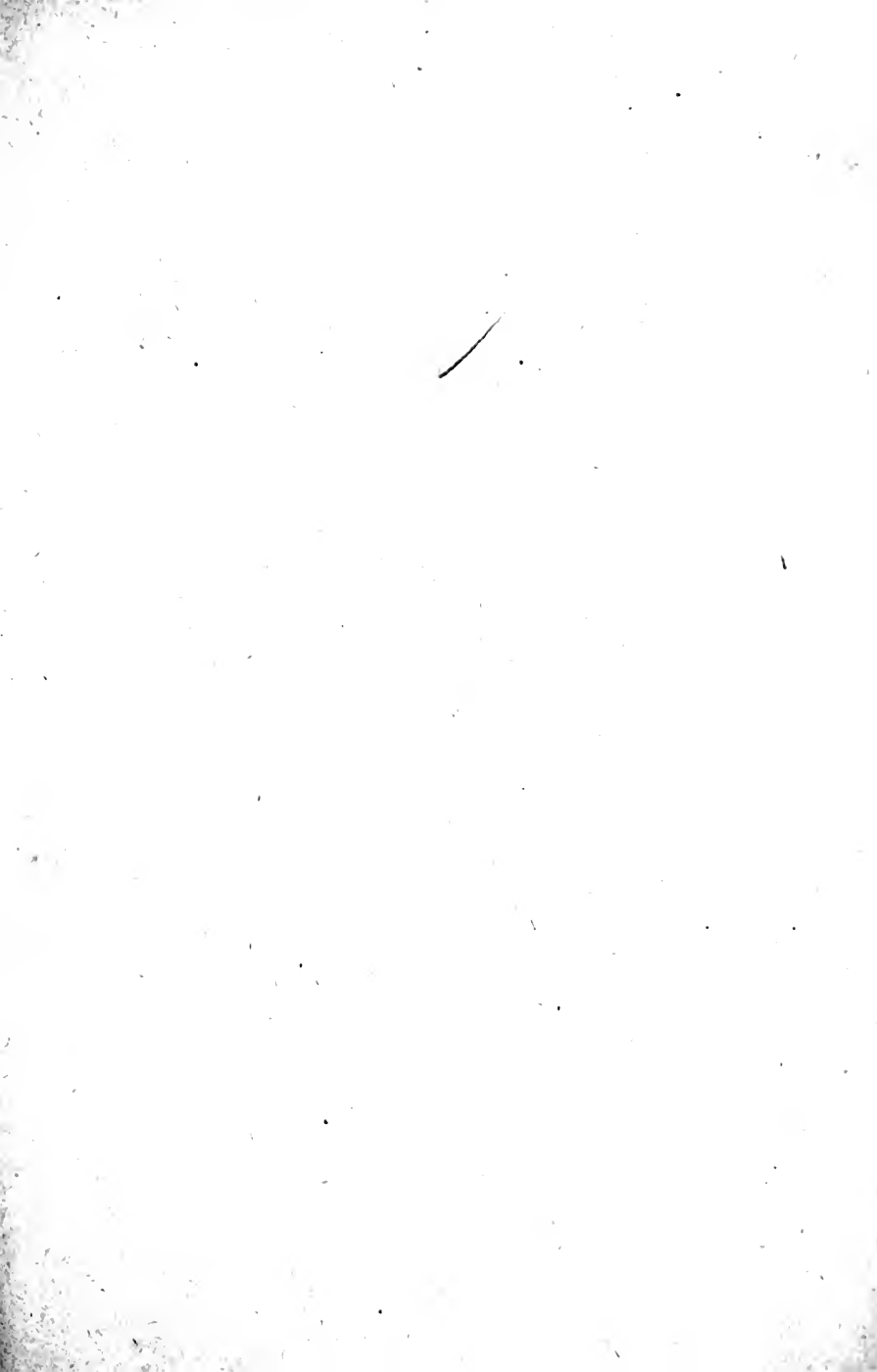




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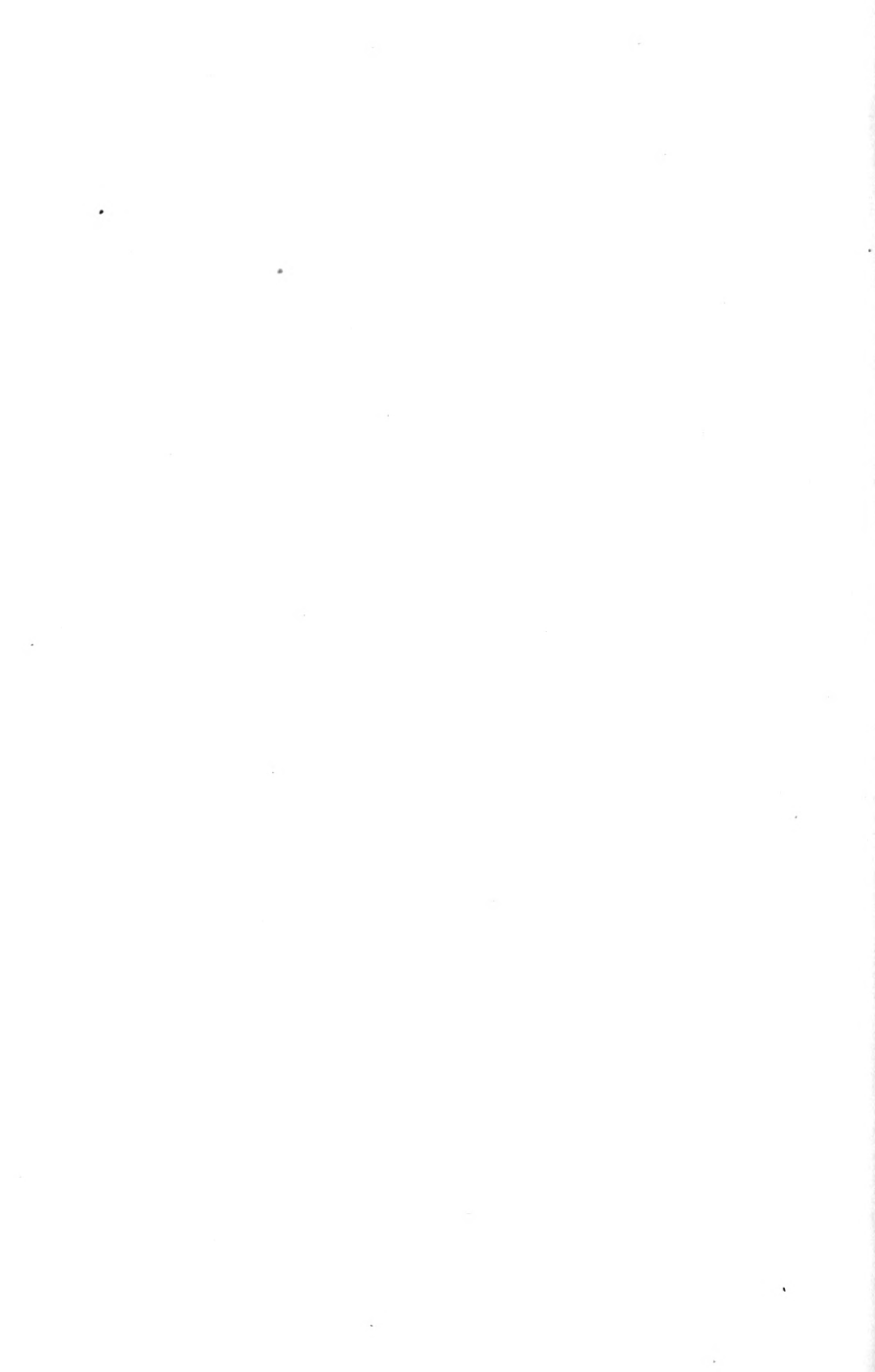
AN ESSAY
ON THE
UNION BETWEEN THE CHURCH
AND THE STATE,
AND
THE ESTABLISHMENT BY LAW
OF THE PROTESTANT REFORMED RELIGION
IN ENGLAND, IRELAND, AND SCOTLAND.

READ AT THE VISITATION OF THE CLERGY OF THE ARCHDEACONRY
OF LONDON, MAY 14. 1868.

BY W. H. HALE, M.A.

ARCHDEACON OF LONDON.

London,
BUTTERWORTHS, 7, FLEET STREET.
LAW PUBLISHERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
1868.



TO THE
CLERGY OF THE ARCHDEACONRY OF LONDON,

WHO, AT THE ANNUAL VISITATION,

ON MAY 14, 1868,

FAVOURABLY LISTENED TO THE READING OF THE

FOLLOWING PAGES,

This Essay is Dedicated,

BY THEIR FRIEND AND BROTHER,

W. H. HALE,

ARCHDEACON OF LONDON.

Charterhouse, May 25, 1868.

AN ESSAY

ON THE

UNION BETWEEN THE CHURCH AND THE STATE.

A YEAR since, the condition of the Colonial Church in Africa led me to make some historical inquiries into the legal constitution of our Church, and the origin of that royal authority, which is implied in the assertion, that in all causes spiritual or ecclesiastical the Queen is supreme. The result of those researches I set forth, both in my Address to the Clergy at my last Visitation, and also more fully in a subsequent publication entitled “A Legal Enquiry into the Supremacy of the Crown in matters of Religion.” I am not aware that the correctness of my statements has been impugned, or that I have been considered to have misrepresented the character of the Supremacy. Wide as has been that authority, the exercise of it would be unduly attributed to the personal views of the Sovereign upon any question of religion, the Supremacy being a branch of the Prerogative which could hardly be put in action in this country at any time, without

the advice or concurrence of the Council. So long as the law required all persons to be of the National Religion, the supremacy in matters of religion extended over all the subjects of the Crown ; but since the reign of William and Mary, when the law exempted from prosecution in the Ecclesiastical Courts such persons as did not adhere to the worship and faith of our Church, and Nonconformity ceased to be an offence against the law, the Supremacy of the Crown in matters of religion has ceased to be universal, and is limited to those subjects of the Crown, who are members of that Church, which the law recognizes, as the Church of England by law established.

An accidental circumstance led me a short time since to inquire into the origin and meaning of the term "as by law established," and thus materials were collected for this present treatise, which may be entitled "An Essay on the Union between Church and State." I am inclined to avoid the expression "Church and State." There is a vagueness in the terms. When we speak of the union between Church and State, something like a contract is implied between two parties ; yet it is difficult to say, by whom the Church is represented, and by whom the State. That there is such a union will, I suppose, be granted ; but who the parties are, between whom that union exists will, I think, appear, if for the term *Church*, we substitute the *National Religion*, and for the term *State*, the *Statute Law*. The distinctive

character of the Faith of the Church, or of the National Religion, need not enter into the definition. Whatever be its doctrines, any Church is in union with the State, whose polity is regulated and defined by the Municipal or Statute Law.

I propose to illustrate this subject by a brief history of the connexion which, in ancient as well as in modern times, has been maintained in our country between the National Religion and the National Law.

The laws of the Anglo-Saxon kings, divided as they are into their well-known branches, Secular and Ecclesiastical, show clearly that the Christian religion was received as the National Religion, to the total exclusion of heathenism. The first endowment of the Church most probably consisted of the property attached to the heathen temples and priesthood. Then succeeded voluntary gifts, and the adoption of the principle of the Mosaic law, the duty of the people to pay, and the right of the Clergy to receive a tithe of the annual produce of the land. Before the Conquest, the Church of England had acquired her secular rights and position in the State under what we now call the Common Law, and hence Christianity itself came to be acknowledged, as part of the Common Law of the land. As to the Religion itself, I see no reason to doubt that the Church of England adopted from age to age the opinions of the Western Church, as they were developed in the decisions of Councils, in the Decretals

of the Popes, and in the compilation of the Canon Law. Agreement in doctrine is, however, no evidence of subjection to jurisdiction. The numerous Statutes which were passed in the reigns of the Henrys and Edwards to repress the encroachments of the Popes, in the disposal of benefices, and to forbid appeals in ecclesiastical causes to Rome, are good indications of freedom; and the formation of a body of English Canon Law in the decrees of our Provincial Councils, subsequently confirmed by Statute of Henry VIII., without ever being sanctioned by the Popes, is as strong a proof as can be given of the legal independence of the Church of England, however close might be her agreement in doctrine with the see of Rome. The formal acceptance of that doctrine does not appear to me to have been effected earlier than the beginning of the fifteenth century. The Church by a Canon of the Council of Oxford (Lyndwood l. v. tit. 5, De Hæreticis, p. 297), under Archbishop Arundel in 1408, recognized as heresy, any opinion contrary to what the Church had determined in the Decrees of the Roman Pontiffs and Holy Fathers, the Decretals of the Popes, and our Provincial Councils; and the State, in the Statute of 2 Henry IV. c. 15, in 1401, against the Lollards, declared that “the Catholic faith, builded upon Christ, and by her Apostles and the Holy Church sufficiently determined, declared, and approved, had been in this realm, amongst all the realms of the world, most

devoutly observed; but that wicked, erroneous, and heretical opinions had been taught contrary to the same faith and blessed determinations of the Holy Church." The statute recognized the authority of the Canonical decrees and holy Canons, which determined, that relapsed heretics ought to be left to the Secular Court, and authorized their being publicly burnt. This Statute seems to have prepared the way for the Canon of the Council of Oxford; which, in accepting the Decrees and Decretals of the Roman Pontiffs as standards, whereby heresy should be judged, admitted their authority in all other matters of religion.

During the reign of Henry VIII. no change took place in the National Religion, as generally professed in the Western or Romish Church, and deduced from the Decrees, Decretals, and Provincial Councils. No doubt private men had embraced new truths and discarded old errors, but the assertion of the Supremacy of the Crown made no change in any article of faith, nor did the destruction of the monasteries, and the abolition of the Monastic orders, imply a greater departure from the Roman Catholic Church, than has taken place in those kingdoms in Europe, from which monks have been banished by the authority of the State, but the people have remained as firmly attached as ever to their old superstitions. How those changes were brought about, which caused the Church of England to renounce the doctrines of the Church of Rome, it is

not my present business to inquire. I have to illustrate the nature of the Union between the Church and State, by showing how the National Religion has been sanctioned by the law; and when I quote Acts of Parliament, either of Henry, or Edward, or Elizabeth, or any other succeeding monarchs, I wish those documents to be regarded as legal documents; not as the edicts or injunctions of individual Sovereigns, but as the acts of the national Legislature, which the Lords and Commons, in Parliament assembled, prayed the Sovereign to enact, and which received the consent of the Legislature, before they were enacted by the Crown. So complete since the Reformation has been the Union of the Church and State by legal enactments, both in England and in Scotland and in Ireland, that it would not be beyond the truth to say, that the historian, who would record the history of our National Religions, need scarcely trouble himself to consult the writings of historians or divines; in the Statutes of the three countries, he will find the Articles of their Faith, as well as their authorized forms of worship and of government so plainly set forth, that from them alone a correct portraiture of the religion, which the Legislature has accepted, might be easily drawn.

In what way the Legislature dealt with religion in the reign of Edward VI. may be plainly seen in several Statutes, of which I will give a brief account. He ascended the throne in January, 1547.

His first Parliament met in November following. The first Statute is remarkable, not so much for its avowed object, the punishment of those who spoke irreverently of the Sacrament of the Altar and made publicly a jest of the Mass, as for the statement which it contains of the nature of the Lord's Supper, expressed in Scripture language only, and containing nearly all that is said in Scripture of that rite. It was this Statute which remedied the wrong done to the Laity, in their being denied for many centuries the cup in the Lord's Supper, and which enacted that henceforth the Blessed Sacrament should be ministered to the people under both kinds of bread and wine.

The next Act to be noticed is that concerning the Chantries—it is the first Act in which any intention is expressed by the Legislature to repress superstition. By the Act of 37 Henry VIII., the Crown had obtained possession of many Colleges, Hospitals, and Chantries, but with no avowed intention of diverting them from the purposes for which they were founded. This Act of Edward (1 Ed. VI. c. 14) took a more direct and open course, for the dissolution of the Chantries. It struck at the root of the Chantry system and at that doctrine of the Romish Church, which is the main support of the authority and influence of the Priest, the existence of a Purgatory, and a belief in the efficacy of Masses satisfactory, offered for the dead. Accordingly, when it proposed to apply the Chantry lands to the

purposes of education, the reason given was this, “that a great part of the superstition and errors in religion had been brought into the minds and estimations of men by reason of the ignorance of their very true and proper salvation through the death of Jesus Christ, and by devising and phantasinge vain opinions of Purgatory and Masses satisfactory to be done for them which be departed ; and that that doctrine was by nothing more maintained and upholden than by the abuse of Trentals, Chantries, and other provisions made for the continuance of the said blindness and ignorance.” In this form did the English Parliament, the Laity of the Church, disavow Purgatory and Masses for the dead.

I take no notice of the acts of the Sovereign as the Head of the Church, of the form for administering the Holy Communion put forth by Royal Proclamation, of Royal Injunctions and Visitations, or even of the proceedings of the Clergy in Convocation, which might have sanctioned or recommended these changes in religion ; they are beside the present inquiry, the purport of which is to ascertain, not how the religion of our Church was propagated, but how it was adopted by the Legislature, and became the National and Established Religion. It was not enough that the Council advised to the King the establishment of some uniform mode of worship and administration of the Sacraments, or that the Bishops at the suggestion of the Council

devised that form, or that the Clergy in Convocation might have approved it; but when the Lords and Commons in Parliament assembled prayed that it might be enacted, that all the ministers in every cathedral and parish church throughout the King's dominions should be required to use them, and made disobedience to the law a civil offence, then it was that the State accepted the religion by prescribing to the people an order of worship. Nor was this all; not only was one form of worship prescribed, but every other form forbidden. In the following year the Act was passed which enacted "that all books called Antiphons, Missals, Scrayles, Processionals, Manuals, Legends, Pyes, Porteouses, Primars in Latin or English, Couchers, Jurnales, Ordinals, or other books or writings whatsoever, heretofore used for service of the Church other than such as are or shall be set forth by the King's Majesty, shall be clearly and utterly abolished, extinguished, and forbidden for ever to be used or kept in this realm or elsewhere within any of the King's dominions." The King by his injunctions had ordered images to be destroyed; but by this Act the destruction of images was enforced by penalty, and the invocation of Saints disavowed by a provision, "that Primars might continue in use, provided that the sentences of invocation or prayer to Saints be blotted or clearly put out of the same."

Scarcely second in importance to the form of administration of the Sacrament is that of making

and consecrating Bishops, Priests, and Deacons, which differs from the Roman Pontifical not only in its form but in its spirit. The Parliament authorized the undertaking of this work, and enacted that when put forth under the Great Seal it should be used. We have to remark, also, that it was the Statute Law which, by the Act of Uniformity, required every parishioner to resort to the church on Sundays and holydays, which subjected him to ecclesiastical censures for neglects, and to civil penalties for frequenting any other form of worship; which confirmed the Second Book of Common Prayer, and added it to the Statute, and ordained the Second Book to be of like form, authority, and value as the first.

If it be asked, what doctrines were thus sanctioned by law, it may be replied, that as yet no dogmatic system had been authorized. The religion had been changed by the adoption of a different mode of worship, by substituting common prayer in the place of private prayer to the Virgin and to the Saints, and by the reception of the Holy Communion in both kinds unaccompanied by the worship of the consecrated wafer. The system of doctrine comprised in the Articles of 1552, though accepted by the Clergy in Convocation, and published by the King's authority, had not the confirmation of the Legislature. Indeed, until the reign of Elizabeth, the Articles of Religion appear to have been in the same position as the Canons of 1603 now are; not being confirmed by

Parliament, they were not part of the municipal law; and yet, without the appearance of being dogmatic, the Prayer-Books of Edward VI. do so plainly and fully set forth all the truths of the Gospel as deduced from Holy Scripture, that the best evidence to prove that our Church does not accept this or that doctrine, is the fact that it is not contained in our Services. Omission was rejection. As the assertion of the Supremacy by Henry VIII. had separated England from the authority of the Pope, so the publication of the Prayer-Book separated us from the doctrine of the Roman Catholic Church. In it the truth was asserted, though *error* was not as *error* condemned.

I need not detail the course of legislation by which, in the reign of Philip and Mary, the English nation was reconciled to the Pope, the laws for the punishment of heresy were re-enacted, and “the Pope’s Holiness and See Apostolick declared to have such authority, pre-eminence, and jurisdiction as His Holiness used and exercised, or might lawfully have used and exercised, by authority of his supremacy in the twentieth year of Henry VIII., within the realm of England and other the king’s dominions without diminution or enlargement of the same.” As by Statute Law the submission of the country to the See of Rome had been withdrawn, so by Statute Law was it restored. The Roman Catholic faith had been repudiated by forbidding the Old Service Books to be used, and substituting

for them the Book of Common Prayer; it was by the revival of the Sarum Ritual and of the old Sarum books which had been destroyed, that the Roman Catholic Faith was restored.

At the accession of Elizabeth, the Church of England was found subjected by Act of Parliament to the spiritual jurisdiction of the See of Rome, that jurisdiction having been exercised by Cardinal Pole—not in his capacity of Archbishop of Canterbury, but as the Papal Legate. The very first business of the Parliament, which assembled within two months, was that of restoring to the Crown its ancient jurisdiction over the estate Ecclesiastical and Spiritual, and abolishing all foreign powers repugnant to the same. This was accomplished by the re-enacting of the Statutes of Henry VIII. which had been repealed under the reign of Mary, and specially by that clause which established the supremacy of the Crown over the Church, by annexing for ever to the Crown Imperial of this realm power “for the visitation of the Ecclesiastical estate and persons, and for reformation, order, and correction of the same and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities.” The power to exercise that visitation by Commissioners under the Great Seal, or a Court of High Commission, granted to the Crown by the 1 Eliz. c. 1, was taken away by the 16 Charles I., but the authority to visit and the duty of visitation were preserved. Our Church is thus united by Statute

with the State in this most important point of government. If Churchmen are disloyal to the Church, and depart from that faith which the law has recognized as the faith of the Church, the correction of such misconduct belongs to the Crown. I exemplify the necessity of such a power being vested in the Crown by a supposed case. If any Archbishop of England or Ireland were to be reconciled to Rome, there is no power but the Queen's visitatorial power, which could remedy such an evil and redress such a wrong.

In Ireland, the authority of the Queen over the Church was established in the same manner as in England, and the Church of Ireland equally united with the State. The religion of the kingdom was also changed, both in England and Ireland, by the Act of Uniformity, which restored the use of the Common Prayer of Edward, some few alterations having been made in it; and forbade any other mode of worship or any other religious rite than those prescribed and mentioned in that Book. The idea that the early Acts of Uniformity were the invention of an intolerant Clergy is not supported by their history. They pressed rather upon the Clergy of the time than upon the Laity. They were the means by which the State compelled the teaching of that religion by the Clergy, which the nation wished to adopt. The same remark will apply to the recognition of the XXXIX Articles, 1562, by the Legislature as the rule of faith in our Church. In 1552 and 1562, the Clergy in Convo-

cation had agreed upon the Forty-two and upon the Thirty-nine Articles. These Articles were published and promulgated under the Royal authority in 1552. They were described as Articles agreed upon in the Synod of London, between the Bishops and other learned men, for the removal of difference of opinion and establishing consent in the true religion. In 1562 the parties who agreed to the Articles are said to be the Archbishops and Bishops of the Provinces, but no mention is made of any learned men. There can be no doubt, that determinations upon matters of doctrine made in Provincial Councils are, by the Ecclesiastical Law (see Lyndwood above), to be accepted as the judgment of the Church, and recognized as the rule of faith and the test of heresy. The State, however, by Statute Law, made no provision that the Clergy should subscribe and publicly declare their assent to these Articles, until Pope Pius V. had excommunicated Queen Elizabeth, deprived her of her kingdom, and absolved her subjects from their oath of allegiance (Wilkins' Concilia, Vol. iv. p. 262). Upon this occasion, the Statute enacted, first, that all the Clergy who had been already ordained by any other form of ordination than that of Edward the Sixth's book should declare their assent, and subscribe to the Articles of 1562; and secondly, that every person admitted to a benefice should subscribe the Articles and declare his unfeigned assent to them; and that, before any one was ordained, testimony should be

produced to the Bishop of his professing the doctrine contained in the Articles. The doctrine of the XXXIX Articles was thus accepted as the religion sanctioned by the Legislature. The reason for this was political rather than religious. It was not that men should be made to agree in the doctrine they were to teach, but it was thought, that the requiring consent to this doctrine would exclude from the service of the Church those who were in communion with Rome, and of whose continuance in their loyalty to their Sovereign there was great doubt, when she lay under the sentence of excommunication and all her subjects had been absolved from their allegiance.

The Church and the State were certainly most closely united when the Act 23 Eliz. c. 1. (1581) entitled "An Act to retain her Majesty's subjects in their obedience," made it high treason to withdraw persons to the Romish religion, and enforced by severe pecuniary penalties the attendance of all persons above sixteen upon the Common Prayer. I do not defend the severity of the enactment. I observe that it was the act, not of the Church but of the State, and that it was founded upon the assumption that every Papist believed the validity of the excommunication and must consequently be disloyal. This Statute deserves attention on another account, as showing the origin and illustrating in some degree the meaning of the term "as by law established." It contains two remarkable expressions; the first, in

which her Majesty's laws in general are said "to have been established for the due service of Almighty God;" and the second, that in which the Romish religion is contrasted with the "religion now by her Highness's authority established within her Highness's dominions."

I pass by the legislation on religion in the reign of James I. with a single remark; that the severe Statutes against Recusancy, in that reign, were designed rather for the protection of the person of the Sovereign than for the promotion of the Established religion. Right or wrong, Recusancy and Disloyalty were taken as convertible terms; nor is it surprising, when the conduct of the Court of Rome in relation to Guy Fawkes is taken into account, that the Legislature thought it necessary to require the subjects of the Crown to abjure that dreadful doctrine, which had been approved and avowed by so many eminent writers in the Roman Communion—that the subject who killed a prince when deposed from his throne by the sentence of the Pope was not guilty of the sin of regicide¹.

The reign of Charles I. is signalized by the temporary dissolution of the Union of the Church of England with the State. By public authority the Common Prayer was abolished and the Directory substituted, and thousands of the Clergy were ejected from their benefices, these events being pre-

¹ See Bishop *Taylor's* Sermon on the Anniversary of the Gunpowder Treason, Vol. vi. p. 605. Ed. 1822.

ceded by the Statute, which abolished the Court of High Commission, and altered the forms of proceeding in the Ecclesiastical Courts. But the visitatorial power of the Crown was not destroyed, nor were the Ecclesiastical Courts by it abolished. The Clergy were forbidden by a Statute to exercise any temporal jurisdiction, and the Bishops were deprived of their seats in Parliament. A Statute was enacted for the better observance of the Sabbath, and Sabbath-breakers subjected to temporal penalties, but the power of the Ecclesiastical Courts to take cognizance of such offences was specially preserved.

Upon the state of religion during the Commonwealth I make no remark, except to say that, marked as the period is with professions of religion and loyalty, it is a warning to princes and people how little dependence is to be placed on such professions. Would he not have been thought a madman who, in 1640, had thought it possible that the Sovereign would be brought to the scaffold, and that the men, who openly were so religious, would conspire to overthrow their Church ?

The same authority of Parliament, which sanctioned the Restoration of the Monarchy in the person of Charles II., restored the National religion by a revision of the Book of Common Prayer—making that book a part of the Statute Law, and compelling all ministers to subscribe the XXXIX Articles, as had been required by the Statute of Elizabeth. The effect of this was to exclude the

Puritan ministers from being in the service and holding the benefices of the Church. Loud complaints are made of the severity of the law; but it should be borne in mind that, as in the reigns of Elizabeth and James, the Romish Priests and Recusants were regarded almost as foreigners, persons whose allegiance to the Pope rendered it impossible for them to bear true allegiance to the Crown, so also in the reign of Charles II., every person who, upon the return of the Sovereign to the throne, was unwilling to renounce the obligation of the Solemn League and Covenant, was considered to be a secret approver of the death of the King, and unworthy of trust in the service either of the Church or of the State. The English and Irish Churches had been united, whilst holding Romish doctrine, in the reign of Henry VIII., by their acts of submission to him as their one Supreme Head, and by their submission to the Archbishop of Canterbury as being invested by 28 Henry VIII. c. 19 (Ireland) with the power of dispensation in both England and Ireland, in cases formerly dispensed by the Pope. The Parliaments of the two kingdoms of England and Ireland, always, from time to time, enacted similar ecclesiastical statutes, acknowledging the same supremacy and the same form of worship; but the union in Doctrine as well as Government, under one Sovereign, between the two Churches was not complete, until the Parliament of Ireland not only accepted the Common Prayer Book of the English Convocation in 1662, but

required subscription to the XXXIX Articles of the English Church, as set forth in 1562.

The reader may probably have observed that hitherto I have spoken of our Church only as the Church of England, or the National Church; and of our Religion as the Religion established by the authority of the Crown, within the Sovereign's dominions. I have not called it a Protestant Church, because though her doctrines are as perfect protests against Roman errors as were the Confessions of those Churches, which grew into existence under the favour of the German Princes, who made their Protest in 1529 at the Council of Spire, I do not find our Church hitherto described in any public documents as a Protestant Church, nor our Religion authoritatively termed a *Protestant Religion*. I gather from the Dictionaries, that Protestantism and Protestants were words used by Bacon and Milton; but the earliest mention of the word "Protestant" in the Statutes which I have discovered is in the Act 29 Car. II., 1677, for the abolition of the writ "de heretico comburendo," which, in the second clause, provides "that nothing in the Act should extend or be construed to take away or abridge the jurisdiction of Protestant Archbishops and Bishops, or any other judges of any Ecclesiastical Courts, in cases of atheism, blasphemy, heresy, or schism, and other damnable doctrine and opinions, but that they may proceed to punish the same according to his Majesty's Ecclesiastical Laws,

by excommunication, deprivation, degradation, and other Ecclesiastical censures not extending to death, in such sort and no other as they might have done before the making of this Act." In the following year also, in the form of the Declaration against Transubstantiation, added to the Oaths of Allegiance and Supremacy by which Papists were to be disabled from sitting in either House of Parliament, we find mention made of English *Protestants*, and of the sense in which the words of the Declaration would be understood by *them*. To the conduct of James II., and especially to the treatment which the Irish Protestants had experienced during the short time he occupied the throne, may be ascribed the statutable designation of our Church as a Protestant Church, and of our Religion as the Protestant Reformed Religion. It is charged against him in the Bill of Rights, that, with the advice of divers evil counsellors, judges and ministers employed by him, he did endeavour to subvert and extirpate the Protestant Religion, and the laws and liberties of the kingdom. The nation sympathized at that time with the sufferings of the Irish Protestants; it rose against him and against the power of Rome. He was forced to abdicate, and the throne was declared vacant.

It is not merely on account of passing events that I allude to these transactions of former times, but because the knowledge of them is necessary in order to understand how in the person and duties of

the Sovereign the Church and State have been united by law. Elizabeth, James I., and Charles I., had been sincere and faithful governors and protectors of the English Church, in her separation from the Church of Rome; but the nation had learned from the conduct of Charles's two sons, that a concealed Papist might sit on the throne, and that the Crown might pass by hereditary descent into the possession of a Roman Catholic Prince. The Statute Law had hitherto provided that the Clergy, both of England and Ireland, should teach the people the doctrines of the Church of England, and that the public worship of God in every parish should be with rites free from every Romanist tendency; but no provision had been made that the Sovereign, who is by law the governor and guardian of the Church, should be of the religion, which the law had established, or that it should be the specific duty of the Sovereign to maintain it. To remedy these defects, and to prevent any member of the Church of Rome from reigning in this country, it was enacted 1 Will. & Mary, c. 6, that at his coronation the Sovereign should swear to the utmost of his power to maintain the laws of God, the true profession of the Gospel and the *Protestant* religion established by law; and further, by 1 Will. & Mary, sess. 2, c. 2, it was enacted that all and every person or persons, that is, are, or shall be reconciled to or hold communion with the See or Church of Rome, or shall profess the Romish religion, or shall

marry a Papist, shall be excluded and be for ever incapable to inherit, possess or enjoy the Crown or Government of this realm and Ireland, and the dominions thereunto belonging, or any part of the same; and in any such case the subjects shall be and are hereby absolved from their allegiance.

All that human wisdom could devise for perpetuating and preserving the Protestant Religion as by law established in the three kingdoms would seem to have been effected by the legislation of the English, Irish, and Scotch Parliaments. In the Irish Parliament, in 1692, the Right of William and Mary to the Crown was fully acknowledged, and Ireland itself declared to be annexed and united to the Crown of England, being delivered by King William and Queen Mary, at great expense of blood and treasure and hazard of the King's person, from the miseries of civil war and rebellion, raised by Irish Papists and abetted by the French King. And in 1697 an Act was passed banishing all Papists exercising any ecclesiastical jurisdiction and all regulars of the Popish Clergy out of the kingdom. In the Parliament of Scotland a still more direct course was pursued. In the Declaration of the Estates of the Kingdom of Scotland containing the Claim of Right and the offer of the Crown to the King and Queen of England, which charged King James with exercising his power to the subversion of the Protestant religion, and thereupon declared the throne vacant, it was declared that no Papist can be King or Queen

of the realm, nor can any Protestant successor exercise the Royal Power until he or she swears the Coronation Oath. The oath tendered and taken by William and Mary was as follows:—

“ We faithfully Promise and Swear By this our Solemn oath in Presence of the Eternall God, that during the wholl course of our life, we will serve the same Eternall God, to the uttermost of our power, according as he has required in his most holy word, revealed and contained in the new and old testament, and according to the same word shall maintain the true Religion of Christ Jesus the preaching of his holy Word and the due and right ministrations of the sacraments now received and preached within the Realme of Scotland, and shall abolish and gainstand all false religion, contrary to the same, and shall rule the people committed to our charge, according to the will and command of God revealed in his aforesaid word, And according to the loveable lawes and constitutiones received in this realme nowayes repugnant to the said word of the Eternall God, And shall procure to the utmost of our power, to the Kirk of God, and wholl christian people true and perfect peace in all tyme coming that We shall preserve and keep inviolated the rights and rents, with all just priviledges of the crowne of Scotland, neither shall we transferr nor alienate the same, That we shall forbid and repress in all Estates and Degrees, reife, oppression, And all kind of wrang And We shall Command and procure that justice and equity in all judgements be kepted to all persons without exceptione As the Lord and father of all mercies shall be mercifull to us, And we shall be carefull to roote out all hereticks and Enemies to the true worship of God that shall be convicted by the true Kirk of God of the forsaides crymes out of our lands and Empire of Scotland And wee faithfully affirme the things above written by our solemne Oath.”

The taking of it was acknowledged in a letter dated at Hampton Court, May 17, 1689, “ We did

take and sign the oath tendered to us by your said Commissioners, which by God's assistance we will religiously observe." In May 26, 1690, the Confession of the Kirk of Scotland was recorded solemnly in the Books of Parliament; and on June 7 the High Commissioner touched with the Sceptre² the Act for settling the Church Government, containing a ratification of the Confession of Faith made at Westminster, and settling the Presbyterian Church Government. We cannot read the oath thus taken by William and Mary without being struck with the spirit of intolerance which pervades it. The idea of a relation between Religion and the State originally implied the maintenance of a religion to which all the people should conform; indeed it is a mistake to imagine that the dislike of Heterodoxy is of Christian origin, or that heresy has been made a crime against the State only in Christian countries. This principle may be distinctly traced in the jurisprudence of Athens and of Rome. The condemnation of Socrates by the Court of the Areopagus, which condemned him for introducing new demons and not honouring the gods whom the city honoured, is a proof how little the modern toleration was acknowledged at Athens. Nor was it more admitted into the Roman law, as may be gathered from the following statement of the manner in which the Religion of Rome was protected by the State, which may be found in that

² By this form the Royal Consent was given.

most valuable work, Colquhoun's Summary of the Roman Civil Law, § 2400 :—

“ Offences against religion were also included in crimes against the State, because the religion from the age of Numa had been so intimately interwoven with the common polity, that Rome may be fairly said to have had in those days as much a State Church as England at the present time, and to have tolerated dissent infinitely less : hence strangers were allowed to profess their own creeds, because, not possessing the rights of citizens, they had no participation in the national rites. On the other hand, they were not allowed by the introduction of new doctrines or the public practice of religious ceremonies to set up any competition with the established faith. This was however hardly a legal question, but rather one with which the higher authorities had concern, who interfered as occasion seemed to require, by admonitory and prohibitory edicts and divers pains and punishments up to capital punishment. The emperor punished for this offence persons of consideration by *deportatio*, and those of an inferior grade by death.”

Before the Revolution of 1688 and the accession of King William, the Law of England recognized no religion but that of the Church of England as by law established, to which every subject was obliged under penalties to conform. Many events had taken place which rendered it impossible to maintain the old system of jurisprudence as respected the relation

of religion to the State, and which compelled the Legislature to permit other professions of religion than those of the Established Church. I doubt whether this change in our legislation is to be attributed to new ideas being entertained of justice with respect to liberty of conscience, the formation of opinion, and the possession of civil privileges. These are the thoughts of a later age, deductions from events rather than the causes of them. When William and Mary accepted the two crowns of England and of Scotland, offered by the Estates of each Kingdom assembled in Parliament, and undertook to maintain the Protestant Reformed Religion, they found in Scotland the Presbyterian principles so dominant, that by Act of Parliament they abolished Prelacy before they confirmed the faith of the Kirk. England was in nearly similar circumstances. The nation at large had escaped from Roman Catholic dominion by the exertions of men holding every variety of opinion, and that of no recent growth, but commencing with the union of the two Crowns under James, the invasion of England by the Scotch, and the overthrow of the Church of England during the Commonwealth. If William secured the Crown of Scotland by the sacrifice of Prelacy, he could hardly have maintained himself upon the throne of England without protecting the anti-prelatical party in this country, and freeing them from subjection to the Church and obedience to the Ecclesiastical Laws. This was effected by

1 William & Mary c. 18, entitled an Act for exempting their Majesties' Protestant subjects dissenting from the Church of England from the penalties of certain laws. Adopting then as true the principle laid down at the commencement of this Essay, that the Recognition of a religion in the Statute Law is an union between that Church and the State, it follows that Dissent was first established in England at the Revolution; and if we carry out the principle to its consequences, that every religion is now so far established as it is recognized by the Statute Law, the establishment being of greater extent and upon a wider basis as it is more or less supported by Statutes—more or less endowed, directed, or controlled in its privileges or its possessions by Law. At the present time it may, I think, be justly inferred from the proceedings of the Legislature in the distribution of money, as well as from divers Acts of Parliament relative to municipal privileges, that every form of religion is now established, by being specifically acknowledged as having claims upon the public for the education of its members. As regards Ireland, the endowment of the Seminary at Maynooth³ for the education of persons professing the Roman Catholic religion was really the establishment of Romanism in that country; it has been followed by other colleges for the education of the Roman Catholic laity, and schemes are now under con-

³ By Irish Acts of Parliament in 1795 and 1800.

sideration for the establishment of a Roman Catholic University. So that, in fact, there are two religions in Ireland, the Protestant and the Roman Catholic, both established by the State. True, however, as these inferences may be as respects the establishment of any other religions, they do not justify the conclusion that the religion of the Church of England has ceased to be the Religion of the State, established, defined, guarded, and protected by Law.

Having thus described the changes in the English jurisprudence respecting the relation of religion to the State, which, commencing in the reign of William III., have gone on progressively to the present day, I have to draw attention, in the last place, to those enactments for the security of the Protestant religion in England and Ireland, and throughout the dominions of the Crown, which took place in the reign of Queen Anne, upon the occasion of the Union of England and Scotland. The enactments of that period demand at this time our special notice, because they define most distinctly the particulars in which the union of the Church with the State consists, and what are the Institutions which it is the duty of the Sovereign to protect and to preserve. When the two countries, England and Scotland, fell by hereditary descent into the possession of the same Sovereign, each country had its distinct form of religion, each of them both in doctrine and government established by Statute Law. The authority or supremacy of the Sovereign over

the Church was different in each country; but in both countries alike was the Church and its doctrines recognized and sanctioned by the Parliament.

The relation in which Queen Anne stood personally to the two Churches was this. At her coronation in England she had taken the oath prescribed to King William, to maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion, as established by law. On her accession in Scotland, having taken the Coronation oath required in the Claim of Right ⁴, her royal authority was recognized by Act of Parliament in Scotland. Within three months after her accession, in June, 1702, she had made proposals to the Scotch Parliament for the union ⁵ with England, and an Act was passed in Scotland enabling the Queen to appoint Commissioners to treat of an union. The strongest anxiety was felt in Scotland respecting the Presbyterian government of the Church. An Act of Parliament was passed to maintain it, and ratified by the Queen in that same Session; and this same Act of Parliament was again re-enacted in 1703 in the same words. It is probable that this zeal on the part of Scotland for the preservation of the Presbyterian government was the reason of inserting that clause in the English Act of Parliament of 1704 ⁶, which forbade the Commissioners appointed to negotiate a treaty of union with Scotland

⁴ Statutes of Scotland, vol. ix. p. 48. ⁵ 3, 4 Anne, c. 6.

⁶ See Postscript A.

to treat of or concerning any alteration of the liturgy, rites, ceremonies, discipline or government of the Church as by law established within this realm. Eventually all difficulties were removed in the following manner. In the year 1706 an Act⁷ was passed in the English Parliament for securing the Church of England as by law established, in order to its being inserted in any treaty of union; and in 1707 a similar Act of Parliament was passed by the Scotch Parliament for securing the Protestant religion and the Presbyterian Church government, to be inserted in like manner in the treaty. The essence of the agreement consisted in this, that both parties recognized as binding and perpetual all the Acts⁸ of Parliament of each country which had established the religion of each country: and provided for the performance of the contract between them, by prescribing a new Oath to be taken by the Sovereigns of each country at their accession and coronation. It is in accordance with that treaty, that our present Queen at her accession took the Oath in the presence of the Council with reference to Scotland, "that she would inviolably maintain and preserve the settlement of the true Protestant religion, with the government, worship, discipline, right and privileges of the Church as established by the laws of this kingdom in prosecution of the claim of right" and at her coronation with reference to

⁷ 6 Anne, c. 8.

⁸ See Postscript B.

England and Ireland took the oath “to maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof as by law established within the kingdoms of England and Ireland, the dominion of Wales, and the town of Berwick-upon-Tweed, and the territories thereunto belonging.”

I care not to pursue these historical researches through later times. I am content to have brought to notice the Coronation Oath taken by our Sovereigns as the Magna Charta of the Protestant Established Churches of England, Ireland, and Scotland, defending for ever the union of the Church with the State in both countries, and securing to the members of the Church in England and Ireland all the rights which the laws have bestowed upon them. In the Claim of Right in Scotland, which corresponds to the Bill of Rights in England, and which changed the succession to the throne, it was alleged as one of the crimes of James II. that he had not taken the oath at his coronation, and thus had avoided incurring the obligation. This cannot be said of our gracious Sovereign; and surely if any oath be binding, it is the oath taken publicly in the presence of both Houses of Parliament on so solemn an occasion as the Coronation. I know that there is no proposition, however true—no fact, however believed, which sophistry cannot mystify or render doubtful; but the principles of the English constitution, as respects religion in England, Scotland,

and Ireland, seem to me so plainly laid down by the Legislature, and the duty of the Sovereign so plainly set forth, that however great may be the liberty of speech allowed to Privy Counsellors within the walls of Parliament, I believe that any of them, who in times past, at the Council table or in private, should have advised the Sovereign to depart, either in spirit or in the letter, from the obligations of that oath, would have been impeached himself for designing to subvert the whole constitution of the kingdom.

In order to the disendowment of a Church, nothing more is required than an Act of Parliament directing the payment of its revenues into the hands of an Ecclesiastical Commission. But to disestablish the Church without the overthrow of our whole constitution, and the renunciation of our religion by the nation, appears to me impossible. So long as a single Act of Parliament remains relative to the faith, doctrine, and discipline of the Church in the three kingdoms, so long as the clergy have a single legal duty or privilege; that is, until the very idea of our national religion is effaced from the Statute-books of England, Ireland, and Scotland, so long will the Protestant reformed religion be, to a greater or less extent, established in these kingdoms. There will be union between the Church and the State so long as the religion and faith of that Church is at all recognized and established by Statute law. The Church of Ireland was established by Statute in that

country by Henry VIII., as a Church independent of the Pope. The Reformed Church was similarly established by Statute under Elizabeth and Charles, and the Union between the two Churches of England and Ireland has been made as strong as law could make it.

I forbear to discuss the circumstances under which the opinion has been given that the existence of the Church of Ireland is an act of injustice to that hierarchy and that Roman Catholic Church which is established by a foreign prince, the Pope. All that I think it necessary to say is this, that the zealous advocates of the measure would do well to bear in mind that disendowment and disestablishment are not extinction, although they have in them a very near resemblance to persecution; and that there would be no greater obstacle to the peace of Ireland, as well as its prosperity, than the existence of a body of Protestants, such as the Irish are, injured and rejected by the State.

What effect the change made in our jurisprudence, by which all religions are established, may have upon religion in general, or upon the Protestant religion as the opponent of the Roman Catholic, no person living can foretell. It may possibly end in general indifference to all religion, but of this I am certain, that at present it is rapidly advancing the cause of Rome. We should deceive ourselves signally if, because the Pope should lose his endowments in Italy, we should deem his religion less established,

or his spiritual power diminished. So long as he is supported by such an Hierarchy, not only in Ireland and in England, but throughout the world; so long as the Society of Jesus exists with its wonderful organization, and is able to send forth men of such learning, ability, and self-devotion, ready to suffer as well as to obey; and so long as they apply all their energy, to promote divisions in our own Church, and to draw away the affections of the people from our Protestant Church—so long, I feel persuaded, will the ascendancy of Rome increase, not only in Ireland, but in England, and the pure truth of the Gospel be less extensively professed. The present state of public feeling has been well described as the unanimity of apathy. The English public, for a time at least, has lost its admiration of the Protestant faith as the guardian of religious truth and political liberty, and has thrown aside its ancient fear of the tyranny and superstition of Rome; and I think it not too much to say, that if the progress which Rome has made both in the acquirement of political influence in England and in the extension of her Communion, should continue to go on at the same rate; if every Roman Catholic prelate should occupy in every city of this kingdom the same position in society, that he assumes who now exercises the authority of Rome in the city of Westminster, and who was once a valued friend of mine; if the Roman Catholic cathedrals should exceed our own in number and in splendour; if

monks as well as nuns should frequent our thoroughfares, ostentatiously displaying their life of devotion ; if our nobility and great landed proprietors should give their daughters to be wives, and take wives to their sons from the Roman Catholic Communion ; and if, while all this goes on, the members of our Church should be taught that in the Protestant faith there is some departure from the Catholic faith, and that though there be some error in Rome in respect to the worship of the Virgin, there is much more to be admired and revered, so that unity with her ought to be the earnest prayer and wish of every devout Christian,—under these circumstances there will be reason to fear that the pure profession of the Gospel will at length be confined to small communities, and that God Himself may take away from us that knowledge of the pure truth of the Gospel which, as a nation, we have learned to undervalue and have ceased to preserve.

POSTSCRIPT.

(A.)

THE union of England with Scotland in the reign of Queen Anne, and that of Great Britain with Ireland in the reign of George III., were not proceedings of the same kind. The union with Scotland was that of two nations, the result of a treaty negotiated by Commissioners nominated by the Crown, under the authority of Acts of Parliament of each kingdom, who met and agreed upon a Treaty of Union of the two kingdoms. The Union with Ireland was the effect of resolutions in the form of Articles agreed to by each Parliament and embodied in a Bill by each. The Royal assent being given to the English Act July 2, and the Irish Act August 1, 1800.

(B.)

The Treaty of Union with Scotland ratified with respect to the Church of Scotland the fifth Act of the first Parliament of King William and Queen Mary, intituled "Act ratifying the Confession of Faith and settling Presbyterian Church Government, with all other Acts of Parliament relating thereto, in prosecution of the declaration of the Estates of the Kingdom, containing the Claim of Right, 11th April 1689." This Act ratified by name the Act of James VI., 1592, intituled "Ratification of the Liberty of the true Kirk," and it rescinded by name many later Acts of Parliament, which were derogatory from the Presbyterian Government. In the same manner, with respect to the Church of England, the Treaty of Union with Scotland ratified and perpetuated for ever the Act of 13 Elizabeth, "for the members of the Church to be of sound religion," the 13 Charles II. "for Uniformity," and "all other singular Acts of Parliament now in force for the establishment and preservation of the Church of England, and the doctrine, worship, discipline, or government thereof," and by the Coronation Oath it extended the protection to the Church of England in Ireland.

