

# THE LAW OF DOCTRINAL DISCIPLINE IN THE CHURCH OF ENGLAND

**Norman Doe**

The following describes in outline the law of the Church of England as it relates to doctrinal discipline. Its focus is the freedom, and the limits to this, which the law confers on individuals, principally clergy, to hold and communicate their own ideas about the doctrine of the church. In order to determine whether the Church of England employs a liberal or a restrictive approach to doctrinal discipline, its laws are placed comparatively in this study against the doctrinal laws of other churches of the Anglican Communion. For the purposes of this study, doctrine is understood as the body of faith or teaching which is received and held by the Church of England.

## I. THE PLACE OF LAW IN DOCTRINAL DISCIPLINE

Law is employed in the Church of England to effect doctrinal discipline by means of: rights and duties to proclaim the faith; rules which identify that which represents the official doctrine of the church; and structures for the protection and development of doctrinal formulae. Discipline involves compliance with standards set by the law and other norms of the church in relation to each of these areas of doctrinal life.<sup>1</sup>

### 1. The Proclamation of the Faith

First, law is employed in the Church of England in order to ensure the proclamation or public presentation of the faith. Whilst the laity in general have no *legal* duties to present the Christian message,<sup>2</sup> bishops, priests, deacons, readers and lay workers all have specific legal duties to teach the faith either formally or by way of example.<sup>3</sup> In sermons, the preacher 'shall endeavour himself with care and sincerity to minister the word of truth, to the glory of God and to the edification of the people'.<sup>4</sup> Classes of person enjoy rights to instruction in the faith on prescribed occasions: each minister

<sup>1</sup> As shall be seen below, doctrinal standards are also set by ecclesiastical quasi-legislation (such as may be contained in a statement or guidance issued by the House of Bishops); for this form of regulation see N. Doe, 'Ecclesiastical quasi-legislation', in N. Doe, M. Hill, and R. Ombres (eds), *English Canon Law* (Cardiff, 1998) 93.

<sup>2</sup> However, profession of the faith is recognised as a spiritual responsibility of lay persons; eg concerning baptism for those of riper years, see the Book of Common Prayer 1662 (hereafter BCP) 288: whilst no express promise is made to teach, the candidate is signed with the cross 'in token that hereafter he shall not be ashamed to confess the faith of Christ crucified'.

<sup>3</sup> Canon C18(1) (bishops must 'uphold sound and wholesome doctrine'); E4(2) (readers); E7(5) (lay workers); for the duty to teach by example see, for instance, Canon C26(2): ministers must frame their lives 'according to the doctrine of Christ'; E1(4): churchwardens must 'encourage parishioners in the true practice of religion'; C15(1)(1), preface to the declaration of assent: 'which faith the Church is called upon to proclaim afresh in each generation'.

must `teach the people from time to time`, especially at Christmas, Easter and Whitsun, so that they come to holy communion prepared.<sup>5</sup> A minister must `take care that the children and young people within his cure are instructed in the doctrine...of Christ, as the Lord commanded and as they are set forth in the holy Scriptures, in the Book of Common Prayer, and especially in the Church Catechism`.<sup>6</sup> Ministers must instruct parents or guardians before infant baptism, adult candidates must be instructed `in the principles of the Christian religion`, as must confirmation candidates and those to be received into the church.<sup>7</sup> In addition to duties placed on specified office-holders,<sup>8</sup> evangelisation is coordinated by a number of bodies centrally and at the local level.<sup>9</sup> So: clergy are subject to discipline in the sense that these duties require them to teach or instruct others in the faith and doctrine of the church, but such duties are cast in general terms. The law containing these duties is silent as to the interpretation, and the manner of the exposition, of doctrine in teaching and instruction. These seem to be a matter of discretion for the cleric.

In contrast to the Church of England, the formal laws of most churches of the Anglican Communion,<sup>10</sup> relate proclamation of the faith directly to the fundamental objectives of the institutional church.<sup>11</sup> The formal law may be purely descriptive,<sup>12</sup> or else proclamation is cast as a duty of the institutional church,<sup>13</sup> or as both a duty and a right.<sup>14</sup> Occasionally, laws simply provide that the church is to hold the faith.<sup>15</sup> As with the Church of England, most Anglican churches place no specific duties on lay persons to proclaim the faith. Instead, this function is assigned to the bishop, to clergy and to special classes of lay office-holder.<sup>16</sup> As is also the case with the

<sup>4</sup> Canons B18 and C24(3): a sermon should normally be preached at all celebrations on Sunday and other Holy Days`; a sermon must be preached in every parish church at least once each Sunday, except for some reasonable cause approved by the diocesan bishop; ordinarily the sermon is preached by a minister, reader or lay worker, though, at the invitation of the minister having cure of souls, `another person may preach with the permission [given occasionally or generally] of the bishop`.

<sup>5</sup> Canon B15(2).

<sup>6</sup> Canon B26: to this end the minister, `or some godly and competent persons appointed by him, shall on Sundays or if need be at other convenient times instruct and teach them in the same`; moreover, all parents and guardians shall take care that their children receive such instruction.

<sup>7</sup> Canons B22(3), B24(1), B27(2); Can. B28 confers on persons to be received into the church a right to be instructed.

<sup>8</sup> Canon E(4) (churchwardens); E7(2),(3) (lay workers).

<sup>9</sup> See N. Doe, *The Legal Framework of the Church of England* (Oxford, 1996) 255. For the deanery, see Synodical Government Measure 1969, s. 5(3)(b); and for the parish, Parochial Church Councils (Powers) Measure 1956, s. 2(1)(a).

<sup>10</sup> See generally, N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) Ch. 7.

<sup>11</sup> See eg Rwanda, Constitution, Art. 1: `The mission of the Province is...the proclamation of the Gospel of Jesus Christ`.

<sup>12</sup> See eg Southern Cone, Const. Art. 1: the church `professes the historic faith`.

<sup>13</sup> See eg South India, Const. II.3.

<sup>14</sup> See eg Kenya, Const. 1979, Art. II(e).

<sup>15</sup> See eg Central Africa, Const. Art. I.

<sup>16</sup> See N. Doe, *Canon Law in the Anglican Communion*, Ch. 6.

Church of England, laws impose on clergy two duties to enable proclamation of the faith: the preaching of sermons and the instruction of persons within a cure of souls. In relation to sermons, the laws of churches are in much the same terms as the law of the Church of England,<sup>17</sup> but as to instruction generally, the discipline in other churches is rather more rigorous than that of the Church of England, particularly in relation to the subjects of instruction.<sup>18</sup>

## 2. The Official Doctrine of the Church

Secondly, the law is employed to define the official doctrine of the Church of England.<sup>19</sup> It does so by means of rules which identify the sources or foundations of doctrine, and those which identify the location of doctrine: (a) 'the doctrine of the Church of England is *grounded* in the Holy Scriptures, and in such teachings of the ancient fathers and Councils of the Church as are agreeable to the said Scriptures'; and (b) '[i]n particular such doctrine is to be *found* in the Thirty-nine Articles of Religion, the Book of Common Prayer, and the Ordinal'.<sup>20</sup> The status of these as the lawful sources of doctrine and the doctrinal texts of the church is recognised in the Church of England (Worship and Doctrine) Measure 1974.<sup>21</sup> Other documents may contain doctrines of 'persuasive authority',<sup>22</sup> such as those of the Doctrine Commission, Convocations, the House of Bishops,<sup>23</sup> or the Lambeth Conference,<sup>24</sup> and the courts sometimes appeal to such doctrines in the resolution of disputes.<sup>25</sup>

<sup>17</sup> See, however, eg Southern Africa, Can. 24.4(a): the minister must preach 'a sermon expounding and applying Holy Scripture'.

<sup>18</sup> See eg Philippines, Cans. III.16.3(a): ministers must instruct the youth on the Holy Scriptures and 'the Doctrine, Polity, History and Liturgy of the Church'.

<sup>19</sup> The expression 'official teaching of the Church' was used by the Bishop of Chichester in *Re St. Stephen's, Walbrook* [1987] 2 All ER 578 at 561. See also: *Believing in the Church* (London, 1981): 'Definition of doctrine is necessary to present the gospel to the current generation and to preserve it for future ones'.

<sup>20</sup> Canon A5; compare the view of the Arches Court *per* Sir Herbert Jenner Fust in *Gorham v Bishop of Exeter* (1849) 2 Rob. Ecc. 1 at 55: '*Prima facie*...the Thirty-Nine Articles are the standard of doctrine; they were framed with the express purpose of avoiding a diversity of opinion, and are, as such, to be considered, and, in the first instance, appealed to, in order to ascertain the doctrine of the Church'.

<sup>21</sup> Church of England (Worship and Doctrine) Measure 1974, s. 5(1): 'References in this Measure to the doctrine of the Church of England shall be construed in accordance with the statement concerning that doctrine contained in the Canons of the Church of England'.

<sup>22</sup> T. Briden and B. Hanson (eds), *Moore's Introduction to English Canon Law* (3<sup>rd</sup> edn., London, 1992) 50.

<sup>23</sup> See eg *Believing in the Church*, A Report of the Doctrine Commission (1981); *Abortion and the Church* (1993: this report 'has only the authority of the Board by which it was prepared'); *Issues in Human Sexuality* (1991) and *The Nature of Christian Belief* (1986), both statements by the House of Bishops. For the authority of Convocation resolutions, see N. Doe, *Legal Framework*, 21.

<sup>24</sup> See generally N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) 345f.

<sup>25</sup> *Re St Stephen's, Walbrook* [1987] 2 All ER 578 at 582: the Bishop of Chichester appealed to the formulations of the Anglican-Roman Catholic International Commission in clarifying doctrines of the holy communion; the findings of ARCIC had been 'recently approved by the General Synod as consonant in substance with the Doctrines of the Church of England'.

Generally in the Anglican Communion, in which churches are not confessional institutions with formal legal statements of their beliefs, laws are employed simply to point to doctrinal documents, extrinsic to the law, which are accepted by the church as normative in terms of faith. It is only in this oblique sense that law is used to define doctrine.<sup>26</sup> In addition to the approach of the Church of England, which locates official doctrine in the trilogy of post-Reformation documents, some churches formally *accept* Holy Scripture as 'the supreme standard of faith'.<sup>27</sup> The most common approach is based on the principle of *reception*. For example, the Province of the West Indies 'receive(s) and maintain(s) the faith of Our Lord Jesus Christ as taught in the Holy Scriptures, held in the Primitive Church, summed up in the Creeds, and affirmed by the undisputed General Councils'.<sup>28</sup> The Province of Southern Africa operates a mixture of the English approach and the reception approach: the province (1) 'receives' the faith of Jesus Christ, as taught in the Holy Scriptures, held by the primitive church, summed up in the in the Creeds, and affirmed by the undisputed general councils; (2) receives the doctrine of Christ, according as the Church of England has received and set forth the same in its doctrine; and (3) receives the Book of Common Prayer and Ordinal 1662. In addition, canonical 'approval' is given to the Thirty-Nine Articles.<sup>29</sup>

### 3. The Protection and Development of Doctrine

Thirdly, the law is employed for the protection and development or reformulation of doctrine, the latter on the basis of the principle that doctrine is reformable.<sup>30</sup> As a matter of law, however, doctrine of an established church may be altered only in

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<sup>26</sup> For a rare occasion on which 'doctrine' has been defined judicially by church courts, the case in ECUSA of *Stanton (Bishop of Dallas) v Righter* (1996), see N. Doe, *Canon Law in the Anglican Communion*, 187.

<sup>27</sup> The approach is uncommon and is illustrated by the constitution of the church in South India which 'accepts the Holy Scriptures of the Old and New Testaments as containing all things necessary to salvation and as the supreme standard of faith' as well as the Apostles' and Nicene Creeds.

<sup>28</sup> West Indies, Declaration of Fundamental Principles, 1.

<sup>29</sup> Southern Africa, Fundamental Declaration and Can. 16.

<sup>30</sup> Thirty-Nine Articles, Art.20: 'The Church hath ... 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'; see also Art. 34: 'It is not necessary that traditions and ceremonies be in all places one, or utterly alike, for at all times they have been diverse, and may be changed of countries, times and man's manners'; also, 'Every particular or national Church, has authority to ordain, change, and abolish ceremonies or rites of the Church ordained only by man's authority'.

accordance with the legal procedures prescribed for alteration.<sup>31</sup> For the Church of England, state approval for the alteration of doctrine has been given with the enactment of the Synodical Government Measure 1969 and the Church of England (Worship and Doctrine) Measure 1974: and the doctrines approved by the latter may, in turn, be altered only with an amendment of this measure.<sup>32</sup> As such, General Synod is the only authority within the church competent to alter legally approved doctrines, and the State courts have understood that General Synod possesses *in law* unlimited power to do so provided the required procedures are followed.<sup>33</sup> The procedures are rigorous.<sup>34</sup> Also, a new form of worship `shall be such as in the opinion of the General Synod is neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter`. <sup>35</sup> As doctrinal development is reserved to General Synod, so the law is restrictive towards other church institutions: diocesan synods, deanery synods and parochial church councils may discuss matters of religious interest, but they cannot `issue...any statement purporting to declare the doctrine of the Church of England`. <sup>36</sup> Moreover, it is generally understood that the courts do not possess a power to declare, create or to change doctrine,<sup>37</sup> and, `it is to be remembered that a court of law has nothing to do

<sup>31</sup> *General Assembly of the Free Church of Scotland v Lord Overton* [1904] AC 515 at 648: according to the House of Lords, `where the state has by legislative acts established a church identified by certain doctrines, that church cannot, while retaining the benefit of establishment, exercise any power of altering those doctrines without the legislative sanction of the state'.

<sup>32</sup> Halsbury, *Laws of England*, Vol. 14, *Ecclesiastical Law* (4<sup>th</sup> edn., London, 1975) paras. 335, 936.

<sup>33</sup> *R v Ecclesiastical Committee of Both Houses of Parliament, ex parte the Church Society* (1994) 6 Admin LR 670: *per* McCowan LJ, accepting the argument that `the Church of England has inherent authority to deal with all matters of doctrine ... as affecting its own members`; the courts had not been given the task of determining, for the purposes of the Enabling Act 1919, what was a fundamental change of doctrine (see M. Hill, *Ecclesiastical Law* (2<sup>nd</sup> Edn., Oxford, 2001) 665); *R v Archbishops of Canterbury and York, ex p Williamson* (1994) *per* Sir Thomas Bingham MR: `I, for my part, can see nothing absurd about entrusting decisions on matters of doctrine and faith to a body of church people, including the Bishops and Clergy, with overall control reserved to a majority in Parliament` (for the judgments, see Hill, *op cit.*, 672).

<sup>34</sup> Synodical Government Measure 1969, Sched. 2, Art. 7(1): `[a] provision touching doctrinal formulae shall, before it is finally approved by the General Synod, be referred to the House of Bishops, and shall be submitted for such approval in terms proposed by the House of Bishops and not otherwise`; see also Art. 7(2)-(5).

<sup>35</sup> Church of England (Worship and Doctrine) Measure 1974, s. 4(1) and (2) (synod `shall` determine conclusively); s. 2(1): a canon dealing with declarations of assent to the church`s doctrine must be passed by a two-thirds majority in each House of General Synod.

<sup>36</sup> Synodical Government Measure 1969, ss. 4(2),5(3), Parochial Church Councils (Powers) Measure 1956, s. 2(2)(b); see also *Opinions Concerning the Church of England* (Legal Advisory Commission) 107: this applies `whether or not the motion involves only the reaffirmation of doctrine`.

<sup>37</sup> T. Briden and B. Hanson (eds), *Moore`s Introduction to English Canon Law* (3<sup>rd</sup> edn., London, 1992) 50: `the courts do not claim to declare true doctrine, but only to state what the law is with regard to doctrine`. In *Gorham v Bishop of Exeter* (1850) 117 ER 377, the Privy Council concluded: `[t]his court has no jurisdiction or authority to settle matters of faith or to determine what ought in any case to be the doctrine of the Church of England`. The duty of the courts extends `only to a consideration of that which is by law established to be the doctrine of the Church of England upon the true and legal construction of the articles and formularies`; for the view of the Arches Court in *Gorham* (1849) ER 1221 at 1238: `I am particularly anxious...to have it distinctly understood that I guard myself against being supposed to offer any opinion on the purely theological point at issue between the parties .... All

with the soundness or unsoundness of a particular doctrine'.<sup>38</sup>

As is the case in the Church of England, generally, in the Anglican Communion, as a matter of law, competence to draw up doctrinal formularies is enjoyed only by national or provincial assemblies, not by institutions at lower levels of the church. Legal provisions dealing with the development of doctrine, from its re-statement to its alteration, fall into a wide spectrum of categories: from enabling through limiting to disabling provisions. The Kenyan constitution is an example of an enabling arrangement.<sup>39</sup> Churches having a connection with the state are subject to additional procedural constraints; this is the case in New Zealand.<sup>40</sup> Moving along the spectrum, some churches employ a reserved right to adopt doctrinal alterations accepted by the Church of England; typically: 'we disclaim for this Church the right of altering any of the Standards of Faith and Doctrine now in use in the Church of England'; however, nothing shall prevent the church from 'accepting any alterations in the Formularies of the Church (other than the Creeds), which may be adopted by the Church of England or any other Church in the Anglican Communion'.<sup>41</sup>

## II. ASSENT TO DOCTRINE

With respect to assent to doctrine, the law of the Church of England contains one set of rules applicable to the general membership of the church, and another set of rules in relation to ordained and lay ministers. First, there is no clear legal duty on

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that the Court is called upon to do is to endeavour to ascertain whether the Church has determined any thing upon the subject, and, having done so, to pronounce accordingly....The authoritative declaration of the Church constitutes the law which this Court is bound to follow implicitly, without indulging in any opinion of its own as to its correctness or erroneousness. The Court is to administer the law as it finds it laid down`.

<sup>38</sup> *Overtoun* [1904] AC 515 at 648.

<sup>39</sup> Kenya, Const. Art. II.(c): 'The Church of this Province, being a wholly autonomous and self-governing part of the Body of Christ, affirms its right to draw up its own formularies of faith, and to set forth in terms that it considers suitable to the present day and to the needs of the peoples of this Province, the Faith which this church holds`.

<sup>40</sup> In New Zealand it is lawful for the General Synod `in such way and to such extent as may seem expedient`, in accordance with the terms of the secular Church of England Enabling Act 1928, `to alter, add to, or diminish the Formularies, or any one or more of them, or any part or parts thereof, or to frame or adopt for use in the Church...new Formularies in lieu thereof or as alternatives thereto`. But this does not empower General Synod `to depart from the Doctrine and Sacraments of Christ as defined in the Fundamental Provisions of this Constitution`. Changes may be made after adoption of a proposal, reference to the diocesan synods, and, following a `fresh election` the Synod confirms the same by a two-thirds majority of the members of each order: see N. Doe, *Canon Law in the Anglican Communion*, 201-2.

<sup>41</sup> Southern Africa, Declaration of Fundamental Principles 1870.

members of the church generally to believe Holy Scripture,<sup>42</sup> but the Thirty-Nine Articles require belief in the Creeds.<sup>43</sup> Nor do legal rules clearly require individuals to believe the Thirty-Nine Articles.<sup>44</sup> Rather, and doubtless this makes sense in terms of enforceability, the law provides only for a right to assent: the Thirty-Nine Articles 'may be assented to with a good conscience by all members of the Church of England' as agreeable to the Word of God.<sup>45</sup> Indeed, the Thirty-Nine Articles provide that the church 'ought not to decree any thing against [holy Writ], so besides the same [it] ought not to enforce any thing to be believed for necessity of Salvation'.<sup>46</sup> Nevertheless, as to the statement that '[t]he Church of England...belongs to the true and apostolic Church of Christ', 'no member thereof shall be at liberty to maintain or hold the contrary'.<sup>47</sup> Moreover, with those seeking the ministrations of the church in baptism, confirmation and holy communion an assent of faith is required liturgically.<sup>48</sup> The position of office-holders is very different: soundness of faith is a prerequisite for admission to holy orders and various lay ministries.<sup>49</sup>

Secondly, General Synod is empowered by Measure to make provision by Canon as to the obligations of the clergy and lay officers of the Church of England to assent or subscribe to the doctrine of the church.<sup>50</sup> At ordination and on admission to office, respectively, ordained clergy and lay ministers must make a declaration of assent to the faith and doctrine of the Church of England.<sup>51</sup> Archbishops, diocesan and suffragan bishops, archdeacons, priests, deacons, and readers are obliged to *affirm*

<sup>42</sup> However, the Thirty-Nine Articles provide that 'whatsoever is not read [in Holy Scripture], nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the Faith' - this impliedly requires an assent of faith to that which is contained in Holy Scripture; Art. 6: 'Holy Scripture containeth all things necessary to salvation: so that whatsoever is not read therein, nor may be proved thereby, is not required of any man, that it should be believed as an article of faith, or be though requisite or necessary to salvation'.

<sup>43</sup> Art. 8: 'The Three Creeds...ought thoroughly to be received and believed; for they may be proved by most certain warrants of Holy Scripture'.

<sup>44</sup> However, the royal declaration preceding the Articles enjoins 'all Our loving Subjects to continue in the uniform Profession' of the Articles as containing 'the true Doctrine of the Church of England agreeable to the Word of God': it is possible that this may give rise to a legal duty of assent.

<sup>45</sup> Canon A2; see also House of Bishop's *The Nature of Christian Belief*, 6: 'Canon A5 ... from one point of view, is not worded strongly enough. Commitment to the catholic Creeds implies more than commitment to teachings 'agreeable' to Scripture. It means accepting as normative on specific points only that interpretative selection of teachings agreeable to Scripture which the Creeds authorise'.

<sup>46</sup> Art 20.

<sup>47</sup> Canon A1; moreover, concerning schisms, 'it is the duty of clergy and people to do their utmost not only to avoid occasions of strife but also to seek in penitence and brotherly charity to heal such divisions': Canon A8.

<sup>48</sup> Liturgical action may require, needless to say, an assent of faith (see eg BCP, 285: 'Wilt thou be baptized in this faith? *Answer*. That is my desire'): similarly, under Canon B9, the Creed must be recited.

<sup>49</sup> See N. Doe, *The Legal Framework of the Church of England* (Oxford, 1996) Chs. 7,8.

<sup>50</sup> Church of England (Worship and Doctrine) Measure 1974, s.2.

<sup>51</sup> See generally, *Subscription and Assent to the 39 Articles*, A Report of the Archbishops' Commission on Christian Doctrine (London, 1968) 12: 'assent' does not mean 'general assent'; '[i]n law, assent must be taken to mean "complete legal acceptance"'.

`loyalty to this inheritance of faith as [the candidate`s] inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making Him known to those in [the minister`s] care`. Also, they are obliged to `declare [their] belief in the faith which is revealed in the Holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness'.<sup>52</sup> A declaration must also be made by ecclesiastical judges and registrars.<sup>53</sup>

It has been understood that the declaration generates a duty of intellectual assent.<sup>54</sup> However, it remains unclear whether assent means a complete and *ex animo* adherence to every doctrinal statement, acceptability of their main tenor, preference for them (as opposed to any other doctrinal statement), or else their acceptance as portraying the identity of the Church of England.<sup>55</sup> The Church of England provides for no intellectual response to persuasive doctrines falling outside the terms of the declaration of assent. Whereas sometimes these may prescribe forms of conduct, *prima facie* any duty to follow these is moral rather than legal in nature.<sup>56</sup>

In other churches of the Anglican Communion, although it is obviously assumed that ordinary lay members of churches hold the faith, very seldom do formal laws impose upon the laity a duty to assent intellectually to the legally approved doctrines. However, whilst forms vary, lay candidates for judicial office, for some administrative offices, and for teaching, liturgical and pastoral office, must in the vast majority of churches make a subscription.<sup>57</sup> Nevertheless, it is a general principle of Anglican canon law that subscription to doctrine is a pre-condition to admission to diaconal, priestly or episcopal ordination as well as, in most churches, admission to positions of episcopal and clerical office. The concepts of assent and of belief, and

<sup>52</sup> Canons C15, E5, E6.

<sup>53</sup> Ecclesiastical Jurisdiction Measure 1963, s. 2(5)(a) (and Canon G2(3)): diocesan chancellors; and s. 3(7)(a) (and Can. G3(5)): Dean of the Arches and Auditor; Canon G4(3): registrars.

<sup>54</sup> House of Bishops *The Nature of Christian Belief*, 4: `It is on the basis of this response, made in good conscience and *without private reservation*, that ministers are ordained, commissioned or appointed to particular work, and given authority to teach as officially approved representatives of the Church of England`.

<sup>55</sup> *Subscription and Assent to the 39 Articles* (1968) 33

<sup>56</sup> See eg *Issues in Human Sexuality*, A Statement by the House of Bishops (London, 1991) 5.12ff: for the possibility of disciplinary action against clergy who engage in sexually active homosexual relationships; see also *Bland v Archdeacon of Cheltenham* [1972] 1 All ER 1012: the Deputy Dean accepted that Bland had been influenced (in refusing baptism) by doctrinal ideas `generally consistent with those expressed in several official reports and decisions of the Convocations and in the report and resolutions of the Anglican bishops at the 1949 Lambeth Conference`. Though refusal to baptize was not itself a `doctrinal offence`, the assessors at Bland`s trial did not know about his `high ideas` of the importance of baptism as based on these doctrinal documents. `This`, said the Deputy Dean, `would have been highly relevant on the issue of whether the neglect of duty (if any) was serious`.

<sup>57</sup> N. Doe, *Canon Law in the Anglican Communion*, 204.

occasionally of respect, are employed as the basis of subscription. Usually candidates give `assent` to church doctrines or declare `belief` that doctrines are agreeable to the Word of God. Subscription may involve affirmation, declaration, promise or oath.<sup>58</sup>

Whereas the English form requires an `affirmation of loyalty` to the faith and a `declaration of belief` in scripture, the creeds and the formularies, the Australian declaration of assent, for example, which may be adopted by the dioceses, requires `belief` in the faith, `assent` to ecclesiastical doctrine, and `belief` that the latter is `agreeable to the word of God`.<sup>59</sup> In New Zealand, canon law requires `belief` in the faith and an `affirmation of allegiance` to ecclesiastical doctrine.<sup>60</sup> In Southern Africa, before ordination, candidates declare `belief in the faith` revealed in Holy Scripture, held by the Primitive Church and summed up in the Creeds, and: `I will teach and maintain the Faith of our Lord Jesus Christ, and the Doctrine and Discipline by Him delivered to the Church, as acknowledged and set forth by the Church of the province of Southern Africa in the Constitution`.<sup>61</sup> Some churches require assent to the Thirty-Nine Articles (eg Ireland), but others do not (eg Scotland).

### III. THE ENFORCEMENT OF DOCTRINAL STANDARDS

Doctrinal standards are enforceable in the Church of England by means of executive action on the part of the bishop, and by judicial proceedings.<sup>62</sup>

#### 1. Episcopal Oversight of Doctrine

In the Church of England, the bishop has a canonical duty `to uphold sound and wholesome doctrine, and to banish and drive away all erroneous and strange opinions`; also, the bishop must correct `all such as be unquiet, disobedient, or criminous, within his diocese`.<sup>63</sup> According to a statement by the House of Bishops

<sup>58</sup> Ibid., 204-8.

<sup>59</sup> Australia, Can. 7 1973.

<sup>60</sup> New Zealand, Can. A.I-II.

<sup>61</sup> Southern Africa, Can. 16.1-2.

<sup>62</sup> Needless to say, dissent may involve a range of factual circumstances, including private withholding of assent to or a public statement inconsistent with the doctrine of the church.

<sup>63</sup> Canon C18(1),(7); The *Gravamen* prepared for presentation to Convocations: Bishop David Jenkins' views on the Virgin Birth and Jesus' `bodily Resurrection` were `in contradiction to the teachings of the Church of England as set forth in the Holy Scriptures and affirmed in the Apostles' and Nicene Creeds`; especially as ministers of the church are required `to set forward and maintain quietness, love and peace among all men` (Canon C18) and `to teach and to uphold sound and wholesome doctrine` (C18); `erroneous and strange opinions` (C18). The *Reformandum* sought to restore confidence and

(1986),<sup>64</sup> as part of the episcopal duty to 'guard' the faith, bishops are 'guardians of the process of exploration as well as of received truths'. As such, they are 'to give courage and support to those who are engaged in "proclaiming afresh" the faith. Bishops must 'not allow themselves to be trapped in purely negative criticism of older ideas which are still spiritually precious and creative for many'. Moreover, 'they have at all times the duty to avoid and to warn against the shallow truth, either traditionalist or innovatory, which fails to connect with and penetrate human life'.<sup>65</sup>

According to the House of Bishops, bishops too 'may properly enter into questionings on matters of belief...[b]ut must in all ways...take care not to present variant beliefs as if they were the faith of the Church'. A bishop is obliged 'not only to refrain himself from statements contrary to the doctrine of the Church of England but also to use all his efforts against such statements, whether made by those under his authority or by others'. However, to 'attempt to monitor and control every piece of doctrinal or moral instruction given by the ministers under [episcopal] care would be repugnant, disastrous and utterly impracticable. Those entrusted with ministry must be trusted....What the bishop can and should do is to foster a continuing process of theological education for all ministers, clerical and lay, and to share and guide, so far as opportunity allows, their reflection on these matters, including reflection on questionings and speculations'; 'when a bishop has done all he can...to promote true understanding and presentation of the faith by those who share his authoritative teaching ministry, he will have fulfilled his obligations under Canon Law for the care of both ordained and lay Christians alike'.<sup>66</sup>

As is the case in the Church of England, in most other Anglican churches the law places on the diocesan bishop the function to maintain doctrinal standards amongst ministers in the diocese. This is recognized time and time again in national and provincial church laws. For example, the English formula is mirrored almost *verbatim* in Scottish canon law.<sup>67</sup> In a very small number of churches, the law expressly enables the bishop to be assisted in oversight of doctrinal standards: in

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peace. For the synod debates, sparked off by the Jenkins' controversy, see the General Synod February Group of Sessions 1985 *Report of Proceedings*, Vol. 16, No.1 (London, 1985) 128-163,171-182.

<sup>64</sup> Needless to say, the statement is not of law, though it may enjoy the status of quasi-legislation: see above n.1.

<sup>65</sup> *The Nature of Christian Belief* (1986) paras. 64-73 (34-37).

<sup>66</sup> *Ibid.* See also *Working As One Body*, Report of the Archbishops' Commission on the Organisation of the Church of England (1995), recommended that the House of Bishops continues the practice of issuing statements on doctrine and, indeed, 'A more clearly focussed and regular collective approach by the House of Bishops would not suppress openness of debate or differences of view within the Church' (7.5). For heresy proceedings against a bishop, see *In re Lord Bishop of Natal* [1864-5] III Moore NS 114; *Capetown (Bishop of) v Natal (Bishop of)* [1869] VI Moore NS 202.

<sup>67</sup> Scotland, Can. 16.2.

Southern Africa, for instance, a duty is placed upon churchwardens to complain to the bishop (or the archdeacon) 'if there should be anything plainly amiss or reprehensible in the life or doctrine of the Incumbent'.<sup>68</sup>

## 2. Doctrinal Offences and Judicial Proceedings

In the Church of England, the laity generally would seem to enjoy a legal right to private rejection of the doctrines of the church,<sup>69</sup> and a public sermon, being a matter of public interest, is open to fair public criticism under the civil law of libel.<sup>70</sup> With regard to those who have made a declaration of assent, the position is very different. Though the law contains no specific provision, lay-office holders may be disciplined executively but not judicially.<sup>71</sup> Judicial proceedings may be instituted against archbishops, bishops, priests and deacons in pursuance of a complaint under the Ecclesiastical Jurisdiction Measure 1963 for an offence against the laws ecclesiastical involving a matter of doctrine.<sup>72</sup> Proceedings for a doctrinal offence must be brought in the Court of Ecclesiastical Causes Reserved.<sup>73</sup>

Whilst it is possible to generalise as to what constitutes a doctrinal offence it is difficult to ascertain its precise elements. Maintaining opinions contrary to the Christian religion, depraving the Book of Common Prayer, maintaining doctrines repugnant to the Thirty-Nine Articles and heresy have all been treated as doctrinal offences.<sup>74</sup> In *Bland v Archdeacon of Cheltenham* (1972), the Deputy Dean of the Arches explained that '[c]ertain offences clearly involve a matter of doctrine', including 'a public statement (as in a sermon or a book) denying the doctrine of the Trinity or of the deity of Christ'; offences of this type 'would be charged as such and would be referred without hesitation to the Court of Ecclesiastical Causes Reserved'. In this case it was decided that refusal to baptise was not a doctrinal offence.<sup>75</sup> In

<sup>68</sup> Southern Africa, Can. 29.7.

<sup>69</sup> See above for the general absence of duties of assent applicable to the laity.

<sup>70</sup> *Gathercole v Miall* (1846) 15 M & W 319; *Kelly v Sherlock* (1866) LR I QB 686; *Botterill v Whytehead* (1874) 41 LT 588; *Magrath v Finn* (1877) IR II CL 152.

<sup>71</sup> Generally, the church courts lack jurisdiction over the laity. *Reformandum* (1984): 'the doctrine of the Church of England is and remains as defined by Canon A5 ... and [is] required to be assented to in accordance with canon C15'.

<sup>72</sup> Ecclesiastical Jurisdiction Measure 1963, s. 38. See generally M. Hill, *Ecclesiastical Law* (2<sup>nd</sup> edn., Oxford, 2001) para. 615. ff.

<sup>73</sup> s. 10(1): 'The Court of Ecclesiastical Causes Reserved has original jurisdiction to hear and determine (a) proceedings upon articles charging an offence against the laws ecclesiastical involving matter of doctrine ritual or ceremonial'; see also s. 14(1)(a). For the procedure, and the episcopal veto over proceedings, see N. Doe, *The Legal Framework of the Church of England*, 147 and M. Hill, *Ecclesiastical Law*, para. 626..

<sup>74</sup> Halsbury, *Ecclesiastical Law*, para. 1354.

<sup>75</sup> [1972] 1 All ER 1012 at 1017.

*Gorham v Bishop of Exeter* (1850), the defendant maintained *inter alia* that infants were not incorporated into the Body of Christ at baptism. His presentation and induction were refused by the bishop on the basis that he held 'unsound doctrines, contrary to the true Christian faith, contrary to and inconsistent with the doctrine of the Church of England', and against the Thirty-Nine Articles and the Prayer Book. The decision of the Court of the Arches, to uphold the bishop's refusal to induct,<sup>76</sup> was reversed by the Privy Council.<sup>77</sup>

It has been understood that proceedings for heresy may be brought if a cleric advances publicly 'a false opinion repugnant to some point of doctrine clearly revealed in scripture and either absolutely essential to the Christian faith or at least of most high importance'.<sup>78</sup> In *Williams v Bishop of Salisbury* (1864),<sup>79</sup> the defendant was prosecuted under the (now repealed) Church Discipline Act 1840 for publishing heretical doctrines in contravention of the Thirty-Nine Articles, for, *inter alia*, describing the Bible as 'an expression of devout reason', 'the written voice of the congregation' and not 'the Word of God', and for his assertion that the offering of Christ was not for the propitiation for the sins of the whole world. Williams was found guilty by the Arches Court. On appeal the Privy Council formulated two basic principles. First, if a standard of faith is not 'expressly and distinctly stated, or which is not plainly involved in or to be collected from that which is written', 'there is so far freedom of opinion that they may be discussed without penal consequences'.<sup>80</sup> Secondly, in proceedings the articles must distinctly state the opinions which the cleric maintains, the relevant passages of the work in which the heretical statements appear and the doctrines of the church which the individual's statements are alleged to contravene.<sup>81</sup>

It may be noted that the decisions of the Privy Council in *Gorham* and *Williams* are not strictly binding on the Court of Ecclesiastical Causes Reserved,<sup>82</sup> and today the use of legal powers to prosecute for doctrinal offences may be fettered by an

<sup>76</sup> (1849) ER 1221 at 1253.

<sup>77</sup> (1850) Moore's Special Report, 462; (1850) ER 177. The question for the Privy Council was jurisdictional - whether an appeal would lie to it or the Upper House of Convocation (it held appeal did lie to the Privy Council).

<sup>78</sup> R. Burn, *Ecclesiastical Law*, 304,305; see T. H. Jones, 'Law and the suppression of heresy in the English Church: an historical survey', University of Wales LL.M. dissertation (Cardiff, 1994).

<sup>79</sup> (1864) 2 Moore PCCNS 375.

<sup>80</sup> The court relied on *dicta* from *Gorham v Bishop of Exeter* (1850).

<sup>81</sup> Halsbury, *Ecclesiastical Law*, para. 1354: 'There are ... many points of doctrine which the church has not decided and which are open to every member of the church to decide for himself according to his own conscientious opinion'.

<sup>82</sup> Ecclesiastical Jurisdiction Measure 1963, s. 45(3).

ecclesiastical convention recognising doctrinal freedom.<sup>83</sup> In contrast with the Church of England, Roman Catholic canon law contains more detailed provision concerning both the right to dissent and the elements of offences concerning doctrine.<sup>84</sup> (Public statements offensive to the Christian faith are also regulated by the two common law offences of blasphemy for which proceedings may be brought in the courts of the State.<sup>85</sup>) The position in the Church of England has been summed up as follows: 'In doctrinal matters the law permits a considerable degree of liberty, and where two interpretations are possible either is permissible. Further, there are many matters upon which the formularies are silent and much is therefore left to the conscience of the individual. In England, it is generally in the outward expression of doctrine, that is public worship, rather than in the exposition of doctrine itself, that the greatest controversies have arisen and where heterodoxy has been challenged' .<sup>86</sup>

The position of the Church of England may be compared with the laws of other Anglican Churches. In all churches, judicial proceedings are available in serious and appropriate cases of doctrinal indiscipline. The system of ecclesiastical offences of most churches includes a special offence relating to doctrine, over which church courts possess jurisdiction. In a small number of churches, proceedings may be taken against lay people for doctrinal offences; for example, in the Church in Wales, for 'teaching, preaching, publishing or professing doctrine or belief incompatible with that of the Church in Wales', and according to provincial quasi-legislation '[t]he teaching of private and esoteric doctrine, and all interpretation of the Faith that is in clear contradiction of the formularies of the Church, is both an act of disloyalty and a breach of duty' .<sup>87</sup>

Most Anglican churches, however, confine judicial proceedings for doctrine offences to the clergy. Definitional elements differ most in terms of their width. In contrast to England, where there is no formal definition of offences against doctrine, Southern African law is a little more precisely formulated: the doctrinal offences are heresy ('false doctrine'), schism ('acceptance of membership in a religious body not in

<sup>83</sup> House of Bishops', *The Nature of Christian Belief*, 10 ('[t]he questioning and creative process is a necessary part of Christian discipleship'), 37-38 ('if the Church of England does not proceed against its ministers for heresy this comes not from indifference but from a conviction born of experience that such proceedings do more harm than good. 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'; N. Doe, 'Obedience to doctrine in canon law: the legal duty of intellectual assent', *Denning Law Journal* (1992) 23.

<sup>84</sup> See N. Doe, *The Legal Framework of the Church of England* (Oxford, 1996) 267f.

<sup>85</sup> See eg A. Bradney, *Religions, Rights and Laws* (Leicester, 1993) Ch. 5.

<sup>86</sup> L. Leeder, *Ecclesiastical Law Handbook* (London, 1997) 270.

<sup>87</sup> See generally, N. Doe, *The Law of the Church in Wales* (Cardiff, 2002) 214-5.

communion` with the church); and apostasy (abandonment of `the Christian faith`). For these it must be established that the accused has `taught, published, or otherwise publicly promulgated, some doctrine or opinion repugnant to or at variance with the Faith and Doctrine of the Church`, as contained in the Creeds, the Thirty-Nine Articles, the Book of Common Prayer and the Ordinal; a charge must specify `particular passages of these Standards and Formularies`.<sup>88</sup> Furthermore, under some laws private withholding of assent is also actionable: in ECUSA, a bishop, deacon or priest may be tried in the church courts for holding and teaching publicly or privately any doctrine contrary to that held by the church.<sup>89</sup>

The laws of Anglican churches commonly deal with the interpretation of doctrine in cases of controversy. In Southern Africa, for example, in the interpretation of the standards of faith and formularies, the church is not bound by decisions concerning faith and doctrine other than those of its own ecclesiastical tribunals.<sup>90</sup> But in South East Asia: `[i]n the interpretation of the...standards and formularies and in all questions of faith [and] doctrine...whilst the Province is a fully autonomous part of the Anglican Communion, it shall nevertheless give due weight to the teaching and traditions of the Communion in the deliberations and decisions of its own ecclesiastical tribunals`. <sup>91</sup>

Finally, in contrast to the formal laws of the Church of England, the laws of many Anglican churches provide for quasi-judicial process in cases of doctrinal dispute. Three systems seem to be used. First, the laws of churches provide that if a doctrinal disagreement in the church persists it is to be referred for determination by the Archbishop of Canterbury.<sup>92</sup> Second, they provide for referral for consultation with the Anglican Consultative Council,<sup>93</sup> or the Archbishop of Canterbury or the Primates Meeting,<sup>94</sup> or the Archbishop of Canterbury assisted by `Bishops of the Anglican Communion`. <sup>95</sup> A third approach is for church law to provide exclusively

<sup>88</sup> Southern Africa, (Can. 37.1,5)

<sup>89</sup> ECUSA, Cans. IV.1.1.

<sup>90</sup> Southern Africa, Const. I.

<sup>91</sup> South East Asia, Fundamental Declarations, 5.

<sup>92</sup> See eg Central Africa, Const. Art. V.

<sup>93</sup> See eg Indian Ocean, Const. Art. 7.

<sup>94</sup> See eg South East Asia, Const., Fundamental Declarations, 4-6.

<sup>95</sup> See eg Southern Africa, Can. 41.

for resolution within the church (eg New Zealand, which has a special doctrine tribunal).<sup>96</sup>

## CONCLUSIONS

1. The law of the Church of England dealing with faith and doctrine aims to strike a disciplinary balance between safeguarding received faith and formulating it afresh to accommodate the changing needs of contemporary society. In this, it has much in common with other churches of the Anglican Communion.

2. In the Church of England doctrinal discipline is found in legal duties to teach. Such duties are confined to ordained ministers, readers and lay workers. This regime of teaching discipline generates a range of rights to instruction, though English church law is less well developed than in other Anglican churches with respect to the subjects of instruction. Also, in England, the deanery synod and parochial church council have specific duties to evangelise, and extensive evangelisation structures are provided by norms operating at both national and diocesan levels. In other Anglican churches, canonical institutions for evangelisation are much more common.

3. In the Church of England, doctrinal development is in the keeping of General Synod which, in the exercise of its doctrinal authority, is subject to a disciplinary regime. Elaborate procedural rules exist to preserve the received faith and to facilitate thorough consideration of proposed innovations. Doctrinal discipline is also evident in relation to diocesan synods and parochial church councils which are forbidden to develop or make doctrinal statements as would seem to be the church's courts. English arrangements are much the same in their discipline as those in other Anglican churches, though the laws of these churches seem to give greater formal profile to scripture, the creeds and the pronouncements of the early councils as normative standards in matters of faith.

4. In the Church of England it is only the ordained clergy and some lay officers who must declare their belief in the faith of the church, though the precise meaning of 'assent' remains unclear. The position would seem to be equally vague in other churches of the Anglican Communion.

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<sup>96</sup> For details concerning these models, and for the bodies to which reference may be made (such as the Archbishop of Canterbury), see N. Doe, *Canon Law in the Anglican Communion*, 211.

5. As in other Anglican churches, in the Church of England enforcing doctrinal standards is in the keeping of the bishop and, whilst guidelines from the House of Bishops enable reasonable questioning of the faith, in serious cases ample provision exists to penalise ministerial dissent in the church courts. Doctrinal offences are not, however, clearly defined, nor is there an explicit right of dissent.<sup>97</sup> The lack of definition in the elements of doctrinal offences may be contrasted with the laws of other Anglican churches in which such offences are defined with a greater degree of precision. However, the position of the Church of England would seem, generally, to be, at present, less restrictive than that of other Anglican churches, in some of which private doctrinal dissent may result in judicial proceedings.

Professor Norman Doe  
Director of the Centre for Law and Religion  
Cardiff Law School

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<sup>97</sup> The conclusions of the Clergy Discipline (Doctrine) Group are not yet in the public domain.