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The Righter Trial and Church Discipline

Stephen F Noll

This second of two articles by Dr Noll was initially prepared as a paper at the request of the judges of the Episcopal Church Court in the trial of Bishop Walter Righter for clarifications on the question of Church discipline. It is intended to complement the earlier one on The Righter Trial and Christian Doctrine, parts of which were incorporated into the Presenters' paper on doctrine of 1 February 1996 and which was published in Churchman vol 110/3 1996.

The relationship of doctrine and discipline, terms repeatedly mentioned in tandem in Church formularies, is complex and relevant not only to this particular trial but to the larger moral crisis facing the Christian churches today. It seemed right, therefore, to step back a pace from the details of the Righter trial and lay a theological foundation for the whole issue.

The paper was written in consultation with the Presenters' counsel and was submitted as a reference to their memorandum due on 25 March 1996. Its overall conclusions are consonant with the Presenters' case, but details of the argument are the responsibility of this author alone.

What are Doctrine and Discipline?

Doctrine, as noted previously, may be defined as 'communally authoritative teachings regarded as essential to the identity of the Christian community', particularly as revealed in Scripture and summarized in the Church's official formularies.¹

Discipline may be defined as 'the totality of ecclesiastical laws and customs regulating the religious and moral life of the Church. In this sense it comprises all Church activities not regulated by Divine law, such as the administration of the Sacraments, offices, feasts, devotions, etc'.²

Doctrine includes not only fundamental beliefs about God, but also about human nature, about institutions such as the Church, sacraments, and marriage, and about *moral norms*. Because the latter institutions and

1 Alister McGrath 'Doctrine and Dogma' *The Blackwell Encyclopedia of Modern Christian Thought* (Oxford: Blackwell 1993) p 112

2 *Oxford Dictionary of the Christian Church* 2nd edn F L Cross ed (Oxford: Clarendon) p 409

norms are part of the political character of the Church, they must be ordered and enforced by discipline and are often confused with discipline itself. The operative words distinguishing doctrine and discipline are *truth* and *substance* on the one hand, and *form* and *order* on the other. Both doctrine and discipline originate with God, but one is unalterable (though not necessarily accessible or transparent) and the other variable. 'Variable' does not mean that discipline can be changed topsy-turvy. The limits of variation are set by doctrine and reason.

The Biblical Understanding of Discipline

The biblical understanding of discipline is rooted in God's marvellous ordering of the world and his people. Psalm 19 captures the manifold wisdom of God: 'The heavens are telling the glory of God... the law of the LORD is perfect, reviving the soul... may the words of my mouth and the meditation of my heart be acceptable in thy sight.' God's word is embedded in the regularity of creation, revealed in Scripture as a lamp to our feet, and returned to him in our prayers and praises and in our right use of reason.

The predominant motif of discipline in the Old Testament is covenant Law. The Law is founded on the holy character of God, and it prescribes a specific moral and political order for Israel:

See, I have set before you this day life and good, death and evil. If you obey the commandments of the Lord your God which I command you this day, by loving the Lord your God, by walking in his ways, and by keeping his commandments and his statutes and his ordinances, then you shall live and multiply, and the Lord your God will bless you in the land which you are entering to take possession of it. (Deut 30:15-16)

The Old Testament Law is a theocratic 'way', which is later developed in Judaism as *halakah* ('walking'). The fundamental identity of the Israelite or Jew is that of a law-keeper, whose beliefs (orthodoxy) are known largely from his observances (orthopraxy). The salvation promises are the goal or reward of covenant obedience.

The New Testament reverses the emphasis between Law and the now fulfilled promise of salvation. Each of the Gospels climaxes with the mighty act of salvation in the Cross and Resurrection. The primary question faced by the apostolic Church was whether it still lived under the legal authority of the old covenant. This issue was settled decisively in favour of St Paul's 'freedom in the Spirit'. The coming of the Holy Spirit means that Christians are now free to perform acts of love 'against which there is no law' (Gal 5:23; cf 2 Cor 3:7-18).

The initiation of a new covenant in the Spirit does not mean, however, that love is amorphous or that there are no norms of Christian behaviour nor pattern of church order. According to Jesus' Great Commission, the Church is to *evangelize* and to *teach his commandments*. Discipleship, according to the New Testament, involves a wholehearted commitment to follow Jesus personally and to obey his words (Matt 7:24-7; John 14:24). It is not surprising that the earliest description of Christianity was simply 'the Way' (Acts 9:2). The early Church provided a matrix of apostolic teaching and fellowship, breaking of bread and prayers (Acts 2:42), ie doctrine, discipline, and worship.

The Epistles generally move from proclamation (*kerygma*) to moral and spiritual exhortation (*didache*). The fact that the churches did not have a legal constitution like ancient Israel did not mean that there was no common discipline among the early Christians. Paul refers frequently, whether implicitly or explicitly, to that 'standard of teaching [*didache*]' (Rom 6:17) which he had received through the Church, ie apostolic tradition.

For Paul this tradition, which was undoubtedly a part of baptismal instruction, covers the basic norms of the whole Christian life: 'As therefore you received Christ Jesus the Lord, so walk in him, rooted and built up in him and established in the faith, just as you were taught, abounding in thanksgiving' (Col 2:6-7). The tradition covers various topics:

The Gospel – Gal 1:9; 2:16; 1 Thess 2:13; 2 Tim 3:14

Doctrines – 1 Cor 3:16; 15:1-3; 2 Thess 2:5,15; James 4:4; 1 John 2:18-21; 3:2,14; 5:15-19

Church order – 1 Cor 4:6-7; 11:2,16; Phil 4:9

Worship and sacraments – Rom 6:3; 1 Cor 11:23-6

Morals – 2 Thess 3:6; 1 John 3:14

Sexual discipline – 1 Cor 6:9-11,15-20; Eph 4:20-4; 5:3-5; 1 Thess 4:1-6

Paul expected Christians in one church to respect and follow the practices of the other churches (1 Cor 11:16; 1 Thess 1:14). At the same time, his letters show Paul willing to allow considerable variation in church order and a desire to persuade rather than command Christians to seek the mind of Christ.

The Rule of Faith

The apostolic tradition came to be known as the *Rule of Faith* (Greek: 'rule of truth'). The patristic writers discerned in the structure of Scripture itself

a coherent pattern of meaning akin to what Paul calls 'the obedience of faith'. One scholar recently described the character of the Rule in this way:

When we look at the Rule (or even the Apostles' Creed for that matter) through modern eyes, we see a propositional statement and, perhaps, a confession of faith at best. While the Rule was certainly both of these, it was far more. The Rule embodied the living fabric of the Christian Church together with its *doctrine, morality, and liturgy*. In other words, what was handed down (*traditio*, from which we derive tradition) was not simply a set of beliefs or ideas, but a *system of life, a praxis, a faith, a reality*.³

Like Paul's notion of tradition, the Rule of Faith covered all the major areas of theological and moral doctrine and church order and worship. However, the permanent substance of the Rule had to be tested by what was historic (ie apostolic) and what was ecumenical. This test later developed into the Vincentian rule of judging doctrine by 'what has been everywhere and always believed by all people'.

With regard to sexual morality, there was indeed a consensus in the early Church, which DiPuccio has described in this way:

If, as I have contended, the Rule of Faith embodies both the doctrinal and moral matrix of apostolic Christianity, then there is no question as to the teaching of the Bible or the practice of the apostolic church concerning human sexuality: From the *Didache* to Augustine, the prototype in Genesis (1:17; 2:23-4) stands as the pattern by which all sexual relations are measured in Scripture..... Consequently all sexual acts outside of marriage are immoral.

I might note, in the way he has expressed it, that the moral discipline of the Church was based on the dogmatic foundations of creation and human nature.

The Classic Anglican Distinctions between Doctrine and Discipline

The distinction between doctrine, including moral norms, and discipline was important in the formation of classic Anglicanism. As has recently been noted 'Anglican moral theology stands firmly in the context of dogmatic and spiritual theology'.⁴

At the time of the Reformation, the Roman Catholic Church, with its

3 William DiPuccio 'Hermeneutics, Exegesis, and the Rule of Faith' *Premise* 2/9 19.10.95 p 5; his italics

4 Nigel Biggar 'Ethics' *The Blackwell Encyclopaedia of Modern Christian Thought* (Oxford: Blackwell 1993) pp 169-70

notion of infallible tradition, had elevated discipline, as embodied in the canon law, to a place of equal obligation with the basic truths of the Gospel. In so doing it had blurred the lines of the Rule of Faith and mixed 'weightier matters of the Law' with indifferent matters. Under the Roman discipline, Christian morality was governed by a precise casuistry of virtues and vices with accompanying rules of confession and penance. It was against this system that Martin Luther wrote his famous tract *The Freedom of the Christian*.

Calvinism, the particular branch of the Reformation that took root in the Elizabethan Church of England, tended also to make doctrine and discipline indistinguishable. The Puritan disciples of Calvin argued that the Church was subject to one uniform 'godly discipline'. This discipline, modelled not surprisingly on the theocratic constitution of Israel, included theological beliefs, moral commandments, and church order, all of which it claimed to find specifically revealed in Scripture. The Church was merely to apply the plain words of Scripture to every department of faith, life, and society.

Over against the monolithic 'discipline' of Rome and Geneva, the basic Anglican divisions of doctrine and discipline are set out in the structure of the Thirty-nine Articles, which consist of theological foundations (Articles I-V), the rule of faith and practice (Articles VI-XVIII), and matters of church order (Articles XIX-XXXIX). It was the great contribution of Richard Hooker (c 1554-1600) to Christian theology, and to Anglican thought in particular, to develop the Anglican view by means of a fully nuanced set of distinctions. These distinctions continue to inform the understanding of doctrine and discipline in the Prayer Book, Oath of Conformity, and Canons.

Hooker agreed on one point with Catholics and Puritans: all reality derives from the eternal, orderly law of the transcendent Creator, which 'can have no show or colour of mutability'. Human beings conform to these laws in two ways: through knowledge of the truth and exercise of virtue (*Laws* I.5.3). The complicating factor, according to Hooker, is that God's eternal will for humanity is mediated in several kinds of laws, including the *law of natural reason*, the *revealed laws* given in Scripture, and *positive laws* of Church and state.

We encounter God's laws, he argued in his classic *Laws of Ecclesiastical Polity*, in mixed combinations, which require several careful distinctions.

A The Distinction between Natural and Supernatural Laws

Many biblical commands, while communicated by means of revelation, can also be derived rationally from nature: 'When supernatural duties are

necessarily exacted, natural are not rejected as needless' (*Laws* I.12.1). Moral principles like 'Thou shalt not commit adultery' and virtues like chastity are, upon reflection, simply reasonable. For this reason, doctrine need not only involve the revelation of a supernatural mystery but may include natural laws as well.

This does not mean that God's commands are superfluous. Because sinful human beings are not simply reasonable, God reveals his moral will supernaturally in order to make it perfectly clear and obligatory: 'God hath delivered a law as sharp as the two-edged sword...which the Law of Nature can hardly, human laws by no means possible, reach unto' (*Laws* I.12.2).

A contemporary example of the measured use of reason operating within and under the revealed purpose of the Gospel is found in the 1995 *St Andrew's Day Statement*, issued by a group of the Church of England's leading theologians [reprinted in full in *Churchman* vol 110/2 1996]:

Many competing interpretations of the phenomena [of homosexuality] can be found in contemporary discussion, none of them with an unchallengeable basis in scientific data. The church has no need to espouse any one theory, but may learn from many. To every theory, however, it must put the question whether it is adequate to the understanding of human nature and its redemption that the Gospel proclaims....

The primary pastoral task of the church in relation to all its members, whatever their self-understanding and mode of life, is to re-affirm the good news of salvation in Christ, forgiveness of sins, transformation of life and incorporation into the holy fellowship of the church. In addressing those who understand themselves as homosexual, the church does not cease to speak as the bearer of this good news. It assists all its members to a life of faithful witness in chastity and holiness, recognising two forms or vocations in which that life can be lived: marriage and singleness (Gen 2:24; Matt 19: 4-6; 1 Cor 7 *passim*). There is no place for the church to confer legitimacy upon alternatives to these.

B The Distinction between Moral Law and Legal Code

Moral law, according to Hooker, exists prior to particular legal codes, and yet it is embodied to some extent in every code of discipline and most importantly in the biblical legal code. Thus 'in Scripture God both collected the most necessary things that the school of nature teacheth unto that end' [ie salvation] (*Laws* III.3.3). Dorothy Sayers makes this same point when she writes:

At the back of the Christian moral code we find a number of pronouncements about moral law, which are not regulations at all, but which purport to be statements of fact about man and the universe, and upon which the whole moral code depends for its authority and its validity in practice. These statements do not rest on human consent; they are either true or false. (*The Mind of the Maker* p 11)

The Episcopal Church's marriage Canon (Title I.18) gives an unusual glimpse of the hidden moral principle standing behind a particular disciplinary regulation. According to the Canon, each couple is required to sign the Declaration of Intention, which states the biblical purposes of marriage. (The introduction in the Prayer Book marriage service reiterates these purposes.) The doctrine of marriage does not depend on the existence of the Canon; nevertheless the legal code employs the Declaration of Intention to ensure that couples do not enter into marriage unadvisedly or lightly and that they understand the moral law contained in the Christian marriage covenant.

It has recently been claimed *ad nauseam* that the Episcopal Church changed its doctrine of marriage when it revised Title I.18,19 in 1973. On the contrary, no one argued at that time that they were changing the doctrine of marriage, only that they were changing the application of the exception provisions of Scripture to allow for more pastoral discretion in matters of divorce. In the Declaration of Intention and in the 1979 marriage rite itself, the key principles of Christian marriage – that it is a union of one man and one woman, that its purposes include mutual fellowship and the procreation of children, and that it is lifelong in intent and unbreakable in the perfect will of God – were retained. So the change of Canons did not *officially* change the moral doctrine of marriage. If, in fact, the result of the present marriage discipline has been to undermine the biblical doctrine, then this is good reason indeed to consider revising the Canons again to promote the Christian institution in our divorce-riddled culture.

C The Distinction between Articles of Belief and Matters of Outward Order and Ceremony

Hooker is the quintessential source of the classic Anglican understanding of doctrine and discipline in terms of *unchangeable substance* and *variable form*.

Touching points of doctrine, as for example, the Unity of God, the Trinity of Persons, salvation by Christ, the resurrection of the body, life everlasting, the judgment to come, and such like, they have been since the first hour that there was a Church in the world, and till the

last they must be believed. But as for matters of regiment [discipline], they are for the most part of another nature. (*Laws* III.10.7)

Superficially, Hooker may seem to support Bishop Righter's claim that doctrine deals with our relationship to God and discipline with our relationship to one another. The true comparison, however, is between articles of belief on the one hand and matters of 'outward order and polity' on the other. Later in the same section, Hooker expands his definition of articles of belief to include 'things which all men must of necessity *do* to the end that they may saved'. Thus Hooker follows Augustine (*Epistle* 54) in identifying 'faith and morals' as unchangeable, and custom or discipline as variable. This leads then to three categories:

Articles of belief (dogmas) are unchangeable and grasped by an act of faith, but contextually they are applied in the spiritual discipline of individual prayer and corporate worship through recitation of Creeds.

Moral precepts are unchangeable in that they are founded on the truths of dogma, but contextually they are applied by habits, customs, and decisions in the active life of the individual and the Church.

Disciplinary structures and regulations are unchangeable in terms of the general institutions of Church and sacraments insofar as they are determined by doctrine, but they are changeable in particular matters of training, organizing, administering, and censuring the individual and corporate life of worship and action.

Why then the distinction between dogmas and morals, since both are unchangeable? Hooker explains that these 'precepts concerning works of charity' differ from articles of belief in that they require *actions* rather than *faith* (*Laws* III.3.2). Dogma formulates the truth of God's free gift of salvation in Christ received by faith; discipline administers the truth of moral action.

D The Distinction between Prudential Advice and Essential Moral Precepts in Scripture

Hooker in a certain way anticipated modern 'higher criticism' by pointing out that in the Bible moral truth is conveyed in various forms: by language of proverbial advice, legal casuistry, and binding command. While the Puritans treated every 'rush or straw' in Scripture as equally binding on the conscience, Hooker focused on those duties which are bound up with the end or goal of the biblical revelation, which is eternal salvation.

By Scripture it hath in the wisdom of God seemed meet to deliver unto the world much but personally expedient to be practised by men; many deep and profound points of doctrine as being the main original ground whereupon the precepts of duty depend... (*Laws* I.13.3)

For Hooker, doctrine grounds and sets the parameters of all moral virtues and actions, but human beings and institutions have a measure of freedom and discretion in the living out of the Christian way. Thus the institution of marriage of male and female ‘from the beginning’ and the Seventh Commandment forbidding adultery form a doctrinal core from which derivative disciplinary Canons in church and state governing sexual behaviour may flow.

The interplay between principle and prudence explains why the Church needs several levels of authority in carrying out its discipline. There cannot be one rulebook – not even the Bible, much less a human code – that can answer every moral question.

E The Distinction between the Plain Sense of Scripture, the Corollaries of Reason, and the Weight of Tradition

Hooker is often identified as the author of the three-source theory of Anglican authority: *Scripture, tradition, and reason*. In fact, these three concepts seldom occur together in his writings; and, when they do, they can hardly be described as a three-legged stool, an image that implies an equal authority of all the sources. The following passage is a *locus classicus* in this regard:

The Church hath authority to establish that for an order at one time, which at another time it may abolish, and in both it may do well. But that which in doctrine the Church doth now deliver rightly as truth, no man will say that it may hereafter recall, and as rightly avouch the contrary. Laws touching matter of order are changeable, by the power of the Church; articles concerning doctrine not so.... Be it in matter of one kind or of the other, what Scripture doth plainly deliver, to that the first place both of credit and obedience is due; the next whereunto is whatsoever any man can necessarily conclude by force of reason; after these the voice of the Church succeedeth. (*Laws* V.8.2)

Several observations about this passage are in order. First of all, the plain teaching of the Bible is authoritative: it calls for ‘credit [belief] and obedience’. These dual terms suggest the distinction noted above that doctrine includes matters of faith and morals. For instance, once the sense of the exhortation to ‘flee fornication’ (1 Cor 6:18) is determined by

exegesis of the New Testament, the resulting doctrine will be included in the ordering of the Church's life. The Church may devise Canons and pastoral discipline as it thinks best to deal with those who violate this doctrine, but to deny the doctrine in practice is immorality and to deny it by word or judgment is heresy.

Secondly, Hooker is convinced that because revelation and reason both proceed from the same eternal law of God, there will be many corollaries that can be reasonably derived from Scripture. In the Sermon on the Mount, Jesus authorizes such a reasonable, if challenging, extrapolation from the divine Law (Matt 5:17-48). The Catechism follows the same logic when it interprets the Seventh Commandment to teach that we should 'use all our bodily desires as God intended' (*Book of Common Prayer* p 848). One can conclude, therefore, both from the biblical mandates of exclusive monogamy and from the natural human end of self-preservation, that contemporary practices of same-sex unions would be immoral and unexemplary.

Finally, while Hooker places great confidence in the plain sense of Scripture and in the ability of reason to work from its central tenets, he adds the 'voice' or 'ancient practice' of the Church as confirmation, especially in the sense that other believers have interpreted the text reasonably in the same way. The universal interpretation of the biblical texts on homosexuality through time and across ecumenical lines would provide, for Hooker, not irrefutable proof but a very strong argument against change.

F The Distinction between 'Authority to Convince' in Matters of Doctrine and 'Authority to Command' in Matters of Discipline

The distinction between the power to convince and the power to command is central to the logic of Article XX 'Of the Authority of the Church'.⁵ This key article is at the heart of the classic Anglican understanding of the relationship of doctrine and discipline:

The Church hath power to decree Rites or Ceremonies, and authority in Controversies of Faith: And yet it is not lawful for the Church to ordain any thing that is contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and keeper of Holy Writ, yet, as it ought not to decree any thing against the same, so besides the same ought it not to enforce anything to be believed for necessity of Salvation.

5 Oliver O'Donovan *On the Thirty-Nine Articles: A Conversation with Tudor Christianity* (Exeter: Paternoster 1986) pp 97-9

The Church exercises a limited but crucial ‘authority to convince’, to enforce right doctrine among its people and in particular among the clergy. The *basis* for enforcing doctrine is the truth of God as focused in the unified teaching of Scripture as necessary for salvation. The normal *means* of exercising this authority is persuasion and admonition; but especially in the case of clergy, the Church enforces doctrine by means of its disciplinary Rubrics and Canons. In the present case, the charge against Bishop Righter has been based on his alleged ‘holding and teaching’ false doctrine, but the process by which he has been charged is spelled out in the Canons (specifically Title IV).

The ‘authority to command’ includes discretionary authority in ‘indifferent’ matters of rites and ceremonies. The good order of the Church, ‘maintaining the unity of the Spirit in the bond of peace’, while it is not a matter of one’s personal salvation, is necessary for the Church to edify its people and to make its witness to the world. Resolutions of General Convention, even if they did not touch on essential truths, would carry disciplinary authority under this power to command.

In Richard Hooker’s day, the Puritans who insisted that all discipline was a matter of revealed truth were the ones who prophetically violated the human laws of the Church. The comparison with the present situation is ironic because the Puritans insisted that Church law be supported by specific biblical proof-texts, while today’s revisionists make vague appeals to ‘the total biblical witness’ and ‘biblical inclusiveness’.

Basing himself on the distinction in Article XX, Hooker challenged his Puritan opponents with these words:

Laws that have been approved may be (no man doubteth) again repealed, and to that end also disputed against, by the authors thereof themselves. But this is when the whole doth deliberate what laws each part shall observe, and not when a part refuseth the laws which the whole hath orderly agreed upon. (*Preface 5.2*)

This understanding of church discipline articulates what Philip Turner has called the ‘ethics of oversight’ and the ‘ethics of dissent’ (see section below). Today’s puritans are those who, claiming conscience as their guide, seek to change the Church’s doctrine and discipline by simply asserting a new position and acting on it without consent.

The Prayer Book Preface on Doctrine and Discipline

I have taken considerable space to lay out the classic sources of the Anglican understanding of doctrine and discipline because they are at the heart of the question whether the charges against Bishop Righter have

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been properly brought.

It has been argued, for instance, by Bishop Righter's counsel that the Bishop has not violated doctrine under Title IV.1.1(2) and (6) on the basis of the 1789 Preface to the American Prayer Book (*Book of Common Prayer* p 9). This Preface, which continues a succession of Prayer Book prefaces entitled 'Of Ceremonies', reads:

It is a most valuable part of the 'liberty wherewith Christ has made us free', that in his worship different forms and usages may without offence be allowed, provided the substance of the Faith be kept entire; and that, in every Church, what cannot be clearly determined to belong to Doctrine must be referred to Discipline; and therefore by common consent and authority, may be altered, abridged, enlarged, amended, or otherwise disposed of, as may seem most convenient for the edification of the people, 'according to the various exigency of times and occasions'.

All would agree in principle that the Trinitarian dogma must be kept entire and that 'forms of public worship' may be altered, but do we seriously think the authors of the Preface believed it possible to white out one or more of the Ten Commandments from those colonial chancel plaques? And if abstinence from homosexual practice can be reasonably derived from the Seventh Commandment, as the Church has continually thought, then it is a *necessary* rather than an *accessory* matter (cf *Laws* III.3.4 for Hooker's argument that certain 'sustained duties' are of the substance of the Faith).

Even if Bishop Righter and his supporters were to argue that such passages of Scripture or deductions from them do not mean what we say they mean, or what the Church has consistently interpreted them to mean, they must accept that the *question*, as posed in the trial, is correctly put. It concerns doctrine. This 'controversy of the Faith' boils down to whether the Church has a teaching on sexual morality, based on Scripture, that would exclude a non-celibate homosexual from serving as a wholesome example to the faithful.

Conclusion

The Homily for Whitsunday in the *Book of Homilies* reads:

The true church is an universal congregation or fellowship of God's faithful and elect people, built on the foundation of the Apostles and Prophets, Jesus Christ himself being the head corner-stone. And it hath always three notes or marks: Pure and sound doctrine; The sacraments ministered according to Christ's holy institution; And the

right use of ecclesiastical discipline.

This classic definition makes clear that doctrine, fundamental institutions like the sacraments, and discipline are different things, but that all must function in harmony if there is to be an authentic church. Bishop Righter's ordination of Barry Stopfel constituted a breach of doctrine, because the Church's teaching on monogamy and abstinence cannot change and he has judged that it can. By this act, he simultaneously broke his ordination vows and breached the discipline of the Church. It will be the burden of the rest of this paper to show how the breakdown of doctrine has necessarily led to the undermining of the Church's discipline.

Question 1: The Disciplinary Authority of Church Resolutions

The Court, having heard argument as to the charge that Bishop Righter held or taught false doctrine in ordaining Barry Stopfel, addressed two additional questions relating to discipline. Having argued that doctrine and discipline must be properly distinguished, I now turn to these questions.

Do resolutions, statements, and/or actions of General Convention or the House of Bishops constitute disciplinary authority, as distinct from doctrine, a violation of which subjects a bishop, priest, or deacon to presentment under Title IV?

The question of how best to address matters of moral discipline is not new. Robert Prichard has given several examples from the nineteenth century Episcopal Church.⁶ Vices such as alcoholism, duelling, and gaming were addressed by various means, including Canon, General Convention Resolution, and Pastoral Letter.

Levels of Authority

More recently, the Church faced this question in the 1960s when Bishop James Pike took the 'prophetic' stance of denying fundamental articles of the Faith, while remaining a bishop. In response to this crisis, the General Convention in 1964 adopted a Statement on 'Levels of Authority within the Church', which accords well with the classic Anglican tradition of doctrine and discipline. The first point below describes what I have defined as doctrine, the other four what I have defined as discipline.

1 The Statement begins by grounding all authority in Holy Scripture and in the ecumenical expressions of biblical teaching, the Nicene and Apostles' Creeds.

⁶ 'Clerical Morality and Moral Discourse' *A Wholesome Example: Sexual Morality and the Episcopal Church* Robert W Prichard ed revised edn (Lexington Ky: Bristol Books 1993) pp 52-4

- 2 It goes on to cite the official formularies of the Episcopal Church, the Book of Common Prayer, and the Constitutions and Canons.
- 3 It then traces a descending chain of authority through General Convention, the House of Bishops, and the Presiding Bishop and Executive Council.
- 4 It distinguishes between the freedom of conscience which private members or unofficial groups in the Church have and the responsibilities of official bodies and representatives to '*commit the Church*' [emphasis added].
- 5 It concludes: 'The Holy Spirit of God is not to be bound. Yet the Church must act with a sense of order within itself, that God's word be spoken effectually to God's world and in charity within its own fellowship.'

If one accepts this Statement as an accurate articulation of the Anglican understanding of the 'authority to command', it follows that every action and pronouncement of General Convention or the House of Bishops or the Presiding Bishop and Executive Council carries with it some authority over the conscience of the faithful, but the higher the level of authority, the more serious the demand for attention and consent.

Twenty Years of Church Resolutions on Sex

In the case of the Church's sexual discipline, the House of Bishops spoke in 1977; the General Convention spoke in 1979, 1982 and 1988; the Presiding Bishop's Council of Advice spoke in 1990, and this was confirmed by the House of Bishops in September 1990. The General Convention spoke again in 1991 and 1994. In each of these Resolutions and Statements, the official authorities confirmed that it was not appropriate to ordain a non-celibate homosexual.

General Conventions do, of course, pass many resolutions which Hooker might term discretionary or prudential rather than normative. Sometimes these resolutions are not in accord with the conscience of many Episcopalians, including clergy. Frequently, they are granted the respect of silence rather than overt contradiction.

The case at hand, however, was not considered merely prudential, despite the claim of twenty bishops to the contrary. That this was so can be seen from the fact that the General Convention claimed to be 'reaffirming' a normative teaching derived directly from Scripture on the nature of marriage and of humanity as male and female:

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It is clear from Scripture that the sexual union of man and woman is God's will and that this finds holy expression within the covenant of marriage. Therefore this Church confines its nuptial blessing to the union of male and female. (1979 *Journal* B-226)

The Church of England's teaching, as articulated in 1987 and 1991, makes a similar appeal to Scripture:

The convergence of Scripture, Tradition and reasoned reflection on experience, even including the newly sympathetic and perceptive thinking of our own day, make it impossible for the Church to come with integrity to any other conclusion. Heterosexuality and homosexuality are not equally congruous with the observed order of creation or with the insights of revelation as the Church engages with these in the light of her pastoral ministry. (*Issues in Human Sexuality* 5.2 p 40)

Note also that both 1979 and 1991 statements from the American and English Church claim to employ the Anglican panoply of Scripture, tradition, and reason to undergird their 'disciplinary' resolutions.

Dissent from the Church's Discipline

It was no doubt to forestall or counteract the normative thrust of the House of Bishops' Statement of 1977 and the General Convention Resolution of 1979 that twenty bishops responded by issuing a 'Statement of Conscience'. This Statement made several assertions involving discipline that have been disputed ever since:

- 1 That the General Convention Resolution of 1979 is 'recommendatory and not prescriptive';
- 2 That bishops, in accordance with their vocation to be 'apostolic pioneers', may violate the express statements of the Church assembled;
- 3 That an appeal to conscience and to 'the total witness of Holy Scripture' can justify a bishop violating what the official body of the Church, not to mention the consensus of the ecumenical Church, has held to be the plain teaching of the Bible; and
- 4 That bishops have the power to 'determine' the fitness of candidates for ordination without being restrained by the Church's officially stated norms.

While this Statement was later printed in the *Journal* of the General

Convention (1988), it carries no authority from the General Convention, House of Bishops, Presiding Bishop or Executive Council. As noted above, it seems reasonable to interpret the repeated 'reaffirmations' of the 1979 Resolution by subsequent Church assemblies as intending to deny the claims made in the 'Statement of Conscience'.

Disciplining Bishop Spong

Although the dissenting bishops threatened 'not to implement' the 1979 Resolution in their dioceses, none of them in fact publicly violated the key disciplinary clause about ordaining an avowed non-celibate homosexual until 1989 when Bishop John Spong of Newark ordained Robert Williams.

The official response to the 1989 ordination came from all the levels of authority available within the Church's disciplinary structure. Since the General Convention was almost two years away, the Presiding Bishop asked his Council of Advice to address this action. The Statement by this Council of Advice not only reaffirmed the Church's traditional doctrine, but it made several points about discipline.

First of all, the Council argued that only General Convention could change the Church's official position:

Not all members of the church agree with this position, as they did not when the resolution was adopted in 1979. Nevertheless, short of action by the General Convention, it is the stated and authoritative position of the church at this time.

This statement denies the claim that a bishop may determine criteria for ordination by private prophetic action. A bishop may not unilaterally declare that he has 'determined' that genital homosexual relationships are appropriate in candidates for ordination when the Church has stated that it is not appropriate. Thus Bishop Righter's repeated claims that Barry Stopfel was 'qualified' begs the question before the Court.

Secondly, the Council of Advice made several strong statements about the threat to the Church's order caused by the Robert Williams ordination:

What is at stake is the *discipline* of the church in addressing actions that violate the spirit of our common life... 'the seeds of anarchy are sown...' Scandal within the church, whenever and however it may occur, is a profoundly serious matter. We believe that good order is not served when bishops, dioceses, or parishes act unilaterally. *We believe that good order is served by adherence to the actions of General Convention [emphasis added].*

The Righter Trial and Church Discipline

Thirdly, the Council of Advice warned of the danger of disunity in the Church:

We decry the action of the Bishop of Newark, which, far from furthering that discussion [of the role of homosexuality in the Church] has polarized our community of faith.... Bishops are called to safeguard the unity of the church, a responsibility the Newark ordination has seemed to disregard.

I might note in passing that the Council of Advice focused its concern for unity on the internal state of the Episcopal Church; it might well have added that Bishop Spong's precedent risked placing the Episcopal Church outside the doctrine and discipline of every known Christian Church except the United Church of Christ.

The House of Bishops at its next regular meeting in September 1990 passed a Resolution, by a vote of 80 to 76, 'affirming and supporting' the Council of Advice and adopting the text of its Statement. In so doing, the House of Bishops 'disassociated' itself from the actions of the Standing Committee and Bishop of the Diocese of Newark. The use of the word 'disassociate' had rather precise disciplinary meaning, as the 1967 Bayne Committee had recommended that 'the Church may find it necessary, on occasion, to disassociate itself publicly from theological views which it considers to be seriously subversive of essential Christian truths' [nb 'truths' = doctrine].

As of 18 September 1990, therefore, the House of Bishops had exercised its disciplinary authority in several ways:

- 1 It had reaffirmed the Church's traditional teaching in the terms of the 1979 General Convention Resolution.
- 2 It had argued that Bishop Spong's pre-emptive tactic had subverted serious theological discussion of the nature of homosexuality and of the ministry to and role of homosexuals in the Church.
- 3 It had 'decried' the action of Bishop Spong as scandalous and disruptive of the Church's order and unity.
- 4 It had publicly disassociated itself from Bishop Spong's action, using an accepted instrument of discipline.

Having this decision in hand, Bishop Righter proceeded on 30 September, twelve days later, to do the very thing which the House of

Bishops had just decried.

Disciplining Bishop Righter

Several disciplinary options were available to the Church. It would have been pointless for the House of Bishops once again to ‘disassociate’ itself from Bishop Righter’s action, since that measure of restraint had just been publicly flouted. There was an attempt on the last day of the 1991 General Convention to collect enough votes to censure him. Perhaps it failed because too many bishops had already departed; or perhaps the bishops, as documented by Philip Turner, were increasingly losing the will to deal with one of their own on this contentious issue.

The failure to discipline Bishop Righter from 1991 to 1995 does not mean that the Church had abandoned its disciplinary right. The failed attempt by Bishop William Frey at the same Convention to pass a disciplinary Canon stating that ‘all clergy of this Church shall abstain from genital relationships outside of holy matrimony’ was instructive in this regard. While some contended that a canonical statement was necessary on pragmatic grounds to bring discipline, others argued that the 1979 General Convention resolution was currently in force and a Canon redundant. Only in 1994, after the General Convention’s schizophrenic reaffirmation of its traditional teaching while tolerating continued violations of that teaching, did the ten Presenters feel compelled to take action under Title IV of the Canons. Sixty-six other bishops agreed that such a charge against Bishop Righter was appropriate under canon law.

Presentment was both a legitimate and an appropriate act. The Bayne Commission itself had concluded that ‘it is probably inescapable that provision be made for such final and definitive action’. Likewise, the English House of Bishops, while counselling caution in bringing Presentments, had conceded:

It would be foolish to say that there can never be a situation in which it would be right (or, more likely, unavoidable as a last resort) to take such a step. But such cases as there have been in modern times are not encouraging. (*The Nature of Christian Belief* section 74 1986)

The Presenters may arguably have been mistaken in their choice of resort, and surely elements of this trial have not been ‘encouraging’. But the issue is: ‘Do they have disciplinary authority to bring such a Presentment?’ And to that the answer must be ‘Yes’.

The Alternative to Levels of Authority: Canonical Fundamentalism

How would the Church be governed if its official Resolutions did not have

disciplinary authority? The argument has been recently put forward by Bishop Spong that all Resolutions are recommendatory and that 'only the Canons are mandatory and thus required to be obeyed. Only the Canons have the power to bind our corporate life'. If one accepted Bishop Spong's single level of authority, several consequences would logically follow:

All other sources of authority would be wiped out as matters of Church discipline. For instance, if a bishop were to conclude independently that bisexuality was an inherent condition and begin to ordain otherwise qualified bisexual persons, there would be no grounds to discipline him or her unless it were specified in the Canons.

The only ground for Presentment under Title IV would be subsections (4) and (5), which have to do with specific violations of Canons or Prayer Book Rubrics.

The ordination oath would have to be rewritten, dropping the commitment to the Scripture as the Word of God and the vow to conform to the doctrine and worship of the Episcopal Church as part of clergy discipline because these would have no explicit disciplinary application apart from the Canons.

The Canons would of necessity become more copious than the Roman canon law, as every doctrinal, moral, and disciplinary jot and tittle would need to be specified.

Bishop Spong's canonical fundamentalism is obviously absurd. (One wonders if he would be so enthusiastic about this proposal if the Frey Canon of 1991 had passed.) The deficiency of his position, however, does point up the need for the Church to appeal to multiple sources of authority in exercising proper discipline of its clergy and members. These sources were well identified in the 1963 Statement on Levels of Authority.

I conclude therefore that Resolutions of the General Convention and House of Bishops certainly do constitute legitimate disciplinary authority.

Question 2: Discipline and the Oath of Conformity

Because of his ordination of an avowed non-celibate homosexual, Bishop Righter was charged under Title IV.1.1(6) for 'an act which involves a violation of Ordination vows'. These vows include the specific promises in the Prayer Book ordination services and the Oath of Conformity, which is stipulated in Article VIII of the Constitution of the Episcopal Church.

In the case of the ordination vows, Bishop Righter had promised 'to

banish and drive away from the Church all erroneous and strange doctrine contrary to God's Word'; to 'deny all ungodliness and worldly lusts'; to 'diligently exercise such discipline as by the authority of God's Word, and by the order of this Church, is committed to you'; and to 'be faithful in Ordaining, sending, or laying hands on others' (1928 *Book of Common Prayer* p 555). I would simply note in passing that his fulfillment or violation of these vows depends on 'what constitutes doctrine'. If doctrine and Scripture forbid any genital relationships outside marriage, then it is impossible that he was faithful to those vows.

The Court chose to focus its question on the Oath of Conformity, which epitomizes the specific promises of the ordination vows:

With particular attention to the issue of discipline, does the ordination of a non-celibate homosexual person constitute a violation of the ordaining bishop's oath of conformity?

The Rationale of the Oath

The idea of an oath of conformity for clergy is inherent in the biblical idea of a solemn public charge given to those who oversee God's Church (1 Tim 1:18). Clergy are to serve as examples to the people and as signs of the Church's apostolic unity and continuity through time.

Hence there is a special sphere of discipline required of representative ministers of Word and Sacrament. This is why a conceptual distinction is useful between the discipline of church members and the discipline of persons in the ordered ministry. Double standard? No, for it assumes that the behavioral standard expected of the laity will at least be followed by the clergy, and in addition those responsibilities voluntarily assumed in ordination.⁷

Episcopal bishops, priests, and deacons 'solemnly declare' the following: 'I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God and to contain all things necessary for salvation; and I do engage to conform to the doctrine, discipline, and worship of the Episcopal Church.' This oath is then signed publicly before witnesses.

I might note at the outset that the shape of the 'Oath of Conformity' follows Article XX and the distinctions of Hooker's ecclesiology. The chief end of the Church is to bring men and women to salvation in Christ, and the primary instrument to that end is contained in Scripture. The visible Church exists within, and is bound by, the biblical rule of faith, but

⁷ Thomas C. Oden *Corrective Love: The Power of Communion Discipline* (St Louis: Concordia 1995) p 125

it also possesses liberty to legislate its polity, Canons, and liturgy according to its own peculiar time and place.

The Oath of Conformity and the Shape of Canon Law

The Oath of Conformity made at ordination is the culmination of a disciplinary process laid out in the Canons. In the process of his ordination, a bishop has been tested in the following ways:

Screened for postulancy [preliminary candidacy] as to, among other things, intellectual and moral qualifications [III.4.2(b)1];

Interviewed for candidacy by the bishop as to readiness to take the Oath [III.5.1(d)];

Trained and examined in Christian theology and moral theology [III.6.4(a)(3)(4)];

Received testimonials, prior to ordination as deacon and priest, from the Rector and Vestry of the sponsoring parish and from the Standing Committee of the diocese that 'A B... has lived a sober honest, and godly life, and is loyal to [has not written, taught, held, or done anything contrary] to the Doctrine, Discipline, or Worship of this Church' [III.6.6(c)(1); III.6.7; III.7.11(c); III.7.12];

Received testimonials, prior to ordination as bishop, from a majority of diocesan Standing Committees, confirming his 'sufficiency in good learning', 'soundness in the Faith', 'virtuous and pure manners' and 'godly conversation' [III.22.3(a)].

The Oath directs clergy to particular pastoral duties: to conduct worship, to offer pastoral care, and to catechize according to the Church's doctrine, discipline, and worship [III.14.1(a); III.14.2(a)]. Whenever a priest moves from diocese to diocese, the bishop must attest in 'Letters Dimissory' that 'A B... has not, so far as I know, been liable to evil report, for error in religion or for viciousness of life, for the last three years' [III.16.1(a)]. Clergy transferring to the Episcopal Church from other bodies must demonstrate moral character and be educated and attested as to the Episcopal doctrine, discipline, and worship [III.10, 11,12].

What, we may ask, is all this formal procedure about? The canonical procedures confer an official character on clergy that does not apply to the laity. While every Christian is called to witness to the truth of the faith and to live an exemplary life, an ordained person engages to do so within a publicly agreed upon order and ceremony. Thus the call to guard the *official* doctrine and morals of the Church is particularly incumbent on clergy.

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The sealing of this commitment with an oath places the responsibility of clergy in a special relationship before God, the Church, and the wider society, much as a wedding vow does for the couple taking it. It is not to be entered into unadvisedly or lightly, and the breaking of that vow is attended with serious sanctions and consequences.

It is thus part of the logic of the Canons that the Title III Canons on qualifications for the ordained ministry are followed by the Title IV judicial Canons. The ‘offenses’ in Title IV.1.1 follow the basic distinction between doctrine and morals on the one hand (subsections 1-2), and discipline and worship on the other (subsections 3-8). Subsection 6 – ‘Any act which involves a violation of Ordination vows’ – covers the general subject matter of doctrine and discipline but focuses on a particular act. A bishop who did not generally teach false doctrine or violate disciplinary Rubrics and Canons may nevertheless commit a single egregious breach of doctrine or discipline. Such a bishop would be liable for presentment under IV.1.1(6).

It would be hard to argue that Bishop Righter’s action was a breach of his Oath of Conformity if:

The Church has no doctrine of sexuality that would prohibit genital relationships outside marriage; *and* if

The Resolutions of the General Convention and House of Bishops have no disciplinary authority.

I have argued at length, however, that the Church does have a doctrine *and* that official Resolutions authoritatively affirm that doctrine as binding in the discipline of the Church. Therefore, as a matter of plain logic, Bishop Righter broke his ordination vow when he ordained a practising homosexual.

The Neglect of Vows and Ecclesiastical Chaos

It is a sign of ecclesial rot when clergy fail to uphold the Church’s norms, as when Bishop Spong writes:

Many times clergy have shared with me the fact that the standards they reflect in their pastoral ministries differ sharply from the official positions of the church. The church has stated with regularity that genital sexual activity is neither appropriate nor moral except inside the bond of marriage. Yet many, if not most, of the couples coming to our clergy are in fact actively engaged sexually with each other and, in numerous cases, already living together.⁸

⁸ John Shelby Spong *Living in Sin? A Bishop Rethinks Sexuality* (San Francisco: Harper & Row 1988) p 11

The Righter Trial and Church Discipline

There may be prudential reasons (though more often the reason is simple cowardice) that would lead a pastor to accept on occasion a less than ideal pre-marital arrangement. But if in fact the clergy of the Episcopal Church have adopted a policy of absolute permissiveness in the case of pre-marital intercourse, they should seek to change the Church's official position. To teach publicly, as Bishop Spong does, that what the Bible and Church have universally condemned, ie sex outside marriage, is in fact perfectly moral and acceptable in the eyes of God, necessarily undermines the covenant that binds any genuine community together.⁹

Similarly, it is destructive of the Church's credibility and unity when some clergy are declaring freedom from traditional norms of sexual abstinence at the same time as others are urging people to be abstinent. For instance, it was reported in a recent Episcopal News Service brief (7 March 1996) that Dean Philip Getchell of Trinity Cathedral in San Jose had performed a same-sex blessing for a couple who claim their relationship is 'an image of the Divine Love of Humankind'. This act, according to the report, had the support of Richard Schimpfky, the diocesan bishop, who said he 'could not bar the way of two human beings with the same spiritual concerns and needs of the rest of us'.

What would happen if this 'couple' were to move to a diocese whose bishop held the traditional teaching that they were living in sin? Or if Mr Stopfel were to move to another diocese, what would prevent the bishop from either refusing to accept letters dimissory or presenting him for trial? What would prevent Bishop Spong from following his own writings and presenting one member of a live-in heterosexual couple for ordination? What if Bishop Schimpfky became convinced that life-long intent was an unnecessary bar to the coming together of two human beings or being a wholesome example for ordination? One could multiply the possibilities almost endlessly once the Church accepts the precedent of Bishop Righter's act.

The Bishop as Apostolic Pioneer

To show that Bishop Righter violated the Church's discipline and his ordination vows leaves open the question of whether bishops possess an exemption when they feel the Church's teaching or order is wrong and should be changed. In an earlier submission to the Court, the Bishop claimed the right to break the Church's discipline as an 'apostolic pioneer'. It is hard to see how the idea of apostolic pioneer, at least as Bishop Righter and others are using it, is compatible either with any biblical or historical precedent or, as we have just seen, with any notion of church order.

⁹ John Shelby Spong *Living in Sin? A Bishop Rethinks Sexuality* (San Francisco: Harper & Row 1988) pp 208-218

The role of the bishop as guardian, steward, and shepherd is firmly rooted in the New Testament (John 10:11-18; Acts 20:28-31; 1 Tim 6:20; 2 Tim 1:14; 1 Pet 5:1-4) and in the Church's tradition. The Prayer Book itself refers three times to the bishop's call to guard the faith and the flock (*Book of Common Prayer*, pp 517,518,521). While one might legitimately ground in Scripture the idea of the apostle as a cross-cultural church planter (eg 2 Cor 2:12-3:3), the role of bishop as *doctrinal* pioneer is not to be found there. The first Anglican bishops were ordained to guard the biblical faith from the innovations introduced by the apostolic pioneers of the Roman Church.

Only by stretching the notion of the bishop's 'interpreting the Gospel' (*Book of Common Prayer* p 517) could one find the idea of a pioneer role as present in the ordination service. It is one thing to *contextualize* the Gospel, another thing to *reverse* its essential teaching. Bishop Righter derives his notion of bishop as apostolic pioneer from the recent English Bishops' Statement, *The Nature of Christian Belief* (1986). This document, however, goes on to qualify the idea by noting that any restatement of Christian doctrine must also 'be sensitive to the faith affirmed together by the overwhelming majority of Churches worldwide'. The same English bishops resolved in 1987 that the biblical and historical Christian consensus made it inappropriate to ordain non-celibate homosexuals as exemplary leaders. By contrast, Bishop Righter's unilateral action ignored not only his own colleagues but the vast majority of Christian churches who reject homosexual practice.

So the questions to be asked of a 'pioneer' are: at what point may a bishop's private opinion become public teaching, and at what point may public teaching be exercised in a public act, such as an ordination, which commits the Church as a whole? Surely an apostolic pioneer is not the same as a lone ranger. A pioneer may scout out frontier territory, but he cannot unilaterally admit that territory to statehood. Bishop Righter and his supporters had the opportunity for many years to make the case for ordaining non-celibate homosexuals to the Church's legislative body. They did not succeed in convincing their peers of this teaching through the Church's legislative process (and for good reason). To transgress the stated doctrine and then claim immunity on grounds of pioneering new truth smacks more of having your cake and eating it too than of apostolic boldness.

Winsome as the idea of a dialectical tension between the roles of bishop as guardian and apostolic pioneer may be, it is hard to take it seriously when the House of Bishops has been unwilling to discipline a bishop (John Spong) who has denied the virgin birth and bodily resurrection of Christ, described the Apostle Paul as a self-hating gay man, called the Ten

Commandments immoral, and advocated assisted suicide. Rather, it seems, the notion of apostolic pioneer is merely an excuse for absolute doctrinal and moral libertinism. Rather than truly engaging the tragedies and dilemmas of the modern/postmodern world, such abandonment of biblical and doctrinal principle has removed the Episcopal Church from the place it once had in serious national debates and relegated it to the entertainment section of the news.

Bishop Righter and the New 'Tradition' of Authority

In a perceptive analysis of the past quarter century of episcopal oversight, Philip Turner, Dean of Berkeley Divinity School at Yale, has concluded that two 'traditions' of discipline have been at war.¹⁰ The 'originating tradition', the tradition of Richard Hooker, sees order and discipline as furthering common beliefs and practices. This tradition operates by means of what Turner calls the 'ethics of oversight' and the 'ethics of dissent'. Those in authority and those who disagree with some part of it both appeal to a common core of belief and practice and presuppose that by reasoned debate from first principles, resolution can be attained. In this tradition, bishops are especially concerned to maintain the good order of the Church. They may argue and dissent in private or in the Church's assemblies, but they are required to maintain the official rules.

Turner's second 'tradition' (I would prefer to call it a *tactic*) is sceptical of common beliefs and practices, seeing in them a cover and rationalization of power interests. This 'tradition' substitutes bureaucratic control for legislative discipline and prophetic assertion for reasoned dissent. This tradition was ensconced in power in 1985 with the election of a Presiding Bishop who, by signing the 1979 Statement of Conscience, had openly refused to accept the authority of the Church's traditional teaching and resolutions. In the new tradition, 'each bishop in effect becomes judge in his own case and in so doing undermines the point of the vows by means of which he received his title and authority'.¹¹

The logical response of bishops in the originating tradition to the prophetic acts of the new tradition is, according to Turner, to bring canonical charges. Their assumptions

imply that when one responsible for the doctrine and order of the church acts in a way that serves to undermine either, it is incumbent upon those who also hold positions of authority to take notice and decide upon a prudential course of action. Failure on the part of

10 Philip Turner 'Episcopal Oversight and Ecclesiastical Discipline' *Inhabiting Unity: Theological Perspectives on the Proposed Lutheran-Episcopal Concordat* (Grand Rapids: Eerdmans 1995) pp 111-133

11 Turner p 122

those who hold authority to address a threat to the faith and common life of the church indicates either a dereliction of duty or (more seriously) a *de facto* rebellion, revolution, or schism.¹²

The bureaucrat-prophets see this disciplinary reaction through their own lenses as a cynical power-play. This perception explains the attacks on the Presenters as ‘mean-spirited’, ‘heresy-hunters’, and ‘ten righteous men with their own private agendas’. Such attacks are meant to intimidate and eviscerate the ‘middle of the road’ church leaders. Looking back on the mounting success of the new tradition, Turner concludes:

Thus, over the last quarter of a century the House of Bishops of the ECUSA has been confronted by statements and actions on the part of individual bishops that fly in the face of established doctrine, morality, and order. In the first case [Bishop Pike], a bishop left the church after an act of censure. In no case, however, has a bishop been removed from office or in any way inhibited in the exercise thereof. Further, the disciplinary actions of the bishops have become increasingly weaker, moving as they have from censure to statements that ‘decry’ an action or ‘disassociate’ other bishops from it. Each reaction seems weaker and less effective than the one before. One must ask, therefore, about the prudence of a pattern of oversight that, in the face of obvious challenges to the doctrine and discipline of the church, goes no further than an increasingly mild and qualified expression of disapproval. *One must ask if this pattern of response does not signal both the decay of tradition and the decline of virtue within an entire church and a de facto break in its communion – an internal schism whereby warring factions make use of a single organizational structure but in fact do not seek to maintain communion by means of it.*¹³

Conclusion

A bishop who violates the clear biblical and traditional teaching of the Episcopal Church by ordaining a non-celibate homosexual undermines the Church’s discipline and unity. Furthermore, a Church hierarchy that condones by silence or endorses publicly such a violation likewise will become overseers of confusion and disorder among Episcopalians, separation from our ecumenical partners within the Anglican Communion and worldwide Christianity, and of public ridicule from outsiders who see that the Episcopal Church is not theologically or morally serious about anything.

12 Philip Turner ‘Episcopal Oversight and Ecclesiastical Discipline’ *Inhabiting Unity: Theological Perspectives on the Proposed Lutheran-Episcopal Concordat* (Grand Rapids: Eerdmans 1995) p 124

13 Turner p 131 emphasis added

The renowned theologian Wolfhart Pannenberg has recently written the following about the consequences for a Church that endorses homosexual practice:

Here stands the boundary for any Christian Church which knows itself bound by Scripture. Those who would press the Church to change the norm of her teaching in this question must understand that they press the Church toward schism.¹⁴

To fail to discipline Bishop Righter would constitute one more step toward making the Episcopal Church an apostate body.

An Unscientific Postscript: To the Judges

The Court has asked the rather abstract question about what constitutes a violation of a bishop's Oath of Conformity? Let me shift the focus from what Bishop Righter did in 1990 to what you are about to do in 1996.

The recent movie *Sense and Sensibility*, based on the novel of Jane Austen, that literary heir of Richard Hooker, is a marvellous study of the virtue of self-denial for the sake of honouring vows. You also have taken the most solemn vows to uphold the Church's doctrine and discipline. You have been, I am sure, under the most intense pressure from the 'warring factions' in the Church. My plea to you is simple: keep your vows and trust God to bring good out of it.

Many of my friends, looking at the trend lines in the Church, have concluded that the verdict in this trial is a foregone conclusion, regardless of the strength of the arguments. To these friends I wrote the following note prior to the 27 February 1996 hearing:

Dear Friends

I believe the Righter trial represents an historic moment which will determine the future course of Anglicanism in the United States. Let us not forget that God is the Lord of the Church and history. Who could accuse God if he were to 'shake the [church]... as one shakes with a sieve' (Amos 9:9), for as Lincoln reminded the American people: 'the judgments of the Lord are righteous altogether.' But history is also the occasion for the mercy of the Lord to be displayed. 'Who knows whether he will not turn and repent, and leave a blessing behind him...'

Bishop Stanway, the founding Dean of Trinity Episcopal School for Ministry, put his finger on our constant temptation: 'Christians are always

trying to get themselves to the place where they don't have to trust...' It strikes me that the same principle applies to the Righter trial. People have worked, people have protested, everyone has his personal opinion on what the 'odds' are, etc. But if God can bring Nebuchadnezzar to acknowledge the God of heaven, why not nine (or even five) bishops of the Church?

One thing struck me as I collected the official rulings of the Church on sexuality: bishops affirmed the universal teaching of the Church especially when they were speaking collectively as bishops. There is, I believe, a grace that comes with the office. That grace can be resisted, but it offers the hope that a bishop might actually be compelled to do justice against his own inclinations.

I believe that the court just might uphold the Church's doctrine. This would be a real victory because it would keep the burden of proof on the revisionists, forcing them either to try to change the doctrine in General Convention and/or continue their rogue ordinations. It hardly solves the overall crisis, but it gives us a stronger place to stand.

But the margin of victory, if this were to happen, may be provided by the sincerity with which we and our congregations pray and fast for Christ's Church in this place. Ash Wednesday is coming: let's find ways to offer our own repentance and prayer for the Church at this time. Don't be cynical: we do believe in miracles, don't we? Why not in this case?

Many of us are sceptical, but we are also praying that somehow the discipline of the Church will lead to a just, though painful, verdict.

Aftermath of the Righter Trial

On 15 May 1996, the trial Court delivered its Opinion, dismissing both counts: that Bishop Righter had taught false doctrine and had violated his ordination oath. The vote was 7 to 1, one judge having recused himself from the case.

The seven majority judges, inspired by C H Dodd's *Apostolic Preaching*, made a distinction between what they called 'Core Doctrine' (*kerygma*) and 'traditional teaching' (*didache*). Despite the fact that the Canon stated that a bishop might be tried for holding and teaching 'any doctrine contrary to that held by this Church', they concluded that only Core Doctrine could be grounds for a heresy trial. In fact, Core Doctrine, as they spelled it out, is so vague that no one will ever be convicted. And surely, that was their point: no more trials!

The Core Doctrine distinction involves a category error. Dodd was describing basic elements of the *evangelistic* preaching of the Church, not its internal rule of faith and life. The Court majority was a bit uneasy that their Core Doctrine contained no moral norms at all, and so they conceded that a bishop might conceivably be disciplined for teaching or practising immorality such as adultery, theft, and assault; but the condition for such a norm would be that it had never been contested within the Church as homosexuality has. Since Bishop Spong has already contested every known doctrine of the faith, he can presumably breath a sigh of relief!

The majority claimed to be agnostic on the morality of homosexuality and called for a period of ‘patient listening and holy discernment’. During such a holy hiatus, of course, a sizeable group of Episcopal bishops will continue to ordain non-celibate homosexuals and push the next agenda item, gay marriage. For if Barry Stopfel is now free to live with his lover as a wholesome example to the flock of Christ, it follows that the Church should formalize that relationship.

Did the Court respond at all to the issues raised in the two papers presented above? Only in one respect, so far as I can see. The judges may have moved to the Core Doctrine distinction, which has no precedent in Anglican theology or canon law, because they realized that the identification of morals with discipline simply would not work.

The main burden of *The Righter Trial and Christian Doctrine* was to argue that homosexual practice was contrary to the clear teaching of Scripture as that teaching had been conveyed through the history of the Church. The Court opinion had virtually nothing to say about the content or authority of Scripture. Two of the bishops ‘concurred’ with the majority but criticized Bishop Righter for acting preemptively in a matter where Scripture is silent. In making this claim, they simply ignored the burden of the Presenters’ case. Only Bishop Andrew Fairfield, the lone dissenter, accepted biblical authority, and he made his own thoughtful analysis of biblical teaching.

As to matters of discipline, the judges made use of Richard Hooker in a purely formal way: ‘For our purposes, it is enough to note that Hooker’s effort at comprehensiveness has shaped a tradition extending through such figures as Frederick Denison Maurice and Charles Gore in the last century, and William Temple and Michael Ramsey in our own.’ I suspect that there will be a lot of turning over in the grave when the exemplars of this tradition discover that they have paved the way for gay ordination and gay marriage.

The judges acknowledged some uneasiness that their decision ‘may be

difficult for members of other Christian communions'. Indeed it will. The real question, however, is whether members of their own Anglican Communion will have difficulties with the Episcopal Church. The Presenter bishops have announced that they will not appeal the trial verdict; they have promised to propose, against all odds, a traditional sexuality Canon at the 1997 General Convention; and they have initiated the 'American Anglican Council' as a confessing movement within the Episcopal Church. Most realists, however, believe that there will be a breakup of the Episcopal Church unless 'deliverance rises from another place' (Esther 4:14). That other place does not seem to be Canterbury.¹⁵ Would it not be ironic if, in a reversal of the Colenso affair, the provinces stood up and brought discipline to the mother Church and her American stepchild?

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15 As he celebrated the centenary of one of the most radical dioceses in the United States (Los Angeles), Archbishop Carey seemed to concur with the Righter trial majority when he said of the sexuality debate: 'There will always be questions that have to be left hanging while we wait for fuller answers. What we must not do is walk away from one another.'