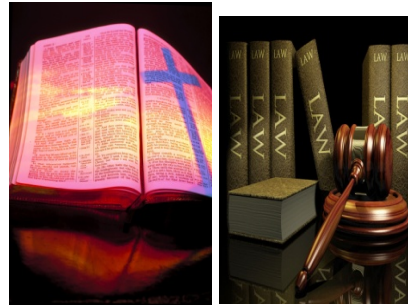


# Gospel & Law

All Souls & All Saints 2015

Editor: Revd Dr Catherine Shelley  
Circulation & events: Andrew Male

revdrcath@gmail.com  
admin@ecclawsoc.org.uk



## **Gospel & Law, October 2015 - NL9 - all Saints & All Souls edition**

**Editorial:** As I write it is the feast of St Theresa of Avila, that great reforming nun of the Counter Reformation, who stirred and girded up religious life in 16/17th CE Spain; echoes possibly of the Reform and Renewal process in the Church of England? And in the lectionary for today was a double stab at lawyers, particularly Jesus' forceful comment in Luke's Gospel, 'woe to you lawyers'. Now I am sure that most readers would not sympathise with the sorts of lawyer castigated by Jesus for laying undue burdens on people's backs but sadly there seems to be something of that perception of law in a recent questionnaire being circulated as part of the Simplification process. Is law necessarily the factor that is most restrictive of mission? Whatever you think of the assumption, do get involved and respond to any opportunities for further consultation.

This edition of the newsletter includes a report of the recent London Lecture discussion about the Bishops' Declaration on the Ministry of Priests and Bishops, cases about Christ Church, Spitalfields and Shakespeare's skull (or rather the skull that turned out to be probably not that of Shakespeare), and a thought on saints and souls. There are also notices as usual and a look ahead to the November Session of the new General Synod, on which note congratulations and best wishes to those who have been elected to Synod and commiserations to those whose bid for election was unsuccessful - but do find other ways to get involved.

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### **A gracious settlement, living together with difference...**

The final London Lecture of 2015 was held on 14th October and featured a panel discussion about the House of Bishops Declaration on the Ministry of Bishops and Priests, in the wake of the consecration of women as Bishops. The discussion was begun by the Rt Rev Christopher Lowson, Bishop of Lincoln and a member of the ELS committee, who presented the Declaration. Rev Paul Benfield responded from his perspective as a member of the Declaration drafting committee, outlining the process of negotiations and the identification of 'red line' issues. Rev Dr Catherine Shelley concluded the panel presentation arguing that in addition to the principles of simplicity, mutuality and reciprocity there need to be transparency and clarity. All agreed that the application of the Declaration and its guidelines needs some monitoring so that fairness is assured and so that provision for genuine theological conviction is not used as a mask for simple prejudice. There was widespread recognition of examples of prejudice such as parishes preferring 'a nice young man with a family' and all were agreed that it is in no-one's interests for the legislation to be misused for other purposes. The Declaration sets out five principles by way of guidance for the implementation of the declaration and resolution of concerns arising from its operation. The principles are that:

- The Church of England is fully and unequivocally committed to all orders of ministry being open equally to all, without reference to gender, and holds that those whom it has duly

ordained and appointed to office are the true and lawful holders of the office which they occupy and thus deserve due respect and canonical obedience.

- Anyone who ministers within the Church of England must be prepared to acknowledge that the Church of England has reached a clear decision on the matter.
- Since it continues to share the historic episcopate with other Churches, including the Roman Catholic and Orthodox Churches and other provinces of the Anglican Communion some of which continue to ordain only men as priests or bishops, the Church of England acknowledges that its own clear decision on ministry and gender is set within a broader process of discernment within the Anglican Communion and the whole Church of God.
- Since those within the Church of England who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England remains committed to enabling them to flourish within its life and structures; and
- Pastoral and sacramental provision for the minority in the Church of England will be made without specifying a limit of time, in a way that maintains the highest possible degree of communion and contributes to mutual flourishing across the whole Church of England.

There was some comment on the limitation of the third Principle to Churches with episcopal structures, effectively failing to consider the ecumenical implications of work with congregational and free churches, of particular relevance to those with theological reservations about female headship. This may be significant for example in university chaplaincies with strongly evangelical Christian Unions and a female chaplain. The issue of ministry in chaplaincy posts needs to be addressed further (there is only one paragraph in the guidance) to take into account the rapid congregational turnover of most chaplaincies, the lack of decision-making bodies equivalent to a PCC, the need to meet equalities provisions in secular institutions and nonetheless to provide for those service users who dissent on theological grounds to women's ordination.

The need for careful drafting of licences in multi-parish benefices with a dissenting parish to enable for example the ministry of women ministers at Evensong but not the Eucharist was noted, in line with the Independent Reviewer's report on a Gloucester Benefice with this predicament. There was also common agreement on the need for ongoing conversations about the implications and application of the declaration, so as to reduce the need for references to the Independent Reviewer, particularly in relation to resources and ensuring the church's overall mission to the nation.

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### **On a lighter note... the case of 'Shakespeare's skull'?**

The case concerned an application to remove a skull from a vault beneath a side chapel at St Leonard's Church, Beoley in Worcester Diocese. The skull was the subject of speculation that it might be that of William Shakespeare – which had allegedly been removed from Stratford and placed in the vault in Beoley. The applicants sought to exhume the skull temporarily for archaeological investigation by laser scans, radio carbon dating and anthropological assessment. The first questions were whether the placing of the skull in the vault was in fact burial or a whether a faculty for exhumation was needed as the skull had been removed for photographs previously. The Chancellor was clear that the placing of the skull in a vault constituted burial in

consecrated ground and that the previous removal was irrelevant and did not justify further unauthorised removal. Even if it was not analogous to full burial nonetheless the faculty jurisdiction applied as it was designed to protect objects of historical interest in the Church's care.

The first test to be applied for the exhumation of human remains for public rather than private benefit is the credibility of the reasons advanced for public benefit. Examples of valid and credible public benefit included inheritance matters hinging on DNA evidence. The Chancellor declined to decide the matter on written representations as he was not convinced of the credibility of the assertions about the skull's origins. He therefore ordered an oral hearing, at which evidence was presented by the Vicar, a former churchwarden, the lead archaeologist in charge of the project, the archaeological adviser to the DAC, Professor Stanley Wells and Revd Dr Paul Edmondson, from the Shakespeare Birthplace Trust and Mr John Smithson, Creative Director of Arrow Media.

Having heard evidence that described the tale of the skull's translation from Stratford to St Leonard's, as 'lurid fiction', 'like a piece of Gothic fiction' or 'witty satire', the Chancellor concluded that the story was 'just above... complete fabrication'. In the absence of any convincing evidence that the skull might be that of William Shakespeare, there was a lack of factual basis to justify exhumation, removal or investigation as, following the case of Re St Nicholas Bosham, the proposed research had no realistic prospect of producing useful knowledge.

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### **General Synod: Agenda for the Group of Sessions to be held 23rd to 25th November 2015**

23.11.15 - Induction of new and returning members

24.11.15 – Inauguration of the Synod

- Prayers, welcomes & Presidential Address: Archbishop of Canterbury
- Business Committee Report
- Reform and Renewal Presentation followed by a Question and Answer session

25.11.15 - Legislative Business and the Loyal Address

- Presentation by the Archbishop of York on Global Warming
- Motion moved by a member of the House of Bishops on the Migrant Crisis (Debate)
- Ecclesiastical Judges, Legal Officers and Others (Fees) Order
- Mission and Public Affairs Council on research on "Public Perceptions of Jesus" (presentation)
- Debate on a Report from Church Buildings Review Group

***To see who has been elected you might like to look at:***

<https://www.churchofengland.org/about-us/structure/general-synod/synod-elections-2015/results.aspx>

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### **Re Christ Church, Spitalfields, Burial Ground**

Court of Arches: George Dean, Tattersall and Pittaway Chs, 24 July 2015

This complex appeal to the Court of Arches, from a decision of the London Consistory Court, primarily concerns an application for a Restoration Order but also raises issues of abuse of process and striking out or summary judgement.

The case concerns Christ Church Spitalfields, consecrated in 1729 with a churchyard that was closed for burials in 1859, by which time around 67,000 burials had taken place. In 1873, before the Disused Burial Grounds Act 1884, Christ Church Primary School was lawfully erected at the eastern end of the Site. In 1970 a Recreation Centre for children was erected, also lawfully, under section 7 of the Ministry of Housing and Local Government etc Act 1967. In 1999 this became the Christ Church Gardens Youth and Community Centre, which was replaced by the current school and community building, planning permission for which was granted in 2011 and the faculty in 2012. There was no formal opposition to the faculty, although there were written objections.

Enter, in 2013, the recently incorporated Spitalfields Open Spaces Ltd, who sought to re-open the matter. An attempt to grant a licence to occupy and maintain the building was judicially reviewed and stayed on condition that there should be no occupation of the building without notice. Negotiations and stalemate followed until the school gave notice in 2014 that it intended to seek a licence to occupy its now not-so-new building. The objectors applied for a restoration order under section 13(5) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 requiring the demolition of the building, arguing that the construction of the building had been unlawful by virtue of section 3 of the Disused Burial Grounds Act 1884.

At an interlocutory hearing, on written representations, the Chancellor held that the applicants' points should have been raised in 2011 in the proceedings on the faculty petition, they were an attempt to re-litigate settled issues and so amounted to an abuse of process; he therefore directed that the proceedings be stayed. Alternatively, if the court did not have the power to order a stay of its own initiative, it should decline to exercise its discretion to grant a restoration order for the same reasons. Additionally, the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure ("the Amendment Measure") – giving the court power, by faculty, to authorise the construction of buildings on disused burial grounds (overriding the 1884 Act prohibition) – was soon to be laid before Parliament; the impending change in legislation afforded an additional reason why the court should not exercise its discretion to grant a restoration order. The applicant appealed.

Allowing the appeal, the Court of Arches applied the Civil Procedure Rules ("CPR") (in the absence of pertinent Faculty Jurisdiction Rules) on striking out (r.3.4(2)) and summary judgment (r.24.2). They found that the chancellor's rulings on abuse of process were probably summary judgment rather than striking out; and that was certainly the case in respect of his ruling on the Amendment Measure. The chancellor was not entitled to impose a permanent stay of the application for abuse of process. The facts that the applicant had not been incorporated until a year after the grant of the faculty and that the petition had failed to mention the 1884 Act and had incorrectly stated that the land in question was not consecrated meant that the issues raised had not been settled in the faculty proceedings. Issue estoppel could not arise in respect of the application for a restoration order because there had been no parties opponent to the faculty proceedings. It was dubious whether issue estoppel could ever arise so as to prevent a challenge to a claimed breach of a statutory prohibition existing for the public benefit.

The application could not be castigated as "a blatant abuse of the process of the court", especially given the misrepresentation in the petition that the land was not consecrated. The public interest required that the matters raised in the application be properly investigated. The decision not to grant a restoration order was erroneous for the same reasons; it fell outside CPR rule 3.3(2)(a) or (b) and could not properly constitute summary judgment under CPR rule 24.2.

The ruling on the Amendment Measure could not stand because at the date of judgment, the Measure had not yet completed its progress through Parliament and even if enacted, it was not then known when it would be brought into force. The new power conferred by the Amendment Measure would be discretionary, requiring a full investigation of the facts, requiring a trial of the facts rather than summary disposal. Accordingly the appeal was allowed.

*(With thanks to Alexander McGregor for his assistance in preparing this report, a fuller version of which will appear in the next edition of the ELJ)*

***And at this season of All Saints and All Souls*** let us remember that the Church respects those of all integrities, those who pray for the dead and those who only pray for those who mourn.

***Please keep in your prayers*** the Society's Chairman John Rees who is currently receiving ongoing treatment following minor surgery.

### **Dates and events:**

**London Lectures at Winckworth Sherwood, Montague Close, London SE1 9BB** (by Southwark Cathedral)

**27<sup>th</sup> January 2016** – Dr Charles Mynors on the new Faculty Jurisdiction Rules, which come into force on 1<sup>st</sup> January 2016. Charles is author of *Changing Churches: A Practical Guide to the Faculty System*, to be published by Bloomsbury early in 2016.

March 2016 – Winding up and leaving religious communities – detail and date to be confirmed

22<sup>nd</sup> June 2016 – Andreas Hendriksen Arflot, the Church in Norway, on Church and State in the process of dis-establishing the Norwegian Church

October 2016 – Confirmation of Episcopal elections – detail and date to be confirmed

**The Annual Conference for 2016** will be held on **Saturday 12<sup>th</sup> March 2016** at the Bridewell Institute, Bride Lane, London, with worship at St Bride's Church, Fleet Street. **Freedom from and of Religion - Keynote speaker will be Baroness Hale of Richmond, Deputy President of the Supreme Court**, with David Burrowes MP and Mark Hill QC. Further details and booking forms have gone out with the September edition of the ELJ; contact Andrew Male if you need more.

**A reminder that the ELS event for Magna Carta, planned for 23<sup>rd</sup> November, has been cancelled** - one Magna Carta event too many. If you booked and paid and haven't yet had a refund, do contact Andrew Male.

**Plans are ongoing for the Residential Conference 2017 on the subject of Authority and the Law**, in the light of Reform and Renewal and 500 years on from the start of the Reformation. Watch this space for more details in due course.