

# **‘The Seal of the Confessional in the Church of England: Historical, Legal and Liturgical Perspectives’**

**Lecture for the Bishop of Richborough’s Initial Ministerial Education Session**

**The Shrine of Our Lady of Walsingham, 14 November 2016**

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When the Bishop of Richborough asked me to address you about the seal of the confessional, I initially said ‘No’. It wasn’t that I didn’t want to come here – I am delighted to be with you and greatly encouraged to see so many of you. It was simply that I didn’t know enough about the subject to fill a lecture, and was unlikely to have time to do any research. Well, Bishop Norman can be very persuasive – and I’m old-fashioned enough to think that, if a bishop wants you to do something, you ought to do it – so here I am. We agreed that I would try to set the canon which enshrines the seal of the confessional in historical and legal perspective. I’m going to widen the focus even more and include liturgy also, since it is above all in its liturgy that the Church of England has given expression to its doctrine. Given my lack of expertise and research time, this is going to be an experiment in what a diligent amateur with a reasonable library and internet access can produce over a couple of weekends. But as ‘a diligent amateur with a reasonable library’ is not a bad description of at least part of the English clerical tradition into which you are being inducted, perhaps that’s not entirely inappropriate.

## **The Ordinal and the Book of Common Prayer**

Let me start not with the canon or even with the Book of Common Prayer, but with the 1662 Ordinal, according to which all Church of England priests were ordained until 1980. Legally speaking, it is still our normative ordination rite, not an ‘extraordinary form’. I have been present at two priestly ordinations at which it was used. In Common Worship, of course, ordination is effected by a prayer which includes the laying on of hands, so the bishop stands up and takes his hat off – he is, after all, speaking to someone even more important than himself. But in the 1662 rite it is not a prayer but a formula, so traditionally the bishop sits in his chair, wearing his mitre. The ordinand kneels before the bishop, who addresses him, saying,

‘RECEIVE the Holy Ghost for the office and work of a Priest in the Church of God, now committed unto thee by the imposition of our hands. Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained. And be thou a faithful dispenser of the Word of God, and of his holy Sacraments; In the Name of the Father, and of the Son, and of the Holy Ghost. Amen.’

Note what is at the heart of the words spoken at that most solemn moment when the grace of priesthood is conferred: ‘Receive the Holy Ghost... Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained.’ What an awesome responsibility. The reference to faithful dispensing of the Word of God and of the Sacraments, important as they are, comes almost as an afterthought. Who, experiencing that moment of ordination, or just reading the text, could doubt that the ministry of absolution is at the heart of the Anglican understanding of what it is to be a priest?

When the Prayer Book was in more widespread use than it is now, and its services were used in full, the people were reminded every Sunday that absolution is at the heart of priestly ministry. At Matins and Evensong, the priest pronounced the absolution or remission of sins using the words, 'Almighty God..., who... hath given power, and commandment unto his Ministers, to declare and pronounce to his people, being penitent, the Absolution and Remission of their sins...'. This is sometimes called a declaratory form of absolution, in which the priest declares that God pardons and absolves all who truly repent. At Holy Communion, the absolution is in a petitionary, precatory or 'optative' form: the priest effectively *asks* that God *may* have mercy, pardon and deliver from sin, saying 'Almighty God... have mercy upon you; pardon and deliver you from all your sins.'

In the Exhortation that the priest was to read on the Sunday before Holy Communion was to be celebrated, he reminded the congregation of the possibility of private confession in these words:

'And because it is requisite, that no man should come to the holy Communion, but with a full trust in God's mercy, and with a quiet conscience; therefore if there be any of you, who by this means cannot quiet his own conscience herein, but requireth further comfort or counsel, let him come to me, or to some other discreet and learned Minister of God's Word, and open his grief; that by the ministry of God's holy Word he may receive the benefit of absolution, together with ghostly counsel and advice, to the quieting of his conscience, and avoiding of all scruple and doubtfulness.'

It is in the Visitation of the Sick that we find absolution in its strongest form, which has been called the 'indicative' form. The sick person is to be 'moved to make a special Confession of his sins, if he feel his conscience troubled by any weighty matter. After which Confession, the Priest shall absolve him (if he humbly and heartily desire it).' The words of absolution (abbreviated from the Sarum rite) are:

'OUR Lord Jesus Christ, who hath left power to his Church to absolve all sinners who truly repent and believe in him, of his great mercy forgive thee thine offences: And by his authority committed to me, I absolve thee from all thy sins, In the Name of the Father, and of the Son, and of the Holy Ghost. Amen.'

That is not, as some modern Protestants would have you believe, an overlooked remnant of catholicism, but an expression of the understanding of priesthood that we find at the heart of the Ordinal: 'Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained.' We live in an age in which, thank God, life-threatening illness is a relatively rare experience for most people of working age. So too, therefore, is a sick visit from a priest, and thus also the experience of this ministry of being helped to quieten one's conscience in the face of possible death, and receiving absolution in that context. When the Prayer Book was written, the Visitation of the Sick would have been much more central to people's experience of priesthood, and the absolution at its heart could not have been thought of as being tucked away in an obscure rite. At the Savoy Conference in 1661, the Presbyterians tried to get this absolution changed into a declaratory form: not 'I absolve thee' but 'I pronounce the absolved'. The bishops rejected this, pointing out that in John 20 Christ does not say 'Whose sins you *pronounce* remitted' but 'whose sins you remit'. It was not by accident but by deliberate decision that this form of absolution was retained in the 1662 Prayer Book.<sup>1</sup> For this point I am indebted to Geoffrey Rowell's essay in the book *Confession and Absolution*, produced by the Church Union Theological Committee in 1990. (That committee had been revived by Bishop Eric Kemp in 1979 and was chaired by my friend Roger Greenacre until it fell apart in 1991 as its members took different sides on the ordination of women to the priesthood.)

Lutheranism promoted private confession and saw it as normative, as the elaborate confessional boxes to be found in many baroque Lutheran churches across Central Europe testify. The English Reformation was more reticent, seeing private confession as a resource for those who need it, not a requirement for those who do not. Thus Richard Hooker, in Book 6 of his *Laws of Ecclesiastical Polity*, attacks the requirement introduced by the Fourth Lateran Council in 1215 that all the faithful make their confession at least annually to a priest. But he none the less describes ‘private and secret confession’ as ‘a profitable ordinance’ (ch. iv. 3). ‘Confession to man, not to God only, cleared from all errors,’ he says, ‘is both lawful and behoveful for God’s people’ (ch. iv. 14).

## Canon Law

I turn now from the liturgy to the Canons. We must begin in the middle ages, because much of the mediaeval canon law remained in force in the Church of England after the Reformation, and indeed, insofar as later canons have not superseded it, still remains in force today.

Canon 21 of the Fourth Lateran Council (X, v. 38.12), said of confession:

‘Let the priest be discreet and cautious that he may pour wine and oil into the wounds of the one injured after the manner of a skilful physician, carefully inquiring into the circumstances of the sinner and the sin, from the nature of which he may understand what kind of advice to give and what remedy to apply, making use of different experiments to heal the sick one.’

It went on to say this about the seal of the confessional:

‘But let him exercise the greatest precaution that he does not in any degree by word, sign, or any other manner make known the sinner, but should he need more prudent counsel, let him seek it cautiously without any mention of the person. He who dares to reveal a sin confided to him in the tribunal of penance, we decree that he be not only deposed from the sacerdotal office but also relegated to a monastery of strict observance to do penance for the remainder of his life.’<sup>2</sup>

This was not the first canonical reference to the seal of the confessional (and the seal was already well established in England in the previous century<sup>3</sup>), but it became definitive.

In England, this canon was imitated by canons made by a number of diocesan synods in the ensuing decade (unlike their present-day counterparts, mediaeval diocesan synods were legislative bodies). Eventually a Canterbury provincial synod that cannot now be identified enacted the following canon:

‘No priest may be so bold through wrath, hatred, nor fear of death to disclose in any wise the confession of any by sign, token, beck, or word, generally or specially. And if he be convicted hereof he ought justly to be disgraced without hope of reconciling.’<sup>4</sup> [The Latin is ‘debet degradedare’, so I wonder whether ‘disgraced’ in the published English translation is a typo and should read ‘degraded’ – ie reduced to the lay state.]

This English canon is consistent with, and indeed contains echoes of, Canon 21 of 1215. The penalty differed, but the principle was the same.

In 1432 the then Dean of the Arches, William Lyndwood, produced his *Provinciale*, a codification of the English provincial canon law enacted by English national and provincial councils and later by the two provincial synods, the Convocations of Canterbury and York. Both convocations accepted Lyndwood’s *Provinciale* as the consolidation of English Canon

Law as it was then practised. Lyndwood included this canon (Book V, tit. xvi, c. viii), which he attributed (probably wrongly) to a council held at Oxford by Archbishop Walter Reynolds in 1222. In his commentary, Lyndwood emphasized that the seal only applied to sacramental confession.<sup>5</sup>

Lyndwood's *Provinciale* was so important that a printed edition was published by Wynkyn de Worde in London in 1496, and it remained in print in successive editions. In 1534 an English translation of the canons, without Lyndwood's accompanying commentary, was published. The Act for the Submission of the Clergy provided that the existing canon law, in so far as it was not contrary to statute law or harmful to the royal prerogative, should remain in force until a canon law commission had reviewed it. That commission was never appointed, so, for the most part, the English provincial canons, including those codified by Lyndwood, remained in force unless or until they were superseded by later statutes or canons. The fact that the *Provinciale* was re-published in Oxford in 1679 indicates its enduring significance. The English translation was re-published by the Faith Press in 1929, edited – with learned introductions – by two of the clergy proctors in the York Convocation. That publication formed part of the background to the appointment, ten years later, of the commission that produced our modern canons. I mention this because it is now difficult to imagine many (any?) members of the present House of Clergy of the General Synod thinking that before embarking upon renewal and reform one would need to engage in study of pre-Reformation precedents, or indeed possessing the scholarly wherewithal to do so. It was less than ninety years ago.

Though the commission envisaged in 1534 was never appointed, a drafting group did produce an incomplete set of draft canons in 1535. This drew on the western canon law collected in the *Corpus iuris canonici* and on Roman civil law, as well as on the English canons. However, it never saw the light of day, probably because it was regarded as too conservative. The canon on the seal of the confessional (10.10) reads (in Gerald Bray's English translation):

'We decree that no priest shall reveal the identity of a sinner who has confessed to him in the context of penance, or any sins so confessed by him, by word or sign or in any other way, and if he does otherwise, he shall not only be deposed from his priestly office but shall also be confined in a closed monastery in order to do perpetual penance.'<sup>6</sup>

Again the dependence of this text on Canon 21 of the Fourth Lateran Council is clear.

In the reign of Edward VI a commission was finally appointed to revise the canon law, under new legislation, in 1552. The following year it produced a voluminous draft, entitled *Reformatio Legum Ecclesiasticarum*. As one might expect of a text produced in 1552-53, the nadir of the English Reformation, it made no mention of the seal of the confessional, so it need not trouble us further. In any case, the draft was rejected by Edward VI's chief minister, the Duke of Northumberland, and after the King's death a few months later protestantism fell.

In 1604 much of the inherited English canon law was replaced by a new code of canons (canons that were not superseded remained in force). The canon that is of interest to us is Canon CXIII. It is not really about confession at all: its primary purpose is to empower the clergy to report to the Ordinary laypeople in their care who they believe should be disciplined by the ecclesiastical courts. I'm afraid that main part of the canon was repealed in the 1960s without replacement when the new canons were promulgated. (I'm sure there are many clergy who lament the lack of a modern-day equivalent – perhaps in the form of a Laity Discipline Measure.)

Canon CXIII was qualified by a proviso. Out of the 141 Canons of 1603 (so called because the relevant Convocation began in 1603), only that one sentence was left un-repealed when the new canons were promulgated, and it remains in force today. Strictly speaking, it is the Latin text<sup>7</sup> which has legal force, though for some reason this is not printed in the modern publication of the Canons. The usual English text (a somewhat free translation), which appears there, reads:

‘Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not in any way bind the said minister by this our Constitution, but do straitly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy (except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same), under pain of irregularity.’

The wording is interesting: one senses the drafter walking a tightrope. The seal of the confessional had to be mentioned: otherwise, the canon would appear to permit the priest to break the seal and it would thus conflict with the canon in Lyndwood and with the doctrine that it enshrined: there was no desire to do that (this was 1603 not 1553 – the pendulum had swung back in a more catholic direction from the extreme Protestantism of Edward VI’s reign).

But what are we to make of the phrase ‘we do not in any way bind the said minister by this our Constitution’? It led Professor Norman Doe to claim that ‘the Church of England merely *recommends* that a minister should not disclose information received in the exercise of the ministry of absolution’.<sup>8</sup> But the proviso makes disclosure of such information positively punishable, so I don’t think that can be right. Dr Rupert Bursell has suggested that it refers to the main body of the canon, which he says imposed a duty on incumbents and curates to present (report) wrongdoers to the Ordinary, and that it was meant to imply that this duty to report was not binding where a crime was revealed in confession.<sup>9</sup> The problem with this interpretation as it stands is that the main body of the canon is permissive not mandatory (it permits the clergy to report on the laity but does not require them to do so), so I don’t think the sense can be that there is a duty of disclosure which is not binding in respect of information learned in confession.

Face with this conflict of the legal titans, what could I do? I phoned a friend. Fr Alexander McGregor, who is learned in the laws ecclesiastical, pointed out that there are two other canons with provisos that include the words ‘this constitution’ (LXIX and LXXVIII). In both cases that phrase clearly refers to the main body of the Canon, so Dr Bursell is right on that score, even if he is wrong to suggest that the main body is binding rather than permissive. As to Professor Doe’s conclusion, Fr McGregor comments that if disclosing information received in the exercise of the ministry of absolution is an ecclesiastical offence which has the most serious legal consequences for the cleric concerned (‘irregularity’ rendered a cleric incapable of exercising any of the functions of his orders), it is only reasonable to say that he Proviso declares a duty to observe the seal, not merely a recommendation of secrecy.

It looks as if the proviso may have been drafted hastily as an afterthought, probably after discussion with the ministers of the Crown, and for that reason was not very precisely drafted. The sense must be that the permission given to the clergy in the main body of the canon to report the crimes of their people to the Ordinary does not apply in the case of sins disclosed in the confessional. It is important to note that the Proviso to Canon CXIII did not create the duty of non-disclosure, but merely reflected and declared the existing, mediaeval, canon law regarding the seal of the confessional, which remained in force.

It's also interesting to note that the proviso contains an exception within an exception: the proviso says that the seal is not binding if the crime is one, the concealing of which could, in English law, result in the priest being put to death. Fr McGregor tells me that the Attorney General in 1603, Sir Edward Coke, believed that the rule about the seal was always subject to an exception for the disclosure of treason. It is probably because that was his view, and the Crown's licence and assent would be needed in order for the canon to be promulgated, that this phrase was included. Whether Coke was right or not, this provision was in fact never operative, since by 1603 Parliament had legislated to replace the common law capital offence of not revealing a treasonous plot to the Crown with the statutory offence of misprision of treason, for which the maximum sentence was life imprisonment, so it was no longer the case that the priest's life would be at risk if he did not divulge a confession of treason.<sup>10</sup> )

For an indication of Laudian views about confession in the reign of King Charles I it is worth looking at the canons that Archbishop Laud composed for the Scottish Church in 1636 but which were rejected by its General Assembly in 1638. Canon 18.9 concerns confession.<sup>11</sup> Its opening phrase is interesting: 'Albeit sacramental confession and absolution have been in some places very much abused.' Is this intended to distinguish private confession in the Church of England from 'sacramental confession and absolution', or, on the contrary, does it recognize confession as sacramental? Whereas the 1603 canon merely says that the priest should not divulge what is revealed to him in confession, the proposed Scottish canon made explicit the duty of bishops and priests to hear confessions and give absolution – not just when visiting the sick but more generally.

### **The Catholic Revival**

In the essay that I mentioned, Geoffrey Rowell refers to examples of private confession and absolution in being practised in the Church of England between the Restoration and the Oxford Movement. For our purposes, it is sufficient to note that, however widespread the practice was or was not (given its private nature, it is difficult to be sure), it never died out completely.

The revival and growth of confession and absolution in the Church of England is rightly associated with the Tractarians, and as a primary source for the study of Tractarianism in practice we now have George Herring's book *The Oxford Movement in Practice*, published this year but based on his 1984 doctoral thesis supervised by Geoffrey Rowell. This very important book presents Tractarianism in its first quarter century – roughly 1833 to 1858 – as it was, liberating it from the distorting shadow of the Ritualism that developed from around 1858 onwards. (People have too commonly projected Ritualist beliefs back onto the pre-Ritualist Tractarians.) In praising it, I must however add a 'health warning': it is excellent on Tractarianism, but its account of the transition to Ritualism is sadly marred by the author's visceral hostility to the latter (which may perhaps be linked to his own conversion to Roman Catholicism).

As Herring shows, for the early Tractarians the priority was not promoting private confession but calling people to repentance. Writing in 1850, Dr Pusey made an important point: 'I have preached repentance, review of life, rather than confession and absolution, because the soul must feel itself wounded, before it can look for a cure.'<sup>12</sup> The Tractarians esteemed confession highly, and spoke of there being moments in life when repentance sometimes leading to confession was desirable, but they rejected anything that resembled Roman Catholic *habitual* confession. As late as 1865, in his book *The Doctrine of Confession in the Church of England*, Thomas Carter (Rector of Clewer and founder of the Confraternity of the Blessed Sacrament) spoke of confession as 'the exception and remedial element' within a larger spiritual framework of sacraments, prayer and self-discipline. By contrast, Carter did advocate a regular

pattern of spiritual direction.<sup>13</sup> It was also the case that the early Tractarian clergy lacked training and experience in hearing confessions, and their people (in the rural parishes in which the early Tractarians predominantly ministered) lacked the habit of making confessions. Hence the focus on promoting repentance rather than on formal confession in the parochial context.

[The call for repentance is surely much needed today. The Church of England's liturgy may have been too penitential in the past, but today penitence is often expressed only through the Kyries, preceded by sentences that are often not even penitential in character. And in some quarters there is an emphasis on 'affirming' that implies that we are all alright as we are. If that is so, why did Christ come to call sinners to repentance and die on a cross for our sins? But I digress.]

It was the Society of the Holy Cross that promoted sacramental confession. In 1873 an SSC petition to Convocation, signed by 483 priests, argued for a more catholic liturgy based on that of 1549 and 'the advisability of providing for the education, selection, and licensing of duly qualified confessors'.<sup>14</sup> It hardly sounds revolutionary now, but it was then. The result was a backlash (there are often questions it is better not to ask): an episcopal committee claimed that the Church of England provides for confession only in 'exceptional cases'. Dr Pusey may have been hesitant about positively promoting confession, but he was not going to leave an episcopal attack on it unchallenged. In December 1873 *The Times* published a Declaration setting out the Church of England's position, drafted by the leading Tractarians Pusey, Liddon, Carter and William Bright. There were only 29 signatories, carefully-chosen: Pusey commented, 'We have excluded mostly those of the advanced school. Mackonochie is the only ritualist. It is, in fact, a rallying of the old school for whom the young ones have been speaking...'<sup>15</sup> The Declaration affirms in para. 9 that 'the Church left it to the conscience of individuals, according to their sense of their needs, to decide whether they would confess or not'. However, it points out (at the end of para. 8) that the Exhortation in the Communion Service implies that 'the use of Confession may be, at least in some cases, of not unfrequent occurrence' and adds (in para. 10) that the two occasions on which the Church of England commands its priests to receive confessions from those who are moved to make them (visitation of the sick and preparation for Holy Communion) 'do practically comprise the whole of the adult life'.

In 1877 a copy of part 2 of *The Priest in Absolution*, a manual for confessors published in 1870 at the SSC's instigation by its former Master John Chambers, was condemned in a speech in the House of Lords, and a furore ensued. Dr Pusey reproached himself: for years he had been planning to publish an English edition of Jean -Joseph Gaume's manual for confessors. 'If I had published Gaume in those former years, *The Priest in Absolution* never would have been compiled', he told Liddon: 'Chambers asked me to put out Gaume, and it was only on my continual delay that he published the first part and prepared *The Priest in Absolution*.' Pusey now set to work, and in 1878 published *Advice for Those who Exercise the Ministry of Reconciliation through Confession and Absolution, being the Abbé Gaume's Manual for Confessors..., Abridged, Condensed and Adapted to the Use of the English Church...* Pusey's extensive preface (168 pages) set out earlier Anglican testimony to the practice and importance of sacramental confession. Though he was still unwilling to *require* habitual confession – 'We cannot make one unvarying law for souls which God has made so varied and forms so variously' (p. clvi) – he was now much more willing to recommend it:

'The proverb says, "Better late than never;" but the proverbial truth implies, "better still, not late." I do not mean that the Church of England recommends habitual confession, but I *do* mean that she does virtually recommend the confession at any time of any sin, which, if not confessed before, she would recommend to be confessed on the sick-bed.'<sup>16</sup>

Here we see an example of what often happened: when the younger generation went beyond what the Tractarians had said or did, Dr Pusey did not repudiate it but rather was spurred on to defend the catholic teaching underlying their position.

The controversy over *The Priest in Absolution* resulted in mass resignations from the SSC. Its membership, which peaked at 400 in 1877, fell within a couple of years by more than half; not until the early 1970s did it reach 400 again. Accusations that the hearing of women's confessions could undermine family life and involve improper questioning or even immorality remained a stick with which to beat Anglo-Catholics. These culminated in the lurid claims of Walter Walsh's *Secret History of the Oxford Movement* (1897). All of this forms the background to discussion of the seal of the confessional in the twentieth-century Church of England and even today.

## **The Twentieth Century**

In the mid-twentieth century, both the Doctrine Commission and the Convocations underlined the duty of non-disclosure. The Doctrine Commission, reporting in 1938, commented as follows:

'The confession is heard under the "seal" of absolute secrecy. This rule is necessary in order that freedom of confession may be secured. It is essential to the due discharge of the confessor's office that this rule should be held to be so binding on the priest's conscience that he cannot consider himself liable to be released therefrom by the authority of the civil or other power. This, however, does not necessarily imply that he ought not in certain cases to refuse absolution except on condition of the disclosure by the penitent or with his consent of certain facts; the determination of the cases, if any, in which he should so act is one of the most delicate problems of moral theology, which it would be outside our province to discuss.'<sup>17</sup>

Twenty years later, the Convocations approved this solemn statement as an Act of Convocation:

'That this House (*York*, That this Synod) reaffirms as an essential principle of Church doctrine that if any person confess his secret and hidden sin to a priest for the unburdening of his conscience, and to receive spiritual consolation and absolution from him, such priest is strictly charged that he do not at any time reveal or make known to any person whatsoever any sin so committed to his trust and secrecy.'<sup>18</sup>

The fact that the Convocations have declared the seal of the confessional to be not just a canonical rule but an essential principle of Christian doctrine would surely have a bearing on the synodical process if it were ever to be proposed that the proviso to Canon 113 be repealed.

## **Canon Law Revision**

The 1959 Act of Convocation was passed against the background of the drafting of the present canons, an exercise which began in 1939 with the appointment of a commission on canon law and came to fruition in 1964 and 1969 with the promulgating of the canons which form the basis for our current code. This brings me to a book which I mentioned here last year: *The Canon Law of the Church of England. Being the Report of the Archbishops' Commission on Canon Law, together with Proposals for a Revised Body of Canons...*, published in 1947. I love it partly because it is a work of art, with beautiful typography, including engraved dropped capitals at the beginning of each chapter of the draft canons (the first drafts of our present code of canons). But I love it also because the draft canons that it



proposed are copiously annotated with references not just to the post-Reformation historic formularies and the Canons of 1603, but also to the sources in the mediaeval canon law – both the general law of the Church and the local canons of the pre-Reformation English Church – from which they were largely drawn. This shows that our canon law is not the invention of a modern bureaucracy but an expression of catholic tradition.

The commission proposed two draft canons on our subject.<sup>19</sup> The first of these, no. LXV *Of Priests hearing Confessions*, would have permitted only certain clergy to hear confessions as of right: bishops, deans, provosts and residentiary canons (in respect of visitors to their cathedral or collegiate church), priests with the cure of souls (in respect only of those within their cure, or visitors to their churches), priests holding a general licence to preach or minister throughout a diocese, licensed chaplains (in respect of residents of their institutions), and religious superiors (in respect of members of their communities). Other priests would only have been able to hear confessions if they had received authority in writing from the diocesan bishop either in the whole or a part of the diocese, and ‘in respect either of all persons or of certain persons only’ – or if the person was in danger of death or there was ‘some other urgent or weighty cause’.

I believe that I read somewhere earlier this year (but annoyingly can’t now find the reference) that Arthur Winnington-Ingram, who was Bishop of London from 1901 to 1939, insisted that newly-ordained clergy should go to Fr Mackay, the Vicar of All Saints, Margaret Street, for training before being permitted to hear confessions. Be that as it may, the idea that the ministry of hearing confessions is one upon which priests should embark only after specific training and some experience of parochial ministry is one that may be worth pondering. The draft canon was clear that that ministry forms part of the cure of souls, but suggested that it should only be exercised by clergy who do not have the cure of souls with the bishop’s permission.

More directly relevant to our subject of the seal of the confessional is the second draft canon recommended by the Canon Law Commission in 1947: no. LXVI *Of the Duty of Priests towards any who resort to them to confess any Secret or Hidden Sin*. It reads as follows:

‘If any person confesses any secret or hidden sin to a Priest for the unburdening of his conscience and to receive absolution from him, such Priest shall no either by word, writing or in any way whatsoever, at any time reveal and make known to any person whatsoever, any sin, crime, or offence so committed to his trust and secrecy; neither shall any Priest make use of knowledge gained in the exercise of such ministry to the offence or detriment of the person from whom he has received it, even if there be no danger of betraying the identity of such person; neither shall any Priest, who is in a position of authority in any place, make use of any such knowledge in the exercise of his authority.’

The sources named for this canon are Canon 21 of the Fourth Lateran Council (with its reference from the *Corpus Juris Canonici*), Lyndwood, and Canon 113 of 1603. Note that it goes beyond merely enforcing the seal of the confessional. Its final point leaves open the question of whether a person in authority should in fact hear a confession of one of his subordinates at all.)

The mid-twentieth century was the era in which a catholic ethos was dominant in the Church of England – hence the comments of the Doctrine Commission in 1938, the Canon Law Commission in 1947 and the Convocations in 1959. I haven’t had time to read the debates about the draft canons on confession, but I imagine that even in the 1950s they were probably a bit too extensive to be accepted. By 1959 the lengthy revision process had resulted in their replacement by what is now Canon B 29, together with this final paragraph:

‘5. If any person confess his secret and hidden sins to a Priest for the unburdening of his conscience, and to receive spiritual consolation and absolution from him, such Priest is hereby strictly charged and admonished that he do not at any time reveal and make known to any person whatsoever any sin so committed to his trust and secrecy.’

It is noticeable that the canon is largely a conflation of the relevant texts from the Prayer Book, with the addition, in that final paragraph, of the key quotation from the proviso to Canon CXIII. When controversial matters are at stake, the Church of England often falls back on what it says in the Prayer Book: no one can properly object to that.

In the event, the final paragraph of the new draft canon was removed before it was promulgated in 1969. Again, I have not had time to research the story, but I imagine that consultations with Whitehall indicated that the royal licence and assent would not be given to a canon that might conceivably create a conflict of laws if a priest were ever to be asked in the witness box to reveal what had been said to him in confession. Equally, given the Act of Convocation reaffirming the Seal of the Confessional as ‘an essential principle of Christian doctrine’, the Convocations were hardly going to agree to repeal the proviso to Canon CXIII without replacement. Therefore, in a typically pragmatic Church of England solution, when the rest of the 1603 canons were repealed, that proviso was simply left un-repealed. It remains in force today.

### **The Guidelines for the Professional Conduct of the Clergy**

I now fast-forward to 2003, when the Convocations approved Guidelines for the Professional Conduct of the Clergy. Fr David Houlding was a member of the working party that drafted them and went on to chair a further working party that produced a revision that was declared an Act of the Convocations of Canterbury and York in July 2015. I don’t know how well known they are to the clergy, but it is worth studying them, because Clergy Discipline tribunals do take them into account in considering whether a cleric has engaged in conduct unbecoming.

Back in 2002-3 and again in 2014-15, the section about confession was controversial, but on both occasions the seal of the confessional was upheld and attempts to remove reference to it were successfully. It now appears in para. 3.5, which affirms that the requirement of non-disclosure is not broken by the penitent’s death. I regret the absence from the latest version of the following passage in para. 7.2 of the 2003 text: ‘The priest may not refer to what has been learnt in confession, even to the penitent, unless explicitly permitted. Some appropriate action of contrition and reparation may be required before absolution is given.’ But those statements remain true, even if they no longer form part of the Convocations’ guidance to the clergy. The 2003 text also included a note stating, ‘Whether the civil courts will always respect this principle of absolute confidentiality remains uncertain.’ That too remains true (the seal of the confessional has never been tested in the English courts), even though the present text does not mention it.

The Guidelines refer to a working party on the seal of the confessional, charged with considering whether proposals the proviso to Canon CXIII should be amended. Forward in Faith made a submission to that working party, arguing for no change. It’s on the website ([www.forwardinfaith.com/Confession.php](http://www.forwardinfaith.com/Confession.php)). We pointed out that repealing the proviso would not remove the duty of non-disclosure, because it is integral to the Sacrament. In any case, the Sacraments belong to the whole Church and the Church of England does not have authority to alter them unilaterally. We also pointed out that removing the seal would discourage confession of crimes against children and vulnerable adults (which of course are uppermost in

the minds of those who argue for change), and thus serve to remove the opportunity for a priest to encourage a perpetrator to report him- or herself to the Police (withholding absolution until this has occurred). Even if the working party were to recommend amendment, which seems unlikely, I think legislation would be fraught with difficulty and unlikely to succeed.

## **Common Worship**

Having begun with the 1662 Ordinal and Book of Common Prayer, in conclusion I want to look briefly at what the Common Worship liturgies can tell us of the Church of England's attitude to confession in the twenty-first-century.

It was in my time as Secretary of the Liturgical Commission that it produced rites for the Reconciliation of a Penitent. Following publication of *The Alternative Service Book 1980* the Liturgical Commission had produced such a rite, but in 1983 it failed to gain the two-thirds majority in the House of Laity needed for authorization because it included an absolution containing the words 'I absolve you'. Legal advice had indicated that the rite could not be used without synodical authorization, as it was alternative to provision in the Book of Common Prayer. In 2003 I put it to the present Chief Legal Adviser that this was wrong, because the Reconciliation of a Penitent is a service for the reconciliation of people who are mostly not sick, whereas the Visitation of the Sick is specifically a rite for visiting sick people. He agreed, and that enabled us to offer the rite for commendation by the House of Bishops after a mere take-note debate in the Synod, without needing a synodical revision process or two-thirds majorities at final approval. The rite said that an authorized absolution should be used, and one of those included in the resource section was the absolution from the Visitation of the Sick, with 'has', 'you' and 'your' instead of 'hath', 'thee' and 'thy' – these being 'variations which are not of substantial importance' within the meaning of Canon B 5. So the Church of England does now have a rite for the reconciliation of a penitent, which is published both in the *Christian Initiation* volume of Common Worship and on a card. In publishing the card in 2006, we obviously had to include one or two absolutions. We printed the Visitation absolution first, with one other as an alternative.

Even more important are the Ordination Services (to which I am particularly attached because this was the most important piece of work that the Liturgical Commission did while I was its Secretary). It is not insignificant that the section headings in the Guidelines are drawn from the Common Worship rite for the Ordination of Priests. In the 2007 study edition of the Common Worship Ordination Services the rites are annotated with references to Scripture and the Canons, to make clear to evangelicals in particular how the liturgy is steeped in Scripture and relates to what the Church of England teaches. The volume also includes the 1662 rites, a brief history of ordination rites, a commentary on the Common Worship rites, and a practical guide to celebrating ordinations for those involved in planning the services. The book was my idea and I edited it, so I am a bit disappointed that even many bishops seem unaware of its existence.

Absolution, and the ministry of reconciliation more generally, are among the major themes of the Priests' rite. In the introduction to the Declarations, we are told that priests 'are to call their hearers to repentance and to declare in Christ's name the absolution and forgiveness of their sins'. The ordinands are asked, 'Will you, knowing yourself to be reconciled to God in Christ, strive to be an instrument of God's peace in the Church and in the world?' Towards the end, the Ordination Prayer says:

'In union with their fellow servants in Christ, may they reconcile what is divided, heal what is wounded and restore what is lost. May they declare your blessings to

your people; may they proclaim Christ's victory over the powers of darkness, and absolve in Christ's name those who turn to him in faith'.

Introducing the liturgical welcome to the presbyterate, the senior priest says, 'God was in Christ, reconciling the world to himself, and has given us the ministry of reconciliation'. The anointing of the new priests' hands is accompanied by these words: 'May God, who anointed the Christ with the Holy Spirit at his baptism, anoint and empower you to reconcile and bless his people.'

In the contemporary understanding of the Church of England priestly ministry is a ministry of reconciliation, both in the general sense and in the specific sense of imparting absolution.

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<sup>1</sup> D. G. Rowell, 'The Anglican Tradition: from the Reformation to the Oxford Movement' in M. Dudley and G. Rowell (eds), *Confession and Absolution* (London: SPCK, 1990), pp. 91-119, at p. 104.

<sup>2</sup> Caveat autem omnino sacerdos, ne verbo, aut signo, aut alio quovis modo aliquatenus prodat peccatorem. Sed si prudentiori consilio indigerit, illud absque ulla expressione personae caute requirat. Quoniam qui peccatum in poenitentiale iudicio sibi detectum praesumpserit revelare, non solum a sacerdotali officio sibi deponendum decernimus, verum etiam ad agendum perpetuam Poenitentiam in arctum Monasterium detrudendum.'

<sup>3</sup> A. K. Thompson, 'The Liberties of the Church and the City of London in Magna Carta', *Ecclesiastical Law Journal*, 18 (2016), 271-90 at p. 275, quoting A. Thompson, *Religious Confession Privilege at Common Law* (Leiden, 2011), pp. 64-5.

<sup>4</sup> J. V. Bullard and H. Chalmer Bell (eds), *Lyndwood's Provinciale: The Text of the Canons therein contained, reprinted from the translation made in 1534* (London: Faith Press, 1929), p. 150. Latin original: 'Nullus sacerdos ira, odio, metu etiam mortis audeat detegere quovismodo alicujus confessionem signo, nutu, vel verbo generaliter vel specialiter. Et si super hoc convictus fuerit, sine spe reconciliationis, non immerito debet degredare.'

<sup>5</sup> R. Bursell, 'The Seal of the Confessional', *Ecclesiastical Law Journal*, 2 (1990), 84-109, at p. 84.

<sup>6</sup> G. Bray (ed.), *Tudor Church Reform: The Henrician Canons of 1535 and the Reformatio Legum Ecclesiasticarum* (Church of England Record Society, vol. 8, 2000), pp. 32-3. Latin text: 'Statuimus ut nullus sacerdos peccatorem sibi in foro poenitentiae de suis peccatis confessum, vel etiam peccata sibi taliter confessa, verbo au signo, aut alio quovismodo revelet, et si contrarium fecerit, non solum a sacerdotali officio deponetur, verum etiam ad agendum perpetuam poenitentiam in arctum monasterium detrudetur.'

<sup>7</sup> J. V. Bullard (ed.), *Constitutions and Canons Ecclesiastical, 1604, Latin and English* (London: Faith Press, 1934), p. 119: 'Proviso semper, quodsi quis peccata sua occultiora alicui privatim confiteatur, conscientiam suam exonerando, quo ab illo spiritualem consolationem et levamen percipiat, eum hac nostra constitutione nullatenus teneri volumus; quin potius stricte illi praecipimus, ne ejusmodi aliquod crimen aut delictum fidei ac taciturnitati suae taliter commisum cuivis personae aliquando retegat, nisi sit ex eo genere criminum, quorum occultatio ex legibus hujus regni sit capitalis: qui contrafecerit, eo ipso irregularis esto.'

<sup>8</sup> N. Doe, *The Legal Framework of the Church of England: A Critical Study in a Comparative Context* (Oxford: Clarendon Press, 1996), p. 353.

<sup>9</sup> Bursell, 'The Seal of the Confessional', p. 87, n. 39.

<sup>10</sup> *The Ministry of Absolution* (GS Misc 1085, 2014), note.

<sup>11</sup> 'Albeit sacramental confession and absolution have been in some places very much abused, yet if any of the people be grieved in mind for any delict or offence committed, and for the unburdening of his conscience confess the same to the bishop or presbyter, they shall, as they are bound, minister to the person so confessing all spiritual consolations out of the Word of God, and shall not deny him the benefit of absolution after the manner which is prescribed in the visitation of the sick, if the party show himself truly penitent and humbly desire to be absolved. And he shall not make known nor reveal what hath been opened to him in confession at any time, or to any person whatsoever, except the crime be such as by the laws of the realm his own life may be called in question for concealing the same.' G. Bray (ed.), *The Anglican Canons, 1329-1947* (Church of England Record Society, vol. 6, 1998), p. 551.

<sup>12</sup> E. B. Pusey, *The Church of England Leaves her Children Free to Whom to Open their Grievs* (1850), p. 135, quoted by G. Herring, *The Oxford Movement in Practice: The Tractarian Parochial World from the 1830s to the 1870s* (Oxford, 2016), pp. 134-5.

<sup>13</sup> Carter, *The Doctrine of Confession in the Church of England* (1865), pp. 212, 210, quoted by Herring, *The Oxford Movement in Practice*, pp. 139-40.

<sup>14</sup> K. Macnab, 'Mackonochie and the Controversies over Confession and Ritual' in *In This Sign Conquer: A History of the Society of the Holy Cross* (Societas Sanctae Crucis), 1855-2005 (London: Continuum, 2006), p. 93.

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<sup>15</sup> E. B. Pusey to W. J. Copeland, quoted in H. P. Liddon, *Life of Edward Bouverie Pusey*, vol. 4 (2nd edn: London, 1897), p. 264.

<sup>16</sup> E. B. Pusey, *Advice for Those who Exercise the Ministry of Reconciliation through Confession and Absolution, being the Abbé Gaume's Manual for Confessors...*, *Abridged, Condensed and Adapted to the Use of the English Church* (2nd edn: London, 1878), p. iv.

<sup>17</sup> *Doctrine in the Church of England. The Report of the Commission on Christian Doctrine appointed by the Archbishops of Canterbury and York in 1922* (London: SPCK, 1938), pp. 197-8.

<sup>18</sup> H. Riley and R. J. Graham (eds), *Acts of the Convocations of Canterbury and York* (London: SPCK, 1971), p. 111. The introductory text reads: 'On 29th April, 1959, the Convocation of Canterbury agreed, and it was declared by His Grace the President to be an Act of Convocation, and on the same day the Convocation of York in Full Synod also agreed.'

<sup>19</sup> *The Canon Law of the Church of England. Being the Report of the Archbishops' Commission on Canon Law, together with Proposals for a Revised Body of Canons; and a Memorandum 'Lawful Authority' by the Honourable Mr Justice Vaisey* (London: SPCK, 1947), pp. 155-8.