

EDITORIAL

The Church and State We're In

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An abiding theme of the Silver Jubilee volume of the *Ecclesiastical Law Journal* has been taking stock of the academic discipline of ecclesiastical law from various vantage points and postulating some reflections on the current direction of travel. With apologies to Will Hutton for the title,¹ I venture some thoughts on the delicate relationship between Church and state. Readers may be relieved that my outlook is less apocalyptic than Hutton's. And this is largely because of the status of the monarchy – or, more particularly, of the Monarch.

I write on 6 February 2012, the Diamond Jubilee of the Accession of Queen Elizabeth II, a 60-year reign that eclipses the more modest 25-year span of this *Journal*. Being present at Westminster Abbey last year for the distribution of the Royal Maundy on Her Majesty's 85th birthday, and in the run up to her grandson's wedding, brought home to me the affection in which the Queen is held and the sense of stability that has resulted from her 60 years of devoted public service, both as Head of State and as Supreme Governor of the Church of England. While there has been change during this period – the payment of income tax, the opening of Buckingham Palace to the public, and the engagement with mass communication media – it has been modest and incremental. It has certainly not been at the same pace and with the same brutality as the unravelling of the Constitution that marked much of Tony Blair's period in office and that has continued to a lesser degree thereafter.

Throughout Her Majesty's reign, governments of every conceivable complexion have come and gone: and the Queen has offered a succession of prime ministers the benefit of her wisdom and experience, in circumstances where the long view often provides a helpful counterpoint to immediate political opportunism. However, while deference towards Her Majesty has resulted in dignified restraint being shown towards any significant inroads into establishment, it is unlikely that the same level of constitutional forbearance will be shown when the throne is transferred to another. Indeed change may come about very swiftly in a dam-burst of legislative provision designed to rewrite the relationship between the Church of England and the state.

To some extent the path towards disestablishment is well trodden. A Parliamentary dry run took place with the passing of the Welsh Church Act 1914,

1 W Hutton, *The State We're In: Why Britain Is in Crisis and How to Overcome It* (London, 1995).

which with disarming simplicity unpicked each of the indicia of establishment within the Principality. Section 1 of the Act prescribed that, with effect from a date to be fixed (which transpired to be 31 March 1920), the ‘Church of England, so far as it extends to and exists in Wales and Monmouthshire . . . shall cease to be established by law’. Furthermore, section 3(1) baldly stated that, with effect from the date of disestablishment, ‘the ecclesiastical law of the Church in Wales shall cease to exist as law’. And thus, with a couple of strokes of the pen, a significant section of the westernmost part of the Church of England was disestablished.

Unsurprisingly, much of the remainder of the Act dealt with matters of property, transferring legal title to various newly created bodies. The sections dealing with high-vaulted constitutional provisions were drafted with absolute simplicity. Section 2(2) provided that, from the date of disestablishment ‘no bishop of the Church in Wales shall as such be summoned to or be qualified to sit or vote as a Lord of Parliament’; section 2(3) provided the counterpart provision, to the effect that no person shall thenceforth be disqualified from sitting in the House of Commons by reason of holding ecclesiastical office in the Church in Wales. The more astute reader will observe that this latter legislative change will be unnecessary, if and when the remainder of the Church of England is disestablished, following the enactment of the House of Commons (Removal of Clergy Disqualification) Act 2001.

What this short Celtic excursus is intended to demonstrate is nothing more than the relative ease with which disestablishment can be secured if the legislature deems it politically expedient. There are votes in secularism. And there is political currency in seeking to redress the perceived preferential treatment accorded to a particular denomination. I am not an advocate of disestablishment. Far from it. Constitutionally conservative, temperamentally liberal, with some socialist principles, I am hesitant to embrace change for its own sake. However, the difficulty that the Church of England faces is that it could so easily find itself the recipient of enforced re-establishment at a pace and to a level dictated by political expediency and government policy-making. With Lords Spiritual removed from a revised second chamber, with the Christian content of the Coronation service where the new monarch is anointed diluted to vanishing point, with the right to be married in one’s parish church abandoned in favour of non-compulsory registration of both gay and straight unions, and with the end of civic religion as it is currently understood,² the nature of the Church of England will inevitably evolve to reflect some or all of these future realities.

2 Note the media furore attendant upon the misreported – and largely misunderstood – judgment of the Administrative Court in *R (on the application of National Secular Society and Bone) v Bideford Town Council* [2012] EWHC 175 (Admin), Ouseley J, where a narrow interpretation of section 111 of the Local Government Act 1972 (soon to be replaced by provisions under the Localism Act 2011) concerning prayer at council meetings led to suggestions that Christianity was being driven out of the public square in the United Kingdom by aggressive secularism.

Change is inevitable and few can predict where the wind will blow. But blow it will, and the Church of England needs to be prepared for the next stage in its own evolution, which will begin when a new monarch ascends the throne. As a loyal monarchist, and as one of Her Majesty's Counsel, I hope that that day is still some way off. But as a member of the Church of England and as a pragmatist, I also hope that the Church will begin to engage aggressively with the debate on re-establishment that has already begun.³ It needs a commission of able, agile-minded individuals, who can think constructively about the manner in which the established church can continue to serve the nation and witness to its Christian mission in 2012 and beyond. If the Church of England does not begin to fashion its own re-establishment it will be the inert recipient of such degraded residue as increasingly secular administrations may choose to leave for it.

The Ecclesiastical Law Society can no doubt contribute to this process but the initiative must come from the Church of England at the highest possible level. There is a viable alternative to change and decay: it is the renaissance of a Church for the nation, less shackled by bureaucracy and weighty tiers of administration, but entrusted, enabled and equipped to promote its own mission and safeguard the presence of the spiritual in society. And if the vision is sufficiently clear, ecclesiastical law can and should facilitate its realisation.

As a postscript, I add some words of Her Majesty, spoken after the foregoing text had been written, with which I am proud to associate *the Journal* in our shared Jubilee year:

We should remind ourselves of the significant position of the Church of England in our nation's life. The concept of our established Church is occasionally misunderstood and, I believe, commonly under-appreciated. Its role is not to defend Anglicanism to the exclusion of other religions. Instead, the Church has a duty to protect the free practice of all faiths in this country. It certainly provides an identity and spiritual dimension for its own many adherents. But also, gently and assuredly, the Church of England has created an environment for other faith communities and indeed people of no faith to live freely. Woven into the fabric of this country, the Church has helped to build a better society – more and more in active co-operation for the common good with those of other faiths.⁴

3 A useful starting point for discussion could be the extensive scoping exercise whose results are to be found in R Morris, *Church and State in Twenty-first Century Britain: The Future of Church Establishment* (Basingstoke, 2009). Informed and perceptive insights are also to be found in M Chapman, J Maltby and W Whyte (eds), *The Established Church: past, present and future* (Continuum, London, 2011). See also M Turnbull and D McFadyen, *The State of the Church and the Church of the State* (London, 2012).

4 From the Queen's speech to a multi-faith reception convened at Lambeth Palace on 15 February 2012. The full text is at <<http://www.royal.gov.uk/LatestNewsandDiary/Speechesandarticles/2012/TheQueensspeechatLambethpalace15February2012.aspx>> (accessed 15 March 2012).