The Oath of Canonical Obedience

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Introduction

> 'According to the ancient law and usage of this church and realm of England, the inferior clergy who have received authority to minister in any diocese owe canonical obedience in all things lawful and honest to the bishop of the same, and the bishop of each diocese owes due allegiance to the archbishop of the province as his metropolitan.' (Canon C 1/3).

> 'I, A.B., do swear by Almighty God that I will pay true and canonical obedience to the lord bishop of C and his successors in all things lawful and honest, so help me God.' (Part of canon C 14/3).

> 'I, A.B., do solemnly, sincerely and truly declare and affirm that I will pay true and canonical obedience to the lord bishop of C and his successors in all things lawful and honest.' (Part of canon C 14/4).

The above canons encapsulate the current law of the Church of England with respect to the oath of canonical obedience, which is required of every ordinand and/or licensee in the church. Though apparently straightforward enough (and rarely burdensome), these canons have in fact caused considerable disquiet in recent years, particularly among clergy who believe (rightly or wrongly) that episcopal power in the church is increasing and that it is more likely to be abused in the future than it has been in the past. The reasons for this belief are both institutional and spiritual. It is a fact that when organisations centralise their operations (often in an effort to streamline them), individual cases are likely to receive less consideration and therefore abuses are more likely to occur – it is one of the standard perils of 'big government'. It is also true that the orthodoxy of modern bishops cannot be taken for granted, and that there have been several cases of bishops who have tried to force their

'progressive' views on others. Clergy of a more traditional stamp are understandably wary of this, and unhappy to think that a demand for 'canonical obedience' may be made on them in circumstances which would violate their conscience.

The impending advent of women bishops complicates matters still further, since many of these same clergy would not willingly swear obedience to a woman, believing that this would violate the principle of male headship outlined in the New Testament.[1] Fears of this kind are compounded by the fact that even lawyers are uncertain about the precise meaning of the above canons, and at least one leading expert in the field has expressed the view that not only have they been badly drafted, but canon C 14 adds nothing to C 1/3 and is therefore effectively redundant.[2] A little reflection on the subject soon reveals that there are fundamental theological, as well as legal, issues involved in requiring the oath, and that given their intrinsic importance, it is disquieting to have to reflect that few of these have received any serious airing in the church. The main issues involved may be outlined, in descending order of importance, as follows:

1. The principle of *obedience*. Granted that this is a basic Biblical theme, does it apply to the relationship between a bishop and the clergy in his diocese? To whom (or to what) do the clergy owe their obedience? What does the word 'canonical' imply in this context, and what limits does it set on the extent of the obedience required?

2. The concept of an *oath*. Even if we can agree that there is such a thing as 'canonical obedience' and that it ought to be required of all clergy, is an oath the best or

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[1]See *e.g.* 1 Corinthians 11:3-7; 1 Timothy 2:12.

[2]N. Doe, The legal framework of the Church of England (Oxford, 1996), pp. 212-15.

most Scriptural way of achieving this? Some people object to swearing oaths because they believe that it is unbiblical, and canon C 14/4 makes provision for them, but this does not alter the substance of what is required. Does this provision suggest that a better way might be found which everyone could accept?

3. The relationship of a *bishop* to the rest of the clergy. Is the episcopate a distinct and 'superior' order in the church or is such a hierarchical way of thinking fundamentally alien to and inappropriate for describing different patterns of Christian ministry? How much of our thinking about this is a legacy of a medieval past, rather than an expression of Biblical principle(s)? On the other hand, does the former have to be jettisoned in order to do justice to the latter, or can the two live side by side, because at bottom they are mutually compatible?

4. The *applicability* of the current canons. Even if everything else about the oath of canonical obedience can be explained in an acceptable manner, can these canons be applied today in a way which is both coherent and sensible? How much disagreement can be contained within the bounds of legitimate interpretation, and do we have to fear that bishops will be inclined to 'push the envelope' in a desire to maximise their authority and influence over the clergy?

Let us consider each of these issues in turn, and see whether acceptable answers can be found to at least some of these questions, before we proceed to draw conclusions about the best way forward for the church in the immediate future.

Obedience

That obedience is a basic Biblical concept, and a virtue required of every Christian, is so obvious as to be uncontroversial – at least in theory. Every believer is called to obey God first of all, which in practice means that he must conform his mind and will to the commands which God has given us in Holy Scripture.[3] God may also speak to individuals directly, of course, and those who claim to hear his voice in this way will understand it as a call to their own personal obedience in particular circumstances, but it is impossible for the church to legislate for, or to generalise about this. All that can be said with assurance is that God does not command individuals to do things which contradict his revealed will in Scripture, nor does he use particular people as oracular authorities, or give them some right to impose their desires on others. It often happens that people will claim that God has told them to do something which involves the co-operation of others as well, but those who find themselves put on the spot in this way are under no obligation to obey such 'commands'. A bishop who asserted that he had such oracular authority would have no claim on the obedience of either his clergy or of the laity under his care, and many would think it their duty to resist him on principle, for fear that one or two such incidents might easily harden into a doctrine and give the bishop extraordinary – perhaps even unlimited – power.[4]

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[3] Throughout this essay generic nouns and pronouns should, where context indicates, be understood as gender inclusive in their meaning.

[4] This is one of the main objections which Protestants have to the claims of the papacy, which (they believe) claims essentially this kind of authority - *i.e.*, one not subject to the constraints imposed by the teaching of Holy Scripture.

In the Bible, it is clear that certain human relationships contain an important element of obedience. The most fundamental, and most universal of these is within the family, where children are invariably expected to honour and obey their parents (Ephesians 6:1). There is a similar injunction to wives, who are told that they must be subject to their husbands (Ephesians 5:22), though this has become more controversial in recent years and it is now possible for a woman to marry in church without swearing to obey the bridegroom. In any case, the command of obedience given by the Apostle Paul to Christian women and children has to be balanced against the commands given to men, that they should love and respect their families, and not put unreasonable demands on them (Ephesians 5:28; 6:4).[5]

Extensions of these kinds of obedience are first, the obedience which employees owe to their employer(s) and second, the obedience which citizens (or subjects) owe to the state. In Biblical times, the first of these was often worked out in the family context, because much economic activity in those days was concentrated in what we would now call the 'extended household'. The snag (for the modern standpoint) is that most of these 'employees' were probably slaves. But it is interesting to note that exactly the same principles apply. The employee/slave was expected to obey his master(s), but equally masters were warned not to burden or mistreat their slaves (Ephesians 6:5-9). In the case of the state, the obedience of a citizen or subject was less intimate, since few people had any direct contact with their rulers, but it was no

[5]In the early church (and for many centuries thereafter), it was generally agreed that women and children who suffered unjustly ought to bear this in a spirit of endurance, leaving judgement to God. It is fair to say that modern thinking generally has shifted the emphasis to the punishment due to the husband/father if he abuses his place in the household, and that 'suffering in silence' is no longer recommended by anyone in the church or outside of it.

less obligatory, and there was never any suggestion that Christians had a right to rebel against the injustices of those set over them by God (Romans 13:1-7).

The common theme running through these relationships is that they all entailed *mutual* obligations. The obedience of those who were hierarchically 'inferior' was meant to be matched by the responsible care and solicitude which those placed in authority were expected to show towards them. If this mutuality broke down, so too did the relationship, which then either became a tyranny or else ceased to exist altogether.

When we turn to the church, it is evident that the pattern of obedience which we find in the New Testament is an extension of what obtained in the family. The Apostle Paul, for example, demanded the obedience of church members because he was their *father* in Christ (1 Corinthians 4:14-15; 1 Thessalonians 2:11). Of course, it must also be pointed out that he had no intention of lording it over other believers, and he went out of his way to tell them of the extent to which he had suffered on their behalf. This spirit of self-sacrifice on behalf of the church was the other side of Paul's claim to spiritual fatherhood, which he consistently emphasised in spite of what the people he was writing to might have been doing to upset him. In this, of course, Paul was doing no more than imitating God himself, who is always faithful to his promises, whatever his creatures might get up to. The message is clear – though there is indeed a mutuality of relationships, the true sign of the 'superior' is consistent self-sacrifice in the face of failure, disappointment and even rebellion on the part of those in an 'inferior' position.

Whether the New Testament has any model genuinely comparable to what we know as the bishop-clergy

relationship is an open question and must be regarded as somewhat doubtful. The closest we come to it is the relationship which we can discern between the various apostles, on the one hand, and their ministerial assistants on the other, but how this operated is difficult to say. The parent-child relationship is not really appropriate in that connection, even if it is true that Paul called Timothy his son (1 Timothy 1:18). Timothy was young, but he was not a minor, and Paul regarded him more as a companion than as a servant. The husband-wife analogy does not fit either, as there was no union in one flesh between the apostles and their disciples. Nor can it be said that the apostles were employers. Presumably Paul exercised some kind of employer-style authority over people like his secretary Tertius (cf. Romans 16:22), but Tertius was not a 'minister' in the normal sense.

The apostles appointed deacons to administer the affairs of the church, but we do not know how their relationship with them was structured – if indeed it was. There must have been some sense of orderly co-operation, and Paul certainly gave orders to men like Timothy and Titus, but as far as we can tell, their relationship was based on an essentially charismatic sense of apostolic authority rather than on anything which we would think of as 'contractual'. The evidence is scarce and unclear, but it seems that if one of Paul's associates was not prepared to do what the apostle ordered, he would simply take his leave of the apostle, go off and work independently. This seems to have been what happened in the case of Barnabas (Acts 15:39-40), and there is nothing to suggest that men like Mark, Stephen or Philip were anything other than free agents, working alongside the apostles, but not in subjection to them. We can only conclude that a hierarchical organisation, complete with pledges of loyalty and so on, was a post-Biblical development in the

church and that it is not strictly comparable to the way in which the apostles related to their helpers and disciples. This does not mean that the post-Biblical practice was wrong – it may well have been inevitable – but it does at least suggest that it cannot be regarded as of divine institution, or given the same degree of fundamental importance which attaches to matters which are set out in the Scriptures.

What we find in the New Testament is that the true focus of obedience among the apostles and their associates was not a person (like the Apostle Peter for instance) but a belief. The apostles did not demand pledges of loyalty to themselves, but to the truth of the Gospel revealed in Jesus Christ. They were prepared to tolerate freelance evangelism, and Paul appears to have resisted pressures to rein in some of the more unruly ones (Philippians 1:15-18), but in the realm of doctrine neither he nor his colleagues were prepared to countenance any kind of compromise or opposition. Thus Barnabas was not expelled from the church for failing to go along with Paul's missionary plans, but if he had preached a false gospel, there is no doubt that he would have been out the door immediately, as Hymenaeus and Alexander were (1 Timothy 1:20).

This order of priorities is a matter of considerable relevance to the modern debate about canonical obedience, because many clergy who are unhappy with the concept think the way they do because they are faced with having to deal with bishops whose orthodoxy is suspect – to say the least. It may be true that no bishop of the Church of England has ever been successfully prosecuted for heresy, and it would certainly be extremely difficult to launch such a trial, though there was a time when bishops who crossed the line were quietly moved on – the late John Robinson of Woolwich

being a good example of that.[6] But since the failure to prevent David Jenkins from going to Durham in 1984, despite his public and contemptuous remarks about the physical resurrection of Jesus, episcopal heresy has been tolerated with little fuss. Now there are several bishops who are prepared to abandon traditional Christian teaching, not only on matters of doctrine but also in the sphere of morality, and particularly sexual morality.

There can be little doubt that the Apostle Paul would never have tolerated anything like that, or that he would have expected Christians not to associate with such people at all – let alone swear an oath of canonical obedience to them! When laxity in these spheres is combined with rigidity in such trivial matters as the wearing of a stole at ordination, it is small wonder that people are questioning what basis there is for such an oath. To borrow an analogy from the administration of the sacraments, the unworthiness of the minister may not hinder the efficacy or detract from the validity of his actions, but in cases like those just mentioned, it certainly brings the whole office of a bishop into disrepute, and does so in a way which the apostles would never have tolerated.

We must therefore conclude that canonical obedience, whatever it is, has little to do either with the concept of 'obedience' as found in the Bible, or with the relationship between the apostles and their colleagues. For better or worse, there is no clear Scriptural analogy which corresponds to the modern position of a bishop and the clergy under him. We must also conclude that the apostles evaluated their co-

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[6] In 1963 Robinson published *Honest to God*, a book in which he challenged orthodox Christianity. The furore was such that he was soon appointed dean of Trinity College, Cambridge, where he remained until his death in 1983.

workers not by their subservience but by their orthodoxy, which was far more important. Whether we like it or not, the suspicion that many of our present bishops are less than fully orthodox has created a situation which the apostles would certainly have condemned. Furthermore, the knowledge that those apostles would most probably have counselled ordinary church members not to have anything to do with people who compromised or denied the faith of Christ by embracing either doctrinal heresy or sexual immorality can only encourage orthodox clergy to rebel against a system which would place them in that position.

Oaths

To what extent can it be said that the Biblical relationships which we have identified were undergirded by some kind of 'oath'? Mutual responsibility was present in every case, but how that was acknowledged is less clear. Children obviously never took an oath to their parents, nor did slaves to their masters. Presumably relations between a free employee and his employer would be governed by some kind of contract, though this would not have involved oath-taking in the usual sense. Only in betrothal and matrimony do we find something analogous, and it is probable that the pledges required of a man and his wife served to underline the depth and permanence of their commitment to one another, as well as its essentially voluntary character.

Within the church, there is no sign of any oath taking, unless we interpret baptism in that way, as someone like Tertullian did. He used the Latin word for 'oath' (*sacramentum*) to describe the rite of Christian initiation because he compared it to the oath which a soldier took to the emperor when joining the army, but it is fair to say that this was an analogy which he invented rather than a concept found in the New Testament. Certainly the subsequent development of the word 'sacrament' has taken it well away from any idea of oath-taking and the origin of the word now has to be pointed out, somewhat to the bemusement of most people.

There is no sign that any Christian took an oath of obedience to anyone, not even to God, and there is certainly no suggestion that such a thing was expected of the relationship between believers and the Apostle Paul. If anything, the father-child analogy would probably have excluded it, since children did not take oaths. Of course, the

relationship between a clergyman and his bishop is less intimate than that between a believer and God (or even the Apostle Paul), if only because a clergyman does not (usually) owe his faith to his bishop. For that reason, if for no other, the term 'father-in-God', which is commonly used of bishops, cannot be equated with the Apostle Paul's claim to be the 'father' of his converts. Seen from this perspective, the bishop-clergy relationship is closer to that which obtains between an employer and his employees, though it is not identical with that either. The historical analogy used to describe it was that of the feudal relationship between a lord and his vassals, and the oath of canonical obedience really comes from that. The presence of a majority of our diocesan bishops in the House of Lords is a continuing reminder of that history, and it can have some odd effects even now. For example, if a bishop ordains someone to a title, he becomes responsible for his maintenance, and may even be expected to discharge his debts – which is why the church refuses to ordain people who cannot meet their own financial obligations! The oath of canonical obedience is therefore essentially an oath of vassalage which along with some other things, has somehow managed to survive the demise of medieval feudalism more or less unscathed. Much of the confusion which surrounds it today must be attributed to the demise of the context in which it was devised, with the result that no-one is quite sure what effect it is supposed to have in the modern world.

The swearing of oaths goes back to the Old Testament, but it is a problem for some Christians because of the teaching of Jesus, who said that we should let our yes be yes and our no, no – and told us not to swear by heaven, earth or

anything else (Matthew 5:33-7).[7] The precise meaning of Jesus' teaching in these verses is somewhat unclear, and has given rise to a considerable amount of discussion.[8] Jesus began by quoting a text ('You shall not swear an oath falsely') which does not actually come from the Old Testament, although there are parallel references which can be cited in support of it.[9] The quotation does however survive in Jewish *halakah* literature, and probably developed out of Jewish traditions regarding the interpretation of the third commandment ('Thou shalt not take the name of the Lord thy God in vain.') The Jews apparently believed that too frequent swearing would inevitably devalue the act and lead to cases of perjury (which included failure to fulfil the terms of an oath), which they regarded as a particularly heinous sin. People who made vows which they could not keep were inviting divine retribution, and the wise person would therefore avoid committing himself in this way if he possibly could. It seems that some Jewish teachers tried to get around this by devising a series of rules by which oath-taking could be classified into 'binding' and 'non-binding' categories. An oath made in God's name was supremely binding and therefore to be avoided, except in the most solemn contexts. Instead, Jews seem to have been encouraged to substitute lesser entities for the name of God, including the earth and Jerusalem. The absurdity of this approach can be seen from the fact that to swear by the temple was not binding in Jewish eyes, whereas to swear by the *gold* of the temple was, presumably because gold was peculiarly indicative of the

[7]There is a similar prohibition in James 5:12.

[8]See for example, H. D. Betz, *The sermon on the mount* (Minneapolis, 1995), pp. 263-74 for a full discussion of the interpretive possibilities.

[9]The ones usually mentioned are Leviticus 19:12, Exodus 20:16 and Deuteronomy 5:20.

divine presence. This kind of hair-splitting could do nothing but discredit the whole process of oath-taking and lead to an almost thoughtless perjury, when the whole purpose was to avoid just that. It appears to have been this tendency of the Pharisees to fall into a trap of their own making that Jesus was attacking, and not the solemn swearing of oaths (or taking of vows) as such.

That he did not exclude all oath-taking is clear from Matthew 26:63. At his trial Jesus was ordered to swear on oath whether or not he was the Messiah, and it appears that he did so without objecting. The Apostle Paul also had recourse to a form of oath from time to time (cf. Romans 9:1; 2 Corinthians 1:23) and in Hebrews 6:16 we are told quite explicitly that in the Old Testament God bound himself to Israel by an oath, which the book's author evidently regarded as a perfectly legitimate confirmation of the truth of what God was saying. Oath-taking in the New Testament was never meant to be an everyday affair, as it had become among too many Jews and pagans, but there were certain circumstances in which it was appropriate and expected. Here the matrimonial analogy helps us, because it was on solemn occasions like that, when the truth and sincerity of a person had to be unambiguously displayed, that pledges and oaths came into their own.

Of course it can always be argued that in a perfect world oaths would not be necessary, because there would never be any occasion when the truth of a statement could possibly be doubted. But we live in a fallen world, and have to have it impressed on our minds that there are times when telling 'the truth, the whole truth and nothing but the truth' is of paramount importance and must not be taken for granted. Taking an oath on such occasions is not intended to suggest that the person concerned cannot be trusted to tell

the truth at other times – God could certainly not be doubted in that way – but rather to impress on us the great significance of certain solemn acts in our lives, of which marriage is clearly one. Ordination and institution to a living, it might reasonably be argued, are other occasions when a similar principle might be thought to apply.[10]

On the other hand, because oaths were instituted as a safeguard for fallen humanity, refusal to take an oath under any circumstance whatsoever came to be associated with the ideal of moral perfection. As we understand it today, perfectionism is an unrealisable goal, and anyone who claims to have achieved it is either lying or deluded. But in earlier times it was thought that there were certain carefully defined contexts in which some people could manifest the ideal, even if it did not mean that they were objectively perfect. Thus it was that St Benedict (d. 480) forbade his monks to swear oaths for fear of perjury,[11] an injunction which later generations explained as necessary, because monks were supposed to bear witness on earth to the perfect life of the kingdom of heaven.[12] This prohibition was later extended to all Christians at certain times of the year – the penitential seasons of Advent and Lent, for example, as well as Sundays,

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[10]It is perhaps not entirely irrelevant here to remember that in medieval theology, matrimony and ordination were mutually exclusive alternatives - a man could have one but not both. The justification for this was that ordination was marriage to the church, and so the solemn vows taken at the time can legitimately be compared with those taken at a wedding ceremony.

[11]Found in chapter IV of the rule of St Benedict.

[12]There is no evidence that Benedict himself thought this. To him, the refusal to swear an oath was simply a way to avoid falling into sin and so running the risk of being excluded from the kingdom of heaven.

ember and rogation days, when even ordinary believers could be asked to emulate the life of the saints in glory.[13]

At roughly the same time, clergy were forbidden to swear oaths administered by laymen – a reminder of their 'holy' status.[14] Needless to say, prohibitions of this kind led to all sorts of unintended complications. For example, the ecclesiastical courts did not meet on the prohibited days, so that swearing an oath in them (an integral and essential part of a trial) would be permissible. There were also a large and continually growing number of circumstances in which monks and other clergy were allowed (or even required) to swear oaths which in principle were forbidden, simply because to have done otherwise would have been to invite the charge that the word of a monk or priest could not be trusted. On the other hand, if a monk renounced his vocation by swearing an oath to that effect, the oath was rejected as invalid, because monks were not allowed to swear them![15]

From this it can be seen how the medieval church managed to get itself into a situation reminiscent of that of the Pharisees, where rules did not mean what they said and where subtle distinctions designed to cover every circumstance were invented as required. The reformation tried to break through all this, though it is worth remembering that one of the most powerful accusations made against Martin Luther was that he married a nun, in

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[13]In a council held at St Médard in 853. See *Decretum Gratiani* C. 22, q. 5, c. 17 in E. Friedberg ed., *Corpus iuris canonici* (2 vols., Leipzig, 1879-81) I, 887.

[14]*Ibid.*, C. 22, q. 5, c. 22 (Friedberg I, 889). The prohibition is falsely attributed to a council of Reims, but appears to come from legislation of King Egbert of Wessex (802-39), and may therefore be regarded as an English contribution to this process!

[15]*Liber extra* 2.24.13 (Friedberg II, 363). This was a decree of Pope Urban III (1185-7).

direct violation of the oath of celibacy which both of them had taken. The breaking of his vow, more than anything in his theology, was held up to the masses as proof that Luther had clearly departed from the way of Christ.[16] It should also be remembered that there were radical reformers who wanted to go to the opposite extreme and insist that no oaths should be taken by anyone under any circumstances. That view was specifically condemned by Article XXXIX, though that article does not refer specifically to the clergy.[17] Since then official church opinion has softened somewhat, and there is now a greater willingness to respect the views of those with tender consciences in this respect. This is what lies behind canon C 14/4, which provides an alternative declaration for those to whom swearing an oath causes offence. There is no way of knowing how many people avail themselves of this opportunity, which is probably not widely publicised, but it makes no difference to the substance of what is required, so that no-one can opt for canon C 14/4 on the ground that it is somehow less demanding or less binding on an individual's conscience than canon C 14/3.

The English reformation also introduced an oath of allegiance to the monarch which was imposed on all clergy. To some extent this took the place of the oath which bishops

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[16] Luther's defence was that the oath of celibacy was illegitimate, because it went against the teaching of Scripture. The medieval canon law recognised that anyone who swore an illegitimate oath was free to break it. See *Liber extra* 2.24.18-19 (Friedberg II, 365-6), two decrees of Pope Innocent III (1198-1216) in 1199 and 1200.

[17] It says: 'As we confess that vain and rash swearing is forbidden Christian men by our Lord Jesus Christ and James his apostle, so we judge that Christian religion does not prohibit, but that a man may swear when the magistrate requireth, in a cause of faith and charity, so it be done according to the prophet's teaching, in justice, judgement and truth.'

had previously sworn to the pope[18] but its purpose was fundamentally different. It is often understood as a declaration of loyalty to the laws of the state, but although this is undoubtedly included in it, it cannot be said that it was the oath's original intention. It was first imposed in 1583, in the aftermath of the excommunication of Queen Elizabeth I in 1570. In his bull of excommunication the pope decreed that not only were Christians absolved from their secular allegiance, but that they were bound to seek the queen's overthrow as well. Plots against her life were rampant, and in 1583 it was becoming clear that there was a very real chance that Philip II of Spain would launch an invasion of England in order to make the papal bull effective.

In a very real sense the oath of allegiance can be compared to the oath of canonical obedience, because it too is basically an oath of vassalage, recognising the queen's authority as supreme in ecclesiastical matters.[19] To this day it remains the more fundamental of the two, since the laws of the church are enacted in the name of the monarch, not of the bishops. It seems unlikely that anyone would contest the oath of allegiance today, but there have been times in English history when it has come into play. For example, it prevented conscientious clergymen from accepting the execution of Charles I in 1649, and the refusal of some 400 clergymen to swear allegiance to William III and Mary II in 1689 led to the schism of the so-called 'non-jurors'. It also played a part in 1776, when colonial clergy in America, all of whom had

[18] *Liber extra* 2.24.4 (Friedberg II, 360). This was originally a decree of Pope Gregory VII, issued in 1073.

[19] It is possible that the extension of the oath of canonical obedience to all licensed clergy, and not just to beneficed ones, occurred as a result of the imposition of the oath of allegiance to the sovereign - the two went well together! However, probable though this theory is, there is no documentary evidence to support it.

trained and been ordained in England, had to do battle with their conscience over this oath. The royal supremacy remains a fundamental part of the Church of England's canon law, and the oath of allegiance continues to give clear expression to that.

For a long time the church also retained (in an amended form) the traditional oath against simony, which tried to prevent the sale of ecclesiastical offices.[20] This was a serious problem for many centuries, when some livings were so much more valuable than others, but the levelling of clerical incomes seems to have made it obsolete. It may yet turn out that abolishing it was not a good idea, but whatever the case, the oath against simony belonged to a different category from those of allegiance and canonical obedience, which are generically related to each other.

There can be no doubt that the oath of canonical obedience as we now know it bears the strong imprint of medieval feudalism, nor that its closest relative is an oath of allegiance to a secular lord, comparable to the one which the clergy have sworn to the monarch since the late sixteenth century. However, it must also be remembered that it did not take shape in a vacuum, but was integrated into a pattern of church authority and governance which went back to the first days of the legalisation of Christianity in the fourth century. The church at that time did its best to insist that no bishop should act in a way which went against the consensus of the church as a whole. To ensure that this would happen in practice, canons were devised which bound bishops to respect the collegiality of their order.[21] To make this stick, it seems

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[20] This oath was finally abolished on 5 July 1977.

[21] *Decretum Gratiani*, C. 9, q. 3, c. 1-2 (Friedberg I, 606). The canons are those of Pope Martin I (649-54) and canon 9 of the council of Antioch, 341.

that oaths were taken, though we know this only from negative evidence. Pope Leo I (440-61) told one of his correspondents that it was not necessary for a clergyman to swear an oath of obedience if he were not engaged in church administration.[22] This was repeated several centuries later by Pope Urban II (1088-99), who said that no bishop could force a clergyman to take an oath of obedience unless some form of church administration had been granted to him.[23] The oath was therefore directly connected to church administration – a term which is not altogether clear but would certainly have included institution to a benefice, once benefices came into existence.[24] The form of the oath used today is undoubtedly very ancient, although it does not seem to appear anywhere in print before 1713, when the feudal order which lies behind it was already long dead.[25] It is a form which has managed to survive all the changes and upheavals of the centuries, presumably because successive generations of churchmen have considered it important enough to be retained in substantially its original form. To understand why, we have to consider the nature and limitations of the office of the bishop before and to whom the oath is meant to be sworn, and consider to what extent (if any) that office has changed its character from the days when the oath assumed its present shape.

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[22] *Liber extra* 1.33.3 (Friedberg II, 196).

[23] *Ibid.*, 2.24.5 (Friedberg II, 360). The text reads: 'Nullus episcopus clericos suos, nisi forte quibus ecclesiasticarum rerum commissa fuerit dispensatio, sibi iurare compellat.'

[24] After the fourth Lateran council in 1215.

[25] In Edmund Gibson, *Codex iuris ecclesiastici Anglicani* (London, 1713), p. 810. Gibson gives the oath in Latin, which probably indicates its pre-reformation origins, as the other, post-reformation oaths (of allegiance and against simony) are given in English.

The rights and duties of a bishop

Is the oath of canonical obedience given to a diocesan bishop a declaration of allegiance made by a clergyman to him personally, or should it rather be understood as a declaration of assent to a body of doctrine and law which has been canonised by the church (and/or the state) and which the bishop is authorised to administer in their name? To put it a different way, does the bishop who receives the oath have a legal personality in his own right, so that a breach of the oath would be an offence against him, or does he merely represent the collective mind and authority of the church, making a breach of the oath an offence against the church as a whole? Some people get quite worked up about what they see as the personal character of the oath, believing hat it opens the way for them (or others) to be victimised by a maverick bishop, but it is difficult to see that they have much ground for this kind of concern. As we have already seen, no bishop can act canonically without the support and collegiality of his fellow bishops, and this restriction applies to the metropolitan of the province as well. Of course, a bishop who is determined to oppose a clergyman in his diocese has many ways of doing so which fall well short of accusations that the oath of canonical obedience has been breached, and the stories one hears bear this out. An 'unco-operative' clergyman might be denied a curate and would almost certainly be passed over for promotion or any post of responsibility in the diocese, and threats (or fears) along these lines have often been enough to ensure clerical compliance with the bishop's will – without raising the issue of 'canonical obedience' at all.

Traditionally, it has been the province, not the diocese, which has been the more important ecclesiastical unit, and in many parts of the Anglican Communion this is still the

case.[26] Where a province is coterminous with a country (*e.g.* Nigeria, Wales) or where it covers several countries (*e.g.* West Africa, the southern cone of South America), the effects of this can be seen very clearly. But where a country includes more than one province, the tendency is for the provincial administration to be submerged into the national one.[27] This is the case in Canada, Australia and the USA, and it was formalised in Ireland as early as 1615, when the four provinces there lost whatever autonomy they had previously enjoyed. In England, the provinces of Canterbury and York have marched in tandem at least since 1462, when York accepted all the canonical legislation of the southern province *en bloc*, though the exact degree of autonomy which York might have possessed was left undefined. But whatever the case may have been in the past, since the creation of the General Synod in 1970 there has been no way that one of the provinces can legislate independently of the other.[28]

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[26]There is a somewhat curious acknowledgement of this in T. Bladen, *Praxis Francisci Clarke* (Dublin, 1666) title 91 (p. 117). Francis Clarke wrote in the late sixteenth century and his opinions circulated widely in manuscript, until they were finally published by Dr Bladen. Translated from the Latin, Clarke's title 'On the oath to be sworn at institution' reads as follows: 'The presentee, before his institution... shall first undergo the oath mentioned in the act of parliament concerning the recognition of the royal supremacy, shall then be obliged to subscribe to the articles of religion mentioned in the said statute, and shall afterwards swear canonical obedience, both to the archbishop of Canterbury and his successors, and (if it is a vicarage) concerning his personal residence in it.' There is no mention of the diocesan bishop at all.

[27]In the Canadian case mentioned below, it is noteworthy that appeals against the actions of the bishop of New Westminster have gone to the national church. The (ecclesiastical) province of British Columbia seems to have been completely overlooked.

[28]The provinces continue to act separately in certain things, like the licensing of overseas clergy, but they do not legislate independently and an English clergyman's orders are fully recognised in both provinces. This is not always true overseas, where the provincial boundaries are often more clearly recognised as barriers.

This means that the bishop of New Westminster (Canada), who in 2002 approved a quasi-matrimonial rite of same-sex blessing was acting *ultra vires*, since neither his province (British Columbia) nor the national church had agreed to this, and the local clergy who objected to the decision had every right to reject it. In such a circumstance, the oath of canonical obedience taken to the diocesan bishop can have no effect, because the bishop has put himself out of communion with his colleagues by acting unilaterally and introducing a policy which they have not agreed to and which does not represent the 'mind of the church' expressed in a general synod. His behaviour was clearly schismatic, and the rest of the Canadian church (quite apart from the Anglican Communion) has a duty to tell him so. It is the national church's failure in this regard, whatever its cause might be, which is the real problem for the church, and not the action of those clergy who have repudiated their bishop's (forfeited) authority.

The other point which needs to be mentioned in this connection is that the oath of canonical obedience does not have to be sworn again every time a new bishop takes office. The significance of this can best be appreciated by comparing it with the historical practice of the state. Until 1901 servants of the crown lost their appointments when the sovereign died, because they were held to be personal to him or her.[29] That is no longer the case, but it is a reminder to us of just how different the position of a licensed clergyman is – and has always been. The relevant canon goes back to the time of Pope Clement III (1187-91) and states that the oath is to be administered only once to any given appointee.[30] This proves

[29] This principle still applies in the United States. Every time a president changes, those appointed in his name lose their positions and have to be reappointed.

[30] *Liber extra*, 1.24.14 (Friedberg II, 363-4).

that any individual bishop is only an agent of the church, not an independent lord to whom the clergyman stands in a relationship of vassalage, although of course the language of the medieval canon is couched in those terms.

The concept of *canonical* obedience therefore has to be understood in the context of the overall canonical structure of the church, with its interlocking authorities, no one of which can claim dominance over the others. Furthermore, if it is true (as many today would argue) that a bishop and a presbyter share what is essentially a single office, collegial responsibility for ensuring canonical obedience ought arguably to be extended to cover the entire presbyterate. That would have the effect of reducing the bishop to a figurehead, rather like a Presbyterian moderator, and would confirm that the oath of canonical obedience to him is really no more than a symbolic way of expressing loyalty to the teaching and practice of the church.

It is perhaps worth saying here that one of the major differences between the Church of England and most of the other churches which make up the Anglican Communion is that the establishment in England greatly limits the scope of a bishop's authority. This can be seen most clearly in the practice of ordination and institution of clergymen to livings. In many other countries and overseas provinces, the bishop of a diocese can keep a tight rein on those whom he is prepared to ordain, and exclude from his diocese anyone he does not want. This has meant, for example, that some dioceses in the United States have refused to ordain or to receive ordained women, because the bishop is opposed to them. In England there are also bishops opposed to women's ordination, but they cannot keep women clergy out of their dioceses. If a woman is approved for training or appointed by a patron to a living, the bishop must accept her, even if it

means letting someone else perform the formal ceremonies involved.[31] Likewise, no diocesan bishop has the power to exclude clergymen who are opposed to the ordination of women.[32] In these and other ways, the national church shows itself to be a cohesive and coherent unit which cannot be hijacked by the particular views or eccentricities of a local diocesan bishop.[33] In this connection it is perhaps worth pointing out that the functioning of episcopal appointments in the Church of England is such as to preclude any diocese from becoming a fortress of one tradition or another. The guaranteed Evangelical succession of Sydney (Australia) is inconceivable in the English church, where bishops of different types of churchmanship regularly succeed one another, on the principles that change is a good thing from time to time, that everyone ought to have a turn and that no one type of churchmanship should be allowed to dominate in any given diocese. The result is that in England, a specific tradition of churchmanship can be maintained only at the parish level, where it is carefully safeguarded, although there are also dioceses which can be said to have a general preponderance of one kind of churchmanship as opposed to another.[34]

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[31] By the same token, English ordinands have always been free to choose where they would train for the ministry - a luxury undreamt of in many other places!

[32] Unfortunately however, it has to be said that there have been cases where a bishop has refused to ordain men opposed to women's ordination in a separate ceremony, despite the ordinand's legal right to one. Such episcopal behaviour is yet another reason why so many clergy are suspicious of bishops and fear that many will abuse their power by denying the clergy their legitimate rights.

[33] Suffragan bishops play no part at all in this process and can be ignored for our present purposes.

[34] Thus Liverpool, Bradford and Rochester are broadly 'Evangelical', Chichester, Blackburn and Truro are broadly 'Catholic', and Birmingham, Leicester and Southwark are broadly 'liberal'. But these are generalisations which by no means guarantee the churchmanship of any individual bishop.

It is of course true that the diocesan bishop has some leeway in enforcing the church's canons in his diocese, but it is extremely doubtful whether he can do anything which would affect the oath of canonical obedience to any significant extent. His sphere of discretion generally works in the other direction and can perhaps best be expressed as the degree to which he will tolerate deviations from the canonical norm, rather than impose additions to it. The way this works is seen most often in such matters as the acceptance of forms of worship not authorised by canon, but it may extend also to norms of clerical dress and so on. In practice however, the bishop is constrained in such matters by the general feeling of the church. For example, when Bishop Whitsey of Chester (1974-81) tried to enforce his understanding of the canons relating to clerical dress, his proposals were greeted with a mixture of laughter and incredulity, and he was unable to proceed any further. It is fairly safe to say that any bishop who attempted to ban the use of a particular translation of the Bible, for example, would find himself up against similar difficulties of enforcement and in practice would be unable to do anything.

This situation has given individual clergymen and parishes a great deal of freedom to do what they like (especially in worship), but there are dangers inherent in this freedom which also need to be appreciated. For example, no bishop can authorise the remarriage of divorced persons in church in cases which goes beyond what the canons of the church are prepared to authorise, but it would be very difficult for him to discipline a clergyman who flouted these canons as long as he remained within the parameters of the secular law on the subject. So far this has not proved to be a major problem, but if the state should recognise same-sex unions as marriages, a very difficult situation will arise for

the church if (as seems likely) it decides not to accept these as canonically valid. In practice, it will be virtually impossible for anyone to prevent an individual clergyman from performing same-sex wedding ceremonies if he is determined to do so – and all the signs suggest that there is a sizeable group of clergy which is only too eager to go down that path. Then, the powerlessness of the bishop to enforce 'canonical obedience', which may be a source of great comfort and relief to many orthodox people in their own particular circumstances, will almost certainly lead to situations which no orthodox Christian can regard with equanimity.

Those who fear the prospect that 'canonical obedience' may be used as a weapon against them on less serious matters and who therefore want to discount it as much as possible, must at least recognise that it cuts both ways. It is by no means inconceivable that some clergymen, who would object to being forced to submit to canonical discipline regarding something like clerical dress, will be demanding that it be applied to clergy who ignore the canons on weightier issues like same-sex 'marriages'. If that should happen, the complainants will doubtless be accused of inconsistency – appealing to the canons when it suits them but ignoring them when it does not. The only real defence against such a charge would be an appeal to higher authority – in this case the teaching of Scripture and the church through the ages. Such an appeal would have to point out that the canons suffer from being the product of an ecclesiastical tradition which has never been able to distinguish what is essential in church discipline from what is merely desirable (in the eyes of some) but not strictly necessary. Clerical dress for example, long a favourite topic of the canonists, is really a matter of indifference (an

adiaphoron, to use the theological term) which is only marginally related to the furthering of the

Gospel mission, and probably ought not to be put on a par with matters of genuine doctrinal significance. In other words, conservative, orthodox traditionalists will have to decide what is essential and what is not, and allow the latter either to be expunged from the canons entirely, or at least made optional.[35]

To sum up then, the diocesan bishop in the Church of England is not an independent authority entitled to some form of obedience outside the overall structures of the church. In practice he is little more than an agent of the church's will and cannot initiate or maintain policies which do not gain the general assent of the church at large. 'Canonical obedience' therefore does not depend on him alone for its interpretation. In theory at least, it would probably not be difficult to mount a successful legal challenge against any bishop who thought otherwise and who tried to impose views on his clergy or diocese which were uniquely his own. But just as a bishop's freedom of manoeuvre is circumscribed by the realities of church life, so too is the freedom of his opponents to contest his actions. What is possible in theory might turn out to be very difficult in practice, and it is therefore to the vexed question of the current applicability of the canons that we must now turn our attention.

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[35]The latter alternative, which is the compromise position, is almost certainly the more likely to gain widespread acceptance. Liturgical revision has already pointed the way here, by allowing so many different options that virtually every view is catered for but nothing objectionable to any sizeable group is forced on them against their will. Cynics may wonder whether regulation has any significance in such circumstances, but the answer must be that it probably does, since total lack of controls would open the door to anything and everything.

The current applicability of the canons

As far as most people are concerned, the canons of the Church of England are a set of regulations contained in a loose-leaf binder which are periodically revised and updated. But since most clergy live in ignorance of them most of the time, and have almost certainly never studied them in any serious way, the canons impinge on the life of most parishes only to a very limited extent, and then usually in extraordinary circumstances. Generally speaking, it would be more common for a clergyman and his church to be surprised to discover that they are already in breach of the canons because of their current practice, than for him or them to be greatly troubled by the knowledge that they are being prevented from doing certain things because the canons theoretically forbid them. In almost every case, the canons are invoked only to contest an existing practice which is thought to go against them – and then only rarely, and usually in circumstances where other factors, like internal conflict in the congregation, have caused a problem. This inevitably gives them the reputation of being an unwelcome straightjacket, rather than a set of helpful guidelines to help those who are uncertain or perplexed. In this respect, canons are rather like police officers. We may want more of them in theory, but resent having to deal with them in practice, because they invariably appear to be putting limits on our freedom of action!

This situation of general ignorance (and therefore also of general disregard) of the canons is due in large measure to the extraordinary history of English canon law since the reformation. Uniquely in Christendom, the English reformation started because of a quarrel over canon law. Henry VIII wanted an annulment of his marriage, and it was

canon law which stood in his way. The first thing he did after breaking with Rome is that he abolished the canon law faculties of Oxford and Cambridge, and ordered the entire law to be codified, rewritten and adapted to meet the need of the time – and not least his own. The irony is that thirty years later, the Church of England had a new liturgy (which Henry VIII never wanted) and a new doctrinal standard (which he wanted even less), but no new canon law. The original attempt to rewrite it got bogged down in a hopeless combination of political manoeuvring and inertia, with the result that the church was stuck with the body of medieval canon law as it stood in 1535, together with the *ad hoc* modifications to that which were proposed from time to time throughout the reign of Elizabeth I (1558-1603).

The accession of James I (1603-25) gave the church a chance to sort out what had happened during the course of the previous reign and to make some further changes, but although no-one at the time realised it, that was to be the end of the story for a long time to come. Some rather eccentric divines produced canons relating to the divine right of kings in 1606, but they were rejected – by the king himself. In 1640 there was another set of canons passed, but they were swallowed up by civil war and never reappeared. The result was that until 1865, the Church of England retained the 1604 canons intact, and even then permitted only a few minor changes until the great reform which was introduced in two stages (1964 and 1969). The result of this long stagnation was that many of the traditional canons lost their applicability over the years but remained on the statute books as historical curiosities. To a large extent, people forgot what canons were for, and when they did take a look at them, were often

reduced to ridicule by quoting clearly obsolete texts.[36] Matters were not helped by the fact that secular courts which had to adjudicate matters relating to the canons almost invariably cut back their applicability, so that by the nineteenth century it had become extremely difficult to mount any kind of case on the basis of the canon law alone, unless it related explicitly to a matter of clergy discipline. Even then, the secular courts found it embarrassing to have to adjudicate matters of ritual, for example, and the effectiveness of the canons was gradually reduced to almost nothing, even in internal church affairs.

The history of ecclesiastical law from the sixteenth to the twentieth centuries is bound to appear as one in which the sphere of canon law gradually contracted to the point where it almost disappeared, but it has to be remembered that this reflects a deeper struggle which was going on between two quite different systems of law which could not happily co-exist in a single ecclesiastical polity. Before the reformation, the church, and particularly the bishops, administered the ecclesiastical law which was based on a form of Roman law. The state, on the other hand, clung to English customary law, which developed into the common law which we know today. Henry VIII combined the law of the church and the law of the state into a single overarching system, though it was not altogether clear that this meant that the canon law would have to give way to the English common law tradition.

Many people in the 1530s believed that it would be only a matter of time before England would abandon its

[36]The canons relating to clerical dress were particular favourites in this regard, as they prescribed a modest early seventeenth-century form of clothing which by the early twentieth century was more outlandish than anything the ritualists of the time could come up with.

ancient customary law in favour of the Roman system, as other European countries had recently done. For various reasons that did not happen, and by the time of the so-called 'glorious revolution' of 1688-9 it was clear that the common law would remain the basis of the English legal system. This produced a crisis for the church, which could no longer operate its own, quite different legal system, very effectively. Many prominent churchmen were unhappy with this and did what they could to preserve the independence of the ecclesiastical jurisdiction, but they were fighting a losing battle. According to a recent article by Augur Pearce, who lectures at the Cardiff Law School, these 'high episcopalians' were trying to uphold the authority of the bishops as the source of church law, whereas the common lawyers, including Richard Hooker, opted for a system in which authority as dispersed and church law was seen to arise from the people, rather than be imposed by the hierarchy.[37] The legal decisions of men like Sir Edward Coke in the early seventeenth century and Lord Hardwicke in the mid-eighteenth upheld and furthered this principle, which had the effect of limiting episcopal power as much as that of the king.

The belief that the 'whole church' and not just the bishops, should be involved in church legislation and discipline, ruled supreme until the 1830s. During all that time, the 'whole church' was understood to mean parliament, a position which could be defended at least until 1828-9. But as parliament became inter-denominational and (eventually) secularised, the question of who represented the 'whole church' became more complicated. The legal position remained unchanged, of course, and those who objected to

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[37] Augur Pearce, 'Episcopacy and the common law', *Ecclesiastical Law Journal* VII (2003), 195-209.

things like the rise of ritualism in the church did not hesitate to have recourse to the secular courts for justice. But as time went on and the Church of England became more like any other denomination in a pluralistic society, parliament became increasingly embarrassed about the part it was expected to play and reluctant to interfere in church affairs. The revival of the convocations of Canterbury (1852) and York (1861) provided a forum for church affairs to be discussed and new canons to be devised, though for a long time not much actually happened. The last great triumph of the old order came in 1927-8, when Protestant opponents of liturgical revision were able to appeal to parliament, over the head of the convocations, and get it rejected.

The fact that this 'victory' was only won with the support of Scottish, Welsh, Northern Irish and English non-conformist votes discredited it in the eyes of many in the church, and there was a widespread refusal to ban the technically illegal use of the deposited Prayer Book. Evangelicals however, were generally relieved at the outcome, and concluded that they could still rely on the secular power to defeat their opponents, who would inevitably control the internal synods of the church. The crisis of 1927-8 made it clear that the church would have to rewrite its canons and seek greater independence from the state if a parliamentary veto on change were to be overcome, and this aim was a major factor in the work of canonical revision which began in 1939 and continued for the next thirty years.

The canon law commission which reported in 1947 was mainly composed of 'high episcopalians' (to use Mr Pearce's terminology), whose aim in loosening ties to the state was to reinstate the ancient power and authority of the bishops, legislating in synod. The report which they submitted in 1947 was full of medieval precedents and

allusions and would have gone a long way to realise their goal if it had been adopted as it stood. In fact, it was largely degutted by the interventions of Sir Thomas Barnes, solicitor to the treasury and a latter-day champion of the common law inheritance in English church law. The end result was a revised set of canons which was much more in tune with the post-reformation common law tradition (limiting the power of the bishops) than the original drafters would have wished, but the story does not end there. As so often in the past, other factors have come into play which have tended to tilt the balance in favour of the 'high episcopalians', despite the rearguard action of Sir Thomas Barnes.

Before we turn to that, we should first remember that the unfortunate history recounted above bred an attitude of contempt towards canon law, and even towards the whole concept of legality in the church, which has proved to be almost impossible to eradicate, in spite of canonical revision and the development of synodical government. It is probably true to say that even the Evangelicals, who were once sticklers for canonical propriety, and in some sense the last remaining defenders of the traditional order, have now become as ignorant of the canons and as lawless as any other section of the church – perhaps even more so in some cases.

This is not a healthy situation, not least because anarchy always breeds uncertainty. In the absence of a generally agreed and understood tradition of canonical practice, there is growing fear in many quarters of what might happen if the canons were ever enforced as they were supposedly intended to be. Nobody knows for sure, and if there is a clampdown at some point, there is no guarantee that the reform which that would bring would be fair, just or even sensible or coherent. The history of such reforms rather suggests that any attempt to apply a body of law which is not

properly understood is more likely to end in chaos and tears than in any real improvement to the system.

In the meantime, the system has not stood still, and as Mr Pearce has argued, the tendency of a certain 'high episcopalianism' to manifest itself has grown over the years. Partly this is because of the successful introduction of synodical government and the corresponding loosening of ties with the state. Parliament still retains the final say, but nobody would now be able (or even want) to pretend that it represents the 'whole church'. For better or for worse, the 'whole church' is now represented in general synod, where the bishops have a far more powerful voice than they could ever hope to have in parliament. The growing distance between parliament and the church has been accompanied by a revival of the ancient canon law tradition, complete with a renewed insistence that it is a fundamentally different legal system from the one operated by the state. Logically, this means that it ought to have its own courts, lawyers, legislation and legal procedures, which purists would like to keep as uncontaminated by common law habits and principles as they can.

The result is a shift away from the democratic consensus idea of lawmaking towards a more hierarchical structure, in which the bishops play a more central role than they have hitherto been accustomed to doing. Those lawyers who take an interest in such things are now more likely to have 'high episcopalian' sympathies than they once did, if only because earlier generations did not specialise in canon law, but mostly dealt with ecclesiastical cases on the side.[38]

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[38]This applies to the situation after the demise of Doctors' Commons in the 1860s. Before that time there was a corpus of ecclesiastical lawyers which was very much immersed in its profession.

Furthermore, whereas lay people who are upset with the goings-on in their churches might at one time have taken their vicar to court, now they are more likely simply to move to another church – or to stop attending public worship altogether. Ecclesiastical lawyers today are seldom if ever asked to take cases *against* a bishop; to the extent that they are employed at all, it is more probably *by* the bishops, who need them to draft legislation and ensure the smooth running of the ecclesiastical machine. It is only to be expected that such lawyers will incline to their employer's point of view, and this reinforces the tendency towards greater episcopal control, without any change in the actual law.

There is another social factor at work too, which Mr Pearce describes in the following terms:

> Leadership with a strongly personal focus is undoubtedly in accord with the modern trend (and the requirements of the media), as prime-ministerial has replaced cabinet government, authority within some presbyterian polities has passed from synods to moderators (no longer always elected by the bodies over which they preside), universities concede ever greater power to administrator vice-chancellors, and elected mayors dominate collegiate local authorities. Even in vacant sees, guardianship of the spiritualities historically undertaken by cathedral chapters is being steadily whittled away by the statutory allocation of functions to metropolitical delegates in bishop's orders.[39]

The spirit of the age favours centralised control in a charismatic leader, and men in purple shirts go down well on television. Standing up to them may still be legally possible, but it is no longer as socially acceptable as it once was. General synod is far more likely to defend episcopal initiatives and follow them than it is to contest them, and there is certainly no-one there who has the independence of mind and spirit which one might expect to find in some MPs. On the other hand, the disquiet which one often hears about

[39] Pearce, 'Episcopacy', p. 209.

these developments in the sphere of secular politics should encourage those who would buck the same trend in the church, and remind them, along with others, that their concerns about an over-concentration of power in too few hands are widely shared by people in other walks of life, and may indeed constitute a grave long-term threat to our society.

But if the recent history of the Church of England suggests that episcopal power is growing, it must also be said that it has also created a corporate culture in which a term like 'canonical obedience' has become incomprehensible to many, including some of those who are expected to require it. This would not be an irreparable disaster if the problem were merely one of ignorance, since there would be a core of knowledgeable people who could fairly easily inform everyone else what the true position was. Unfortunately things are not that simple. The truth is that the canons which speak of 'canonical obedience' are unsatisfactory in their present form, and it is unclear whether they could ever be enforced in a way which would carry conviction and set a reliable precedent. As with so much else in the revised canons, they are trying to express a 'high episcopalian' view of church government in a context which has not shown itself ready and willing to part with the common law notion of government by the 'whole church'.

Professor Norman Doe of Cardiff Law School is the leading expert in this field today, and he has outlined the following problems with the existing canons:[40]

> 1. The oath in canon C 14 is nothing more than a promise to fulfil a pre-existing obligation to obey episcopal directions as stated in canon C 1/3. Therefore the oath has no more than a symbolic importance.[41]

[40] Doe, *Legal framework*, pp. 213-14.

2. The term 'inferior clergy' in canon C 1/3 is not defined. Generally speaking it would refer to all ordained priests and deacons, but there could be exceptions to the general rule.[42] The position of a suffragan bishop is not clear either, since he shares the same order as the diocesan.[43] Oddities like these are doubtless few in number, but they exist and might be a source of trouble in the event of conflict.

3. The expression 'who have received authority to minister in any diocese' is ambiguous, since it could be interpreted to mean that an oath taken to one bishop could be valid in another diocese where his authority does not operate. But would a clergyman operating outside his own diocese owe canonical obedience to his home bishop or to the bishop of the diocese in which he is ministering?[44] And of course, the oath does not apply to suffragan bishops, so no clergyman can be bound by canon to obey them! The root of the problem here is that the Church of England is a national church divided for administrative purposes into provinces and dioceses; it is not a federation of basically independent units in the way that the American Episcopal Church is. An oath taken to a bishop can only be an oath taken to the church as a whole though whether this would be recognised in a court of law is unclear.

4. Clergy are not required to take an oath of obedience to the archbishop of their province, even though they might be expected to obey him in certain instances. Direct archiepiscopal intervention may be rare, but it can occur, as it did for example in the case of Lincoln

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[41]However, Professor Doe quotes P. S. Atiyah, *Promises, morals and law* (Oxford, 1981), pp. 187-90, who claims that canon C 1/3 is general whereas canon C 14 is particular, making an otherwise general duty specific and personal to the individuals concerned.

[42]The dean of Norwich, for example, does not have to take an oath of canonical obedience to his bishop - an ancient privilege which has survived all attempts to modernise the church!

[43]This would also be the case for other bishops who may be ministering in the diocese - retired ones, for example, or men who were missionary bishops overseas but who are now in parish ministry in England.

[44]This can sometimes be exceedingly complicated. For example, when I was on the staff of Oak Hill College, London, I was licensed to the bishop of London, even though the college itself is in St Albans diocese (the diocesan boundary runs through the college grounds) and the bishop of St Albans was the college visitor. What 'canonical obedience' might mean in that context is unclear, to say the least!

Cathedral (1997), when the archbishop of Canterbury asked both the precentor and the subdean to resign. The precentor (Brandon Jackson) did so, but the subdean (Rex Davis) refused and carried on until his retirement in 2003 as there were no grounds for removing him.

5. Episcopal commands must be lawful if they are to be obeyed. This sounds reasonable in theory, as indeed it is if we are thinking about the possibility that the bishop might command something which is clearly unlawful. This, however, is rare. The real problem is that there are many things on which the law is silent, so that no-one can say for sure whether they are 'lawful' or not. In England it is generally assumed that the answer to this question was given in the judgement known as *Long vs. Capetown* (1863), when the Judicial Committee of the Privy Council decided that: 'the oath of canonical obedience does not mean that every clergyman will obey all the commands of the bishop against which there is no law, but that he will obey all such commands as the bishop by law is authorised to impose.'[45]

This means that in England a clergyman is obliged to obey the bishop's directions only in so far as they correspond to other laws of the church which he is authorised to implement in practice. In other words, the bishop is merely an agent of the church, not a source of authority in his own right, so that an oath of canonical obedience taken to him cannot be regarded as personal in that sense. Unfortunately, there may be hidden complications regarding this judgement which have not yet been fully explored by the courts because no comparable case has been laid before them in recent years. For a start, Capetown was a colonial diocese in which the laws of England and its church did not fully apply. Secondly, the Judicial Committee of the Privy Council, which acted as the final court of appeal in ecclesiastical causes from 1833 to 1965[46] cannot now be regarded as having set a binding precedent, since canon law does not operate according to the norms of English common law. Modern canon lawyers might well argue that an ecclesiastical court is free to ignore and reverse the 1863 decision as it might choose, since the legal system which it operates does not recognise the notion of 'precedent' in the English common law sense. Thirdly, there were no revised canons in 1863, and the oath of canonical obedience is not actually part of the 1604 ones. This may have some effect on the oath's legal standing, which has not yet been

[45] 1 Moo PCCNS 411 at 465; 15 ER 756 at 776 (*per* Lord Kingsdown).

[46] And still retains a residual appellate jurisdiction in non-doctrinal causes.

clarified. Finally, cases of this kind have been decided more recently in the United States, and the decisions have almost always gone the other way – allowing the bishop the right to demand canonical obedience in matters not specified by the law. This is of no force in England, of course, but it may be indicative of the way a modern English ecclesiastical court would be inclined to rule if a similar case were to be brought in this country.

6. There is no consensus about the meaning of the word 'honest' in the phrase 'all things lawful and honest'. Is it possible for something to be lawful, but not honest? Whose standards are to be used when the question of a thing's 'honesty' is being decided? We have already had occasion to note that for some people, swearing an oath violates their conscience and so presumably is not 'honest' in their view, but does any individual have the right to impose his standards on others in a case like this? in the end, it is hard to see how a viable distinction can be maintained between what is 'honest' and what is 'lawful', even if we all recognise that such a distinction can and does exist.[47]

Professor Doe concludes his analysis of this subject by stating that disobedience to a bishop's lawful commands is a genuine and extremely serious ecclesiastical offence, but goes on to say that legal proceedings would probably be for neglect of duty, a charge which would have to be shown to rest on evidence that the disobedience has been serious, consistent, wilful and obstinate – criteria which would often be difficult to demonstrate in practice.[48] Professor Doe's general conclusion, as the above example illustrates, is that the oath of canonical obedience is superfluous and could be dispensed

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[47]It is generally assumed nowadays that 'honesty' puts restrictions on 'legality', but the reverse is also possible. For example, in occupied Europe during the Second World war it was lawful to denounce Jews, resistance fighters and the like to the authorities, but hardly 'honest', if by 'honest' one means 'honourable'. Some people might well take a similar line today with regard to offenders whom they may be protecting for one reason or another.

[48]Doe, *Legal framework*, p. 215.

with without altering the law in any substantial way. If it has any value at all, it is purely symbolic, bringing home to the individuals concerned that each one has a personal responsibility to uphold the disciplinary norms which lie behind it.

In addition, Professor Doe points out that the canons are in serious need of redrafting. Ambiguities should be ironed out, and loopholes closed in so far as that is practicable. More importantly, words like ‘lawful and honest’ ought to be more carefully defined and the place of ‘canonical obedience’ within the overall structure of the church’s administration should be spelled out. If these things could be done to general satisfaction, the lack of clarity which now bedevils this subject would be greatly lessened, and the average clergyman might have more confidence in the working of the system. The snag is that in the current climate of opinion, as Mr Pearce has so brilliantly pointed out, any moves in that direction would almost certainly reinforce the ‘high episcopalian’ tendency of recent legal thinking, and produce a result which might be even less acceptable to the dissatisfied than the present system is. As it is, vagueness and uncertainty can only lead either to inaction (which seems to be the dominant reaction at the present time) or to arbitrariness in which certain shibboleths are emphasised to the detriment of the law as a whole.

Concluding considerations

From our survey of the oath of canonical obedience, it seems that the following points can be made:

1. The relationship between a bishop and the clergy of his diocese has some parallels with different structures of obedience found in the Bible, but the closest analogy, that of the apostles and their helpers, is also the one where the precise nature and obligations of the relationship are not spelled out. It must therefore be concluded that there is nothing in Holy Scripture which clearly suggests that 'canonical obedience' is the appropriate model for the relationship of a bishop to the lower clergy.

2. Canonical obedience developed within the church over a period of centuries, and was never divorced from other considerations, of which the collegiality of the bishops and the importance of maintaining doctrinal orthodoxy were the most important. No bishop had the right to act independently; if he went against the advice or opinions of his colleagues he would be censured for it, and his orders would be null and void. Even more obviously, a bishop whose doctrine or morals were in any way defective from the standpoint of orthodoxy would be cut off from the fellowship of the church, and those working under him would automatically be absolved of whatever allegiance or obedience they owed to him.

3. Oath-taking as a means of securing canonical obedience is not found in the Bible, but it does not contradict the teaching of Jesus either. It is one way, if not the only way, of expressing the principle that a clergyman is bound by his vocation and his office to uphold the doctrine and discipline of the church which he serves.

4. The enforcement of canon law is a difficult and ambiguous task, relying more on underlying principle than on specific example. The canon law is fundamentally different in origin and conception from English common law, and attempts to interpret it through the prism of the latter are almost bound to cause problems sooner or later. The Church of England has resisted the absorption of its canon law into the common law system, but it has not been able to provide the legal resources needed to maintain and develop an alternative tradition adequately. The result is that people with a common law mentality are expected to operate a different legal system, which inevitably produces a tendency to make that system conform to common law expectations. The absence of precedent is particularly troubling in this respect, because it creates a climate of uncertainty and distrust in the workings of the law.

5. A bishop in the Church of England is not (and cannot be) any more than an agent of a discipline which is that of this church as a whole. The nature of the church demands that this discipline be reasonably uniform across the country and that its application be, as far as is humanly possible, divorced from personal idiosyncrasies on both sides.

6. Attempts to enforce canonical obedience today are likely to falter, both because the law itself is too vague and because other, less ambiguous legal principles (like 'neglect of duty') are liable to intervene and be used as the basis for any court action. This carries the danger that cases resolved on such a basis may be misunderstood as cases of canonical obedience, when in fact they are something else.

7. The whole concept of ‘canonical obedience’ needs to be thoroughly reworked. The basic principle has a certain validity, but there are too many uncertainties and ambiguities in the existing canons for them to inspire much confidence in any practical attempt to enforce church discipline and unless this can be corrected, such attempts are likely to cause more difficulties than they will resolve.

8. It must be frankly recognised that at the present time, any serious attempt to reform the workings of ‘canonical obedience’ are liable to lean in the direction of a *strengthening* of the bishop’s authority, rather than a weakening of it. As this is not at all what the protesters want to see, an alternative strategy must be developed. It is no longer realistic to rely on parliamentary intervention, or to take cases to a secular court. The only long-term solution is for those who see the dangers in too much episcopal power to get involved in the system set up under the revised canons and to seek to turn it in a different direction. This is long, slow and painstaking work, but it can be done – if only the will to do it is there.

It remains to be said that the working of any system depends to a large extent on the confidence of those involved in it that they can trust one another. A bishop needs to know that the clergyman who swears an oath of ‘canonical obedience’ understands what he is doing and is prepared to conform to it. On the one hand, there has unfortunately been a long history of clergymen who have taken these oaths very lightly and gone off to do many things which are contrary to the spirit of the canons. Historically the most obvious of these has been the tendency among some to engage in ritualistic

practices and use forms of liturgy which are not approved by canon, and which go against the spirit of Anglican teaching. There can be no doubt that dishonest behaviour of this kind led in the late nineteenth century to a widespread breakdown of clergy discipline, which has never been properly restored.

Since then, however, a new and different problem has arisen. Nowadays, the clergy cannot be certain that any given diocesan bishop will respect the canonical norms of the church even though he is officially committed to upholding them. To cite but one recent example, the fact that about a third of the English episcopate (including suffragans) dissented publicly from the teaching on human sexuality elaborated at the 1998 Lambeth Conference, and that this dissent continues to be expressed within the Church of England, does nothing to inspire confidence in the episcopate as a body. It may be true that so far, no-one has been persecuted for upholding orthodoxy, but the notion that heresy has equal rights alongside it cannot be accepted with equanimity. The deity of Christ is not a subject on which a range of opinions among the bishops is tolerable, nor can we agree to differ about the rightness or wrongness of homosexual relationships.[49] The fact that the episcopate is not united on subjects such as these is a sign of its weakness and unsuitability to act as the arbiter of doctrine and morals in the church, and of course it also discredits any process of discipline which the bishops might wish to impose on the rest of the clergy. Unless and until they put their own house in order, they will not (as a body) inspire confidence in the

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[49] It is extremely important to insist that doctrine and discipline belong together as two sides of the same coin. If they are separated from one another, (as Archbishop Rowan Williams suggested to the primates' meeting in Lisbon in 2000 they could - and therefore presumably should - be), the whole concept of canon law goes out the window, since at bottom it is really no more than an attempt to turn theoretical doctrine into practical discipline.

church at large, and any attempt to insist on 'canonical obedience' will be regarded with the deepest suspicion. Even in those cases where it might be justified, there is a very real chance that it will be seen as a covert attack on orthodox traditionalists using the pretext of some rubric or other as an excuse.

The truth of the matter is that without trust between the bishops and the clergy – a trust which has to be cultivated on both sides – canonical obedience cannot and will not work. It has never been, and can never be, a weapon which can be introduced as a last resort in a desperate attempt to sort out some situation which has gone horribly wrong. If things get to that point (as they occasionally do), it is clear that the canonical relationship, of which obedience forms a part, has broken down. To try to mend the relationship by invoking the principle of obedience is just as futile in the church as it is in a marriage. Only when the relationship is working properly can the notion of obedience find its true place and become a constructive element, both in the upbuilding of the church and in the propagation of the Gospel. If this is forgotten, or if things have gone too far for the relationship to be mended, scandal will be the most likely result. A broken marriage can always be ended by divorce, difficult and painful though that is. But a broken relationship in the church, if it occurs between a bishop and a clergyman possessing freehold, may not have such a clear-cut ending. As the sad events at Lincoln Cathedral have recently demonstrated, a clergyman with right of tenure can simply hang on and disregard all criticism, however much damage that may to do him and to the church.

There is no infallible solution to this problem, and we must expect it to resurface from time to time, whatever we do to prevent it, but at the very least we should do our utmost to

ensure that both bishops and clergy understand what their mutual responsibilities are, and that they should demonstrate their sincere loyalty to the doctrine and discipline of the Church of England before entering its ordained ministry. In the nature of the church, a higher degree of commitment in this regard must be expected of bishops, because of the prominence which they enjoy and because of the special responsibilities which have been entrusted to them. Sadly, we have to conclude by saying that in recent years doubt has crept into the church about the commitment of at least some of the bishops to its faith and morals. Unless and until that is brought to an end, there is little prospect that 'canonical obedience' will ever be able to play the part intended for it as a preservative of the church's integrity.