









OPINION OF THE JUDGES  
ON THE  
JURISDICTION OF THE CONVOCATION  
IN  
MATTER OF HERESY;  
GIVEN IN THE YEAR 1711.

(EXTRACTED FROM MR. WHISTON'S "ACCOUNT OF THE CONVOCATION'S  
PROCEEDINGS" IN HIS CASE.)

[BODLEIAN. 5<sup>th</sup>. K. 98. LINC.]

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M DCCCL.



## WHISTON'S "ACCOUNT," pp. 15—28.

CONTAINING,

Letters of the Archbishop of Canterbury to the Bishops of his Province in Convocation.

Address of the Archbishop and Bishops in Convocation to the Queen.

Opinions of the Judges given in to the Queen.

Letter of the Queen to the Archbishop of Canterbury as President of the Convocation.

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N.B. The italics are Whiston's throughout.

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“ *April* 11. the first Convocation day after *Easter*, the Archbishop of Canterbury sent the Upper House my letter; accompanied with two of his own, which two here follow *verbatim*.

‘ *To the Right Reverend my Brethren, the Bishops of the Province of Canterbury, in Convocation assembled.*

*Right Reverend Brethren,*

Whereas your Lordships, on the 19th of *March* last, came to some Resolutions concerning a book lately published by Mr. *Whiston*, and in pursuance thereof did agree at the same time that they should be laid before me, for my opinion thereupon: I have already signified unto you, that I entirely agree with you in your Resolution that notice should be taken of the said book; and, after hav-

ing consulted such books and persons as I thought proper on this occasion, I do now subjoin and offer my opinion concerning the further methods of proceeding therein, as follows.

To proceed regularly in the Censure of Mr. *Whiston*, two points are to be considered :

1. The censure of the book or doctrine.
2. The censure of the person.

1. In order to a censure upon the book or doctrine, two things seem necessary to be done. First, to have the book well examined, and to fix upon the particular passages wherein he has asserted his pernicious tenets most plainly and expressly. Secondly, to fix the particular places of Scripture, and in the Council of *Nice*, and the Articles of our own Church, upon which the charge of Heresy may be most clearly grounded.

2. In order to a censure of the person in a judicial way, there are three several methods which you will weigh and consider well, in order to judge how far each of them will be safe and expedient, and how far effectual.

I. The first method is by Court of Convocation, in which such a judicature hath been evidently exercised in many instances, both before and since the Reformation, and seems to be the most desirable method in the present case, if the following difficulties do not stand in the way. First, Such a court being final, or the last resort, from which no appeal is provided by the Stat. 25. *Hen.* 8. cap. 19.



it may be seem doubtful, how far a prosecution without appeal to the Crown will be consistent with 1 *Eliz.* cap. i. sect. 17. whereby all jurisdiction, and particularly for *Reformation of Errors, and Heresies, and Schisms, is united and annexed to the Imperial Crown of this Realm*; and also, how far it will be consistent with the Statute of Appeals, 25 *Hen.* 8. cap. 19. which, in the course of the Appeals directed to be thenceforth made, doth not mention Convocation.

Secondly, It seems to be another difficulty, that there does not appear to have been any exercise of such a Judicature for this last 100 years or thereabout; in which time matters of this nature were usually considered and adjudged in the High-Commission-Court, whilst that remained; and when that Court was suppressed, it was enacted 17. *Car.* 2. cap. 2. that no Court should be thenceforth erected with like *power, jurisdiction, or authority*; but that all Commissions erecting any such Courts should be void.

You will therefore think it fit to be duly considered, how far the revival of this judicial authority in a convocation, empowered to proceed and act by her Majesty's commission or license, may be construed an erecting of a Court with *like power* as the High-Commission had.

Thirdly, Since the disuse of such judicial proceeding, the Writ *de heretico comburendo* has been taken away by the Statute of 29 *Car.* 2. cap. 9. And

you will also consider whether the provision there made for the *Jurisdiction of Protestant Archbishops and Bishops, or any other Judges of Ecclesiastical Courts, in Cases of Atheism, Blasphemy, Heresy, and Schism*, extend to Convocation, or only the ordinary established Court of every Archbishop or Bishop.

Fourthly, In the year 1689, several heretical books having been complained of to the Lower House; the Bishop of *London*, President, and the then Bishops, after mature advice and deliberation thereupon, returned this answer. *Sess. 13.*

*Quod consciū sunt diversas esse clausulas perniciosas in libris allatis penes eos, et directione dictæ Domus relictis: sed informati sunt per jurisperitos utriusque Juris proprias esse Curias Judiciales pro punitione delictorum hujusmodi, et eorum ferunt opiniones non esse conveniens in præsentia sese his rebus immiscere.*

II. The second method of proceeding in the present case, as I humbly conceive, is for the Archbishop to hold a Court of Audience; and, calling to him his Provincial Bishops as assessors there, to examine, proceed, and give sentence, as in his Court of Audience: into which Court he is fully empowered by a special proviso, 23 *Hen. 8. cap. 9. sect. 3.* to cite any person out of his Diocese wherein he dwells, in case that the Bishop or other immediate Judge or Ordinary dare not or will not convene the party to be sued before him; and from which Court (as within the Statute of 25 *Hen. 8. cap. 19.*) a regular appeal lies to the Queen's Delegates in Chancery.

III<sup>ly</sup>. The Bishop in whose Diocese he inhabits, may of his own accord cite him in his Court, or the Cause may be remitted or specially recommended to him as his proper Ordinary by the Archbishop and Bishops in Convocation: which we find hath oftentimes been done in Cases of the like nature.

Of the three forementioned methods the two last seem to be most plain and clear in point of legality. But because the first is the most solemn, provided it may be pursued legally and with safety to the Archbishop Bishops and Clergy of the Province, it seems to be necessary to lay the premises, or what else may be the result of your own debates and deliberations, before her Majesty; with an humble request, as from the Upper House, that her Majesty will be graciously pleased to lay the case before her reverend Judges, for their opinions thereupon.

I heartily recommend you to God, the Ruler and Guide of His Church; and remain, Right Reverend Brethren,

*Your most affectionate Brother,*

CANTERBURY.'

“The Second Letter.

*‘Right Reverend Brethren,*

I send you herewith a letter which I received on the 5th of this instant *Apr.* from Mr. *Whiston*,

whose case (as you have given me to understand) now coming under your consideration, I thought it proper for me to communicate to you for your perusal, and thereby also to cut off all occasion of his complaining that I smother any of his overtures. You will best judge what use is fit to be made of this paper, and at what time. I desire the original may be kept, as long as you think convenient, in the hands of any of my substitutes that shall be this day in the Chair.

I cannot but observe one thing in this letter, with some degree of admiration; that 'tis his earnest wish that the uncorrupt Faith and Practice of *the Gospel may prevail*; and the profession which he makes, that he aims to promote, to the best of his judgment and ability, the *Purity of Christ's Religion*, whilst he would obtrude on the world, as a considerable part of the Canon of the New Testament, that very spurious and corrupt Book of the Constitutions.

Lambeth, 11 Apr.  
1711.

*I am,*

CANTERBURY.'

“Upon the perusal of both letters, the House appointed a Committee to meet on *Friday* Morning, before their usual time of sitting as a House, to reconsider the precedents upon which they had gone, and to add the consideration of the Acts of Parliament thereto relating, which had been formerly

omitted. Upon *Friday* it came to a Division of the House, whether they should venture to act as a Court without addressing the Queen for the opinion of the Judges, or not? The Bishops of *London, Rochester, Bath and Wells*, and *St. David's*, were for proceeding without such an Address and Opinion: but all the rest were for agreeing to the Archbishop's motion; except the Bishop of Bristol, who was neuter. So that the Resolution was to Address accordingly. Upon which the Bishop of *Bath and Wells* produced a draft of such an Address. But the naming of persons to present the Address being left to the Archbishop, he appointed the Lord Bishop of *Litchfield and Coventry*, and the Lord Bishop of *Ely*: who on *Tuesday, Apr. 17*, presented it to the Queen. She enquired, whether they expected a present answer? They replied, that the nature of the thing rather required time for consideration. This Address was in these words:

‘ To the Queen’s most Excellent Majesty.

*The humble Address of the Archbishop and Bishops of the Province of Canterbury, in Convocation assembled.*

*May it please your Majesty.*

Whereas one *William Whiston*, a Presbyter of the Church of *England*, and late Professor of Mathematicks in the University of *Cambridge*, who

was in *October* last expelled the said University, for asserting and spreading abroad divers tenets, contrary to Religion received and established by public authority in this Realm, has since that time, and a little before the sitting of this present Convocation, printed and published an *Historical Preface* to other writings of the same pernicious design, intended for the Press, in which he has advanced several *damnable* and *blasphemous assertions* against the Doctrine and worship of the Ever-Blessed Trinity; expressly contradicting the two fundamental articles of the Nicene Creed; and defaming the whole Athanasian; and has had the confidence to inscribe and direct the said printed Preface to the Convocation now assembled:

And whereas we take ourselves to be both bound in duty to God and to His Holy Truths, and in obedience to your Majesty's pious intentions signified to us with your Gracious License, to repress the said blasphemy; and also obliged in vindication of our firm adherence to the true Faith, and for the preservation of the same in the members of our Communion, to call the said *William Whiston* before us, in order either to his amendment, or exclusion from the Communion of the Church of *England*; but do yet find ourselves hindered from going on, by some doubts arising among ourselves concerning our power so to act and proceed:

For that the Court of Convocation being final, or the last resort, from which no appeal is provided

by the Statute made in the 25th year *Henry* the Eighth, chap. 19, it may seem to be doubtful how far a Prosecution, without Appeal to the Crown, will be consistent with the Statute made in the first year of Queen *Elizabeth*, chap. 1, sect. 17, whereby all Jurisdiction, and particularly for reformation of errors, heresies, and schisms, is united and annexed to the Imperial Crown of this Realm; and also how far it will be consistent with the Statute of Appeals made in the 25th year of *Henry* VIII. chap. 19, which, in the course of the Appeals directed to be henceforth made, doth not mention Convocation. May it please your most gracious Majesty, out of your known zeal for the honour of God, and the good of His Church, to lay this case before your reverend Judges, and others whom your Majesty in your wisdom shall think fit, for their opinion, How far the Convocation, as the Law now stands, may proceed in examining, censuring, and condemning, such tenets as are declared to be heresy by the Laws of this Realm; together with the authors and maintainers of them.'

“Upon this Address to the Queen, Her Majesty was pleased to refer the whole to the twelve Judges and to her Attorney and Solicitor-General: who, being several times assembled together and debating the matter, came to the following Resolutions.

‘To the Queen’s most Excellent Majesty.

*May it please your Majesty.*

In humble obedience to your Majesty’s Royal Command signified to your Judges by the Right Honourable the Lord Keeper; We, whose names are subscribed, have considered the questions mentioned in the Address hereunto annexed; and are humbly of opinion, That, since the Statute of 23rd of *Henry VIII.* against citing out of the Diocese, and those Statutes of the 24th and 25th years of the same Reign touching Appeals, and as the Law now stands, the Convocation hath not any Jurisdiction originally to cite before them any person for Heresy, or any other spiritual offence, which according to the Laws of the Realm may be cited censured and punished in the respective Ecclesiastical Courts or jurisdictions of the Archbishops Bishops and other Ordinaries; who, we conceive, have the proper judicature in those cases; and from whom and whose Courts the parties accused may have their Appeals; the last resort wherein is lodged in the Crown. In which Statute for citing out of the Diocese, and in the others, as far as relates to Appeals for such offences, no notice is taken of the Convocation, either as to Jurisdiction or Appeals. Nor doth it any way appear to us in whom the pretended judiciary power



of a Convocation, either before or since the said Statutes (if any such they ever had) resided; whether in the whole body of the Convocation, or in part. But it is plain by the first Statute, that the Archbishop's jurisdiction, even in case of heresy, is bounded so that he cannot proceed against such offenders within any other Diocese than his own, without the consent, or in the default of, the Diocesan Bishops. All which Statutes being made for the ease and benefit of the Subjects, they cannot, as we humbly conceive, be deprived of the benefit of them by any pretence of jurisdiction in the Convocation; from which we cannot find or be informed of any instance of Appeal. Nor have any judicial precedents or authorities for convening or censuring of such offenders in any Convocation since those Statutes or the Reformation (which is now near 180 years) appeared unto us. And if such power should be allowed to the Convocation, we conceive it would invade the ordinary jurisdiction of the Archbishops and Bishops; which we conceive are preserved by the Act of Parliament made in the 17th year of the reign of his late Majesty King *Charles* the first, *Chap.* 11. and by another made in the 13th year of King *Charles* the second, *Chap.* 12. and by the Act made the 29th *Car.* 2<sup>di</sup>. chap. 9. which took away the Writ *De heretico comburendo*: in none of which any mention is made of the Convocation. And by the *Bill of Rights*, 1. *Wilh.* & *Mar.* it is enacted, That the Commission for erecting the late Court of Com-

mission for Ecclesiastical Causes, and all other Commissions and Courts of like nature, are illegal and pernicious. But we conceive that heretical tenets and opinions may be examined and condemned in Convocation, authorized by Royal Licence, without convening the authors and maintainers of them. All which we most humbly submit to your Royal Majesty's great wisdom.

May 5th, 1711.

*Edw. Ward.*

*Jo. Blencowe.*

*Rob. Dormer.*

*S. Lovell.'*

“The other Paper here follows.

*‘May it please your Majesty.*

In obedience to your Majesty's Commands signified to us by the Right Honourable the Lord Keeper of the Great Seal, in relation to the humble Address of the Archbishop and Bishops of the Province of *Canterbury* in Convocation assembled, hereunto annexed; We, whose names are hereunto subscribed, have taken into consideration the doubts and questions therein stated.

And after Conference with the rest of the Judges, We are humbly of Opinion, that of common right there lies an Appeal from all Ecclesiastical Courts in *England* to Your Majesty, in virtue of your Supremacy in Ecclesiastical affairs, whether the same be given by express words of any Act of Parliament, or not: And that no Act of Parliament

has taken the same away. And consequently, that a Prosecution in Convocation, not excluding an Appeal to your Majesty, is not inconsistent with the Statute of 1 *Eliz.* Chap. 1. but reserves the Supremacy entire.

As to the question proposed in the said Address, How far the Convocation, as the Law now stands, may proceed in examining censuring and condemning such tenets as are declared to be Heresy by the Laws of this Realm, together with the Authors and maintainers of them, we understand it to import only these two things: Whether a Jurisdiction to examine censure and condemn such tenets, and the authors and maintainers thereof, could ever be exercised in Convocation; and, if it could, Whether it be taken away by any Act of Parliament.

And we humbly lay before Your Majesty, That all our Law-Books that speak of this subject, mentioning a Jurisdiction in matters of Heresy, and condemnation of Heretics, as proper to be exercised in Convocation, both before and since the Acts of Parliament mentioned in the Address; and none of them, that we find, making any doubt thereof; and we observing nothing in those or any other Acts of Parliament that we think has taken it away; We are humbly of Opinion, that such Jurisdiction, as the Law now stands, may be exercised in Convocation.

But this being a matter, which, upon application for a Prohibition, on behalf of the persons who

shall be prosecuted, may come in Judgement before such of us as have the honour to serve your Majesty in places of Judicature ; We desire to be understood to give our present thoughts, with a reserve of an entire freedom of altering our opinions in case any records or proceedings which we are now strangers to shall be laid before us, or any new considerations which have not occurred to us be suggested by the parties or their counsel to convince us of our mistake.

*T. Parker. L. Powys. Ro. Price. E. Northey.*  
*T. Trevor. T. Bury. R. Eyre. Ro. Raymond.'*  
*J. Powell. R. Tracy.*

“ Upon the receipt of these Opinions from the Judges, Her Majesty was pleased to send the following letter, together with those Opinions, to the Archbishop of *Canterbury*, President of the Convocation, to be by him communicated to both Houses.

‘ ANNE R.

*Most Reverend Father in God, our Right Trusty and Right entirely beloved Counsellor, We Greet you well.*

Upon consideration of the humble Address delivered to us from you and from the rest of the Bishops of your Province in Convocation assembled, We have consulted Our Judges, Our Attorney and

Solicitor-General, how far the Convocation, as the Law now stands, may proceed in examining censuring and condemning such tenets as are declared to be Heresy by the Laws of this Our Realm ; together with the Authors and maintainers of them ; And we have ordered the Opinions given by Our Judges, Our Attorney and Solicitor-General, to be transmitted to you.

We are pleased to find that, according to the opinion of eight of our twelve Judges, and of our Attorney and Solicitor-General, as the Law now stands, a Jurisdiction in matters of Heresy and condemnation of Heretics is proper to be exercised in Convocation ; and We cannot doubt but the Convocation may now be satisfied they may employ the power which belongs to them, in repressing the *Impious attempts, lately made to subvert the Foundation of the Christian Faith* ; which was one of the chief ends We proposed to ourselves in assembling them, as appears from the whole of our letter of *December 12th*, and from the first head of business which in our two subsequent letters of *January 29th.* and *February 14th.* we recommended to their consideration. We trust that these our Royal intentions, so often signified, will not be without effect : and so, requiring you forthwith to communicate this Our letter, together with the Opinions of Our Judges and Attorney and Solicitor-General herewith transmitted to you, to both Houses of Convocation, We bid you heartily Farewell. Given at Our Court at

St. *James's*, the eighth Day of *May* 1711. in the tenth year of Our Reign.

*By her Majesty's Command.*

DARTMOUTH.'

“ Accordingly, this letter was communicated to both Houses on *Friday, May* 11. together with the opinions of the Judges. The same day a Committee of both Houses was named, to compare my doctrines with those of the Church of *England*: The Bishops of *Norwich*, and *St. David's*, being named in the Upper; and the Prolocutor, Dean *Kennet*, Dr. *Smalridge*, Dr. *Edwards*, and Dr. *Gibson*, in the Lower. Some time after, the Report of the Committee was brought in, which contained Propositions extracted from some of my late books, compared with the usual texts of Scripture, with the doctrine of the two first General Councils, and with that of the Church of *England*.

As soon as I heard of this procedure, and before the Report was brought in, being very desirous to be heard before any Censure, I wrote &c. &c.”

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1911  
CHAS. F. MERRILL









