Do the Alternative Services Legalise Reservation?

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THE ACTIVITIES of the ecclesiastical courts do not normally attract much notice except from those whose home church is directly affected by a particular judgment. Mr. C. G. Smith, who (in a letter to the *Church of England Newspaper* for December 15th 1967) first drew public attention to the question raised in the title of this article, was one whose home church had been affected in just such a way. In the month in which he wrote, a faculty had been granted by the chancellor of the diocese of Bath and Wells for the installation of an aumbry (or cupboard for the reserved sacrament) in the church of St. Andrew, Minehead, where Mr. Smith worshipped, partly on the grounds that a few days before the judgment was given the Series 2 Communion service had started to be used in that church. The investigations made by the present writer, which have led to the writing of this article, originated from Mr. Smith's letter.

The writer of the article is conscious that he is not a lawyer. He has, however, either through personal interview or by letter, had the benefit of discussing the question he raises with several ecclesiastical lawyers of distinction, including Chancellor W. S. Wigglesworth (now Dean of the Arches), who gave the Minehead judgment, and Chancellor B. T. Buckle. To them and all others who have answered his questions and enlightened his ignorance he is deeply grateful. None of them has, however, read or criticised the article in its final form, and none of them must be held responsible for the statements of fact or opinion which it contains.

Correspondence with Chancellor Wigglesworth, arising out of the Minehead judgment, elicited the fact that, as there had been an unavoidable delay, he was not proposing to report this particular judgment. Consistory court judgments which are not of special interest do not necessarily appear in the published reports; they may merely be recorded in the diocesan registry. The chancellor kindly confirmed that he had indeed appealed to the Series 2 service, adding that a

slightly earlier judgment to the same effect by Chancellor Garth Moore had been published in the law reports, and that a third judgment had since been delivered by Chancellor Buckle. It was now possible for the writer to trace and assemble the relevant facts.

Garth Moore's Judgment

THE report of Chancellor Garth Moore's judgment runs as follows:

In the Gloucester Consistory Court, in re St. Peter and St. Paul Leckhampton, on October 20th, 21st., 1967, Chancellor Garth Moore gave judgment, holding 'That while reservation was theologically permissible in the Church of England, as the law existed until this year, it was prima facie not legally permissible by reason of one rubric in the Book of Common Prayer of 1662; but that by virtue of the Prayer Book (Alternative and Other Services) Measure, 1965, rubric 40 of the Alternative Services (second series) removed the last remaining legal obstacle to reservation, at any rate in respect of reservation which took place during a Communion Service as authorised by the Alternative Services (second series), the method of reservation being within the jus liturgicum of the bishop and the discretion of the consistory court; and that, in the circumstances, the faculty prayed for would be granted.'

This is the summary, but in the actual judgment also, everything turns upon the Series 2 service: 'Since then, however, something has happened which makes this case of much greater importance than perhaps any of the parties have appreciated. We have now by virtue of the Prayer Book (Alternative and Other Services) Measure, 1965, the Alternative Services (second series) which have the force of law. Rubric 40 of the Order for Holy Communion in that series . . . appears to be governed by the words "which is not required for the purposes of Communion", and there is nothing to indicate that the Communion there contemplated is Communion at that or at any particular service. My understanding of Rubric 40, which has now as much the force of law as the Rubric in the 1662 Book of Common Prayer, is that the last remaining legal obstacle to . . . reservation, has now been removed, at any rate in respect of reservation which takes place during a Communion Service as authorised by the Alternative Services (second series).' And so again later, 'But rubric 40 has altered the law . . .' (*Weekly Law Reports*, 1968, pt. II, pp. 1551-55).

Wigglesworth's and Buckle's Judgments

CHANCELLOR Wigglesworth's informal account of his own judgment in the case of Minehead St. Andrew (letter of February 14th, 1968) was:

'I did say that the expression in Rubric 40 of the 2nd Series Holy Communion service envisaged that some of the consecrated bread and wine which remained over at the end of the service might be wanted for communion later.'

Chancellor Buckle's judgment was delivered when issuing a faculty for an aumbry in the case of Derby St. Werburgh (1969), and like Chancellor Wigglesworth's is not being reported. However, the Derby Diocesan Registrar has given this account of it (letter of January 7th, 1970):

'In his judgment the Chancellor referred to the question of whether reservation of the Sacrament is lawful, and in this connection mentioned the case of re St. Peter and St. Paul Leckhampton . . . where it was held that reservation was theologically permissible, and by rubric 40 of the Order for Holy Communion in the alternative services (2nd series) reservation was now lawful under the circumstances mentioned in the judgment of the Court.'

It is now clear that in at least three cases, in different dioceses, judgments have been given sanctioning the legality of reservation on the grounds of rubric 40 of the Second Series Communion service. As one of these judgments has been reported, it is bound to be quoted in subsequent cases. Unreported judgments (like the other two mentioned, and several of the earlier judgments on reservation discussed below) are also invoked in the courts from time to time.

The Legal Situation prior to Series 2

1. UP to the time of the appearance of the 1928 Proposed Prayer Book, the courts gave no countenance whatever to the practice of reservation. The Archbishops, in their 'Lambeth Opinions' at the turn of the century, had expressed the view that every form of reservation was unlawful, and various judgments given through the courts in the early part of this century, notably two given by Sir Lewis Dibdin, confirmed their view. This is the state of opinion as reflected in Cripps's *Law relating to the Church and Clergy* (London, Sweet and Maxwell, 1937, pp. 229, 530).

2. By the time the 1955 edition of Halsbury's *Ecclesiastical Law* appeared (London, Butterworth, pp. 335, 345), the situation had developed a good deal, and still more by the time the 1965 *Supplement* appeared (pp. 22, 23). One of the main reasons for this was the existence of the 1928 Prayer Book. If passed by Parliament, that book would have made it lawful to practice reservation of two sorts. It would have been lawful for the sacrament to have been taken to the sick straight from the service in church; and perpetual reservation in church would also have been lawful, subject to three provisos. These were that permission should be obtained from the bishop of the

diocese or from the archbishop and bishops of the province; that the place of reservation should be a locked aumbry, located in the wall of the church, preferably the north or south wall, and not the wall behind or above a holy table; and that the only use made of the reserved sacrament should be reception, not the cultus, or worship, of the reserved sacrament (as in exposition, benediction etc.). The cultus of the reserved sacrament is not well served by reservation in a locked cupboard, located in the north or south wall; reservation over, upon or beside the Lord's table (i.e. in a hanging pyx, tabernacle or sacrament house) suits it much better; and these modes of reservation the 1928 Book therefore forbade. After the rejection of the Book by Parliament, and the bishops' decision to behave as if it had been passed, reservation in an aumbry was sanctioned by various bishops for various parishes, and at length the law took cognizance of this fact. In the case Re Altofts, Parish of (1941), Chancellor Vaisey gave judgment that, whether or not reservation ought to be permitted by bishops, it was in fact being permitted, and it was the chancellor's duty to see that what was permitted was done decently. He therefore issued a faculty for an aumbry, possibly the first ever issued. By 1946, however, things had progressed so far that in the case Re St. Mary the Virgin, Swanley, Chancellor Ashworth stated that it was well known that in many dioceses faculties were issued for aumbries. Then in 1954, in the case Re St. Mary's, Tyne Dock, Chancellor Hylton-Foster opined that (whatever might be true of reservation itself) an aumbry seemed not to be illegal, since it was not an ornament but a cupboard, and so was not affected by the provisions of the Ornaments Rubric in the 1662 Prayer Book.

Occasionally it has been found that the walls of a church are not suitable for the excavation of a cupboard. In such cases, some chancellors have been prepared to issue faculties for other means of reservation than aumbries, though the number of instances in which this has happened seems to be extremely small. In 1953 Chancellor Guillum Scott issued an unopposed faculty for a tabernacle on the Lord's table at St. Peter and St. Paul, Shiplake. The parish records in the Bodleian Library show that this was because the walls of the church would not take an aumbry. Again in the Oxford diocese, unopposed faculties for the introduction of a pyx were granted by the same chancellor to the parish of St. Mary, Wolverton, in 1950, and by Chancellor Boydell to the parish of St. Peter and St. Paul, Newport Pagnell, in 1961; and a faculty for the introduction of a sacrament house is said to have been granted to the parish of St. Philip and St. James, Oxford. In addition, faculties for sacrament houses are said to have been granted to the parishes of St. Lawrence, Mickleton (diocese of Gloucester), and St. Mary-le-Bow, London (see C. E. Pocknee, *The Christian Altar*, London, Mowbray, 1963, p. 105; 'Supplement' to A. A. King, *Eucharistic Reservation in the Western Church*,

London, Mowbray, 1965, p. 251). Except in the case of St. Lawrence, Mickleton, where the sacrament house stands in the chancel, and the chancellor of the diocese is Chancellor Garth Moore, it is likely that the faculty was only granted because the walls of the church were unsuitable for an aumbry. In the church of St. Philip and St. James, Oxford, the sacrament house has been made as inconspicuous as possible, by being erected behind a large pillar in a side chapel, and it is completely invisible from the body of the church.

3. A new departure was made in 1954, when in the case Re Lapford Chancellor Wigglesworth expressed the view that reservation with the sanction of the bishop was not unlawful. However, later the same year the case was taken by appeal to the Court of Arches, where the Dean of the Arches, Sir Philip Baker-Wilbraham, rejected this view, holding that Articles 25 and 28 seem to repudiate reservation, and that the rubric in the 1662 Prayer Book about the consumption of the remains, for whatever reason inserted, certainly excludes it; however, though strictly illegal, reservation may be blamelessly sanctioned by the courts within the limits set by the 1928 Prayer Book, i.e. in an aumbry, with the bishop's permission, and without devotions, but not otherwise. This judgment has sometimes been criticised by lawyers for giving a quasi-legal status to the 1928 Book, but it is the most authoritative judgment that has yet been given on the subject, and was binding in the province of Canterbury until the authorisation of the Alternative Services.

4. We come on now to the activities of Chancellor Garth Moore. Having appeared as counsel in the cases of St. Mary's, Tyne Dock, and Re Lapford, in the former of which he argued that reservation is not unlawful, and in the latter of which Chancellor Wigglesworth sided with his cause to the extent of giving judgment to this effect in the lower court, in 1958 he sat as chancellor in the Bishop Wearmouth case in the diocese of Durham, and thus had the opportunity to express his personal beliefs on the subject and to enforce them. In his judgment, he argued that reservation is (a) theologically sound; (b) legally permissible, not because of the 1928 Book, which has no legal standing, but because the Articles do not directly repudiate it and the 1662 rubric on the consumption of the remains was designed to prevent profanation and has no bearing on reservation; (c) necessary in parishes where there are many sick communions, it being a legal principle that 'necessity has no laws'. These arguments are open to grave objection. The first argument is, to say the least, not proven. The second overlooks the fact that somewhat different rules for preventing profanation would certainly have been given by the precise 1662 revisers if they had meant to permit reservation. The third overlooks the fact that there are other ways of coping with numerous sick communions than reservation, such as shortening the celebration at the bedside to the same length as the prayers accompanying the administration of the reserved

sacrament, or alternating a full celebration of the Communion of the Sick with the instruction which the service provides about the possibility of spiritual communion.

As the Bishop Wearmouth judgment was given in the northern province, it was not in formal contravention of the judgment of the Court of Arches, but in 1960 Chancellor Garth Moore gave judgment in the case Re St. Nicholas, Plumstead, when he freely referred to his own Bishop Wearmouth judgment, and acted upon it by issuing a faculty for a hanging pyx. As has been seen, this was not the first faculty for a pyx ever issued in any diocese, but it was certainly the first after the judgment of the Court of Arches against such methods of reservation, and it was also the first supported by the sort of arguments which Chancellor Garth Moore used. Apart from contending that reservation was lawful, he conceded that the pyx was an ornament of the church, and so was covered by the Ornaments Rubric (or rather by the Ornaments proviso of the 1559 Act of Uniformity), but he attempted to evade the fact that the Ornaments proviso makes obvious reference to the 1549 Prayer Book, established 'by authority of Parliament, in the second year of the reign of King Edward the Sixth', and that the 1549 Prayer Book did not authorise either the hanging pyx or any other method of perpetual reservation. It only authorised the taking of the sacrament to the sick straight from the celebration, and the pyx used for this purpose was quite distinct from the pyx used for perpetual reservation (see A. A. King, *op. cit.*, pp. 57-60). Hanging pyxes had in fact already been removed by the time the 1549 Prayer Book came into force, as is clear from the fourth complaint of the Devon Rebels, who revolted the day after the Book was introduced (see Thomas Cranmer, *Miscellaneous Writings and Letters*, Parker Society, p. 172; Philip Hughes, *The Reformation in England*, 5th ed., London, Burns and Oates, 1963, vol. 2, p. 165). It is a pity the Plumstead case did not have to go to the appeal court, for clearly if reservation is legal, if no mode is prescribed, and if the judgments of higher courts can be disregarded, chancellors can issue at will faculties for pyxes, tabernacles or sacrament houses, no less than for aumbries, without having recourse to Series 2.

It will be noted that up to this point Chancellor Garth Moore had consistently argued that reservation was legal, and had twice given judgment to that effect. He was still arguing in this vein in 1965, when he wrote his *Introduction to English Canon Law* (Oxford, Clarendon Press, 1967, pp. 74-76). In his 1967 judgment, however, he freely admits that when he gave his earlier judgments reservation was in fact illegal, claiming instead that Series 2 has now changed the law. Probably, therefore, one need not give great weight to his earlier judgments, which involved serious errors of fact and conflicted with the judgment of a higher court, and which he himself now admits were mistaken.

The Series 2 Rubric

THE rubric on which Chancellor Garth Moore based his 1967 judgment stands at the end of the Series 2 service, and runs as follows:

> '40. What remains of the consecrated bread and wine which is not required for purposes of Communion shall be consumed immediately after all have communicated, either by the Priest, or by one of the other Ministers while the Priest continues the service; or it shall be left upon the Holy Table until the end of the service, and then consumed.'

The same rubric appears in the same position in the Series 1 service, having been borrowed from Series 2, as is explained by a former member of the Liturgical Commission (letter of January 30th, 1970):

> 'I certainly drafted it . . . it certainly appeared first in Series 2, and was afterwards borrowed by those who drafted Series 1.'

The rubric has also been carried to other countries, where Series 2 is in use or exercises influence, and it was reproduced in substantially the same form in the 1969 edition of the Australian revision; so it is far from being a merely local danger. Serious concern has been expressed in the Australian church press about the bearing which the English legal judgments have upon their own service, but the rubric remains unaltered in the 1971 edition of the Australian revision.

When Series 1 and Series 2 were first published, in 1965, it was recognised by evangelicals that the rubric was intended to prepare the way for reservation (see *Towards a Modern Prayer Book*, Marcham, 1966, p. 43f.), but it was thought that the ambiguous phrase 'which is not required for purposes of Communion' could not be interpreted as actually introducing reservation so long as the only authorised method of administering communion outside public celebrations of the sacrament was the form for the Communion of the Sick in the 1662 Prayer Book, which prescribes consecration at the bedside. Chancellor Wigglesworth may at the time have shared this view, since he assured the House of Laity that nothing in the Series 1 Communion service contravened the doctrinal restrictions of the Alternative Services Measure (*Church Assembly Report*, Autumn 1966, p. 811). The bishops certainly shared this view, since they thought it necessary, when revising the 1928 Communion service for its reappearance as Series 1, to omit the rubric authorising reservation, and to replace it by rubric 40 of Series 2; and at the last minute they left out altogether from the collection of Series 1 services the 1928 service for the Communion of the Sick by the reserved sacrament. The latter still appears on the Contents page of *Alternative Services: First Series* (London, SPCK, 1965), but when one turns up the page there referred to, all one finds is a pasted slip reading 'A form of service and rubrics are under consideration'. The bishops clearly felt that on this explosive issue—the issue on which the 1928 Book foundered—it was wiser to hold their hand and appoint a committee; but as the committee appointed proved unable (so it is said) to reach agreement, the service has still

not appeared. The net result was that the matter of reservation was not discussed in the Convocation and House of Laity debates on Series 1 and Series 2, and was hardly discussed in the domestic debates among evangelicals whether to use the new services; and people now find themselves in the entirely false position of being told by the law courts that, quite unknowingly, Church Assembly has authorised, and evangelicals have started to use, a service which legalises (and legalises in an entirely unguarded form) this most controversial of all liturgical practices. If the Series 2 rubric, as interpreted by Chancellor Garth Moore, is allowed to stand, there would seem to be no legal obstacle to any form of reservation (as the Chancellor's judgment indeed states) or to any form of devotion to the reserved sacrament, since all of these are ultimately followed by reception, and so come under the umbrella of reservation 'for purposes of Communion'. If there were any sign that ecclesiastical lawyers were prepared to challenge the interpretation of the rubric given by Garth Moore, things might be different, but as it is his judgment has been quoted without demur in two further cases, and every ecclesiastical lawyer whom the writer has consulted agrees with Garth Moore's interpretation, as being legally correct, though several of them regard such a method of legalising reservation as very undesirable.

The Matter Raised in the General Synod

IN this situation, the rubric obviously had to be taken back to those who composed and authorised it. Consequently, at the opening sessions of the General Synod, in November 1970, when the question of extending the authorisation of Series 2 till 1972 was under discussion, Mr. P. H. C. Walker, a solicitor member of the House of Laity, raised the matter of the rubric. He made a formal request of Canon R. C. D. Jasper, the chairman of the Liturgical Commission, that before the amended text of their service was presented to the Synod, the Commission should take the necessary steps to meet the problem which rubric 40 had entailed. Mr. Walker's words were these:

> 'It is unfortunate that this rubric has become the subject of a question in the consistory court in Gloucester, where it was described as "altering the law of the Church of England". I am asking for this issue to be squarely faced before the matter comes back in two years' time, and that we have some constructive proposals for dealing with that' (*General Synod: Report of Proceedings*, Autumn 1970, p. 72).

The Series 3 *Rubric*

THE amended text to which Mr. Walker was referring has now been published as *Holy Communion: Series* 3 (London, SPCK). It will be debated by the General Synod in November and February, with a view

to its coming into use (if approved) in July, when the extended period of authorisation for Series 2 expires. But can it be approved in the form now published? The answer to this question partly depends on the sort of response which the Liturgical Commission has made to Mr. Walker's request. The rubric in Series 3 which corresponds to Rubric 40 of Series 2 runs as follows:

> '36. Any consecrated bread and wine which is not required for purposes of communion is consumed at the end of the administration, or after the service.'

It will be seen that this is substantially the same rubric, much more briefly expressed, but retaining the crucial phrase 'which is not required for purposes of communion', on which Garth Moore's judgment was based. It would seem, therefore, that the Liturgical Commission has not heeded Mr. Walker's request. All that it has done is to pit its own opinion against the opinion of the lawyers, and to assert in its commentary on the service that the rubric 'leaves entirely open' the matter of reservation (*A Commentary on Holy Communion: Series* 3, London, SPCK, p. 27). But on a question of law, it is the opinion of the lawyers that matters. It must now be taken as certain that the Series 2 rubric does legalise reservation, and it seems fairly clear that the Series 3 rubric does the same. What, then, is the next step? It is surely for the General Synod to act, and itself to make the change which the Liturgical Commission had declined to make. Only thus can the Church's synods be cleared of the stigma of having legalised reservation by mistake, without knowing what they were doing; only thus can Series 3 be brought into clear conformity with the doctrinal requirements of the Alternative Services Measure, under which it would be authorised; and only thus can the hope of united action over Prayer Book revision, with evangelical participation, be kept genuinely alive. Evangelicals have never been unwilling to discuss the pro's and and con's of reservation, but no one need be surprised if they refuse to discuss them so long as the issue is prejudiced by the Series 2 or Series 3 rubric.

Note. Since this article went to press, the Dean of the Arches and Chancellor Buckle have kindly read it through and informed the writer that they have no objection to anything it says, except that the statement quoted from C. E. Pocknee that a faculty was granted for the sacrament house in the rebuilt church of St. Mary-le-Bow, London, is incorrect. Furnishings introduced at the rebuilding of a church under the Reorganisation Areas Measure of 1944 did not require a faculty. Consequently, the only faculty for a sacrament house which is definitely known to have been granted is that issued by Chancellor Garth Moore to the parish of St. Lawrence, Mickleton. This faculty (so the Vicar of Mickleton has been good enough to inform the writer) was granted in 1961.