PROPERTY RIGHTS FOR DISSENTING MEMBERS OF RELIGIOUS CHARITIES

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1. Introduction

This article explores the extent to which religions can change their doctrine and religious government so that their property can continue to be held by those professing new doctrinal beliefs. Connected to this issue is the question to what extent dissident members can claim property as a result of a change in doctrine and religious government or a refusal to change doctrine and religious government. It is an important issue as religious division has a long heritage - for example: the dispute between Paul and James about the extent to which Gentile converts were to observe Mosaic law;[2] the Great Schism between East and West in the eleventh century; and, the Reformation in the sixteenth century -which continues in the present day over issues such as the ordination of women priests in the Church of England.

The issue is becoming more important as church members increasingly seek to assert their 'rights' as donors. This recently led to an article in 'The Guardian' entitled 'Money becomes the new Church battleground'.[3]

Developments in the doctrine of *cy-près* raise the hopes of dissident members seeking to claim a share in the property of their religion. The power to amend charitable purposes *cy-près*, where there is no power of amendment in the charity's trust deed, is generally limited by the requirement for the court or the Charity Commission to have regard to the *'spirit of the gift'*. However, the importance of this requirement has recently been reduced by the Charities Act 2006 (now

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2 Acts 15.

3 The Guardian, 17 May 2012.

Charities Act 2011[4]) which now places a further requirement on the court or the Commission to balance the consideration of the *'spirit of the gift'* (on the one hand) with the need to consider the *'social and economic circumstances'* prevailing at the time of the proposed alteration of the original purposes (on the other hand). Even prior to this liberalisation of statutory *cy-près*, the court[5] had taken a more liberal and interventionist approach in the case of religious charities where opposing factions were claiming charitable property. This article explores developments in modern *cy-près* and other developments in practice for dealing with the division of property between religious factions.

2. Issues

There is a tension between respecting donors' intentions where they give to a religion with doctrinal beliefs which exist at that time and allowing religions to develop. For example, the Roman Catholic Church is slow to amend or declare new doctrine. It has an ancient doctrine of sensus fidelium[6] whereby one way in which to ascertain 'the faith' on a point and consider amendment is to see what is believed by the whole people of God, who by supernatural grace cannot fail to uphold the truth. Although the present Pope accepts the doctrine, he rejects the idea that the faithful is a statistical majority. He insists that that the whole 'people of God' includes the magisterium[7] and ordinary members, so any attempt to distinguish a faithful that stands against the magisterial teaching is misconceived. Further, the 'people of God' includes those who have deceased and their testimony of the faith included in the doctrines of that time.[8] On this analysis, the doctrines of the Roman Catholic Church are unlikely to change and, although this view might be considered by some as over restrictive, the doctrine of sensus fidelium does set a high bar for change.[9] Whatever view is taken of the doctrine of sensus fidelium, a consequence of it is that donors' wishes are respected whether they are living or deceased.

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4 Charities Act 2011, s 62(2).

5 *Varsani and Others v Jesani and Others* [1999] Ch 219.

6 See Code of Canon Law 1983, Canon 212 and Lumen Gentium, 12.

7 The magisterium refers to the teaching authority of the bishops in communion with the Pope: see Catechism of the Catholic Church (2nd Ed, Libreria Editrice Vaticana) para 85.

8 Allen Jr, *Pope Benedict XVI*, Continuum, 2005.

9 See Beal, Coriden and Green, *New Commentary on the Code of Canon* Law, Paulist Press, 2000, p 263-267.

Counterbalanced against the respect for donors' intentions, is the need for churches to be able to develop in the light of modern conditions. As Lord Macnaghten said in *General Assembly of the Free Church of Scotland v Lord Overtoun*:[10]

> Was the Free Church by the very condition of her existence forced to cling to her subordinate standards with so desperate a grip that she has lost hold and touch of the supreme standard of her faith? Was she from birth incapable of growth and development? Was she (in a word) a dead branch and not a living Church?

3. How are Religious Organisations Structured?

Before going any further, there is a need to explain how religions are structured. Typically, they will have a religious constitution, which will regulate religious life, and separately a charitable trust or charitable company, which will hold the property. Sometimes the charitable trust or company is the only document and it serves to perform both functions. In this article, a religion will be called 'the religious constitution' and the charitable trust or charitable company will be called 'the trust deed'. If the religious constitution has a power of amendment and the trust deed refers in general terms to religious doctrine and religious government, then, any amendment to doctrine and religious government in the religious constitution will be incorporated by reference into the trust deed.

4. Does the Religious Constitution Provide for Change?

Prior to *Varsani and Others v Jesani and Others*,[11] there was a line of 19th century decisions of the court (referred to in this article as 'the 19th century cases') which made it clear that, unless the trust deed expressly provided for the amendment of doctrines (including religious government) or a schism, then church property would be held subject to the original doctrines contained in or referred to in the trust deed.[12] Take the case of *Craigdallie v Aikman*[13] which was concerned with a chapel acquired with the subscriptions of a congregation which seceded from the Church of Scotland in 1737 and subsequently split primarily over a dispute about

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10 [1904] AC 515 at 631. The decision of the court, in this particular case, answered the question in the affirmative having decided that The Westminster Confession was fundamental.

11 [1999] Ch 219.

12 See F Cranmer 'Christian Doctrine and Judicial Review: The Free Church revisited' (2002) 6 Ecc L J 318.

13 *Craigdallie v Aikman* (1813) 1 Dow 1.

ecclesiastical patronage. Each of the rival groups claimed that the chapel belonged to them. The Lord Chancellor (Halsbury) quoted with approval in *Free Church v Lord Overtoun*; [14] Lord Chancellor Eldon's opinion in *Craigdallie v Aikman*:[15]

> With respect to the doctrine of the English law on this subject, if property was given in trust for A, B, C &c, forming a congregation for religious worship; if the instrument provided for the case of a schism, then the court would act upon it; but if there was no such provision in the instrument, and the congregation happened to divide, he did not find that the law of England would execute the trust for a religious society, at the expense of a forfeiture of their property by the *cestuis que trust,* for adhering to the opinions and principles in which the congregation had originally united.

He went on to say in a subsequent case: '…the leaning of the court must be to support those adhering to the original system.'[16]

The key case in this period was the House of Lords decision in *Free Church v Lord Overtoun.*[17] The background facts in this case were that the Free Church of Scotland, which was established in 1843, claimed to carry with them the doctrine and system of the Established Church save that they believed that they were freed from the state in matters spiritual. They claimed to hold two fundamental beliefs. First, the Establishment principle, that there should be a church supported by the state, and second, the Westminster Confession in its entirety as its principal subordinate standard of faith, including its position on double predestination. In 1900, the Free Church formed a union with the United Presbyterian Church under the name the United Free Church and Free Church property was conveyed to new trustees of the new Church. The United Presbyterian Church, also a Church that had seceded from the Established Church, was opposed to the Establishment principle and did not maintain the Westminster Confession in its entirety. The United Free Church claimed that it had the power to amend its doctrines. A small minority of the Free Church objected to the united Church on the basis that it had no power to unite with a body which did not hold their doctrines and claimed breach of trust in respect of the transferred property. The Earl of Halsbury LC confirmed that a court of law: 'has nothing to do with the soundness or unsoundness of a particular doctrine… a court has simply to ascertain the original purpose of the trust.'[18] Crucially, he went on to say:

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14 *Free Church v Lord Overtoun* [1904] AC 515 at 613.

15 *Craigdallie v Aikman* (1813) 1 Dow 1.

16 *Attorney General v Pearson* (1817) 3 Mer 353 at 418-419.

17 *Free Church v Lord Overtoun* [1904] AC 515 at 626.

18 Ibid, at 613.

> …I do not suppose that anyone will dispute the right of any man, or any collection of men to change their religious beliefs according to their consciences; but when men subscribe money for a particular object and leave it behind them for the promotion of that object, their successors have no right to change the object endowed.[19]

Further, he concluded[20] that the 'so-called union' was not really a union of religious belief at all. It was a union for administrative purposes, with each of the united churches agreeing to keep their separate religious views where they differed. By a majority decision, the House of Lords decided that the property was held for the Free Church as it existed before the Union in 1900. It held that the Free Church had no power to vary the doctrine of the Church contained in the trusts relating to its property. Its powers did not expressly provide for schism[21] or a power to 'subvert or destroy fundamental and essential principles of the Church'.[22]

5. New Approach

To sum up the position so far: it was established that, unless religious charities have an express power to amend their doctrines or provide for schism, then the original religious doctrine must apply to the trusts relating to the property.

5.1. Religious Constitution does not Cater for Doctrinal Developments

However, the court of Appeal decision in *Varsani v Jesani*[23] points to a new approach to factional disputes between members of religions where the property is held by a religion where the religious constitution does not cater for doctrinal developments. In this case, the members of a Hindu sect split into two factions, with the majority of the members continuing to recognise the authority and divine status of the successor to the founder and a minority refusing to accept the successor due to allegations of misconduct. As a result of the split, neither group felt able to worship together in the same temple. Both groups sought a *cy-près*

19 Ibid, at 623.

20 Ibid, at 627.

21 Ibid, at 613-614.

22 Ibid, at 719.

23 *Varsani and Others v Jesani and Others* [1999] Ch 219.

scheme under the then section 13(1)(e)(iii) of the Charities Act 1993,[24] on the basis that the property:

> 'ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift'

together with a declaration as to which of the two groups was the true proponent of the faith and entitled to worship at the temple.

Commenting on the 19th century cases, Morritt LJ said that it was essential to bear in mind the narrowness of the *cy-près* jurisdiction which had existed at that time:[25]

> In those cases the answers to the inquiries were necessary in order to ascertain both whether there was jurisdiction to make a *cy-près* scheme and how to enforce the existing trusts if there was no such jurisdiction. That dual purpose does not exist in this case or any comparable case arising since the enactment of section 13 of the Charities Act 1960. Now the jurisdiction to make a *cy-près* scheme depends on whether the case falls within one or other of the paragraphs of section 13(1). The relevant test in this case is now whether the original purpose has ceased to provide a suitable and effective method of using the property, regard being had to the spirit of the gift.

Before, the *cy-près* jurisdiction depended on whether it could be said that the trusts were impossible[26] or impracticable.[27] Note the comments of Romilly MR:[28]

> If the testator has, by his will, pointed out clearly what he intends to be done, and his directions are not contrary to the law, this Court is bound to carry that intention into effect, and has no right and is not at liberty to speculate upon whether it would have been more expedient or beneficial for the community that a different mode of application of the funds in charity should have occurred to the mind of the testator, or that he should have directed some different scheme for carrying his charitable intentions into effect. Accordingly instances of charities of the most useless

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24 Now contained in Charities Act 2011, s 62(1)(e) which now contains the requirement to have regard to the 'appropriate considerations' which are defined as (on the one hand) the spirit of the gift concerned, and (on the other hand) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes: see Charities Act 2011, s 62(2)(a)(b).

25 [1999] Ch 219 at 233.

26 *Philpott v St George's Hospital* (1859) 27 Beav 107.

27 *Re Wokingham Fire Brigade Trusts* [1951] 1 All ER 434.

28 *Philpott v St George's Hospital* (1859) 27 Beav 107 at 111.

> description have come before the court, but which it has considered itself bound to carry into effect.

If those 19th century cases applied in this case, then the court could make orders restricting the use of the property for the use of the minority group adhering to the original doctrinal beliefs[29] because the trusts could still be carried out. However, the court held that, although the position was clear: to promote the faith of Swaminaryan according to the teaching and tenets of Muktajivandasji, it was the expression of that purpose in the light of subsequent events that gave rise to the schism with the result that the original purpose had ceased to be a suitable and effective method of using the trust property.

5.2. Differences of Approach to Religious Issues Rather than Difference of Opinions on Doctrinal Issues

The *Varsani* approach has been applied in circumstances where there is a difference of approach to religious practice rather than a fundamental difference of opinion about doctrine.

In *Dean v Burne*[30] a factional dispute arose in the Russian Orthodox Cathedral of the Dormition, in London, following an influx of Russians joining the Cathedral parish following the collapse of Communism. The proceedings were brought to examine the lawfulness of resolutions under provisions in the trust deeds effectively to appropriate the Church's property from jurisdiction of the Russian Orthodox Church to the jurisdiction of the Ecumenical Patriarch. The court held that what was at stake was a difference of approach to matters of religious practice, as opposed to the continuation of the parish or as its identity as Orthodox, and therefore the Church lacked the power to pass the necessary resolutions. Significantly, Blackburne J commented at the end of his judgment that it was not appropriate for him to consider a scheme on the same grounds as *Varsani* because the issue had not been properly explored and was an 'afterthought', but he suggested that it could 'profitably be considered by the Charity Commission'. He then went on to summarise the facts that were almost identical to those in *Varsani*, thereby implying that a scheme should be made.[31]

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29 *Varsani and Others v Jesani and Others* [1999] Ch 219 at 232.

30 *Dean v Burne* [2009] EWHC 1250 (Ch).

31 Although it is difficult to see how this could have worked out in practice, given that Bishop Basil had transferred his canonical obedience to the Ecumenical Patriarch and the whole point of a cathedral is that contains the bishop's cathedra. Did Blackburne J think that the two factions might share one cathedral?

5.3 Schism Leading to Trusteeship by a Rival Faction

The *Varsani* approach has been applied in the case of a church which, as a result of a schism, fell under the trusteeship of members of the rival faction.

White & Ors v Williams &Ors[32] concerned the Bibleway Church UK which was the UK branch of an American Church called the Bible Way Church of Our Lord Jesus Christ World Wide Inc. In 1997, the American Church split into two parts, one led by Bishop Campbell and the other led by Bishop Rogers, each of which claimed to be the true successor body. At the time of the split, the main assets of the Bibleway Trust in the UK were four properties. In 2000, the Lewisham congregation seceded from the Bibleway Church altogether, becoming independent and autonomous. The Lewisham congregation formed a charitable trust called the Tabernacle Ministries of Great Britain and claimed the property. The defendants were the Bibleway Trustees, all members of the Cambridge congregation - the only one of the congregations that continued to adhere to the Rogers' faction. The claimants sought a *cy-près* scheme and appointment of themselves as trustees of the property, arguing that it was currently under the trusteeship of persons who were not members of the congregation and that it could not be administered in accordance with the objectives of the Tabernacle Trust which were shared by the congregation.

Applying *Varsani,* Briggs J made the following observations[33] about the exercise of the court's *cy-près* jurisdiction in such circumstances. First, the court is not equipped to determine issues of belief or ecclesiastical order and which of two or more groups emerging from a schism represents the true faith. Second, it will usually be unnecessary to do so in the context of a *cy-près* application under section 13(1)(e)(iii) because, in respect of property donated to a religious charity prior to the schism, the spirit of the gift is to be ascertained at the time of the gift and the schism will lead to the results that, first, the appropriation of the whole property to the use and control of one of the factions will be contrary to the spirit of the gift, and second, that the use of the donated property for the advancement of religion for one of the factions to the exclusion of another will no longer be a suitable and effective method of using that property. Third, the spirit of the gift is to be ascertained more broadly than by 'a slavish application of the language of the relevant trust deed'.[34] He ruled that the *cy-près* scheme should impose a special

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32 *White & Ors v Williams & Ors* [2010] EWHC 940 (Ch). See also the further hearing [2011] EWHC 494 (Ch).

33 Ibid at paras 19-20.

34 Ibid at para 20.

trust on each of the properties designed to make a broad reference to the spirit of the original gift.[35]

5.4 There is a need to Argue the *Cy-près* Case

In *Varsani* and *White & Ors v Williams & Ors* the parties had applied for a *cy-près* scheme. In *Dean v Burne* they did not, but, with the benefit of hindsight, perhaps they should have. The point is that the court will only consider the merits of the arguments put forward. In *Dean v Burne*, that was whether the resolutions put forward had the legal effect of appropriating property and in the recent decision *Rai and Others v Charity Commission for England and Wales* [36] involving a factional dispute between Hindus, it was whether a proposed change in the conditions for members was legally in accordance with the constitution.

6. Implications for Religious Charities

The *Varsani* decision has implications for some religious charities which do not provide for amendment to doctrine and religious government or for schism.

The current position can be theoretically illustrated by looking at the issue of women priests in the Roman Catholic Church and the Church of England. What follows is a theoretical examination of these two Churches. Even if a claim could be made for a *cy-près* division of property, it would be difficult to untangle church property, which in the Church of England vests at a parish level in the incumbent subject to faculty jurisdiction[37] and in the Roman Catholic Church, typically, vests in the diocesan trustees but might be held on special trusts for the parishes.[38] It is beyond the scope of this article to examine these property issues in detail, especially given the conclusion in paragraph 6.3 of this article.

6.1 Church of England

When women were ordained in the Church of England, some dissenters questioned the lawfulness of the ordinations. Before examining the old and the new approaches by the court to *cy-près*, there is a need to explore whether the Church of England had the power to make provision for women priests.

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35 Ibid at para 118.

36 *Rai and Others v Charity Commission for England and Wales* [2012] EWHC 1111.

37 See M Hill, *Ecclesiastical Law*, OUP, 3rd Ed, 2007, p 98.

38 See Robert Meakin, 'Who Owns the Property of a Parish Church in the Roman Catholic Church in England and Wales?' CL&PR 14 [2012] 41.

The Church of England has the power to legislate, through its General Synod, by Measure.[39] A measure has the full force of an Act of Parliament[40] and may relate to any matter concerning the Church of England[41] including doctrine.[42] In *Williamson v Archbishops of Canterbury and York*, Morritt LJ observed that 'the Church of England is and at all material times has been the established church. As such its doctrines and government were and are susceptible to change by the due processes of law.'[43] The power to legislate by canon vests in the General Synod.[44] A canon has the force of subordinate legislation.[45] Doctrinal changes may be made by canons under the Church of England (Worship and Doctrine) Measure 1974 which permits such changes, even if repugnant to the Royal Prerogative, or the customs, laws or statutes of the realm.[46] A parent measure may render the making of a particular canon lawful because the measure is declaratory of the law of the land.[47] It follows that the Deacons (Ordination of Women) Measure 1986, which permitted the promulgating of Canon C 4 A; the Priests (Ordination of Women) Measure 1993 was not open to legal challenge.[48]

Applying the 19th century cases, donors to the Church of England clearly knew when they donated that the Church has the power to alter its doctrine and religious government and would therefore be precluded from claiming that they should own the pre ordination of women priests' property. On that basis, dissenting members would have no claim on Church property.

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39 Synodical Government Measure 1969, s 2 (1), Sch 2, art 6(a)(i). For general commentary see M Hill, *Ecclesiastical Law*, OUP, 3rd Ed, 2007, pp 14-16.

40 Church of England Assembly (Powers) Act 1919, s 4.

41 Church of England Assembly (Powers) Act 1919, s 3(6), applied by the Synodical Government Measure 1969, s 2(2).

42 See R *v Ecclesiastical Committee of Both Houses of Parliament, ex parte The Church Society* (1994) 6 Admin LR 670, The Times, 4 November 1993, CA. This case held that Church of England Assembly (Powers) Act 1919, s 3(6) did not preclude a measure being passed which permitted a change in doctrine. This was confirmed in *R v Archbishops of Canterbury and York, ex parte Williamson*, The Times, 9 March 1994, CA.

43 *Williamson v Archbishops of Canterbury and York*, 5th September 1996, CA, unreported.

44 Synodical Government Measure 1969, 1(1)(3)(5); Sch 1, para 1; Sch 2, art 6(a)(ii).

45 See Burton J in *Calvert v Gardiner and others* [2002] EWHC 1394 (QB) 10 May 2002, unreported.

46 Church of England (Worship and Doctrine) Measure 1974, s 6 (1).

47 See *Brown v Runcie*, The Times, 20 February 1991, CA.

48 Ibid.

6.2 Roman Catholic

Unlike the Church of England which is founded on secular law, the Roman Catholic Canon law does not form part of the secular law. It is contained primarily in the Code of Canon Law 1983. Ordinatio Sacredotis Apostolic Letter on Reserving Priestly Ordination to Men Alone dated 22 May 1994 by His Holiness Pope John Paul II states:

> …in order that all doubt may be removed regarding this matter of great importance… I declare that the Church has no authority whatsoever to confer priestly ordination on women and that this judgment is to be definitely held by all the Church's faithful.

The matter was clarified in Responsum ad Dubium concerning the Teaching contained in Ordinatio Sacredotis on the 28th October 1995 by the Congregation for the Doctrine of the Faith, confirming that the teaching belongs to 'the deposit of the faith'.

This statement has been the subject of much criticism[49] and arguably cannot be relied on as an infallible statement and therefore one incapable of amendment. First, it is not clear whether the Pope made the statement (as required for an infallible statement)[50] with the consent of the bishops. Second, a statement can only be infallible if it is founded on the Word of God and from the beginning constantly preserved and applied in the tradition of the Church.[51] The first condition was not fulfilled because when Pope Paul VI explored this question through the Pontifical Biblical Commission he was advised that the question could not be determined on the basis of New Testament scripture alone. In respect of the second condition, it has been observed that the question did not arise until the mid-20th century.[52]

If pro women priest members of the Roman Catholic Church claimed a right to property there are a number of possible ways of analysing the position. First, if the Church is right, that it has no power to amend its doctrinal position, then there could be a *Varsani* type claim for a *cy-près* scheme on the basis of legitimate doctrinal dispute. Second, if it is open to the Church to amend its doctrinal position but it decides not to do so, then the court would arguably not interfere with what could be considered to be an internal religious issue.[53] Third, it could

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49 See Nicholas Lash 'On Not Inventing Doctrine' The Tablet, 2 December 1995.

50 Lumen Gentium, Article 25.

51 Ibid.

52 Ibid.

53 *HH Sant Baba Jeet Singh Maharaj v Eastern Media Group* [2010] EWHC 1294 (QB).

be argued that, under Roman Catholic Canon law, an attempt to apply for a *Varsani* type claim for a *cy-près* scheme would amount to a schism bringing the claimant outside the Church and without any locus standi to make a claim. Schism is defined as:[54]

> the refusal of submission to the Supreme Pontiff or of communion with the members of the Church subject to them.

An example is Archbishop Lefebvre who led his followers into schism in the early 1970s shortly after Vatican II, but he was excommunicated only in 1988 after illegally ordaining four bishops. Membership of the Roman Catholic Church is conditional on, inter alia, being bound by ecclesiastical government.[55]

The argument that schismatic behaviour caused by refusing to accept the discipline or government of the Roman Catholic Church jeopardises dissenters' claim to property is supported by a decision of the court of Session involving the Free Church of Scotland. In *General Assembly of the Association or Body of Christians known as the Free Church of Scotland and for administrative purposes only as the Free Church of Scotland (Continuing) and Ors v General Assembly of the Free Church of Scotland and Ors*[56] Lady Paton commented that some of the claimants had failed to comply with the discipline and government of the church as set out in the rules,[57] and that it would therefore be inappropriate to apportion the property between the parties.[58] A safer course of action for a dissenter is to found a new church or raise funds for restricted charitable purposes.

6.3 Conclusion: What are the Implications for the Church of England and Roman Catholic Churches?

It may be concluded that in the case of the Church of England there is no opportunity for a *Varsani* application and in the case of the Roman Catholic Church only a limited chance that it might be relevant. From the cases it would appear that a *Varsani* application will have little chance of succeeding where religions have highly developed religious constitutions with clear powers to amend religious doctrine. There is a lesson here for religions seeking to protect their property.

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54 C 751.

55 C 205.

56 [2005] CSOH 46.

57 Ibid, para 76.

58 Ibid, para 78.

7. Accommodation by Other Religions

Where a schism happens in a church, another church can (some might say opportunistically) offer refuge. In the case of the Roman Catholic Church, accommodation has been made for Anglican conscientious objectors through the creation of The Apostolic Constitution Anglicanorum Coetibus (ACAC)[59] which provides for the erection of ordinariates, which are the equivalents to dioceses within the Roman Catholic Church, and for Anglicans to enter into full communion with the Roman Catholic Church.[60] Anglicans joining the ordinariate, even en masse as parishes, have no right to take Church of England property with them which is vested in ecclesiastical bodies. The ordinariate has largely been funded from donations from the Roman Catholic Church,[61] but there has been controversy concerning a donation from the Confraternity of the Blessed Sacrament which was recently investigated by the Charity Commission.[62] The Confraternity's objects are to advance the Catholic faith in the Anglican tradition. At the time of making the grant, a majority of the trustees had converted to the Roman Catholic Church and the Charity Commission noted the conflicts of interest and ruled that the grant was not within the objects of the Confraternity. Providing a refuge for people is one thing, but it can lead to legal challenges when there is an attempt to move the property with them.[63]

8. New Funds

The discussion so far has been about existing funds and property, but there could be greater flexibility in the case of new funds. Developments in the Church of England point to a new approach by Church members flexing their financial muscles as donors. A company called 'Good Stewards Company' was reported by 'The Guardian'[64] to have been incorporated with two vicars as directors to raise funds from Church members who want their funds to be distributed amongst churches who reject 'liberalism'. As 'The Guardian' put it:[65]

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59 Approved by Pope Benedict XVI on 4 November 2009.

60 ACAC, Introduction and 1.1 and 1.4.

61 See www.ordinariate.org.uk FAQ.

62 See www.charity-Commission.gov.uk and 'The Church Times' 20 January 2012.

63 See 'Whitterings The Musings of an Archdeacon' by The Venerable Edward Simonton OGS www.archdeaconalwhitterings.blogspot.co.uk

64 The Guardian, 17 May 2012.

65 Ibid.

> Not contributing to central funds could represent a serious threat to the rest of the C of E, whose cohesion depends in part on a redistribution of money from rich, largely suburban and middle-class parishes to the inner cities and the countryside where congregations are too small and the buildings too old to be economically sustainable.

This approach could be adopted by other members of religions seeking to use financial means to accommodate their views.

9. Conclusion

In the 21st century, members of religions are increasingly active in asserting their views on doctrinal issues. The *Varsani* case provides a charter for dissenting religious members to assert their rights over church property. Arguably, there is some equity in this approach as it recognises the financial contributions made by members. However, set against this argument is the disadvantage of increasing schisms in religions, which could go on in the words of Lord Uist in *Smith (As Moderator of The General Assembly of The Free Church of Scotland) & Anor v Morrison & Ors*[66] 'ad infinitum' and 'would be astonishing and lead to chaos…'[67] Recent developments in the Church of England and Roman Catholic Churches point towards alternative approaches using both charity law and canon law to accommodate religious beliefs. The overriding lesson is that religious charities need to consider having sophisticated religious constitutions which provide for member consultation and involvement in doctrinal reform and church practice, in order to avoid exposure to dissenting members' claims.

66 *Smith (As Moderator of The General Assembly of The Free Church of Scotland & Anor v Morrison & Ors* [2009] CSOH 113 at para 75.

67 Ibid.