

THE SEAL OF THE CONFESSIONAL: 'AN ESSENTIAL PRINCIPLE OF CHURCH DOCTRINE'

by Colin Podmore

The ministry of absolution lies at the heart of the Church of England's understanding of priesthood. In the 1662 Ordinal, the formula for ordination of a priest begins thus:

'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...'¹

The 'seal of the confessional' is described as follows in the *Guidelines for the Professional Conduct of the Clergy* (which were approved, and declared to be an Act of Convocation, by the Convocations of Canterbury and York on 10 July 2015):

'If a penitent makes a confession with the intention of receiving absolution the priest is forbidden (by the unrepealed *Proviso* to Canon 113 of the Code of 1603) to reveal or make known to any person what has been confessed. This requirement of absolute confidentiality applies even after the death of the penitent.'²

The proviso to Canon 113 of the Canons of 1603 was deliberately left in force when the rest of the 1603 Canons were replaced by the present Canons in 1969.

The requirement of absolute confidentiality in respect of sins confessed to a priest with a view to receiving absolution had been reaffirmed 'as an essential principle of Church doctrine' in an Act of Convocation on 29 April 1959. This paper sets out the background to that Act of Convocation, the text of which is set out in the Appendix.

As part of the general revision of the canon law, it was proposed to re-enact the key parts of the 1603 text (in more absolute terms) as Clause 5 of what eventually became the present Canon B 29 (Of the Ministry of Absolution). A draft Canon including that clause was approved by the Convocations at the first stage of the approval process in January 1958.

As the Secretary of the Steering Committee, the then Canon E. W. Kemp (later Bishop of Chichester), explained to the Convocation of Canterbury in October 1958, the Crown would not grant Royal Assent to a Canon that did not accord with the present law of England, and both government and ecclesiastical lawyers advised that in their view:

'English law did not recognize what was known as the seal of confession as being in any way absolute. It was the practice of Her Majesty's judges, and had been for some time, that they did not press this, and that when the matter arose they did not in fact require a priest to reveal what he knew in confession; but the advice was that the law was that they had the power to do so if they wished, and therefore, if it were

¹ Texts referred to in this paper are set out in the Appendix.

² *Guidelines for the Professional Conduct of the Clergy* (revised edn: London, 2015), p. 6: para. 3.5.

desired to go ahead with this Clause, there would have to be legislation in Parliament on this matter.’

This legal advice was supplemented by ‘political advice’ from the government lawyers that ‘there would be the very strongest opposition in Parliament to any attempt to get the law changed in this respect’, since others, including Roman Catholic priests, doctors and lawyers, could be expected to demand a similar legal exemption. The government lawyers had indicated that if the words ‘subject to the Law of England’ were added to the Clause, that would remove any objection, but the Steering Committee unanimously rejected that possibility, because it would ‘qualify the obligation of the seal’ and to do that would attract ‘the strongest opposition from very large numbers of people – including... members of the Upper House’ [of Bishops]. Instead, they proposed that Clause 5 be deleted from the draft Canon. Canon Kemp added that it was not proposed to repeal the existing Canon 113. Therefore, ‘if the proposal to drop Clause 5 was accepted, the situation with regard to the seal would go on being what it had been in the past’.³

On 30 September 1958 the York Convocation rejected this proposal.⁴ As Canon Kemp put it, ‘They wished to retain the Clause and to face whatever might come’.⁵ When the Convocation of Canterbury debated the proposal in full synod the next day, concern was expressed at the possibility of the Church deferring, on a matter of doctrine, to Parliament.⁶ The Revd G. B. Timms (later Archdeacon of Hackney), commented that

‘If they dropped Clause 5... and did nothing else, then they would come perilously close to picking up their pinch of incense and offering it to the imperial image, performing an act which they knew in their hearts was absolutely disloyal to their ministry and therefore disloyal to their Lord from whom they had received their commission.’

He suggested at least postponing the deletion of Clause 5 until the Convocations had passed a resolution upholding the seal of the confessional as absolute. In this he was supported by the Bishop of Exeter, Robert Mortimer, and then, from the chair, by the Archbishop of Canterbury, Geoffrey Fisher.

When the Lower House (the House of Clergy) debated the matter on 2 October, an amendment was duly moved ‘That the proposal to delete Clause 5 be reconsidered at such time as the obligation of the seal of the confessional shall have been affirmed by Act of Convocation’.⁷ In the debate, doubt was expressed as to whether the legal advice was correct: it was noted that some ecclesiastical lawyers took a different view, given that the Canons form part of the law of England. This point was academic, however, since the Government would be advised by its lawyers that a Canon containing this Clause should not receive Royal Assent. The proposal to defer consideration of Clause

³ *Chronicle of Convocation*, 1958, pp. 250-251, 343.

⁴ *York Journal of Convocation*, 1958-9, pp. 45-51.

⁵ *Chronicle of Convocation*, 1958, p. 251.

⁶ *Chronicle of Convocation*, 1958, pp. 251-260.

⁷ *Chronicle of Convocation*, 1958, pp. 325-248.

5 until a suitable Act of Convocation had been passed was carried, as it was later in the Upper House.⁸

In his Presidential Address to the Convocation of Canterbury on 28 April 1959, Archbishop Fisher summarized the position following the previous autumn's debates in three points.⁹ First, 'There is little reason to be dissatisfied with the working of the present position, and nobody wishes to challenge the principle of the seal.' Second, though there were 'contrary opinions', the view of the Crown's Law Officers – that Clause 5 could only be approved if Parliament granted a statutory exemption to the duty to answer a judge in a court of law (which it would not) – had to be accepted. Third, if Clause 5 were simply dropped, this would be misunderstood. However:

'The clause with its statutory implications might be withdrawn, if at the same time Convocation could emphatically reaffirm the principle of the seal for what it is: an ancient and universally-held principle not only of the Church of England but of the Church of Rome and the Eastern Orthodox Churches as well. If that could be said clearly, the clause might then be withdrawn without fear of misunderstanding.'

The Archbishop explained that Canon Kemp would therefore move a motion to reaffirm the text of Clause 5 of the draft Canon as 'an essential principle of Church doctrine'. If both Houses of the Convocation approved this, the Archbishop, as President, would declare it to be an Act of Convocation, giving it a higher status than a mere resolution. The next day, 29 April 1959, Canon Kemp moved the motion in full synod.¹⁰ It was carried without dissent in both Houses. The Archbishop commented:

'The declaration of principle contained in Resolution 1 has been passed in both Houses without dissent, and it is an important principle. In view of that fact, I now declare it to be an Act of Convocation.'

The York Convocation passed the resolution in similar terms, also without opposition.¹¹

Debate on what to do with Clause 5 of the draft Canon continued. In the course of this, Archbishop Fisher said in the Canterbury Upper House on 30 April 1959,

'We have not given up the principle. We have just reaffirmed it. We are prepared to say to our priests in the last resort "If a Judge were to try to compel you and said that you must answer, you must still refuse." That is a perfectly good position to be in.'¹²

Eventually, Clause 5 was deleted, Canon B 29 was enacted in 1969 without it, and the proviso to Canon 113 that it had originally been intended to replace was left in force, now bolstered by the declaration in the 1959 Act of Convocation (approved without dissent) that the principle that it enshrines is 'an essential principle of Church doctrine'.

⁸ *Chronicle of Convocation*, 1958, pp. 308-309.

⁹ *Chronicle of Convocation*, 1959, pp. 157-161.

¹⁰ *Chronicle of Convocation*, 1959, pp. 224-231.

¹¹ *York Journal of Convocation*, 1958-9, pp. 81-96.

¹² *Chronicle of Convocation*, 1959, p. 281.

TEXTS

The Ordinal, 1662 (extract)

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.

Unrepealed Proviso to Canon 113 of the Code of 1603

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 Canons of the Church of England (7th edn: London, 2012), p. 185.

Draft Canon B. 28 (35A):**Clause 5, as approved by the Convocations (at stage 1 of the approval process) in January 1958 but later deleted from the Draft Canon**

5. 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 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.

Canon Law Revision 1959 (London, 1960), pp. 72-4.

Act of Convocation, 1959

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:

“That this House [*York*, That this Synod) reaffirms as an essential principle of Christian 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.”

Acts of the Convocation of Canterbury and York, p. 111.