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EDITORIAL

Editorial

Benjamin Harrison

Barrister, Serjeants' Inn Chambers, London, UK
Email: editor@ecclawsoc.org.uk

The unifying nature of liturgy

The Comment section of this issue of the *Journal* is dedicated to considering the laws of worship and liturgy in the Church of England. Bishop Martin Warner frames this discussion from a theological perspective. In his contribution, Warner emphasises the *unifying* nature of liturgy: it engages 'with a hugely diverse range of human circumstances and need, uniting its participants in a shared enterprise'.[1] He goes on to identify that this enterprise

> must also teach and communicate faith that will withstand distortion. This accounts for the importance of image, repetition, gesture, sensory perception (smell, touch, taste), and simplicity as elements that should remain characteristic of the Church's public worship and theological integrity.[2]

Pointing to the provisions of Canons B15 and B16, Warner reminds us that there is no entitlement on the part of the faithful to participate in worship on their own terms. There is, as he puts it, 'a cost to discipleship'.[3]

The tensions inherent in regulating public worship

There is an inherent tension in the Church's attempt to seek to control an expression of what are essentially *personal* spiritual beliefs through man-made law. However, the integrity of any faith depends upon certain beliefs and behaviours being common to all its members.[4] Thus, ecclesiastical law seeks to provide a framework through which the Christian faith can be expressed through liturgy and worship. To succeed, such a framework must coalesce around a basic, corporate

[1] M Warner, 'The law of liturgy: a theological context' (2025) 27 Ecc LJ 53–58, at 57.
[2] Ibid, 57. Emphasis added.
[3] Ibid, 55.
[4] M Hill, *Ecclesiastical Law*, 4th edn (Oxford, 2018), para 1.05, note 14 (citing R Ombres, 'Faith, Doctrine, and Roman Catholic Canon Law' (1989) 1 Ecc LJ 33).

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understanding of what is (and what is not) doctrine touching on so-called 'essential matters'.[5]

The sheer challenge of this endeavour is summarised by Neil Patterson, who traces the development of what he calls the 'consistent legal reality of non-enforcement of liturgical law' since the famous Ritualist trials of the 1870s.[6] The familiar story he tells recounts just how traumatic the Church found the process of regulating public worship to be during this period. At the turn of the 20th century, the *Report of the Royal Commission on Ecclesiastical Discipline* reflected on this unfortunate episode and concluded that:

> the law of public worship in the Church of England [was] too narrow for the religious life of [that] generation. It needlessly condemn[ed] much which a great section of Church people, including many of her most devoted members, value; … the Church has had to work under regulations fitted for a different condition of things, without that power of *self-adjustment* which is inherent in the conception of a living Church …
>
> …
>
> It is important that the law should be reformed, that it should admit of *reasonable elasticity*, and that the means of enforcing it should be improved; but, above all, it is necessary that it should be obeyed. That a section of clergymen should, with however good intentions, conspicuously disobey the law, and continue to do so with impunity, is … a scandal to religion and a cause of weakness to the Church of England. It is not our duty to assign responsibility for the past; we have indicated our opinion that it lies in large measure with the law itself. But with regard to the future we desire to state with distinctness our conviction that, if it should be thought well to adopt the recommendations we make in this report, one essential condition of their successful operation will be, that obedience to the law so altered shall be required and, if necessary, *enforced*, by those who bear rule in the Church of England.[7]

Three themes emerge from these recommendations which provide a lens through which we might examine the Church of England's attempts to regulate liturgy and worship in the 21st century. First, the need for the law in this area to be capable of *natural evolution* – 'self-adjustment' – over time. Second, the requirement for law to embrace a degree of *flexibility* – 'elasticity' – rather than absolutism. And third, the need for 'red lines' which, if crossed, warrant meaningful, albeit *proportionate*, measures of enforcement.

[5] cf. Canon B2 para 1 (approval of forms of service by General Synod); Canon B4 paras 1–3 (approval of forms of service by the Convocations, archbishops, and ordinary); Canon B5 para 3 (discretion of the minister in the conduct of public prayer); Canon B38 para 2 (burial service to be approved by the ordinary in certain circumstances); and Canon B43 paras 7(4)(b) and 11 (in the context of ecumenical relations).

[6] N Patterson, 'The Origins of Liturgical Lawlessness' (2025) 27 Ecc LJ 59–66, at 59.

[7] *Report of the Royal Commission on Ecclesiastical Discipline* (1906). The conclusions can be accessed here: <https://anglicanhistory.org/pwra/rced11.html>, accessed 7 October 2024. Emphasis added.

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Evolution

The Church of England (Worship and Doctrine) Measure 1974 gave General Synod the power to authorise new forms of service and in so doing granted the Church the freedom to change its liturgy over time. However, in addition to Synodical deliberations, we can also see how an evolving understanding of worship and liturgy plays out in the context of the Church of England's faculty jurisdiction.

Moira Astin's contribution focuses on the role of the Diocesan Advisory Committee (DAC) in the context of petitions for faculties to change the fabric of listed Church of England churches. In performing functions of 'care and conservation' under the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, the DAC is under a statutory obligation to have due regard to the '*rites* and *ceremonies*' of the Church of England.[8] Astin identifies the unique contribution archdeacons play in the DAC's deliberations: they are experienced priests who are able to step back, pivot from their own personal liturgical mindset, and draw out the missional advantages of proposed alterations from the perspective of the worshipping community bringing the petition.[9] Indeed, as the Court of Arches made clear in *Re St Alkmund, Duffield*, a worshipping community's evolving understanding of worship and doctrine is relevant to the balancing exercise a consistory court must undertake when considering petitions for a faculty:

> … we … appreciate the concerns of the petitioners about the theological symbolism of this particular chancel screen. Moreover, perhaps because the argument was presented to the chancellor differently, we consider that he too readily dismissed this theological aspect of the petitioners' case. The theological/doctrinal stance of a particular congregation cannot of itself determine whether or not a faculty should issue, and it is not a basis on which, taken alone, we would have allowed this appeal. Nevertheless, it is certainly a matter which needs to be taken into consideration in assessing the totality of the petitioners' case.[10]

As noted by the current Dean and Auditor (writing extra-judicially in a previous issue of this *Journal*), the ever-burgeoning corpus of case law flowing from the consistory courts of the Church of England reflects a sophisticated and ever-evolving process of refinement:

> [t]he physical results of operating the faculty jurisdiction – petitions granted and refused – can be seen as the embodiment of legal process culminating in the articulation of each building's legal architecture, or 'juristecture'. Henry Moore's altar stands in St Stephen's, Walbrook; the Duffield screen has gone; Rustat's memorial remains in place.[11]

[8] Ecclesiastical Jurisdiction and Care of Churches Measure 2018, s 37(9). Emphasis added.
[9] M Astin, 'Liturgy, law and the Diocesan Advisory Committee' (2025) 25 Ecc LJ 67–70, at 69.
[10] *Re St Alkmund, Duffield* [2013] Fam 158, at para 34.
[11] M Ellis, '"Juristecture" and the regulation of normative space' (2024) 26 Ecc LJ 129–146, at 141.

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There is, however, a tension between (1) the influence that *individual* congregations have on this process of refinement (who have different worshipping patterns and different ideas as to how God calls them to use their church buildings) and (2) the essential *unity* that Warner reminds us liturgy is supposed to foster. On that issue, we turn to consider the part that flexibility plays in this balancing act.

Flexibility

Bishop Robert Atwell draws on his experience as a former Chair of the Liturgical Commission and examines the recent debates in General Synod pertaining to the *Prayers of Love and Faith.*[12] He describes the various routes by which this suite of prayers might eventually be formally authorised, and reminds us that:

> the Church of England has been shaped as much by pragmatism as principle. We have made a virtue out of compromise not only in order to survive, but also in a genuine desire to be comprehensive for the sake of the mission of God in this land. From time to time the parameters of the compromises we inhabit come under intense scrutiny, as they are at the moment, and sometimes they fragment.[13]

It is not the purpose of this editorial to comment on the theological debate that surrounds the *Prayers of Love and Faith*, nor indeed evaluate the decision of the House of Bishops to commend[14] these prayers for use by the minister in exercise of their discretion under Canon B5. What is important to note, for the purposes of this discussion, is that the current period of tension surrounding these prayers exemplifies how the limits of the law of liturgy is being stretched as the Church seeks to balance two competing objectives:

i. The creation of circumstances in which these controversial prayers can be tested, albeit without finally settling (at this stage) the question of their lawfulness;[15] and
ii. The need to affirm that, within this process, there remains a clear normative liturgical framework within which ministers must ultimately operate.

Enforcement

In respect of enforcement in the context of liturgical law, Patterson describes the

[12] That is, resources which have recently been commended by the House of Bishops in praying with and for a same-sex couple who love one another and who wish to give thanks for and mark that love in faith before God: see further <https://www.churchofengland.org/sites/default/files/2023-12/prayers-of-love-and-faith.pdf>, accessed 12 October 2024.

[13] R Atwell, 'The Future of Law and Liturgy' (2025) 27 Ecc LJ 71–80, at 71.

[14] Rather than seek formal *authorisation* pursuant to Canon B4 (i.e. authorisation by either the archbishops or ordinary) or Canon B2 (i.e. authorisation by General Synod).

[15] cf. Atwell (note 13), 77–79.

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> paradoxical wisdom about how authority can, and cannot be used in a Church founded on the Cross, where the redemption of the world was achieved by submission to, not exercise of, worldly authority, by a Saviour who called men and women to follow him but did not *compel* them.[16]

While it is true that we do not hear of the Ecclesiastical Jurisdiction Measure 1983 (or the Clergy Discipline Measure 2003[17]) being invoked formally to reprimand those clergy who persistently use unauthorised liturgical texts, Patterson himself identifies that there exists at least low-level, informal, liturgical discipline provided by bishops and archdeacons giving clear steers to clergy in response to concerns that have been raised with them.[18]

In 2011, Richard Chartres, then the Bishop of London, published a pastoral letter in which he admonished the clergy in his diocese who planned to use the new iteration of the Roman rite (introduced in 2011) when celebrating Holy Communion. He wrote:

> priests and parishes which do adopt the new rites – with their marked divergencies from the ELLC texts and in the altered circumstances created by the Pope's invitation to Anglicans to join the ordinariate – are making a clear statement of their dissociation not only from the Church of England but from the Roman Communion as well. This is a pastoral unkindness to the laity and *a serious canonical matter.* The clergy involved have sworn oaths of canonical obedience as well as making their Declaration of Assent. *I urge them not to create further disunity* by adopting the new rites.
>
> There will be no persecution and no creation of ritual martyrs but at the same time there will be no opportunity to claim that the Bishop's directions have been unclear. All the bishops of the Diocese when visiting parishes will celebrate according to the rites of the Church of England allowing for permitted local variations under Canon B5.[19]

Whilst Chartres was explicit in noting that formal sanctions were not contemplated for those who breached his direction,[20] the pastoral letter was significant because it

[16] Patterson (note 6), 65. Emphasis in original.

[17] A minister's failure to follow a bishop's direction under Canon B5 para 4 on such a matter would arguably amount to misconduct within the meaning of the Clergy Discipline Measure 2003 (being a breach of a minister's duty of canonical obedience under Canon C14 and thereby constitute a failure to do an act required by the laws ecclesiastical within the meaning of the Clergy Discipline Measure 2003, s 8(1)(b)). See further R Bursell, 'Turbulent Priests: Clerical Misconduct Under the Clergy Discipline Measure 2003' (2007) 9 Ecc LJ 250–263, at 254.

[18] Patterson (note 6), 65.

[19] R Chartres, *Do This in Remembrance of Me: A Pastoral Letter on the Eucharistic Life of the Church in London* (2011), which can be accessed here <https://www.yumpu.com/en/document/read/3499228/do-this-in-remembrance-of-me-aeur-diocese-of-london>, accessed 8 October 2024. Emphasis added.

[20] A direction which, despite the uncertainties surrounding the limits of the clergy's obligation pursuant to their oath of obedience, it seems clear Chartres was entitled to make as a 'command … the Bishop by law [was] authorised to impose', as it simply reinforced the rules in the Canons concerning the authorisation of forms of services: *Long v The Bishop of Cape Town* 15 ER 756 at 776 (Privy Council).

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squarely affirmed the *normativity* of the law of the Church of England in this area and in so doing exemplified a proportionate approach to enforcement whilst avoiding a full-blown disciplinary process.[21]

I hope that the selection of Comment pieces in this issue generates further discussion and debate on these important issues. The remainder of this issue of the *Journal* includes articles from Colin Podmore (on the seal of the confession); Philip Petchey (providing a comprehensive summary of the law relating to trees in churchyards); and Jan Hallebeek (on the canon law of the Old Catholic Churches). Robin Ward is a guest contributor to the *Rediscovering Anglican Priest-Jurists* series (on Edmund Wood) and readers will find the usual selection of book reviews, reports, and case notes. I wish to put on record my thanks to John Stuart who is retiring after many years of dutifully preparing reports on the General Synod of the Scottish Episcopal Church for the *Journal*. Dee Bird has kindly agreed to take up the mantle in the future.

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[21] On the issue of the normativity of ecclesiastical law generally, see further B Harrison, 'Editorial' (2023) 25 Ecc LJ 1–4 and the subsequent contributions in that issue of this *Journal*.

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