LETTERS TO THE EDITOR

REGULATING RELIGIOUS BROADCASTING

From P. F. Hedley-Saunders

Dear Sir,

I was most interested in Ian Leigh's article on Regulating Religious Broadcasting in the January 1992 issue of the Journal. However, it appears that little or no reference was made to the regulation of fund raising for religious purposes during broadcast, particularly by satellite and cable television. Would it be possible for the author to write another article on this most important aspect and on how regulation should take place where millions of pounds could be raised without apparent public accountability leading to the very damaging potential of financial scandal?

Yours faithfully,
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Poachers
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13 April 1992.

IAN LEIGH WRITES:

Cable and satellite television are covered by many of the same rules described in my original article, but in a few cases these are relaxed.

The prohibition on ownership of channels by religious bodies is weakened in the case of non-domestic satellite channels and local cable channels, so that the ITC may allow such ownership in appropriate cases (Broadcasting Act 1990, schedule 2, Part II, para. 2(2)). In considering applications the ITC operate to published guidelines. A channel of this kind will be subject to the duty contained in section 6(1) of the Act to exercise due responsibility over the content of religious programmes. However, the ban on recruitment to faith in the ITC's Programme Code (Section 10.7) does not apply to 'Specialist' religious channels. Nevertheless, if the ITC considers that abuse is occurring it will be relatively simple to decide that the operator is no longer an 'appropriate' person to run the service, with the effect that the licence may be revoked under section 5 of the Act. *Domestic* satellite channels are subject to the full rigour of the disqualification on ownership by religious bodies.

The ITC Programme Code applies to all services licensed by the ITC under Part I of the Broadcasting Act 1990, including domestic satellite and cable services. Two provisions are relevant here with regard to fund raising: appeals for funds to make programmes are prohibited (para. 9.1) and fund-raising by religious charities is only permitted if it can be shown that the proceeds 'will be devoted solely to the benefit of identified categories of disadvantaged third parties, and that the conveying of such benefit will not be associated with promotion of any other objective (e.g. proselytising)' (para. 9.3.). The general provisions of the programme code covering treatment of religion (section 10)

apply to domestic satellite and cable TV as to terrestrial TV channels. A more specific Code applies to advertisements (including religious advertisements) on all categories of channels. However, it contains an invitation to providers of 'Specialist' religious channels to approach the ITC on an *ad hoc* basis for relaxation of the rules on religious advertising in view of the special make-up of their viewing audience.

The ITC also has drawn up a Code of Programme Sponsorship, which includes an Appendix devoted to sponsorship of programmes by religious and charitable bodies. A programme is 'sponsored' if any part of its costs of transmission is met by or on behalf of such a body with a view to promoting its own or another's name, activities, policies, beliefs or philosophies or its products, services, image or any other direct or indirect interests. If the religious body concerned is the licensee of a specialised religious channel the funding provided for programmes on that channel will not be regarded as sponsorship. The code applies to terrestrial channels (when sponsorship is permitted from 1993) and in a more relaxed form to satellite and cable channels. The Code prevents the sponsoring of programmes 'containing . . . investigation or analysis of current matters of moral or religious controversy'. The sponsorship of programmes containing religious news is similarly prohibited. Sponsorship of programmes aimed at persons under 18 is prohibited except on Specialist religious channels. On terrestrial channels there is an additional (and all-embracing) prohibition on sponsorship of programmes featuring religious services or concerned with 'any religious matter' (this does not prevent cultural appreciations of religious art or music). In the case of cable and satellite channels editorial material may be included in sponsored programmes 'which promote the religious beliefs of the bodies'. This allows the possiblity of sponsored religious services on these channels and sponsored programmes on other topics, provided they do not cover matters of current moral or religious controversy. However, such programmes remain subject to the provisions of the Programme Code and the 'placing' of products, for instance, by promotion of books, tapes or videos is also regulated.

As can be seen from the above, an extensive panoply of controls is available to deal with potential abuses by religious broadcasters on satellite and cable television.

IAN LEIGH
Lecturer
Newcastle Law School
University of Newcastle upon Tyne.

THE OFFICE OF CHANCELLOR
From the Revd. M. G. Smith

Dear Sir,

I am not competent to enter a discussion about the office of chancellor on the same level as the two learned and stimulating contributions which have appeared in the last two issues of the Journal ((1992) 2 Ecc. L.J. 273 and (1992) 2 Ecc. L.J. 383) but I should like to add a comment on the work of a vicar-general.

Both Chancellor Coningsby and Mr Pearce cite Edmund Gibson as their authority for saying that the proper work of a vicar-general includes 'granting institutions and the like'. I believe the statement is misleading. The power

delegated to a vicar-general was more personal and immediate than was the case with an official principal. A bishop might chose to delegate the power to collate and to institute to his vicar-general; on the other hand he might not. The practice in the diocese of Exeter at the time Gibson was writing was for the bishop to delegate his powers to a commission of cathedral clergy. On the eve of the Civil War, the bishop included his chancellor among the number of commissioners but they all shared in the work.

Of the Patents of Provincial and Diocesan Officials Principal printed in (1883) *Ecclesiastical Courts Commission,* ii, 659-698, nineteen out of the twenty-seven expressly exclude the power of granting institutions. That for Norwich reserves the fees for institution to the vicar-general which may imply that he had had that right until the nineteenth century. Except for the diocese of Manchester all the patents listed were modelled on older examples so it would not seem to be the case that practice was modified in order to reflect a reassessment of the role of a bishop in the nineteenth century. The vicars-general of London and Oxford, however, were empowered to grant institutions. Gibson was familiar with these two dioceses and this may explain why he assumed it was part of 'the proper work' of the office.

Although there was only one chancellor in the diocese of Exeter, a distinction was always made between the two offices; indeed, until the middle of the eighteenth century, they were exercised in two separate courts; that of official principal in the consistory; that of the vicar-general in the audience court or principal registry. Apart from testamentary business concerning those who were 'knights,beneficed men and such as were *de roba episcopi*' (to quote from the Exeter Composition of 1616), the only causes which came before the vicar-general were either mere office or necessary promotion of the office. It would seem that the failure of other dioceses to preserve the same distinction and the failure of Exeter to retain it after the 1770's helped to create the confusion and uncertainty in the minds of many and sometimes led to open conflict between a bishop and a chancellor, a distressing state of affairs which occurred in the diocese of Southwark as recently as 1964.

Yours faithfully,
MICHAEL SMITH,
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5 August 1992.

MARRIAGE IN CHURCH AFTER DIVORCE

From the Ven R. D. Silk

Dear Sir,

In Appendix A to its admirably clear and helpful report published in Volume 2 No. 12 the Working Party on Marriage in Church after Divorce gives considerable space to the concept of 'Release from Vows'. Asserting that 'from a theological point of view marriage vows may be equated with monastic life vows', it argues that 'it seems probable that a release by the Archbishop of Canterbury would suffice.'

Apart from the sheer breathtaking papalism which is implied by the assumption behind the solution, the assertion itself must be challenged. Such an equation of marriage vows and monastic vows was firmly rejected in the Root Report (Marriage, Divorce and the Church 1971) Section 139 pp. 70-71 and Appendix 5 pp.131ff, and by implication in the Lichfield Report (Marriage and the Church's Task) Sections 160-173 pp.57-61.

There are many similarities, not all of them superficial. But there remain at least three fundamental differences. First, marriage vows are made principally by one person to another person in the presence of God; it is thus principally for that other person to grant release. Secondly, marriage vows are integral and effectual to the sacrament of marriage; in this respect they have more in common with baptismal vows than with monastic or ordination vows. Thirdly, marriage vows are closely related to, and enshrine, fundamental christian morality; the Church surely cannot release anyone from the obligation to be chaste.

There is a clear distinction between the Church releasing a person from the vows (which it has not claimed, does not claim, and cannot claim, to do), and pronouncing that the person is in fact released from the vow. The release will usually be because the vow is impossible to keep.

This was the essence of the proposals in 'Son of Option G'. The constant use in those proposals of the principle 'free to marry' goes back to the Bishop of Salisbury's amendment in General Synod in February 1984, and to the speech which I made in support of him (Report of Proceedings Volume 15 No 1). I argued then that there existed a 'general view which belongs to a period earlier than the Western indissolubilist nullity tradition and bridges the gap between the Eastern and Western traditions in the Church. It lies behind both the Western view and the Eastern Orthodox view of the spiritual death of a marriage'. From this 'Son of Option G' derives its main thrust, and remains, as the Working Party says, 'the nearest thing we have to a national code of practice, and might well now find acceptance if brought back in a revised form by the House of Bishops'.

'Son of Option G' was a characteristically Anglican Code based upon the common ground in the Eastern and Western traditions. While the West asks, 'was there a marriage?', and the East asks, 'is there a marriage?', 'Son of Option G' asks, 'are the new couple (spiritually) free to marry?'. Each is in fact asking essentially the same question. The detailed provisions are derived from the common ground in the actual case law of East and West.

I join with the Working Party in hoping that the House of Bishops will use the theological assumptions and work behind 'Son of Option G' to achieve a national code of practice. In that case it will not need to be drawn along the false path of 'release from vows'.

Yours faithfully,
DAVID SILK
Archdeacon of Leicester
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21 August 1992

MARRIAGE IN CHURCH AFTER DIVORCE

From Dr John Warwick Montgomery

Dear Sir,

Appendix A to the Working Party Report on 'Marriage in Church After Divorce' (2 Ecc. L.J. 366) asserts: 'It is our belief that . . . the form critics are right when they tell us that these words [Mark 10, 11 f] reflect the heightened Christian conscience of the early church in Rome, where Mark's Gospel was compiled, rather than the *ipsissima verba* of the incarnate Lord. The same may be said, *mutatis mutandis,* about other Biblical rules such as the Pauline privilege and the Matthaean exception, so that what matters is what the Spirit is now saying to the churches, and in particular the Church of England, on this question.'

Readers unacquainted with the Greek text of the New Testament should be informed that there are no substantive textual problems whatsoever with Mark 10, 11 f, nor – *mutatis mutandis* – with the Pauline privilege (1 Cor. 7, 15) or the Matthaean exception (Mt 5, 32). The form-critical argument in these instances is founded not on the exigencies of the text but (as is so frequently the case) on subjective considerations and extrinsic, deductivistic reasoning ('Jesus – or Paul – would not have taken such a viewpoint in light of the way *we* think doctrine evolves'; 'The Matthaean exception could not represent Jesus's own teaching, for it appears in only *one* Gospel'; etc.). The unscientific nature of such argumentation has been thoroughly documented; see, *inter alia,* Humphrey Palmer, *The Logic of Gospel Criticism* (London: Macmillan, 1968), especially pp. 172-73, 185-91, 224; C. S. Lewis, 'Biblical Criticism', in his *Christian Reflections,* ed. W. Hooper (London, 1967), pp. 152-66; and Gerhard Maier, *The End of the Historical-Critical Method,* trans. Leverenz and Norden (St Louis: Concordia, 1977), *passim.*

Logically, if the key passages on marriage and divorce in the New Testament are not *per se* binding upon us, but are merely 'reflective of Christian conscience' at its early stage, then no objective criteria exist by which today's Church can pronounce on the very issues with which the Working Party is so properly concerned. Whether or not there can be 'marriage in church after divorce' becomes a *sociological* rather than a theological question – to be determined by the direction current societal and ecclesiastical winds are blowing.

A more serious route to lightening the burden of the church's blanket prohibition on ecclesiastical marriage after divorce would be to pay far more attention to the very texts the Working Party downplays. The Lutheran theology of the Reformation, which in many ways constituted the original thrust of the 16th-century Anglican Reform (see C. M. Jacobs, *The Lutheran Movement in England* and N. S. Tjernagel, *Henry VIII and the Lutherans)* insisted – on the basis of the Matthaean exception and the Pauline privilege – that the *ratio* of the prior divorce must always be examined before refusing a church marriage. To paraphrase George Orwell, all divorces were considered equal but some were seen as more equal than others! In the view of the Continental Reformers, an innocent party to a divorce on the ground of adultery ought surely to be able to marry again in church. Likewise, the innocent party who divorces on the basis of desertion. Indeed, the Lutheran theologians recognised that there could also be such a thing as (legally) *constructive desertion;* thus cruelty might constitute

constructive desertion, and Luther said that the persistent refusal of one partner to engage in sexual relations with the other could be tantamount to malicious desertion. To the objection of Anabaptists and pietists that none of this would apply if the guilty partner were a *believer* ('let the unbeliever depart' – 1 Cor. 7, 15), the Lutherans responded that no true Christian *would* maliciously desert his or her mate, so the guilty partner could never legitimately hide behind the facade of Christian profession.

May we suggest that the Working Party might have more success in their endeavour if they attached their wagon not to the form-critical star but to the more biblically-serious approach of classic Reformation theology?

Yours faithfully,
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The Temple
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28 August 1992

WILLIAM LYNDWOOD

From O. W. H. Clark, Esq.

Dear Sir,

According to Professor J. H. Baker's very interesting article in the Journal ((1992) 2 Ecc. L.J. 10), Wm. Lyndwood died on 21 October, 1446. Is not the 550th anniversary in 1996 of the death of the greatest of English canonists an occasion which should be figuring already in the forward thinking and planning of the General Committee of the Society?

Following the removal of his body from St. Stephen's Chapel, Westminster, it appears from information kindly made available to me by the Keeper of the Muniments (Dr. R. Mortimer) at Westminster Abbey that according to the Abbey's Funeral Fees Book (not its Burial Register) the burial of "the supposed remains of William Lyndwoode, Keeper of the Privy Seal to Henry 6th and Bishop of St. David's from 1442 to the time of his decease on the 22nd of October, 1446, aged between 70 and 80 years", took place on Saturday morning, 6 March, 1852. The actual place of burial is precisely described as in the north cloister of the Abbey "under a black marble ledger, close to the north wall, 16 feet from the bottom step of the east entrance door to the centre of the coffin". Dr. Mortimer notes that the black marble ledger may well be still there but it is not visible because of the ramp, etc., around the east cloister door.

Whether the death was on 21 or 22 October should there not be a Society event in 1996 at the Abbey and/or at St. David's Cathedral – or something at St. Mary-le-Bow or Linwood? Perhaps, in association with the Canon Law Society of Great Britain, the first of a regular series of Lyndwood lectures?

I am Sir
Your obedient servant
O. W. H. CLARK
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19 September 1992.

ECCLESIASTICAL VISITATIONS

From The Rt. Revd. Dr. R. D. Say, K.C.V.O.

Dear Sir,

The report of the Working Party published in the July, 1992, issue of the Journal makes a strong case for the continuation of the inherited pattern of Visitations and reaffirms that it is the duty of the Bishops 'to include visitation as part of their office'.

Yet the Working Party makes clear that of the 35 Diocesan Bishops who responded to its questionnaire 23 said that they had never held an Episcopal Visitation, either because of pressure of time or because of their dislike of the legalistic formality of the traditional Visitation.

Whilst I understand both these arguments for not fulfilling this episcopal duty, I make bold to say, after conducting two Visitations of a diocese and of a Cathedral at an interval of twenty years, that I believe such Visitations are a worthwhile use of time and that, provided great care is given to the Articles of Enquiry beforehand, a Visitation can be the means of exercising a pastoral ministry and of strengthening the relationship of both diocese and cathedral to the local community.

Between my first Visitation in 1964 and my second in 1984 there were the sixteen years of experiment with alternative services, culminating in the publication of the A.S.B. in 1980. There was also the inauguration of synodical government and, most far reaching of all, there was the gradual diversification of ministry, ordained and lay.

All three of these far reaching developments affected the life of both the parishes and the Cathedral and a Visitation was a valuable means of assessing local reaction to them and of obtaining factual information of real significance. (In 77 parishes the Churchwardens said they did not regard their incumbent's stipend as adequate; whilst 154 parishes, out of 220, said that their link with the Cathedral was 'distant, tenuous or non-existent').

In one Visitation, I gave the County Council, the District Councils, the Local Education Authorities and the Armed Services, the opportunity to comment on their relationship with the diocese and the Cathedral and to indicate any ways in which they considered the Church could serve them more adequately.

My experience was that it was the laity who responded most eagerly to a Visitation, possibly because many of them were accustomed to the process of assessment and review in their secular occupations. Whilst some of the clergy preferred their own ministry to be reviewed by the Bishop, or one of his colleagues, in a more personal way, many appreciated the value of a comprehensive review of the diocese and the opportunity it gave the Bishop in his Visitation Charge to be both encouraging and challenging at a time of unprecedented change.

A Bishop-in-synod cannot do other then adapt the traditional pattern of a Visitation. This is especially important in relation to Cathedrals, which, sooner or later, must be led to take their rightful place in a synodically governed Church.

Yours truly,
+ DAVID SAY
23 Chequers Park
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2 November 1992