

The Harry Street Lecture 2016
The School of Law
The University of Manchester

“Jurisdiction within this Realm”

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checked against delivery

It is not exactly a secret but it happens behind closed doors. It is never broadcast. It is an ancient ceremony that lies at the heart of our unwritten constitution. The closed doors are to be found deep in the portals of Buckingham Palace. The ritual involves the Queen. The other principal participant is dressed in black and white. He, or now she, kneels on the footstool before the Sovereign with only two others present - the Home Secretary and the Clerk of the Closet. The supplicant with praying hands enfolded by the Monarch's own ungloved hands does homage to Her Majesty and declares in no uncertain terms “that no other foreign prelate or potentate has any jurisdiction within this realm”. This is the oath of homage performed by every newly appointed diocesan bishop in the Church of England. It is enunciated line by line by the Home

Secretary, repeated by the Bishop and takes about sixty seconds in all. Here is the full text.

I, James

Lately Bishop Suffragan of Hull

Having been elected Bishop of Liverpool

and such election having been duly confirmed

Do hereby declare

That your Majesty is the only Supreme Governor
of this your Realm

In Spiritual and Ecclesiastical things

As well as in Temporal

And that no foreign prelate or potentate

Has any jurisdiction within this Realm

And I acknowledge that I hold the said Bishopric

As well the Spiritualities and Temporalities thereof

Only of Your Majesty

And for the same temporalities

I do my homage presently to Your Majesty

So help me God

God Save Queen Elizabeth

Laying aside the origin and history of the oath which dates back to the sixteenth century the significance is plain both ecclesiastically and politically. Henry VIII clearly had the Pope in his sights as he sought marital

freedom to secure a male heir and Elizabeth I obviously worried about the threat to national security posed by Philip II of Spain, one of the Pope's european lackeys.

I was surprised that in all the debate prior to the Referendum this article of our unwritten constitution which echoes the Sovereign's pledge in the Coronation Service never made an appearance.

Not only does the Sovereign eschew political and religious interference she emphatically assents to the unique and privileged settlement of the Church of England "established by Law".

Archbishop: Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel?

Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law?

Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England?

And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their

charge, all such rights and privileges, as by law do or shall appertain to them or any of them?

Queen: All this I promise to do.

Interestingly both Archbishops intervened in the referendum debate about Europe and argued in favour of remaining but neither referred to this oath of homage which they had both made twice: John Sentamu for the See of Birmingham and then of York, Justin Welby for the See of Durham and then of Canterbury. Given the constitutional implications of the vote to leave the European Union it will be interesting to see what our ecclesiastical lawyers will make of the historic oath, its future and its implications.

It is a truism to say that our unwritten constitution is always in a state of transition as society evolves. Indeed, it could be argued that its 'unwritten' nature is a virtue for it allows for nuance and shades of meaning to evolve and change without too many clashes that come from challenging principles and ideas written in stone. So, for example, the sovereignty of the Monarch implicit in the oath has since the Civil War in the 17th Century (admittedly a violent clash) been moulded into the concept of the Sovereign-in-Parliament. It is now

Parliament under the Crown that is sovereign. Thus the principle of Royal Supremacy in both State and Church reigns in the 21st century albeit after many mutations in a form radically different from the 16th century.

What many people and indeed many lawyers do not appreciate is that ecclesiastical law is the law of the land and Canon 7 of the Church of England headed “of the Royal Supremacy” states that “the Queen’s excellent Majesty acting according to the laws of the realm, is the highest power under God in this Kingdom, and has supreme authority over all persons in all cases, as well ecclesiastical as civil”. In this way the Monarch “constitutionally and symbolically unifies the spiritual and temporal aspects of national life” (Paul Avis). Of course, it raises the question of how this can be so in an age when the spiritual life of the nation is more pluralistic than it was in the 16th century and it presents a challenge for the next Coronation Service which must blend the Christian essence of the service with a more diverse nation and Commonwealth.

Where I wish to focus now is to examine the acknowledgment in the oath of homage that “I hold the said bishopric as well the spiritualities and temporalities thereof only of your Majesty ...”

Without going into too much technical detail “the spiritualities and temporalities” of “the bishopric” cover all the material, spiritual, pastoral and juridical responsibilities of the bishop in his diocese. And for this we need to know that there is not a square inch of England that is not covered by one of its 42 dioceses or one of its parishes.

The parish system of the Church of England gives expression to a particular understanding of God and his world. The Kingdom of God is not just the church. It is the world. Whether people believe in him or not God is sovereign and rules over the world. The pastoral care that priests exercise extends to all who live in the parish and not just to the gathered congregation. When someone seeks the help of a vicar he or she is not asked if they come to church but where they live. If they live in the parish, that corner of God’s kingdom for which the priest has “the cure of souls” the priest is there for them.

The same principle applies to the ministry of a bishop. Although bishops have oversight both juridical and pastoral of the churches in their diocese their pastoral care is not limited to church members but extends to all

people of all faiths and none within the diocesan boundary. Thus bishops exercise a civic leadership and engage in affairs that affect the welfare of the region. It is their rootedness in the realities of local communities that gives them their authority when members of the House of Lords. In the Upper Chamber they speak as “Lords Spiritual” not just on ethical and religious issues but on the full range of issues from education to the environment, from health to international relations. All this flows from their theological understanding of ‘the spiritualities and temporalities’ for which they did homage to the Sovereign.

This can prove irksome to some especially when the bishops emerge as critical of a particular stance because of its impact on those for whom the bishop is responsible pastorally. Their critics might tell the bishops to stick to God and to stop meddling in politics. They might even quote Jesus saying “My kingdom is not of this world”. If that quote were true it would fly in the face of everything else Jesus did and taught not least the Lord’s Prayer which pleads for God’s will to be done. Where? On earth. As it’s done in heaven. In fact, the quote is taken from the trial and the exchange between Pontius Pilate and Jesus. It is about

sovereignty and jurisdiction. Pilate thinks he has the power of life and death over Jesus. Jesus defies him “You’d have no authority over me unless it were given you from above: (John 19). In the clash between the two Jesus tells Pilate “My kingship is not from this world” (John 18: 36). The source of his authority is higher than Pilate’s. It is from above. This doesn’t mean that Jesus denies the validity of Pilate’s own jurisdiction. Far from it. He in effect lays the foundation for a Christian understanding of the State which is later developed by St Paul in his letter to the Romans (13)

*“Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore whoever resists authority resists what God has appointed, and those who resist will incur judgement. For rulers are not a terror to good conduct, but to bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive *its approval; for it is God’s servant for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain! It is the servant of God to execute wrath on the wrongdoer”**

It is remarkable that these letters were written when Nero was Emperor of Rome. In spite of his brutal persecution of Christians which would lead to Paul's own imprisonment and execution, Nero and his state officials are seen not just as public servants but "God's servants" (diakonoi, deacons).

This high view of the divine ordinance of the State does raise fundamental questions about what do you do when the State behaves in an immoral and oppressive way and we could explore that after the lecture. For the purpose of this essay it underlines how Christians have viewed those in authority and recognised the providence and purpose of God in the sovereignty of the Monarch in Parliament. In particular, it has informed my own understanding of the role of bishops and their relationship with the Sovereign, with Parliament and with the State.

You have been very patient with these theological and ecclesiological sketchings! But they expound the basis upon which I entered into and contributed to public life in Liverpool and beyond and through, for example, chairing the Hillsborough Independent Panel.

When a community allegedly finds itself failed by the police, the press, politicians, Parliament and even the judiciary to whom do they turn? The Church of England, for all its own failings and short-comings, has through its pastoral care and social justice programmes a reputation for seeking the welfare of the people. That was the context in Liverpool when I was approached and asked to chair the Panel. I have written about this in an article that will appear in the January edition of Theology.

I remember with the announcement of the setting up of the Panel by the Home Secretary in 2010 questions were asked as to why it was being led by a bishop and not a judge. Independent Panels are ad hoc and sui generis. In other words, there's no formula. Given the number of them now, perhaps there should be. I should add that it was the last Harry Street Lecturer, Dominic Grieve QC who played a pivotal role in taking forward the Hillsborough Independent Panel Report. I believe that it was what the Panel found on the pathology of the 96 that more than anything else led him in his role as Attorney General to appeal to the High Court to quash the original verdicts and order fresh inquests. The day after the Inquests, the longest in British legal history, returned their determination of

'unlawful killing' the Home Secretary, now the Prime Minister, announced in the House of Commons that she was asking me to work with the Hillsborough families to write a report for Parliament based on their experiences so that their "perspective should not be lost". I am currently in the middle of that work and understandably cannot preempt the Report's findings. Nevertheless, I can offer you a reflection on the methodology of the Hillsborough Independent Panel and some thoughts about the role of a bishop as its chair.

The Panel interrogated documents, not people. Its Terms of Reference were shaped by the Families' longstanding concerns and questions but not defined by these because the Panel had to maintain its independence and had to be free to go wherever the documents took them. We had three objectives; to secure maximum possible disclosure of all documents from nearly 100 stakeholders, to research and analyse them and to write a report that added to public understanding of the disaster and its aftermath. In effect, through the documentary interrogation we sought to establish whether there was a case for anyone to answer.

Half way through our work we began to form a picture and scratched our heads wondering how it had come to this. The way the Families of the 96 and the survivors had been treated amounted to the patronising disposition of unaccountable power.

Our Terms of Reference called on the Panel to engage with the Families. The Panel members were all expert in their own fields of data access and protection, police procedures, medical knowledge, coronial courts, academic research, media practice. We were served by a secretariat of extremely dedicated civil servants headed up by Ken Sutton whose outstanding initiative and leadership set the course for our work. Regular consultations with the Families and Survivors drew them into the process and although we were candid from the start about not disclosing any details of our progress until the end we heard some say “this is the first time we’ve been listened to ... the first time anyone has taken us seriously.” Whereas Enquiries because of barristers, costs and time-scale can often leave victims feeling alienated, a Panel can affirm their centrality to the process.

Although it was never specified in my appointment I found myself constantly drawing upon my own pastoral

experience both with the Families and Survivors and also with the Panel as we encountered deferred grief, soured relationships, sublimated guilt, mental distress and anguish and anger aggravated by two decades of frustration. When outsiders wondered why there were three groups of families and a large number who wanted no contact at all, I offered the observation that many marriages do not survive grief so why should friendship especially if they are forged through grief. This is not untypical of the aftermath of public disasters.

My own work with the Families continues as I chair a Forum that enables them to meet with the Crown Prosecution Service, the Independent Police Complaints Commission and the Police Investigator to understand the process whereby the Crown Prosecution Service will decide whether or not to bring charges. These meetings take place very much in the spirit of Article 2 of the Human Rights Convention which recognises the right to life and the legitimate interests of the family of a loved one allegedly killed by the State into the process of investigation.

It was in my capacity as the Home Secretary's Adviser on Hillsborough that to my surprise I found myself in an Employment Tribunal. Because of allegations that

Freemasonry had been part of the controlling mindset in the aftermath of the Hillsborough disaster it was decided that no Freemason should be appointed to the investigative team 'Operation Resolve'. When it was discovered that someone with a past association with Freemasonry had been recruited he was subsequently dismissed. He took the Home Secretary to an Employment Tribunal alleging unfair dismissal and religious discrimination even though Freemasons officially deny that they are a religion. I was the last witness to be called on behalf of the Home Secretary. I argued that in the eyes of the Families it would be an affront to natural justice to allow Freemasons to investigate an allegation against Freemasonry. I further argued that there was in effect "an occupational requirement" that investigators into Freemasonry should not be Freemasons. I did not engage with the argument as to whether or not Freemasonry was a religion.

The case was heard in the London Central Employment Tribunal between James Conway (Claimant) and the Home Office (Respondent) (case number:2205162/2013) The Court dismissed the claim saying "we do not consider that being a member of the Grand Lodge of Scotland contributes membership of a

religion". The Court went on "In case we are wrong in that conclusion" and considered favourably the principle "that there is an occupational requirement, that the investigators are not, and have not been, members of the Freemasons". I have a copy of the judgement with me and will leave it with you for further consideration. It is an important judgement for it reprises what the law says constitutes a religion. It is also important for it specifies an absence of certain characteristics as relevant to defining 'occupational requirement'.

In the course of my cross examination by the claimant's barrister the point was put to me that I was not a lawyer. I readily conceded, but did point out to the court that as a bishop I held juridical responsibility under ecclesiastical law which was the law of the land and that therefore I was not a stranger to the Law!

But there is another arena in which bishops gain experience of and expertise in the law. The House of Lords is a legislative chamber where Bills are debated and amended. The hours and days spent in committee stage open one's mind to the complications of drafting and applying legislation. It is where the Upper Chamber excels. Members bring the experience and expertise of their profession to bear upon legislation

which makes it a much more effective revising chamber than the House of Commons with its more partisan nature. The strength of the House of Lords is the breadth of its membership especially on the cross benches which constitutes the elders of society. The weakness of the House of Commons is that its membership is drawn mainly from the political class which is too narrow a base on which to draw all the wisdom required for good legislation. One of the misconceptions in the debate about Parliamentary reform is that we have two competitive bodies in the Commons and the Lords. I have long believed that we need to recover the unity of Parliament with clarity that there is one Parliament with two Houses that are complementary and not competitive with the last word going to the directly elected House.

As well as contributing to the legislature the bishops also exercise a pastoral and liturgical role in the House of Lords. In the decade I spent as a member there were many occasions when Peers would confide in you as a parishioner would do their priest. And a surprisingly large number would come to Prayers in the Chamber that begins each day. When the Law Lords sat in the House and gave their judgements Prayers were brought forward. The order Paper was ominously

headed “Judgement Day” and right underneath it printed the name of the duty bishop! I recollect that when the Supreme Court was established I and another bishop wrote to the President suggesting the tradition of prayers should be continued. The reply is somewhere in the archives of the Bishop of Liverpool. The offer was declined! I recall the response referred to the Annual Judges Service at Westminster Abbey and to the fact that there were now other faiths in the land.

This raises the question as to how long the Church of England can maintain its special relationship with the State expressed in that phrase “by law established”?

Significantly the challenge comes more from atheists and secularists than it does from other Faith Leaders who appreciate the role the Church of England plays both locally and nationally in bringing together the different faith communities and enabling their leaders to share the platform in public life. I had direct experience of this both in Liverpool and in my role of Bishop to Prisons. When it came to the appointment of the present Chaplain General there were moves within the Ministry of Justice to open the post up to people of other denominations and faiths. What is little known is that the 1952 Prison Act specifies only three posts for a

prison: a governor, a medical officer and a Church of England priest. I argued that given the responsibility for recruiting, training and deploying anglican clergy there was in effect “an occupational requirement” for the Chaplain General to be an Anglican. But what was most significant is that the support for this position came from the leaders of other Faith Communities. They recognised that it was the leadership of the Church of England Chaplain General that had paved the way for ministers of other faiths to minister in Prison on an equal basis. In many prisons now the leader of the Chaplaincy Team is often of a different denomination or faith.

This unique role of the Church of England as convenor and enabler of all faiths was articulated by its own Supreme Governor when in her Jubilee Year in 2012 she spoke at a reception at Lambeth Palace hosted by Archbishop Rowan Williams and attended by the Faith Leaders of the UK.

“ the Church of England has created an environment for other faith communities and indeed people of no faith to live freely. Woven into the fabric of this country, the Church has helped to build a better society – more

and more in active co-operation for the common good *with those of other faiths.*”

The Queen was reinforcing the point made by the Prince of Wales who sees his future role as “Defender of the Faith” as the protector of the rights of all people to practise their faith freely.

The interventions of the Queen and the Prince of Wales are part of that evolution of the constitution of Great Britain. I have no doubt that we will see further developments when it comes to the next Coronation.

I preached at Trinity College Cambridge in a series of sermons “A brief history of Christianity in Britain in seven objects”. I chose the Crown and preached on the Feast of Christ the King. The challenge I suggested was how to blend the classic Christian service of Holy Communion which with the anointing lies at the heart of the Coronation with the need to engage a pluralist society in a richly diverse world. I am certain that it can be done and offered some possible ideas. It will require the marriage of our best constitutional experts and our finest liturgists.

Before I close, a word about freedom. Religion has not always been freedom's champion. Indeed the fear of offending has placed considerable restraint on the freedom to criticise religion. To enshrine such restrictions in law is, I believe, a mistake. Respect for one another's religion should be left to the realm of conscience and voluntary respect. The reason I believe it is wrong to criminalise belittling the religious beliefs of others is that religion is an immensely powerful force which can oppress women, abuse children, exploit the vulnerable and motivate its followers to be cruel and to kill in the name of religion. One of the most effective ways of defusing religion of its destructive power is humour. Ridicule and satire are potent instruments in tempering excessive zeal. This does not mean that I am in favour of hurting the feeling of fellow faith followers. I believe that it is a sign of a civilised society that people voluntarily consider the sensibilities of one another. I believe that although the Church has been guilty of curtailing freedom at times in its history the Christian faith has from the New Testament period provided a theological and moral basis for freedom and the freedom of religion. The first disciples were warned by the authorities not to proclaim their faith. They defied these edicts and the Bible says 'they preached with boldness'. The word used by the author is 'paresia'

which in Classical Greek meant ‘freedom of speech’. When faced with the threat of punishment they decided to do ‘what was right in God’s eyes’ and take the consequences for choosing conscience instead of the State. It was as if they were saying that freedom to speak the truth was their God-given right.

As waves of terror crash across the shores of Europe we brace ourselves for more indiscriminate acts of violence. The killers of Jo Cox and Lee Rigby have made us all feel vulnerable. The horror of what happened in London over a decade ago can make us all fearful of what could happen in any one of our cities.

We are living in a new era. Globalisation has universalised food and football – and terror. There have always been psychopaths and some who’ve used religion to control and destroy others. But never before have they had the technology both to broadcast their threats globally through social media and to inflict such violence through weapons of mass slaughter. It’s a new and deadly combination.

The Government’s response is properly to prioritise our protection. They have to balance freedom and security.

It's like a spirit-level. At one end is the need to ensure that we do not lose our freedoms which have been so sorely won; at the other end lies the requirement to keep us safe by regulating and limiting the freedom of those who seek to harm us.

Making sure the bubble hovers in the centre of the spirit-level requires constant vigilance and wise government. It's very easy to tilt one way or the other with the upheaval of the public mood in the face of a crisis.

The only way to moderate public reaction to the outrages of terror is to be clear about our values and secure in our convictions about liberty.

Marbled into the human heart by our Creator is a streak of freedom that cannot be suppressed or ignored. It's the thirst for freedom that racked the bodies and souls of slaves and made them break the chains of slavery. It's that thirst that only a century ago drove the suffragettes to liberate women.

It's the same thirst which makes the LGBT community around the world risk life and limb so that they can live free and true to themselves.

Freedom is the cornerstone of our civilisation. Terrorists may try to blow it up. But with every blast of a bomb, every pull of a trigger and slash of a knife we must with grief and grit shore up our foundations, lock in the cornerstone and resolutely maintain the edifice of our civilised society.

One of the elements of terror has been its unpredictability. But after so many indiscriminate attacks the campaign of terror has become predictable. Although wounded by their assaults we're no longer surprised by their abuse of the very freedom upon which they depend for their cruelty.

The world they want to create is as airless as a smog bound city. A life without freedom suffocates the human spirit. But those who want to put our freedom in chains should look at history. Tyrants of whatever size never last forever.

The human spirit is irrepressible. It has a longing for the beauty of freedom. But there's always a fragility to beauty. A flower. The wings of a butterfly. A dancing flame.

A breeze can display its shimmering vulnerability. A storm can destroy it and make mourners of us all.

Fragility belongs not just to the world of nature but also to the realm of ideas. Every assault of terror desecrates the beauty of freedom and exposes its inherent fragility.

In this centenary year of the Battle of the Somme when we salute the sacrifice of so many we comfort ourselves with the hope that the two World Wars were a battle for freedom. With so much blood spilled and soaked up by the soil we might think that the force for freedom is strong and powerful. But the alphabetical and violent litany in Istanbul, Jerusalem, Kabul, London, Munich, Nice, Oslo and Paris shows freedom's vulnerability.

Freedom is both great and weak. An idea that is so powerful that it gives oxygen to originality but at the same time so powerless in the face of evil.

This paradox about freedom is similar to what people of faith have wrestled with for ages – how can the world's great Creator who is supposed to be powerful be also so powerless in the face of evil? That question comes into focus for Christians with the vision of Jesus nailed to a cross. Can this victim of violence really be the eventual victor of good over evil?

Whenever there's a terrorist attack politicians, in the name of freedom, pledge to fight and defeat the evil of terrorism. If I were a politician I'd probably say the same. But there's another way of responding.

We could also say,

“Every act of terror you inflict exposes the truth about freedom and its fragility. But for all its vulnerability, and indeed because of it, we still believe in it. And you depend upon it. For without freedom you would not be able to do your deadly deeds. When you abuse freedom in a storm of violence we will die for it.”

So let the candle flames that mark the names of the fallen and the flowers that grace their graves speak not only of grievous loss but also of freedom's beauty, its fragility and its greatness.

Freedom, of course, does not mean freedom from the law but freedom within the law. Admittedly these societal laws change down the generations especially when they are challenged by greater insight into those moral laws of the universe, such as justice and the equality of rights. Later this month I will give the Ebor Lecture in York entitled “A Journey Around Justice” which offers a Christian understanding of justice and the role of the Church in seeking justice in the world.

What I humbly hope that this Lecture has shown is that a bishop is not without some historic and constitutional foundation in contributing to the framing of those laws in search of a more just and free society.

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