LETTERS TO THE EDITOR

Lay Presidency at the Eucharist

Dear Sir,

May I offer the following thoughts in response to the Rev. Michael Vasey's question in issue No. 18.

The decision in *Middleton v. Crofts* (1736) 2 Atk 650 is probably the clearest authority for saying that the canons do not bind the laity, although there are earlier decisions on the point. Lord Hardwicke CJ's judgment in that case makes a clear distinction between those canons which re-state the ancient law (i.e. English custom, and those provisions of the *jus commune* which had become embedded in the common law of the land) and those which depend solely on the Convocations' ecclesiastical authority as bodies representing the clergy. The latter do not bind the laity; the former, while not binding on the laity *proprio vigore*, do restate the common law by which all subjects are bound.

Since the 1960's a third category of canons has needed to be considered: those made not in exercise of the Convocations' original power (as transferred to the General Synod), but in exercise of express power conferred by a Measure. This is delegated power, derived ultimately from Parliament, and therefore also effective to bind all subjects.

The question of lay presidency would hardly have arisen in the Middle Ages. I have not researched the *Corpus Juris Canonici*, but the doctrinal position was clear (and defined expressly by the Fourth Lateran Council), and there is surely ground to suppose that the restriction of presidency to the ordained was a matter not only of the canon law, but also of the common law, by the 16th century.

I say 'the ordained' with some care, since the Reformation was of course followed by a period in which non-episcopal ordinations on the Continent were sometimes taken as a sufficient basis for appointment to English ecclesiastical preferments in which those appointed would naturally have presided at the Eucharist. Whether one could claim that the law against lay celebration was 'recognised, continued and acted upon' so as to satisfy the test in *Bishop of Exeter v. Marshall* (1868) LR 3 HL 17 therefore depends on whether it is expressed as a requirement of ecclesiastical authority to preside (in which case it was), or a requirement of episcopal ordination (in which case it is more dubious).

The continued validity of the mediaeval law is an important question here because the statutory provision requiring episcopal ordination for presidency at the Eucharist (the words 'nor shall presume to consecrate and administer the Holy Sacrament of the Lord's Supper' in the Act of Uniformity 1662, s.1) was repealed by the Church of England (Worship and Doctrine) Measure 1974. This Measure gave the Synod power to legislate by canon in liturgical matters, and any subsequent canon made under this authority would have fallen in the third category described above and bound the laity. But Canon B12.1, which pre-dated the Measure, must fall either in the first or second category, depending on whether or not it both re-stated 'ancient law' and satisfied the *Marshall* test.

Michael Vasey's point as to 'designated ecclesiastical buildings' is really a red herring. The clergy (and maybe office-holders) of the Church of England are bound by the canon everywhere (*R. v. Barnes and Official Principal of the Arches Court of Canterbury, ex p. Shore* (1846) 8 QB 640), so a deacon or a Reader who took it upon himself to preside at the Eucharist would be liable to discipline, wherever the service took place. As to others, if we conclude that the canon does restate the ancient common law, then the common law (see the same case) also applies everywhere and can be enforced (by injunction) against a layman outside a church

building. Of course, if he claims to be acting as a Dissenter from the Church of England the Toleration Acts will protect him; but he cannot consistently do this and claim that his Eucharist is an Anglican one.

Yours faithfully,
C. C. Augur Pearce

Dear Sir,

Michael Vasey enquires what, notwithstanding Canon B 12, para. 1, forbids lay communicant members of the Church of England presiding at the eucharist, particularly outside designated ecclesiastical buildings.

Canon B 12, para. 1, reflects the doctrine of the Church of England, as does the ecclesiastical law. Indeed in *Escott v. Mastin* (1842) 4 Moo. PC 104 at p. 128 the Privy Council stated:

> 'If the rite can only be administered by clerical hands,—if it be wholly void when administered by a layman,—no necessity can give it validity. The consecration of the elements, for the purpose of giving the eucharist to a dying person, may be a matter of urgent necessity, as the baptism of an infant in extremities; but, neither in the Roman Catholic, nor in the Reformed Church, was it ever supposed, that any extremity could dispense with the interposition of a priest, and enable laymen to administer the sacrament of the Lord's Supper.'

See, too, *Cope v. Barber* (1872) 7 Cp 393 at p. 402 *per* Willes, J. and Ayliffe, *Parergon Juris Canonici Anglicani* (London, 1726) at p. 104. Thus, if the purported president were a lay person (whether a communicant or not), it would not in law be a valid celebration of the eucharist.

In so far as the lay person who purports so to celebrate the eucharist is concerned, he or she would be in breach of the ecclesiastical law as the pre-Reformation canon law bound the laity in relation to matters of liturgy and therefore still continues to do so: see 14 Halsbury's Laws of England (4th ed.) at para. 308. This would be so whether or not the purported celebration took place in a designated ecclesiastical building.

Yours faithfully,
Rupert Bursell