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Forms of authority in today's Church: Legislative authority and soft law in the Church of England

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THE SYNOD'S LEGISLATIVE FUNCTION: Article 6 of the Synod's Constitution (in Schedule 2 of the Synodical Government Measure 1969):

"The functions of the General Synod shall be as follows:—

(a) to consider matters concerning the Church of England and to make provision in respect thereof—

(i) by Measure intended to be given, in the manner prescribed by the Church of England Assembly (Powers) Act 1919, the force and effect of an Act of Parliament, or

(ii) by Canon made, promulgated and executed in accordance with the like provisions and subject to the like restrictions and having the like legislative force as Canons heretofore made, promulgated and executed by the Convocations of Canterbury and York, or

(iii) by such order, regulation or other subordinate instrument as may be authorised by Measure or Canon; or

(iv) by such Act of Synod, regulation or other instrument or proceeding as may be appropriate in cases where provision by or under a Measure or Canon is not required;

(b) to consider and express their opinion on any other matters of religious or public interest."

Measures: Section 4 Church of England Assembly (Powers) Act 1919 ('the Enabling Act'): on receiving the Royal Assent, a Measure "*shall have the force and effect of an Act of Parliament*".

R v Archbishops of Canterbury and York ex parte Williamson (The Times, 9 March 1994) (Court of Appeal).

Section 3(6) of the Enabling Act: "*A measure may relate to any matter concerning the Church of England, and may extend to the amendment or repeal in whole or in part of any Act of Parliament ...*"

R v Ecclesiastical Committee of Both Houses of Parliament ex parte the Church Society (1994) 6 Admin LR 670.

Canons Section 1 Submission of the Clergy Act 1533: requirement for the Royal Assent and Licence.

Section 3: no Canon is to be made or executed “*which shalbe contrary aunt or repugnant to the Kynges prerogative royall or the customes lawes or statutes of this realme.*”

Orders, regulations and other instruments made under a Measure or Canon: Standing Order 65.

Acts of Synod: Standing Order 41(2): “*If it is desired that the instrument or resolution be published formally as the embodiment of the will or opinion of the Church of England as expressed by the whole body of the Synod, it is to be affirmed and proclaimed as an Act of Synod*”

Bland v Archdeacon of Cheltenham [1972] 1 All ER 1012.

Regulations, instruments and other proceedings: *R v Bishop of Stafford ex parte Owen* (2000) 6 Ecc LJ 83.

R (on the application of Munjaz) v Mersey Care NHS Trust [2005] UKHL 58.

Section 8(1)(b) Clergy Discipline Measure 2003: disciplinary proceedings under the Measure may be instituted in respect of (inter alia) “*failing to do any act required by the laws ecclesiastical*”.

Section 5 of the Safeguarding and Clergy Discipline Measure 2016.

House of Bishops’ Declaration on the Ministry of Bishops and Priests (May 2014). (See too *Women in the Episcopate – New Legislative Proposals* (May 2013) (GS 1886) and *Report from the Steering Committee for the Draft Legislation on Women in the Episcopate* (October 2013) (GS 1924).

Canon C 29 (‘*Of the House of Bishops’ Declaration on the Ministry of Bishops and Priests*’) and the House of Bishops’ Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014.

THE WAY THAT THE SYNOD GOES ABOUT MAKING LEGISLATIVE AND OTHER PROVISION:

Synodical procedure in relation to legislative business: *Synodical Government in the Church of England: A Review* (‘the Bridge Review’) (GS 1252) (1997): “*A basic function of the General Synod is to act, under the authority and scrutiny of Parliament, as the Church of England’s legislature. Parliament has delegated to it certain of its responsibilities in this respect. The Synod has to demonstrate to Parliament and the world that ecclesiastical legislation has been at least as well considered by it as it would have been had it undergone full scrutiny by Parliament. It is understandable therefore that in its legislative capacity the Synod should model itself on the procedures of Parliament.*”

First Consideration; Revision Committee Stage; Revision Stage (in full Synod); Final Drafting; Final Approval.

Article 7 business; Article 8 business.

The role of the Ecclesiastical Committee: Report of the Archbishops' Committee on Church and State (1916): *"not an opportunity to reduplicate in the House of Commons the process already gone through in the Church Council ... but an assurance that all measures ... will pass under the scrutiny and criticism of a competent state authority and be subject to the exercise of an absolute veto in their event of their proving unsatisfactory from the point of view of the State"*.

Section 3(3) of the Enabling Act: *"After considering the measure, the Ecclesiastical Committee shall draft a report thereon to Parliament stating the nature and legal effect of the measure and its views as to the expediency thereof, especially with relation to the constitutional rights of all His Majesty's subjects"*.

Lord Bridge (page 184 of the report of the Bridge Review): *"It is a question which may merit consideration whether this intermediate level of debate between the General Synod on the one hand and the two Houses of Parliament on the other hand makes a necessary or useful contribution to the legislative process. There seems no reason to doubt, however, that the examination to which Measures are subjected by the Ecclesiastical Committee adequately provides the safeguards which were envisaged as necessary by the promoters of the 1919 legislation, albeit that those safeguards might be provided more expeditiously and economically by a body with a different constitution and different statutory terms of reference."*

Approval by both Houses

THE FUTURE?: Renewal and Reform – the simplification strand: freeing the Church for mission.

Repeal / consolidation.

Less prescription in primary legislation / greater use of secondary legislation.

Draft Legislative Reform Measure. (Cf the Legislative and Regulatory Reform Act 2006.) See *A New Enabling Measure* (GS Misc 1135) and the Explanatory Memorandum for the draft Measure (GS 2018X).

Increased use of Codes of Practice / guidance?

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