Crown and Canon: An Address to the Annual General Meeting of the Prayer Book Society[1]

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The Book of Common Prayer is an integral part of an Act of Parliament. That is naturally so, because the Church of England is that Church of which the supreme governor on earth is the Crown of the United Kingdom. In making law, which has to happen if the *Book of Common Prayer* is altered or allowed to be altered, the sovereign acts by and with the consent of Parliament.

The members of the Church of England are therefore, in respect of the law, bound by Acts of Parliament. That might appear—indeed, it does appear to those outside—to be a bleak conclusion; but our duty, as members of the Church of England, to obey the law of the land is not only our identity. It is also our necessity.

Our possessions include the books of the New Testament; but without interpretation those books do not, as the Old Testament did for the Jews, prescribe how we shall worship together nor indeed (if we are to be candid with ourselves) what we are to profess to believe. [Please pardon my use there of the word 'profess', but it is indispensable: since the heart of man is secret, what he believes is for all practical purposes of his relationship with his fellows what he publicly states to be his belief.] In order to worship together and to profess a common belief we need something more than a book: we need authority; and the law of England is for us that authority. It was our refuge, and remains our refuge still, from accepting an authority extraneous to this realm, as the papacy is acknowledged by the members of the Roman Catholic Church. It also differentiates us from our fellow Christians in the so-called free churches, who have various other methods of deciding for themselves what they shall profess and how they shall worship.

All religion is a matter of 'must', a matter of authority. We act, think and worship as we do, because we must. No direct line leads from any book, however sacred, to a creed or a liturgy, unless and until that book has been interpreted in a manner which carries authority. Religion's 'must' may have, or we may believe it to have, many different sources. There is

the 'private judgment', to which the dissenter appeals. There is the custom and opinion into which the individual happens to have been born. There is also the same authority which rules and regulates the rest of his existence. When we enquire about a religion, we enquire about the nature of its 'must', which may or may not be explicit.

About the religion of the Church of England, the nature and source of authority is exceptionally explicit: it is the Church of which the Crown of England is the supreme governor. The definition is plain, indisputable and comprehensive. It is a definition which applies to no other part of the Christian Church. A Christian cannot repudiate that authority and still claim to belong to the Church of England or, to give to *ecclesia Anglicana* its more accurate and historically correct translation, to 'the Church *in* England', [words which I pronounce in the full consciousness of the weight which the definite article 'the' gives to 'Church', even when geographically qualified by the spatial expression 'in England'.]

The statement that the Crown governs the Church endows the word 'govern' with a specific force; for there are certain statements which we are entitled with full conviction to make about that word 'govern'. Above all and first of all, it does not, can not mean, never does mean 'governs arbitrarily' or 'governs autocratically'. 'Supreme' is plain enough and means free from any concurrent or antagonistic source of authority; but 'supreme' does not and cannot make the government of the Crown arbitrary. We are governed—and we pray to be 'godly and quietly governed'—under the Crown by our own consent, because, as an end product of our continuous history as a people down to the present time, we have freely and heartily consented so to be governed.

The Crown therefore as 'on earth supreme governor of the Church in England' is a Crown which governs the Church by consent; and that same history to which I have appealed enables us to define what 'consent' in that context has to mean.

I will make bold to take upon myself to go further and to assert what it means to say that the Crown governs the Church of England by consent. The Crown does so by making law and in no other way—neither by example, nor by precept, nor by persuasion but, quite definitely and precisely, by making law. We can breathe a little more easily now; for we can ascertain how the Crown makes law simply by opening and perusing any piece of legislation:

> Be it enacted . . . by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled and by the authority of the same, as follows.

A command or enactment to which those words are not prefaced is not law, neither are you and I bound by anything done or ordered otherwise than in pursuance of such an enactment. The 'advice and consent' conveyed to the Crown by the Crown's Ministers is the advice and consent of

both Houses of Parliament; but in the case of law affecting the Church the Crown bound itself, in the statute which created the General Synod, that it would only make law in terms put forward,upon certain conditions, by the General Synod itself. Note that the Crown did not promise that it would legislate whatever the General Synod proposed—only that it would *not* legislate otherwise than in terms which the General Synod had proposed. The decision whether to legislate or not remains a decision of the Crown acting with the advice and consent of both Houses of Parliament. In tendering that advice the Houses of Parliament remain unfettered. So we are entitled to enquire upon what grounds the Crown could or should be advised not to legislate.[2] I can see two such grounds, and both apply to a decision which is pending at the present time.

The principal Act defines the minimum majorities in each of its Houses by which the General Synod may propose legislation at all; but I submit that the Crown is within its rights in considering not only *whether* those majorities have existed but by what margin they were obtained, especially in any context where differences are profound and deeply felt. It must surely be within the right and duty of the Crown's advisers to weigh that consideration maturely, and not to regard the Crown's statutory authority as pedantically and automatically predetermined.

There is a further consideration which can and ought to be taken into account. It is a consideration close to the concern of this Society with the text of the *Book of Common Prayer*. That book is safeguarded by being verbally and integrally part of the law of the land. The power of the Crown to make law is exercized directly—and necessarily so, because all the procedures of Parliament are concerned with the control of law directly made. What the Crown cannot do is to transfer into other hands the power to make or change the law. The Crown is not legislating by consent if and when it enacts that some other body shall or may have power to legislate. It is a breach of constitutional propriety for the Crown to take refuge from its responsibilities by purporting to enact that such and such provision may be made by Canon.

There is a confusion that can easily arise here, because of the modern habit of enabling Ministers to make legislation by order—something that goes under the name of subordinate legislation. 'Legislation' it is, because a regulation or order made in accordance with an enabling statute is itself part of the law of the land. It would be wrong however to support that Parliament could or would escape the labour and burden of passing Acts of Parliament simply by enacting that Ministers might make such and such regulations or orders. It is obvious that that would be an evasion of the duty of the Crown to legislate by consent: subordinate legislation becomes an abuse unless it is implementing in detail the spirit and intention of what has been laid down by statute. To purport to define that spirit and intention by order is an abuse. What Parliament cannot do, in the face of a decision of principle, is to purport to create a power to take that decision by an

instrument outside the scope of the controls which apply to the making of statutes. No plea of convenience or efficiency can override that simple assertion of what is fair, just and reasonable.

If Parliament had wished to enact that the Crown could do this or that by Canon without the safeguards written into the constitution of the General Synod, it would have done so; but it did not. It is inconsistent with the condition of consent attendant upon the power of the Crown to make through Parliament the law of the Church of England that the law should be made secondhand or at one remove.

I have argued thus far that a Measure implementing the resolution of the General Synod in favour of altering the natural meaning of the Ordinal would be legislation lacking the necessary consent that ought to be attendant upon all new law. That leaves behind still unanswered the question of obedience. The citizen is not at liberty to look behind the face of a statute and, if he find it to have been in his opinion made without the due accompaniment of consent, to decline to obey it. The political process cannot be substituted for the legislative process: the political argument 'this statute ought not to have been made' cannot invalidate the legislative force of a statute once it has been made, otherwise there would be no finality and in the end no ordered society.

What I have been putting forward is suitable in my opinion to be put forward against the decision to make a particular law. It is not an argument against the validity of that law, once made. We in the Church of England, and especially we who hold the *Book of Common Prayer* dear, have placed our trust and our dependence upon the law of our land. To that law we cannot without self-contradiction refuse our obedience. So what can we do?

Let me go back a moment to consent. We the electorate, when we elect a House of Commons, place in commission with our representative there the function of advising and, if thought fit, consenting to proposed legislation. We can legitimately urge them to advise in that a matter of such great moment the circumstances do not exist in which legislation will carry the necessary consent. To do that is fully in accordance with our constitutional rights and consistent with our respect, as members of the Church of England, for the authority of the law of England, duly made.[3]

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NOTES

1 Given at the Painter Stainers' Hall, London, 26 June 1993.

2 The Ecclesiastical Committee of Parliament voted to deem the Priests (Ordination of Women) Measure expedient on 12 July 1993. **Ed.**

3 As a journal of record, the *Churchman* is pleased to include this important contribution to the present debate. **Ed.**