CHURCH AND STATE

A mapping exercise

By Frank Cranmer, John Lucas and Bob Morris

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Appendix E – Church and State in Western Europe (excepting Scandinavia)

Summary of Key Points

- Present relationships between the Church of England and the state are to be found based not so much in the Reformation as in the revolutionary settlement of 1688/89 and subsequent action taken, including on the union with Scotland in 1706/7, to preserve a protestant succession to the Crown. ‘Establishment’ is a portmanteau, elastic term rather than a fixed, immutable concept.

- Whereas initially state and Church were linked in a joint enterprise of governance based on a theory of religious uniformity, over time the state became dominant both in relieving the effects of the harshest civil disabilities imposed for nonconformity and in removing the hegemonic position of the Church in the areas of interpersonal relations and social control for which it had been regarded as chiefly responsible.

- Current arrangements span something more than a merely vestigial residue of the former partnership, especially in the relationship with the sovereign as Supreme Governor of the Church and in episcopal membership of the House of Lords.

- All episcopal and many other senior church appointments are made by the Crown on the advice of ministers. The Church has nowadays more influence in Crown appointments but ultimate Crown/ministerial control remains real.

- The Church retains access to a unique method of legislating for its affairs. Although this still gives Parliament the last word, the Church has acquired the legislative initiative and in practice obtained autonomy over issues of worship and doctrine

- Whilst taxpayer support for its educational and chaplaincy work is substantial, it could not be said that the Church of England is especially or uniquely privileged by the state financially. Not since the first half of the nineteenth century has it received any state subvention not equally available to other denominations.

- Establishment in Scotland has a wholly different character from its meaning in England. The extent to which the Church of Scotland is independent of the state has been thrown into some doubt by a recent House of Lords decision.

- The disestablishments in Ireland (1871) and Wales (1920) were the product of special local circumstances and do not provide models for disestablishment in England. This is because neither had to confront the core of the constitutional settlement fashioned between 1688 and 1707.

- At the Reformation the Scandinavian forms of establishment followed even more erastian models than in the UK, and in societies that were generally more homogeneous and which experienced less religious fracturing subsequently. In most cases, they have been moving to give more autonomy to the churches, though this is least true of Denmark.

- The position in the rest of Europe varies a good deal between countries but not infrequently with a larger engagement of the state than is the case in England. Forms of church tax, for example, are not confined to Scandinavia and there is a good deal more direct subvention by the state than would be contemplated as politically feasible in the UK.

ABSTRACT

This study seeks to describe the nature and extent of current relations between the Church of England and the British state. At the same time, to give depth of field, it looks at analogous arrangements in Scotland and in other European countries, especially in Scandinavia where the relationship between church and state has been historically particularly close. The study shows that in England, although the church/state relationship has greatly changed over the years, what remains is more than an inconsiderable residue. Being confined to a mapping exercise, the study does not enter into argument about the merits of the arrangements or the options for change. It follows that it is not concerned, for example, with questions of disestablishment. On the other hand, it does show that such disestablishment as has occurred – in Ireland and Wales – does not provide viable models for similar initiatives in England.

PREFACE

What follows is the work of many hands. I am particularly grateful to Frank Cranmer and John Lucas for their indispensable contributions on other European churches and the disestablishments in Ireland and Wales. Frank Cranmer also contributed much knowledgeable bibliographical advice.

All of us are also most appreciative of all those who took time to comment on previous drafts of the text. In every case their observations improved accuracy and enriched understanding.

For the remaining errors of fact, judgement or omission the Constitution Unit alone is responsible.

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Introduction

> …there is not any man of the Church of England but the same man is also a member of the commonwealth; nor any man a member of the commonwealth who is not also of the Church of England…(Hooker: 320)

The purpose of this study is to map the current extent of relations between the Church of England and the United Kingdom state. Inevitably, there is much history to be covered. Modern England is obviously not the England of Hooker who died in 1600. Whilst the quotation above asserted what was even at the time only arguably true of the post 1559 Elizabethan state, modern England is a pluralistic society beyond any conception of sixteenth century understanding.

In the 2001 UK census, 92% of respondents answered a voluntary question about their religious status. Of those replying, 72% said they regarded themselves as Christians of all denominations, nearly 3% (1.6 million) were Muslim, and a further 3% together were (in order of size) Hindu, Sikh, Jewish and Buddhist – none accounting individually for more than 1%. In addition, about 16% of respondents said that they had no religion.[1] Even what seem small percentages now in a much larger population refer to numbers that Hooker, in an England of perhaps 2.5 million, would have regarded as very large numbers indeed

It is not the object of this study to argue for or against the present form of establishment of the Church of England. Rather, the study tries to explore establishment's present meaning in the political environment. It is therefore principally concerned with the Church of England's structural relationship with the modern state. This means explaining not only what that relationship is but also how it has developed to that point.

One consequence of this limited viewpoint is that the study will not explore all the Church of England's current functions and activities. Whilst on the one hand some may find this results in an attenuated account, on the other hand, to give depth of field to what might be a viewpoint wholly directed at the Church of England, the study includes consideration of church/state relations elsewhere - in some detail in the cases of Scotland and Scandinavia, and more briefly for other parts of Europe.

'Establishment'

An essential preliminary is to tease out the meaning of 'establishment' in the church/state context. Clearly, the term is ambiguous: For example, whilst it is often accepted that both the

establishment as a way, amongst other things, of categorising the meanings currently attributed to establishment in England (Carr 2002).

The four Church of England twentieth century church/state inquiries all, of course, reflected upon establishment. The last of them refused to ag

baptised and married according to its rites in its churches, and interred in its burial grounds. Pastoral succour is available to all.[2]

It is this commitment to a national mission in partnership with the state which results in the Church of England's involvement with public affairs in a variety of ways. Notably, it leads not only in the grand ceremonial of anointing new monarchs at coronations, but also in a whole range of occasions responding to significant events in the nation's life. Whereas the bishop of London leads the national high profile annual commemoration of Remembrance Day at the Whitehall Cenotaph, Anglican clergy officiate at local memorials and public services throughout the land. St Paul's Cathedral and Westminster Abbey are the settings for state events which mark the great moments of the nation's passage through the world. The relationship with the monarchy where the sovereign, for example, normally opens the Church of England's Synod, reflects the national roles of both institutions.

But the Church of England does not regard its public involvement as simply an involvement in the ceremonial life of the nation: it also shoulders significant and effortful social functions. For example, approximately one quarter of all primary schools in England are Church of England schools educating about one fifth of the school population. It has also a smaller proportionate engagement at secondary and tertiary levels. Further, the Church of England offers chaplaincy services (discussed further below) across public life on a considerable scale. In none of these cases does it operate exclusively: there are other religious schools in the public system, for

a government's urban policies. Moreover, rather than resting on criticism, by means of the ensuing Church Urban Fund it saw to it that money was invested in projects to help ameliorate the conditions the initiative had observed.

More could no doubt be said on these points. For present purposes, it is enough that they may be in the mind of readers for what follows during a study which concentrates only on aspects of the engagement of a particular religious organisation with the state.

I THE LAW

The following describes the requirements of the law affecting the Church of England's constitutional relationships with the principal organs of the state viz. the monarchy, the legislature, the executive and the judiciary. The account does not attempt to describe the church's general legal structure or internal procedures except in so far as they mesh with state concerns.

Monarchy

Constitutionally the UK's sovereign is a Parliamentary monarch: Parliament prescribes the monarch's relations with the Church of England and the rules of succession to the throne.

Although it is not formally one of the sovereign's titles, the sovereign is - as described in the preface to the Thirty-Nine Articles - "Supreme Governor" of the Church of England and, when doing homage, new bishops are required to acknowledge that position.[3] In addition, the surviving part of the Elizabethan Act of Supremacy 1558 (1 Eliz 1 c 1s.8) read with Canon A 7 makes it clear that, as spelled out in the Canon, the sovereign has supreme authority 'over all persons in all causes, ecclesiastical as well as civil'. The monarch is also styled 'Defender of the Faith', a title originally bestowed by a Pope on Henry VIII but subsequently appropriated permanently by the donee in circumstances very different from those of the original grant.[4]

As to the succession, the present rules have remained unchanged since the early eighteenth century and were devised from the revolution of 1688 to ensure the continuation of a Protestant succession to the exclusion particularly of Roman Catholic claimants. Thus, in addition to the monarch being qualified by primogeniture descent from a former Electress of Hanover, he or she is required by s. 3 of the Act of Settlement 1700 (12 and 13 Will. III c 2) to 'join in communion with the Church of England as by law established. The requirement was confirmed by the Act of Union in 1706 (Article II of 5 & 6 Anne c. 8) which repeated and thus further entrenched the anti-Roman Catholic provision first introduced in effect by the Coronation Oath Act 1688 (1 Will & Mary c. 6), stated explicitly in 1689 by the Bill of Rights which excluded even Protestants from the succession if they married Roman Catholics, and restated in s.2 of the Act of Settlement.[5]

The requirement to be 'in communion with the Church of England' does not mean that the sovereign has necessarily to be a *member* of the Church of England itself. The first two Hanoverian monarchs were, of course, Lutherans. Rather, the requirement may be satisfied wherever a successor is a baptised and communicant member of Protestant churches 'which subscribe to the doctrine of the Holy Trinity, and who are in good standing in their own Church' – the combined effect of the Church of England's Admission to Holy Communion Measure 1972 and Canon B 15A. These provisions comprehend potentially most Protestant denominations (including, of course, the Church of Scotland) but not non-Trinitarians like Unitarians or the non-eucharistic Quakers.

[3] The Sovereign is not "Supreme Head", an obsolete title used in the earliest Tudor legislation and long since repealed. - 26 Hen VIII c 1 and 1 Eliz I c 1.

[4] A discussion of these and related issues arising from the Fabian Society pamphlet *The Future of the Monarchy* (London, 2003) may be found in Leigh 2004.

[5] The requirement does not have effect where a male monarch or a person otherwise eligible for the succession has a wife who, subsequent to marriage, converts to Roman Catholicism.

These provisions are variously reflected in the oaths required of the sovereign on accession. (The very first oath – dealt below in the section on the Church of Scotland - in the order of their being taken is in fact the Scottish oath under the Act of Union.) So far as the Church of England is concerned, these oaths are the coronation and accession oaths as follows.

Coronation Oath

The original form of the oath as prescribed by s. 3 of the Coronation Oath Act 1688 (1 Will and Mary c 6) is as follows:

> Will you solemnly promise and swear to govern the people of this Kingdom of Great Britain and the dominions thereunto according to the statutes in Parliament agreed on, and the respective laws and customs of the same?
>
> I solemnly promise so to do
>
> Will you to your power cause law and justice in mercy to be executed in all your judgements?
>
> I will
>
> Will you to the utmost of your power maintain the laws of God, the true profession of the Gospel and the Protestant reformed religion established by law? And will you maintain and preserve inviolately the settlement of the Church of England and Ireland and the doctrine, worship, discipline and government thereof as by law established, within the Kingdoms of England and Ireland, the dominion of Wales, and the town of Berwick on Tweed, and the territories thereto belonging? And will you preserve unto the bishops and clergy of England and to the churches there

Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the Bishops and Clergy of England, and the

The Government have a heavy legislative programme aimed at delivering key manifesto commitments in areas such as health, education, crime and reform of the welfare system. To bring about change to the law on succession would be a complex undertaking involving amendment or repeal of a number of items of related legislation, as well as requiring the consent of legislatures of member nations of the Commonwealth. It would raise other major constitutional issues. The Government has no plans to legislate in this area.

Under the Church Assembly (Powers) Act 1919

> subjects.' If there has been a conference, the transcript is attached to the report, but the Ecclesiastical Committee does not otherwise take evidence.
>
> During this process, neither Committee has any power to vary the text of the Measure. The Legislative Committee may, however, withdraw the Measure – for example, after receipt of the Ecclesiastical Committee's draft report which the latter is required to show the former during the considerative process.
>
> A Measure may deal with any Church of England matter, and may amend or repeal any act of Parliament except those provisions of the 1919 Act itself relating to the composition, powers or duties of the Ecclesiastical Committee. A Measure may confer powers for Synod to make subordinate legislation which may, though not automatically, be brought within the requirements of the Statutory Instruments Act 1946 and become subject to Parliamentary scrutiny before entering into full effect. The Synod's own Standing Orders require Measures to provide for subordinate legislation to be laid before Parliament for approval if it affects the legal rights of any person.
>
> Following submission of the Ecclesiastical Committee's report to Parliament, a resolution of each House is required to present the Measure for Royal Assent whereupon the Measure attains the force and effect of an act of Parliament.

Granted that what in an analogous voluntary association would be purely internal adjustments without recourse to a public, let alone statutory, procedure, the Church of England has made regular but not prolific use of the 1919 Act arrangements. In the last two decades, for example, only 1986 has seen as many as four Measures approved; and in some years – 1984, 1985, 1987, 1989, 1996 and 2002 - there have been none.

The scrutiny of the Ecclesiastical Committee is no mere formality or necessarily Parliament's last

Commissioner came to be regarded as the Parliamentary spokesman for the Ecclesiastical/Church Commissioners (Best: 418-9).

The present position is that the government business managers arrange that Parliamentary time is made available on about eight times a year to the MP to answer Questions concerning the Church Commissioners' activities. The MP is briefed by the Church Commissioners for these purposes. (There is no equivalent arrangement in the House of Lords, because only the Commons may deal with financial matters.) The rationale for an arrangement where the only other non-ministerial MPs who take Questions are the chairs of certain Commons committees is that the Church Commissioners dispose of funds with historic origins partly in Parliamentary grants. The arrangement also reflects the established status of the Church of England.

Bishops in the House of Lords

(a) Extent of Crown patronage

Bishops and Suffragan bishops

The Crown appoints 43 diocesan bishops and 68 suffragan bishops. The diocesans include the Bishop of Sodor and Man but not the Bishop in Europe. Neither of the latter two bishops is eligible to sit in the House of Lords.

Cathedral Deans

Under the Cathedrals Measure 1999, all cathedrals now have deans. The Crown

Queen accepted the Lord Chancellor's recommendations based on the report of the review group.[21]

Crown reversion

It is the established convention that, where the appointment of a diocesan bishop creates a vacancy even in certain non-episcopal offices, it is the Crown that appoints to the vacancy so created. Thus, the Crown may become involved on those occasions only in appointments to cathedral deaneries, archdeaconries and residentiary canonries not otherwise in its patronage as well as those deaneries and canonries which are.

Benefices

The government is also significantly involved in the exercise of patronage for the appointment of clergy to individual benefices, that is as the incumbents of parishes. A total of 652 benefices is involved: 210 where the Crown appoints on the advice of the Prime Minister, and 442 where the Lord Chancellor is the appointing authority – in 157 as the sole patron, and in 285 cases either alternately or sequentially with other patrons. Whilst all these appointments are exempt from the Patronage (Benefices) Measure 1986, it is the practice of the appointing authorities to observe the spirit of the Measure's requirements

Archbishops and diocesan bishops

the Joint Standing Committee of the Primates Meeting of the Anglican Communion and the Anglican Consultative Council as a voting member. Also invited, but in a non-voting capacity, is the Secretary General of the Anglican Communion. In the case of a *York* vacancy, the Appointments Committee of the Church of England, after consultation with the Archbishop of Canterbury, nominates the chair. (In the instance of the most recent archiepiscopal vacancies, the Canterbury Commission was chaired by a senior Judge and the York Commission by a senior northern figure with wide experience of the Church, both at national and diocesan level.)

The Vacancy in See Committee's function is to prepare a brief description of the diocese with a statement setting out the diocese's needs, and to elect the diocesan representatives to the Crown Nominations Commission. Its *ex officio* members include all suffragans and stipendiary assistant bishops, the cathedral dean, no more than two archdeacons, any diocesan members of the General Synod, and the chairs of the Houses of Clergy and Laity of the diocesan synod. Elected members are not fewer than two each of clerical and lay members of the diocesan synod. There are also arrangements for the diocesan bishop's council to nominate up to four additional members in order to secure representation of a special interest or to improve the representative character of the Committee as a whole.

Having taken into account the statement of needs provided by the diocese, the national statement of needs provided by the Archbishops and also the memorandum written by the Appointments Secretaries, and after considering eligible candidates, the Crown Nominations Commission submits two names (in order of preference if they so choose) to the Prime Minister for recommendation to the Crown. The Prime Minister may determine which of the names to recommend or invite the Commission to reconsider and submit an alternative name or names.

Following approval by the Sovereign, cathedral colleges elect the final nominee expressing thereby consent to the outcom

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Suffragan bishops

These bishops are appointed under the Suffragan Bishops Act, 1534 (26 Hen VIII c14). The Act requires the diocesan bishop to submit two names to the Crown for it to choose which of the two is to be appointed.

> The initiative for the appointment of suffragan bishops is in the hands of the diocesan bishop in whose diocese the suffragan appointment is to be made. Whilst the Crown Nominations Commission is not involved, there is a formal consideration procedure during which diocesan bishops sets up consultative arrangements about the nature of the role and the type of person required, as a minimum involving a small group to advise him and the bishop's council on the vacancy. In addition, the Archbishops' Secretary for Appointments advises as to the field of consideration of candidates, and acts as the vehicle for submitting the diocesan bishop's recommendations through the Archbishop of the relevant Province to the Prime Minister's Secretary for Appointments. Whilst by law two names must be submitted, by convention the first name is recommended by the

as to the law and practice regarding appointments to the offices of suffragan bishop, dean, archdeacon, and residentiary canon. It is expected to report in 2006.

Judiciary

The jurisdiction of the ecclesiastical courts was much curtailed in the course of the 19th century (when, for example, they lost their jurisdiction in cases of defamation, testamentary matters and matrimonial causes). Their jurisdiction, currently regulated largely by the Ecclesiastical

and inspection of documents; and failure to comply with their orders can be enforced by the contempt process, through the High Court, in the same way as if there had been contempt of the High Court.

Legatine jurisdiction

Before the Reformation, Archbishops of Canterbury commonly exercised legatine powers delegated to them by the Pope. At the Reformation these powers were "nationalised" by the state and are exercised by the Archbishop under legislation originating in the Ecclesiastical Licences Act 1533. The system is administered on behalf of the Archbishop by the Faculty Office operating under the supervision of the Master of the Faculties (usually a High Court judge).

The commonly active elements[26] of this jurisdiction include three areas:

- *Special marriage licences* – These may be issued in England *and* Wales to authorize the solemnisation of marriage in circumstances not permitted under normal Church of England and Church in Wales requirements, for example where parties wish to marry outside their parishes of residence.
- *Notaries Public* – These are legal officers of ancient standing. Their functions include the preparation and execution of legal documents for use abroad, attesting the authenticity of deeds and writings, and "protesting" bills of exchange. Under the Courts and Legal services Act 1990, the Master of Faculties may make Rules for the regulation of the Notarial profession.
- *Lambeth Degrees* – The ability of the Archbishop to award degrees is also founded on the 1533 Act. The degrees are recognized in law as full degrees. In practice, they are awarded (sometimes after examination) to those – not necessarily Anglicans - who have distinguished themselves in the service of the Christian Church.

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ANNEX

Howick to van Straubenzee

Howick Commission

In the 1960s the modalities of appointments came to the fore, at least in part, as a result of the Government's refusal in 1961 to appoint the Provost of Guildford, Walter Boulton, to the newly-established Deanery of the Cathedral for whose completion he had worked so long and hard (Welsby 1984). In that year a Commission was established under the chairmanship of Lord Howick of Glendale to consider Crown appointments: it reported in December 1964, suggesting a modification of the system rather than a radical overhaul. A vacancy-in-see committee of about twenty people under the chairmanship of the senior suffragan bishop or, failing that, the dean or provost would make representations about the needs of the diocese to the Prime Minister and the Archbishops but without suggesting names; formal elections by cathedral chapters would be abolished (Howick 1964). The Commission also wished to see a wider degree of consultation before the appointment of deans and provosts (Howick 1964: 55). It is difficult to judge the impact of the Howick Commission. Though adopted later, vacancy-in-see committees were not established immediately, and, since the process remained strictly confidential, whether there was, in fact, any wider degree of consultation cannot be known

The 1976 settlement

In 1974, Synod resolved that it

> affirms the principle that the decisive voice in the appointment of diocesan bishops should be that of the Church; believes that, in arrangements to give effect to this, it would be desirable that a small body, representative of the vacant diocese and of the wider Church, should choose a suitable person for appointment to that diocese and for the name to be submitted to the Sovereign; and instructs the Standing Committee to arrange for further consideration of these matters...(van Straubenzee 1992: 107)

In 1976, after lengthy informal negotiations between the Church and Downing Street, it was agreed that a modified system of consultation should be introduced which would involve the Church more closely in Crown appointments. When a diocese fell vacant, a vacancy-in-see committee would be established along the lines envisaged by Howick. It would submit two names to the Prime Minister, who would be free to recommend *either* name to the Queen, or to ask for further names. The Prime Minister, James Callaghan, rejected any notion that it was time to end Prime Ministerial involvement in such appointments.

> There are... cogent reasons why the State cannot divest itself from a concern with these appointments of the Established Church. The Sovereign must be able to look for advice on a matter of this kind and that must mean, for a constitutional Sovereign, advice from Ministers. The Archbishops and some of the bishops sit by right in the House of Lords, and their nomination must therefore remain a matter for the Prime Minister's concern.[27]

The possibility that the Church *itself* might advise the sovereign was evidently not regarded as a serious option in a situation where the executive took the view that the sovereign could not act other than on ministerial advice.

[27] Hansard, Commons, 8 June 1976, col 613.

Van Straubenzee Working Party

The issue was revisited in the late 1980s by a Working Party chaired by the former MP and Second Church Estates Commissioner, Sir William van Straubenzee, and charged with reviewing the appointment of dignitaries other than diocesan bishops. It reported in 1992 with a series of proposals for the removal of the Prime Minister's part in the appointment of dignitaries. In particular, it recommended that the appointment of deans should be made after an appointing group chaired by the diocesan bishop had considered the matter; the bishop would transmit two names in order of preference to the Archbishop of the Province who, as a Privy Councillor, would submit the preferred name direct to the Sovereign. (van Straubenzee: 38-42)

However, the Working Party was by no means unanimous. Frank Field MP entered a Memorandum of Dissent in which he argued strongly for the Prime Minister's continued involvement in the process, on the grounds that any attempt to diminish the involvement of the Crown in Church appointments would lead to disestablishment by default:

> For what would be left of the Crown's influence if the Government were to accede to the reforms in the [van Straubenzee] report? And if the Crown were to lose its remaining influence in appointments how could the privileges of the Church, particularly its endowments, remain intact?

His preference would be for something like the present system, but

> ... exercised in public. I therefore endorse the... [van Straubenzee] approach for senior positions. I do, however, believe that the majority of places on any such committee should go to Crown nominees. (van Straubenzee: 115-7)

The recommendations of the Working Party were not implemented.

II FINANCE

A common fallacy is the belief that “establishment” means that the state funds the costs of the Church of England. This is not now, and never has been, true.

When approaching the topic of state funding, it is first right to bear in mind that, for running costs purposes the Church of England relies on its own resources. Annual expenditure exceeds £800 million. The Church Commissioners (the body that united the Ecclesiastical Commissioners and Queen Anne’s Bounty in 1948) concentrate on support for dioceses/parishes, bishops, cathedrals and paying clergy pensions. For these purposes, the Church Commissioners manage capital assets currently amounting to over £4 billion.[28] The dioceses, mainly using funds from parishes, are responsible for paying and housing their clergy, the Church of England’s relations with its schools, and support of the parishes. The upkeep of parish churches and cathedrals is in the first instance the responsibility of each individual body.

The last decade has seen important shifts in internal funding responsibilities. Because of the increased burden of clergy pensions, a resulting reduction in the amounts formerly given by the Commissioners to dioceses has had to be made up by increased giving from church members, including in respect of pension entitlements arising from service after 1997. Since 2000, tax changes (the Gift Aid scheme estimated in 2001 to have helped make covenant giving worth a total of £196 million (Daws 2001) have benefited the Church of England as all other charities.

What follows will summarise (a) the historic subventions of the state and, with the exception of Church of England schools (to be dealt with separately), (b) the current sources of state – concentrating on central government - funding made available to the Church of England.

(a) Historic subventions

In the medieval period - when the distinction between the personal rule of the sovereign and the impersonal concept of what is now understood by the “state” was unknown - the crown conferred many gifts on the church *in* England in the days before it became regarded as the Church *of* England. The Chapels Royal, other Royal Peculiars and many cathedral and collegiate buildings continue to testify to this munificence. The Reformation on the other hand both nationalised and alienated much church property. The crown diverted to itself the taxation revenues formerly received by the Pope, and a significant amount of tithe (the local taxation directed to the support of incumbents) fell into lay ownership.

In a measure designed to reduce clerical poverty, Queen Anne in 1704 surrendered the former Papal revenues - the first-fruits and tenths[29] - to the Church of England to establish the funding charity Queen Anne’s Bounty. Although the state continued to collect the revenues on the

Other subventions were of a different character. There were two church building initiatives. The first was the early eighteenth century Commission for Building Fifty New Churches which spent nearly £250,000 secured from that part of the coals duty formerly used for the rebuilding of St Pauls and the maintenance of Westminster Abbey. Restrictive conditions and problems which included negotiating the rights of existing incumbents meant that only 12 churches were built though five were subsidised and two others acquired (Port 1986). In the nineteenth century, the two principal Church Building Acts of 1818 and 1825 steered £1.5 million through a Church Building Commission into a process where a significant matching effort from within the Church of England saw a total of 612 churches built by the time the Building Commission was amalgamated with the Ecclesiastical Commissioners (Port 1961). These sums were augmented by "drawback" (exclusive to the Church of England[30]) on building materials, that is tax refunds similar to current Value Added Tax refunds.[31] In addition, from 1809, the government made grants of £100,000 a year to the Bounty up to a total of £1,100,000.

All of these were, of course, significant sums. Equally significant was that there were no further Parliamentary grants after 1828. Although Parliament continued to legislate for the Church of England, it took no further steps to fund it. The creation of the Ecclesiastical Commissioners in 1835-6 was an occasion for enabling *existing* funding to be managed more equally and efficiently rather than an opportunity for additional Parliamentary largesse. Peel, the prime mover in 1835, was clear in his ministry of 1841-5 that there could be no question of fresh public funding even when church extension was thought to be an important response to the social ills of the day (Gash 1972: 381-4).[32] On the other hand, the Church of England National Society and the largely Nonconformist British and Foreign Society schools continued to benefit from funding arrangements initiated in 1833.

At the same time, and to put contemporary funding practices in perspective, it has to be borne in mind that Parliamentary grants continued to be made to other churches. The *the lars. The Ef 5.4(sh to benec*

Indian revenues, a situation confirmed in the Government of India Act 1915 (5 & 6 Geo V c 61) but repealed in the Government of India Act 1936 (26 Geo V and Edw 8 c). In Canada and Australian territories, proportions of crown land values had been set aside early on for the purpose of supporting the clergy. In Canada, since 1791 one seventh of all crown land sales had been reserved for the support of Protestant clergy, latterly in ratios of two thirds for the Church of England and one third for Church of Scotland clergy. Preserving existing entitlements, the system was abolished from 1853.[34] In Australia the new responsible legislatures moved to do the same – in Queensland at the first opportunity in 1860. (Selborne: Appx IV 94-191)

Finally, although the state did not supply the funds, it stood behind two forms of taxation that benefited the Church of England and which were levied on the whole population irrespective of their religious beliefs: the tithe (originally a tax on the product of the land to support incumbents,

- For urgent repairs to listed buildings in regular use as public places of worship
- Worth an average of over £20 million 2000/01 - 2003/04.[36] Money available for offers for 2004/5 and 2005/6 was just under £25 million in each year.

(ii) Cathedral grants (EH only)

- For repairs to Church of England and Roman Catholic cathedrals listed grade I or II* and/or are situated within a conservation area.
- Total grants (including Roman Catholic cathedrals, though chiefly directed to Church of England cathedrals) £2.1 million 2003/04.[37]
- For each of the three years 2005/6 until 2007/8 EH proposes to offer £1 million for cathedrals.

(iii) Heritage grants (HLF only)

- Grants (or loans) allocated between all applicants on a competitive basis and directed to maintaining or preserving buildings, assets and sites of outstanding heritage significance.
- Outcome examples: of the 50 projects which qualified in the category for grants of more than £5 million listed by EH 2004/05 at a total value of £550 million, two were Church of England projects in line for grants totalling £19 million, or just over 3% of the total. Between them the two projects will have to raise a further £44 million i.e. 70% of the total cost.[38]
- Total awarded by Heritage Lottery Fund for projects of all kinds since their establishment in 1994 was £3 billion. They estimate that in the UK as a whole between 1994 and July 2004 they have given a total of nearly £300 million to

- As at 30 September 2005, £28 million had been paid out in total since the scheme began to churches in England, an estimated 90% for Anglican churches.

which spares denominations no labour and subsidises no expense. Moreover, it could be maintained that the arrangement confers an indirect financial benefit on the state, because the cost implications of replicating the expertise involved in advising on works to churches and cathedrals, much carried out on a voluntary basis by members of advisory committees and central church bodies, would run into millions of pounds.

III CHAPLAINCIES

In addition to arranging the availability of its ministry through its parochial organisation, the Church of England extends that ministry to a range of public and private organisations by the appointment of chaplains. It is not, of course, the only religious denomination that provides such services. Indeed, although the Church of England remains the largest supplier, one of the consequences of the increased multiculturalism in the UK is the extent to which not only are other Christian denominations represented through chaplaincies but now also faiths other than Christian.

The following seeks to summarise the extent of the Church of England's chaplaincy effort, concentrating on public organisations. Where reasonably ascertainable, estimates will be made of current running cost expenditure where it is borne by sources other then the Church of England itself. Amongst the deficiencies of such estimates is that, since they concentrate on running costs, they fail to include the costs incurred by the Church of England in preparing individuals to assume chaplaincy roles. Overall, the Church of England estimates that chaplains of one kind or another amount to 4% of licensed ministries as a whole, and 10% of all stipendiary clergy.[44]

Armed services

Chaplains are provided as commissioned officers under Queen's Regulations subject to the approval in each case of the appropriate denominational authority. For the Church of England this entails the Archbishop of Canterbury's licence.

In May 2005, the total number of full time Church of England chaplains in the armed forces was 177, or 58% of the total of 294. (Of the rest, Roman Catholic chaplains constituted 16%, Church of Scotland 12%, Methodists 8%, and the remaining churches 6%.)

Because of the way in which costs are allocated within the Defence budget, it is not possible to

Prison Service (England and Wales)

By law (s. 7 of the Prisons Act 1952) every one of the 129 prison establishments in England and Wales must have a chaplain who has to be a clergyman of the Church of England – a requirement which in respect of the 4 of the establishments in Wales is stipulated (s. 53(3) to include a clergyman of the Church in Wales.

The prisons chaplaincy is not confined to Church of England clergy or, indeed, Christian denominations. Under the general superintendence of the Chaplain General, a Church of England priest, the chaplaincy nowadays includes representatives of, for example, the Muslim and Buddhist faiths. This greater diversity reflects significant changes in the character of the prison population where the proportions of the population professing any religious faith were in 2002 as follows:

Religion	%age
Anglican	36
Roman Catholic	17
Muslim	8
Other Christian	3
Free Church	2
Buddhist	1

Between 1993 and 2002, Bhuddists showed the highest growth rate. In second place was the growth in the proportion of prisoners professing no religion.[46]

There is a total of 315 chaplains, 184 full-time and 131 part-time. Of the full-time 147 are Church of England. Because of the manner in which expenditure is delegated to individual establishments, cost data are not readily available. However, on the analogy of Defence costings, it will not be unreasonable to estimate that the annual level of public expenditure in respect of Church of England chaplains runs at about £11 million.[47]

Hospital chaplains

Authorised under the National Health Service Acts, there are 422 full-time chaplains of whom 350 are Church of England clergy. There are also estimated to be 3,000 part-time chaplains half of whom are from the Church of England.[48] That Church has operated a Hospital Chaplaincies Council, a Council of the General Synod, since 1951 and which functions at the interface of the Church of England, the department of Health and the NHS Executive. In addition, the Church of England participates in a Churches' Committee for Hospital Chaplaincies which co-ordinates the relations of all Christian denominations with the Department and the NHS.

Because budgets are delegated to Trust level, it has not been practicable to obtain overall figures constructed on a common basis. Assuming an equivalence with Prison Service chaplains

[46] Home Office (2002) *The Prison Population in 2002: A statistical review,* Findings 228, p. 3.
[47] MOD costings are calculated as capitation rates which are comprehensive in including, for example, employer NI contributions, education support though not accommodation costs, support costs and training costs. On that basis, MOD chaplain main grade capitation rates are at £90-95k depending on the Service concerned. Assuming conservatively that the capitation rates of 147 Church of England chaplains run at about 80% of the lowest MOD capitation rates, then the total cost would amount to £11,172, 000.
[48] *Church of England Yearbook 2004*.

would suggest an annual cost of over £26 million for full-time chaplains. However, granted that hospital chaplains cost less because there is no housing allowance and probably less in the way of support costs, a more conservative estimate confined to full-time chaplains suggests public expenditure costs in a range of £9-10.5 million {i.e. at annual rates of £25,000 and £30,000 for 350]

Chaplaincies in Higher Education

There are on one estimate174 Church of England chaplains in Universities, 35 in Colleges of Further Education and 29 in Colleges of Further Education.[49] There is a National Adviser for Higher Education/Chaplaincies at Church House generally supporting these chaplaincies.

Estimating costs on the basis of the number of Higher and Further Education chaplains (85) recorded in the Church of England's statistics for 2002 (Church House 2004) and on the same conservative estimating principles for hospital chaplains, the annual public expenditure costs would fall into the range £1-2 million.

Other chaplaincies

IV THE DEVELOPMENT OF ESTABLISHMENT 1800-2005

Annexed is a non-exhaustive list of the principal legislative and other changes or events over the last two hundred years relevant to the constitutional relationship between the Church of England and the United Kingdom state.

From the perspective of today, it can be seen that, whereas in 1800 state and church were conceived as joint partners in the governance of the nation, by the end of the period a process of - still incomplete - institutional separation had been occurring. That process was uneven, non-linear and largely unplanned – the product of individual initiatives in response (especially so far as the state was concerned) to particular political problems. There was never any programme of deliberate overall change as such. Furthermore, it would not be right to see the process as one determined entirely by the state: the response of the Church itself always played a part and increasingly so in the later period.

These cumulative changes may be seen simultaneously in different ways. On the one hand, some may be seen as the product of a progressive division of view between the Church and the state about, for example, the objects of family and marriage law, or the extent to which the state should continue to stand behind interests, for example financial interests, specific to the Church. On the other hand, they may be characterised as the product of a state increasingly impelled to extend its protections directly and uniformly to the whole population regardless of confessional considerations, though it would be anachronistic to label such a process for the most part as one of self-conscious secularisation.

In 1800, however, state and church were, formally, a single enterprise. A largely Anglican Parliament legislated for secular and ecclesiastical affairs in a structure which in theory treated the entire population outside Scotland as a uniform entity. The law subjected all Dissenters to civic penalties designed to deny them full membership of the political society. The civil and ecclesiastical courts constituted a joint jurisdiction with the latter's functions controlling significant areas of family law as well as matters, such as clerical discipline, entirely of internal Church of England concern. Whatever the issue, all the judgements of the ecclesiastical courts were enforceable by mechanisms supported by the state. The support of the clergy and the fabric of the churches themselves depended on a system of local hypothecated taxation – tithe and church rates - underpinned by the state. The state appointed the episcopacy which was itself in its entirety in full membership of the senior part of the legislature.

Reciprocally, the Church of England acted on responsibilities for a wide range social functions then not shouldered by the state. These included, for example, education (one quarter of all primary schools in England are still Church of England schools), the parochial based system of relief of the poor, the solemnisation of marriage, and the disposal of the dead. Originally responsibilities exclusive to the Church of England, they became increasingly undertaken by the state.

All significant changes in the functioning of the church had to be processed through the legislature. Unlike the position in Scotland, the church had no separate assembly of its own. Even when functioning – and they had not done so regularly since 1741 – the Convocations of the two Provinces of Canterbury and York were entirely clerical bodies possessing no significant powers. For example, they could not legislate finally for their own affairs and their power to tax the clergy had been surrendered in 1664.

Even in 1800, however, the formal and the real positions were already significantly different. Despite the appearance of a confessional state (that is, one where government, nation and church are coterminous)[51], the state had since 1727 long in practice admitted most Christian Dissenters to full, normal civic participation by means of annual Indemnity Acts. In addition, since the late seventeenth century, the state had made payments, known as the "Regium Donum", to Dissenting ministers in England and Ireland – a limited form of concurrent endowment. In other words, the state had conceded the principle of pluralism for many, if not all, purposes in practice.

During the nineteenth century the same benefits were extended to non-Trinitarian Christians in 1813, to all Protestant Christian Dissenters by the removal of all *formal* discrimination against them in 1828[52], to Roman Catholics in 1829, to Jews successively in 1846 and 1858, and to explicit non-believers in 1888. The introduction of civil marriage and the removal of the Church of

ANNEX

TIMELINE

1800. Act of Union (40 Geo III c 67) created United Kingdom of Great Britain and Ireland, and a United Church of England and Ireland to include representation of the Irish episcopate by four Irish bishops in the House of Lords. Ministers resign over refusal of George III to accept a concurrent measure designed to remove Roman Catholic disabilities, e.g. to continue their ability to vote as granted by the Irish Parliament in 1793 (33 Geo III c 21 (Ireland)).

1813 Doctrine of the Trinity Act (53 Geo III c 160) put Unitarians (Christian non-Trinitarians) on the same basis as other Protestant Dissenters when they had hitherto been excluded from the benefits of the toleration legislation.

1813 Excommunication Act (53 Geo III c 127) abolished the civil penalties of excommunication.

1818 Church Building Act (58 Geo III c 45) established a Commission with a Parliamentary Grant of £1m to encourage the building of churches. A further grant of £0.5m was made in 1824. The Commission was merged with the Ecclesiastical Commission in 1856.

1828 Repeal of Test and Corporation Acts (9 Geo IV c 17) removed the civic disabilities placed on Protestant Christian Dissenters in the reign of Charles II and ended the regime of annual Indemnity Acts 1727-1827 which allowed Dissenters in effect to circumvent the Acts' requirements. The Repeal Act required beneficiaries to swear an oath that they would never as holders of their office "injure or weaken the Protestant Church as it is by law established in England, or to disturb the said Church, or the bishops and clergy of the said Church, in the possession of any rights or privileges to which such Church, or the said bishops and clergy, are or may be by law entitled". [The oath was repealed by the Promissory Oaths Act 1871 – 34 & 35 Vict c 48.] The change meant that Parliament, although it remained a Protestant assembly, was no longer (disregarding the Scottish representation since 1707) a wholly Anglican body.

1829 Roman Catholic Relief Act (10 Geo IV c 7) removed Roman Catholic civic disabilities although continuing to exclude Roman Catholics from the offices of Lord Chancellor, Lord Lieutenant of Ireland and the High Commissioner to the General assembly of the Church of Scotland. Roman Catholic peers and MPs had to take an oath on assuming their seats which included similar clauses to those of the 1828 Act swearing that they would not seek to harm the Church of England (or the Church of Scotland). The effect of the 1828 and 1829 Acts was that Parliament ceased to be a wholly Protestant body though it retained legislative control over the Church of England.

1833 Irish Church (Temporalities) Act (3 & 4 Will 4 c 37) abolished church rates (the rate levied for the support of the church fabric and divine service) in Ireland, halved the number of archbishoprics to two, reduced the number of bishoprics from eighteen to ten, and established a Commission to administer the funds released by the changes. (Because it was seen by some as unilateral interference by the state, this Act was one of the triggers of the Tractarian movement.)

1833 Irish Tithe Owners Relief Act (3 & 4 Will IV) in response to tithe agitation voided collection of tithes for 1833 and allowed for recovery of arrears for 1831 and 1832, advancing relief to owners on repayment terms.

1833 Court of Delegates Act (2 &3 Wm IV c 92) removed final appeals from ecclesiastical courts from Court of Delegates (a specialised tribunal) to Judicial Committee of the Privy Council which therefore became the supreme authority for determining, amongst other things, questions of worship, doctrine and discipline in the Church of England in addition to its other wide-ranging judicial functions.

1833 Treasury grant of £30, 000 a year in aid of school building shared between the Anglican National Society and the predominantly Protestant Dissenter British and Foreign Schools Society commencing a system of concurrent endowment. Sum later increased, extended to include other denominations, and policy responsibility given to a permanent committee of the Privy Council.

1836 Marriage and Registration Acts (6 & 7 Wm IV cc 85 and 86) permitted civil marriage and registration, and also allowed Dissenters to marry in their own places of worship. [Quakers and Jews had already been permitted to marry outside the Church of England.]

1836 Tithe Commutation Act (6 & 7 Wm IV c 71) created a Tithes Commission in England and Wales to oversee the commutation of tithes from payments in kind to cash payments.

1836 Established Church Act (6 & 7 Wm IV c 77) set up a permanent Ecclesiastical Commission to manage important revenues of the Church of England. It was the first in a series of initiatives – managed and led in practice by clerical Commissioners - compulsorily to redistribute revenues in the interests of financing the ministry of the Church in poorer neighbourhoods.

1836 London University formed by government approved Charter as a secular institution.

1838 Irish Tithe Act (1 & 2 Vict c 109) converted tithe to a charge paid by the landowner.

1843 Government forced by opposition of Dissenters to drop education clauses from Factory Bill that would have given Church of England teaching monopoly in state funded schools.

1846 Religious Disabilities Act (9 & 10 Vict c 5c-0ii5c-orer ce1. commeni0.3.27br.ity( )]TJ0 -1.153 TD0 Tc0
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Chancellor exercising his ecclesiastical patronage. The case drew attention to the reality of ultimate state control over the Church of England.

1851 Religious census – whose methodology was much disputed amongst denominations - showed a considerable shortfall in the availability of places of worship for the population as a whole, and the fact that nearly half the population did not attend church at all, with the lowest rates of attendance amongst the poor. Denominationally, there was a slight general preponderance of dissenting numbers over those for Church of England but with a more marked preponderance in the urban Midlands and North as well as the West country, and a four to one majority in Wales. Irrespective of the arguments on detail, and the differences between England and Wales, the outcome weakened the Church of England case for privileged treatment in so far as it had rested on its continuing predominance in the population. This had implications for its exclusive control over burial grounds, for compulsory church rates, tithes, and for the remaining civil jurisdictions of the ecclesiastical courts over family law and probate.

1854 Oxford University Act (17 & 18 Vict c 81) abolished religious tests for admission to Oxford for most purposes. [Cambridge followed suit in1856.]

1855 Defamation Act (18 & 19 Vict c 41) removed actions for defamation from ecclesiastical to civil courts. As the preamble to the Act put it: "Whereas the Jurisdiction of the Ecclesiastical Courts in Suits for Defamation has ceased to be the Means of enforcing the Spiritual Discipline of the Church..."

1855 Canterbury Convocation resumed for first time since 1717. [York resumed in 1861.]

1857 Divorce and Matrimonial Causes Act (20 & 21 Vict c 85) permitted civil divorce without recourse to private Act. Jurisdiction of the ecclesiastical courts over marriage and probate transferred to civil courts.

1858 Jewish Relief Act (21 & 22 Vict c 49) permitted Jews to sit in Parliament which was therefore no longer nominally an entirely Christian assembly though it retained power to legislate for the Church of England.

1865 Clerical Subscription Act (28 & 29 Vict c 122) altered and simplified the range of clerical oaths accumulated from the Reformation following a Royal Commission set up to examine them.

1868 Abolition of Compulsory Church Rates Act (31 & 32 Vict c 109) abolished the compulsory rate levied on all parishioners irrespective of religious affiliation after successive attempts in Parliament from 1834 to address the issue. The outcome was to oblige the Church of England to look to other funding sources since the voluntary system of church rates that remained proved unviable.

1869 Irish Church Act (32 & 33 Vict c 42) with effect from 1871 disestablished the Irish Church and dissolved its union with the Church of England, removing Irish bishops from the House of Lords. The 1833 Irish Ecclesiastical Commission was absorbed into a new Commission responsible for administering the 1869 Act with its compensation schemes for incumbents and owners of advowsons, and scheme for the extinction of rentcharge. A new self-governing church representative body was set up on synodical lines and the Irish ecclesiastical courts abolished. Although it was

contemplated by Parliament, the measure of disendowment involved was *not* deployed in the interests of concurrent endowment of all Christian denominations.

1914 Welsh Church Act (4 & 5 Geo V c 91) disestablished the Church of England in Wales on lines similar to the disestablishment of the Irish Church. Rejected by the House of Lords, the measure was due to come into force under Parliament Act procedures at commencement of World War I but was then suspended. The Act's original disendowment provisions were mitigated by an Act of 1919 - Welsh Church (Temporalities) Act (9 & 10 Geo V c 65). The legislation came into force in 1920, and the monies from the disendowment eventually transmitted to Welsh county councils.

APPENDIX A

CHURCH OF ENGLAND INQUIRIES IN THE 20

with decisions of the Church Assembly on matters so clearly lying within the province of

> Churches; it means that the State has for some purpose of its own distinguished a particular Church from other Churches, and has conceded to it in a greater or less degree a privileged position.(Cecil 1935 Vol 2: 170)[55]

The final Report in 1935 rejected going down the Scottish road on the grounds that the history of the two countries was not the same, adding that it would also be very difficult to obtain in England the agreement on doctrine and ritual which, whatever their other original differences, had not been in contention between the Church of Scotland and the United Free Church. However the Committee rejected the Scottish model with one proviso:

> …the Church of Scotland Act …[shows] that a complete spiritual freedom of the Church is not incompatible with Establishment. The Crown in Parliament has solemnly ratified the principles on which the Scottish settlement is explicitly based, and has accepted the relations between the spiritual and the civil power laid down in the Declaratory Articles. It is, therefore, neither illogical nor impractical to infer that the Crown in Parliament would be willing to consider and to grant to the Church of England what has been, with the full consent of England, freely granted or confirmed to the Church of Scotland.(Cecil 1935 Vol 1: 55-6)

At the same time, the Committee asserted the view that the Church of England continued to represent the Christian faith of the nation as a whole:

> Its [the Church of England's] primacy has been maintained by the essentially conservative English mind as a primacy of age and honour and comprehensiveness as the acknowledged position of a body which at crucial moments in the spiritual history of the nation has the right to speak for all, however sundered its religious tenets might be. In this sense the Christian State of England may be termed a Church of England State.(Cecil 1935 Vol 1: 17)

The legislative solution recommended by the Committee, and set in a draft Bill in their Report, was that Parliament should allow the Church of England new powers to legislate with regard to the doctrinal formulae and the services and ceremonies of the Church of England. In such cases, where a measure was certified by the two Archbishops, the Lord Chancellor and the Speaker as related 'substantially to the spiritual concerns of the Church of England', Parliament should not interfere. (Cecil 1935 Vol1: 62-3 and 99)

The Archbishop of Canterbury (Cosmo Lang) was clear[56] that there could be no precipitate action, including because much effort - in the end fruitless – would be needed to follow up Committee recommendations that there should be a Synodical declaration to deal with the question of "lawful authority" in the relevant clerical oath as well as a round table conference to settle doctrinal questions. The central issue in the case of the proposed declaration was how far it could itself claim "lawful authority" except with the approval of Parliament. In his oral evidence to the Committee, Gwyer had poured doubt, if not actual scorn, on the notion of a certification

[55] See also National Archives TS 27/420 for the Treasury Solicitors' side of the papers.

[56] Correspondence of Archbishop Lang, Lambeth Palace Library, Vol. 7, f. 186, typed but undated memorandum of 1936 by the Archbishop.

procedure as a way of circumventing Parliamentary interference in Measures tackling worship and doctrine questions.

The chairman, Sir Walter Moberly, was a former head of the University Grants Committee. Amongst the members were three bishops, one lay member each of the Lords and Commons, and a High Court Judge. The unanimous Report was published in 1952 (Moberly 1952).

Sitting during the uncertainties attendant on the aftermath of the Second World War, to a large extent the Report revisited the issues examined by its predecessor, though with a greater distance from the events of 1927/8 and concentrating particularly on control of worship, the appointment of bishops and the appellate machinery of the Church of England courts.

The Committee started out rather cautiously: 'Churchmen should recognise that any demand for greater liberty of action put forward on behalf of the Church tends to excite in many quarters a rather inarticulate but obstinate suspicion. Nonetheless, the Committee roundly affirmed its support for establishment:

> We agree with the 1935 Commission that…the separation of Church and State could not be carried through without grave injury to each. At home the effect would be to increase greatly the unsettling influences already at work, just when we need, for ourselves and for others, to maintain our stability. We believe, too, that it would have disastrous repercussions, injurious to the Christian cause on the Continent and in the whole world…Further,…it is by no means certain that 'disestablishment' would enhance the Church's spiritual freedom. (Moberly 1952: 25-6)

It considered but rejected the Scottish model, even though it showed that establishment was compatible with spiritual freedom. Its reasons were in practice identical to those of the Cecil Commission viz. the more co-extensive character of the Church and nation in Scotland, the lack of division over doctrine and worship, the less clear line of division between clergy and laity, and the fact that the Church Assembly could not make the same claims to longevity and prestige as the General Assembly.

Whilst not attempting to revive the 1935 recommendation for 'certificated' Measures, the Committee canvassed seeking authority to allow experimental deviations during an interim period. On the appointment of bishops, it noted the extent to which informal consultation had led to a more acceptable process in which the Archbishops were more influential. It proposed that there should be a consultative body for appointments which included episcopal, clerical and lay membership answerable to the Archbishops rather than the Assembly. Such a body should invite representatives of the vacant diocese, including cathedral chapters, to confer with it as part of the appointment process. As to the ecclesiastical courts, the final appellate jurisdiction should be removed from the Judicial Committee of the Privy Council into a wholly Church of England body which included laymen who held, or had held, high judicial office.

No immediate steps were taken to act on these recommendations. Over time, however, all found a place – the removal of the Judicial Committee of the Privy Council's role, for example, was achieved in the Ecclesiastical Jurisdiction Measure 1963, experiment with forms of service permitted under the Alternative and Other Services Measure 1965, and the appointment recommendations were – admittedly after two subsequent reviews - addressed in the new arrangements announced by the Prime Minister in 1976.

Chadwick Committee

Commissioned by the Archbishops in 1967, and chaired by the Reverend Professor Owen Chadwick, the committee is perhaps best seen as a response to post World War II social and political developments. Whereas the Moberly committee faced the straitened circumstances of a still rationed and uncertain post war world that had been plunged into the Korean conflict, the Chadwick committee was launched during a period of rapid economic growth and, many felt, social hedonism. Moreover, in a post colonial state, and aware of a more self-conscious Anglican communion beyond the British Isles, the Church of England leadership found itself clashing with the governments of the day over immigration control, and Rhodesia.

Reflecting preparatory work on a scheme of unity with the Methodists, the terms of reference were:

> to make recommendations as to the modifications in the constitutional relationship between the Church and State which are desirable and practicable and in so doing to take account of current and future steps to promote greater unity between the churches.

The committee had a strong lay membership. Seven clerics (including two bishops) were balanced by two MPs, a senior church official, and a raft of three assessors, one of whom (Harold Kent) had been Treasury Solicitor. In addition, for the first time, the committee included female representation - in the form of two women (one of whom was a professor of social studies in one of the 'new' universities).

Like its predecessors, the committee considered how bishops were appointed. Although it appears that Prime Ministers readily accepted and generally acted upon the Archbishops' views on episcopal appointments in this period, there remained dissatisfaction in the Church of England – voiced from time to time in the Church Assembly as well as elsewhere - about the appointments system in principle. Whilst the system continued to evolve, for example with vacancy-in-see committees, in a direction which gave the Church of England a definite voice, it was not balanced to general satisfaction. Further, the relative withdrawal of Prime Ministers was matched, it was thought, by the vacuum of initiative being filled by their Appointments Secretaries (Chadwick 1990: 128-144) Moreover, as the committee was sitting, the government attempted a reform of the House of Lords which embraced what should be the place of the bishops in the House.

The Committee reported in 1970. Even when sitting, events had occurred underlining the potential for friction in the Church/State relationship The Nigerian civil war had led the Archbishop to criticise government policy on the supply of arms to the predominantly muslim Federal government, eventually victorious over the predominantly Christian seceding would-be state of Biafra. The bishops had very publicly disagreed with the government's 1968 Bill designed to control the immigration of Asians from East Africa. Archbishop Ramsey, in his capacity as chair of the National Council for Commonwealth Immigrants, had led a delegation to the Prime Minister to protest.

It was against this background that the committee addressed establishment in its report in 1970. Like its predecessors, the report gave its version of historical developments, this time predicated on the observation that, as the state became more impartial in religion, the Church of England naturally developed its structure of self-government and became more autonomous.

The report first presented establishment as a legal construct: 'For us, "establishment" means the laws which apply to the Church of England and not to other churches.' (Chadwick 1970: 2) But the report did not stop at that:

> We want to make it clear …that we are not blind to the plural nature of English society. The Church of England is one Church of several. So far as it is called a 'national' Church, it professes a mission to all the nation. It does not claim to cast its shadow over men and women who repudiate it…No amendment of the laws could alter the vocation to a national mission…(Chadwick 1970: 10-11)

The committee reviewed the forms of legislation available to the Church of England. It was clear that proceeding by Measure, especially in organisation and property matters, was to be preferred to the private bill procedure. On the other hand, the committee discounted the arguments in favour of retaining the Parliamentary veto under the Enabling Act, and recommended that there should be a Measure to give full power - with safeguards - to the Church Assembly (which became the General Synod in 1970) to determine forms of worship. The safeguards could, for example, require a two thirds majority in the Assembly. Questions of doctrine should be dealt with by Canon.(Chadwick 1970: 23 and Chapter 5)

On the machinery for appointing bishops, as already mentioned part of the background was a government attempt to reform the House of Lords. In 1968 the government had introduced legislation on the lines of a White Paper which urged a reduction in the number of bishops in the Lords from 26 to 16. Whilst this Bill failed, the initiative raised the whole principle of episcopal membership of the House of Lords.

The committee disagreed on the way forward. A minority preferred some form of election from within the Church of England without any political involvement. The majority favoured further development of the existing system on the lines recommended in the Howick Report of 1964. As to episcopal membership of the House of Lords, the committee accepted the White Paper scheme of a membership limited to 16 with only five having voting rights, and in a system where the representation in the Lords of other religious groups was simultaneously increased.[60]

The committee was also divided on the principle of establishment. Whilst no-one favoured the Scottish model, two memoranda of dissent argued for severing church/state links, one to the extent of addressing also the Act of Settlement and the legislation relating to the personal religion of the Sovereign.[61] This was not, however, the majority view:

> We have not recommended a total severing of the historic links; first, because we think such a programme to be impracticable in the present state of opinion; and, second, because even if such a programme were practicable, most of us would not like it, though we should not shrink from it if the State decided it to be either wise or politically necessary. The people of this country value various features of our polity, and will not favour too much tampering. The people of England still want to feel that religion has a place in the land to which they can turn on the too rare occasions when they think they need it; and they are not likely to be pleased by legislation which might suggest that the English people as a whole were going unchristian. (Chadwick 1970: 65)

[60] This position was not endorsed 30 years later in the Church of England's evidence to the Wakeham Royal Commission.
[61] Chadwick 1970: Note of Dissent by Miss Valerie Pitt.

If not immediately, these largely ameliorative recommendations - later described as ‘moderately reformist (Norman 1976: 456) - were mostly acted upon in the next few years. In a situation where the Archbishop (Ramsey) ‘valued autonomy in worship far more than autonomy in appointing bishops’ (Chadwick 1984: 191), it must have been particularly gratifying to him shortly before his retirement to see the Worship and Doctrine Measure 1974 carried and all the uncertainties that had followed the rejection of the 1927 and 1928 Measures brought to an end. After further review in the General Synod, an accommodation was reached with the government over episcopal appointments in the form of the Prime Minister’s statement in Parliament in 1976. No changes ensued, however, in the forms or use of legislation – an issue settled in practice by Parliament’s acceptance of the 1974 Measure.

APPENDIX B

THE CHURCH OF SCOTLAND

The Church of Scotland has from its inception presented an alternative model of Church/State relations to that of the Church of England. There, close at home, appeared to be another national church recognised in one of the few parts – the Act of Union - of the UK's constitution

and led to almost a third of the General Assembly leaving to establish their own Free Church. But they did not do so because they wished to break the link between church and state but because they sought a renewed national church in which ‘The Crown Rights of the Redeemer’

peril of ecclesiastical strife.'[68] There were objectors but they did not divide the House on this occasion, though there was a division on the Second Reading of the later Church of Scotland (Property and Endowments) Bill 1925 (15 & 16 Geo V c 33).[69] The reunion between the Church of Scotland and the United Free Church eventually took place in 1929.

Implications for Church and State in England

The special character of the position of the Church of Scotland was a matter of remark for the Church of England even before the 1921 Act. The Selborne Committee on Church and State, which reported in 1916, devoted a whole appendix (Appendix V) to the Church of Scotland and quoted the then draft 'Articles Declaratory' at some length opining 'The settlement of the sixteenth century was made not by a government, but by a people: and the constitution after the Revolution was only ratified and confirmed by the State.' (Selborne 1916: 35) The Committee defended its recommendations for retaining a state veto in what became the Enabling Act of 1919 partly because it distinguished the position of the Church of England from that of the Church of Scotland: 'The Church of England does not represent the mind of the English people as fully as the established Church of Scotland represents the mind of Scotland.' (Selborne 1916: 39)

In Scotland, there are also different views about the extent to which the 1921 Act disestablished the Church of Scotland. Even during the Second Reading debate on the 1921 Bill it was pointed out that there was some ambiguity in how the Articles Declaratory were seen:

> My friends of the Established Church are told this Bill is to establish the Church of Scotland more strongly than ever…The people who hold the old United Presbyterian view, or the Free Church view…are told that this Bill is really equivalent to disestablishing the Church of Scotland….It is unfortunate that a Bill which is intended to promote union should depend for its support upon exhibitions of casuistry which would have been a credit to the Middle Ages.[70]

As a Scottish lawyer argued over thirty years later

> By this remarkable statute the UK Parliament has admitted the legislative sovereignty which the General Assembly has always claimed in the ecclesiastical sphere, and, by implication, it seems to have conceded that there is in at least one respect in which the UK Parliament is not sovereign. This power of ecclesiastical legislation is a very real mark of freedom, but not at all a mark of disestablishment. For what established church could ask for a greater measure of state association than to share with the civil authority the legislative power of the state? (Murray 1958: 160-1)

At the root of these considerations is just what meaning should be attributed to 'establishment'. In practice an elastic term, its meaning is often stretched to accommodate the rhetorical purpose and policy preferences of particular writers. One commentator has argued that the language of establishment should not be applied to the Scottish situation because it is impossible to do so without giving rise to misunderstanding. Accordingly, the Church of Scotland is neither established nor disestablished but 'a Church both national and free'. (Sjölinder 1962: 374)

More recently, it has been suggested that though the Church of Scotland rejects est

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an office holder, and that the provisions of the 1921 Act privileged the jurisdiction of the Church of Scotland only in so far as spiritual matters were concerned. The minority judgement took the contrary view on Ms Percy's employment status and did not, therefore, have to address the position under the 1921 Act.

At the time of writing, the wider implications of the *Percy* case are still being digested. At the

Articles Declaratory of the Constitution of the Church of Scotland

I. The Church of Scotland is part of the Holy Catholic or Universal Church; worshipping one God, Almighty, all-wise, and all-loving, in the Trinity of the Father, the Son, and the Holy Ghost, the same in substance, equal in power and glory; adoring the Father, infinite in Majesty, of whom are all things; confessing our Lord Jesus Christ, the Eternal Son, made very man for our salvation; glorying in His Cross and Resurrection, and owning obedience to Him as the Head over all things to His Church; trusting in the promised renewal and guidance of the Holy Spirit; proclaiming the forgiveness of sins and acceptance with God through faith in Christ, and the gift of Eternal Life; and labouring for the advancement of the Kingdom of God throughout the world. The Church of Scotland adheres to the Scottish Reformation; receives the Word of God which is contained in the Scriptures of the Old and New Testaments as its supreme rule of faith and life; and avows the fundamental doctrines of the Catholic faith founded thereupon.

II. The principal subordinate standard of the Church of Scotland is the Westminster Confession of Faith approved by the General4.8in6el8.9(u)-5(4hi4.9(u-0.0.2exercmised)6.6(() 4.2(48(0.5(ved

in agreement with the Word of God and the fundamental doctrines of the Christian Faith contained in the said Confession, of which ag

APPENDIX C

DISESTABLISHMENT IN THE BRITISH ISLES: THE CASES OF IRELAND AND WALES

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Introduction

There are two established churches in the British Isles - the Anglican Church of England and the Presbyterian Church of Scotland. Until the middle of the nineteenth century the Anglican Church was also established in Ireland and Wales. These churches were disestablished, however, in 1871 and 1920 respectively as the result of long campaigns culminating in Acts of Parliament.

What establishment meant in Ireland and Wales

The Church of Ireland and the Church in Wales were reformed by the English crown with the Church of England during the mid-sixteenth century. Until its disestablishment, the Welsh Church consisted of the four sees of the province of Canterbury that roughly corresponded to the geographic area of Wales, but had no separate status within what was a unitary church organization for England and Wales together. Though Anglican in form, the Church of Ireland was an independent church until the Act of Union of Great Britain with Ireland in 1800 which explicitly united the Church of Ireland and that of England and Wales.[74]

Establishment provided identical financial benefits. The established churches controlled the traditional lands and revenues of the pre-reformation churches, including rights to tithe and church tax (known in Ireland as church cess) regardless of parishioners' confessions.

Establishment also conferred membership of the relevant legislature and therefore a degree of political power. The bishops of the Irish church sat in the Irish House of Lords in Dublin until the Act of Union, after which a rota was created giving four Irish bishops the right to sit alongside their English and Welsh counterparts at Westminster. In all cases, other clergy were forbidden to sit in the House of Commons. Political influence was also given to the Church of Ireland through places for two archbishops on the Irish Privy Council.

Establishment also meant that ecclesiastical law was enforceable under the authority of the crown, and, following the Court of Delegates Act 1833 (2&3 Wm IV c 92) all matters that

Irish political action

Establishment and the Protestant Ascendancy were meant to increase British security. However, it became clear in the nineteenth century that Catholicism was no longer a threat to British security though political instability *within* Ireland was. This threat was exemplified by the birth of unified Catholic political action in Daniel O'Connell's Catholic Association. It was the election of

Finally introduced on 1 March 1869, Disraeli's Tories vigorously attacked the bill in committee stage, but all amendments were voted down. When it reached the Lords in June, the bill was heavily amended to reduce its financial effects and there was some toying with possibilities of concurrent endowment. The Commons rejected the Lords amendments and it was only after high level mediation involving the Queen and some mitigation of compensation terms that a major constitutional crisis was avoided and the bill finally passed, receiving royal assent on 28 July 1869.

An Act to put an end to the Establishment of the Church of Ireland, and to make provision of the Temporalities thereof (32 & 33 Vict c 42)

The date of Irish disestablishment was set for 1 January 1871, at which time the union of the churches of England and Ireland, crown patronage, appointments and lay patronage ceased. The Irish bishops also lost their places in the House of Lords, and the archbishops their ex-officio places on the Irish Privy Council.[76] The other main provisions were as follows:

- Ecclesiastical law ceased to have effect other than by the operation of the normal civil law of contract.

- Ecclesiastical corporations were disso

Church of Ireland organisation

Between 1869 and 1871 the church designed its new General Synod, which was to meet annually. It consisted of the House of Bishops and House of Representatives, made up of clerical and lay orders. Legislation could only pass if approved by a majority of each order. Thus, each house could operate a veto, although the bishops' veto was limited.

The Representative Church Body was formed to hold the property that remained with the Church. It consisted of the episcopate, one clergyman and two laymen from each diocese, and twelve laymen. Meeting regularly, it was the civil service of the Church, and responsible to the General Synod.

Bishops and the Archbishop of Dublin were elected by the Synods of their dioceses, while the Archbishop of Armagh, elected in the same way, was approved by the House of Bishops. Clergy were appointed by vestry councils operating with diocesan appointment boards.

Post disestablishment

The Church of Ireland declined into the twentieth century, especially in southern Ireland, although it remained unified after 1922 and the creation of the Irish Republic. The new constitutional arrangements functioned successfully and the Church managed to agree on a new prayer-book.

Gladstone's Church of Ireland Act was, of course, only the first in a series of measures that were designed to resolve the Irish issue. Gladstone's Liberal Party held together its coalition of Whigs, Protestant dissenters, Catholics and radicals until the issue of home rule split the party in 1886.

Political Background

In 1851 Henry Mann conducted the first census of religion. It revealed the strength of Nonconformity in the four Welsh dioceses. Of the 52% of the Welsh population who attended services on 30th March 1851, 78% were dissenters, while only 21% went to services within the Church (Morgan 1980: 10). The results provided a clear insight to the conditions of religious activity in Wales and demonstrated that the Church constituted only a small part of active Christianity.

Although the Church did go through a mid-century revival and became more responsive to the needs of the population that it served, the strength of the combined Nonconformist groups continued in the period before disestablishment. By 1906, when the Royal Commission was appointed to investigate the state of the Church in Wales, 27% of active Christians were from the Church, while 73.% practised in dissenting chapels (Bell 1969: 274), although the 'national' Church laid claim to the 50% of the population which did not practice any faith at all.

Although the grievance of church tax was removed in 1868, the Church's unpopularity was aggravated by the existence of tithes as a major part of the Church's endowment throughout rural areas, regardless of confession. Anger boiled over in the 1880s with forced sales during the collapse of the agricultural market, and legislation was passed in November 1890 to hand the responsibility of paying tithe to the landlords rather than tenants.

Disestablishment and Liberal Radicalism

The progress of disestablishment in Wales was not simply a struggle of religious affiliation; it was intrinsically tied to the growing awareness of Wales as a political body, especially as political enfranchisement increased at both the local and national levels.

The Liberation Society quickly took root in Wales and encouraged those favouring radical political change to support disestablishment as the vanguard and symbol of that change. In the election campaign of 1861, the society placed pressure on Liberal candidates in Wales to come out in support of disestablishment and disendowment.(Bell 1969: 18) Disestablishment quickly became the centre of Welsh political consciousness. The campaign for religious equality came to represent the rejection of the political subjugation of Wales as a whole.

The process was advanced by two events in the latter half of the 1860s. The first was the election of 1868, which was fought with a widened franchise after the Reform Act of 1867. This act gave the vote to thousands of Welsh nonconformists for whom disestablishment was a key issue. Liberal candidates campaigned on the slogan 'the nonconformists of Wales are the people of Wales'[77]. The second event was the Irish disestablishment which provided a blueprint for nonconformists and radicals to consider the possibilities for their own nation.

Wales as a separate political identity

The political identity of Wales became further pronounced during the 1870s. Politicians began to understand and exploit the potential of the Welsh 'block' in the Commons. Gladstone's attendance at the 1873 Mold Eisteddfod, at which he defended Welsh nationalism and language, was a key example of this recognition.

[77] (Morgan 1980: 28) - Henry Richard, candidate for Merthyr Tydfil.

Lack of progress was compounded by the fact that bills had to pass both the Commons and the Lords. Bills were introduced by Liberal governments as a sop to the Welsh lobby in the knowledge that they would not be approved by the upper house. (Wittingly introducing Bills that could in fact make no progress was a standard Liberal government technique for managing radical agitation.) It followed that there was no incentive to give such Bills parliamentary time. It was only after the Parliament Act of 1911 removed the Lords' veto that a Bill for Welsh disestablishment became a practical proposition.

Disestablishment and beyond

By the time Home Secretary Reginald McKenna introduced the final bill, much of what disestablishment represented to the people of Wales, especially the equation of religious with political equality, had already been achieved. Two in three men had the vote, Wales was recognised as an area with a separate custom; Welsh culture and language had been recognised by the foundation of a university and national library (Morgan 1980: 274); the Local Government Act had removed Anglican oligarchic county rule; and a Welshman was Chancellor of the Exchequer. The fire that had raged over the cause of disestablishment in Wales was dying out; the Bishop of St Davids commented to the Bishop of London that the Disestablishment movement was dying at its roots from old age.

The Lords failed to pass the 1912 bill twice, but the terms of the Parliament Act were invoked on its third introduction in April 1914. While in the Lords committee stage war broke out. Although the government toyed with the idea of suspending the Act altogether, the Welsh Church Act and supporting suspensory legislation received royal assent on 18 September 1914 and merely postponed the principal Act's coming into force until after the conclusion of hostilities..

An Act to terminate the establishment of the Church of England in Wales and Monmouthshire, and to make provision in respect of the Temporalities thereof (4 & 5 Geo V c 91).

The act dissolved ecclesiastical corporations, abolished patronage, removed the Welsh bishops from the House of Lords and allowed Welsh clergy to sit in the Commons. The ecclesiastical courts ceased to have jurisdiction, and ecclesiastical law no longer had force except as contract under the normal civil law. The Welsh bishops and clergy were removed from the Convocation of Canterbury.

The Act also made provision for the temporalities of the church by supplying a measure of disendowment. A body of commissioners was established to receive the church's property, which was divided into income and non-income generating property. As non-income generating property, the cathedrals, churches, ecclesiastical residences, churchyards and closed burial grounds were transferred to the representative body of the new province.

Approximately five-eighths of income-generating property was transferred to the county and parish councils of Wales, the colleges of the University of Wales, and the National Library. The sequestration of this property, which included tithes as well as diocesan and glebe lands, was justified by the argument that the donation of such ancient property to the Church in Wales had been made in the spirit of donation to the pre-1662 undivided religious community, and was therefore the rightful property of the nation as a whole.

Roughly one quarter of income-producing property was derived from English sources, namely the Ecclesiastical Commissioners' common fund and Queen Anne's Bounty. The Act made

provision for these sources to be transferred to the Representative Body. The final eighth fell under the description of ‘modern endowments’, or those which had been given to the church after 1662.

The disendowment was conditional to life interests upon ‘freehold’ livings. Likewise, lay patrons of the church, whose rights over livings were ended by the Act, received compensation of not more that one year’s revenue from the benefice in question. Curates, however, were not compensated.

Following the outbreak of World War I, the Act’s entering into force was suspended and the church, as a result, given more time to prepare for what not all regarded as necessarily the inevitable. For example, some churchmen felt that a post-war Conservative government might look more favourably upon the church, or repeal the Act. But as war progressed, the Church, led by Alfred George Edwards, bishop of St Asaph, sought to organise its affairs in order to prepare for disestablishment.

After the armistice, the progress of the Act was both resumed and the extent of disendowment mitigated with the Church in Wales (Temporalities) Act (9&10 Geo V c 65) of August 1919. It set the date of disestablishment at 31 March 1920, and provided £1,000,000 from the taxpayer towards commutation. Thus, on slightly more favourable terms than the original 1914 Act, the Church in Wales became an independent province within the Anglican Communion. The Archbishop of Canterbury released the four Welsh bishops from their oaths of obedience, and they duly elected bishop Edwards as their metropolitan.

Effects of disestablishment

No-one appears subsequently to have been sure about the financial effects of disendowment. In addition to the taxpayers’ subvention, Queen Anne’s Bounty and the Ecclesiastical Commissioners behaved generously to the Welsh Church which itself had by 1935 raised over £700, 000 in new endowment by voluntary subscription. Tithe was not abolished but the ownership of the rentcharge passed to county councils before abolition as in England from 1936. Noting with relief in 1935 that the Church in Wales no longer had the responsibility of tithe, Archbishop Green though that one net effect had been actually to see an improvement in net clerical incomes. (Green 1935: 9)The length of time it took to implement disendowment necessarily made it more difficult to judge final outcomes. Ultimate transfers to the county councils from the commissioners during 1942-47 amounted to £3,455,813 10s 8d. (Bell 1969: 312)

Organisationally, two new dioceses were later founded to better serve Wales: the See of Swansea and Brecon was carved out of St David’s in 1921, and the See of Newport was created out of Llandaff in 1923. The sole substantial untidiness left from the legislation related to the upkeep of usable pre 1662 churchyards. The legislat ofl1(312TD0.ew[osnu le)r’ leus, on slightly me ofupke whi

legislature the disposition of the reserves introduced in 1791. What could be tolerated in a far off country was one thing: nearer home questions of property rights, tradition and – in Ireland at any rate – security were at stake. Alien establishment/concurrent endowment could survive only where there was oligarchic control: significantly, it was the Governemnt of India Act 1935 that abolished, save for minor chaplaincies, its manifestation in India.

Both disestablishments assumed that they would be accompanied with measures of disendowment. On the whole, it could be maintained that the disendowment in Ireland was less punitive than that in Wales, though there it is also true that each successive Welsh Bill was less severe than the last. Finally, neither disestablishment could necessarily function as a model for disestablishment in England. Apart from the fact that attitudes and circumstances have moved on greatly from the ancient controversies, dealing

APPENDIX D

CHURCH-STATE RELATIONS IN SCANDINAVIA

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Introduction

At the Reformation, the Scandinavian churches were restructured in accordance with Lutheran principles, although the resulting institutions were by no means identical; Sweden, for example, made a point of preserving the historic 'apostolic succession' of bishops while Denmark decisively rejected it. What they have in common, however, is that they all began as State churches established by law; in addition, all identify themselves strongly with the people of the country that they serve: the 'folk-church' concept.

A Lutheran ecclesiology

For Martin Luther, the conduct of secular affairs was to be reserved to the civil power while the government of the Church was to be conducted by the superintendents and clergy. (Höpfl 1991:28).[78] However, he had no strong desire to supplant the traditional ecclesiastical hierarchy with the kind of conciliar system of governance espoused by the followers of Calvin and, though no great admirer of the nobility, Luther was prepared to concede a place for the Christian prince, always provided that the prince did not act capriciously. Superintendents were to rule the Church unfettered but they, in their turn, were to be subjects of the secular authority. (Höpfl 1991:32). Bernt Ofestad has suggested that, given the troubled times he lived in, Luther regarded this as no more than a temporary expedient. (Ofestad 1996: 23)[79]

But once one has conceded that the Church, though independent in spiritual matters, is subordinate to the secular authorities in temporal ones, it is a fairly short step to conceding the interest of those secular authorities in such matters as senior Church appointments, or even acknowledging that, as protector of the Church's independence, they should have some say in the polity of the Church whose independence they are to guarantee.

And not even in Calvinist polities could the newly-reformed Church always survive without secular assistance. As Ian Henderson points out, Reformation Scotland, for example, was still largely feudal and weak at the centre, with strong territorial magnates. It was this lack of a strong central authority that enabled the people to resist attempts by the Crown to restore episcopacy – but the leadership and support of the 'Lords of the Congregation' were critical to that resistance:

---

[78] '[A]s regards whatever is on Earth and belongs to the temporal, earthly kingdom, man can have power from God. But whatever belongs to heaven and to the eternal kingdom, is subject to the Lord of heaven alone.': *Von Weltlicher Oberkeit* [*On Secular Authority*]. See also Melancthon's *Augsburg Confession – Article XXVIII: Of Ecclesiastical Power*.

[79] But see also Fergusson 2004: 37–39.

> When the first General Assembly met the feudal magnates quietly drew in their chairs and joined in. Again their presence could be left to be justified by the strained laws of exegesis. Its real justification lay in the more basic law that if you rely on someone to shoot you out of a situation he will expect to have some say in determining the kind of situation you are going to get yourself into. If the prototypes of English bishops are government stooges, the prototypes of Scots elders are guys with guns. (Henderson 1967: 65).

Reformation and Establishment

Though Lutheran ecclesiology provided a degree of theological justification for the particular form of the Scandinavian Reformation, it also rested to a considerable degree on *Realpolitik*, beginning in Denmark-Norway-Iceland with a decree by Christian III on his accession to the Danish throne in 1538. In Iceland, the process of Reformation was not completed until the execution of the last Roman Catholic bishop, Jón Arason of Hólar, and his sons in 1550. (Fell 1999: 90, 97).

Similarly, though the Swedish Reformation had been begun by Gustavus Vasa, a Roman Catholic restoration was only narrowly averted on the death in 1592 of Johan III, who had allowed his son Sigismund to be brought up as a Roman Catholic.[80] Sigismund's uncle, Duke Karl Gustafsson Vasa, summoned a synod at Uppsala in 1593 which condemned the new liturgy, elected as Archbishop a militant Lutheran, and adopted the *Augsburg Confession*. Karl became Regent in 1599 and succeeded Sigismund as Karl IX in 1604. Under the Act of Succession 1604 the Crown was secured to the heirs of Karl IX and the Reformation settlement firmly established. (Derry 1979: 99–101).[81]

The folk-church

Dag Myrhe-Nielsen describes the 'folk-church' concept as 'the Scandinavian speciality in the field of church characteristics'. (Myrhe-Nielsen 1990:85). Though it is shared to some extent by the Church of England, the Church of Scotland and the Church in Wales, it is much more developed in Scandinavia than in Britain, given that the vast majority of Scandinavians still regard themselves as members of their national churches even if they hardly ever attend a service. In Denmark, for example, the Church is formally known as *Den Danske Folkekirke*: two possible translations might be 'The Church of the Danish People' or 'The Danish National Church'.

The idea of the folk-church is basic to the self-image of the Scandinavian churches.[82] When, for example, in the early part of the last century the inclusive approach of the leaders of the Church of Sweden was attacked by its Evangelical wing (who wanted gathered congregations united by personal conversion instead of territorial, inclusive parishes (Hope 1995:584)), territoriality was stoutly defended by the bishops. Perhaps the most telling response was by Bishop Einar Billing of Västerås, who argued that territorial ministry demonstrated in a practical way that the services of the Church were available to everyone and bore witness to the fact that every person lives

[80] And who in 1577 had offended many cl

It may be that one of the reasons for this is historical: though the Scandinavian state churches and the Church of England operated within fairly similar legal and constitutional frameworks, toleration both of Dissent and of Roman Catholicism came much earlier to England than to Scandinavia.

The individual churches

Because the national churches of Scandinavia grew out of the Lutheran Reformation they still have a strong family resemblance. But in spite of the unifying factors of the Lutheran tradition and the folk-church concept, the Church-State relationship in Scandinavia has developed differently in each country, with the result that no two of the Churches are exactly alike, while the outliers – Denmark and Sweden – are no longer very similar at all.[85]

Denmark

It was possibly Denmark that experienced the most radical Reformation: the bishops were deposed and the link with the historic episcopate intentionally and decisively broken. In 1537 King Christian III secured the services of Luther's colleague Johann Bugenhagen to help in the continued reform of the Church. Bugenhagen crowned the King and Queen[86] and later ordained seven clergy as superintendents to replace the deposed bishops.

The English version of the Danish Constitution[87]

parish council is unanimous, the candidate *must* be appointed. If, however, the nomination is not unanimous, the Minister is free to present any of the candidates for appointment. (Madsen 1964:92).[91]

Bishops and deans are appointed by the Crown in accordance with the recommendation of the Minister; but a new bishop is appointed only after an election in which all clergy and parish council members of the diocese can nominate candidates and vote – and a candidate receiving more than 50 per cent of the votes will be appointed automatically. The Ministry of Ecclesiastical Affairs also approves the construction of churches and functions as a court of appeal from decisions of diocesan or other authorities. (Danish Ministry of Ecclesiastical Affairs 2002).

As well as their purely ecclesiastical functions, the parish clergy also act as civil registrars. To gain official recognition to maintain legal registers and issue legally-valid certificates of marriage and baptism a religious group must either be 'recognised' by Royal Decree or 'approved' under the Marriage Act 1969. Before that date, only a limited number of faith-communities in addition to the Church of Denmark had official recognition. Even after the passing of the Act, however, the Minister would refer any application for approval to the Bishop of Copenhagen for an opinion as to whether or not the group applying for recognition was 'genuine' – a practice that continued until 1998. (Lodberg 2000:49). In 2004, twelve religious organizations had been recognized by Royal Decree (Stenbæk 2002).[92] and a further 92 had been approved.[93]

The Faroes and Greenland

The Church of Denmark has twelve dioceses: ten in Denmark itself and one each for the Faroes (established in 1990) and for Greenland (established in 1993). Although the extra-territorial dioceses are fully a part of the Church, they are not subject to domestic regulation.

From the reestablishment of the Faroese Parliament [*Løgtinget*] in 1848 until its reorganisation in 1923 the Dean (who was then the highest ecclesiastical authority in the islands, there being no separate diocese) was a member *ex officio*. The *Løgting* still begins its annual session on 29 July, St Olaf's Day, with a service in Tórshavn Cathedral followed by a procession to the Parliament House for the St Olaf's Address given by the Prime Minister – the Faroese equivalent of the Queen's Speech. Legislative authority for the Diocese of the Faroes is devolved to the *Løgting*, while administrative responsibility for church affairs rests with the Minister of Education and Culture.[94]

[91] Nothing has changed in the succeeding forty years.

[92] The situation in England under the Marriage Act 1949 was not dissimilar: that Act recognised for registration purposes only the Church of England, the Church in Wales, the Quakers and the Jews.

[93] By 'approving' religions under the Marriage Act, the Government allows individually-named clerics to conduct officially-recognised marriage ceremonies and thereby legally 'approves' the religion: Bureau of Democracy, Human Rights, and Labor 2004.

[94] See www.logir.fo/MENU/00017232.htm (which lists recent church legislation) and www.tinganes.fo (the Prime Minister's Office website).

Greenland was granted home rule on May 1st 1979. The legislative authority for the Diocese of Greenland is the Greenlandic Parliament [*Landstinget*] which in October 1993 introduced considerable changes in the Church's organisational structure of the church.[95] The ecclesiastical functions remain with the Bishop (who is responsible for the ecclesiastical and doctrinal supervision of the three regional deans, the parish clergy and catechists) while the administration of ecclesiastical affairs has been integrated into the Government's Directorate of Culture, Education and the Church, which also provides financial support for the Diocese.

The governance of the Church

Perhaps surprisingly, the current status of the Church of Denmark does not appear to be a matter of great concern to many of its members. According to the Ministry for Ecclesiastical Affairs:

> It was the intention of the Constitutional fathers that a constitution for the Church should be created which would give it autonomy and free it from the State. But it has never… been possible to reach agreement about a constitution for the Church or any type of synod to govern an autonomous Church. Minority groups within the Church have throughout the years wished for a free constitution for the Church. And… the Social Democrats for many years had a separation between Church and State as a major goal. But there has not for some decades been any serious wish in the Church nor in political parties for a change in that direction. (Danish Ministry of Ecclesiastical Affairs 2002).

This seems to be borne out by independent observers. Writing in 1986, Geoffrey Brown and Anders Bäckström could detect no great desire for reform. While some of their respondents acknowledged that the absence of any relatively autonomous national decision-making body presented certain problems for the Church, they sensed an overall acceptance of the *status quo* – possibly because no-one had any firm idea as to what should be put in its place. (Brown and Bäckström 1986:*passim*). The result, suggests Martin Schwarz Lausten, is something of a vacuum; quite apart from the question of church legislation, even on ethical issues there is no single individual, organization or movement that is able to speak on behalf of the whole Church. (Lausten 2002:283).

Peter Lodberg notes that Danish society is becoming more pluralistic and bemoans the fact that this has not been reflected in any loosening of the ties between Church and State:

> The Established Church is still dependent on the State and the Minister for Ecclesiastical Affairs. All important decisions on the structures and finances of the Established Church are taken by the Minister for Ecclesiastical Affairs and the relevant departmental civil servants in Copenhagen.(Lodberg 2000:59–60).

The constitutional status of the Church continues to be a matter of debate. The current Minister of Church Affairs, Bertel Haarder, has recently defended the present order, arguing in effect that it guarantees theological pluralism:

[95] *Landsting* Order No. 15 of 28th October 1993: see Statistics Greenland 2002: ch 21:223.

> the church is a free battlefield on which you cannot use anything else than spiritual weapons against your opponents. It is just because the politicians have retained the power that the parties to the dispute have not driven each other out of the Church. (*Church News from Denmark* February 2006:1/6).

And the *status quo* still has powerful support from Queen Margrethe herself who, according to a recent report, told her latest biographer that she was afraid that disestablishment would only serve to marginalise religious belief:

> I am not fond of the free congregations that are so fine and feel they are the genuine Christians… What about all of us? Where do we belong? There is one entrance, baptism, and that is enough. I am afraid that if you separate church and state then we will for real get a de-Christianisation of the country. (*Church News from Denmark* June 2005:3/6).

Finland

Section 76 (The Church Act) of the Constitution that came into force on 1 March 2000 reads as follows:

> (1) Provisions on the organisation and administration of the Evangelical Lutheran Church are laid down in the Church Act.
>
> (2) The legislative procedure for enactment of the Church Act and the right to submit legislative proposals relating to the Church Act are governed by the specific provisions in that Code.

Finland has *two* Established Churches. As well as the Evangelical-Lutheran Church, there is also an autonomous Orthodox Church of about 60,000 members under the ultimate jurisdiction of the Oecumenical Patriarch. When Finland became independent after the Russian Revolution, administrative ties with the Patriarchate of Moscow were severed. The Orthodox Church of Finland had to be reorganised and, though small, it was formally recognised by the Decree on the Orthodox Church of Finland in 1918 and is currently regulated by the Act on the Orthodox Church of Finland 1969. It is governed by a General Assembly of bishops, priests and laity; but the Assembly's decisions (like those of the Synod of the Church of Finland) have legal effect only if approved by the State – possibly because the Orthodox Church is a beneficiary of the church tax. (Archbishop Leo of Karelia 2003). Until 2000, the Orthodox bishops (like the bishops of the Church of Finland) were appointed by the President.[96]

The supreme legislative authority for the Church of Finland itself is the Finnish Parliament [*Eduskunta*] but it exercises this authority in a rather unusual form. Unlike the Westminster Parliament, the *Eduskunta* has no right to initiate church legislation: under the Church Act 1869, that power rests exclusively with the Synod. Although Parliament must ultimately ratify church

[96] The right appoint bishops surrendered under Ordinance 880 of 2000, amending s 153 of the Ordinance on the Orthodox Church (Heikkilä, Knuutil & Scheinin 2005: 530).

laws, it has no right to amend the proposals it receives from the Synod; they must either be accepted in their original form or rejected altogether. However, since changes to church law must be presented to Parliament by the Government, it is always possible for ministers to

Article 64 guarantees the freedom to exercise a religion or not, but includes an interesting provision about financial support for religious organisations. Individuals are free to direct their church tax payments to any of the religious groups officially registered and recognized by the State, but

> [a] person who is not a member of any religious association shall pay to the University of Iceland the dues that he would have had to pay to such an association if he had been a member.

So the church tax is payable in one form or another by all taxpayers: not even atheists escape.[101] In addition, the State pays the salaries of Church of Iceland's clergy from central government funds and the clergy are regarded as public servants under the aegis of the Ministry of Judicial and Ecclesiastical Affairs. Though the Church holds an election when there is an episcopal vacancy, it is the President of Iceland that signs the successful candidate into office.[102]

Synodical government, of a kind, began in Iceland in 1639 with the establishment of a diocesan synod for the Diocese of Skálholt, to be held annually at Þingvellir in conjunction with the open-air meeting of the mediaeval Parliament [*Alþingi*]. (Fell 1999:323)[103] When the Diocese of Skálholt was merged with the Diocese of Hólar to form the present single See of Iceland the synod became an annual gathering of all the Church's clergy.[104]

The first modern synod was the Church Council established by the *Althing* in 1931; it consisted of the Bishop, two theologians and two representatives chosen by district meetings. It continued in existence until 1957, when it was superseded by the Church Assembly [*kirkjuþing*], which meets annually and currently consists of twenty elected delegates: nine clergy and twelve laypeople, with a lay president. Its remit was to make recommendations to the Bishop of Iceland on the internal affairs of the Church which became binding if approved by the Bishop. (Fell 1999:323). Under new legislation that came into force on 1 January 1998, however, the Church's relationship with the Government was modified so that most of the legislation that would previously have been enacted by the *Althing* is now the province of the annual Church Assembly. The highest executive authority is the Church Council [

In its *International Religious Freedom Report 2005* the US State Department concluded that, in the case of Iceland,

> … although surveys show that the majority of citizens favor the concept of separation of church and state, most probably would not support the change if it meant closing Lutheran churches because of lack of funding. Although few citizens regularly attend services, they see the Lutheran religion as part of their culture and view the closing of a church as losing a part of their heritage.

The Report went on to note, however, that in October 2004 the Alliance Party leaders had called for a review of the role of the Church, and that in October 2003 the Liberal Party had presented a bill in the *Althing* to separate Church and State.[105] t o K

Norway

The Constitution of 1814, which marked the country's brief independence in the changeover from Danish to Swedish rule, stated that the Evangelical-Lutheran faith should be the religion of the Kingdom of Norway (Church of Norway nd) and establishment remains embedded in the Norwegian Constitution. In two rather incompatible provisions, Article 2 states that:

> The Evangelical-Lutheran Confession remains the official religion of the state. Inhabitants belonging to the Evangelical-Lutheran faith should raise their children in the same. [Art. 2.1]

responsibility of the State to support faith and 'life-stance' communities. (Plesner 2002:263, 266).[109]

in respect of matters affecting the Church that was created by the abolition of the House of Clergy of the unreformed *Riksdag*.

In the early 1990s I spent a week at the *Riksdag* and on my host's desk I found a copy of the Swedish *Civil Service List*. Listed in it were all the bishops and cathedral deans and, to my surprise, the rectors of every parish in Sweden. Prior to disestablishment, the Crown (presumably on the advice of the Minister for Church Affairs) appointed to every third vacancy in every parish, and a parish rector in Skåne once told me, tongue-in-cheek, that he was 'the King's man' because he had been appointed when it was the Crown's turn to nominate.

In addition, until the early 1990s the parish rector was also registrar of the *civil* parish and was responsible for maintaining lists of residents. Since Swedes pay local tax on the basis of primary residence (presumably because vast numbers of them have little country cottages or chalets) in the event of any dispute the civil registrar decides the place of residence for local tax purposes. In the case of a company with more than one branch, however, this means that the civil parish registrar, in effect, may decide which *kommun* is going to collect rather a lot of tax. The impression was that the Swedish clergy were very happy to be relieved of this responsibility.

Prior to 1 January 2000, dignitaries were appointed, as in England, by the Crown on the advice of the Government. When a bishopric was vacant an electoral college, consisting of the diocesan council and parish representatives, voted on the candidates and sent a list of three names to the Government. The Government was not obliged to choose the first name on the list though, unlike the deliberations of an English vacancy-in-see committee, the votes of the electoral college were made public.[110]

The legal status of the Church of Sweden changed radically at midnight on 31 December 1999, though it remains a major player within Swedish society. (Gustafsson 2003; Cranmer 2000:417). Prior to this there was a long series of consultations, culminating in two major pieces of legislation which are regarded as part of the 'fundamental law' of the State: the Religious C ch EnglTca(sg)5.9003sens pprlyEnglish Ptsg9:182–183er o nominate.

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for a parochial and diocesan structure, by establishing an ecumenical church *fee*,[111] collected by the Government, to replace the former church tax, and by making general provision about property and assets.

The new Church Ordinance that came into force on 1 January 2000 (replacing the Church Code

Councils					
Senior appointments	State confirmation	Church	State confirmation	State	Church

Perhaps the most striking common feature is the extremely high proportion of citizens in membership, even if that membership may be largely nominal. This seems to be a peculiarly Nordic phenomenon, which Andreas Aarflot sums up like this:

> For many in the Church of Norway their feeling of belonging to a religious community offering its services and sympathy is more important than the contents or character of the goods that this fellowship delivers. Grace Davie has offered the observation that in Great Britain religious life is often characterised by 'believing without belonging'. In Norway one may well see the opposite position: 'belonging without believing'... But this sense of belonging is often not related to the real evangelical and biblical basis of the activities of the Church. (Aarflot 2004:170).

Aarflot's conclusion echoes the analysis of Jan-Olav Henriksen quoted earlier. And if their conclusions are true for Norway, then they are probably true for the rest of Scandinavia as well.

Scandinavian clergy as civil servants?

To assert, as does the Methodist Faith and Order Committee, that

> [c]lergy in some European countries, particularly in Scandinavia, are civil servants with standard employment contracts paid at least partly from taxation (Methodist Church 2004).

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APPENDIX E

CHURCH AND STATE IN WESTERN EUROPE (EXCEPTING SCANDINAVIA)

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Introduction

The following notes attempt to illustrate the considerable degree of variation in relations between governments and religious organisations across the countries of Western Europe. However, they are offered with a series of health warnings. First, any comparative institutional study always runs the risk of failing to compare like with like – and the briefer and more impressionistic the study, the greater the risk of over-simplification. What *is* apparent from this kind of very general review, however, is that even in avowedly secular states accommodation is often made with religious organisations over such matters as the provision of educational facilities. Secondly, church membership statistics (where they exist at all) are notoriously unreliable: some are based very precisely on current membership, others on baptised members, yet others on annual attendance, and a few, one suspects, on wishful thinking. Thirdly, these notes are precisely what it says on the tin: *notes*. For a fuller description of church-state relationships in the various countries under consideration, the reader is referred to the most recent study by the European Consortium for State and Church Research (Robbers 2005) and the US Department of State's annual *International Religious Freedom Reports*, particularly those for 2004 and 2005, at http://www.state.gov/g/drl/rls/irf.

Austria

Article 7 of the Constitution declares that Austria is a secular state.[113] The status of religious organisations is governed by the 1874 Law on Recognition of Churches and by the 1998 Law on the Status of Religious Confessional Communities. Relations between the State of Austria and the Roman Catholic Church are governed by treaties with the Holy See that are recognised in public international law and may be transposed into domestic law under Article 50 of the Constitution. The treaties provide, *inter alia*, that the Roman Catholic Church may make laws within its own sphere of competence and that those institutions that have legal personality in canon law have legal personality in public law (Potz 2005: 397).

There are three distinct kinds of religious organisation: officially-recognized religious societies, religious confessional communities, and associations.

[113] Article 7(1) (Equality, Political Rights): 'All federal nationals are equal before the law. Privileges based upon birth, sex, estate, class, or religion are excluded.'

religious groups and ‘life stances’: Roman Catholics (law of 8 April 1802), Protestants (law of 8 April 1802), Anglicans (law of 4 March 1870), Jews (law of 4 March 1870), Muslims (law of 19

> any matter relating to betrothal, marriage, divorce, nullity of marriage, judicial separation or restitution of conjugal rights or to family relations other than legitimation by order of the court or adoption…

Article 109 of the Constitution of 1960 provided for elected representatives from the minority religious groups ‘in the Communal Chamber of the Community to which such group has opted to belong’. The Greek Communal Chamber was abolished in 1965 and replaced by the present

Estonia

Article 40 of the Constitution provides for freedom of religion and decrees that there shall be no state church; in consequence, there is no church tax, but religious organisations are exempt from property tax. (Kiviorg 2005: 109)

The Churches and Religious Organisations Act 1993 required that all religious organisations should have at least twelve members and register with the Religious Affairs Department under the Ministry of Interior Affairs. Religious organisations were required to submit their constitutions for scrutiny and their leaders had to be citizens with at least 5 years' residence. However, the Churches and Congregations Act 2002, as amended,[119] has repealed the 1993 Act. The 2002 Act provides in section 2 for the existence of 'churches, congregations, associations of congregations, and monasteries' as 'religious societies', while section 4 makes provision for 'religious societies' –voluntary associations of natural or legal persons whose main activities include

> … confessional or ecumenical activities relating to morals, ethics, education, culture and confessional or ecumenical, diaconal and social rehabilitation activities outside the traditional forms of religious rites of a church or congregation and which need not be connected with a specific church, association of congregations or congregation.

Section 8 of the Act guarantees individual rights freely to exercise one's religion.

Sections 11 to 13 of the 2002 Act continue to require that a religious organisation should have a memorandum and statutes and should register. Since 2001 clergy of registered religious organisations have been able to apply to have marriage ceremonies conducted by them recognised in civil law.

Traditionally, because the Estonian Evangelical Lutheran Church has attracted the largest following from ethnic Estonians it has tended to function in some respects as the 'National Church'. But Estonia also has a large ethnic Russian population and, as a result, the Lutheran Church, with about 150,000 members (about 11 per cent of a population of 1,350,000) it is only slightly larger than the Orthodox Church. (Kiviorg 2005: 95–6) Therefore, however tempting the prospect might have seemed at the fall of Communism, a legal establishment of the Lutheran Church was probably never a realistic option.

France

Church and State have been separated since the 1905 *Loi de la Séparation*;[120] however, under what remains of the former 1801 Napoleonic Concordat with the Vatican the President of the Republic is consulted about the appointment of Roman Catholic bishops (Lamont 1989:160; van Straubenzee 1992: 83).

Religious organisations are not required to register, but may do so if they wish to apply for tax-exempt status or to gain official recognition. The Government defines two categories under which religious groups may register: *associations cultuelles* (religious associations, which are exempt from taxes) and *associations culturelles* (cultural associations, which are not).

[119] English text available at http://www.legaltext.ee/en/andmebaas/ava.asp?m=022.
[120] Therefore, for example, a religious marriage (unless contracted abroad) is not recognised as valid in French law and must be validated by a civil wedding.

Associations in these two categories are subject to certain management and financial disclosure requirements. A worship association may organise only religious activities, defined as liturgical services and practices. A cultural association may engage in profit-making activity. Although a cultural association is not exempt from taxes, it may receive government subsidies for its cultural and educational operations, such as schools. Religious groups normally register under both of these categories; the Mormons, for example, run strictly religious activities through their worship association and operate a school under their cultural association.

Under the 1905 statute, a religious group must apply to the local prefecture to be recognized as an *association cultuelle* and receive tax exemption. To qualify, the group's purpose must be solely the practice of some form of religious ritual: such activities as running a publishing company or running a school may disqualify an applicant group. On the other hand, private confessional education is recognised under the 1959 *Loi Debré*, and schools run by religious organisations can enter into contracts with the state, provided that they agree not to impose any religious test on admissions. (Basdevant-Gaudemet 2005: 171)

Under the amending Law of 1908, the state assumed ownership of Roman Catholic places of worship built before the 1905 *Loi de la Séparation* and undertook to bear the cost of maintaining them, with the result that a considerable part of the building maintenance costs of the Roman Catholic Church are met from public funds. (Basdevant-Gaudemet 2005: 163 n6, 178)

Alsace-Lorraine

Because they were German territories from 1870 to 1918, during which time the *Loi de la Séparation* was enacted, the Napoleonic Concordat remains largely in force in the three *départements* of Haut-Rhin, Bas-Rhin and Moselle. Four *cultes reconnus* have official status: the Lutheran and Reformed Churches, the Roman Catholic Church and the Jewish community. Clergy whose offices are recognised by the Concordat are paid by the State and the law allows the local governments to provide support for the building of places of worship. Authorised representatives of the four *cultes* provide religious instruction in schools, and, uniquely, the University of Strasbourg has Catholic and Protestant Faculties of Theology with the right to award the *Diplôme d'État*. Adherents of the four *cultes* may choose to have a portion of their income tax allocated to their religious organisation in a system administered by the central government that is not unlike the German church tax (US Department of State 2005: Germany). Finally, no doubt because their holders' stipends are paid by the State, the President has a role in appointments to the more important ecclesiastical offices. Lutheran superintendents are appointed subject to his approval, and the President and the Pope jointly appoint the Archbishop of Strasbourg and Bishop of Metz. (Greenacre 1996:14; Solé 1996: 3) [121]

Religious symbols

In recent years the separation of church and state has become a matter of considerable controversy. In September 2004 a law came into effect that bans public school students from wearing 'conspicuous' religious attire and symbols in school. In practice, this ban applies to Muslim headscarves, Sikh turbans, Jewish skullcaps and large Christian crosses. It remains to be seen whether or not the ban is compatible with the right under Article 9 of the European Convention of Human Rights to manifest one's religion or belief; but it is by no means certain

[121] Nor does the *Loi de la Séparation* apply in the *départements d'outre mer* of Réunion, Martinique and Guadeloupe (Basdevant-Gaudemet 2005: 169) – but their legal position is not entirely relevant to a discussion of church-state relations in Western Europe .

Though Article 13(2) of the Constitution provides for freedom of religion, it also stipulates that worship must not disturb public order or offend moral principles and prohibits proselytising–a prohibition that has been the subject of litigation before the European Court of Human Rights in *Kokkinakis v Greece* (1994) 17 EHRR 397. (Edge 1995) The Government pays for the salaries, pensions and religious training of clergy, finances the maintenance of Orthodox church buildings and gives special recognition to Orthodox canon law.

The Orthodox Church, Judaism, and Islam are the only groups that have legal personality in public law: other religions have legal personality only in private law and cannot own property as religious entities; instead, they must create specific legal entities to hold the properties. On the other hand, the laws that provide property-tax exemptions for religious organisations apply equally to Orthodox and non-Orthodox churches

A 1994 government decree provided for military chaplains and prison chaplains from the four 'historic' religious groups.

In 2003, the Government allocated almost £100 million (36.18 billion forints) in public funds for various religious activities and related programs. State schools and private religious educational establishments receive the same *per capita* funding, and the Government subsidises clergy in settlements with fewer than 5,000 people.[124]

Ireland

The Constitution as adopted in 1937 gave special recognition to the Roman Catholic Church as 'the guardian of the faith professed by the majority of the citizens'.[125] This statement was

by a Board of Religious Affairs under the supervision of the Ministry of Justice; only registered churches may establish theological schools and monasteries. There is an ecumenical theology faculty at the University of Latvia. (Balodis 2005: 268)

Lithuania

Almost 80 per cent of Lithuanians are Roman Catholic. (Kuznecoviene 2005: 283). Article 43(1) of the Constitution declares that the state

> … shall recognize traditional Lithuanian churches and religious organisations, as well as other churches and religious organisations provided that they have a basis in society and their teaching and rituals do not contradict morality or the law.

However, Article 43(7) provides for separation of church and state.

Article 26 provides for freedom of thought, conscience and religion; the right to profess and propagate a religion or faith 'may be subject only to those limitations prescribed by law and only when such restrictions are necessary to protect the safety of society, public order, a person's health or morals, or the fundamental rights and freedoms of others.'. The religious teachings of churches and other religious organisations, their religious activities, and their houses of prayer may not be used for purposes that contradict the Constitution and the law. The Government may also temporarily restrict freedom of expression of religious conviction during a period of martial law or a state of emergency.

Though there is no state religion, Article 43 of the Constitution divides religious communities into state-recognized traditional Lithuanian churches and 'other churches and religious organisations'. In practice, a four-tiered system exists: traditional, state-recognized, registered, and unregistered communities.

Under the 1995 Law on Religious Communities and Associations, some religious groups enjoy government benefits not available to others. Article 5 recognises nine 'traditional' religious communities and associations: Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Orthodox, the Old Believers, the Jews, the Sunni Muslims and the Karaites. Traditional religious communities and associations are not required to register their bylaws with the Ministry of Justice in order to receive legal recognition and personality. Non-traditional religious communities, however, must present an application, a founding statement signed by no fewer than 15 members who are adult citizens of the country, and a description of their religious teachings and their aims. Legally, the status of a 'state recognised' religious community is higher than that of a 'registered' community but lower than that of a 'traditional' community.

As well as being able to register marriages and teach in state schools, the nine 'traditional' communities qualify for government assistance th

naming churches and traditional organisations as traditional is not an act establishing them as traditional organisations but an act stating both their traditional character and the status of their relations with society. [131]

compromise between the Labour Government and the Nationalist Opposition,[135] establishes Roman Catholicism as the state religion:

> (1) The religion of Malta is the Roman Catholic Apostolic Religion.
>
> (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.
>
> (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

So, for example, there is no provision for divorce in Maltese family law;[136] and the Marriage Law Amendment Act 1995 restored the previously-recognised exclusive jurisdiction of ecclesiastical tribunals over Roman Catholic marriages that had been set aside by the Marriage Act 1975. (Mifsud Bonnici 2005: 360–361)

The Government provides partial finance for Roman Catholic schools. Roman Catholic religious instruction is compulsory in all state schools, but Section 40(2) of the Constitution ensures a right of conscientious objection for those who are not Roman Catholics.

Since 1991 all religious organisations have been able to own property. Perhaps surprisingly, however, neither the Roman Catholic Church nor the other faith-communities enjoy any particular tax exemptions beyond those given to charities generally. (Mifsud Bonnici 2005: 359).

The Netherlands

In the past, the religious makeup of the Netherlands has been characterised as roughly one-third Protestant, one-third Roman Catholic and one-third secular: a situation traditionally described as ‘pillarisation’. However, Dutch society has become increasingly secular and the Protestant denominations, in particular, have suffered a considerable decline in membership.

Article 1 of the Constitution outlaws religious discrimination and Article 6(1) provides that everyone ‘shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.’. The Dutch model of church-state relations is rather at the separatist end of the spectrum so that, for example, religious marriages contracted in the Netherlands must be validated by a civil ceremony. Religious groups are not required to register with the government; however, the law grants religious denominations certain rights and privileges, including tax exemptions. The Government also provides state subsidies to religious organisations that maintain educational facilit ious gn4j2ands mbe

Poland

Article 53 of the Constitution provides for freedom of religion, with the result that religious communities may register with the Government if they wish but they are not required to do so. Article 25 provides for a fairly level playing-field between faith-communities:

> (1) Churches and other religious organizations shall have equal rights.
>
> (2) Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
>
> (3) The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.
>
> (4) The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.
>
> (5) The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.

However, those rather bald statements of the law can only give a massively over-simplified impression of the complicated relationship between the majority Roman Catholic Church and the Polish state.

During the post-War Communist regime, the Roman Catholic Church, under the leadership first of Cardinal Wyszyński then of Cardinal Woytyła (later Pope John Paul II), was perhaps the only institution strong enough to attempt to act as a serious counterweight to the Communist Party. During and after the period of martial law that was declared by General Jaruzelski in December 1981 and lasted until July 1983, the Church was heavily involved with the activities of Lech Wałęnsa and the Solidarity movement.[137] The result of the close relationship between Solidarity and the Roman Catholic Church was that when the Communist Government fell in 1989 and the devoutly-Catholic Wałęnsa came to power, the social policies of the new Government had a decidedly pro-Church stance: in particular, the reintroduction of religious instruction in public schools (which happened in 1990 without any prior parliamentary discussion), a prohibition on abortion, and restrictions on contraception.

The current law on abortion is that it is permitted only when the pregnancy has resulted from rape, when giving birth would put the mother's life at risk or when there is a serious possibility of birth defects. At the time of writing Ms Alicja Tysiac was contesting the abortion law as a violation of her rights under Articles 8 and 14 of the European Convention of Human Rights and Fundamental Freedoms relating to respect for privacy and family life and prohibition of discrimination, arguing that her third pregnancy (which in her view should have been terminated) severely damaged her eyesight, rendering her disabled. (Harding: 2006)

[137] The position both of Solidarity and the Church was probably strengthened by the murder by security police of Father Jerzy Popiełuszko in 1984.

One legacy of Communism positively benefited the Church: the Church Fund established in 1950 by the Communist Government in compensation for land they confiscated from the Church.

taxpayer contributions amounted to some £90 million (135 million euros) while the Government also provided an additional £18 million (28 million euros) in direct payments. (US Department of State 2005: Spain).[143] Representatives of Protestant, Jewish, and Islamic faiths have also signed bilateral agreements with the Government and are seeking parity of treatment on the matter of voluntary income tax contributions; and in 2004 legislation was approved to provide

Article 141 of the Constitution of the Canton of Fribourg recognises the Roman Catholic Church and the Reformed Church as institutions under

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