Theology on the Web.org.uk

Making Biblical Scholarship Accessible

This document was supplied for free educational purposes. Unless it is in the public domain, it may not be sold for profit or hosted on a webserver without the permission of the copyright holder.

If you find it of help to you and would like to support the ministry of Theology on the Web, please consider using the links below:

https://www.buymeacoffee.com/theology

https://patreon.com/theologyontheweb

PayPal https://paypal.me/robbradshaw

A table of contents for *The Churchman* can be found here:

https://biblicalstudies.org.uk/articles_churchman_os.php

The Ethics of Disendowment.

By P. V. SMITH, LL.D.,
Chancellor of the Diocese of Manchester.

THE article by the Rev. C. F. Russell on "Endowments and Disendowment" in the July CHURCHMAN professed to discuss the topic of our Church Endowments and the policy of Disendowment dispassionately and in all their bearings. But, without much supplement and some correction, it cannot be admitted to have placed the whole case fairly before its readers. It was not a very happy way of introducing the subject to instance the endowment of a sinecure wardenship of a charity hospital from a work of fiction, as if it were a fair specimen of the actual endowments of our hard-worked Bishops and clergy; nor to quote, and adopt as unanswerable, the words of Dr. Forsyth about men of personal honour and uprightness in the "Catholic, Orthodox, or Established" Churches losing their sense of social justice, and being incapable of grasping the just thing when a question arises which threatens the interest of their Church; as if the same charge might not, with similar or far greater truth, be brought against equally upright men in the Nonconformist bodies, when a question arises which involves the relative interests of those bodies and the Churches against which his accusation is levelled. And the same one-sided method of dealing with the question runs through the whole article. The writer is correct in asserting that Disendowment is not necessarily wrong from an ethical point of view because it would cripple the Church. But he is mistaken in assuming that those who ground their opposition to it on its baneful consequences, regard those consequences as determining its ethical complexion. They would either say that, in the abstract, it is neither right nor wrong, and is therefore to be advocated or resisted according to its practical results; or else that it is ethically wrong in the abstract, but that its inevitable evil effects alone make opposition to it worth while. This is not an immoral position, as it is called in the article.

The worst that can be said of it is that it is a non-moral attitude; but such an attitude may, from a practical point of view, be in the highest degree justifiable and proper. A line of policy may be quite moral and just; but if it is inexpedient, and will be harmful in its effects, it cannot be rightfully adopted, unless to abstain from it would be clearly immoral and ethically wrong.

Mr. Russell is, however, quite right in pursuing the ethics of the subject further, and he puts forward the following thesis as exhausting all that can be said on the subject:

"(*a*) The endowments of the Church of England were given to it in the past; (*b*) therefore they are its lawful possession in the present; (*c*) therefore it would be an act of robbery to deprive the Church of them now or in the future."

Before proceeding to pull to pieces this syllogism of his own creation, he proceeds to discount its value, and, in fact, the value of any assertion that Disendowment is morally wrong, or, in other words, unjust, by dwelling on the fact that a large number of honest and upright persons—to wit, in the Nonconformist bodies—hold a diametrically opposite opinion. But the existence of conflicting views on the morality and justice of a particular claim or line of action is a universal incident in every cause which comes before our judicial tribunals; and it no more precludes one side of the Disendowment question from being morally right and just, and the other from being wrong and unjust, than it prevents a plaintiff or defendant, as the case may be, having the right on his side in a stoutly-contested law-suit. The divergence of opinion is, of course, due to the fact that, on one side or the other, there is either a misconception of the law or an imperfect knowledge of the facts, or both. On the question before us Mr. Russell makes no serious effort to grapple either with the law or the facts. He asserts, though he does not attempt to prove, that the "therefore" in both the second and the third clauses of his syllogism will not stand; and that consequently the syllogism cannot be sustained. But he ignores the possibility of Disendowment being proved to be immoral and unjust by quite a different line of reasoning. Because it is easy to knock

down the nine-pin which he has himself set up, he appears to assume that no argument of any stability or value can be urged against that policy. A little consideration, however, will show that this is far from being the case.

What is the true test of the morality and justice, or otherwise, of Church Disendowment? We must, doubtless, admit that the question cannot be decided off-hand on abstract principles. We cannot affirm that all appropriation or diversion of property is robbery, and that, therefore, Disendowment under all circumstances is necessarily wrong. But, on the other hand, we cannot admit that because the possession of property depends upon law, and the Legislature has absolute power to make and unmake laws, therefore, if Parliament enacts that the Church shall be disendowed, the process must necessarily on that account be moral and just. A popular Legislature, no less than an individual despot, may act in a tyrannical, unjust, and wicked manner. The true test of moral and just dealing on the part of a community as regards property is that all individuals on the one hand, and all corporations or institutions on the other, shall be treated alike in reference to it. There need not, and there cannot, be the same law for private property and for religious, charitable, and other public property. But justice is violated if one individual is treated differently from another in respect of his property; and justice is equally violated if one institution is treated differently, in respect of its property, from another of a similar class, or having similar objects. We have, therefore, to inquire, not what is the correct abstract law as regards property in an ideal community, nor even what is the general law of property in our own land at the present time, but what are the principles of our existing law as to religious and other charitable property. These may be summarized as follows: (1) Although the acquisition of property by a charitable institution is subject to certain restrictions from which the acquisition of private property is exempt, yet, when it is acquired, the title to it rests on the same basis, and is as secure as the title to property in private ownership. (2) In particular, the length of

time of actual possession which confers an indefeasible title, however irregular or unlawful the origin of the possession may have been, is the same in both cases. Thus, if the trustees of a charity encroached on a common, and held the encroachment without interruption for twelve years, they would obtain an absolute title to it in precisely the same way as an individual squatter would do. But (3) the holding or application of charitable property will be altered where (*a*) the property cannot be applied to the purposes of the charity for which it is held; or (*b*) those purposes have ceased to exist; or (*c*) the property is largely in excess of the amount required for fully carrying out those purposes; or (*d*) the general good of the community requires that the property should be diverted to some different purposes. On the other hand (4), if some of the members of a charitable institution, or of the recipients of an endowed charity, secede from the institution, or dissent from the regulations by which the charity is governed, they have no claim to carry off a share of the property of the institution or charity, unless they can bring the case within one or other of the subheadings of principle (3).

The ethics of Church Disendowment must be tested by these principles. If the process is in conformity with them, it is moral and just. If it is not, it is immoral and unjust. Let us, then, apply the test. We note at the outset that principles (1) and (2) sweep away the first two parts of Mr. Russell's above-quoted syllogism. The ancient endowments of the Church, to which alone Disendowment is proposed to be applied, are her present lawful possession, not because they were given to her in the past, but because she can show a title to them of many centuries—longer, in fact, than can be shown to any other public or any private property in the realm, except certain Crown lands. This does not, of course, preclude the sentimental argument derived from the fact that her possession of them had its origin in voluntary gifts.[1] But her legal title to them would be the

[1] The voluntary origin of the tithe is only denied by those who have never studied the subject. On June 17, 1895, when the Welsh Disestablish-

same, however they were in the first instance acquired. No doubt this title does not prevent Church endowments from being taken for public purposes like any other property; but they can only be justly so taken upon the same terms as any other property. Mr. Russell actually compares the Disendowment of the Church to the compulsory acquisition of private land for a public purpose. Of course, much glebe land throughout the country has already, like other land, been so acquired, and the Church has in consequence been deprived of it. But in all cases of such compulsory acquisition, whether from the Church or from any other owners, the estimated market value of the land, together with an additional 10 per cent. in consideration of the surrender of it being compulsory, has been paid for the land; and it is idle to adduce a transaction of this kind as bearing on the question of confiscating Church endowments without any sort of compensation. The real crux of the question, however, lies in the application to it of the various alternatives of principle (3). And here it is important to emphasize a fact which is constantly forgotten or overlooked, and which is obscured by the inevitable necessity of using in reference to the subject brief and concise, but none the less inaccurate, language. We commonly talk of the ancient endowments of the Church and of disendowing the Church, and, so long as we do not lose sight of the actual truth of the matter, it is convenient and, in fact, almost

---

ment Bill of that year was in Committee in the House of Commons, an amendment was moved with a view to preserving to the Church in Wales all private Church endowments, whatever might be their date, and not merely those of recent origin. But Mr. Asquith, who was in charge of the Bill, declared that this amendment could not possibly be accepted, since the effect of it would be to leave to the Church the whole of the tithe. "It was," he said, "an arguable position to take up, that although tithes became a compulsory tax after a certain date, they were originally a voluntary obligation, and were given by private persons out of their own resources; and, if the amendment were adopted, it might be contended, and it might be open to a court of law to say, that practically the whole revenue of the present Established Church passed to the representative body of the Disestablished Church." (Hansard, Parliamentary Debates, Fourth Series, vol. xxxiv., col. 1284).

necessary, to do so. The usage is, therefore, maintained throughout the present article. But, strictly speaking, the Church of England herself does not possess a penny of ancient endowments. They were all given to bishoprics, or to cathedral bodies or monasteries, or to parochial benefices or other local Church dignities or offices. Those given to monasteries, including about one-fourth of the tithe of the whole country, were, as we know, confiscated at the Reformation. The remainder—namely, the old episcopal, cathedral, and parochial revenues—are what we mean by the ancient endowments of the Church, and it is these of which it can be truthfully affirmed that no other property in the realm is held by a better title. How, then, do the various subheadings of our principle (3) apply to these endowments, when viewed in their true light? Their alienation cannot certainly be justified under either of the subheadings (*a*) and (*b*). Without pursuing the interesting inquiry of how far the present tenets and practice of the Church of England correspond with her early tenets and practice at the time when the bulk of these endowments were given, and before she assimilated the medieval errors and ceremonies of the Roman Church, these endowments are at present used for the maintenance of her worship and doctrine as legally settled at the Reformation. It is idle to pretend that her title to them is prejudiced by the deliberate and lawfully effected alteration of her standards of doctrine and worship more than three centuries ago. It was enacted by Parliament in 1844 (7 and 8 Vict., c. 45) that where no particular doctrines or opinions were expressly laid down in the deed of trust under which a Nonconformist chapel was held, a usage of twenty-five years should be sufficient to establish the tenets and practices which might lawfully be taught and carried on therein. The bearing of subheading (*c*) on the question requires, however, more detailed examination. We had an object-lesson in reference to it a few years ago in Scotland, when the highest court of the realm decided that the bulk of the Free Church of Scotland, by forming with the United Presbyterians a new combined Church, had forfeited all right to

the endowments of the Free Church; which, therefore, belonged to the diminutive minority who had declined to join in the movement. But it was obviously unreasonable that this minority should retain the whole of these endowments, which were largely in excess of its wants; and, therefore, a perfectly moral and just Act of Parliament was passed to effect an equitable division of them between the majority, which had technically forfeited them, and the minority, which had retained a legal right to them. The circumstances of the Church of Ireland in 1869 were very different; but still, so far as the mere alienation of a portion of its property was concerned, it was possible to argue that, considering how small a fraction of the population of Ireland was included in its ranks, its endowments at that time were out of proportion to its requirements. And when we look at our English ecclesiastical endowments in their local and specific aspect, we see that the principle of alienating charitable property when in excess of the requirements of the object for which it is held, has already been largely applied in their case. Through the instrumentality of the Ecclesiastical Commissioners, considerable portions of the old endowments of bishoprics and cathedral bodies have been diverted to other purposes. But these have been invariably Church purposes, such as the endowment of new sees or of new parochial benefices or curacies, and, quite recently, the provision of pensions for aged incumbents. In fact, what is known as the doctrine of *cy près* has been applied. That doctrine is recognized in our law as properly regulating every alteration in the purposes of a charitable endowment which is called for or justified by any of the subheadings of principle (3). The new purposes should bear as near a resemblance to the old purposes as the circumstances render possible. No serious departure from the old objects is permissible where adherence to the principle of *cy près* is practically possible. While, therefore, our principle (3) (*c*) justifies the readjustment and redistribution of our Church revenues, as occasion requires, it does not justify their alienation from Church purposes. And no loyal Churchman would admit that this alienation is justifiable

under subheading (*d*) on the plea that in the interests of the community these revenues could be more beneficially devoted to some non-Church objects.

As to principle (4), one would have thought that this was too self-evident to need any comment, were it not that Mr. Russell in his article seriously propounds the exact contrary. Just as he puts into the mouths of Churchmen a weak argument on which no serious defender of Church endowments would ever think of relying, so he makes Nonconformists advance a claim which is wholly destitute of any foundation of justice or equity. According to him, they demand that inasmuch as their various bodies are co-heirs with the Church of England of the earlier National Church, these bodies are entitled to some share in the gifts which the devotion of our forefathers bestowed on that early Church. The first observation to be made upon this demand is that it is no more just and reasonable than would be the demand of a number of Nonconformist seceders from one of their bodies to take away with them a part of the property belonging to the body from which they seceded. But the next observation is that no one but Mr. Russell has ever heard of any Nonconformists putting forward this demand, and we may shrewdly suspect that those who do so exist only in his own imagination. The claim, as he formulates it, no doubt involves partial Disendowment of the Church; but it is not a claim for Disendowment in the sense in which that word is generally understood. It is a claim for concurrent endowment, which has always been regarded as a very different thing. Concurrent endowment was seriously proposed in 1869 during the passage through Parliament of the Bill for disestablishing and disendowing the Church of Ireland. Considering the small fraction of the Irish people who were members of that Church, there was some ground for arguing that her revenues in equity ought to be shared with the religious bodies to which the large majority of the people belonged. But it was Churchmen who put forward and urged this policy. The Nonconformists would have none of it. The Roman Catholics abstained from supporting it,

probably from the fear of provoking a storm of Protestant fanaticism which might have wrecked the Bill altogether; and so the confiscated revenues of the Church of Ireland have been expended on secular objects.

This disposes of Mr. Russell's fanciful suggestion that the objection of Nonconformists to concurrent endowment arises from their knowledge that it would certainly be rejected by Church-people. It was not on this account that the Welsh Disestablishment Bills of 1895 and 1909 expressly provided that the Church endowments which were to be confiscated should be devoted to charitable or public purposes of a secular character. We may be perfectly certain that if the Disestablishment and Disendowment on this side of St. George's Channel is again seriously proposed, concurrent endowment will not be part of the scheme of its promoters, and will be rejected by them if it is suggested from the side of the Church. The Disendowment, not merely of the Church, but of Religion, has always been, and will always be, their fixed policy. It is therefore of little, if any, practical utility to discuss the alternative policy of concurrent endowment; and yet a brief consideration of it, as an abstract question, may not be inopportune. Tried by the ethical principles which we have laid down, it certainly cannot be pronounced, under present circumstances, to be just or equitable. It would only become so, if the body of Church-people in the country were to become so attenuated in numbers that the Church endowments were in excess of their spiritual needs, as was the case with the remaining adherents of the Free Church of Scotland when the bulk of that body had joined the newly-constituted United Free Church.

As between man and man, therefore, it would not at the present time be an ethical proceeding; and, considering that we Church-people of the present generation are in a sense trustees of the ancient Church endowments, not only for ourselves, but also for posterity, we have no right to consent to the allocation of any portion of them to the maintenance of a different standard of religious doctrine and worship, unless we are compelled to

do so. But if we are reduced to choosing between the alternatives of concurrent endowment and Disendowment in the only sense in which, *pace* Mr. Russell, that word is seriously used, then unquestionably, even as Church-people, but still more as citizens, we shall, as in 1869, pronounce for concurrent endowment. For, just as Archbishop Benson declared that he would prefer the establishment of a non-episcopal Christian body to no establishment at all, so we cannot hesitate in preferring concurrent endowment to the disendowment of religion. Both processes, as we have seen, would, under present circumstances, be ethically inequitable; but concurrent endowment would not, like Disendowment, be a direct act of dishonour to God Himself. Mr. Russell, like many others, appears to have very hazy ideas on this aspect of the question. He is correct in laying down that there may be cases of secularization of religious property which are not sacrilegious or impious, and in a note he expresses the opinion that there is a good deal to be said in favour of secularizing a portion of the tithe. He does not explain why; but we may conjecture that it is because, in other countries, a portion of the tithe was originally devoted to the support of the poor. This, however, was not the case in England, except so far as it indirectly resulted from the gifts of the tithe, in many cases, to monasteries which, while they existed, gave relief on a bountiful scale to the poor. But if he had this in mind, he forgot that the monastic tithe, amounting to about one-fourth of the whole, was almost entirely secularized at the Reformation. With this unexplained exception, however, he makes no attempt to define what are the legitimate cases of secularization, or to ascertain whether the present application of the process to our Church endowments would fall within them. Let us endeavour to supply his omission. Religious property may be secularized without injustice and without sacrilege—(1) When it is held for religious purposes unlawfully, or, in other words, without a legal title; (2) when it is not required for religious purposes; and (3) when its secularization would clearly and directly benefit the cause of religion itself.

No one who has any elementary knowledge of the subject will for a moment pretend that our ancient ecclesiastical endowments fall within category (1). If they did, it would, of course, be quite unnecessary to pass an Act of Parliament to disendow the Church. The process could be effected by the rightful owners of the endowments taking proceedings to recover them in our courts of law. Again, it cannot be contended that these endowments come within category (2) as not being required for religious purposes, when we remember the additional millions of pounds which are annually contributed for Church work alone to supplement the revenues derived from them, and when the cause of religion as a whole is clearly not over-endowed or over-supplied with money. No; if the secularization of our Church endowments is to be justified at all, it must be under heading (3). This heading contains a sound principle, which, however, must be applied with caution. It certainly will not justify the Pecksniffian proposition that the secularization of religious property is lawful because it is good for a religious body to be poor, and, still less, the application of this proposition to the Church of England alone among all the religious bodies of the country. Genuine examples of its true bearing are, indeed, to be found, where a strip of a consecrated churchyard is thrown into a public highway with the result, among other things, of making the access to the church more convenient; or where a church in a depopulated district is pulled down and its site sold for secular purposes, and the proceeds of the sale are utilized for the erection of a new church in a recently-developed quarter. But there is no analogy between cases such as these and the secularization of religious property without any countervailing advantage to religion. Such secularization would not be a religious, but an irreligious, act. The iniquity of it is aggravated by the fact that, although the Church is no doubt the National and Established religious organism, yet the property to be thus dealt with is not national property, but is the property of the Church, or, more accurately, of the various ecclesiastical corporations in which it is vested, quite as much as the property held

by other religious bodies is their property. But even if it were national property, the character of the act would remain the same. The treasures of our National Gallery are unquestionably national property, and Parliament might alienate them without any violation of the code of ethics, and devote the proceeds of their sale to other purposes. But no one could pretend that this would not be an inartistic proceeding, indicating, to say the least, a callous indifference on the part of the nation to art. And similarly the confiscation to secular purposes, however beneficial and excellent, of endowments devoted and applied to the maintenance and furtherance of religion, whatever else it might be, would unquestionably be an irreligious proceeding. It would be an avowal, before God and man, that the nation regarded the material and intellectual objects, to which the endowments were to be diverted, as of greater public importance and benefit than the moral character and spiritual life which they had been originally intended, and had hitherto been employed, to promote. Woe to the English people if this ever represents their settled conviction and becomes their deliberate policy!

As things are at present, Disendowment and concurrent endowment, whether in Wales or in England, would alike be contrary to true ethical principles. But, of the two unjust and inequitable proposals, concurrent endowment would be the less objectionable, since it would demonstrate that the nation, although repudiating certain principles of the Christian religion to which we attach great importance, yet adhered to that religion as a whole, in the different forms in which it is presented by the various existing Christian bodies.