DIGNITY AT WORK[1]

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I have been privileged in recent years to be able to see the work of national church institutions from the perspective not only of a General Synod member, but also as a member of a modern trade union, which came into being in August 1994. It is one thing to be concerned with the role, status and conditions of service of the clergy, as a parish priest and as a member of a professional union—it is quite another to be made aware of the implications of change as they are viewed centrally, not the least of these being the cost of improved conditions of service.

The pace of change in the Church of England is, I believe, greater than it has been for many years, perhaps since the clericalisation of the clergy under the influence of the Oxford Movement. What I mean by that phrase is the deliberate reaction of the Oxford fathers to what they perceived as incipient erastianism, in the ending of the confessional status of Parliament, the diminution of the special privileges of the Established Church, the advent of Catholic Emancipation, the Reform Act and so on.

Richard Hooker's vision of Church and State as a single polity, a vision beloved of John Keble (who edited Hooker) could no longer be sustained when the State began the process of secularisation. In its place, in the first of the *Tracts for the Times*, Newman offered to the clergy an alternative authority for the Church's life and witness: 'OUR APOSTOLICAL DESCENT. We have been born, not of blood, nor of the will of the flesh, nor of the will of man, but of God.'[2]

It is often said that the Oxford Movement never wholly commended itself to the Church of England as a whole. Despite the liturgical transformation of parish life (which was at least in part a Cambridge movement) and despite the apparent success of the later Parish Communion Movement in bringing the Eucharist to the forefront in Sunday worship, the Oxford Movement has remained very much a clerical movement.

But it played a key role in reinvigorating the Victorian Church and in organising its mission to Victorian England. The number of communicants at the turn of the century was the highest ever. Its legacies are many, and as well as its liturgical creativity its achievements include the introduction of formal training for the priesthood, in places like Cuddesdon and Westcott House. This resulted from the laudable aim of providing a properly trained, resident priest for each parish; and of encouraging a sense of awareness of the sacred calling which is implied in the doctrine of priesthood as a sacrament.

One remarkable consequence of the Oxford Movement was the advent of church self-government under the leadership of men like Neville Figgis CR, Bishop Charles Gore, and William Temple, later Archbishop of Canterbury. Simultaneously, with its emphasis on spiritual authority exercised through holy orders, the Oxford Movement brought about the development of an episcopally-conscious House of Bishops

[1] A paper delivered at the Society's London Conference on the Deployment of the Clergy, on 25th March 2000.
[2] Quoted in R. W. Church, *The Oxford Movement 1833 to 1845*, ch 6.

in place of the rather quaintly erastian figures of the early nineteenth century. Others of course contributed to these developments, but the Oxford Movement was at the forefront, and there remain many today who continue to be its admirers and practitioners as Prayer Book Catholics.

The arrival of a clerical profession was roughly paralleled by the restoration of the long-suppressed Convocations, which were clerical bodies and in some limited senses spoke for the clergy as a body, both in matters of doctrine and in terms of defending clerical privileges. There were serious limitations on their powers until real church self-government came about with the Enabling Act in 1919,[3] and I suspect that Queen Anne's Bounty did rather more for their impoverished brethren than those who sought to defend the considerable inequalities from one benefice to the next.

Nevertheless, the 1911 case, *Re National Insurance Act 1911*; *Re Employment of Church of England Curates*,[4] had logic on its side in setting out the principles of case law concerning the status of clergy at that time. At a time when 'the freehold' included parochial endowments and glebe, as well as the real estate of the parish, freehold parish clergy were quite arguably without an employer, since their income did not depend on employment by another party. Sometimes it was augmented by a charity or from a diocesan fund, but the priest's basic income was his own, received in right as an ecclesiastical corporation sole.

The principle that clergy are self-employed has subsequently been applied universally and with less logic in cases involving the Church of Scotland, the Methodist Church, the Presbyterian Church of Wales, the Salvation Army, the Sikh faith and Islam. In order to apply the self-employment principle in cases which are not on all fours with the Church of England's practice in 1911, the courts have developed the view that spiritual duties cannot be treated as constituting employment in the accepted legal sense. This is especially to be seen in the conclusions of the Court of Appeal in 1983 in *President of the Methodist Conference v Parfitt*.[5]

Again, the courts have argued that the arrangements between a church and its ministers cannot be construed as a contract of employment in the absence of *consensus ad idem*—the lack of evidence of intention on the part of a church to enter into a contract with its ministers. The courts have pointed too, to the apparent difficulty in identifying who is the employer, should there be a reversal of the 1911 principle.

However, what was true in 1911 may not be true any longer. Substantial changes have come about as a result of reforming legislation by General Synod in the 1970s, by which the parish clergy no longer have freehold of the endowments and glebe, which have been centralised—as was inevitable—in order to pay all stipendiary clergy more fairly and more adequately. Tithe rents went out half a century before.

The Endowments and Glebe Measure 1976 has in fact radically altered the position of parish clergy, in that what was once called 'the living' (the endowments and glebe), providing the clergy with the financial independence noted in 1911, is no longer the personal property of incumbents, but is now held and managed centrally for the common good.

[3] Church of England Assembly (Powers) Act 1919.
[4] [1912] 2 Ch 563.
[5] [1983] 3 All ER 747; [1984] QB 368, CA.

Today stipendiary clergy are paid a monthly wage, through PAYE, which continues to be called a stipend. Almost all of this monthly payment is in the form of augmentation, authorised by the diocesan bishop, topping up to the diocesan level of stipend any remaining annuity left over from the reforms of 1978, typically £1,000 per annum where the benefice remains unaltered by pastoral reorganisation since that time.

However, the stipend is not a wage, legally speaking, a payment for time and services in the bishop's employment. It is strictly a discretionary payment, whose only guarantee is the policy of the Central Stipends Authority that it should be paid, monthly and in full, as if it were a wage. One of the most important reasons for wishing to see a reform to the present law, therefore, is to ensure that clergy do receive their stipend as a wage, a payment for their work as a condition of employment. At present, where a bishop decides to reduce or stop the payment of stipend, the priest has no recourse to action either in the civil courts, or under the Wages Acts. Cases of this nature do occur and the priests concerned are not able to recover their lost income.

It seems to me that the introduction of the present system of augmentation and PAYE provides in its own right compelling evidence of a signal change in the conditions under which clergy work in the Church of England. We not only know who is responsible for instituting or collating us to the living (or licensing us to a new post); the bishop has a right of veto over any appointment by a private patron, under the Patronage (Benefices) Measure 1986. We know who directs our augmentation. We know who is responsible for the oversight of our ministry, and for taking steps to terminate it where necessary.

It is unlikely that many secular employers would be able successfully to argue, given such a complete picture, that there is a lack of either *consensus ad idem* or an identifiable employer. A change either in the case law or, more likely, in statutory provision, will very quickly ensure that the employer of the clergy is identified, at least so far as the Church of England is concerned.

Again, the argument in *Parfitt*, that spiritual duties cannot be construed as employment in the accepted legal sense, is becoming harder to sustain, as the older patterns of clerical deployment break down, and a growing number of clergy do actually have contracts of employment, in a variety of circumstances: for example as hospital chaplains, with health care trusts; as industrial chaplains on the staff of a diocesan board of finance; or as employees of the Archbishops' Council at Church House. They are employed *qua* clergy, and what realistic distinction can be made between their ministry and that of clergy serving in parish life?

As parish clergy we no longer have any control over the income of the benefice which once formed a key component of the rights of freehold incumbents. We are however left with the management and trusteeship of the buildings and the churchyards, and I think that that remains rightly so, for the sake of the parishes which we serve. Vesting these things locally provides a vital check and balance within the diocesan economy.

Unfortunately, while a growing number of statutes and regulations have provided substantial employment rights for secular employees—protection against unfair dismissal or unlawful discrimination, for example—these provisions have passed the parish clergy by. The accrued body of case law means that we are set in the amber of 1911, despite the new realities of our modern conditions of service. One of the key

objectives for the clergy members of the MSF union, therefore, has been to secure a change to the law which would have the effect of bringing those whose livelihood depends on their employment as ministers of religion, within the operation of the employment legislation.

The Oxford Movement's emphasis on the sacred character of ordained ministry, reinforced by the exclusion of clergy from Parliament and from jury service, or from bearing arms in time of war, is perhaps the reason why many people have an instinctive feeling that it is somehow wrong for clergy to be concerned about such material things as their conditions of service, let alone do anything so political as join a trade union. I do not however consider that it has ever been wrong to care about the conditions of service which clergy are asked to accept, either as a theological principle—the labourer is worthy of his hire—or as a matter of justice within the Church, or as a matter of best practice in personnel management.

The effective absorption of the exclusively clerical Convocations since 1970 into the new General Synod makes it all the more urgent that the clergy should have a professional body which can speak for them, and that is something which a modern union does now offer. The growing diversity of forms of stipendiary ministry also seems to require the existence of a body which can represent other church workers as well.

It is essential to acknowledge that radical change is happening in the ways in which the Church deploys and provides for its ministers, ordained and increasingly lay. The traditional pattern of ministry by a solo parish priest still exists, and remains the case in the majority of benefices. But the patterns of ministry are shifting rapidly in multi-parish benefices, both rural and urban, and growing numbers of parishes have a priest-in-charge, shared with some other diocesan post or ministry. More and more responsibilities are being taken by NSM clergy (Non-Stipendiary Ministers) and by the growing numbers of OLM clergy (Ordained Local Ministers).

The status of the clergy is also changing, as the models of training and deployment change. The traditional route of university, followed by residential training and then two curacies following ordination, before becoming an incumbent, is less and less to be found as clergy numbers have fallen, and new ministries and new styles of training have been developed. There are important questions to be asked about the present category of clergy within synodical government: should those whose ministry is NSM or even OLM have the same voting and election rights as those clergy for whom their ministry is still quite literally their living? Is there a potential for conflict here, which needs to be addressed?

Stipendiary, NSM or OLM, or in active retirement, the Church has a resource here which is of immense value—arguably its greatest resource, since it is the personal, pastoral ministry of the clergy which holds together the mission of the Church of England as an Established Church, maintaining its presence with doors open to all in every parish. Whether one speaks of *ministry* or *priesthood* it ought to be apparent that without the training, experience and commitment of the clergy, the Church would be considerably diminished in terms of both manpower and leadership.

It is therefore essential that the Church should recognise, value and improve its human resources, and I would argue that it is not possible to do so while the Church does not take responsibility for its clergy as employees, in a world which accords dignity to work by according rights to workers.

DIGNITY AT WORK

MSF (the Manufacturing, Science and Finance Union) is one of the unions which has most prominently figured in the modernisation of the world of work during the last decade, a welcome *aggiornamento* in which the concept of 'dignity at work' has featured strongly.

A world in which work is simply a commodity, to be bought and sold like material goods, can of course be improved by legislation which regulates the trade, protecting employees from exploitation, guaranteeing safety at work, and setting a minimum wage. The century which has just ended has seen these and many issues given the formal recognition which they require, in the interests of justice.

But work is more than just a contract to sell or buy labour. It is a fundamental part of our lives, so much so that we are shaped by it, for good or ill, by the way in which we work, or sadly fail to find work. It can bring us a tremendous sense of fulfilment, or it can grind us down. For many people, for most of their lives, the truth lies somewhere between those two extremes. The conditions in which we work can make all the difference, even if the job which we are doing is not as satisfying or rewarding as we are capable of achieving. There have been significant improvements in working conditions in recent years as a result of Britain's association with the European Union, and the arrival of new rights and benefits taken for granted elsewhere on the continent for many years. The law cannot guarantee happiness, but it can go a long way towards ensuring a basic platform of rightful expectations, which would not be provided voluntarily by many employers.

I do not believe it to be stretching ambition too far, to claim that work is a basic human right, and more than that, to claim that dignity at work must be part of the equation. By that I mean not just providing employees with the *minimum* wage and the minimum of job protection which the law allows, but finally achieving a world of work in which the task itself is seen and understood by both sides of industry to be part of our very dignity as human beings.

From that it follows that all who work for a business, or in the voluntary sector, or in the churches, ought to recognise one another as partners in a common enterprise, whether they have recently been employed for the first time, or whether they sit on the board of directors. Whatever the nature of their employment, all should have the rightful expectation of dignity of treatment according to law and according to the terms of their service.

Section 23 of the Employment Relations Act 1999 holds out the possibility that ministers of religion will come a step closer to such parity of employment rights. For ninety years we have been classed as self-employed, and many of the advances in law which have so much improved working life in Britain have simply passed us by. Few employers provide rights for their employees which they are not compelled by law to provide, and those engaged in religious ministry, Christian and otherwise, have found themselves consistently denied the same rights at work as their lay counterparts.

At some stage this year, the Department of Trade and Industry is expected to begin a consultation process with the churches and other faiths, so that the Secretary of State can consider making an order under section 23, bringing clergy and ministers of religion within the same category of rights at work as almost everyone else who is paid for their employment. It is the vital next step if we are to become first class citi-

zens along with everyone else who works for a living. There is however still a determination in some quarters to preserve the somewhat Dickensian *status quo*, in which holy poverty and holy obedience are thought to depend on maintaining the legal fiction that we have 'no terrestrial employer' (to quote Staughton LJ in the case of *Coker v Diocese of Southwark*[6]).

It is self-evident to those of us who are already engaged as priests and ministers that the sacredness of our calling does not dispense us from experiencing the same human needs as anyone else who works for a living—the need for dignity at work, for an adequate level of remuneration, and for job security, especially when we are required to live in tied houses. In fact, there are many whose ministry will be significantly enhanced when they are at last assured of protection against unfair dismissal, or unlawful discrimination at work. To have, or to be part of, a workforce which is constantly looking over its shoulder is in no-one's best interests.

The provision of new rights under the Employment Relations Act 1999 will not of itself automatically introduce contracts of employment, or abolish freehold, or require anyone to act against deeply held religious convictions. What it will do is to assure ordained ministers that they are entitled to the dignity at work which is taken for granted in other organisations as a result of the employment legislation, something which is long overdue in the churches and other faiths at present restricted by case law.

One beneficial side-effect would be to clarify and define the relationship of parish clergy and bishops. Too often in the present structures they are perceived to be at odds one with another, because of the many ambiguities of the present system, and I well remember a diocesan bishop, years ago, coming to our clergy chapter meeting, and taking as his theme for the morning the difference between his profession and ours. It certainly can be an uneasy relationship when no one is quite clear what it actually is!

Many clergy at present will privately express the view that they would rather not see the bishop too often, although at the same time there is a desire for closer personal support and pastoral oversight. This is because of the insecurity of their present position and because of the lack of definition of their relationship with the bishop, whose ministry is at different times pastoral or managerial. This is most unfortunate if one happens to believe that the ministry of priest and of bishop is theologically indivisible.

It seems to me that the present trend towards collaboration and team work in parish ministry ought to be mirrored by a new pattern of episcopal ministry, which is by definition less 'managerial' and more directly involved, on a day to day basis, with ordained colleagues, both pastorally and in shared ministry and mission. If episcopacy is to remain, in our tradition, monarchical, let it be a constitutional monarchy, governed by the rule of law and a proper regard for the separation of the powers of government. One way to make this effective would be to give fresh definition to the employment status of the clergy for the needs of the new century.

I believe that Dignity at Work is a universally applicable concept, and one which is as appropriate for bishops, priests, clergy, or ministers of religion, as it is for those the Church employs at 1 Millbank, at Church House, or at the diocesan office. It is one of the ways in which the Church can both set an example of best practice in the world

[6] [1998] ICR 140 CA.

of work—and at the same time benefit itself, by recognising how precious is the asset which the Church still possesses in the shape of its clergy. The application of section 23 of the Employment Relations Act 1999 to the clergy would be a significant symbol of the Church's care for its ministers. I hope that, in due course, the Church of England and all the churches will welcome the opportunity which the Act provides, to deal with a burden of anachronistic case law, and to provide for the clergy the same dignity at work which the great majority of the population already enjoys.