

Church autonomy in Australia - Some forgotten aspects

The Dean of Melbourne, in his lucid article quoted in your issue of the 25th. August, begins by defining the term 'nexus', and goes on to describe what is commonly regarded as the 'legal nexus' between the Church in Australia and the Church in England. His description is limited to the Church of England in Victoria because that is the subject of his article. But there are many who will be led to think that what is said of the Church in Victoria is true of the Church throughout Australia. The Dean does not say so because he keeps strictly to his subject, and because he doubtless knows that the situation is different in New South Wales.

According to the Dean of Melbourne the Church in Victoria is in such a position "that whatever is the law for the Church in England is also binding upon us as members of that Church" for "we are still a part of the Church in England". In New South Wales, however, no change in the law of the Church in England has any force until it is deliberately accepted by a Diocesan Synod. The Sydney Diocesan Synod has already asserted and vindicated this prerogative.

The Church in New South Wales exercised its autonomy in the 'seventies', after it was disestablished, when it deliberately chose as its standards of doctrine & worship, those that were then established by law in the Church of England in England. It also chose to retain the name of "Church of England" for itself. This course of action was ~~required~~ necessary in order to retain the property & to define the trusts in terms of which the property was held & used. As the terms of the trusts have been embodied in Acts of Parliament of N. S. W. those terms can be altered only by further acts of the State Parliament. The only legal obstacle

As the alteration of our formularies ~~and~~ of doctrine and worship is the necessity of recourse to Parliament. To put it plainly, ~~the~~ if the Church in ~~A~~ N. S. W. desired to have a ^{new Prayer Book} ~~passed, or~~, or even a revised edition, an act of the State Parliament would have to be passed in order to safeguard the title to Church property.

But this is true, not merely of the Church in N. S. W. but of the Church throughout Australia. In order to carry out a change of name, say from "The Church of England", to "The Anglican Church of Australia & Tasmania", or in order to modify the Thirty-nine Articles as the ^{official} doctrinal standard, an act of Parliament would have to be passed in every State. The Federal Parliament, apparently, has no authority in the matter. As the ^{legal} ~~status~~ status of the Church is different in the different States, a different act of Parliament would be needed in each State.

It is only confusing the issue to talk about the "legal nexus" in such a way as to imply that the Church in Australia is under the thumb of the Church in England. In fact the "legal nexus" is not the right way to approach the question of the Constitution of the Church in Australia. The word "autonomy", so often misused in the controversy, offers a better starting point. But the word 'autonomy', like the word 'nexus' calls for definition & explanation. It means self-government. ^{negatively it means to an authority outside ourselves} [freedom from] the absence of subjection, positively it means freedom to manage ^{our} ~~our~~ own affairs.

Negatively, the Church of England in Australia has, in practice, complete autonomy. It may ask advice from the authorities of the Church in England, but it is not bound, ^{to follow the advice or} to get their consent for any action it may take, ~~see~~ Dr. Hart, however, has said that "whatever is the law for the Church in England is also binding

upon us in Australia." ^{that} by answer to that is, first, ~~that~~ ^{that} the situation so described is the result of our own choice if the statement is true. ~~it is because the church in Australia has chosen that line of~~ ^{England it is} because we ourselves choose to do so. It has never been imposed upon us by any ^{authority} external to ourselves. We have never received any commands from the Church in England & I see no probability of any such commands coming to us. The Church in England makes no attempt & has never expressed any intention to assert any authority over the Church in Australia. Even if we are a "part of the Church of England in Australia", we are, as a matter of fact, "on our own", & we act accordingly.

But, more than that, the statement of Dean Hart merely quotes a legal opinion. As such it is entitled to respectful consideration, but a legal opinion is a very different thing from a legal decision. It is legal decisions that have real authority in law. We have had many differing legal opinions from eminent lawyers in England & Australia upon the 'nexus'. But we have never yet, to any knowledge, had a legal decision on the question from any court in Australia, nor indeed has the Australian "nexus" been before any court in England. There are, of course, legal decisions recorded in England on questions that bear a likeness to certain ^{that might arise} issues ~~arising~~ out of our "legal nexus". But while these decisions may throw light upon our own position in Australia, they do not define that position, ^{while applied here by a competent authority.} Too much has already been made of certain legal opinions & not enough notice has been taken of the actual facts of the situation, & also of the differences in the legal opinions obtained. We have not yet obtained

an authoritative legal decision that would justify the assertion that the Church in Australia is subject to the Church in England.

Taking the word 'autonomy', then, in its negative aspect, it is possible to make out a strong case for the statement that the Church of England in Australia has ^{all the} ~~full~~ autonomy that it ~~necessary~~ can reasonably expect to possess.

But when we come to the positive aspect we find the case is much stronger. The Church in Australia, as Dr. Hart has pointed out, has erected an elaborate machinery of government & administration, ^{quite different from the Ch. system in England.} The Church in Australia has in this & many other ways asserted complete independence of the Church in England. We retain the threefold order of the ^{the same order of the ancient parochial system.} ministry, but we appoint & consecrate our own bishops, we ordain & appoint our own clergy, ^{all} on our own conditions, we manage our property, & divide our parishes, & set up diocesan & provincial & wider organisations, ^{& make our own financial arrangements} exactly as seems good to us. The question of autonomy ought to be ^{studied} settled by looking at the things that have been done, & that are actually being done by the Church in Australia. We manage our own affairs in our own way, & if that is not autonomy, then the word has no meaning that matters.

But there is another aspect ^{still} of the autonomy question that is raised by the fact that the Church is a property owner, & as such has a relation to the political authority. ^{the ordinary law of the land in which we live} The property of the Church is held on trust & as ^{such} ~~subject~~ is subject to the law of the State. The standards of doctrine & worship define the terms of the trusts which constitute our title to the property, & we cannot vary the terms of the trusts without endangering our

title to the property, unless we obtain the authority of Parliament. This ^{brings us to} the real issue of the autonomy question, namely, is it possible for the Church to obtain complete "autonomy" from the State law relating to trusts in such a way that the Church may be able to alter her formularies of doctrine & worship without going to Parliament for a fresh act to authorise every alteration? In a word, can the Church obtain such freedom from the State as would enable it to revise the Prayer book & enforce its observance without recourse to the State Parliament? If this is the "autonomy" we are trying to ^{seek} then we shall not get it without serious risk of losing our property. The Church has run this risk in times past & may have to face it again, for, after all, the Church does not exist to hold property, ^{but} to bear witness to Jesus Christ.

However, as things are, the State would readily grant permission to the Church to alter its formularies without risking its property, provided that ^{Parliament} the State was assured that the change ~~was expressed~~ ^{in consultation} was really desired by the Church. If we want a new prayer book, we must get six acts of parliament passed, one in each state, to safeguard our property. But the parliaments will demand evidence that the new prayer book is desired by the Church as a whole, that it represents the wishes of the great majority. The State authorities will say, "What do you want?" Does your proposal commend itself to the mind of the majority of your people? Is the minority against it large or small? Does it involve a radical alteration in the terms of the trusts in which your property is held?

This issue was
clouded by the
determination in 1861
Gowland

proposed to secure
autonomy from
the State

Hence before we can go to Parliament we must, as a church, make up our own mind as to what we want done. Here we reach the vital difficulty of the "sexus" question. It is not ^{so much} a matter of our relation to England or of our dependence upon the State. These questions are important, but secondary. The main issue is whether we can get at the mind of the Church in Australia. Do the Church people in Australia want a revised prayerbook, & if so, what sort of prayerbook do they want? Are we to have ~~one~~ a uniform use, or are we to legalise a variety of uses? If so, what limits are to be set to the variations?

Hence we must proceed to examine the institutions through which the mind of the Church may be expressed. Is there a body which can be said to express the mind of the Church in Australia? The answer may be "General Synod exists for that purpose." But a study of its make up shows that it does not at all represent the ~~church~~ membership of the Church in Australia. It is so constituted that a very large proportion of the church membership is unrepresented in General Synod, while another section is grossly over-represented. The strong points of its proceedings bears out this statement.

Hence the first step towards getting at a "mind of the Church" in Australia is to reform the basis of representation on which General Synod is constituted. Then we may hope to be able to ~~say, there is~~ point to an assembly which will express the general consensus of opinion in the Church in Australia.

To sum up, we have all the autonomy we really need & have a right respect in the Church in Australia. But our machinery for exercising ~~that~~ ^{the} autonomy of the Church as a whole is clumsy & ineffective. I have suggested the main improvement

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that is needed. But until that improvement is effected the
difficulty of asserting an autonomy of the whole Church
in Australia will remain. Australia stands for the
democratic principle