CHURCH-STATE RELATIONS IN THE UNITED KINGDOM: A WESTMINSTER VIEW[1]

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1. INTRODUCTION

In any discussion of church-state relations in the United Kingdom, it should be remembered that there are four national Churches: the Church of England, the (Reformed) Church of Scotland, the Church in Wales (disestablished in 1920 as a result of the Welsh Church Act 1914) and the Church of Ireland (disestablished by the Irish Church Act 1869). The result is that two Churches are established by law (the Church of England and the Church of Scotland) and enjoy a particular constitutional relationship with the state, while the other Churches and faith-communities (the Roman Catholics, the Free Churches, the Jews, Muslims, Hindus, Sikhs and others) have particular rights and privileges in particular circumstances.

(a) *Early history*

Traditionally, the interface between politics and the churches proceeded on the basis enunciated by Richard Hooker in the late sixteenth century: the church was the people, the people were the church, and the Sovereign, as ruler of the people, was naturally the ruler of the church as well: 'there is not any man of the Church of England but the same man is also a member of the commonwealth; nor any man a member of the commonwealth, which is not also of the Church of England [...] no person appertaining to the one can be denied to be also of the other.'[2]

As we know, this was not a uniquely English phenomenon: the same was true of Scandinavia, where the post-Reformation Churches were all established by law and placed under the authority of the Crown, or Germany, where religious allegiance was finally settled by the Peace of Augsburg, under which the state religion would be that of the local ruler: *cuius regio, eius religio*. In Reformation Scotland, where Queen Mary was a Roman Catholic, Parliament enacted the Reformed faith into statute[3] and successfully asserted its right to decide on the Kirk's form of government and theological stance.[4] But, as in England, it was assumed in Scotland that there was no *private* right to practice a religion different from that prescribed by the state.

(b) *The formal place of religion in Parliament*

Historically, the United Kingdom Parliament has been strongly influenced by its connexion with the Church. The House of Commons sat in St Stephen's Chapel until it was burned down in the eighteen-thirties; and each day still starts with prayers, read by the Speaker's Chaplain in the House of Commons and by a bishop in the House of Lords. The reason why Members of the House sit in parallel rows facing one another, instead of in a horseshoe or hemicycle, is that originally the Speaker sat where the

[1] This is an edited version of a paper presented to an international conference on the Unification of Europe and the Relationship of Society, State and Church at Christ Church College, Canterbury, on 13 to 15 September 2000. I should like to thank Chancellor Mark Hill for reading the original draft.
[2] Richard Hooker, *Laws of Ecclesiastical Polity*, Book VIII.1.2.
[3] Confession of Faith Ratification Act 1560 (Mary c 1) (Parliament of Scotland). Fortunately for the Estates, Queen Mary was a minor in 1560 and the Regency was exercised by the ineffectual Mary of Guise as Queen Dowager.
[4] Claim of Right 1689 (Will & Mary c 28) (Parliament of Scotland).

altar had been situated and the Members sat in the choir-stalls. This seating-pattern tends to encourage an adversarial rather than consensual style of debate, and at least some aspects of British parliamentary practice probably derive from the accident that the Commons met regularly in a chapel rather than a secular hall.

What the United Kingdom as a whole does not have is confessional political parties in the continental European sense. There was a time when working-class Roman Catholics tended to vote Labour and people in rural areas (mainly Anglicans) tended to vote Conservative. In the late nineteenth and early twentieth centuries there was a link between Liberalism and Nonconformity; and there was also a strong traditional connexion between Methodism and the Labour Party, particularly in the North of England. But all of that has largely passed, and there is certainly no Westminster equivalent of, for example, the Dutch system of 'pillarisation', where there are confessional political parties, confessional voluntary organisations and even confessional broadcasting companies.

(c) *Politics and the churches*

The Christian Churches and the other faith-communities are still major players in the political and social life of the United Kingdom, not just because of what they say, or how many people attend services, but because of what they *do*. The Church of England and the Roman Catholic Church run a large segment of the school system, particularly in the primary sector, and they therefore tend to be involved in any government consultations on the education system. The biggest provider of social services outside central and local government is the Salvation Army; though a small Church in terms of adherents, it is immensely important in terms of its social outreach, dealing particularly with the homeless and rough sleepers in a way which government agencies probably could not.

Moreover, the general feeling among politicians seems to be in favour of more involvement by the faith-communities rather than less. The Christian commitment of the Prime Minister, Tony Blair, is well known. The Leader of the Opposition, William Hague, has recently called for, in effect, closer relations between the faith-communities and government on social policy issues.[5] At the dawn of the third millennium the Churches and the major political parties seem to be drawing closer together, on social issues at least.

2. THE VIEW FROM ENGLAND

(a) *The present situation*

Representative institutions for the Church of England have developed piecemeal since the end of the nineteenth century through a process of gradual acceptance by both the hierarchy and Parliament of lay representation within Church government:

- 1885: consultative Houses of Laymen were elected by the diocesan conferences to confer with the Convocations.
- 1904: a consultative Representative Church Council was established, consisting of the two Convocations sitting together with the Houses of Laymen.
- 1919: the Church of England Assembly (Powers) Act established a National Assembly, with power to pass Measures for the Church which had statutory effect, subject to parliamentary approval.

[5] In a speech to the Annual Conference of the National Council of Voluntary Organisations on 7 February 2001, Mr Hague announced that, if elected, the Conservative Party would create an Office of Civil Society which would be staffed by 'charities, faith communities and family groups' and would report to a Cabinet Minister.

- 1969: the Synodical Government Measure inaugurated the General Synod of the Church of England which, for the first time, was given the power to legislate by Canon as well as by Measure.[6]
- 1974: the Church of England (Worship and Doctrine) Measure gave Synod power to authorise new forms of worship without parliamentary approval.

However, both the Government and Parliament remain involved in the affairs of the Church of England in various ways.

First, Measures of General Synod (though not Canons) are still subject to approval by Parliament. Under the 1919 Act, draft Measures are considered by the Ecclesiastical Committee, composed of Members of Parliament and Peers, which makes a recommendation to Parliament as to whether the draft Measure is 'expedient' or not. In the case of disagreement between the Ecclesiastical Committee and the Legislation Committee of Synod there can be protracted negotiations,[7] while on very rare occasions draft Measures have simply been rejected.[8]

Secondly, the twenty-six senior bishops in the Church of England sit as full voting members of the House of Lords–and they speak and vote on 'secular' as well as 'religious' issues.

Thirdly, bishops, deans of cathedrals, and certain other dignitaries are still appointed by the Crown on the advice, not of the Church, but of the Prime Minister. In 1976 the then Prime Minister, James Callaghan, agreed to greater degree of Church involvement in the appointment of diocesan bishops, through the establishment of a Crown Appointments Commission to recommend names. However, he was not prepared to give up his involvement completely, because he felt that there were 'cogent reasons why the state cannot divest itself from a concern with these appointments of the established church. The Sovereign must be able to look for advice on a matter of this kind and that must mean, for a constitutional Sovereign, advice from Ministers. The Archbishops and some of the bishops sit by right in the House of Lords, and their nomination must therefore remain a matter for the Prime Minister's concern'.[9]

A Synod Working Party under the chairmanship of Sir William van Straubenzee, a former MP, recommended in 1992 that the Prime Minister's role in Church appointments should be reduced, but the recommendations of that report have never been implemented.[10] Under the present system, a vacancy-in-see committee of diocesan representatives is appointed and soundings are taken as to the kind of candidate that the diocese wants. Two names are transmitted from the Crown Appointments Commission to the Prime Minister through his Appointments Secretary. He either sends them to the Queen with an appropriate recommendation or, alternatively, he may ask for further names; and it is generally thought that in 1997 the Prime Minister, Mr Tony Blair, rejected the original nominations put forward for the vacant bishopric of Liverpool.[11]

[6] Synodical Government Measure 196, s 1. The promulging of Canons had previously been the preserve of the House of Bishops and the Convocations.
[7] The draft Churchwardens Measure, which had been approved by General Synod in July 1997 as GS 1165C and which was amended as a result of disagreements between the Ecclesiastical Committee and the Legislation Committee finally received Royal Assent on 10 April 2001.
[8] The most recent examples of rejection are the draft Appointment of Bishops Measure of 1983 and the draft Clergy (Ordination) Measure of 1989.
[9] *HC Deb* (1975–76) 912, col 613.
[10] Sir William van Straubenzee *et al*, *Senior Church Appointments* (London: Church House Publishing, 1992).
[11] See *eg* Ruth Gledhill, 'Blair's Block on Bishop may lead to Church Crisis' (*The Times*, 15 September 1997).

Finally, the Second Church Estates Commissioner is always a Member of Parliament, and answers parliamentary questions about the work of the Church Commissioners and, in practice, about Church of England matters generally—even though, strictly speaking, some of the issues raised in supplementary questions tend to be outside his remit.

(b) *The current debate*

In England, establishment has continued more or less without protest from the time of Henry VIII until the present. Various aspects of Church government have been looked at in recent years; the last thoroughgoing review was by a Commission under the chairmanship of the Revd Professor Owen Chadwick in 1970.[12] The Chadwick Report did not itself propose any radical overhaul of establishment. Overall, the majority opted for recommendations which, while distancing the Church further from the state, kept the *status quo* more or less intact. The principal demand was for the church to be given more say in such matters as appointments of bishops and deans, and the former of these was partly conceded by the changes in 1976.

As recently as 1988 it was still possible for Kenneth Medhurst and George Moyser to suggest that establishment was

> 'not a major issue. Not only is there little pressure for disestablishment from within the Church of England itself, there is also considerable support from Nonconformists for a continuing state link. Such a link is commonly perceived as a visible reminder of England's officially Christian past and the creative role that the churches could consequently play in national life. Thus, for the immediate future, radical changes seem most unlikely. What might fall within the realm of practical politics is consideration of some further loosening of the state link.'[13]

Whether or not that was an entirely accurate assessment at the time it was made, it is undoubtedly the case that the situation has changed since then, and there are various factors–some domestic, some external–which may have contributed to this shift of opinion.

From the political point of view, the first is that the active membership of the Church of England is getting smaller. There are now probably as many Roman Catholics in church on the average Sunday morning as there are Anglicans; and the question inevitably arises as to why, if it no longer commands the overt loyalty of the majority of the population, the Church of England should continue to occupy what many Christians outside it regard as a privileged position.

Secondly, there is a certain amount of disquiet about the mechanism for Church appointments. Quite apart from arguments about the procedures, some, both inside and outside politics, have started to question why the state should be involved in church appointments at all.

Thirdly, there is the matter of changing religious demography. The United Kingdom now has about one million Muslims, probably the majority of whom are now second- or third-generation citizens, as well as substantial Hindu and Sikh popula-

[12] Owen Chadwick *et al*, *Church and State—Report of the Archbishops' Commission* (London, Church Information Office, 1970). The van Straubenzee Working Party was much more limited in scope.

[13] Kenneth M. Medhurst and George H. Moyser, *Church and Politics in a Secular Age* (Oxford, Clarendon Press, 1988) p 365.

tions. Recently there has been a call by a Commission on the Future of Multi-Ethnic Britain, established by the Runnymede Trust, for the re-examination of establishment in the interests of good race relations. Initial reports were that the Commission would call for the ending of the privileged position of Christianity in general and of the Church of England in order fully to demonstrate that the United Kingdom is a multi-cultural, multi-faith society.[14] In the event, the Commission's conclusion has been to call for the setting up by the government of a further commission to make recommendations on the legal and constitutional aspects of the role of religion in the public life of a multi-faith society.[15]

But the political debate is still fairly muted, and establishment still has its advocates. Frank Field MP, a former member of Synod and the dissenting member of the van Straubenzee Working Party in 1992, has argued strongly for retaining at least a modified form of establishment as a means of guaranteeing the openness and theological pluralism of the Church. Field clearly regards theology as far too important to be left to theologians–still less to Synod–and sees the lay element in establishment as an important counterweight to clericalism: '[o]ne of the many great distinguishing marks of the Anglican Church [...] is the fact that, because of its closeness to the English nation, it has understood how much religion the English are prepared to take, which is not very much.'[16]

He feels that the Anglican tradition of relatively undogmatic Christianity is in tune with the religious temper of the English people. There is independent evidence that others feel the same: a survey of five hundred Church of England incumbents in 1992–93 revealed serious concerns about the dangers of the Church falling into the hands of its activists and becoming increasingly sectarian in its approach to the needs of the unchurched.[17]

Finally, Field argues that any attempt to diminish the role of the Crown in Church appointments will lead to disestablishment by default. 'For what would be left of the Crown's influence if the Government were to accede to the reforms in the [van Straubenzee] report? And if the Crown were to lose its remaining influence in appointments how could the privileges of the church, particularly its endowments, remain intact?'[18] His preference would be for something like the present appointments system, but exercised in public.[19]

However, there are definite signs of changing attitudes. On Monday, 18 September 2000,[20] during the constitutional affairs debate at its Annual Conference, the Liberal Democratic Party voted in favour of the following amendment on disestablishment:

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[14] See, *eg*, Rachel Sylvester, 'Multi-Faith Coronation for Charles' (*Daily Telegraph*, 10 April 2000).
[15] Bikhu Parekh et al, *Report of the Commission on the Future of Multi-Ethnic Britain* (London: Profile Books, 2000) p 243.
[16] *HC Deb* (1995–96) 281, col 1090.
[17] Ted Harrison, *Members Only?* (London, Triangle, 1994) *passim*, but especially pp 112–126.
[18] Sir William van Straubenzee et al, *Senior Church Appointments* (London: Church House Publishing, 1992) p 115.
[19] In the subsequent discussion at the conference the Legal Advisor to General Synod, Brian Hanson, pointed out that from the point of view of *General Synod* there was increasing dissatisfaction with what was perceived as undue parliamentary interference with draft legislation emanating from Synod.
[20] *After* the conference at which the original paper was delivered: for a report, see Rachel Harden, 'Lib Dems vote to abolish Establishment Privileges' (*Church Times*, 22 September 2000).

'Conference further endorses the principle of separating church and state as an important strand in the reform of governance within the UK, and resolves to incorporate that principle into the Liberal Democrat framework for the UK constitution. In particular, Conference calls for:

(a) The Head of State to be barred from holding a position of high authority within any denomination, church or faith;

(b) The reform of the Act of Settlement of 1701, and other legislation, to remove religious discrimination in the succession to the throne.'

3. THE VIEW FROM SCOTLAND

None of the foregoing applies in any great degree to Scotland, and it is difficult to detect any great enthusiasm for disestablishing the Church of Scotland, not least because many Scots do not regard it as 'established' in any meaningful sense in the first place.

The current legal basis of the Church of Scotland rests on the Churches (Scotland) Act 1905 and the Church of Scotland Act 1921. Scheduled to the latter are the 'Articles Declaratory', which set out a kind of 'Charter of Rights' for the Kirk. Most important, the Articles assert the right of the Kirk:

- 'subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government and discipline in the Church [...]'[21] [Art. IV]; and
- 'to frame or adopt its subordinate standards, to declare the sense in which it understands its Confession of Faith, to modify the forms of expression therein, or to formulate other doctrinal statements [...]'[Art. V].[22]

Uniquely, the 1921 Act was to commence not at the initiative of the government but only after the Articles had been adopted by an Act of the General Assembly of the Kirk made with the consent of a majority of the presbyteries;[23] and the Act was finally brought into force by Order in Council in 1926.[24]

Professor Duncan Forrester notes that the 1921 Act does not use the term 'established' at all, referring instead to a *national* church[25] and, under the current arrangements, in legislative terms both the United Kingdom and the Scottish Parliaments leave the Church of Scotland strictly alone. Nevertheless, the Kirk still bears some marks of establishment, even though it is a very different kind of establishment from that of the Church of England:

- the position of Lord High Commissioner to the annual General Assembly, appointed by the Queen 'to supply Our Presence and to hold Our Place' at meetings of the General Assembly: this church-state link is unique to the Church of Scotland;
- the special protection given to the Kirk by the Treaty of Union;[26]
- the Ecclesiastical Household (Queen's Chaplains) in Scotland, composed exclu-

[21] Church of Scotland Act 1921, Schedule, Articles Declaratory, Art IV.
[22] *Ibid*, Schedule, Articles Declaratory, Art V.
[23] *Ibid*, s 4.
[24] Churchof Scotland Order 1926, S R & O 1926/841.
[25] Duncan B. Forrester, '*Ecclesia Scoticana*—Established, Free or National?' *Theology* (1999) CII.
[26] See below.

sively of Church of Scotland Ministers;

- the special position of Parish Ministers with respect to the Marriage (Scotland) Act 1977, which recognises as valid any form of ceremony which is recognised by the Kirk 'as sufficient for the solemnisation of marriages'; and
- unless and until the Court of Session or the House of Lords takes a view entirely contrary to previous decided cases,[27] the current freedom of the courts of the Kirk from judicial review.

What might this mean in political terms? From 1707 to 1999 there was no separate parliament for Scotland, so the General Assembly of the Church of Scotland (and particularly its Church and Nation Committee) tried to provide a national forum for Scottish domestic issues. Prior to devolution, many Scottish MPs would attend the Assembly for the annual Church and Nation debate as a matter of course. The present writer once asked a certain Scots MP whether he would be attending the debate that year and received the classic riposte, 'Of course. I may be an atheist, but I'm a *Presbyterian* atheist.'

Scotland is a small place, with a total population of about 5.5 million. It has two large Churches: the Church of Scotland and the Roman Catholic Church; and a far higher proportion of Scots are active Church members than is the case in England. Religious input into the political process tends to be rather more pronounced than in England. One of the leading participants in the recent debate in Scotland about the proposed repeal of section 28 of the Local Government Act 1988[28] was the Cardinal Archbishop of Glasgow, Thomas Winning. Equally, the Scottish Churches tend to be very involved in the political process by lobbying politicians on a wide range of social and economic issues and giving evidence to parliamentary inquiries. The likelihood is that the revival of the Scottish Parliament will make the relationship between politicians and the Churches even closer, not least because of simple geographical proximity. As we shall see, the new Parliament has already begun to take an interest in one particular issue of religious and constitutional significance: the Act of Settlement 1700/01.[29]

4. REFORMING ESTABLISHMENT AND THE ACT OF SETTLEMENT 1700/01

As long ago as 1995, Archbishop John Habgood of York suggested that the reform of establishment was much more complex than it appeared at first sight: '[t]he Act of Union between England and Scotland followed by six years the [...] Act of Settlement and took place because of the guarantee in England of a Protestant succession. The whole question of unity between England and Scotland therefore comes up.'[30]

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[27] See eg *Lockhart v Presbytery of Deer* (1851) 13 D 1296 (especially per Lord President Boyle at 1299); *Wight v Presbytery of Dunkeld* (1870) 8 M 921 (especially per Lord Justice Clerk Moncreiff at 925); and, most recently, *Logan v Presbytery of Dumbarton* 1995 SLT 1228, OH.

[28] The Local Government Act 1988, s 28, debarred local authorities from promoting the teaching in state schools of 'the acceptability of homosexuality as a pretended family relationship'. It was repealed in Scotland by the Ethical Standards in Public Life etc (Scotland) Act 2000, s 34.

[29] The Act of Settlement (12 & 13 Will 3, c 2) is chapter 2 of the statutes passed in the session of Parliament which began on 6th February 1700 and ended on 24 June 1701. Some authorities give the citation date as 1700, some as 1701. The Act was given a short title retrospectively by the Short Titles Act 1896 *but without a citation date*: see Halsbury's *Laws of England* vol 8(2), CONSTITUTIONAL LAW AND HUMAN RIGHTS, para 35, note 3.

[30] Ruth Gledhill, 'Warning by Habgood on Constitution' (*The Times*, 2 July 1994).

At the end of 1999 there were calls for the amendment of the Act of Settlement to remove the bar on the Sovereign from marrying a Roman Catholic.[31] On 2nd December Lord Forsyth of Drumlean[32] moved a motion for an Address in the House of Lords, as follows:

> 'That an Humble Address be presented to Her Majesty praying that Her Majesty may be graciously pleased to allow that Her undoubted Prerogative and Interest may not stand in the way of the consideration by Parliament during the present Session of any measure to remove the bar on a person who is not, or who is married to a person who is not, a Protestant to succeed to the Crown; and for connected purposes.'

The motion was negatived on division.[33] On 16 December the Scottish Parliament resolved:

> 'That the Parliament believes that the discrimination contained in the Act of Settlement has no place in our modern society, expresses its wish that those discriminatory aspects of the Act be repealed, and affirms its view that Scottish society must not disbar participation in any aspect of our national life on the grounds of religion, recognises that amendment or repeal raises complex constitutional issues, and that this is a matter reserved to [the] UK Parliament.'[34]

According to a report in the *Sunday Times*, Downing Street rejected the call for amendment.[35] In the same report, however, the present Archbishop of York, Dr David Hope, though not calling for disestablishment outright, was quoted as supporting removal of the bar: '[i]t is a very negative kind of arrangement at the moment. I cannot really see why members of the royal family should not be free to marry whom they will. It is a very negative view of the Roman Catholic Church. We're living in a different age and a different climate and the arrangements should reflect that.'[36]

Obviously, such a development would ultimately open the way for a Roman Catholic to ascend the throne and, in such an event, the position of the Monarch as Supreme Governor of the Church of England would have to be re-examined. Not only would there be implications for the establishment of the Church of England, but there would also be wider implications for the Church of Scotland.

The Act of the Scottish Parliament of 1706 'for securing the true Protestant Religion and Presbyterian Government'[37] confirmed the Confession of Faith Ratification Act 1690 and declared that

> '[...] after the decease of Her present Majesty (whom God long preserve) the

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[31] The particular objection is to the Act of Settlement (1700/01), s 2: 'that all and every person and persons who shall or may take or inherit the said crown by vertue of the limitation of this present Act and is or are or shall be reconciled to or shall hold communion with the see or church of Rome or shall profess the popish religion or shall marry a papist shall be subject to such incapacities as in such case or cases are [...] provided enacted and established'.

[32] Lord Forsyth was the Secretary of State for Scotland in the previous (Conservative) Government.

[33] *House of Lords Minute* (1999–2000), 2 December.

[34] *Scottish Parliament Official Report* (1999) 3/16 col 1744.

[35] Christopher Morgan, 'Archbishop Opens Way to Catholic Crown' (*Sunday Times*, 26 December 1999).

[36] Morgan, 'Archbishop Opens Way to Catholic Crown'.

[37] Protestant Religion and Presbyterian Church Act 1706 (Anne, c 6) (Parliament of Scotland), commonly known as the 'Act of Security'.

> Soveraign succeeding to Her in the Royal Government of the Kingdom of Great Britain shall in all time coming at His or Her Accession to the Crown swear and subscribe that they shall inviolably maintain and preserve the foresaid Settlement of the true Protestant Religion with the Government Worship Discipline right and Privileges of this Church as above established by the Laws of this Kingdom in Prosecution of the Claim of Right.
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> And it is hereby statute and ordained that this Act of Parliament with the Establishment therein contained shall be held and observed in all time coming as a Fundamental and Essential Condition of any Treaty or Union to be concluded betwixt the two Kingdoms without any Alteration thereof or Derogation thereto in any sort for ever.'

It was on that basis that the Scots Parliament subsequently passed the Union with England Act 1706;[38] and the English Parliament appended the Scots Protestant Religion and Presbyterian Church Act as a Schedule to the reciprocal Union with Scotland Act 1706.[39]

Whether the Treaty and Acts of Union are an element of unalterable 'basic law' for Great Britain, in the sense understood by Hans Kelsen, is beyond the scope of this article;[40] but the fact that the Presbyterian and Protestant character of the Church of Scotland is referred to specifically in the founding legislation of the Union seriously complicates the issue of disestablishment, the Act of Settlement and the nature of the Coronation Oath. The distinguished constitutional historian Lord St John of Fawsley (himself a Roman Catholic), though lending his support to the proposal in principle, pointed out some of the complexities of amendment in the debate on Lord Forsyth's motion referred to above:

> 'The status of the Sovereign's Coronation Oath, made in 1952, is brought into the issue. The Address involves the amending of not only one statute, but of many, including the Act of Union with Scotland of 1706. Under the Statute of Westminster 1931, if the Address were to lead to legislation, that legislation would have to be approved by all the relevant Commonwealth governments and by their parliaments. Therefore [...] such a major matter is best set in train–and should be set in train–by the Government and Opposition parties officially acting together [...]'[41]

The Irish Church Act 1869 disestablished the Church of Ireland notwithstanding the fact that this was contrary to Article V of Section 1 of the Union with Ireland Act 1800.[42] But times have changed, and the constitutional situation as between England and Scotland at the dawn of the twenty-first century is quite different from

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[38] Union with England Act 1706 (Anne, c 7) (Parliament of Scotland).
[39] Union with Scotland Act 1706 (6 Anne, c 11) (Parliament of England).
[40] And, it should be said, a matter for debate among English and Scots academic lawyers going back at least as far as A.V. Dicey: see *eg* his *Introduction to the Study of the Law of the Constitution* (10th edn, edited with an introduction by E. C. S. Wade, London, Macmillan, 1961) at pp 65–69, reproducing the text of Dicey's 7th edn of 1908. In any case, various provisions of the Acts have been subsequently repealed. For a full table of repeals, see House of Lords Committee for Privileges, *2nd Report (Whether the House of Lords Bill (as amended on Report) would, if enacted, breach the provisions of the Treaty of Union between Scotland and England)* HL 108–I of Session 1998–99 Annex I, Pt I, p 30. The report is a convenient reference for the texts of the majority of the legislation surrounding the Treaty of Union.
[41] *HL Deb* (1999–2000) 607, col 918.
[42] Union with Ireland Act 1800 (39 & 40 Geo 3, c 67) (Parliament of Great Britain), s 1, Art V: 'that the Continuance and Preservation of the said United Church, as the established Church of *England and Ireland*, shall be deemed and taken to be an essential and fundamental part of the Union.'

that of England and Ireland in the middle of the nineteenth, not least because of the effects of the Scotland Act 1998. When the possible impact of disestablishment upon the Union was raised by John Habgood in 1995 his views seemed (to the present writer at least) slightly eccentric: they do not seem so now.[43]

5. DISESTABLISHMENT?

A fairly recent leading article in *The Tablet* pointed out that no-one would include an established Church in a modern constitutional settlement. Even though the late Cardinal Hume felt that disestablishment was not a priority, '[i]n a multi-faith pluralist society, the continued special status of one particular church risks contradicting the principle that the machinery of state, its head, chief executive, government and legislature must represent and serve all citizens equally. The Church of England is fully able to confront such a challenge and modernise–if it wants to.'[44]

The Royal Commission on the Reform of the House of Lords concluded in favour of a change in religious representation in the Upper House: instead of the present twenty-six Church of England bishops there should be sixteen, to whom would be added five members to represent the other Churches in England and five to represent the other churches in Northern Ireland, Scotland and Wales. The Commission also called for at least five members to represent other faiths.[45] Reactions from other Churches have been positive; Monica Furlong relates that the Roman Catholic bishops told the Royal Commission that, subject to Papal approval and a dispensation from canon 285 of the *Codex Iuris Canonici* 1983, they could see merit in representation in a reformed Upper House.[46]

The most recent call for disestablishment of the Church of England was in July 2000, in a question in the House of Lords asked by Lord Dormand of Easington. The junior Home Office Minister, Lord Bassam of Brighton, replied that the government 'would not contemplate disestablishment [...] unless the church itself wished it.'[47] There, in all probability, the matter rests, for the moment at least. Although the

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[43] After delivering this paper in draft, I discovered that the Legal Questions Committee of the Church of Scotland's Board of Practice and Procedure had replied to an inquiry as to its position on the matter as follows:

> 'The Committee's advice would be that the General Assembly should not oppose any review of the Act of Settlement within the context of the process of constitutional reform upon which the Government is currently engaged. Such a review should lead both to the removal of the discriminatory provisions and the identifying of solutions to the constitutional questions which could then arise. Such constitutional questions would not bear directly upon the Church of Scotland [...] It would be a matter of regret to the Church of Scotland were a Roman Catholic sovereign to be put into a position of denying the validity of Church of Scotland orders and of being prevented by Roman Catholic discipline from receiving communion within the Church of Scotland, or indeed within other protestant and reformed churches within the United Kingdom. While these are difficult and sensitive areas, it is not beyond the ability of people of good will to overcome them': *Report to the General Assembly by the Board of Practice and Procedure* (Edinburgh, May 2000) Appendix K.

This, however, is a theological response, and does not address the constitutional problems of repeal.

[44] *The Tablet*, 21st January 1998. The article was written while Cardinal Hume was still Archbishop of Westminster.

[45] See Philip Norton's untitled article in 'Religion and Public Life': *The House Magazine*, 24 April 2000, p 18.

[46] Monica Furlong, *C of E—The State It's In* (London, Hodder & Stoughton, 2000) p 239. The problem of representing non-episcopal churches and other faith communities is that there are sometimes no obvious candidates who can act as permanent representatives: Churches in the Reformed and Wesleyan/Holiness traditions tend to appoint Presidents or Moderators who hold office for one year only.

[47] HL Debates (1999–2000) 27th July, col 571.

political debate surrounding establishment has ebbed and flowed, the experience of the last twenty years would suggest that successive governments have not regarded the radical reform of church-state relations as a high priority and that evolutionary change is much more likely than drastic surgery.