

1

THE ABOMINABLE INCUBUS,
THE CHURCH AS BY LAW ESTABLISHED

by

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The Whig theory of the nature of the British ecclesiastical establishments had been laid down in 1736 by an able controversialist, later bishop of Gloucester, William Warburton. The Alliance between Church and State, or the Necessity and Equity of an Established religion and a Test Law, (London, 1736) described the connection as "a compact between two sovereign powers each ordained for its own proper function"¹ each supporting the other. The church secured public endowment for its clergy. The church supported the institutions and the officers of the State. The State to its inherent civil authority could now claim the benefit of religious sanctions. The compact so defined was analagous to the contemporary doctrine of the social compact and indeed derived from it. Do you ask when the compact was made, where are the documents, who were the signers of such a charter? He answers "It may be found in the same archive where the famous original compact between magistrate and people, so much insisted on in vindication of the rights of mankind is repositied".²

The basis of the alliance rested solely upon its usefulness, not upon divine right or upon truth of the doctrines professed. "The true end for which religion is established," wrote Warburton, "is not to provide for the true faith, but for civil utility."³

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There was therefore no anomaly in Britain's having two established churches, north and south, Presbyterian and Episcopal. The state allied itself to the church of the majority. Questions of forms of government were not the issue. It was in the interest of the Church establishment to retain its majority, and therefore to be as comprehensive as possible, for the existing compact was permanent, but not irrevocable.

Warburton's analysis exactly suited the Whig ruling class, but he was of too speculative a genius and too arrogant to be wholly acceptable to churchmen. It was left to a sober north country successor to write the text-book definitions. William Paley, 1745-1805, became and remained a best selling authority in theological studies. In his Moral and Political philosophy written in 1788, book 6, chapter nine "Of religious establishments and of toleration," begins "A religious establishment is no part of Christianity, it is only a means of inculcating it," and therefore "the authority of church establishment is founded in its utility."

Paley would reject the "arbitrary fiction" of a compact between state and people. It was enough for him that the establishment existed without clear paternity, and that it was useful. The clergy were freed from any dependence upon voluntarism. While all might not be scholars, they would at least be educated men, and enough scholars would arise. "We sow many seeds to raise one flower." Otherwise "preaching in time would become a mode of begging," and "A ministry so degraded would soon fall into the lowest hands." But for Paley three conditions must be fulfilled to retain the establishment in its most useful state. Confessions of faith and articles of subscription must be made as simple and easy as possible. Dissent must be fully tolerated provided that the dissenter was not exempted from church support. And the church established must remain the majority church of the nation. "If the dissenters from the establishment become a majority of the people, the establishment itself ought to be altered or qualified."

If Warburton and Paley showed a somewhat complacent England the providential utility of that best of all worlds, the French

Revolution woke the nation to the alternatives. The Terror and the war with France drove England into an urgent conservation, and the established church was seen to be not only rational and utilitarian, but in Edmund Burke's words "the first of our prejudices."⁴

The church "by law established" in England was seen to be a providential act. No man questioned by what law it had been established. The phrase had first been used in the Canons of 1603. The Scottish establishment indeed had been legally effected in its existing form in 1706. It was enough that the established Church of England had always been.⁵

In the colony of Upper Canada, product of these years, there was for many no difficulty about the establishment. Canada was the refuge of those who chose British institutions rather than remain in the lands of revolution. To the question then "when was the Church of England established in Upper Canada?" they could answer "and when was it not?" On their understanding, the national church needed no act of establishment in a colony. It did need, from parliament or from local legislature, endowments, regulation, "settlement," support. The establishment could be assumed. The details, the degree of public support, the legal matters, must be left to the generosity of crown and parliament, to the instructions to governors and to local action.⁶

Nova Scotia's first legislature did indeed pass "An Act for the establishment of religious public worship in this province and for suppression of popery." [Statute 32 George II, Chap. 5, N.S. 1758] "for the more effectual attainment of His Majesty's pious intentions... the liturgy of the Church established by the laws of England shall be deemed the fixed form of worship among us." Its true intent appears to have been to assure freedom of worship and exemption from church rates for all Protestant dissenters, and the summary banishment of all popish clergy. It bears the marks of its time, 1758 and the Anglo-French war.

New Brunswick's first legislature passed an Act for "preserving the Church of England as by law established in this province"

in 1786.

So the Canada Act of 1791 recited and reaffirmed the successive instructions to governors "for the encouragement of the Protestant religion" [31, Geo. III, c. 31, sec. 35], decreed a permanent appropriation of land, for the support and maintenance of a Protestant clergy [Sec. 36] and authorized the erection and endowment of parsonages or rectories, according to the establishment of the Church of England" [sec. 38] A further section [sec. 42] made it impossible for the local legislature to "vary or repeal" any of the ecclesiastical clauses without reference to both houses of parliament. And William Pitt, guiding the bill through the Commons, defended the whole as a measure to encourage the established Church.⁷

John Strachan was of course aware of the variation in the provinces. "By the Provincial law of New Brunswick and Nova Scotia this church is established."⁸ In Upper Canada the establishment had no such benefit, nor any such liability, for what a provincial legislature may create, it may also destroy. But it remained the establishment, and by that term Strachan and others habitually referred to it. In the testimony of a hostile witness "for several years it was generally supposed that the Church of England was established by law in the Province."⁹

The question may well be asked whether the English establishment was useful or desirable in Upper Canada, given the changing religious opinions and the conditions of an American frontier. Few would recommend it by the mid-nineteenth century; presumably no one would do so now. But it is only right that it should be judged by the contemporary standard, utility.

A case could be made, and John Strachan and others made it, again and again. The new government needed support, needed the sanctions of religion, needed intelligent and persistent advocacy among the people, needed it desperately among the French and therefore worked through Roman Catholic bishops and clergy, needed it among the English speaking and was more or less prepared to pay the price. Grenville and Pitt saw it as the error of their predecessors that in the general policy of assimilating

the American colonies to the British constitution, the church had been neglected. The church also needed the support of government. How else could these raw settlements be given the sacraments and the solace of religion, let alone the buildings? If burgeoning London and Glasgow, Edinburgh and Manchester could legitimately receive churches and endowments in this period solely from state funds, could this dispersed frontier hope for them in any other way? Local pride in Kingston or Cornwall might be induced to begin construction. Government had to assist, and only government could supply salaries. Whatever the deficiencies of the Christian society by 1814, thirty years after the beginning of Upper Canada, and they were many by any standard, such religious ministrations as there were owed their support to government.

Strachan was, of course, an establishment man. His whole frame of reference assumed a close connection between, even an identification of, church and state. Had he remained at home he would have been a Moderatist in the Church of Scotland among the men who had briefly brought theological "tranquility" to Scotland. The establishment created in Upper Canada as in Britain the conditions under which progress would be made. And Strachan even as his friend Thomas Chalmers in Scotland was filled with useful plans that the establishment made practicable: schools, a university, educated and self-respecting colonials, churches, the parochial system, an informed respectable and industrious clergy, the services of religion available to the whole population. He would fight for it in the years to come as a principle worth preserving. But it is important to realize that he believed in 1815 in its utility. He was above all else a practical man rather than a theorist, and for him the establishment worked.

The years from 1815 to 1854 were to bring defeat to the whole concept of a church establishment in Upper Canada. The reasons are many but may be grouped into four: an initial internal difficulty in the assumptions of a colonial establishment, that is the existence of the Church of Scotland in Upper Canada, secondly, changes in church and state relationships in

England, thirdly, the American separation of church and state, and fourthly, the weakness of the "privileged" and "dominant" church in the colony.

Historically, the first assault upon the assumptions of the English establishment came from the Scotch.

The members of the Church of Scotland in the Canadas quite naturally believed themselves entitled to government assistance. The clause in the Canada Act about "a Protestant clergy", taken by itself, clearly could include Church of Scotland clergy. Aged politicians were later to recollect that in 1791 the inclusion of the Scotch church had been intended. Politicians know the value of ambiguity. In the Bathurst Papers¹⁰ there is an interchange between Earl Bathurst, the Colonial Secretary, George Canning and others agreeing that they could not contemplate parallel establishments in any of the colonies beyond exceptional assistance in specific cases. Nor could Upper Canadians expect much support from the Church of Scotland. At the General Assembly of 1796, the Rev. George Hamilton of Gladsmuir, later Moderator, had effectively put down a movement to support Church of Scotland expansion overseas and official recognition of missionary societies in a speech which included the words, "Why should we scatter our forces and spend our strength in foreign service when our utmost vigilance, our unbroken strength is required at home? While there remains at home a single individual without the means of religious knowledge, to propagate it abroad would be improper and absurd."¹¹

Hamilton had visited his brother Robert Hamilton, merchant of Kingston and Queenston, Upper Canada. You will observe that he was therefore connected with that pack of Upper Canadian Scots, the Dicksons, Clarks and Nicholls, that he was brother-in-law to Robert Gourlay, and had interviewed and hired John Strachan.

The Church of Scotland until the mid-twenties was of little help to Upper Canada. Secession clergy were more apt than theirs to emigrate. American Presbyterians presumably had no interest in government support. The initiative had to come

from Upper Canadians. Prompted by them, the Upper Canadian Assembly passed an address to the king in 1824 asserting "that the Churches of England and Scotland had...equal rights...and an equal claim to enjoy any advantages or support."¹² The position had already been conceded by Lord Bathurst. Clergy of the established Church of Scotland were Protestant clergy and entitled to support.¹³ The Church of England, led by Bishop Jacob Mountain vigorously protested, and the long and public protest was the first engagement in the battles of the Clergy Reserves. The financial results for either of the established churches were negligible at the time, since the reserves were nonproductive. The legal aspects of the church's position had become a matter of public debate.¹⁴ The assumptions of an establishment were raised, faced and put to dispute. By January of 1826 the Assembly of Upper Canada concluded that the Reserves were for all protestant groups, or could be applied to other purposes.

The changing relations between church and state in England and the changing theories generated must be condensed to a paragraph. The old simplicities of Warburton and Paley were gone, save perhaps a continuing concern for utility. The British legislation of 1828, 1829 and 1832, and the pressure for English disestablishment demanded new interpretations and such diverse persons as W.E. Gladstone and Sir Robert Peel, Bishops Philpotts and Lloyd, Keble and Pusey, Newman and Froude produced them. The old church was something of an anomaly in an increasingly pluralistic society and fortunately in the next decades it was to reform and transform itself. But among other changes it discovered what American and Scottish Episcopalians had long known, that the catholic and apostolic church was also a divine society independent of the state, that the distinctiveness of its ecclesiastical professions did not derive solely from the English crown. Churchmen in Upper Canada at least had alternative ground should the establishment go.

Even if the founding churches in Britain had not changed over the first half of the nineteenth century the American

environment would presumably have forced its own pattern upon Canadian church life. For the American doctrine of the separation of church and state was not simply a despairing solution to colonial religious diversities, far less the denial of religion by an infidel state as some Englishmen believed. It was also a reasoned response to new American attitudes, to concepts of democracy, egalitarianism and denominationalism. All churches were free before the law. None was privileged (save in those states where establishments still held) and by denominationalism, in theory at least, all churches were held to be equal parts of one great Christian society separated only in name but separated justly for conscience sake until religious separatism was held to be a good in itself. There was clearly no room for a national church, and very little room for that basic geographical unit of the usual establishment, the parochial system. Americans in 1810 worshipped in "gathered" congregations called apart from a largely unchurched world, rather than in parish churches.¹⁵

The tendency to fragmentation was strong. When a denomination arose able to work out an organization that would overcome such handicaps, the frontier was theirs. The Methodist Episcopal system of conferences, circuits and societies was an admirable institution for its purposes. Tightly organized under the dominating personality of Francis Asbury, it sent out itinerant preachers who collected congregations, recruited readers, class leaders and more itinerants who went on in ever expanding circles forever hiving off in more circuits, more congregations, forever riding west and north with the frontier. Inevitably they crossed into Upper Canada and found an instant response. The itinerants may have been often ignorant, American in all their assumptions, and soon gone, but they left classes and congregations behind them and they recruited bright young men who could preach the word of God to their neighbours, or ride off themselves to conference, ordination and circuits of their own. The Episcopalians paid them the sincere compliment of imitating them, the American Episcopalians with their

bishops of missionary districts, Charles James Stewart and John Strachan with travelling missionaries. Other sects were to follow the Methodists across the New York state border, but none so fully met the needs of Upper Canada. The result was disastrous to the idea of a national church. Canadians had heard the gospel and now preached it without help from any establishment. Their church was their own achievement, product of their own wills, and not the will of government. Thus was effected the real separation between church and state, not by the theory of American constitution-mongers, but by the practise of Upper Canadians.

The shrewd Samuel Wilberforce, bishop of Oxford, noted this aspect of voluntarism as characteristic even of American Episcopalians. "They belonged to (the church) because they chose to join her - because she was more reasonable or comely in their eyes than others - because they willed it; and to this action of their will, and that of others around them, it seemed as if she owed her being."¹⁶

The ultimate cause for the failure of the ideal of the English church establishment in Upper Canada was the weakness of the church itself. Its opponents thought of it as privileged and richly endowed. They suspected, with justice, that it wished to be dominant and province wide. They saw its leaders in positions of power, members of the Legislative Council and of the Executive, supported by government here and at home. Bishop Mountain was august and influential, though largely absent. The plain Charles James Stewart was firm in his convictions, active, and well-connected. And always there was John Strachan busily directing affairs at every level. Yet in fact the most strenuous efforts of even these men could not offset the essential weakness of the church.

So much of the English establishment depended upon the parochial system. In Wilberforce's phrase "It acquired all those associations and prescriptive rights whereby an hereditary church maintains her hold upon the love and reverence of men."¹⁷ The parishes provided the sense of continuity, the feeling of permanence, the identification with the land. Its marks were

the familiar spire, the church bell, the accustomed clergyman hidden beneath his surplice and behind his prayer book, anonymous, undemanding, yet available, the liturgy unchanging and predictable, finding its echo in each man's memory. When the whole could be transplanted, the English emigrant found himself strangely at home, in touch with his God, if he was so minded, or at least aware of his inheritance. Alas, it did not readily bear transplanting. Time was too short. The environment was too dissimilar, the distances too vast, the settlements too dispersed. When by good fortune an English parish church appeared, men warmed to the achievement and diligently worked for more. Kingston under John Stuart had early shown that it was possible. John Strachan was not the least of its captives. Niagara, York, Etobicoke, Thornhill each in its time appeared to reproduce the English parish. But so few and scattered were they that men saw them as curiosities, not as the fabric of their own society as indeed they were not. A generation without memories of a national church, a generation or two of immigrants from the south, broke the continuity. The parochial system where it existed was an anomaly outside their experience, making no demands upon their allegiance.

And always there was the vast error of the Clergy Reserves.

John Strachan maintained that the reserves were the gift of a pious king exercising his just prerogative. In fact George III had seen the bill for half a day only in October 1789.¹⁸ William Grenville added the clergy reserve article at the last moment apparently on his own initiative, as part of his attempt to reproduce the English social structure of squire and parson. The reserves were to be in the hands of government as a prospective endowment for the church. These or other lands would provide four parishes in every township. Patronage remained in the hand of the lieutenant governor. A magnificent gesture, the reserves could be worth nothing for years.

What can one say more about the clergy reserves? For Egerton Ryerson they were "the abominable incubus" par excellence.

Every little politician made them his whipping boy. Every land speculator and land company saw them as competition and sought to acquire some or all. Countless individuals squatted upon them, robbed them of their timber, abused their leases. On any dispersed frontier, vacant lands held for a rise in value, whether by the crown or by speculators, were a major social liability. Regrettably, in the early years little compensating revenue came in. They were a gift never fully given which the church could neither effectively use nor readily repudiate.¹⁹

In the end the ideal of the church establishment must come under the judgment of its own standards. Utility it may have possessed in limited measure in the first days of settlement, utility alike to the state and to the church. Its presumably overwhelming resources were not of the kind that would meet the needs of later stages of development. Of William Paley's three further qualifications what can be said? Ease of subscription was not for Canada to decide, although Mountain, Stewart and Strachan in their time were remarkably liberal in practise. Tolerance of dissent under the law was far in advance of English practise from the beginning. Though the Methodists had no authority to register marriages until 1830, not being settled clergy, dissenters were equal citizens, paid no church rates, enjoyed full liberty of worship.

Finally, affirmed Paley, the established church must remain the church of the majority. And here indeed the ideal collapsed entirely. Richard Cartwright had counselled in 1790 that only 5% of the population were churchmen, and that an established church was undesirable. Bishops might labour mightily, John Strachan might claim in print, and purport to demonstrate in Ecclesiastical charts, that most men were nominally Church of England or could become so given the opportunity. They failed, and did so at that point where a national church can least afford to fail in securing the consent of the people.

FOOTNOTES

- ¹ Sykes, Norman, Church and State in England in the XVIIIth Century. Cambridge, University Press, 1934, p. 320.
- ² Warburton, Wm. Alliance between Church and State, London, 1736, pt. 2, sec. 3, p. 90-1.
- ³ Alliance, pt. 2, sec. 5, p. 148-9.
- ⁴ Burke, Reflections on the revolution in France, London, 1790, p. 147.
- ⁵ Garbett, Cyril, Church and State in England. London, Hodder and Stoughton, 1950, p. 30.
- ⁶ cf. A.H. Young, "A Fallacy in Canadian history" in Canadian Historical review, Dec. 1934 "not endowments, property, support of the clergy, and a share in the government of a province or of its municipalities are the essential points in an establishment, after all, but rather beliefs, doctrine, discipline, forms of worship and of orders."
- ⁷ cf. Harlow, Founding of the second British empire, 1763-1793, vol. 2, London, Longmans, 1964. p. 770.
- ⁸ O.P.R.A., S.P., Strachan to Wilmot Horton, 25 May 1824.
- ⁹ James Richardson in the Christian Guardian 31 July, 1833, quoted in J.J. Talman, "The position of the Church of England in Upper Canada, 1791-1840" Canadian Historical review, Dec. 1934.
- ¹⁰ Historical Manuscripts commission. Report on the manuscripts of Earl Bathurst, London, H.M.S.O. 1923, pp. 564, 569, 570.
- ¹¹ John M'Donald, Civil Church establishment, Glasgow, Aird and Coghill, N.D., p. 218.
- ¹² O.A. 11th report, 1914, p. 607, Journals of the Legislative Assembly of Upper Canada.
- ¹³ P.A.C. series Q, vol. 159, pp. 428-9, Bathurst to Jacob Mountain, Aug. 1821.

14

The controversy is best summarized in Millman, T.R., Jacob Mountain, University of Toronto Press, 1947, pp. 158-168.

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cf. Hudson, Winthrop S., American protestantism, cap. 1, sec. 3 "The concept of denominationalism", Chicago, University press, 1961.

16

Wilberforce, Samuel, A history of the Protestant Episcopal Church in America, 2nd ed., London, James Burns, 1846, p. 241.

17

Samuel Wilberforce, History of the Protestant Episcopal Church in America, London, James Burns, 1846, p. 241.

18

Harlow, V., Founding of the Second British Empire, vol. 2 London, Longmans, 1964, p. 765.

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cf. Alan Wilson, The Clergy reserves, a Canadian mortmain, Toronto, University of Toronto press, 1968.