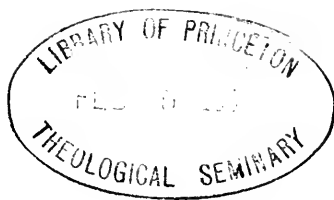
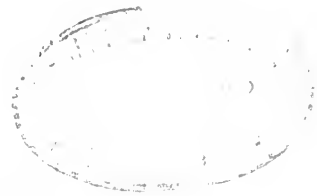


BX5960  
.M52B87



BX 5960  
.M 52 B87

Brooklyn, N.Y.



# THE STORY OF A CONGREGATION

**WHY THE MELISH CASE IS  
A LIVING ISSUE**



# THE STORY OF A CONGREGATION





DR. MELISH sitting for Mr. William Zorach, who has presented the finished bronze to the congregation of Holy Trinity in honor of his forty-six years of service to the Brooklyn community. "Too often," said the sculptor, "memorials are created after great men are dead, when works of art can mean nothing to them and little to those who did not know them. This head is meant to honor a man while he is living and to help others now express what so many of us feel about his true greatness."

*"It is the very simplicity of this story that gives it an epic quality. That a congregation in a downtown city parish could meet a wholly unpredictable and unprecedented development in American life, and stand its ground in the face of pressures that have made many abler citizens run to cover, is a witness to the basic health of the rank and file of the American people. Just so long as there are such men and women who will fight to maintain the essentials of democratic practice and the Christian way of life, there is hope for our country and for our world. To those who cannot be warped by prejudice, fear or intimidation, the record of this struggle will come as a thrilling challenge to renewed effort. Here is the brand of faith and loyalty to the best in the American scene that will help carry us through this revolutionary era with its cataclysmic changes and formidable dangers into a happier and more secure age of moral confidence and material prosperity."*

—WALTER RUSSELL BOWIE

*Published by*  
THE MELISH DEFENSE COMMITTEE

PRINTED IN THE U.S.A.





**T**HIS IS THE STORY OF A CONGREGATION. We number about five hundred individuals. We are members of the Church of the Holy Trinity, a parish of the Protestant Episcopal Church in the heart of downtown Brooklyn. Our beautiful church is an historic landmark that has stood on Brooklyn Heights for a hundred and four years. It was built as a spiritual venture by a man of means who wanted to build an edifice that would glorify God and open its doors to all manner and condition of men. To that dream of its founder the Church of the Holy Trinity has remained consistently true.

We of the congregation are not new-comers. Some of us were baptized in this glorious building as long ago as seventy-five years. We have worshipped in these pews all our lives. Others among us have come into the parish in later life, attracted by the beauty of its architecture, the simple dignity of its worship, the tradition of its music, its emphasis upon intelligent and evangelical preaching, and its unusual history of pioneering first in the liberal re-interpretation of the Scriptures and then in the social application of the Gospel message to all phases of life. We have brought our letters of transfer, or have been confirmed or received, in keeping with the practices of the Protestant Episcopal Church. Some of us are relatively new, dating our membership back but a few years. A score of us were about to be confirmed when the issue related in this narrative first broke upon us. All of us are voting members.

We are a typical cross-section of city people. Some of us are in business. Others have professions and vocations. Among us are physicians, dentists, librarians, teachers, architects, musicians, social workers, journalists, nurses and city employees. Many of us are white collar workers. Others are factory hands and trade unionists. Many are housewives. Just as our means of livelihood are varied, so are our racial and cultural heritages. The majority of us are White, but we are not necessarily Anglo-Saxon. Individuals among us stem from

Mediterranean, Slavic, Scandinavian and Middle Eastern backgrounds. A sixth of us are Negro, some coming from the deep South and others from the islands of the British West Indies where the upbringing has been in Anglican Church schools. Into our midst we have welcomed families of American Indian, Latin American and Oriental origin. We are a reflection of the composite population that is Brooklyn. Here we have been taught to think of ourselves as sons of God and therefore brothers one of another.

We have had good reason to feel pride in our parish because of the compassionate and generous spirit of its organized life, and the outreach of its influence into the community of which it is a part. Holy Trinity has never been a large congregation. It has chosen rather to be an adventurous, pioneering Christian enterprise. Loyalty to Christ and his teachings has been given priority to any emphasis upon physical numbers. Our ministers have sought to preach and apply the Gospel in the belief that the world needs Christ's spirit of reconciliation and redemption. Because the world does not possess this spirit, there is always a state of tension between a community as it now is, and the same community that the Church of Christ is called to make it. No one has found life at Holy Trinity to be casual or accommodating. It has ever been provocative and challenging. We have been taught to expect no flattery and to seek no easy agreement. The impact of Jesus Christ upon us and our world is an unsettling and confounding experience that has confronted us with decisions. With our ministers we have come to believe that the function of Christ's Church in this distraught contemporary world is not to soothe but to save!

**I**N THE Protestant Episcopal Church, the conduct of parish life rests with the rector and with a board of trustees, called the vestry, that meets at regular intervals. Within the parish, the authority is vested in an annual parish meeting. In the interval between such annual meetings, the vestry is empowered to act as the "legal agents and representatives" of the congregation.

Our vestrymen at Holy Trinity were men of professional and social standing, drawn from a number of different and respected walks of life. They had the complete confidence of the parishioners. When a vacancy occasionally developed on the vestry, the rector and the vestrymen canvassed the parish lists to find a capable and worthy individual to serve out the uncompleted term. At the next annual parish meeting, such a temporary appointment was invariably confirmed by the congregation. We in the pews assumed that the men who were willing to accept nomination to the vestry of a liberal and

socially-concerned parish such as ours, and who had the approval of the rector, would be in sympathy with the fine traditions and the dynamic policies of the parish. All through the years there had never been a contest over a vestryman's nomination or election.

What none of us foresaw, was that an international crisis would arouse such widespread hysteria and so intensify group antagonisms, that intelligent men of community standing who under all normal circumstances would have continued to reflect liberal attitudes and support democratic processes, lost their bearings and yielded to outside pressures and public tension. Positions that for years our rector and his associates had been taking on strictly Christian grounds suddenly began to loom as monstrous in the eyes of some of these vestrymen. Fear, compounded of personal associations and corporate interests, impelled nine of the eleven vestrymen to apply to the bishop of the diocese for the dissolution of the pastoral relationship between the Church of the Holy Trinity and the rector who had served us for forty-five years.

Without asking our opinion, and without waiting for a parish meeting at which their doubts and fears could be frankly and openly appraised, these vestrymen adopted their formal resolution in the privacy of the vestry meeting. Only after the step had been taken, did we learn of their action. We do not wish to be ungenerous. In the face of the contemporary hysteria, it is possible that they thought their action represented our true feelings. If such was the case, they were utterly and terribly misinformed. We found it hard to believe that responsible and trusted vestrymen of a church such as ours could act without first taking into account the wishes of the congregation. Even harder to accept was the fact that they had turned against a friend and minister of forty-five years' service, and were abandoning the principles of truth and freedom that have been paramount in our parish life.

It is *the ignoring of the congregation's wishes that is the root of our story*. All that follows is the consequence of this basic fact. That you may understand our feelings and the motives that have underlain the struggle that is related in this narrative, for clarity's sake, we shall proceed to list the basic points and indicate them in bold-face type.

**Nine vestrymen, whom we had elected to office in the belief that they would faithfully represent our interests and desires, acted in the gravest matter that can concern a congregation—that is, its relation to its ministers—without consulting, or taking into account, our wishes.**

**T**HE ADOPTION of the formal vestry resolution, which at any moment might be placed in the bishop's hands, confronted all of us who loved our parish and our ministers with a crisis. As many of us as could be reached by telephone were summoned to consult together. We met in the parish house, ascertained the exact facts concerning the resolution that had been adopted, and discussed the situation with complete frankness. There was no division among us. Unanimously we formed a Committee To Retain Our Rector, elected a chairman and a co-chairman, and instructed a smaller executive committee to inform the bishop of the diocese that the action of the nine vestrymen was not representative of the wishes of the parishioners.

Knowing that we would have to produce tangible evidence in support of this contention, we drafted a two-paragraph statement embodying our position:

*"We, the undersigned members of Holy Trinity parish, are completely opposed to the action of the vestry in asking for the resignation of our rector, Dr. John Howard Melish.*

*"We have the utmost affection for Dr. Melish and approve the policy he has consistently followed for the 45 years of his rectorship. We state that the vestry in this action in no way represents our sentiments."*

By the week's end, 321 of the legal voting members of the parish had gladly signed this statement. Careful check showed that this number was just in excess of 70% of the voting membership. Armed with this evidence, our spokesmen sought an interview with the bishop. Over the telephone we were informed that there was no canonical authority by which the bishop could recognize any body other than the vestry as representative of the parish. Blocked by this legal construction, we sent the statement with the number of its signers to the bishop by telegram. The same information in detail was submitted to our vestrymen with the request that they delay the filing of their resolution with the bishop until the annual parish meeting which was less than three months away. To us this seemed a reasonable request. It was ignored.

**In spite of the knowledge that over 70% of the legal voting members of the parish were opposed to their action and had so stated in writing; in spite of the reasonable request that they defer filing their petition with the bishop until after the annual parish meeting, the nine vestrymen proceeded to transmit their formal request to the bishop that the pastoral relation be dissolved.**

**O**UR RECTOR, Dr. Melish, naturally sought the advice of church lawyers experienced in the canon law of the Protestant Episcopal Church. With one accord, they expressed the conviction that no bishop would act contrary to the wishes of the vast majority of the parishioners. One of these lawyers agreed to see the bishop of the diocese and acquaint him with the exact figures. In a meeting in the chancellor's office, this attorney—who is a respected figure of long standing in the church life of a neighboring diocese—attempted to describe the parishioners of Holy Trinity and to give the bishop the statistics. The bishop's brief comment was, "But who are these people?"

During the entire proceedings only one meeting ever took place between the associate rector and the bishop (though in his Memorandum the bishop later asserted that at all times he had maintained a pastoral relation with both the ministers). The recorded notes of this conversation reveal that the associate rector asked the bishop, "Have the members of the congregation no rights in this matter?" The bishop replied, "I think not."

A number of diocesan clergy have confirmed the fact that the bishop told them individually that a member of the Holy Trinity vestry had informed him that Holy Trinity was not a legitimate Episcopal Church, that its members were all new-comers, and that most of them were "Jews" and "Communists." When the case came before the Supreme Court, the bishop was called on the witness stand. In the course of cross-examination, he admitted that he had relied upon information supplied him by this one individual member of the vestry, whose word he had accepted without question. The bishop had discounted the information provided by our two ministers, whose word, as priests of the Church, he might well have respected; he had ignored our representations; and, on his own part, he had made no independent investigation.

**On the basis of wholly unsupported allegations that were in fact erroneous and libelous, the bishop drew the conclusion that the congregation of Holy Trinity ought to be disregarded.**

**A**LTHOUGH it was by now quite clear that the bishop and his chancellor had no intention of seeing us, our people attempted to make their wishes known to the bishop by telephone calls, telegrams and letters. As a result of this flood of communications, the bishop decided that it was imperative, before he acted on the vestrymen's petition, to provide some form of semi-public hearing. Formal notice of such a hearing, to be held before the standing committee of the

diocese, was received by our ministers, the vestrymen, and the co-chairmen of our committee.

We are working people, most of us, and to take two days off without pay meant considerable sacrifice for ourselves and our families. Yet more than fifty of us traveled by train to Garden City for the two-day hearing. After some argument as to whether any one other than the two co-chairmen should be admitted, the sergeant-at-arms, on instruction from those within, finally opened the door to all who were identified as members of Holy Trinity parish. The press was rigidly excluded. In the Square Room in the basement of the Cathedral House we took our seats opposite a long table at which the eight members of the standing committee were seated. What transpired in those two days need not be recounted here. In the earlier booklet, "The Melish Case: Challenge to the Church," Bishop Ludlow has written an adequate description of its atmosphere and conduct. For our purposes in this second booklet, we are content to describe two brief episodes. Though they were minor incidents, they had a fundamental influence upon the reaction of all of us.

A lawyer on our vestry made the opening address to the standing committee. Vividly he sought to dramatize the "outside activities" of our associate rector, and piled on the table a stack of bound volumes of newspaper clippings as evidence of publicity that he claimed had hurt our parish. Towards the end of this harangue which was exclusively political in content and without reference to theology or ethics, he felt compelled to anticipate the question being raised as to why the nine vestrymen were unwilling to delay action until the parish meeting. Defending the vestry's decision to demand immediate consideration of its petition, he asserted that the issues in this matter were of such grave concern to Church and Nation that they could not be decided by reference to the congregation.

Later in the course of the hearing when counsel for Dr. Melish confronted him with the typed list of the names of those who had signed the statement repudiating the vestry's action, he took it in his hands and then turned to the standing committee. "How do we know who these people are?" he asked. Thumbing the pages in search of names to emphasize his point, he selected two which he read with a slurring and invidious inflection. "Rodri-gyoo-ez! Zo-rach!" Like a prosecuting attorney appealing to the prejudices of a jury and wishing to drive home the idea that all of us who had signed the statement were alien and irresponsible, he tossed the list on to the table.

Mrs. Rodriguez, a Spanish protestant, lives a block down the street from the church, has been a devoted member of Holy Trinity for more

than three decades, and has brought up her entire family within the Episcopal fold. Mrs. Zorach, who was in the hearing room and rose to her feet in emphatic protest, is the daughter of a former vestryman of a Philadelphia suburban parish, has brought her husband and three young sons to Holy Trinity, and is one of the ardent younger workers in our women's organizations.

These two episodes, though small in themselves, are indicative of the fundamental attitude that was adopted by our nine vestrymen towards the people by whom they were elected to office. Nor did we fail to notice that so outrageous a demonstration of social and racial chauvinism drew no rebuke from any member of the standing committee or from the chancellor.

All of us came back from that Garden City hearing with the impression that we had witnessed something unclean. There had been no attempt to discover what items were true or what was false in the charges of the vestry that formed the indictment leveled against our ministers. No effort was made to inquire into the motives that had underlain their activities or the reasoning as Christians that had led to the formulation of their convictions. From the outset the hearing was an irrational proceeding, conducted as if the mere enumeration of a series of alleged charges was sufficient to incriminate, convict and condemn.

Later, Dr. Melish informed us that the bishop had telegraphed him to come to Christ Church, Clinton Street, one Sunday afternoon well before the hearing. There the bishop had read to him the text of a resolution that had been adopted the previous week by the standing committee, asking for Dr. Melish's resignation. This was before the Garden City hearing ever took place! When we learned of this, it instantly became obvious why the hearing at Garden City before the standing committee was so lacking in objectivity. It was nothing more than a concession to public opinion. As a Federal Judge, prominent in the diocese, incisively commented: "The standing committee put the cart before the horse. It decided to remove the Melishes. Then it sought the ways and means to effect its decision." The terrible truth of this revelation was later confirmed by the bishop's personal testimony under cross-examination on the witness stand in the Supreme Court. He admitted under oath that the decision of the standing committee had been made before the hearing.

**As the true nature of this removal proceeding stood revealed, we saw that it was closer to "Lynch Law" than to due process, and that nothing would prevent its being carried out except some immediate and public assertion of our congregational rights.**

AT THE earliest possible moment we sought legal advice and were informed by competent counsel that there were provisions in the Religious Corporations Act of the State of New York whereby special parish meetings can be called upon dates other than that of the stated annual meeting, and that there was excellent precedent—sustained by the highest court of the State—where congregations had removed trustees who had disregarded their wishes, even though their terms of office had not expired. On the strength of this legal advice, we petitioned the rector to call such a special parish meeting with the specific purpose of removing from office the offending vestrymen. To forestall any such consequences of a special meeting, notice of which was read from the chancel steps at the morning service the following Sunday, the bishop precipitately published his Judgment dissolving the pastoral relation between Dr. Melish and Holy Trinity Church.

The findings of the standing committee were released simultaneously with the bishop's Judgment. These findings were embodied in a lengthy document, composed by the chancellor, Col. Jackson A. Dykman, that filled many pages of foolscap. The less said about these two productions, the better. Time will surely put them in their proper place. They were succinctly characterized by Dr. Shipler in *The Churchman*:

“We believe that . . . the church will ultimately consign the bishop's unhappy Judgment and Memorandum to the Museum of Ecclesiastical Horrors where they rightly belong, in company with the decrees of the Spanish Inquisition and the Iron Lady of Nuernberg.”

Holy Trinity parish has never catered to people of any one social stratum or political viewpoint. Our ministers have always taken the position that the function of the pulpit is to teach Christian Truths and to encourage their practical application, but to leave the precise form of that application to the intelligence and conscience of each individual listener. No one knows what proportion of our people share any political belief, or support any particular political party. Indeed, it is not our business in the church to know. The one thing we can say with assurance is that our congregation probably embraces the whole spectrum of political loyalties to be found in so cosmopolitan a community as Brooklyn.

When the chancellor, in the findings of the standing committee, accused our ministers of being trustees of *The Churchman* (as if that were a heinous crime), he was directly incriminating those members



of our parish who subscribe to *The Churchman* and support its fighting editor, Dr. Guy Emery Sipler. When the chancellor defined wartime support of Russian War Relief as disloyalty to Christ, he was conveniently forgetting that he and two other members of the standing committee were themselves directors of the Brooklyn Division of Russian War Relief. When he accused our ministers of subversion because they had advocated closer relations with the Soviet Union within the United Nations as the road to peace, he was attacking such members of our parish as had supported the work of the National Council of American-Soviet Friendship of which our associate rector for three years was chairman. When he pilloried our ministers for sponsoring a dinner honoring the New York State chairman of the Progressive Party, he was indicting those members of our parish who voted for the Episcopalian who headed that Party's ticket in the presidential election of 1948. In writing these findings of the standing committee, which were political judgments and nothing else, the chancellor was oblivious to the fact that the charges he was placing against our ministers were equally applicable to others within our congregation, and therefore that his indictment constituted an attack upon our freedom of thought. If our views on international matters and world peace have no place in the thinking of the Protestant Episcopal Church, then many of us ought to be excluded from its membership.

**The attack upon the Melishes, as launched by the chancellor, was in actuality a political attack against the freedom of thought of the congregation of Holy Trinity Church, and an indictment of the opinions of every Protestant Episcopalian anywhere in the country who might share political views similar to ours on world peace or social change.**

**B**Y WHAT AUTHORITY, we found ourselves asking, can a standing committee of an individual diocese, acting at the behest of a chancellor, dictate the standards of social opinion and political belief for the clergy of that diocese, and for the people in the pews? What canon gives a bishop the right to declare, as Bishop DeWolfe did to Dr. Melish, that he had heard the younger Mr. Melish advocate a National Health Plan, that a National Health Plan was "socialistic," and that no advocate of socialism would be tolerated in his diocese? We can well imagine how amused would be the clergy and the laity of the Church of England at any such interpretation of Anglican thought and practice.

There are many among us at Holy Trinity who do not entirely

agree with the stands taken by our ministers. But agreement or disagreement is not the issue. It is the very right to think for ourselves. And in this case, it is not merely the right of the clergy to think for themselves but the fundamental right of the laity as well.

We are all agreed that if there had been some theological heresy, or moral turpitude, or neglect of duties in the Holy Trinity situation, our ministers should have been brought to trial. For such offenses, the canons of our Church provide ecclesiastical courts made up exclusively of clergymen (the accused's peers, as Anglo-Saxon jurisprudence requires); the rules of evidence must be observed, and there is a right of appeal to a higher provincial court of review. Our ministers were granted no such trial. The associate rector never had any charge placed against him and the rector was given nothing but a sham hearing before a standing committee made up of four clergymen and four laymen, violating every rule of evidence, and with no right of further appeal. A non-judicial body had the effrontery to pass on standards of social conduct and political belief with respect to the clergy and the laity of our Church within a single diocese.

Let us look at this matter candidly. Who are the four laymen on the standing committee of the diocese of Long Island? The first is a manufacturer of mustard. The second is the president of a local savings bank. The third is a receiver of a bankrupt railroad. The fourth is, or more correctly was, counsel for a chain of trust companies. By what authority—canonical, spiritual, moral, intellectual—do such laymen have the right to pass on decisions of conscience made by two ordained priests of the Church, one of whom has as distinguished a lifetime of pastoral and humanitarian service behind him as any clergyman in the nation, and the other of whom has served for fifteen years in two large city parishes and received his preparation for the ministry in four of the outstanding educational and theological institutions in the western world? Of these two ministers, the bishop himself on the witness stand testified:

- Q. You concede that there is no doctrinal question, or question of heresy?
- A. That has not been considered, no, sir.
- Q. And there is no question of immorality, or anything of that sort?
- A. Oh, absolutely not. That I put in my statement: I have every confidence in the moral integrity of these men.

**The standing committee usurped powers belonging only to ecclesiastical courts and to the General Convention of the Protes-**

tant Episcopal Church, which is the sole body authorized in our communion to establish standards of belief and practice; the findings of the standing committee are, in consequence, outside its competence, immoral and worthless; and, unless this dangerous precedent is challenged, there will be in operation a purely arbitrary procedure that can be employed to bedevil any clergyman or congregation as the whim or the prejudice of diocesan authorities may dictate.

WE HAVE CALLED these findings immoral. We do this because of the deceptive and misleading manner in which a removal action was brought against one man and the blame was placed upon another. Had the younger Mr. Melish done anything wrong, he should have been tried as an individual. The truth appears to be that the authorities wished to be rid of Dr. Melish but knew that public opinion would not look kindly upon any attack directly aimed at him, whereas, in the existing state of public tension, a removal proceeding justified by the positions taken by the son might be more easily accepted by the general public.

The most shocking aspect of the bishop's judgment, as the chancellor drew it up, was its dating. As everyone knows, the documents were delivered to Dr. Melish at the close of the Ash Wednesday Community Noonday Service when the suffragan bishop of the diocese, who had just preached the sermon as the guest of our parish, was still with Dr. Melish in the rectory. Nothing so aroused us at Holy Trinity as the heartlessness and the cynicism of this timing. For a bishop who claimed spiritual sensitivity and was urging respect for holy days, the action was unbelievably callous. Why did he do it? The answer is obvious. The chancellor had pointed out to him that under the canons, thirty days must elapse before an episcopal judgment dissolving a pastoral relation can become effective. If there had been even a few days' delay, the removal of the rector could not have been effected until after the annual parish meeting. Therefore, the removal of Dr. Melish had to be timed to take effect in such a way that the parishioners on Easter Monday would be confronted with a fait accompli. Indeed, just after the publication of the bishop's judgment, one vestryman stated bluntly to a number of the parishioners that now there would be no parish meeting this year at all, since there would be no rector to call it! If any doubt still remained in our minds as to the illegitimacy and irregularity of the removal process, here was the final and convincing evidence that this was a plain, political

“frame-up,” so devised that no effective protest could be raised by the congregation.

**Denied all opportunity to play any part in determining the future character and ministry of our parish, to which we had all liberally given of our time, our loyalty and our money; and realizing that the future of Holy Trinity was being entrusted into the hands of nine men whom we had elected and who had then turned against us, their electors; we found our American, protestant and democratic instincts rising in protest; and we determined to stand our ground and assert the traditional rights of a congregation in the Protestant Episcopal Church.**

**WE PRESUME** that the publication of the bishop's judgment, and its release in full to all the metropolitan newspapers, was intended to awe us. It had exactly the opposite effect. Thoroughly aroused, our people went ahead with the special meeting; we turned out in numbers; charges were preferred against the nine vestrymen; a vote was taken, and they were overwhelmingly removed from office. Notice was then read at divine service the next Sunday, calling a second special meeting of the parish to elect their successors. This meeting was never held. On the advice of the chancellor, *the nine vestrymen went into the civil courts* and obtained a temporary restraining order. They asked for a permanent injunction declaring their removal illegal, restoring them to office for the balance of their normal terms, and preventing anyone from interfering with the carrying out of the bishop's judgment dissolving the pastoral relation. A preliminary hearing was set before Mr. Justice Norton in Supreme Court.

What particularly interested our people and the score or more of Brooklyn clergy who crowded the court room, was the arrogance of the chancellor who asserted, with complete disregard to the long history of democratic struggle that gave birth to the Protestant Episcopal Church in these United States, that the vestry is the corporation of a Protestant Episcopal church and that the only specific right granted to a congregation by the canons of our Church is that of selecting vestrymen at the annual parish meeting.

Col. Dykman went to great lengths to define our Church as one in which authority descends from above, contrasting it with churches of the congregational type in which authority ascends from below. He did not explain what he meant by “authority,” leaving the impression that it was absolute and all-embracing. What he was propounding was essentially the Roman Catholic theory of authority. Melodramatically he asserted that our ministers were violating their ordination vow

in which they had promised to "obey the godly admonition" of their bishop, in refusing to resign and then in refusing to accept his judgment dissolving the pastoral relation.

All of us in the court room knew sufficient of the history and background of the Book of Common Prayer to appreciate that the chancellor was deliberately misrepresenting the facts of our Ordination Service to impress and influence the court. There is a fundamental distinction between the pre-Reformation oath of ordination, used to this day in the Roman Church where absolute obedience to the bishop is sworn, and the Anglican ordination vow. The Anglican reformers substituted the discriminating words "obey the godly admonition of your bishop." Such a crucial change in wording can only mean one thing—that on occasion the admonition of a bishop may be something less than "godly," and that priests of the Protestant Episcopal Church, in accepting ordination, do not sign away their minds or their consciences! This fundamental distinction between the Roman and the Anglican concepts of priestly obedience is explained in "The American Prayer Book: Its Origin and Principles," by Bishop Parsons and Professor Bayard Jones:

"Especially noteworthy in the Anglican Ordinals is the emphasis upon the Holy Scriptures. Bishops, Priests, and Deacons signify their acceptance of the Scriptures as 'containing all Doctrine required as necessary for eternal salvation'; and the Priest, like the Bishop, pledges himself 'to teach nothing, as necessary to eternal salvation, but that which he shall be persuaded may be concluded and proved by the Scripture.'

"This vow of the Priest, which is a distinguishing mark of the Anglican Ordinal, is of great significance. In the ancient Catholic Church, the Bishops were considered to be the guardians of Christian truth. This guardianship (the original 'Apostolic Succession') was handed down from one generation to another: with the consequence that as the Church developed, and questions of doctrine became important, it was assumed that they should be referred to the Bishops alone. The pre-Reformation Ordinals were consequently framed on the basis of this theory.

"The Church of England, in breaking with this tradition, lifted the Presbyterate to a new importance, and opened the way to a more thoroughly representative expression of the faith of all Christian people. The position which the Episcopal Church in America has taken in giving to General Convention—laity as well as clergy—the final decision in interpretation of doctrine, would hardly have been possible were the Bishops regarded as its sole guardians and inter-

preters. Likewise, the Anglican Priest is free, intellectually as well as morally.”

This scholarly exposition of the fundamental polity of the Protestant Episcopal Church in the United States will indicate unmistakably the incorrect, unhistorical and strictly partisan character of the interpretation of Anglican theory that Col. Dykman was presenting to the court. However, Mr. Justice Norton was not swayed by the chancellor’s rhetoric. He did the judicial thing that neither vestry, standing committee, chancellor, nor bishop had done. Recognizing that under post-Reformation polity a congregation has a greater place in the Protestant Episcopal Church than in its Roman Catholic counterpart, Mr. Justice Norton issued a temporary injunction holding all parties in statu quo pending a trial of the issues. He then set the date for trial on the day of the annual parish meeting, thereby respecting—as the diocesan authorities had refused to do—the traditional right of the congregation to express its opinion, and to sustain or reject in secret election the vestrymen who had acted allegedly as its agents and representatives.

The nine vestrymen, realizing that a catastrophe had occurred to disrupt their carefully laid plans to have the bishop’s judgment carried into effect before the annual parish meeting, now sought by another tactic to separate the congregation and the ministers. Since they were temporarily restored to office by the court order, they applied formally to the bishop to send in a supply clergyman to take the Palm Sunday, Holy Week and Easter services. This application confronted us with the second major crisis in our struggle. We saw that it had to be met with the same immediate and overt action as had countered the first crisis. Taking advantage of the court injunction maintaining the status quo pending trial, which meant that our ministers were as yet unaffected by the bishop’s ruling and therefore were free to officiate in the church, we advised our attorneys to notify the restored vestrymen that if any strange clergyman sent by the bishop were to enter the chancel on Palm Sunday morning, the entire congregation would rise and march out of the church. Alarmed at the prospect of a public scandal, the vestrymen withdrew their application to the bishop for a supply clergyman. In consequence, our two ministers took all the Holy Week services, conducting them on the high spiritual and moral plane that we have come to associate with their entire ministry.

Col. Dykman had argued before the court that the one specific right of a congregation, stipulated in the canons, was the right of electing the vestrymen at the annual meeting. Fortunately for us, this was the

only legal weapon that we needed to alter and reverse the entire pattern of the removal proceeding, now that we were being given the time to use it. Since the granting of a temporary injunction holding all things in statu quo guaranteed the occurrence of our annual meeting, it was incumbent upon us to make full use of this opportunity to defeat as many as possible of the old vestrymen whose terms expired, and to replace them with men pledged to represent our wishes. By Col. Dykman's own argument, this was simply to exercise our minimum guaranteed right as a parish. We set out to canvass our ranks for suitable nominees to the vestry. It was not as simple a process as we had thought.

To those who have never experienced the merciless publicity of the commercial press when it turns its full spotlight upon some victim, it may seem strange to speak of the personal decision that was required of each of our nominees. He was compelled to ask himself: how will the publicity of my going on the vestry affect my job, my family, my future? Will there be reprisals? One man, who was to retire in just three weeks and needed for himself and his wife the pension due him for his years of service with a public utility, sat up half the night discussing with his wife whether election to the vestry might endanger his pension. Another parishioner, a man with a wife and children, who was employed in a large concern where his immediate superior was a Roman Catholic bitterly opposed to positions we had advanced at Holy Trinity, had to face the possibility of the loss of his job. That these decisions were not easily made can be deduced from the refusal of another unusually sensitive and sympathetic supporter of our parish who was an executive in a semi-public institution on the board of which sat the very vestryman we were asking him to displace. "Next year," said this parishioner, "if you still want me, I shall be honored to run; but this year you will understand why I cannot compete for such office." Soul-searching went into such decisions, yet by Easter Monday five able and responsible men had thought the challenge through and had given their consent. By an overwhelming vote, in ratio of ten-to-one, these nominees were elected to office. With the Treasurer of the parish who was the one vestryman to vote against the dissolution petition, these five new vestrymen gave to the congregation a majority of the votes on the vestry.

**We had regained control of the corporation of Holy Trinity Church, thereby reminding every vestryman in every parish in every diocese that it is the congregation that elected him to office, and that it is to the congregation that he and his fellow-vestrymen are responsible as "legal agents and representatives."**

THE TRIAL before Mr. Justice Steinbrink was already in its second day when the results of this election were made known to the court. It might have been anticipated that some greater deference would now be paid to the parishioners, since so clear a demonstration of the unrepresentative character of the old vestrymen had been given the night before. On the contrary, however, the court proceeded to treat us like bad children who had defied authority and needed a scolding and spanking. Our people sensed this reaction instantly. It served to increase their tenacity. There was something positively thrilling about the strength of will that was displayed by the first parishioners to be placed on the witness stand to testify in behalf of the rector. Under relentless cross-examination, they stood their ground resolutely. When they were asked whether they refused to accept the bishop's judgment, they unswervingly took their stand by their ministers and parish. So unflinchingly did the first twelve witnesses come through the grueling questioning that the attorney for the vestrymen and Col. Dykman consulted together and then informed the court that, to save the court's time, they would admit into the trial record a stipulation that there were 321 parishioners ready to testify in behalf of the rector and refusing to accept the bishop's judgment. This testimony of our people was so damaging that the attorneys for the other side could not afford to let any more of it be entered into the trial record. We were proud of our spokesmen that day. Few of them had ever dreamed that they might be compelled to make a substantial confession of faith in a public courtroom in the presence of the metropolitan press and in an atmosphere lurid with prejudice.

Mr. Justice Steinbrink delivered his decision with theatrical versatility. For an hour and a quarter he impressively extemporized his carefully prepared findings. He covered a vast amount of territory with seeming erudition and much citation of cases. The substance of his decision, however, boiled down to three points. He ruled that the special meeting that had removed the vestrymen was illegal—not because special meetings could not be held, and not because there was no precedent for removal proceedings in New York State—but simply because, under the Religious Corporations Act, the date for such a special meeting had to be set by the vestry, and ours had not been. For this reason he further ruled that the nine vestrymen were still in office for the balance of their normal terms and could not be removed until their terms expired. To all practical purposes, this first portion of the judge's decision was no longer revelant to the situation, since the legal terms of five of the nine vestrymen had terminated and they had been replaced at the stated meeting of the parish.



On the fundamental question that had been posed the court by our attorneys: does the canon permit a vestry to petition for the removal of a rector in the face of a written protest from over 70% of the congregation; and does the filing of such a petition give a bishop jurisdiction to act when neither of the major parties named in the canon—namely, the parish and the rector—is submitting to his arbitral judgment; the court replied in substance that if the bishop and standing committee felt that they had jurisdiction within the meaning of the canon, it was not for the court to rule otherwise, on the principle of separation of church and state. In other words, Mr. Justice Steinbrink refused to give a ruling on the merits of the case.

Having taken this principled position, however, and after having cited many rulings in support of it, Mr. Justice Steinbrink then, in complete contradiction of his whole line of argument, proceeded to impose a sweeping civil court injunction enforcing full compliance with the bishop's judgment dissolving the pastoral relation.

All of us were stunned by the harshness of the long opinion and the severity of the injunction. Although, from the outset, the atmosphere of the court had compelled us to anticipate a negative verdict, we had nevertheless believed, as the argument proceeded, that the judge would say something like this: "This is an ecclesiastical matter. Since the civil court will not interfere in an ecclesiastical matter to question or dispute a bishop's ruling, so it will not interfere to help him enforce his ruling. That he must now do in conformity with the provisions of his own canon law." This would have seemed to us to have been the logical position for the judge to have taken in the light of his emphasis upon the theory of the separation of church and state. No such discriminating distinction was observed. The court seemed intent upon making certain that the Melishes were removed from our parish, and that Holy Trinity—as a voice of independent moral witness in the Brooklyn scene—should be effectively silenced.

Seated in the court room was an outstanding playwright of America, Mr. Arthur Miller, Jr., Pulitzer Prize winner and author of "All My Sons" and "Death of a Salesman." Deeply disturbed by what he had witnessed, he went home and wrote to *The Churchman*:

"Unfortunately, what a little group of extremely reactionary men—now demonstrated to be unrepresentative of the congregation—failed to accomplish, the civil courts seem willing to provide, if the behaviour of New York State Supreme Court Justice Steinbrink is any indication. I attended a session of the trial and thought it clear beyond doubt that the judge believed his duty to be nothing less than a

totally unfavorable decision for Dr. Melish, who, by the end of the trial, was as good as characterized as the Russian devil incarnate.

“It seems to me, that if America’s churchmen, ministers and laymen, allow this stifling of the pastoral conscience to go unchallenged, they have lost the right to complain about it where it occurs abroad, and, perhaps more important, have buried alive their own right to speak and act as their consciences may demand.”

However we might feel about the court proceeding, the effect of this decision was to declare the dissolution of the pastoral relation between Dr. Melish and Holy Trinity Church, and to deprive him of all use of the physical properties. This much was specific and clear. Technically, neither the decision nor the injunction altered the relation of Mr. Melish to the parish. Col. Dykman had taken the position, in advising the old vestry, that an assistant rector was under the rector; could not be removed so long as the rector wished to retain him; but once the rector was removed, could be dismissed by the vestry or by the new rector whom they would proceed to elect and install. It will be seen at once that the loss of a controlling majority in the vestry had upset this calculation. The rector was declared removed and was deprived of the use of the properties, but the position of the assistant minister still remained what it was, since a majority of the new vestry was prepared to continue his contractual relationship to the parish. This was anything but what the old vestrymen, the standing committee, the chancellor or the bishop had intended. In the light of our wholly unanticipated and successful congregational fight, this was the paradoxical outcome.

The pattern of the struggle that would be essential to assert our congregational rights was now clearly determined by the circumstances. Pending the outcome of the appeal, the new vestry, controlled by our slim 6-to-5 majority, would have to maintain the services of the church without the assistance of our ministers. Two questions confronted us. Could we secure clergymen to take our services, even if this interim period should last a year or more? And how would our parishioners react to the prospect of so long drawn-out a period in which visiting ministers would be in the chancel and their own ministers would be seated each Sunday in the pews?

The Pulpit Supply Committee of the new vestry wrote exploratory letters to many clergymen both within and without the diocese, turning to representatives of various schools of thought within the Church. Nearly every man approached responded affirmatively. When they came to Holy Trinity, they entered into the spirit of the parish. Though

given complete freedom of choice as to theme and content of their preaching, the majority felt inwardly moved to take subjects broadly related to the principles that they felt were here at stake. Positions that our ministers had propounded were given forceful advocacy. If the purpose of the removal of the rector of Holy Trinity had been primarily intended to stifle a type of prophetic utterance, the result was just the opposite. Instead of two men preaching with freedom and candor, here were fifty. You will appreciate the heartening effect of this experience upon our congregation, to find so many able men representing all the so-called "parties" in the Church willing to come to Holy Trinity, to speak out in the same great causes to which our ministers had given of themselves, and to be publicly identified with the principles we in our struggle were seeking to advance. Contrariwise, it helped to clarify the understanding of these distant friends among the clergy to meet with our people after service at the coffee hour in the gymnasium and in the rectory. The ugly labels and libels of the press and radio stood revealed for the hollow things they always were. These many ministers saw for themselves what manner of Christians and what manner of Episcopalians we at Holy Trinity are trying to be.

A program of regular parish activities was laid out, so that our people might meet with one another regularly and new friends in the community could come to know us better. A men's club was formed and undertook to sponsor a monthly parish get-together. Larger events, involving the community around us, took the form of an elaborate Harvest Festival, a Smörgasbord Supper and an impressive birthday party to honor Mr. Melish when well over two hundred friends sat down to dinner in the gymnasium. In the summer months holiday trips were planned.

When we undertook to maintain our parish in this unusual fashion, we had no illusion as to the difficulties we would encounter. It was just as well that this was so, for they began to manifest themselves almost at once. They had to do primarily with the emotional aftermath of all the publicity in the press and on the radio, and with the quiet campaign that continued to be directed against us by those elements in Brooklyn that wished to eliminate or silence such a protestant and democratic church as ours. Casual visitors of the kind that had always dropped in for occasional services at a centrally-located church like Holy Trinity almost entirely ceased to come. New people who attended the services came because they had heard about us and were in general sympathy with our positions. On the other hand, we discovered that these new sympathizers were usually hesitant about identifying

themselves permanently with our parish because it was still too early for us to be able honestly to declare what its future was going to be. In the summer months we experienced a gain in attendance but in the winter months a slight drop.

There were penalties paid by our people for their loyalty to Holy Trinity. One school-teacher was quietly but firmly ousted from rented rooms because her Roman Catholic landlord, a reader of *The Tablet* and *The Brooklyn Eagle*, objected to a tenant who received her mail from "that Red Cathedral." One man, employed in a department of the city government, appeared in a men's club photograph in *The Brooklyn Eagle*. A few days later he found the photograph clipped and inserted into his personnel file, and when a routine promotion was due him, he was just quietly passed over. A young couple that had long planned to be married in Holy Trinity, found that relatives objected strenuously to a wedding in a stigmatized church and that an usher, employed in a defense industry under close loyalty check, was afraid that participation in the bridal party might affect his security rating. What we were going through was a modern Salem village with the devil this time hovering not over Massachusetts but the United States of America and moving into the church itself. When this disturbed period of national paranoia is over, and all of us can look back upon it with some degree of detachment, it is probable that this narrative will assume the stature that it deserves. For what was happening here, was that ordinary, decent, average parishioners were finding themselves confronted with the same intimidation that had flattened out their ministers, and instead of crumpling before it, were learning to understand what their ministers had been going through, and then were themselves standing up to be counted in the same brave fashion for the fundamental American and Christian things in which they really believed in their inmost hearts. In the last analysis, the peculiar unity and staunchness that has developed within our congregation is the product of shared suffering!

**The ability of our congregation to organize and maintain its life for more than nineteen months under circumstances that would pulverize most congregations, is the final and incontestable proof that the old vestrymen were utterly wrong in maintaining that Holy Trinity would be destroyed unless the ministers were removed. Holy Trinity has not been destroyed and will not be destroyed. This parish today is a mature Christian congregation that knows its mind and is ready to do the work in the world that the Lord has for it to do.**

WITH THE decision made to see this struggle through to eventual vindication, no matter what length of time might be required, and with the knowledge that we had the equipment and the friends to enable us to maintain our parish life for an indefinite period, if that were necessary; it became important to begin to tell our story to a wider audience. People ought to know the truth. And there was the practical problem of defraying the heavy cost of litigation in the forthcoming appeal proceedings. As a congregation we had limited resources and a costly parish to maintain. We needed help from the outside world. The result of this necessity was the preparation and the publication of the booklet: "The Melish Case: Challenge To The Church." Those who read the manuscript in proof were so moved by its impact that we decided to embark upon a venture of faith. Using volunteer clerical help for the addressing, stuffing and bundling required, we mailed out nearly 40,000 copies at our expense with a simple appeal and a return envelope tucked inside the back cover. What would be the reaction and the financial response? They exceeded our most venturesome dreams. That booklet made "The Melish Case" a living issue, and the financial return defrayed the heavy costs of litigation in the New York State courts.

What this move did in relation to the general public, another interesting development accomplished with equal success among the clergy. The Reverend Joseph F. Fletcher, professor of social ethics at the Episcopal Theological School in Cambridge, Massachusetts, where both our ministers had taken part of their training, issued an invitation to the clergy of the Protestant Episcopal Church to participate in the appeal as "Friends of the Court." He proposed that a brief *amicus curiae* should be filed with the court, stating that the signers believed that the intention of the present canon of our Church was to give a vestry power to apply for a pastoral dissolution only in such cases where the vestry truly represented the parish, and not in such a situation as ours, where the vestry acted in defiance of the known wishes of more than 70% of the parishioners. A total of 1,156 clergymen—that is, one out of every six Protestant Episcopal ministers throughout the country—joined in this brief. We know of no such parallel action in the history of our, or any other, Church. More than anything else, coming on top of the publication of our booklet, this *amicus* brief impressed the newspapers from coast to coast. The press began to treat "The Melish Case" with greater deference and even with some show of respect. Bishop DeWolfe retaliated by refusing to give his episcopal approval to two men who had signed the *amicus* brief, whom vestries were considering calling as rectors of parishes

vacant within his diocese. Unfortunately, the vestries involved were unprepared to make a test of their traditional rights in this matter. Whether the bishop would actually have attempted to veto such calls, or could have made such an arbitrary veto stick—since such rejection has no precedent in Anglican tradition—cannot therefore be determined. But just as the over-statements in Col. Dykman's original document had the opposite effect of what he intended, so this "black-listing" of the clergy similarly proved a boomerang. It convinced innumerable ministers who had shied away from "The Melish Case" because they thought it had nothing to do with their interests, that they had an immediate and personal stake in the issue of clerical tenure and freedom, as that issue was being fought-out at Holy Trinity.

By going steadfastly ahead with our parish business, and by such out-reaching projects as these, we carried our parish safely through the first year of struggle. On Easter Monday, 1950, the second parish meeting since the promulgation of the bishop's judgment (intended to forestall all parish meetings) took place. In the course of the year what little opposition there was in the parish dispersed. At the meeting it did not show its face. Nominations for four more places on the vestry were made without contest, and in the secret ballot that followed these nominees were unanimously elected by a total vote as large as that of the year before. For the first time in the history of our parish a Negro was elected to the vestry to represent one of the most devout and loyal sections of our congregation. As the result of this election, nine of the eleven places on the vestry were now in the hands of the congregation, a quorum was secured, and the legal corporation of the Church of the Holy Trinity, even by the rigid definition of the canon as argued by Col. Dykman, was returned to its people. The two remaining old vestrymen, whose terms of office do not expire for another year, have not attended a vestry meeting and are worshipping in another parish in the neighborhood. Of the other seven former vestrymen, two have moved out of the city, and a third (who was the spokesman before the standing committee) has taken his Letter of Transfer to a Manhattan parish where he now resides.

**The corporation of Holy Trinity Church is now in the hands of the congregation, which is appealing to the highest courts in the hope that Dr. Melish can be reinstated as our rector; but, win or lose in the courts, the initiative as to the kind of parish that Holy Trinity is to be, and the kind of ministry it is to enjoy, now rests with a vestry pledged to represent us—the parishioners.**

**WE HAVE SAID LITTLE** in this narrative about the legal steps that were being taken simultaneously with the maintenance of the life of the parish. Perhaps there is really little to say. The first appeal was made before the Appellate Division of the Supreme Court. In spite of extended argument presented in the briefs, the Appellate Division unanimously upheld the lower court decision, acting so swiftly that it was difficult to believe that much consideration could have been given to the record which, in its printed form, numbered 545 pages, together with exhibits and briefs amounting to several hundred pages more.

At the Court of Appeals in Albany—the highest court in New York State—the case received equally summary treatment. Again, in spite of incontrovertible evidence that a constitutional issue of serious proportions was involved, the case was dismissed on a procedural ground. It was hard not to conclude that the courts were reluctant to handle the case on the merits. In *The Churchman* Dr. Shipler commented editorially:

“The Canon Law of the Protestant Episcopal Church sets a specific and comparatively mild penalty for a congregation that refuses to obey an episcopal judgment dissolving a pastoral relationship, namely, deprivation of representation in the diocesan convention. The reason for the mildness of this penalty lies in the respect which the Episcopal Church traditionally pays to the rights and relative importance of the congregation.

“In the ‘Melish Case,’ a lower court judge, oblivious to the long struggle for democracy in church affairs that underlies our Canon Law, substituted for this mild penalty a drastic civil court injunction enforcing the congregation’s compliance with the bishop’s judgment upon pain of fine or imprisonment for contempt of court. The judge brushed aside the provisions of our Canon Law and substituted a penalty of his own choosing.

“Was not this a clear intrusion of the civil court into the realm of Canon Law in violation of the State and Federal Constitutions, both of which establish absolute separation of church and state?”

“If this precedent is permitted to stand unchallenged, what of the future? Unless the church preserves the integrity and independence of its Canon Law, and its right as a church to think, to preach and to operate free of any encroachment by the state, may not the day come when the church will find itself deprived of its cherished liberty?”

“From the first pronouncement of the bishop’s judgment in the ‘Melish Case,’ the diocesan authorities in Long Island have found themselves confronted with an enraged congregation on the war path, shocked beyond words at the inhuman treatment meted out to one of

the most distinguished rectors in the entire Episcopal Church, and outraged at the 'lynch law' procedures utilized to remove two ministers whose personal integrity was admitted but whose political opinions were distasteful. Does the church public know that 321 members of the congregation of Holy Trinity Church had the courage to offer to go on the witness stand in the civil court proceedings and there defy the bishop's judgment? Or that when the first twelve of them had testified, the testimony was so damaging, that the counsel for the vestrymen and the bishop, to prevent the introduction of further evidence of this character, agreed to a stipulation now in the court record to the effect that there *were* 321 parishioners prepared to defy the bishop's judgment. In the light of this fact, and the subsequent history of more than eighteen months' intensive struggle to reverse the bishop's judgment on the part of this same valiant congregation, it becomes unmistakably clear that the bishop of Long Island could not, and cannot, enforce his highly unpopular and morally questionable judgment *without the help of the coercive power of the civil court.*

"THE CHURCHMAN had a representative at the Court of Appeals in Albany. It was notable in the course of the proceedings that Mr. Theodore Kiendl, attorney for the old vestrymen (seven of whom are no longer in office), did not so much as appear! The burden of the case was carried *by the bishop's chancellor*, Col. Jackson A. Dykman, who fought tooth and nail to prevent the state's highest court from reviewing the 'Melish Case' so that the power of the civil injunction might remain at the discretion of the bishop to invoke. This is the frightening aspect of the matter, that a bishop—who ought to be defending the independence of the church against the inroads of the state—in this case was so set upon increasing his personal authority that he lost all perspective and actually accepted the role of a litigant *who was appealing to the state to employ its full coercive power in an ecclesiastical dispute against a congregation!*

"In the light of the long history of painful struggle to democratize the Canon Law, which is the heroic contribution of the American church in the New World, this action of Col. Dykman is a throw-back and a repudiation of all our hard-won congregational rights and ecclesiastical liberties. Whether they know it or not, the rector and the congregation of Holy Trinity are standing in a great fighting tradition—we say—the tradition of our church in democratic America."

What was happening in this court room cannot be detached from the larger framework of a struggle going on within the entire Protestant Episcopal Church. Bishop Ludlow, in his address to the diocesan convention of Newark, recently declared: "Attempts have been made to drag into our American Church life the whole mass of customs



and traditions from the English Church. The latest attempt was at the last General Convention in San Francisco when one of the prime movers in the Melish Case tried to persuade the House of Deputies to adopt an indefinite mass of English laws and traditions as binding upon this Church. What was the motive behind this effort? This move was properly rejected by the House of Deputies, and we can be grateful that they stood up for our American rights." The introducer of this legislation at the 1949 General Convention of the Protestant Episcopal Church in San Francisco was none other than Col. Jackson A. Dykman, chancellor of the diocese of Long Island. A pattern of centralized episcopal authority which the General Convention of our Church had rejected at San Francisco, was being surreptitiously advanced in the court rooms of New York State in the hope that under the camouflage of the removal of a political dissenter the precedents could be legally established that would increase episcopal authority throughout a traditionally democratic Church.

So important is this point to an understanding of our struggle at Holy Trinity that we quote from the authoritative article on "The Protestant Episcopal Church" prepared for the eleventh edition of the *Encyclopaedia Britannica* by the Reverend Dr. Daniel Dulany Addison, a noted historian of our Church and authority on its canon law:

"With many likenesses, the Protestant Episcopal Church is different from the Church of England in its organization and representative form of government. It has the three orders of bishops, priests and deacons, and uses an almost identical liturgy; but it is a democratic institution in which the laity have practically as much power as the clergy, and they are represented in all legislative bodies. The constitution of the Church follows in many particulars the constitution of the United States. As the separate states of the Union are made up of different townships, so the diocese is composed of separate parishes; and as a nation is a union of the states, so the Church is a union of the dioceses. The American plan of representative government is consistently adhered to. The Church in America is thus a part of the Catholic Church of Christ, with its roots deep in the past and yet a living body with a life of its own, standing for the truth of the Christian religion in the great republic. . . .

"A special feature of the government of the Church is the power given to the laymen. In the parishes they elect their own clergyman; and they have votes in the diocesan convention and in the General Convention, and are thus an integral part of the legislative machinery of the Church."

The refusal of the state courts to grant us any relief confronted us as a congregation with the question as to whether we should attempt to appeal our case to the United States' Supreme Court. If the lower court decision could be reversed, or even if the injunction could be lifted or modified as it constrained the freedom of the congregation, it would make possible the restoration of Dr. Melish to his rightful place as the rector of our parish. This, we were all agreed, was the end in view. What would be the situation, however, if the Supreme Court upheld the lower court decision, or if it rejected our application for a review? Insofar as we can analyze the legal situation, the outcome of an appeal to the U. S. Supreme Court would have a bearing simply on the question of restoring Dr. Melish to the rectorship. It would not otherwise affect the determination of the future policies or ministry of the parish. The relation of the assistant minister to the parish was never altered by either the bishop's judgment or the lower court decision. It is our studied conviction that the successful conduct of our struggle to date in winning control of the vestry and in maintaining the parish, has given our people through our new vestry the initiative. If Dr. Melish cannot be restored, there will be a vacancy in the rectorship of Holy Trinity, which it will then be the duty and the responsibility of the new vestry to proceed to fill. As to our rights in this matter, we stand on the traditional practice of the Protestant Episcopal Church, expressed in the words of Dr. Daniel Dulaney Addison: "In the parishes they elect their own clergyman."

Bishop Parsons, one of the outstanding historians, scholars and statesmen of our Church, analyzes the practice of our communion in a series of articles appearing in *The Witness* in June and July, 1950. In his analysis Bishop Parsons makes two assertions that are fundamental to the position that we intend to maintain.

First, he writes: "The initiative (in the calling of a rector) lies with the vestry." So clear is this point that it is incorporated in the Religious Corporations Law of the State of New York, section 42: "The vestry may, subject to the canons of the Protestant Episcopal Church in the United States, and of the diocese in which the parish or church is situated, by a majority vote, elect a rector to fill a vacancy occurring in the rectorship of a parish, and may fix the salary or compensation of the rector."

Second, he continues: "The canon does not intend to give the bishop an unlimited veto power. . . . The vestry should understand that the bishop has full advisory rights in the matter of their choice and indeed as loyal churchmen they should welcome his counsel but that *the initiative and final decision rest with them*. The bishop may veto that

decision only when he is satisfied that the person chosen is in character and education not properly qualified to be in the ministry at all . . . the bishop can [not] veto an election because he does not like a man's theology or his social views, or his personality, or if he is outside the diocese, because he is not the kind of a man that he wants in it. It is not, and this is vitally important, a question of whether the bishop thinks the man would not be well adapted to the particular parish. *That is the vestry's decision.* . . . The bishop must, to put it bluntly, be satisfied that the man ought not to be in the ministry at all."

We add to this the pertinent comment, mentioned several times in the course of this narrative, that the bishop himself under oath on the witness stand attested to the sincerity and the integrity of both our ministers. As to their character and their education, there can be no question of their being "duly qualified." They are both already resident in the diocese. The parish wants them as its spiritual leadership.

The area of our freedom of choice will be determined by the outcome of the appeal to the United States' Supreme Court. After many consultations, the decision has been made to apply for a writ of certiorari granting us a review of our case. In announcing this decision to the public, a statement was released jointly by Lewis Reynolds, senior warden, in our behalf; and by the rector, Dr. Melish. We know no better way to state our present position and intentions than to conclude with their striking words.

## STATEMENT

ON THURSDAY, Oct. 5, 1950, the Court of Appeals of the State of New York declined to review the case of Holy Trinity v. Melish, stating that "no constitutional issue was properly raised in the courts below." This refusal of the Court of Appeals, based on a procedural ground, nevertheless leaves the implication that a constitutional issue is involved.

Precedent exists that the United States' Supreme Court may be asked, and will often consent, to review a case where a constitutional issue is involved, even when the highest State Court has declined to give a ruling.

On this basis, the decision has been made jointly by the rector, Dr. Melish, and the congregation of the Church of the Holy Trinity, to apply to the United States' Supreme Court for a writ of certiorari that will permit a review of the case by the highest tribunal in the land.

We believe that a fundamental constitutional issue is involved in this case. The Canon Law of the Diocese of Long Island specifically states that when a parish refuses to obey a bishop's judgment dissolving a pastoral relation, the penalty for such disobedience shall be deprivation of representation in the diocesan convention.

In the face of this exclusive ecclesiastical penalty, the lower court imposed a different and more drastic penalty upon the congregation. This took the form of a sweeping civil court injunction involving the possibility of fine and imprisonment on pain of contempt.

In so doing, the Court set aside the established Canon Law of the Church and substituted a penalty of its own choosing. It thereby clearly breached the principle of the separation of Church and State set forth in both the State and Federal Constitutions.

This constitutional issue takes on added weight because, within a few weeks of the rendering of this decision in the case of Holy Trinity v. Melish, the same lower court judge in another important case, that of the Cadman Church v. the Congregational-Christian Churches, similarly imposed a civil court injunction in a specifically ecclesiastical dispute.

The result of this has been to restrain forever the churches of congregational polity from entering into any church union. In both these instances, the civil court ignored the authority of existing ecclesiastical organs of the denominational bodies involved.

Instead, it substituted decisions of the civil court that affect practices of the national church bodies of two great Christian communions.

The rector and the congregation of Holy Trinity Church have moved slowly to this joint decision, and have reached it only after many conversations involving not merely their own parishioners but respected leaders of the Protestant Episcopal and other churches. The consensus of opinion is clearly in favor of pressing this fundamental issue to the highest court in the land.

Because of widespread misunderstanding, we wish to make it quite clear that the case of Holy Trinity v. Melish was originally taken into the civil courts by a majority of the vestry of this parish, whose action in seeking the pastoral dissolution was repudiated by the vast majority of the legal voters of the parish.

Seven of these vestrymen have been replaced at the two annual parish meetings that have since occurred. These old vestrymen took this action on the advice of the chancellor of the Diocese of Long Island, Col. Jackson A. Dykman, upon whose shoulders rests the moral responsibility of advising resort to the civil courts in an ecclesiastical matter that should have been resolved within the family of the church.

Since this case has been taken into the courts, we have now no other recourse than to seek such relief as the law provides through appeal proceedings.

Members not only of the Protestant Episcopal Church but of other denominational bodies as well, including members of the Congregational-Christian Church, have made it unmistakably plain that this issue of the separation of Church and State is a matter of basic concern to all religious groups.

It has been indicated to us that, individually and as a congregation, we have the responsibility of clarifying this issue and presenting it concretely to the highest tribunal available.

Our decision, therefore, is something more than that of one injured pastor or of a congregation deprived of its fundamental rights. It is, we believe, the expression of the religious community's concern that a principle essential to the very fabric of the democratic structure of the Protestant Episcopal Church and the United States of America itself, is here at stake.

The people of Holy Trinity Church, under conditions made extremely difficult by widespread misrepresentation of the facts in this controversy and by the existence of a state of general public hysteria bearing on all civil liberties, have reached a clear and determined decision.

**We believe that the right to preach the Christian Faith itself—its vitality, its freedom, its opportunity—all are involved in this case. This unexpected and unwanted burden of responsibility has been thrust upon us by the urgencies of this historic period of tension.**

**Under God, humbly and prayerfully, we take this action in the faith that it will help contribute to the integrity and the vitality of true Christian witness within the United States and before the eyes of the entire world.**

Copies of *The Melish Case: Challenge To The Church* and additional copies of *The Story of a Congregation* may be obtained by writing:

MELISH CASE DEFENSE COMMITTEE  
MRS. ELLA P. ROSE, *Treasurer*  
161 Henry Street, Brooklyn 2, N. Y.











PHOTOMOUNT  
PAMPHLET BINDER

Manufactured by  
GAYLORD BROS. Inc.  
Syracuse, N. Y.  
Stockton, Calif.

BX5960 M52B87  
The story of a congregation : why the

Princeton Theological Seminary-Speer Library



1 1012 00051 2881