

## THE SIGNIFICANCE OF THE DECLARATION OF ASSENT

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*The Bishop of Chester chaired the working party which produced the report Clergy Discipline (Doctrine). The report's recommendation that a draft Measure be introduced into General Synod, based upon the working party's proposals, was narrowly defeated in the House of Clergy in the General Synod in July 2004. The House of Bishops has subsequently resolved to return in due course to the matter, with a view to introducing revised proposals. At the heart of any process will be the interpretation of the current Declaration of Assent. The Bishop's address on this subject delivered at the 2004 Ecclesiastical Law Society Day Conference (before the Synod's rejection of the immediate proposals) is here reproduced, with minor modifications. The paper explores the primacy of Holy Scripture in the determination of the doctrine of the Church, as expressed in the Declaration of Assent and the Church of England (Worship and Doctrine) Measure 1974. Possible recourse to formal doctrinal discipline is considered in this context, in relation both to the current Ecclesiastical Jurisdiction Measure 1963 and any proposed revision. The nature of the judgment which a court or tribunal would need to make in relation to an issue of doctrine is then assessed. This leads to the conclusion that while an up-to-date procedure for such cases is required, they are likely to continue to be at least infrequent, and quite possibly, as in the twentieth century, non-existent.*

My subject is the significance of the Declaration of Assent, contained in Canon C 15, which was promulgated in 1975. It was formulated alongside the Church of England (Worship and Doctrine) Measure, which became law in 1974, and is specifically authorised by section 2:

Assent or subscription to doctrine

(1) It shall be lawful for the General Synod to make provision by Canon with respect to the obligations of the clergy, deaconesses and lay officers of the Church of England to assent or subscribe to the doctrine of that Church and the forms of that assent or subscription which may include an explanatory preface.

(2) In this section 'lay officers' means licensed lay workers, readers, lay judges of consistory or provincial courts, and lay holders of other offices admission to which is for the time being regulated by Canon.

The particular background to the new Measure and Canon was doctrinally a concern that the Thirty-nine Articles had too great a prominence,<sup>1</sup> and liturgically the process leading to the authorisation of the Alternative Service Book (1980). I shall concern myself mainly with the doctrinal aspects, although they cannot effectively be separated from questions of liturgical conformity. The synodical process by which the Canon was finalised has been well set out by Colin Podmore,<sup>2</sup> with particular interest attaching to the contributions of two back-bench members of General Synod, the Revd Raymond Avent and Mr Bernard Stanley, who rescued a rather studied and self-conscious proposal from the Doctrine Commission with what most would agree is an elegant and effective composition. The Declaration of Assent, set out in Canon C 15, para 1(1), has worn well for nearly thirty years:

#### PREFACE

The Church of England is part of the One, Holy, Catholic and Apostolic Church worshipping the one true God, Father, Son and Holy Spirit. It professes the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds, which faith the Church is called upon to proclaim afresh in each generation. Led by the Holy Spirit, it has borne witness to Christian truth in its historic formularies, the Thirty-nine Articles of Religion, *The Book of Common Prayer* and the Ordering of Bishops, Priests and Deacons. In the declaration you are about to make will you affirm your loyalty to this inheritance of faith as your inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making him known to those in your care?

#### Declaration of Assent

I, A B. do so affirm, and accordingly declare my belief in the faith which is revealed in the Holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness; and in public prayer and administration of the sacraments, I will use only the forms of service which are authorized or allowed by Canon.

In this paper I want to look at some of the issues which would arise were the interpretation of the declaration and its preface to come within the purview of a tribunal or court. In the process I will comment upon some of the questions which have concerned the working party which has produced the forthcoming report. When does loyalty to the inheritance of faith to which the Thirty-nine Articles, *The Book of Common Prayer* and the Ordinal bear witness risk becoming disloyalty? What does it mean

<sup>1</sup> By 1968, when the Doctrine Commission published *Subscription and Assent to the Thirty-nine Articles*, the only Church in which it was required that the Articles should be read aloud on a public occasion was the Church of England. The Report rather trenchantly argued that 'nobody could claim that they are now descriptive of the doctrinal positions of more than a minority' (p 32).

<sup>2</sup> C Podmore, 'The Church of England's Declaration of Assent', (1999) 5 Ecc LJ 241.

to proclaim the faith *afresh* in each generation, in relation to these historic formularies as our inspiration and guidance under God?<sup>3</sup>

The Church of England (Worship and Doctrine) Measure 1974 refers explicitly in section 5 (1) to the current wording of Canon A 5, in specifying where the doctrine of the Church of England is to be found:

A 5 Of the doctrine of the Church of England

The doctrine of the Church of England is grounded in the Holy Scriptures, and in such teachings of the ancient Fathers and Councils of the Church as are agreeable to the said Scriptures.

In particular such doctrine is to be found in the Thirty-nine Articles of Religion, *The Book of Common Prayer*, and the Ordinal.

The primacy given here to the Holy Scriptures has been regularly restated in official Anglican texts, most recently in the Virginia Report, which was endorsed at the last Lambeth Conference.<sup>4</sup> The section of the Report, 'The Anglican Way: Scripture, Tradition and Reason' provides a clear statement of the sovereign authority of Holy Scripture, as the 'uniquely inspired witness to divine revelation', and 'the primary norm for Christian faith and life'. As such, the Scriptures necessarily need to be read in the contexts of tradition and reason, as Richard Hooker classically set out in the *Laws of Ecclesiastical Polity*. The Report sees reason both as the human capacity for rational reflection, and in a wider cultural sense:

If tradition is the mind that Christians share as believers and members of the Church, reason is the mind they share as participants in a particular culture.

If there is a distinctive feature of Anglican theology, it is probably an emphasis upon the Incarnation, and it is not unsurprising that Anglican churches around the world have shown a particular ability to adapt to the different cultures in which they are set. Although often creative, the outcomes have also generated tensions, not least those in relation to human sexuality which are well publicised at the present time. The Virginia Report recognised the need for different parts of the Communion to enter a dialogue out of their differing experiences and perceptions:

In order to keep the Anglican Communion living as a dynamic community of faith, exploring and making relevant the understanding

<sup>3</sup> According to N Doe, *Canon Law in the Church of England* (Clarendon Press, Oxford, 1998) p 206: 'It remains unclear whether "assent" means a complete adherence to every doctrinal proposition, or acceptability of their main tenor, or preference for them as opposed to any other doctrinal statement, or else their acceptance as portraying the identity of the Church of England'.

<sup>4</sup> A report of the Inter-Anglican Theological and Doctrinal Commission.

of the faith, structures for taking counsel and deciding are an essential part of the life of the Communion.

Any formal process for the exercise of doctrinal discipline will need to bear in mind both this wider picture, and the particular circumstances of time and place where the alleged offence is located. While formal legal process will inevitably, and entirely rightly, play a part, potentially or actually, the necessarily inculturated quality of Christian doctrine means that at heart a discernment is required on behalf of the whole Church, and its on-going reception of the Christian faith.<sup>5</sup>

Particular people will have a particular place in the process: bishops, theologians, lawyers; but they will all need to be aware of the broad ecclesial and cultural context in which the Church's representative ministers seek to teach and preach, to hand on in their generation the faith which was 'once for all delivered to the saints' (Jude 3).

All this must be done in relation to the unique and normative witness of Holy Scripture, but modern biblical scholarship has established a considerable diversity of conceptuality, and to a degree at least, also of theology, within the Scriptures. The very process by which the canon of Scripture was established illustrates the evolving, multi-faceted character of its witness. It took the Church approximately 300 years to agree the boundaries of the New Testament canon, the same time that it took to establish the Nicene Creed. In both cases it was a process of discernment by the whole Church, rather than a formal juridical procedure, which took place. Particular bishops and theologians played a significant part, as did specific councils and synods, but only within an overall ecclesial discernment which saw no need to rush to a premature closure of the issues. Canon and creed evolved symbiotically in relation to the life of the Church over a period of more than three centuries.

Let me try to illustrate the resultant character of Holy Scripture, by reference to a special stereo viewer, which mysteriously transforms a pair of two-dimensional photographs into a three-dimensional world.<sup>6</sup> The secret, of course, was that each of the photographs in the pair were taken from slightly different angles, and therefore were different in detail, these differences being the source of the three-dimensional projection which our brain can then see, with the aid of the viewer to separate the images into our two eyes. This is why animals generally have two eyes, to enable the different two-dimensional images on the retina to provide the brain with

<sup>5</sup> The corporate character of believing was set out in perhaps the most creative recent report by the Doctrine Commission of the Church of England, *Believing in the Church* (SPCK, 1981).

<sup>6</sup> This is a reference to a formative experience from my youth, when I often ate Weetabix for breakfast. The different manufacturers of the limited range of cereals which were available then sought to encourage their clientele by offering a range of free gifts, and in the case of Weetabix it was stereo photographs. There was one in each packet, and if you saved up the requisite number of packet tops, you could send for such a special viewer.

sufficiently rich information to generate a three-dimensional perspective. By analogy, is it not the very *differences* between the books and writings in the Bible which help to generate its richness and depth provided, of course, that the books and writings witness to the same basic pattern of God's revelation of himself?

The four gospels provide an example themselves, with their different preoccupations and angles. In the mid second century, as the Church was settling upon the four canonical gospels, Tatian, a prominent theologian, thought it would be helpful to try to harmonise the four accounts into one authoritative version, in his *Diatessaron*. The mainstream Church was resistant to this, on the basis that it would destroy the depth and mystery of the gospel accounts. Consider the same process in a modern thought experiment: imagine that Jesus had lived in an obscure part of South America fifty years ago, and that we were second or third generation Christians, reliant on four somewhat differing accounts of Jesus' life. Would not the modern Church, in our context, be drawn to just the sort of harmonisation which the early Church rejected?

If the depth and richness of a stereo picture is generated by just two different images, with the Bible the permutations are greatly multiplied, and will be viewed somewhat differently at different times and places in the flow of history. The decision in the early centuries over which of the New Testament writings in particular should be included in the canon was a selection of writings that had sufficient authenticity to contribute to a coherent richer picture. It is possible that other writings – the Gospel of Thomas has often been discussed in this context – preserve genuine elements of historical accuracy, but overall provide too much distortion to the lens of interpretation.

The decision by the contemporary Church over whether a given book, lecture, sermon or other form of communication is loyal to our inheritance of faith, and will bring the grace and truth of Christ afresh to this generation has a complexity which is analogous to the process of ecclesial discernment which settled the creed and the canon of scripture. It is little wonder, then, that there has been proper reluctance within the Church to initiate disciplinary proceedings in a doctrine case. If they were infrequent even in the nineteenth century, it is understandable that they hardly featured at all in the twentieth century, as the hermeneutical complexities of biblical interpretation and theological affirmation came to be more clearly appreciated.

No doctrinal case has been brought under the Ecclesiastical Jurisdiction Measure 1963 during the forty years that it has been in existence. Today we tend to imagine that this is because the procedures seem archaic and cumbersome, although I remain to be convinced that the new arrangements for conduct cases will be any less cumbersome overall than those under that Measure. It is the out of date character of the Measure which has primarily led to its revision. However, when that Measure was first

introduced, and therefore can hardly have been regarded as out of step with the then current legal requirements, an obvious opportunity presented itself for the new court to be convened: the 'Honest to God' controversy. This did not materialise, and neither was any action instigated during the extensive controversy in the 1980s over David Jenkins. It is the underlying complexity of the theological and hermeneutical questions which has probably been the predominant factor, and for this reason I would not anticipate a sudden rash of cases if the procedures for trying doctrinal or liturgical cases are modernised. The factors leading to a different outcome might be the greater litigious alertness of the present day, and the greater institutional tensions evident in the Church of England, but I would still regard it as more likely that recourse to a formal tribunal or court would be a rare event, if indeed the total dearth of recent decades were to be broken.

There will no doubt continue to be a trickle of faculty cases with a doctrinal dimension which are referred to the Court of Ecclesiastical Causes Reserved or any successor body, but even here there have only been two cases in forty years. I discern no appetite among chancellors to see an increase in such references.

If changes are introduced to the basis upon which clergy have tenure, this could lead to more cases. The licence of the Revd Anthony Freeman was, I understand, terminated on the grounds of his lack of belief in God, as traditionally understood, and I assume that if the proposals concerning the tenure of clergy without the freehold which were recently discussed at the General Synod are enacted, a court or tribunal case would need to be brought in order to justify the termination of a licence on disciplinary grounds related to doctrinal or liturgical offences.

Other changes could also alter the present climate and favour a more frequent use of formal disciplinary procedures. During the nineteenth century the ecclesiastical courts acquired a greater involvement by secular judges, which was a source of controversy itself, and contributed to some high profile conversions to Roman Catholicism. It was the Judicial Committee of the Privy Council, as the final court of appeal, which gave certain landmark judgments in the latter part of the nineteenth century – not that the judgments were necessarily followed, particularly in liturgical matters. This involvement by the secular courts became progressively more embarrassing in the twentieth century, and was a factor dissuading Archbishop Fisher from instigating proceedings against Bishop Barnes of Birmingham, despite his rejection of any miraculous element in the origin of Christianity. Fisher preferred to slap down Barnes with a public rebuke, and a pointed statement that if he, Fisher, was to hold such views, he would feel obliged to resign.

Discontent with the role of the Judicial Committee of the Privy Council in the settling of doctrinal disputes had been expressed by a series of commissions, dating from the Royal Commission on the Ecclesiastical

Courts in 1883. A further commission was set up during Fisher's archiepiscopate, which laid the basis for the Ecclesiastical Jurisdiction Measure 1963.<sup>7</sup> Under that Measure the Judicial Committee of the Privy Council was replaced as the final court of appeal in doctrine and liturgy cases by a new Commission of Review, comprised of three Lords of Appeal, who are communicant Anglicans, and two senior bishops. Leaving on one side the sensitive subject of whether at any time there could be guaranteed to be three Lords of Appeal who are communicants, the Ecclesiastical Jurisdiction Measure 1963 still provides a final court of appeal with a majority of secular, if communicant, judges. Quite apart from other considerations, this must surely lead in the not-too-distant future to a revision of the present provision. Even if a modernised tribunal or court was never convened, a change which provided for a majority of bishops to sit on the successor body to the Commission of Review would have intrinsic historical importance, and would arguably bring doctrinal disciplinary procedures more clearly into correspondence with both the Church of England (Worship and Doctrine) Measure 1974 and twenty-first century church-state relationships.<sup>8</sup>

Making the Church more clearly master of its own doctrinal interpretation and discipline might encourage more people in the Church to seek to make use of its provisions, although I remain to be persuaded that this will be the case. As I noted earlier, it did not happen when the secular involvement was reduced in 1963.

The current stresses and strains within Anglicanism may be a more potent factor leading to formal adjudication of doctrinal disputes, although it is by no means likely, let alone certain, that cases would have the outcome that the more traditional or conservatively minded would prefer. To take an obvious example, would a court or tribunal decide that it was an offence to deny the miraculous nature of the Virgin Birth? I hope it would, because I regard the Virgin Birth, along with the empty tomb, as essential components of the Christian story, and its historical anchor. I greatly regret that many in the Church of England apparently do not share this conviction, which I regard as having clear theological and historical warrant. Moreover, any formal disavowal of the place of the dogma of the Virgin Birth in the core substance of Christian belief would have severe ecumenical repercussions, beyond those which have recently arisen following the consecration of Gene Robinson as the Bishop of New Hampshire. But do we want the place of the Virgin Birth in our doctrinal formularies to be tested in a formal case? Would it not be preferable to argue the case, as suitable opportunities arise, and to allow the intellectual

<sup>7</sup> *The Ecclesiastical Courts: Principles of Reconstruction* (SPCK, 1954).

<sup>8</sup> In the debate in General Synod when the Measure received final approval, Archbishop Ramsey reminded the Synod that in the summer of 1928, after the second rejection of the revised Prayer Book, the bishops of the Church of England unanimously passed a resolution 'that it is in the last resort the inalienable right of the Church, namely, the bishops, clergy and laity, to declare the doctrine of the Church and to control its embodiment in public worship' (Proceedings, 20 February 1974, p 96).

and spiritual force of the case to advance within the community on the principle once classically enunciated by the senior Pharisee, Gamaliel: if this is of God, it will flourish<sup>9</sup>

I doubt that Archbishop Fisher's hesitation to take Bishop Barnes before an ecclesiastical court was based only upon the Erastianism of the procedures. Yet there must come a point, when all else has failed, and the perceived damage to the mission of the Church is such that formal action is deemed necessary. Bishop Eric Kemp apparently judged this to be the case with the Revd Anthony Freeman, although in those particular circumstances the bishop was able to give notice of termination of licence, with no appeal. How are those responsible for such decisions to decide whether the issues raised, or the matters denied, merit formal action? At what point is the mission of the Church so damaged by false teaching, or indeed liturgical non-conformity, that the nuclear option, if I may so describe it, is all that remains?

It might be answered: when the core belief of the Church is threatened. A distinction has often been drawn between core and non-core beliefs, or beliefs which are essential as compared with non-essential, especially in the churches of the Reformation. The Chicago-Lambeth Quadrilateral among Anglicans has functioned as such a standard, in a general way, but in matters before a court or tribunal much greater precision would be required. It is not at all clear how a court or tribunal would make such a judgement, and much would probably depend upon the particular individuals who were selected to serve on, or advise, the court or tribunal.

To take an example from a neighbouring church, the Church of Scotland was established under an Act of Parliament (the Church of Scotland Act 1921), which enshrined the Westminster Confession as the principal subordinate standard of doctrine, under Holy Scripture. The Declaratory Articles scheduled to that Act recognised the right 'to liberty of opinion in points which do not enter into the substance of the Faith' (Article V), but do not define what that substance might be, or where it might be found. In practice, liberty of opinion far beyond the Westminster Confession has been permitted within the ministry of the Church of Scotland.

Certain aspects of Christian belief will seem central to one age but not to another. For example, the existence of hell and the possibility of damnation, has seen the balance of Christian conviction more or less reverse in recent centuries. Or take Article I of the Thirty-nine Articles, which speaks of God as 'without body, parts, or passions'. Although the matters are not undisputed, the past 150 years have seen a considerable shift, and not least among Anglican theologians, over the perceived relationship between God and suffering. Other aspects of doctrine have not so much changed, as been transformed as the philosophical language of our culture has changed. This is especially true in the area of Eucharistic

<sup>9</sup> Acts 5 : 39.

doctrine, which was so contentious, and contentious unto death, in earlier centuries. The ARCIC agreement on the Eucharist relegated mention of 'transubstantiation' to a mere footnote. The protagonists on both sides of the sixteenth-century disputes are not necessarily turning in their graves.

It might seem attractive to establish a 'core within the core', by reference to the existence of God, his Trinitarian being, the incarnation and the cross/resurrection, but that would open as many disputes as it would solve. It might lead to a rather dumbed-down doctrinal self-understanding, because Christian theology has an architectonic character, with each part contributing to the strength of the whole. Even the existence of God is by no means easy to define. Christians were first so-called at Antioch, because they were suspected of atheism. The submission to the Working Party by the Sea of Faith, signed by a hundred or so of its members, speaks of belief in God as:

Not necessarily to think of God as an object 'in' reality ... but as expressing what is of ultimate value, that which gives meaning to reality. There are long-standing arguments among Christians about how to express the reality of God, and faith in God is constantly being rethought, re-imagined, and enriched.

The submission continued:

Our experience is that many people have left churches not because the basics have been abandoned but because they have not found space to explore or express their Christian faith in non-traditional ways. The demonising of Don Cupitt, the vilification of David Jenkins and the sacking of Anthony Freeman have led to frustration, exasperation and fear and the experience that matters of faith and doubt are not discussible.

To seek to take these concerns seriously, even if in serious disagreement with Messrs Cupitt, Jenkins, and Freeman, need not issue in a Cole Porter world of 'anything goes', but it does put a premium on the way in which sensitive matters, comprising human discourse upon the nature of God, are discussed. It suggests that patience and caution will need to be key watchwords.

Let me return in conclusion to the nature of the judgment which must be made when the doctrinal (or indeed the liturgical) discipline of the Church is at stake. When does intended loyalty to the Church's inheritance of faith become disloyalty?

In order to throw further light upon the nature of the judgment which would have to be made, let me try to draw an analogy with the authenticity of a historically based film. I will not take *The Passion*, which has recently been in the news, but a secular analogue, the 1970s film, *Chariots of Fire*. *Chariots of Fire* told the story of Eric Liddel winning the 440 yards race in the 1924 Olympic Games in Paris. The screenwriter, Colin Welland,

was awarded an Oscar, and it received many plaudits, including the endorsement of Eric Liddel's widow, who spoke of the film's authenticity. But – she added – all sorts of details were not strictly accurate. Colin Welland had used his artistic licence to add or amend various details, in order to bring out what he took to be the essential message of that particular period of Liddel's life. However, there were certain things he could not vary, without changing the story into *another* story, in relation to Eric Liddel, an *inauthentic* story. For example, I do not think it would have been the same story if Liddel were not cast as a Scotsman of a certain Presbyterian ilk, although that may not be crucial in all details. I do not think one could omit or marginalise the fact that originally Liddel was selected for the 100 yards, but withdrew, despite great pressure to the contrary, because he refused to run in the heats on a Sunday. I am quite sure that the film could not have been made with Liddel rounding the final bend of the 440 yards in the lead, but then falling flat on his face before reaching the finishing line. That would have completely changed the story into one of noble tragedy.

The Gospels are rather like film scripts, in that they are written with emotional power to express and communicate a message. Like *Chariots of Fire*, they were written down some decades after the events which they narrate took place. I do not doubt that the human authors had a similar artistic licence to that enjoyed by Colin Welland, and I believe, with the Church, that they each give authentic portrayals of Jesus the Messiah, without feeling committed to defend each and every detail as historically, ie literally, accurate. But at what point does a modern retelling of the story become so inaccurate that it is inauthentic? Would a rejection, with Bishop Barnes, and many others, of all possibility of physical miracles change the story? I believe it would, because the miracle stories are so deeply embedded in the New Testament, and also because I believe that Jesus Christ was the eternal Son of God, uniquely incarnate in history. However, I am happy to remain somewhat agnostic concerning the details of particular miracle stories, while giving them *prima facie* credence.

Why *prima facie* credence? For the same reason that I could not watch *Chariots of Fire* all the time wondering how accurate it was: it would destroy the impact of the film and my enjoyment of it. To deny the empty tomb for me would be equivalent to Liddel rounding the final bend in the lead and falling on his face. Yet I must acknowledge that many sincere believers would not share my judgment in this regard. On the whole I would prefer to argue within the family of the Church, even to the point of alleging disloyalty to the family, rather than to take members of the family to court, even an ecclesiastical court. Just as family life becomes dysfunctional if real and sometimes demanding boundaries are not honoured, so I accept that the existence of canon, creeds, and Declarations of Assent requires that we give serious attention to honouring the faith, 'once for all delivered to the saints'. But we must resist premature closure of debate, or recourse to legally enforced discipline other than as an absolute last resort, especially in doctrinal cases.

The judgment about what might constitute fundamental disloyalty to our inheritance of faith is a synthetic, somewhat intuitive, quasi-aesthetic theological judgment. It might be argued that as such doctrinal disputes simply are not justiciable at all, through a formal legal procedure. The secular courts are notably unwilling to make such adjudications, and rightly so, although that need not preclude a properly ecclesiastical process. However, it could only be used with great reserve, and as a last resort. The doctrinal discipline of the Church has primarily to be exercised in other ways, and the form of assent which is laid out in Canon C 15 seems to imply that this should be the case.<sup>10</sup> Trial of such matters in a court or tribunal would be the nuclear option. Just as we may need a nuclear deterrent precisely in order that we shall never have to use it, so, it might be suggested, the Church will need an updated, human rights compliant, non-erastian, Rolls-Royce provision for clergy discipline in matters of doctrine and liturgy in order to lessen the chances that it will actually be needed. That is not quite true, because the existence and character of a procedure for doctrinal discipline also contains an important statement about a Church's self-understanding, but it may be true enough.

<sup>10</sup> *Doe Legal Framework* p 214 comments that 'Informal resolution of doctrinal controversies, by institutions of a quasi-judicial nature, is beginning to appear in church law'. His examples refer outside the Church of England, but in effect the House of Bishops adopted just such an approach when producing *The Nature of Christian Belief* (1986) although the Bishop of Durham, whose views generated the controversy, contributed to the report itself.