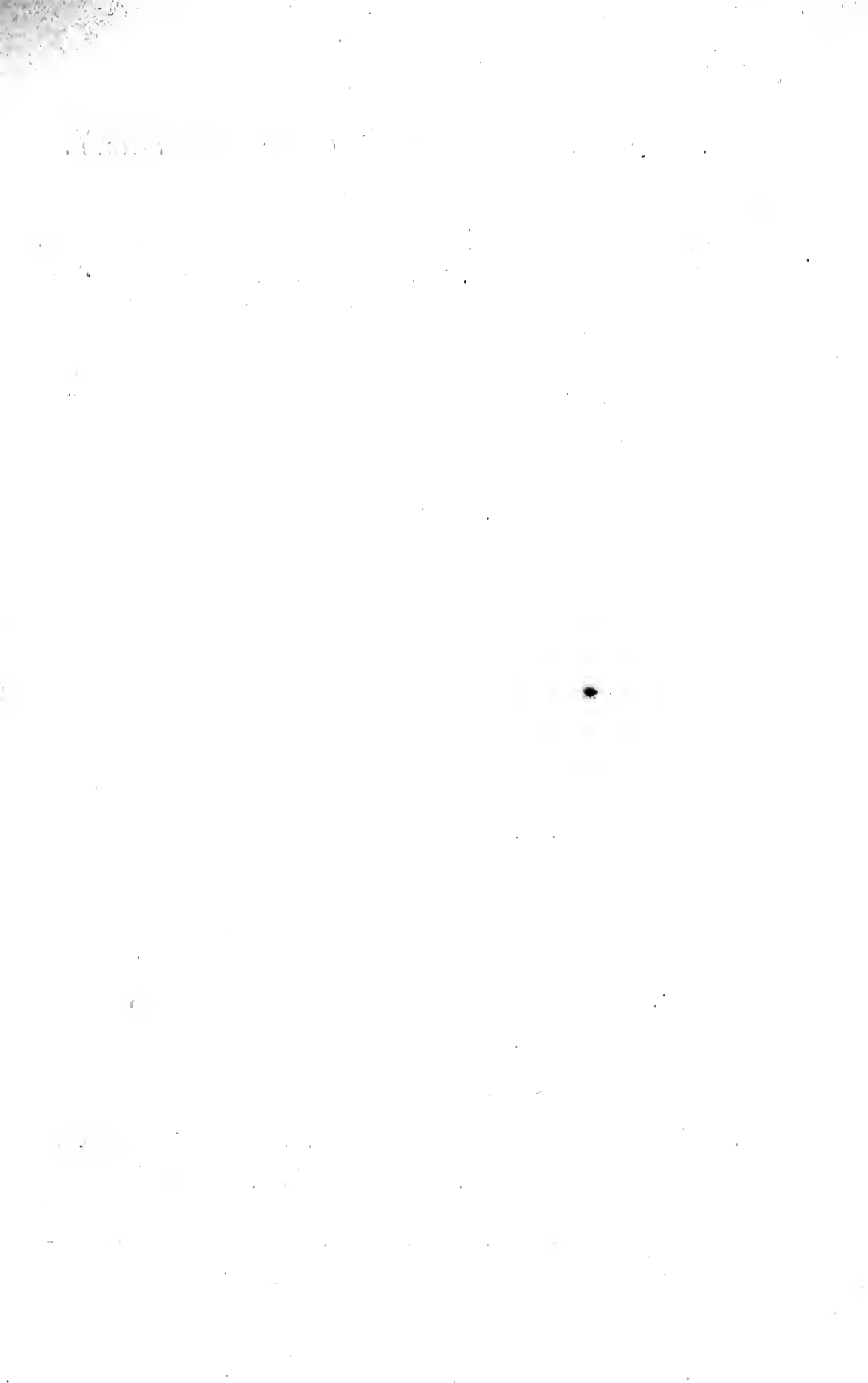


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ESTABLISHMENT AND  
CHURCH REFORM.

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*John G. Talbot*  
*from the Author*

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BY

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## ESTABLISHMENT AND CHURCH REFORM.

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I HAVE prepared a short paper on a large subject. It may serve as suggesting some heads for reflexion, and does not pretend to do more.

I confess to some prejudice or predisposition against disestablishment. In the first place, it practically involves disendowment. The Church may of course be despoiled, but I cannot think it right for a particular generation of her members voluntarily to abandon property with which she has been entrusted for the purposes of her work. Then, again, when I attempt to forecast the probable effect of disestablishment on what may be called Church politics, I see no likelihood that it would include any advantage to that party which attaches particular importance to the position of the Church of England as a part of the Church Catholic.

The great mass of Churchmen would, I believe, in a disestablished Church, resist any proposal to alter the Prayer Book or Articles, being convinced that in such resistance would lie the only chance of escaping disruption. The unaltered Prayer Book and other formularies would have to be construed, in case of dispute, either by a new court constituted by the disestablishing Act of Parliament or by the governing body of the disestablished Church, or by the ordinary Law Courts. I see no reason whatever for thinking that such tribunals would be more favourable to what is called the Catholic position than those which we have.

These considerations, though not decisive of the question before us, are, I think, important in their bearing upon it. Let us go on to ask how far establishment prevents desirable Church reform. Two preliminary cautions are needful. We must not say that establishment prevents us from doing a thing unless we can be sure that we should be able to do it if the Church were disestablished. Again, we must bear in mind that if, and so far as, establishment hinders desirable alterations, it probably also hinders undesirable ones. At various times in the past history of the Church facility of alteration in Church matters would probably have produced changes which we should think ruinous.

The phrases "the establishment of the Church," "the established Church," are rather a popular summary of the result of our history upon the position of the Church in this country than the accurate

expression of any legal or constitutional conception. Their history is curious. They have their origin in the phrase "or by law established," which first appears in connexion with the Church in the latter part of the seventeenth century. We commonly assume that in this expression the word "established" is used in the sense adopted by the modern phrase "established Church"; and that "the Church as by law established" means the Church which is constituted by law an established Church. But in truth the emphasis is not on "established" but on "law." The meaning is "the Church in the condition and order settled by law," law including not only the canons and binding customs of the Church, but also Acts of Parliament accepted expressly or impliedly by the Church. The phrase, in fact, means pretty much "the Church as at present constituted." So, in what is perhaps the earliest use of it, Charles II., in his Declaration on Ecclesiastical Affairs in 1660, speaks of "the esteem we have for the Church of England as it is established by law." al

The word as used in our own day is certainly a somewhat unfortunate one, in that it implies a definite status given by definite enactment and not the complex result of a long series of events. But though the word is unhappy, there is of course a meaning behind it, which may perhaps be approximately expressed by describing an established Church as one which is recognised by the law of the State as the representative of religion in the realm, and as having therefore rights and a position other than those which any body may derive from the consent of its members. Apart from the dignity of the Church's position in the Kingdom, the chief practical incidents of establishment in England appears to be (1) The prerogative of the Crown in the appointment of Bishops. (2) The presence of spiritual peers in Parliament. (3) The parochial system. (4) The recognition by the State of Church law and Church Courts not created by Parliament either in fact or in theory. It ought to be added that it would be evidently contrary to historical fact to infer that because the relation of Church and State can be stated in the form of a deliberate compact, any such compact in truth exists. The analogy of the philosopher's fiction of the social contract is obvious.

The Church came to England as part of a great society already existing, with known customs and structure which were extended without vital modification to every place which she occupied in her advance to conquer the world. The relation of Church and State is the result of the attitude to this Divine Society of the men among whom it has been planted, and of those who have governed them.

At one time so great a proportion of the people are unquestioning and hearty believers in the authority of the Church and in the supreme



importance of things spiritual, and on the other hand the Church has so strongly national a character, that the arrangements of the Kingdom in all their parts have a religious object and colour. A distinction is scarcely drawn between Church and State, or between the position of a man as Churchman and as citizen. The infirmity of men would always make such a state of things precarious, and in England its disappearance was hastened by the increasing centralisation of the Western Church. The claim of Rome passed from one of primacy to one of Sovereignty. Rome was often more secular than spiritual, with political objects and under political control ; and in proportion as the local Church realised its connexion with, and subordination to Rome, so it realised its distinctness from the State in which it was. King and people naturally were not disposed to leave to a body greatly under foreign influence whose law and system were largely moulded by foreign hands, which moreover felt and emphasised its position as something apart from the State, that undefined and unlimited influence which it had naturally exercised while it was merely the nation considered as Christian, paying hardly more than a vague deference to the foreign Churches with which it was in communion. They were obliged to define and limit its authority and its privileges ; the boundaries of secular and ecclesiastical law had to be determined ; the results varied from time to time with the relative power and zeal of the disputing parties, but the separation of the conceptions of Church and State became palpable and was recognised in formal law. On the other hand the position of the Church as the representative of Christianity, the Church of Christ, in the realm was unchallenged. No one dreamed of disputing it, or of doubting that it was the business of the King to lend his aid to the Church in enforcing her discipline in matters which were properly subject to it.

Then came the Reformation. It is impossible, of course, to describe adequately that complicated series of events in few words, but one thing seems certain : there was no intention to alter fundamentally the relation of the English Church to the English State. The change designed was the emancipation of the English Church from usurped foreign control. The emancipation did, however, undoubtedly involve important practical, though not formal changes, in the mutual relation of Church and State. To begin with, the Church was practically much weakened. The habit of deference to ecclesiastical authority was shaken ; the support of the rest of the Holy Catholic Church was gone ; some of the stoutest champions of Church rights remained behind when the Church rejected the dominion of Rome ; the nation, once at least outwardly united in the faith, split into many sects. A Church so weakened was naturally much less able than formerly to resist encroachment by the Crown and

Parliament. That encroachments were made is much less surprising than that they were, comparatively speaking, so few.

But though actual and deliberate encroachment has not been extensive, the conception of the Church as a Divine Society, with rights which being altogether apart from those given or allowed by the State, are not defeasible by it, was so impaired that, when the Tractarians asserted it, it came as a surprise even to many who were very familiar with the formularies in which it is both implied and declared. The Church, cut off practically from the rest of Christendom, had come to be identified in popular conception with the nation beyond which it scarcely extended. The effect of the practical isolation of a National Church in increasing the intimacy of the connexion between Church and State may, I believe, be illustrated by the case of the Russian Church and its relation to the Emperor.

In England the form of English legislation has helped the process. The absolute legal power of an Act of Parliament, assented to by King, Lords and Commons, to accomplish its object, whatever it be, is a fundamental doctrine of English lawyers, and neither before nor after the Reformation has it been customary for Acts of Parliament on ecclesiastical matters to recite the approval of Convocation, whether in fact obtained or not. And, indeed, though the fair result of a survey of Church legislation down to the end of the seventeenth century is that it was regarded as right and normal that Convocation should be consulted upon it, it would be quite impossible to show, either before or after the Reformation, that this general principle had in no case been infringed. Accordingly, in the dark days when the sittings of Convocation were altogether suspended, there was no change in the outward form of legislation affecting the Church, and no pretence for any *legal* argument that Parliament had encroached upon her province. And so most men assumed that Parliament was the regular and sufficient legislature for Church as well as State, and forgot that there was anything whatever to be said against such an arrangement. It should be observed in passing that the power of Parliament to legislate for an unestablished Church is exactly the same, neither more nor less, as that which it has for an established Church.

I venture to think that the common conception of the disadvantages of establishment is to some extent due to a disregard of history. It is assumed that Church and State came to an understanding by which, in consideration of certain privileges granted by the State to the Church, the Church agreed to submit to certain restrictions at the hands of the State. It is desired to get rid of the restrictions, and it is inferred that this can be done by abandoning the privileges of which

they were the price. In point of fact, the restrictions usually complained of were devised and imposed by the Church, the State merely conceding to the Church that coercive sanction of force which she could not herself provide. Take, for instance, the familiar case of the Acts of Uniformity. It was the Church which drew up a book to be the manual of her worship, from which no one was to be at liberty without lawful authority to depart. All that Parliament did was to provide, at the Church's request, a punishment for anyone who departed from it. So as to the discipline of the Clergy. It is the Church which insists that her priests shall be orthodox and blameless, but these requirements she is unable to enforce without the arm of the State. All this is perfectly true, and it makes a good deal of difference in our attitude to these questions if we realise that to represent the Church as tied hand and foot by the State or by Parliament is at any rate to imply a very erroneous view of history. But yet it cannot be denied that the legislation of Parliament on Church matters, though designed and sought for the assistance and not for the repression of the Church, has practically had a fettering effect. When a thing takes the form of an Act of Parliament, whether at the Church's instance or not, it cannot be altered except by like means. This is not in strictness a result of establishment, for it is equally true of some unestablished bodies which have thought fit to come to Parliament for help in the regulation of their affairs. But, as a practical matter, if the Church were to be disestablished and disendowed, Parliament would no doubt empower some Church body to arrange her constitution and alter her law, as has been done in other like cases. Whether the title of a legislature armed with such powers by Parliament would be admitted by the many persons amongst us who are astute to discover objections to the validity of supposed ecclesiastical authority may be a question. Moreover, there is no reason for thinking it impossible that without disestablishment Parliament might consent to allow to Convocation a power of provisional legislation. To attain this is an object to which effort may be well directed and not without hope of success.

In another direction, there is no ground for supposing that if Churchmen could agree on such more definite organisation of lay influence in parochial or diocesan matters as is desired by many who are forward in the movement for "Church Reform," Parliament would refuse its help. The Clergy Discipline Act, 1892, and the Benefices Act, 1898, are two recent and most important examples of Church Reforms agreed on by the Church, and consequently obtained from Parliament.

I turn for a moment to the subject of Church Courts. Here again the great stumbling block of a parliamentary and secular Court for the final

decision of Ecclesiastical Causes is no necessary result of establishment. Rather it is a violation of the principle of establishment, since it is, as we maintain, an anomalous and indefensible exception to the recognition by the State of Church Courts properly so called as independent within their own jurisdiction. This is, in my opinion, a matter of the most vital urgency. No body of men, certainly no Church, can long endure the abeyance of all legal modes of enforcing discipline; but it is better nevertheless to stand still than to move in the wrong direction. Here again we should bear in mind that it is the disagreement among ourselves, far more than any obstruction or hostility outside, which stops the way. The same disagreement might produce consequences in the event of disestablishment which would make us regret our present condition, bad as that is. No doubt Parliament, if it disestablished the Church, would see that some tribunal was set up for the settlement of legal disputes, whose decisions would be enforced on those who should agree to be bound by them. Can we feel any security that in point either of technical authority or of practical working the tribunal so constituted would be satisfactory? On the other hand, if we were agreed now as to what we want, Parliament would have great difficulty in refusing it.

My conclusion on the whole matter would be that there is hardly any development of practical autonomy for the Church which is inconsistent with, or not obtainable under, establishment; that though no doubt disestablishment would in practice facilitate change, that taken by itself might be a most disastrous result; that at any rate the gain from disestablishment is extremely uncertain, while the sacrifice of the national position with which the Church has been entrusted, as we must believe for some high purpose, and of the material resources which she unquestionably needs for her work, is great and clear. By removing needless causes of offence amongst ourselves, and at the same time pressing steadily and fearlessly the high claim of the Church against the thoughtless Erastianism which has unhappily taken so deep a hold on England, we shall, I believe, in time secure the objects which we desire without sacrificing (perhaps in vain) that which we have no right to give up.









