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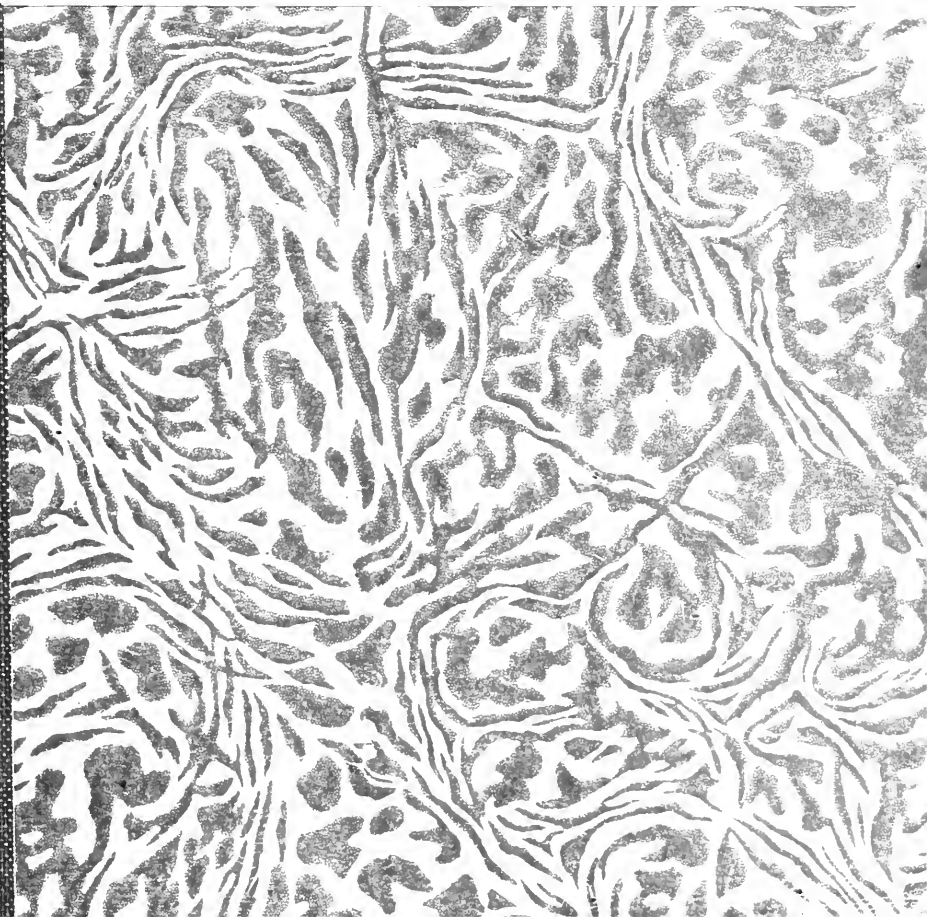
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The Acts of Infirmity

Thomas Alexander Lacey





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# The Acts of Uniformity

## Their Scope and Effect

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BY

T. A. LACEY, M.A.

VICAR OF MADINGLEY

RIVINGTONS

34, KING STREET, COVENT GARDEN

LONDON

1900

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*Michael Ernest Sadler*  
*University College*  
*Oxford*

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#### NOTE

THE following paper, read at Oxford before certain members of the University, in November, 1899, is published at the request of some who heard it.

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## THE ACTS OF UNIFORMITY

THE Acts of Uniformity are incidents in a great movement. They are far from being the most important of its incidents. Their importance has perhaps been exaggerated, and their purport is commonly misunderstood. My object is to place them in their true relation to other incidents. It is useless to study them apart; they cannot be understood except as details of a connected history. I shall confine myself, however, to a narrow question: assuming the general history, I shall ask how the several Acts of Uniformity come into it, with what purpose and with what ultimate effect. To study immediate effects would be to engage in too wide an inquiry.

We owe thanks to the men who drafted the statutes of the sixteenth century for their long argumentative preambles. These are invaluable as showing the occasion and purpose of the Acts. We shall not go to them for an uncoloured record of facts—their unsupported assertions will hardly, indeed, be taken as evidence for facts at all; but they tell us to what facts the legislator wished to call attention, and in what light he would have them regarded. The preamble of the first Act of Uniformity is among the most

illuminating, and with its help we can assemble the facts in relation to which the purport of the Act must be determined.

We are in the year 1548. Important changes in matters of religion had taken place; greater changes were in prospect. The processions before High Mass on Sundays and Festivals, conspicuous and popular ceremonies, had been stopped on rather flimsy grounds, and a Litany in English substituted—the “English Procession,” as it was called. Many images in the churches had been destroyed, as superstitious; the censuring of those remaining had ceased. The peculiar ceremonies of Candlemas, Ash Wednesday, and Palm Sunday had been omitted in many places. A chapter of the Bible in English was being read after the lessons at Mattins, and at Evensong after *Magnificat*.

It was not very clear by what authority these innovations had been made. There had been royal proclamations and injunctions; episcopal injunctions and orders on visitation. There was another change, perhaps the most striking of all, in which Parliament had intervened. The first Act of the first Parliament of Edward VI. required the administration of the Holy Sacrament of the Altar in both kinds. No penalties were annexed, though elsewhere in the same statute severe penalties were appointed for depravers of the Sacrament. Convocation had concurred, adopting on December 2, 1547, a resolution of some sort in favour of communion in both kinds.<sup>1</sup> The records are too

<sup>1</sup> Wilkins, *Concilia*, iv. 6; Strype, *Cranmer*, vol. i. p. 156; Cardwell, *Synod.*, p. 421.

scanty to show exactly what was done. An *Order of the Communion* with English prayers, to be inserted in the usual order of the Mass, was afterwards published, and brought into general use, on the command apparently of the King and his Council. Nothing was said in the Act of Parliament about the mode of giving communion, and therefore,

lest every man phantasing and devising a sundry way by himself, in the use of this most blessed Sacrament of unity, there might thereby arise any unseemly and ungodly diversity,

the King put forth this Order to be exclusively followed.<sup>1</sup> A letter from the Council to the bishops of the realm explains the source of the Order. It was drawn up at the King's desire, by

sundry of his majesty's most grave and well learned prelates, and other learned men in the scripture.<sup>2</sup>

This, then, was commanded by public authority. But there were other innovations of more doubtful origin. On May 12, 1548, at the commemoration of Henry VII. in Westminster Abbey, Wriothesley tells us of

the masse song all in English, with the consecration of the sacrament also spoken in English,

the priest afterwards "ministering the communion

<sup>1</sup> Proclamation prefixed to *The Order of the Communion*, printed by Grafton, March 8, 1548.

<sup>2</sup> Cardwell, *Doc. Ann.*, vol. i. p. 72. As the bishops were required "to cause these books to be delivered to every parson, vicar, and curate," within their several dioceses, the more scrupulous among these might fairly argue that they accepted the order on the authority of the diocesan. But it may be doubted whether such a refinement occurred to many at that time.

after the Kinges booke." In September, at the consecration of Ferrar by Cranmer, Holbeach and Ridley, something of the same kind was done. The account in Cranmer's Register is confused, but it says distinctly that the Holy Eucharist was *consecrata in lingua vernacula*. The churchwardens of St. Michael's, Cornhill, this same year paid five shillings

to the Scolle M<sup>r</sup> of Polles, for wrytyng of the masse in Englysh & y<sup>e</sup> benedicites ;

doubtless for use in church.<sup>1</sup> In May, again, according to Wriothesley,

Poules quire and dyvers other parishes in London song all the service in English, both mattens, masse, and evensonge.

At St. Michael's, "viii Sawtters in Englyshe" were bought.<sup>2</sup> In September, Somerset, as Chancellor, wrote to the Vice-Chancellor of Cambridge that in all the Colleges they should

use one uniform order, rite, and ceremonies in the mass, mattins and evensong, and all divine service in the same to be said or sung, such as is presently used in the king's Majesty's chapel, and none other.<sup>3</sup>

There is nothing to show what was specially intended here, but a copy of the order in question was sent with the letter for more information.

<sup>1</sup> Overall, *Accounts of the Churchwardens, etc.*, p. 67.

<sup>2</sup> *Ibid.*, p. 68. There exist among the MSS. of the British Museum many English renderings of parts of the Mass and the Divine Service, anterior to the Book of Common Prayer, with musical notation. These will shortly be discussed by Mr. W. H. Frere in the *Journal of Theological Studies*.

<sup>3</sup> C.C.C.C. MSS. 106, fo. 495, cited in Gasquet and Bishop, *Edward VI. and the Book of Common Prayer*, p. 147, from Cooper's *Annals of Cambridge*, ii. p. 18.

Meanwhile steps were being taken for a thorough reform of the customary services. A committee of Convocation had been appointed for "examining, reforming, and publishing the divine service." In November, 1547, the clergy of the lower house of Convocation petitioned to have the result submitted to them, with what success is not known.<sup>1</sup> The *Order of Communion* was not improbably the work of this committee. During the year 1548 we know that several divines—probably the same committee still continuing<sup>2</sup>—were engaged in the task of drawing up an order of service, which at a meeting of the bishops held in October or November was subscribed by all, with the single exception of Day of Chichester. This was the order afterwards brought into use, apparently with some verbal alterations, as the Book of Common Prayer.<sup>3</sup>

Here we see things in great confusion. The cause of the confusion is not far to seek. The services of the Church were regulated by custom, and custom

<sup>1</sup> Cardwell, *Synod.*, p. 420; Strype, *Cranmer*, vol. i. p. 155. The petition of the clergy expressly says that this had been done *ex mandato convocationis*. Cranmer's notes on the proceedings, given in Cardwell, make them say that "by the commandment of King Henry VIII. certain prelates and other learned men were appointed to alter the service in the Church." It is probably an instance of two ways of regarding the same thing, and is not un instructive.

<sup>2</sup> I venture on this suggestion as to the character of the much discussed "Windsor Commission," but it is beside my subject to debate the point. It seems to reconcile the many assertions that the Prayer-book was prepared by authority of Convocation with other assertions that all was done by a committee appointed by the Crown. See the preceding note. The statements are collected in Gasquet and Bishop, pp. 148-156.

<sup>3</sup> See Gasquet and Bishop, p. 178, and the notes of the debate on the Sacrament printed by them from MS. Reg. 17 B. xxxix., in their Appendix v. pp. 403, 404.

was crumbling to pieces. Uniform in the main, the services in different places had varied in detail. The tradition of each place had been maintained partly by conservative instinct, partly by the pressure of ecclesiastical discipline. The conservative instinct was now giving way to a temper of innovation ; ecclesiastical discipline was paralyzed by the interference of the Crown. Men could see no reason why they should not innovate, and the authorities of the Church were powerless to restrain them. England was threatened with the state of things prevailing in Germany, where the clergy and magistrates of every free town took it upon themselves to revise the order of divine service ; where the bishop of Strassburg, for example, even in his own city and his own cathedral, could not prevent the introduction of a strange and novel ritual.<sup>1</sup>

Into this environment the first Act of Uniformity was projected. In the preamble of the Act we find the state of things not unfairly described, with a discreet avoidance, however, of all reference to the causes of confusion. Mention is made of the old diversity of use, and then of the new and far greater diversity that was coming in. The godly care of the King, the Protector and the Council, in setting the bishops and divines to work at reforming the service of the Church, is gratefully acknowledged. This work was now concluded "by the aid of the Holy Ghost,

<sup>1</sup> The *Interim* of 1548 was an attempt of Charles V. and the Diet of Augsburg to grapple with this state of things, and was so far analogous to the English Act of Uniformity, and a precedent for it.

with one uniform agreement." The title of the book so prepared is recited: *The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, after the Use of the Church of England.* The enactment then proceeds:

All and singular ministers in any Cathedral or Parish Church, or other place within this realm of England, Wales, Calice, and Marches of the same, or other the King's dominions, shall from and after the Feast of Pentecost next coming, be bounden to say and use the Mattins, Evensong, celebration of the Lord's Supper, commonly called the Mass, and administration of each the Sacraments, and all their common and open prayer, in such order and form as is mentioned in the same Book, and none other, or otherwise.

Then follow the penalties. Any minister refusing to use the Book, or using any other, or speaking in derogation of the Book, for the first offence is to forfeit to the King one year's profits of some one of his spiritual promotions, if he have any, and to suffer six months' imprisonment. For a second offence he is to lose all his promotions and suffer one year's imprisonment. For a third offence the penalty is imprisonment for life. If he have no promotion, he is for the first offence to suffer six months' imprisonment; and for a second, imprisonment for life. There are penalties for laymen also. Any person speaking in derogation of the Book, or interrupting its use, or causing a minister to use any other form, is for the first offence to forfeit ten pounds, for a second offence twenty pounds; on a third

occasion he is to forfeit all his goods and chattels and suffer imprisonment for life. These penalties are to be enforced by judges of assize, proceeding in the manner customary on indictment for trespass.

What have we here? A purely penal statute, imposing the crushing penalties usual at the time. My purpose is to show the relation of the statute to the Book of Common Prayer. I observe, then, that the Book did not originate with the Act. It was already in existence, the fruit of the work of certain divines, which is spoken of in the preamble as concluded. The book was not authorized or brought into use by the Act. It was already in use, though by no means in general use. This fact is illustrated by the title of the Book itself, which sets forth the contents with some audacity as being *After the Use of the Church of England*. I am not here concerned with the question—the very difficult question—of the authority by which the Book came into existence and into use. I am only concerned to show that the authority in question was not the authority of Parliament. The Act of Uniformity did not authorize the use of the forms contained in the Prayer-book, for that was needless; it forbade the use of any other forms. It did not bring the Book into use, for that was already done; it brought it into *exclusive* use, which is not the same thing. It was not an enabling Act, but a prohibitory Act. It did not propose or command a reform; it found the reform already made. It did not purport to set forth an order of divine service; it found an order already in existence,



and forbade the use of any other. It was frankly a persecuting law, and as such may fairly be compared with the statute of the Six Articles. In that case the doctrinal articles, as in this case the forms of worship, were not invented or introduced by authority of Parliament; the statute in each case merely imposed a penalty on all who impugned or refused them. The purpose of the Act was to secure by temporal penalties an uniformity which the ecclesiastical authorities of the time were unable to compass, and which it is possible they did not greatly desire.

I shall not deal with the fortunes of the Prayer-book under the Act, or with the violent changes effected apart from the Act during the two or three years that followed. One incident, however, calls for notice. There were in London at this time numerous refugees of the reformed persuasion, chiefly from the Belgic provinces. These men organized themselves into a congregation, worshipping after their own rites. The King granted them the disused church of the Austin Friars. Here they came under the notice of the Lord Mayor, and of Ridley, the bishop of London, who attempted to enforce the Act of Uniformity against them. The matter was debated with much acrimony, and the Council intervened with a royal letter forbidding any interference with the congregation. So far as I know, this was the only act of toleration perpetrated during the reign of Edward VI.<sup>1</sup>

<sup>1</sup> See the letters of Micronius and Utenhovius to Bullinger, *Orig. Lett.*, pp. 568, 570, 587. The patent for the incorporation and protection

The second Act of Uniformity need not detain us. The Prayer-book had been elaborately revised, still without the initiative or concurrence of Parliament. The statute of 1549, however, hindered the use of the revised Book ; to use it was a penal offence. It was therefore necessary to put the revised Book in the legal position occupied by the unrevised Book. This was done by the Act of the fifth and sixth of Edward VI., in which opportunity was taken to add some pious reflections, which may breathe the spirit of Northumberland and the Council, and some further penalties, which may seem to us more in accordance with the spirit of the time. There was a clause cautiously relaxing the bonds in which the ecclesiastical jurisdiction was held, in order that it might come to the assistance of the champions of Uniformity. The only other point of interest is the statement that the revised Book was "annexed and joined" to the statute, a precedent which was followed in 1662.

In the second session of Mary's first Parliament the Acts of Uniformity were repealed. But the appetite for legislation was aroused. Mary, too, had ideas about legal uniformity. She had no handy and comprehensive service-book, the use of which could be enforced ; but the vague standard of what was customary at a certain date was set up :

All such Divine Service and Administration of Sacraments, as were most commonly used in the Realm of

of the congregation is given in French by Collier, *Records*, vol. ii. no. lxxv. The date is July 24, 1550, and a *non obstante* clause bars any interference "par aucun statute, acte, ordonnance, provision, ou restriction, faits publiez, ordonnez, ou pourueus au contraire."

England in the last year of the reign of our late Sovereign Lord King Henry the Eight,

were alone to be used. Strangely enough, no penalties were appointed for the disobedient.<sup>1</sup>

Elizabeth, immediately upon her accession, began to take measures quietly and cautiously for returning to the Edwardian position. She revived the use of the English Litany in her chapel, and encouraged it elsewhere. So far nothing was done seriously contrary to the statute of Mary, for the Litany as now used varied but little from that used under Henry VIII. Others, however, went further. The returning exiles, and those who had secretly sympathized with them, began to use the Edwardian Prayer-book.<sup>2</sup> There were no statutory penalties to restrain them, and the bishops looked on helpless, or acquiescent. Even in the Queen's chapel, it is said, the English service was used on Easter Day.<sup>3</sup> Long before the Prayer-book was restored to its legal position, Parkhurst was able to write to Bullinger, perhaps with some exaggeration, that it was again in general use: *Nunc iterum per totam Angliam in usu passim est.*<sup>4</sup>

It was the Prayer-book as used in the last year

<sup>1</sup> 1 Mariæ. sess. 2, cap. 2. Gibson, p. 304.

<sup>2</sup> And even this with some freedom. See Machyn's Diary, April 6 and 7, 1559. Jewel wrote to Peter Martyr on April 14: "Itaque factum est ut multis iam in locis missæ etiam invitis edictis sua sponte ceciderint." *Zurich Letters*, ep. vi.

<sup>3</sup> Venetian State Papers, vol. vii. p. 57. Easter Day fell on March 26 that year. The particulars reported by *il Schifanoja* are interesting. On the morrow of St. George's Day, he reports again, mass for the dead was said for the chapter of the Garter in the usual manner, but the Epistle and Gospel were said in English. *Ibid.*, p. 74.

<sup>4</sup> *Zurich Letters*, ep. xii.

of King Edward which was thus revived. But meanwhile a committee of divines was at work revising it. Little is known of their proceedings, or of the authority under which they acted, nor am I concerned with this question.<sup>1</sup> There is in the Record Office a paper which roundly asserts that Convocation went over the Book and approved the alterations before it was brought into Parliament. The document is undated, but the calendar assigns it to the year 1559. It is, however, certainly not of this date, and though interesting from another point of view, it cannot be taken to have any value as evidence of fact.<sup>2</sup> The statement cannot be reconciled with what we know of the proceedings of Convocation at the time.

Parliament met on the 23rd of January, 1559, and after some abortive attempts at legislation a Bill for Uniformity was brought into the House of Commons on April 18, and passed within two days; in the House of Lords it was keenly debated, but passed without amendment on April 28,<sup>3</sup> all the bishops present dissenting. By this third Act of Uniformity all the provisions of the former statutes were revived. The same penalties were enacted, with one addition—a fine of one shilling for absence from church on Sundays or holy days, to be levied by the churchwardens of each parish. The Prayer-book is not said to be annexed to the Act,<sup>4</sup> but is identified by

<sup>1</sup> See Cardwell, *Conferences*, pp. 19-21, and 47-54, 2nd ed.

<sup>2</sup> S.P. Dom. Eliz., vol. vii. no. 46. See below, p. 26, and Appendix.

<sup>3</sup> So all authors; I can find no evidence of the date.

<sup>4</sup> Nor was it so annexed in fact. Cardwell is here in error (*Conferences*, p. 30), and his mistake has been generally followed. If there were any

reference to the statute of the fifth and sixth of Edward VI., by which it is said to have been "authorized." Certain changes to be made in the Book so identified are specified : it is to be used

with one alteration, or addition of certain Lessons to be used on every Sunday in the year, and the form of the Litany altered and corrected, and two sentences only added in the delivery of the Sacrament to the communicants.

The alterations are said to be "appointed by this statute." I call attention to these points, because they seem to show that Elizabeth and her Parliament assumed the function of amending the Book, and claimed for it a purely statutory authority. Such an assumption is strangely inconsistent with the subsequent actions of the Queen, and we are the more struck by the contrast if we reflect that the Act was introduced in the House of Commons. In 1571, when the Commons began to stir matters of the same kind, Elizabeth sent them more than one sharp message forbidding them to meddle with such concerns. The speed, moreover, with which the Bill passed the Commons leaves little room for doubt that all was fully prepared beforehand, the revision of the Book completed, and the enforcement of its use alone made matter of parliamentary debate. In the Lords there was considerable discussion, and the Book was roughly handled by the opposing bishops;

doubt on the subject, it would be dispelled by the fact that in 1661 the House of Commons sought the Book annexed to the Act, not of 1559, but of 1552. See below, p. 21.

but the debate proceeded on the Book as a whole, and there is no trace of any legislative action dealing with its details. At the same time it is right to observe that the power of Parliament to impose the Book was challenged, and no other sanction appears to have been contemplated.<sup>1</sup> The only possible conclusion seems to be that the Book was revised by the committee of which I have spoken, and that as very few changes were made, no fair copy of the whole Book was submitted to Parliament, but the alterations were, for the purpose of reference, mentioned in the Act. Even this was done without much precision. The wording of the alterations is not specified. More remarkable still is the fact that in all the printed copies of the Book yet other alterations were imported, by what authority is not known. It would seem that no copy of the Prayer-book ever existed which answered exactly to the description given in the Act of 1559.<sup>2</sup> It is impossible, therefore, to say that the form of the Book was precisely determined by authority of Parliament. The purport of the Act was to enforce

<sup>1</sup> See the Bishop of Chester's speech against the Bill, in Cardwell, *Conferences*, p. 116: "Marke, my lordes, this short discourse, I beseech your lordshippes, and yee shall perceave, that all catholike princes, heryticke princes, yea, and infidells, have from tyme to tyme refused to take that upon them, that your lordshippes go about and chalenge to do." Collier, vol. ii. p. 430, conjectures that the rubric about kneeling at Communion was omitted by the committee of revisers, and restored while the Bill was passing through Parliament; but there is no evidence on either point. The letter of Guest, to which he refers, probably belongs to an early stage of the revision, and contemplates other and more striking variations from the Book as finally revised. See especially the paragraphs in Cardwell, *Conferences*, p. 51.

<sup>2</sup> See Clay, *Liturgies, etc., of Queen Elizabeth*, pp. xii. seqq.

the use of the Book in a form otherwise determined. That form was settled, with some measure of ecclesiastical sanction, in the time of Edward VI. What sanction there was for the trifling changes now made is not very clear, and possibly men were not meant to inquire too closely.

The obscurity which veils the proceedings of 1559 does not reappear on the occasion of the next revision. In 1660, on the restoration of the monarchy, the use of the Book of Common Prayer, which had been forbidden under severe penalties during the rule of the Long Parliament and of Cromwell, revived as a matter of course. The Ordinances of the previous eighteen years were void in law. Indeed, the Elizabethan Act of Uniformity remained theoretically in force. Charles, however, in the Declaration of Breda, had intimated in some ambiguous words that no attempt should be made to compel conformity.<sup>1</sup> The presbyterian divines, Reynolds, Calamy and others, who waited upon him in Holland, begged him not to insist on the use of the Prayer-book, even in his own chapel. He refused their request, replying that

though he was bound for the present to tolerate much disorder and undecency in the exercise of God's worship, he would never in the least degree, by his own practice, discountenance the good old Order of the Church, in which he had been bred.<sup>2</sup>

The discussions that followed the Restoration

<sup>1</sup> Clarendon, *History*, vol. iii. p. 747, 8vo, ed. 1707.

<sup>2</sup> *Ibid.*, p. 771.

turned chiefly on the question of church-government, with which I am not concerned, except so far as to point out that until the powers of the bishops were thoroughly re-established they were practically unable to enforce, by spiritual censures, the use of the prescript order of divine worship. Still it remained as prescribed, and was gradually returning to general use.

In October, 1660, the divines of the presbyterian party once more approached the King with suggestions for a settlement of uniform practice. In regard to the Liturgy, they had no objection to a fixed form imposed by law, provided it was not too rigorously insisted upon ; but to the forms contained in the Prayer-book they were rootedly opposed. The King seized the opportunity, and in his declaration of October 25 undertook to appoint a committee of divines of both persuasions to review the Book ; in the mean while, he wrote—

Our will and pleasure is, that none be punished or troubled for not using it, until it be reviewed, and effectually reformed.<sup>1</sup>

On the 25th of March following were issued Letters Patent for the committee thus promised. The conferences held at the Savoy were, however, practically fruitless, and the committee was dissolved by lapse of time on the 24th of July. In the mean time, however, the Convocation of the province of Canterbury had

<sup>1</sup> Cardwell, *Conferences*, p. 295. The Address of the Ministers, the King's Declaration of October 25, and the Letters Patent of March 25, are given by Cardwell in full, pp. 277-302.



been busy. Meeting on the 8th of May, 1661, the Synod drew up a form of prayer for the 29th of May, the anniversary of the Restoration, and also an office for the baptism of adults, which was approved on the 31st of May.<sup>1</sup> In another group of sessions beginning on the 21st of November, the Synod, in accordance with letters of business received from the Crown, took in hand an exhaustive revision of the Prayer-book. This was completed on the 20th of December, when a fair copy of the Book as revised was subscribed by the whole Synod.<sup>2</sup>

All this was done without the consent or concurrence of Parliament. The Commons became suspicious. Action under the statute of Elizabeth was suspended by royal command, and the Convocations were proceeding as if it were no longer in force. On June 25, 1661, a committee of the House of Commons was appointed

to view the several laws for confirming the Liturgy of the Church of England, and to make search, whether the original Book of the Liturgy annexed to the Act passed in the fifth and sixth years of the reign of King Edward the Sixth, be yet extant; and to bring in a compendious Bill to supply any defect in the former laws, and to provide for an effectual conformity to the Liturgy of the Church, for the time to come.<sup>3</sup>

This resolution begins the history of the fourth and

<sup>1</sup> Cardwell, *Synod.*, pp. 640-642.

<sup>2</sup> *Ibid.*, pp. 651-660.

<sup>3</sup> *Commons' Journals*, viii. 247. This and the following citations from the Journals of the two Houses will be found collected in the Report of the Ecclesiastical Courts Commission, Appendix v.

last Act of Uniformity, which deserves a detailed examination. A Bill was introduced on June 29, and since the original Book could not be found, a printed copy of the year 1604 was annexed. It was read a third time on July 9, and sent up to the Lords.<sup>1</sup> Nothing more was heard of it for several months. The object of the Commons was simply to enforce with greater efficacy the existing law. But this would have rendered futile the labours of Convocation in revising the Prayer-book. The use of the revised Book would be forbidden under penalty. The Lords therefore held their hand. The Bill sent up from the Commons was at length read the first time on January 14, 1662. Three days later it was read a second time and committed.<sup>2</sup> The committee met several times and adjourned, waiting until they might see the revised Book prepared by Convocation.<sup>3</sup> At length, on February 24, this Book, certified under the Great Seal, was sent by the King to the House of Lords. On March 13 the committee reported the Bill with several amendments and additions. Before these were

<sup>1</sup> *Commons' Journals*, viii. p. 296. The "original Book" should mean the copy actually tied to the Statute of 1552. It was probably intended to mark in it the alterations mentioned in the Act of 1559. The actual Book was missing, and apparently no copy of the Prayer-book of that year could readily be procured. A copy of the year 1604 was probably selected as being anterior to the changes made by James I. after the Hampton Court Conference, and so presumably printed in accordance with the Act of 1559. It did not, however, as I have said above, strictly follow the Act. Two prayers printed "before the reading Psalms" were cancelled before the book was annexed to the Bill, but the other variations would probably be unknown to the examiners.

<sup>2</sup> *Lords' Journals*, xi. 364, 366.

<sup>3</sup> *Ibid.*, xi. 383.

considered, the alterations in the Book were read over to the House, but not in any way discussed, and a vote of thanks to the Convocation for the pains taken in the matter was adopted.<sup>1</sup> On April 9 the Bill passed the third reading, with the revised Book annexed in place of the former printed copy, and so was returned to the Commons.<sup>2</sup>

Meanwhile the Convocation had, on March 5, commissioned three bishops to watch any alterations which might be imported into the Book by either House of Parliament.<sup>3</sup> On April 15 the Commons appointed a committee to compare the revised Book with the copy of 1604, and on the following day, upon the report of the committee, resolved by a narrow majority not to allow any debate on the alterations made. They reserved, however, the right to do so had they wished.<sup>4</sup> The clauses of the Bill were carefully gone through; a proviso inserted by the Lords, that no man should be deprived for not using the surplice or the Cross in Baptism, was thrown out;<sup>5</sup> several amendments were carried, and a conference of the two Houses was held for their consideration.<sup>6</sup>

On this occasion occurred two most significant incidents. The first arose out of the wish of the Commons to insert a proviso for

reverend and uniform gestures and demeanours to be enjoined at the time of divine service.

<sup>1</sup> *Lords' Journals*, xi. 406-408.      <sup>2</sup> *Ibid.*, xi. 425.

<sup>3</sup> Cardwell, *Synod.*, p. 666.

<sup>4</sup> *Commons' Journals*, viii. 406-408.

<sup>5</sup> *Ibid.*, viii. 413.

<sup>6</sup> *Lords' Journals*, xi. 441-442.

It was agreed in Conference that this matter was more proper for Convocation than for Parliament, and, therefore, by a vote of the House of Lords, Convocation was requested

to prepare some canon or rule for that purpose, to be humbly presented unto his majesty for his assent.<sup>1</sup>

The other incident arose from the discovery of the Commons' committee that in one of the rubrics of the revised Book the word *persons* appeared to be written by mistake for *children*. On this

the Lord Bishop of Durham acquainted the House that himself, and the Lord Bishop of St. Asaph, and the Lord Bishop of Carlisle, had authority from the Convocation to mend the said word, averring it was only a mistake of the scribe, and accordingly they came to the clerk's table, and amended the same.<sup>2</sup>

In fact, on April 21, the bishops in Convocation had heard from the Chancellor of the mistake, and had taken measures accordingly, adding Cosin of Durham to their committee of March 5 appointed for such an emergency.<sup>3</sup>

The Act received the royal assent on May 19. I have dealt so fully with its course through Parliament because of the character of the incidents. In itself it does not contain much that is new as regards my subject. The preamble recites the statute of Elizabeth, and relates the fact of its non-observance, and the neglect of the Book of Common Prayer during the late troublous times; takes note of the King's

<sup>1</sup> *Lords' Journals*, xi. 451.

<sup>2</sup> *Ibid.*

<sup>3</sup> Cardwell, *Synod.*, p. 670.

commission for the review of the Book and its subsequent revision by Convocation; and records the message in which the King recommended to Parliament that the Book so revised should "be the Book" appointed to be used everywhere in the kingdom. This accordingly is enacted, and in the twenty-fourth section all the existing laws on the subject, including of course the statute of Elizabeth, are confirmed as referring to the revised Book and none other. The revised Book, as in 1552, is thus put in exactly the same legal position as the original, and the authentic copy, as on that occasion, is, for the purpose of reference, annexed and joined to the Act. The other lengthy clauses of the Act contain elaborate provisions for preventing nonconformity, but with one exception they do not throw any further light on the relation of the legislature to the Prayer-book. The exception is the fifteenth section, which provides

that the penalties in this Act shall not extend to the Foreigners or Aliens of the Foreign Reformed Churches allowed, or to be allowed by the King's Majesty, his heirs and successors, in England.

An exception which had hitherto been made, as we have seen, by a stretch of prerogative, was now established by law. The exception illustrates the purpose of the Act. No sect or congregation of native-born dissenters was to be allowed any relief from the penalties imposed by law. The guarded promise of toleration made by the King before and after his restoration was ignored. The use of the forms of worship provided by the

authorities of the Church was to be forced on the whole nation.

The conclusion that I would draw from this analysis of proceedings will be fairly obvious. The Prayer-book did not originate with Parliament, nor was it in any true sense authorized by the Crown in Parliament. The action of the legislature on the first and the last occasion is perfectly intelligible. A Book of Common Prayer was in existence, drawn up and approved by ecclesiastical authority, on the first occasion it is not quite clear after what fashion, on the last occasion by the unquestioned exercise of synodical powers. This Book, so approved, was then, by authority of Parliament, imposed upon the whole nation. This being clearly the case on the two occasions when the procedure is free from ambiguity, I think we may fairly argue for the same construction of those proceedings, on the other two occasions, which are more open to question. The policy of the Acts of Uniformity is to be taken as a whole. The writer of the paper in the Record Office to which I have referred, purporting to give an account of what was done in 1559, explains that parliamentary action is limited to enforcing the use of the Book by penalties. Further authority than this, he says emphatically, is not in the Parliament. Writing early in the seventeenth century he sets out exactly the procedure followed in 1662. He describes, in fact, the policy of Uniformity, which was, therefore, not peculiar to the last occasion.<sup>1</sup>

<sup>1</sup> See Appendix.

I shall describe it negatively. The Parliament was not legislating for the regulation of divine worship. In 1662, as we have seen, both Houses, while stiffly maintaining their right to interfere, expressly declined that task, and declared it the proper work of Convocation. This was not from want of interest. The Commons were eager to have some further rules for "reverend gestures." But these things were to be regulated rather by canon than by statute. The Convocation was not even asked to prepare something for submission to Parliament; "some canon or rule," enacted by Convocation with royal assent, would be the sufficient and proper authority.<sup>1</sup> There could be no clearer proof, that, according to the mind of Parliament, Convocation has full powers, and is the proper authority, for dealing with such matters.

But even if this be so, it is urged, on the other hand, that what is contained in the Prayer-book is actually prescribed and stands by authority of Parliament. The Book annexed is treated as a schedule of the Act of Uniformity. It is, says Dr. Stephens,

part of the statute law of the land; and all the legal and equitable principles of construction which apply to statutes in general, equally apply to the Book of Common Prayer.<sup>2</sup>

This opinion, supported as it is by a general

<sup>1</sup> This fact should suffice to dispose of a theory propounded by some who attempt to save the face of the Church by representing the Act of Uniformity as the *ratification* in Parliament of what had been already done by the Church. There is no historical basis for such a theory.

<sup>2</sup> *The Book of Common Prayer, etc., with notes, etc.,* by A. J. Stephens, p. clxxiv.

consent of high authorities, I venture to contest. What is meant by the Book being "annexed" to the statute? Physically, it was attached by strings to the parchment on which the Act was engrossed. Was it legally a part of the statute? Was it a schedule? The procedure in Parliament, I submit, makes against this opinion. Can the schedule of a Bill in Parliament be amended otherwise than by the vote of the two Houses? But when a mistake was found in the Book annexed, it was corrected, as we have seen, not by the clerk under authority of Parliament, but by three bishops under authority of Convocation. Could any part of a Bill in Parliament have been so amended? The matter was trivial; there was the less reason for abnormal measures; and Parliament has always been jealous about small matters of procedure, and never more so than at that period. I submit that the Book annexed cannot be regarded as an integral part of the statute.

But if the Prayer-book is thus external to the statutes which require its use, can its meaning be affected by any of the provisions of those statutes? If the wisdom of Parliament had enacted on some occasion that Aldrich's Logic and the Elements of Euclid should be read in the Universities, would it follow that the rules of the syllogism and the axioms of geometry are to be interpreted by "the principles of construction which apply to statutes"? Or since geography is by statutory authority taught in our elementary schools, are we to infer that the world revolves on its axis subject to the British Constitution?



The Prayer-book is a liturgical document, and surely it should be interpreted by the principles which apply not to statutes, but to liturgies in general.

If the Acts of Uniformity are not laws for regulating divine worship, what are they? I should call them, briefly, laws of persecution. They were intended to enforce on all men by criminal process the observance of the Church's forms. That is persecution, I suppose, if anything can be so called. I shall not indulge in any moral reflexions on persecution. They may be taken for granted. I shall only note the dry fact that within thirty years of the last enactment the whole purpose of the statutes was destroyed by the Act of Toleration. A good part of them has been formally repealed, as may be seen by a glance at their text as printed in the Revised Statutes. What remains? A singular ruin. The effect of the law has been turned upside down. It was intended only to restrain dissenters: dissenters are now the only people to whom it does not apply. It was intended only to prevent unauthorized variations from the Prayer-book: it is effective now to prevent authorized variations alone. The one effect of the Acts of Uniformity at the present time is to render it practically impossible for the authorities of the Church to make the smallest amendment of the text of the Book of Common Prayer. In doing this they would run counter to the law which orders the use of this Book and none other. Unauthorized variations, on the other hand, are unchecked by the Acts of Uniformity. So far as they are restrained at all,

they are restrained by the general disciplinary powers of the Church. Theoretically those who indulge in them are liable to the statutory penalties imposed by the Act of Elizabeth. Practically these cannot be enforced: their savagery makes it impossible. They stand as they were enacted in 1549, and again ten years later; they are now intolerable. I am told that no attempt has been made to enforce them since the year 1796, nor is there any chance of their being revived. The Acts of Uniformity, so far as they relate to the Prayer-book, have therefore no present effect but to hinder the activity of the Church. They began with fierce persecution on behalf of the Church. They end by being merely a nuisance.

## A P P E N D I X

STATE PAPERS, DOMESTIC, ELIZABETH, VOL. VII., No. 46.

THER returned into England upon Queene Maryes death that had bin Bishops in K. Ed. 6 tyme

1. Coverdale.
2. Scorye.
3. Chenye.
4. Barlowe.

Ther remaned Bishops for some tyme that were Bishops in Queene Maryes tyme,

1. Oglethorpe, B. of Carleile who crowned Q. Eliz.
2. Kichin, B. of Landafe.

Ther were Bishops in the Parlament holden primo Eliz. and in the Convocation holden at the same tyme

Edmunde B. of London.

John B. of Winton.

Richard B. of Wigorne.

Ralph B. of Covent and Lichfeilde.

Thomas B. of Lincolne.

James B. of Exon.

The Booke of Comon Prayer, published primo Eliz. was first resolved upon and established in the Church in the tyme of K. Ed. 6. It was re-examined with some small alterations by the Convocation consistinge of the said Bishops and the rest of the clergy in primo Eliz. which beinge done by the Convocation and published under the great seale of Englande ther was an Acte of Parlament for the same booke which is ordinarily printed in the beginninge of the booke; not that the booke was ever subjected to the censure of the Parlament but being aggreed upon and published as afforesaid, a law was made by the Parlament for the inflictinge of penalty upon all such as should refuse to use and observe the same; further autoryty then so is

not in the Parliament, neyther hath bin in former tymes yealded to the Parliament in thinges of that nature but the judgment and determination therof hath ever bin in the Church, therto autorised by the Kinge which is that which is yealded to H. 8. in the statute of 25 his raygne.

[Endorsed] *Bishops.*

\* \* \* \* \*

Another copy follows, No. 47, written with modernised spelling. It is endorsed as follows:—

[1] *Bishops.*

[2] *Power of the Convoc<sup>n</sup> in framing the Book of Common Prayer &c. and of the Act of Parlt. S<sup>r</sup> Th. Wilson's hand.*

The second endorsement of No. 47 (wrongly given in the Calendar as "*Progress of the Convocation, etc.*") is in the handwriting of Sir Joseph Williamson, Keeper of the State Paper Office, and from 1674 to 1679 Secretary of State. Sir Thomas Wilson was a confidential servant of Robert, Earl of Salisbury, who often employed him in matters of secret police. He was made Keeper of the S.P. Office in 1605 and died in 1629. A comparison with his letters and notes preserved in the Record Office shows that the copy in his handwriting is the earlier one, No. 46. It is written, however, more formally and with more archaic spelling than his original papers. It would therefore seem to be a copy of an older original. I venture to suggest that it may have been written for Salisbury's use in 1604, when revision of the Prayer-book was being discussed. There is nothing to show the provenance of the original, but the errors in point of fact make against an early date. Cheney is said to have been a bishop in the time of Edward VI.; he was in fact raised to the episcopate in the year 1562. Oglethorpe is said, like Kitchen, to have retained his bishopric under Elizabeth. He was in fact deposed on June 21, 1559, and died in the following December. The statement that the Prayer-book was submitted to the Convocation, "consisting of the said Bishops," is all but demonstrably false.



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