

# MANDATE

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# Trinity 2010



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*By Roberta Bayer, Ph.D., Assistant Professor,  
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## Reflections *from the* Editor's Desk

As we pass through Easter and toward the lengthy season of Trinity, it is time to consider the order of the year. Fr. Dunbar has written an article on the traditional lectionary and the importance of its continued use, in addition to an article about the Biblical precedent for infant baptism. The Rev. Charles Flinn who practiced law in Virginia, has kindly consented to contribute an article explaining the legal reasoning behind the property disputes currently raging in the Episcopal Church (TEC). He outlines the legal doctrines that have been applied in cases germane to the current litigation involving Anglican congregations, and circumstances under which courts have decided either for or against congregations seeking to separate from TEC while keeping the property of the congregation. Canon Alistair Macdonald-Radcliff, who has worked overseas with various church leaders in the Global South, has written a report on the Fourth Anglican South to South Encounter in Singapore held in April. In work of spiritual theology, the Rev. William J. Martin explores the BCP communion service as a pilgrimage of transformative grace.

As a means of generally encouraging the traditionalist movement, we would be happy to advertise new books particularly related to the history of the Book of Common Prayer. We would also like to compile a list of churches using the 1928 Book of Common Prayer. If you would like your church listed officially among BCP churches, send a note to the Society address.

At our February Board meeting, we were very pleased to welcome retired Bishop Obaikol and his wife, who were visiting Savannah, Georgia, on mission from Uganda. He came to thank the PBS for having assisted in sending a box of 1662 BCPs to Uganda in conjunction with the Prayer Book Society of England. He remarked that it was a great

delight to have the 1662 BCPs in their parishes.

Recently the Episcopal Church published its report on Same-Sex Relationships in the Life of the Church, which can be found on TEC's website. It gives equal space to both sides of the argument, and is interesting reading if one is interested to know the conflicting arguments which beset the Anglican Church today. The traditionalist or conservative argument is made with great cogency by four scholars teaching at different seminaries: John Goldingay, Grant Le Marquand, George Sumner, and Daniel Westberg. They counter the new and untoward idea that TEC can unilaterally change the historic teaching on marriage and sexuality with a well-researched, scholarly and logical response, making arguments from Scripture, science, and natural law teaching.

Unfortunately this important report was made much less important by the fact that TEC signaled an end to a short period of restraint on this issue at last summer's General Convention, and recent events indicate that argument appears to be over. Nonetheless, the depth of the conservative argument, compared to that of those advocating revision of the tradition teaching on marriage shows that it could only have been by forcibly pre-empting rational argument that same-sex marriage could be introduced.

The four aforementioned scholars who took the time to defend the traditional teaching on marriage and sexuality do so by use of contemporary science, the Bible, and natural law, in other words the three legs of the stool of the Anglican Way, so to speak, Reason, Scripture, and Tradition. They very capably provided the reader with a chuckle, when they ridiculed the idea put forward by their opponents that same-sex marriage is a "new asceticism," ("Shakerism with benefits"). So too, they

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### THE MANDATE

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# Lessons in the Lectionary

## *of the Traditional Book of Common Prayer*

### The Order of the Traditional Lectionary

One of the chief elements which distinguish the traditional *Book of Common Prayer* from its later namesake is its method of reading Scripture. It incorporates two complementary lectionaries (systems for reading scripture): one that belongs to the daily Office (Morning and Evening Prayer) and the other to the Eucharist.

The Prayer Book Office Lectionary was designed by Thomas Cranmer to restore the ancient tradition of reading the whole of Scripture (or most of it) in the daily office and mostly in order, albeit with a loose relation to the Church year. Thus, Isaiah was read in the month before Christmas in accord with ancient custom, and special lessons were appointed for Sundays and holy days. In subsequent revisions, there has been a tendency to shorten the readings somewhat and to align them more completely to the Church year. The best examples of this kind of revision are found in the English and Canadian Prayer Book from the earlier 20th century: some of the weakest, unfortunately, are found in the 1928 American Prayer Book (both in the lectionary of 1928 and the lectionary of 1943 found in most editions of that version.) While not unusable, and with the great advantage that it is the one actually printed in the 1928 Prayer Book, the English office lectionaries of 1662 and 1922 (as printed in current editions of 1662) or the Canadian of 1958/1962 are much superior.

The Prayer Book Eucharistic Lectionary comprises an Epistle lesson (sometimes from other books of the New Testament, and on rare occasions from the Old), and a Gospel lesson, chosen in relation to one another. It is intended to provide a doctrinally coherent teaching for each Sunday and holy day, within the pattern of the Church year

as a whole. Its origins date back to the church of the city of Rome, wherein it was developed largely between the 4th and 7th centuries. It subsequently was adopted north of the Alps from the 7th century onwards, and with some minor remodeling was retained by both the Anglican and Lutheran churches in their liturgical reforms accompanying the 16th century Reformation. The Roman church also retained a somewhat disordered version of it in its own 16th century Tridentine reforms. (There is a dislocation of the ancient lessons for Advent and for Trinity.) Until the 1960s, Anglican, Lutheran, and Roman Catholic churches used very similar and ancient patterns of reading scripture at the Eucharist – a promising basis, one might have thought, for ecumenical convergence.

### Weaknesses of Three-year Lectionaries

Ironically, 20th century liturgical reformers, despite their professed interest in antiquity and ecumenicity, abandoned this actual ancient and ecumenical lectionary for one of their own devising. The Roman Catholics were first to replace it with a three-year, three-lesson system of readings at Mass called the *Ordo Lectionum Missae* (OLM). This was subsequently adapted for Protestant use in the *Common Lectionary* (CL), and its successor, the *Revised Common Lectionary* (RCL), with some significant variations.

The arguments presented against the ancient lectionary were often tendentious and polemical. First, its choice of readings were alleged (on little or no evidence) to be arbitrary and irrational – though the experience of meditating and preaching on them reveals a subtle and rich pattern of doctrinal teaching in which epistle and gospel lessons of each Sunday or feast day form an



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Reflections *continued from page 2*

criticized the equation of same-sex marriage with a *missio Dei*, remarking instead that it bears more the appearance of the “same old fixation on our own interests”. They noted that their opponents had failed singularly to treat the most recent scientific evidence on the subject.

Not surprisingly, therefore, the argument made by those advocating blessing same-sex marriage is entirely rhetorical in character. It has been remarked from the beginning of this debate that when challenged to give theological justification, those who are in favor of same-sex marriage have failed. As the conservatives note, the liberal

argument is entirely pneumenological (in other words an argument about the perceived intentions of the Holy Spirit for his Church), so that the Holy Spirit's movement has been conflated with personal intuition, and in general, with cultural trends. Such an argument is not theological and looks more like wishful thinking on the part of theologians who know they have a losing case. But mostly I applaud the seriousness of the traditionalist response, which repeatedly states that this is not a matter of ‘diversity’ on which a church might agree to disagree, but rather a matter of extraordinary moment.

interrelated unity. Secondly, the complementary role of the Daily Office Lectionary, with (at least in principle) its extensive and continuous reading of the whole of Scripture, was ignored and passed over. Thirdly, the new RCL three-year, three-lesson pattern was to be prized for its ability to present a wider range of scripture to be read at the principal service of the Sunday, including a lesson from the Old Testament.

### Structural weaknesses in the new lectionaries

Great claims are made for the RCL. Yet on closer examination, the claims made for it do not stand up very well. The basic problem is structural: it attempts to do in one lectionary what the Prayer Book system did in two. The traditional lectionary in the Book of Common Prayer assigned the task of continuous (or semi-continuous) reading primarily to the Daily Office Lectionary; doctrinal and thematic teaching in the pattern of the Church year primarily to the Eucharistic Lectionary. The RCL tries to do both at once: as a result, it does neither adequately. Some passages are chosen for the sake of continuous or semi-continuous reading, while others are chosen for doctrinal themes, especially during Lent and Advent. As a result, for much of the year (what in the OLM is called "ordinary time"), the lessons in the RCL have in principle no relation to one another: thus the coherence of the Sunday lessons disappears. Yet because passages are taken out of canonical sequence in the rest of the year, for the sake of seasonal themes, the goal of continuous (or semi-continuous) reading is not attained. The reading of the epistle to the Romans is a good example: some of it is read, more or less in sequence over successive Sundays

(and thus in principle without relation to the other lessons), but other passages are read entirely out of sequence (for thematic reasons) during Lent or some major feast days, and some of it (notably much of the first three chapters) is not read at all.

Even in a three-year, three-lesson lectionary, the attempt to read Scripture in canonical sequence (continuously or semi-continuously) and to read it thematically was bound to fail. Despite its expansion, there is simply more Scripture than can be easily fitted into this structure. (Even a five-lesson Sunday lectionary would have trouble accommodating the Old Testament.) The attempt to do so (to do what, precisely?) inevitably dilutes the thematic and doctrinal coherence not only of individual Sundays, but of the Church year as a whole.

### Rediscovery and Organic Revision

One could still advise more modest and organic revision with some of the following elements: (1) reversal of some of the unhappy alterations that have crept into the ancient lectionary pattern; (2) provision of Old Testament lessons complementary to the lectionary; (3) revival of the ancient psalmody of the Mass which followed the lectionary; (4) the revival in use of a well-designed Office Lectionary complementary to the Eucharistic Lectionary.

Fortunately, the Ancient Lectionary is far from neglected. Not only has it received a modest official revival in the Roman church (with the re-introduction of the Tridentine Missal), but many young Anglican and Lutheran clergy are making extensive use of it in their preaching.

*For such preachers, the materials on [www.lectionarycentral.com](http://www.lectionarycentral.com) (especially the sermons of Robert Crouse) are recommended.*



### Mission Statement

*The Society is dedicated to the preservation, understanding, and propagation of the Anglican Doctrine as contained in the traditional editions of The Book of Common Prayer.*

# Suffer the Little Children

## *Infant Baptism and the Spiritual Nurture of Children*

*By the Rev. Gavin  
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When the Baptists - an organization of churches composed entirely of persons baptized upon a mature confession of faith - came into being in the 16th century, the ancient and universal practice of infant baptism was placed under skeptical examination. In the American south, where I live, and where Protestantism is represented so preponderantly by Baptist Christianity, those who adhere to the teaching of the magisterial Reformation are sometimes called upon to demonstrate the biblical, historical, and theological rationale of the practice of infant baptism.

The origins of the practice of infant baptism are lost in the mists of history. In the early centuries, most baptism of necessity must have been of adult converts. Nevertheless, we also know that whole households were baptized at once (Acts 16:30-34), rendering it likely that little children were baptized along with adults. While adult baptism was normal in the early centuries, it was not normative. Some pagans converted as adults and were baptized only upon entering holy orders and leaving worldly employment, such as St. Ambrose and St. Augustine; others, such as the emperor Constantine, deferred their baptism until death in order to prevent irredeemable sin after baptism. These peculiar examples suggest, however, that adult baptism was a concession to adult converts in peculiar situations, rather than the norm.

The practice of household baptism implies a corporate view of faith that is strange to our individualistic culture, but is not strange to Christianity. It has ample Biblical precedent. In the Old Testament children enjoyed the covenant of the people of God even before they found personal faith, as is clear in circumcision. This, the sign of the blessings promised to Abraham, was administered by divine command to all male children eight days old (Genesis 17:12). St. Luke is careful to record Christ's own circumcision on the eighth day (Luke 2:21).

Circumcision, the Old Testament sign of the blessings yet to come, corresponds to baptism, the New Testament sign that in Christ those promised blessings have come - which is why in the letter to the Galatians St. Paul considers it a destructive contradiction for the baptized to receive circumcision (Galatians 3:23-29; 5:1-12; 6:15, 16). Baptism is the sign of the present spiritual reality which circumcision prefigured and foreshadowed. Thus baptism takes the role that circumcision did: and

on the same basis is rightly administered to the children of the covenant, as well as those capable of making a mature confession of faith. On the feast of Pentecost, in the first publishing of the gospel, when Peter told the polyglot crowd of pilgrims that "the promise is to you and your children" (Acts 2:39), he extended to the people of the new covenant the solidarity of infants and adults which is found in the old. As noted earlier, Paul is reported to have baptized entire households (Acts 16:15, 33; 1 Corinthians 1:16), some of which may have included children unable to make a mature profession of faith. In that context, it is significant that Scripture does not prohibit the baptism of infants. If believing Jews needed to be told that the promised blessings did not apply to their children, surely this would have been made explicit.

The Biblical text which in the Christian tradition has been received as the touchstone of thinking about infant baptism is St. Mark 10:13-16 - the account of the little children welcomed and blessed by Jesus. Long read as a lesson in medieval and reformed services of baptism, the best commentary on this passage followed it in the 1662 Prayer Book: "Beloved, ye hear in this Gospel the words of our Saviour Christ, that he commanded the children to be brought unto him; how he blamed those that would have kept them from him; how he exhorteth all men to follow their innocency. Ye perceive how that by his outward gesture and deed he declared his good will toward them; for he embraced them in his arms, he laid his hands upon them, and blessed them. Doubt ye not therefore, but earnestly believe, that he will likewise favourably receive this present Infant; that he will embrace him with the arms of his mercy: that he will give unto him the blessing of eternal life, and make him partaker of his ever-lasting kingdom. Wherefore we being thus persuaded of the good will of our heavenly Father towards this Infant, declared by his Son Jesus Christ" - this is where the present exhortation on page 276 begins, "let us faithfully and devoutly give thanks unto him..."

In continuity with the practice of the ancient Church, Anglicans practice infant baptism "as most agreeable with the institution of Christ" (Article 27). "For the infants of Christians belong to God and to the Church no less than did formerly the offspring of the Hebrews to whom circumcision was administered in infancy. And so, baptism should be administered to our infants because they are sharers of the same promise and divine



covenant and were received by Christ with the greatest kindness” (Reformatio legum ecclesiasticorum, 1552).

For those who are not themselves capable of the acts of intellect and will required in faith, the faith of the Church suffices for their salvation. Like the daughter of the woman of Canaan (Matthew 15:21-28); the servant of the Centurion (Matthew 8:5-13); and the son of the nobleman of Capernaum, (John 4:26-54), it is through the faith and prayers of others, the faith and prayers of the Church, that we are received by Christ, and blessed by him.

The Church therefore has a special vocation to pray for all her children, first that Christ may receive them in baptism, and then that they may receive Christ, which they do by means of faith in his Word, and which finds expression in serving him in holiness and righteousness, in obedience to the commandments. As we pray, so must we act, bringing up the baptized children of the Church “in the nurture and admonition of the Lord” (Ephesians 6:4), training them up to believe and serve Christ. There is no more cruel abstraction than the notion that children should be left to discover moral and spiritual truth by experiment – that we should cast them adrift in the supermarket of religion and morality without giving them any criteria by which to make good choices.

That is why the older Prayer Books included a Catechism designed for young baptized children in preparation for their confirmation and admission to communion. With pastoral wisdom this Catechism addresses the meaning and consequences of their baptism. The first question concerns the name received in baptism, the second the benefits that it bestowed. Thus baptism defines who and what they are, establishing their self-understanding as members of Christ, the children of God, and inheritors of the kingdom of heaven. They know that because they belong to the Son, the Father regards them as his own children, and that he bestows upon them the inheritance of his kingdom, the “first fruits” of which is the Holy Spirit. They enjoy the blessings promised in the New Covenant to the Church and people of God.

The question about the benefits of baptism is followed by a question about the promises of baptism. After teaching them of God’s saving love for them, whereby in baptism he has made them his own, we teach them to respond to his love in three ways: first, by renouncing the world, the flesh, and the devil (the powers that lead us into rebellion against God, into sin and death); second, with trusting faith; and third, in grateful obedience. Indeed, one could not imagine a better foundation for their own faith and love of God, than in the sure knowledge of his love for them.

After the benefits and promises of baptism, comes a question about the obligation to fulfill these promises. The acknowledgment of this obligation is filled out in terms of gratitude for God’s calling them into this state of salvation through Christ the Savior, and a prayer for grace to continue in it. The implication is clear enough: it is by baptism that God has called them into this state of salvation in Christ, and it is by keeping the promises of baptism that they may continue in his saving love. “As the Father hath loved me, so have I have loved you: continue ye in my love. If ye keep my commandments, ye shall abide in my love; even as I have kept my Father’s commandments, and abide in his love” (John 15:9, 10; cf Deuteronomy 7:6-11)

How do we teach children the faith? By teaching them the fact of God’s saving love for them in Christ, communicated to them by means of baptism; and on that foundation, teaching them to abide in his love by means of believing and obeying him, in accord with the promises made at their baptism. By teaching them to give thanks for God’s saving love, we encourage them to pray hopefully for grace to abide in this love. “If ye abide in me, and my words abide in you, ye shall ask what ye will, and it shall be done unto you” (John 15:7).

## APPENDIX

*The Opening Questions about Baptism and Salvation in the 1662 Prayer Book Catechism.*

*Question.* What is your Name?

*Answer.* N. or N. N.

*Question.* Who gave you this Name?

*Answer.* My Sponsors in Baptism; wherein I was made a member of Christ, the child of God, and an inheritor of the kingdom of heaven.

*Question.* What did your Sponsors then for you?

*Answer.* They did promise and vow three things in my name:

First, that I should renounce the devil and all his works, the pomps and vanity of this wicked world, and all the sinful lusts of the flesh;

Secondly, that I should believe all the Articles of the Christian Faith;

And Thirdly, that I should keep God’s holy will and commandments, and walk in the same all the days of my life.

*Question.* Dost thou not think that thou art bound to believe, and to do, as they have promised for thee?

*Answer.* Yes, verily; and by God’s help so I will. And I heartily thank our heavenly Father, that he hath called me to this state of salvation, through Jesus Christ our Saviour. And I pray unto God to give me his grace, that I may continue in the same unto my life’s end.

# Encounter in Singapore

## *A Report on the Recent Global South Meeting*

**T**he Fourth Anglican South to South Encounter in Singapore April 19-23 was attended by some 130 delegates including bishops, clergy and laity from Africa, Asia, South America and the West Indies. The 20 provinces participating collectively include the majority of the world's Anglicans. This major event marked another stage in the emergence of the Global South as the Communion's center of gravity. While most of the statement from Singapore addressed positive themes related to Christian mission the participants also renewed their criticism of the course that the U.S. Episcopal Church (TEC) has taken in clear contravention of past undertakings and the wider mind of the Communion. They therefore called for a review of the Communion's present structures on account of their manifest inability to respond adequately to the crisis which the unilateral actions of TEC continue to deepen. As an additional measure in response they have proposed that the Anglican Covenant be strengthened. They also gave full support to the Primates of the Indian Ocean, Uganda, and Jerusalem and the Middle East in their decision to withdraw from Communion instruments in which TEC continues to participate even though it is in breach of the obligations which authentic participation and past undertakings would require. The delegates also called for provinces formally to make a declaration of the impaired or broken communion with TEC brought about by the actions it has taken, and that in consequence they remain in full communion with those, who in a desire to remain faithful to the Anglican Communion have come together as the Anglican Church in North America.

It would be premature to attempt any final assessment of the likely long term impact of the Global South meeting in Singapore. Nonetheless, it shows promise to be yet another step along the path whereby a global transformation of Anglicanism is coming about. The potential scale of this change seems to be such that many involved in the existing historic structures of the Communion find it hard to contemplate. This has had the curious result that they sometimes seem to be proceeding by the simple expedient of averting their gaze and carrying on as though nothing of moment has actually happened.

The language of paradigm shifts, from the philosophy of science, is perhaps overly used, yet, it is hard not to see parallels with the way in which findings incompatible with cherished assumptions

are being ignored or rejected in willful preference for crumbling structures from the past. In such a perspective, to insist upon the basis of certain legal niceties, that the only valid expression of international Anglicanism is the Anglican Consultative Council (ACC) may soon look as compelling as the belief that it is the ether that carries light. The provinces of the Global South see it as a simple fact that they can determine for themselves whom they recognize as authentically Anglican. So it was inevitable that they would explicitly recognize the members of the Anglican Church of North America (ACNA) as fellow Anglicans in good standing. After all, they have remained in continuity with the "mind of the Communion" as a whole in such matters as the 1998 Lambeth Conference's Resolution (I:10) on Scripture and sexuality, in contrast to the perceived self-indulgence of those in the Episcopal Church in the USA who are seen as feeling they have a right to exceptionalism in such matters while also demanding that the global church accommodate their local innovations.

Thus, in terms of the worldwide Communion, with the rise of the Global South, to coin a phrase, the Anglican duck looks well on the way to becoming a rabbit. (By this I refer to Kuhn's image of the duck-rabbit whereby, through a paradigm shift, the same information comes to be seen in a totally new way.) Thus, the new realities of global Anglicanism are being defined in ways that not only transcend the administrative structures of the recent past, such as the ACC, but also in ways that pose deep questions for the Chair of St Augustine itself.

To the Global South it looks as though radically revisionist provinces are demanding that the Communion only exist as they define it, a posture that tends to look rather imperialist. This poses a dilemma for those espousing radical innovations. Either the concept of Communion entails an obligation to submit local claims to the mind of the whole, or, if indeed the Communion is a mere voluntary association, as liberals seem to claim for themselves, then they have no basis to object if the majority of Anglicans, as represented in the Global South, decide to define the Communion by means of a Covenant to which TEC and other radical provinces may decline to subscribe.

All of which throws into relief the vastly important question of just what it is that has in the past, and will in the future, continue to cause all Anglicans to be Anglicans.

*by Canon Alistair Macdonald-Radcliff, Director General of the C-1 World Dialogue and Foundation which promotes improved relations between the Islamic and Western Worlds.*

# Who Owns It?

## *The Property of Episcopal Church Congregations*

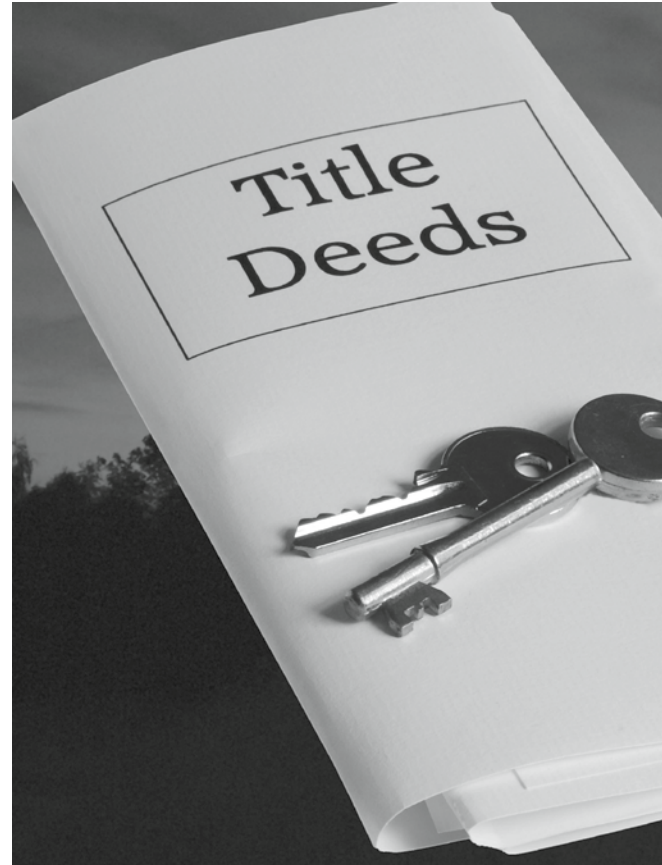
A simple answer to this question may be: So long as the congregation is affiliated with a diocese of the Protestant Episcopal Church in the United States of America (hereafter “PECUSA,” the alias now in common use not being applied here), the congregation owns all the property, real and personal, tangible and intangible held in the name of the congregation under the applicable property laws. Nevertheless, as any reader would find it hard not to know, if those having the legal right to deal with the property, make a decision otherwise according to law to deal with the property as a congregation separated from PECUSA, they will be sued, probably both by the diocese and by the national church. So far PECUSA and its dioceses have prevailed in most of these cases. Those cases will be discussed after a description of the PECUSA canons relevant to the discussion.

The canon most cited is Canon I.7.4 adopted in 1979 which asserts a trust on property that is the most important support relied on by adversaries of the congregations. That canon is usually called the “Dennis Canon” after the late Right Reverend Walter Decoster Dennis who became Suffragan Bishop of the Diocese of New York a couple of months after its adoption. Here it will be called the “recited trust canon.”

Before 1979 there were PECUSA canons regulating use of congregational property by members and their vestries. The older of those canons is now codified as Canon II.6.2, and stipulates that it is not “lawful” for any body holding property for a diocese, parish, or congregation “to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service” “without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.” The next relevant canon has been codified as I.7.3, and that prohibits the alienation or encumbrance of the real property of any diocesan parish, mission, congregation, or institution without the written consent of the bishop and standing committee, except under regulations in the diocesan canons (which could not relax the requirements of II.6.2). Some dioceses have canons allowing self-supporting congregations (as opposed to supported missions) to alienate or encumber property not consecrated or used for divine service by vote of the congregations alone.

One point that the reader should bear in mind is that there were always express, enforceable legal provisions that restricted some congregations

receiving property, usually, but not always, by gift, so that the property could only be used by a congregation as part of PECUSA. It is not unusual for such restrictions to exist when the pastors and members of such a congregation believe otherwise.

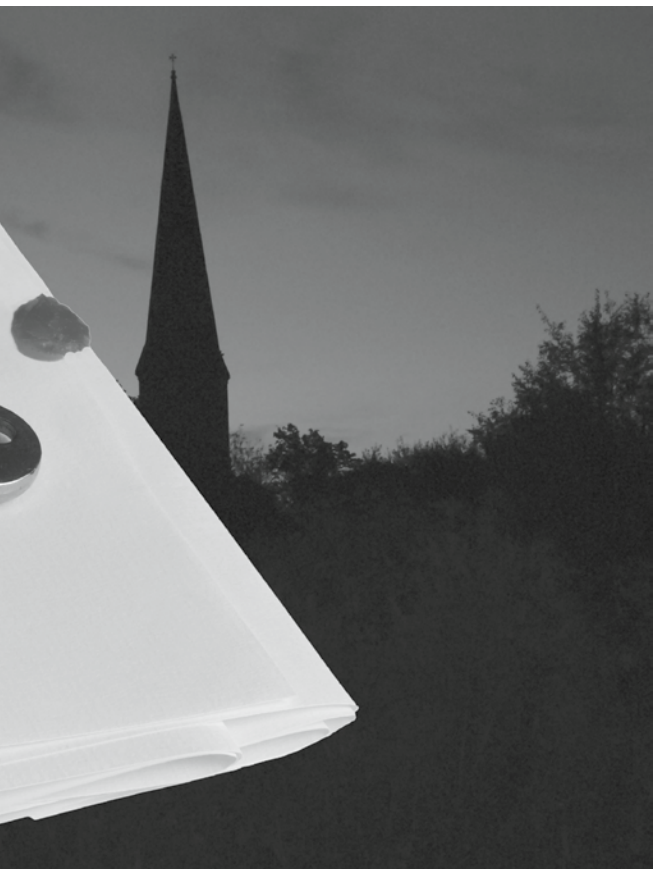


The final canon to be discussed is I.7.4, the recited trust canon. This means that it purports to impose a trust of all the property of PECUSA parishes, missions, and congregations in favor of PECUSA and the relevant diocese based solely on the canon and without the necessity of any other legal act or any consent of the congregation. The canon purports to deprive any congregation of all power and authority over its property the moment the congregation acts without the authority of the PECUSA constitution and canons. This is intended to apply not only to real property but also to all personal property, that is, to the last frayed piece of linen and the last cent of petty cash.

Thus one can see what a major change was intended in 1979, even though those speaking for PECUSA now assert that the 1979 canon only codified what was already the governing rule of PECUSA. Certainly there were cases decided under the pre-1979 canons that determined a



PECUSA diocese could retain ownership of the real property of a separating congregation. Those cases were not always clearly reasoned, but, however reasoned, they could be supported based on the doctrine that in a hierarchical church each congregation was governed by the constitution and canons in effect at the highest level in the hierarchical or general church body. In 1979 the U. S. Supreme Court ("SCOTUS") handed down an opinion that established two allowable approaches which a state may follow in cases where there is no



express written deed condition or trust that favors either the congregation or the hierarchy. That case is *Jones v. Wolf*. It was the trigger for the recited trust canon and its application to Canon II.6.

That case involved the Vineville Presbyterian Church in Macon, Georgia, which voted at a congregational meeting on May 27, 1973, 164 to 94, to separate from the Presbyterian Church U.S. (the then "Southern" Presbyterian Church). The Presbytery appointed a commission to investigate, and the commission declared that the minority was the "true congregation." Based on this the minority sued the majority and the case reached the Georgia Supreme Court which ruled, applying "neutral principles of law," (as summarized by SCOTUS) that "the constitution of the general church, the Book of Church Order, concerning the ownership and control of property, failed to reveal any language of trust in favor of the general church." SCOTUS approved the Georgia decision

on neutral principles except insofar as it decided that Georgia had not explicitly stated that it was "adopting a presumptive rule of majority representation" and had not determined whether or not "Georgia law provides that the identity of the Vineville church is to be determined according to the 'laws and regulations' of " the general church. The case was remanded to Georgia for additional proceedings.

The majority opinion of SCOTUS responded to the minority dissent arguing that the neutral principles approach interferes with religious liberty by proposing that "at any time before the dispute arises" "the deeds or corporate charter" may be modified in favor of the general church, or "[a]lternatively the constitution of the general church can be made to recite an express trust in favor of the denominational church" "provided it is embodied in legally cognizable form." That decision was handed down on July 2, 1979, and shortly thereafter the General Convention of PECUSA adopted the Recited Trust Canon. The reader will note that SCOTUS said "express trust," and that is why this article says "recited" trust, because the general rule in most states is that only a person or legal entity that owns the property being placed in a trust at the time of its creation can impose an express trust on property. In any such jurisdiction, if a trust creator does not own the legal and beneficial interest in the property that is subject to a dispute, no trust like the one asserted by PECUSA is created. The issue that must be decided in any such jurisdiction is whether or not a recital like the one in the canon relied on by PECUSA does create rights and property interests that are the same as those conferred by a valid express trust.

*Jones v. Wolf* was decided by a bare 5-4 majority. The dissenters argued that the majority analysis was "more likely to invite intrusion into church polity forbidden by the First Amendment." That dissent took the position that the question raised by the case was not ownership of property since Vineland Presbyterian Church owned the property both before and after the separation by the majority. The Court's minority viewed the issue as a question of identification of the officers and members of Vineland Presbyterian and contended that only the duly recognized officers of the general church had the authority to make that decision. Since the commission appointed by the presbytery had ruled that the minority faction constituted the true congregation, they should be the members to exercise the ownership rights, not those found by the commission to have deprived themselves of membership in the true congregation.<sup>1</sup> The minority

<sup>1</sup> In the Presbyterian Church the presbytery is at the same level as the diocese in PECUSA, the synod is at the same level as the internal provinces of PECUSA, and the General Assembly is at the level comparable to General Convention in PECUSA.

*by the Rev. Mr. Charles Flinn, Ph.D., priest of the Dioceses of Quincy, Illinois*

followed the 1872 SCOTUS opinion in *Watson v. Jones*.

In that case the Court ruled that where a congregation is not independent but a member of a “larger and more important religious organization, . . . under its government and control, and . . . bound by its orders and judgments,” then whenever “questions of discipline, . . . faith, or ecclesiastical custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such discussions as final, and as binding on them, in their application to the case before them.” This approach was not abolished in 1979, *Jones v. Wolf* was allowing a state to adopt a different rule in a somewhat narrowly defined situation: the neutral principles rule. States are free to adopt or not adopt this rule. (Always bear in mind that the legal instruments specifically defining title to property might decide the case one way or the other notwithstanding the rule followed by the state where the property is located.)

Four cases involving Episcopal Churches that have separated since the adoption of the 1979 canon will now be discussed. They are the only cases decided by the highest court of any state under the canon. A Virginia case involving PECUSA pending before the state supreme court expected to be decided in June 2010 will be mentioned.

Three of the four cases involving PECUSA were decided against separating congregations. The earliest of those cases is the 2005 Pennsylvania case of *In re Church of St. James the Less*, a Philadelphia congregation of the Diocese of Pennsylvania. Its 1846 charter declared that it was a member of that diocese and PECUSA, and would not alienate property without diocesan consent. In addition a state statute in effect at all relevant times required a local church affiliated with a national church to hold property according to the rules of the national church. After years of disaffection with changes in PECUSA and the diocese, the vestry merged the parish corporation with another corporation unaffiliated with PECUSA in an effort to hold its property outside PECUSA. The diocese declared the property subject to diocesan ownership and control, and appointed the bishop as trustee. That action was upheld by lower courts, but the highest Pennsylvania court ruled that the property was still held by the parish corporation, but subject to the trust in favor of the diocese based on neutral principles of law because of the 1846 charter, the long acceptance of diocesan control by the parish, and the 1979 canon. One judge agreed that the property was still held by the parish corporation, but disagreed with the majority as to the existence of a trust in favor of the diocese. In a well-reasoned opinion, that judge pointed out that no express trust could be created in Pennsylvania except by a specific written instrument executed by the owner

of the property at the time of creation of the trust. Furthermore, the judge relied on the requirement that such a trust must clearly describe the property subject to the trust. Neither the corporate charter, the 1979 canon or any trust instrument ever had any description of any property the parish actually owned on which the trust was asserted by the diocese and imposed by the court.

The next case is *Episcopal Diocese of Rochester, N. Y. v. Harnish* decided in 2008 and ruling against the separating congregation notwithstanding the fact that no provision of state law explicitly authorized the unilateral imposition of an express trust, and no deed, trust or other instrument granted any right in parish property to the diocese or national church. The highest New York court based its ruling on its own implication of an agreement by the parish to abide by church regulations by virtue of its incorporation in 1927 after it had organized as a diocesan mission and its recognition by the diocese as a parish in 1947 when an agreement was signed on behalf of the congregation obliging it to conform to the constitution and canons of the diocese. This case illustrates how weak a case a congregation will have in the courts of many states if it seeks to separate from PECUSA or one of its dioceses.

In the Episcopal Church Cases decided in 2009 by the Supreme Court of California the property of St. James Episcopal Church in Newport Beach was claimed by the Diocese of Los Angeles and PECUSA in 2004. Although the parish prevailed in the trial court, the intermediate appellate court reversed. The state supreme court then based its decision against the congregation on what it called a neutral principles approach as it relied on a 1982 statute specifying that trusts impressed on a religious corporation in favor of “a superior religious body or general church of which the corporation is a member expressly so provide.” The court said that the statute together with the 1979 canon “supports the conclusion that the property now belongs to the general church.” One judge concurred with this conclusion but dissented from the majority view that its approach was an application of neutral principles of law. In the dissenter’s view the corporation code provision relied on by the majority stated a “principle of government” approach to church property disputes (the *Watson v. Jones* approach) and not a neutral principles of law approach (the alternative allowed but not compelled by *Jones v. Wolf*)

The case ruling in favor of a separating congregation was also decided in 2009. That congregation was All Saints, Waccamaw (Pawleys Island) which had pledged adherence to the constitution and canons of PECUSA as a component part of the Diocese of South Carolina, and that diocese had made the 1979 canon part of its diocesan canons in 1987. In 2004, after litigation had already begun,

the members voted to amend the parish charter and affiliate with the Episcopal Church of Rwanda. Various side issues had to be resolved along the way, but the state supreme court finally decided without qualification that the recited trust of Canon I.7.4 could not create any beneficial rights in PECUSA or the diocese. A special feature of this case was that in 1903 the diocese had executed a quit claim deed to the land conveying any interest of the diocese in the real property to the parish.

The other two cases where similar facts were present and decided by the respective highest state courts involved Presbyterian congregations. In the 1992 case of *Cumberland Presbytery v. Branstetter*, the Kentucky court held that a trust provision in the church constitution similar to the 1979 PECUSA canon was legally enforceable based on *Jones v. Wolf*. On the other hand, in the 2001 Arkansas case of *Arkansas Presbytery v. Hudson*, the state supreme court refused to enforce the trust asserted by the constitution of the general church because that provision had been added after the congregation took title to the property involved in the dispute.

Another case decided at the trial court level in favor of several separating congregations is now pending in the Virginia Supreme Court and a decision is expected in June. This case involves a state statute that may exist only in Virginia. Under that statute a congregation attached to a general church in which a division has occurred may vote by a majority of its members over eighteen years of age to determine the branch of the divided church to which the congregation shall belong. The trial judge found that a division had occurred in PECUSA and that the voters had validly joined themselves to a branch (The Convocation of Anglicans in North America) of the church to which they were formerly attached. Under the trial court's order the congregations may keep their property.

Those who are trying to understand the applicable law may want to consider some other questions which will be summarized now. In none of the cases considered here was any significance attached to the fact that PECUSA is an unincorporated association. That issue need not be introduced unless a case or statute that clearly shows its relevance is cited and considered carefully before doing so. If one considers the cases discussed above as well as other relevant decided cases, the precedents set by those cases provide little likelihood that a congregation separating from PECUSA and seeking to keep its property will succeed in doing so.

A reader unfamiliar with the legal doctrines applied in these cases who is puzzled by the different results should understand that any confusion is justified. That is because the majority opinion in *Jones v. Wolf* is confused and confusing. The minority opinion favored a clearer rule: only the members of any congregations recognized as

members by the equivalent of a diocese or by the general church have a right to act as owners of the property and the civil courts must accept the general church's determination of who those members are. The majority held that a state could create a presumption that the majority of a congregation had the right to assume full control of its property upon separation, but said that the presumption could be rebutted by a provision "in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it." Thus the majority leaves little room for the application of the neutral principles doctrine and creates a far from neutral rule by inviting the creation of a special category of trust law according to which a general church can create property rights for itself without the consent of the owner of the property, albeit a congregation affiliated with the general church beneficiary. Lawyers for separating congregations have argued that the language of *Jones v. Wolf* sets limits on the right of the general church to do so unilaterally. They rely on a statement in the majority opinion that the recital of a trust in favor of the general church must be "in some legally cognizable form." So far the only court that might be said to have accepted that argument was the South Carolina court in the case discussed above.

Notwithstanding the problems with the majority opinion in *Jones v. Wolf*, the minority would impose a rule that ignores the reality of ecclesiastical life in the United States. The majority approach is only slightly less insensitive in this respect. The reality is that most Americans want to be part of a denomination that imposes some degree of definition and uniformity on its members and accept the oversight of officials and bodies above the congregational level (recognizing the anarchy that may attend strict congregationalism). At the same time the health of the general church arises indirectly from the loyalty of members to each of their local congregations. This is particularly the case for active participation and financial contributions; almost all of those benefits go to the local church and the general church benefits only indirectly. By this means almost all land is bought, buildings built, pastors and other employees paid, and works of mercy and charity staffed and financed. At the same time a realist can see that experience tends to show that many loyal members are slow to recognize when the doctrinal identity of the general church is changing and those members generously presume that the words and deeds of their leaders who are promoting these changes are not actually meant to achieve the goal of changing that doctrinal identity. (Every buyer of questionable securities or borrower lured into a risky transaction by a dubious promoter may have more legal protection.)



The reluctance of SCOTUS to involve the courts in such ecclesiastical and theological controversies is probably wise. Still, a more truly neutral approach would probably have the result reducing litigation at the same time it avoided entanglement of civil courts in matters of religious controversy. Such an approach would determine the ownership of congregational property without regard to any church constitution or canons and by this means give congregations some protection against disingenuous leaders. A hierarchical church could be made up of some congregations that hold their property as the property of the local congregation in a way similar to the holding of property by a subordinate member of a larger non-commercial organization. At the same time the general church would have the option of requiring local congregations to create express written trusts, deliver deeds, or take some other action that would insure that the members of a local congregation could only separate without the congregation's property. In addition, the officials at a higher level like a diocese or presbytery could raise funds to buy property for the use of local congregations and make sure that the property would continue to be held by the diocese whatever the congregation might do in the future. No more skill than that possessed by a competent real estate lawyer would be necessary to make sure that in the event of a separation, it would be clear who owned the property, whether the congregation or the diocese, and no litigation would be necessary. These suggestions are not exhaustive, but they are illustrative.

Although few may want to do so, readers might note that *Watson v. Jones* discussed one other way in which property could be held that did not depend on whether the ultimate owner was either the local congregation or the general church. That

would be where "the deed or will of the donor, or other instrument, by which the property is held, by the express terms of the instrument [has been] devoted to the teaching, support or spread of some specific form of religious doctrine or belief." The Court expounded at some length on its opinion that such trusts were enforceable, stating in part: "It would . . . be the obvious duty of the court, in a case properly made to see that the property so dedicated is not diverted from the trust which is thus attached to its use." The present vitality of this doctrine has not been investigated here, but those concerned with the future use of property transferred to or held by a religious organization may want to give responsible consideration to such an approach.

Finally, congregations considering a separation should seek a clear, accurate opinion of the law of the state where they are located, including an opinion that there are no controlling precedents. That requires a well-considered and objective professional opinion. That may well mean seeking professional advice from someone who has never been part of the general church from which a congregation is contemplating separation. Even then, members of the congregation who are not professionally trained or experienced should still require the professional advisor to make any opinion rendered clear to the congregation and submit any opinion either in favor of or against the desired result to exacting criticism. The evaluation of the congregation's legal rights may not be the most important element of any decision to leave and how to do so, but it should be made remembering St. Paul's exhortation to the Ephesians: "See then that ye walk circumspectly, not as fools, but as wise, redeeming the time, because the days are evil."



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# Worship:

## *Natural and Unnatural*

**T**he last time a group of Church of England priest/theologians contributed usefully to the defense of the Common Prayer tradition was in 1932. The result was a book entitled *Liturgy and Worship*, which is a good collection of essays about the history of worship in general, of the Prayer Book tradition and its parts in particular, and of the latter's development and reform in light of other liturgies. It is rich in theological and historical content, and, on the whole, as such lends itself to a sure defense of the Prayer Book tradition. Having said this, it is not uncritical of the traditional Prayer Books, but does encourage reform and revision along lines that should preserve the principled theology of what has been called "the Anglican mind."

One of its contributors is F.H. Brabant, who offers a piece entitled "Worship in General." In it he reminds his readers of the purposes for Christian worship. He writes:

Demand for a worship which shall be the 'natural' expression of what we feel, just like the demand for a devotional life always in the sunshine, without method or effort, is at bottom a confusion between

the natural and the easy. We do not go to church to say, do and think 'just what we like'; if we all arrived there feeling and thinking as we liked, no doubt our services would be simply the expression in speech and action of the inner state of our souls with all the spontaneous direction of children. But we do not, (I hope) arrive like that. We come stained and weary from a life that is largely unnatural, longing for something to lift us up into an atmosphere of spiritual peace. We ought, indeed, to 'feel at home' in church, but we come to it as wanderers returned, not like tired City men calling for our slippers and our comfortable chairs. This is why we need all the help we can get from without, the steadfastness of discipline, the beauty of holiness, the unswerving faith of the Church, upon which to lean our poor half-heartedness. That is why the Liturgy expresses not only what we feel; it also teaches us what we ought to feel. The genuflection or bow, even if it is done with little conscious devotion, stands for an ideal of adoration, and often the very act itself wakens our sluggish attention. The stately language of prayer and collect reminds us that, however far we lag behind, this is how the Church goes to the

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*Fr. Martin explains  
how joining in  
the worship of the  
traditional Book of  
Common Prayer is to  
embark on a pilgrimage  
of transformative grace.*



altar of God and creates in us the longing to follow as far as we can.”

In worshipping God we are saved from our unnatural selves and the unnatural world we have made. In worship, we find our true selves and the world in Him, and know that He alone can affect this discovery and experience. And through worship, this discovery form but the beginning of our participation in His Life, and one that shall never end. Any other reason for our worship is silly and futile, where - as we have witnessed on the contemporary religious plain - worship will be an expression in speech and action of the inner state of our souls with all the spontaneous direction of children.

But coming to know God and finding communion with him are not easy endeavours. As the author of the Epistle to the Hebrews reminds us, it is a fearful thing to fall into the hands of the living God. And why wouldn't it be? As Dr. Brabant suggests: we come stained and weary from a life that is largely unnatural, longing for something to lift us up into an atmosphere of spiritual peace. In other words, we enter the church, coming out of an unnatural world- a world far from the one God intended for our natures, stained and weary because untouched by the pure and cleansing hand of God. And so we come to Church to find God, and finding Him, then to see ourselves in the light of his desire and intention for us. Seeing ourselves in the light of God's life will mean admitting that the unnatural world, in which we live, has been made this way because we ourselves have become

unnatural. Seeing Him and ourselves in clear light of His day, we desire to welcome the means he provides for our change and transformation.

Through the worship and liturgy of the traditional Books of Common Prayer, we believers are invited into the pilgrimage of transformative Grace, where God leads our unnatural selves out of an unnatural world, into communion with himself. In worship he enables us to see and know Him, to see and know ourselves, and to know ourselves in Communion with Him, through his Son, Jesus Christ our Lord. And the surest realization of this seeing and knowing is found in the traditional Prayer Book service of Holy Communion. For in that particular service of worship, we believers are progressively changed so that, in the end, Jesus Christ unites himself with us through the gifts of his Body and Blood. In that service, we Christians can come into Communion with God the Father because Jesus Christ has promised to be with us and in us as our spiritually defining and enlivening Body and Blood. As such, he becomes the way and means of our union with the Father. His Body is offered to us as the personal location through which our collective and intimate encounter with the Father begins. His blood is offered to us as the singular power fomenting our desire for God and cementing our obedience to Him. In other words, his mystical Body and Blood are given to us as the spiritual substance and real presence which alone comprise the way and means to union with the Father, both here and in the hereafter.

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# Scripture, tradition, reason

## *Hooker's supposed 3-legged stool*

In the modern Episcopal Church there are frequent references made to what is sometimes called “the three-legged stool” (Scripture, tradition & reason) or “the four-legged stool” (Scripture, tradition, reason & experience).

These expressions are commonly believed to derive from the reign of Elizabeth 1 and to be associated with the name of the theologian Richard Hooker (died November 2, 1600). However, the common belief is at best a half truth, as we shall see.

Before actually seeking to state what for Hooker are the relations of Holy Scripture, human reason and church tradition, let me comment on the origins of the supposed “three-legged stool” attributed to Richard Hooker, famous as the author of the multi-volume apologetic for the Church of England by law established and entitled, *Of the Laws of Ecclesiastical Polity*.

The reference to “Hooker’s threefold, ‘Scripture, tradition and reason’” appears to be a 20th century phenomenon with roots in the late 19th century. An example of this phenomenon is found in Francis Paget, *An Introduction to the Fifth Book of Hooker’s Treatise of the Lawes of Ecclesiastical Polity*, (2nd ed, 1907) on pages 282-283. Here there is a new and unprecedented attempt to buttress what was later to be called the Anglican theological method (see the *Report of the Lambeth Conference 1968*, for a reference to the authority of “reason” as a special Anglican tool).

### Richard Hooker

Those who know Hooker’s writings know that he did not use this modern expression. There is only one place in his writings where he seems to come near to asserting this 20th century formulation:

What Scripture doth plainly deliver, to that first place both of credit and obedience is due; the next whereunto is whatsoever any man can necessarily conclude by force of reason; after these the voice of the Church succeedeth. That which the Church by her ecclesiastical authority shall probably think and define to be true or good, must in congruity of reason over-rule all other inferior judgments whatsoever (*Laws*, Book V, 8:2; Folger Edition 2:39,8-14).

We notice that he speaks of Scripture, reason and the voice of the Church, and in that order. Hooker differs from the Puritans (Presbyterians) of his day in the relation of Scripture and reason.

He is much nearer to Thomas Aquinas than to say Walter Travers or Thomas Cartwright or even to John Calvin or Theodore Beza. All these men agree that the Scripture delivers to us knowledge from God and that this knowledge is not available anywhere else in a world infected by sin. That knowledge pertains unto the identity of God as a Trinity of Persons, the Incarnation of the Second Person, our Lord Jesus Christ, the nature and means of salvation, the Christian hope and the mystery of the Church.

But Hooker departed from many of his fellow Elizabethans, especially the Puritans, in asserting that Scripture does not destroy nature but perfects it, that Scripture presupposes reason and requires its use and that Grace presupposes nature. For Hooker reason was God’s greatest gift to human beings, enabling them to understand God’s plan for the whole of reality, to situate themselves within it and to specify proper moral forms of human activity. This approach to Reason is rather different than that which is attached to the modern expression “Scripture, tradition and reason,” where reason is separated from Scripture and seems to be that understanding of reason’s place that we find in modern philosophy since the Enlightenment and the work of Immanuel Kant.

By “the voice of the Church” he meant the major decisions of ecumenical councils and of national churches which relate to important matters on which Scripture is silent or only supplies hints – e.g., the structure and content of Liturgy in terms of Rites and Ceremonial. These rules are morally and spiritually binding on Christians, part of the Christianity to which they are attached by providence and grace. They are not things indifferent left to the individual conscience.

### Conclusion

We may note that Hooker did not normally use the word “tradition” in a positive sense. Like many in his day, for him it referred to that which is merely human and had been added by Rome as an authority independent of Scripture and reason.

As to the extension of the three-legged stool into a four-legged so that it now is Scripture, tradition, reason and experience, we may say that this is much removed from where Hooker (and the standard divines of the C of E in the 17th century) sat. They would have found the claim incomprehensible that modern experience of (sinful) life is a major source of Revelation from God superseding or correcting that which Scripture interpreted by right reason has delivered to us.

*by the Rev. Dr. Peter Toon, reprinted from the July/August 2001 issue of Mandate*

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