27/96 Future Patterns of Ministry

Introduction

1. Synod resolution 27/96 reads as follows -

> "This Synod -
>
> (a) requests Standing Committee to prepare legislation to remove whatever restrictions exist in any ordinance which inhibit ministry across parish boundaries; and
>
> (b) requests Regional Councils to consider, as a matter of priority, the establishment of new congregations in their regions, and to apply resources accordingly.".

2. On 28 January 1997, the Standing Committee appointed a committee (the "Committee") consisting of Bishop Ray Smith (as convenor), Mr Neil Cameron, Archdeacon Trevor Edwards and Justice Peter Young to prepare an amending ordinance to remove any restrictions which inhibit ministry across parish boundaries. The Committee has met on 4 occasions.

3. It should be noted that the terms of reference raised purely legal issues because the Committee was asked to identify certain restrictions and to prepare legislation. Research undertaken by members of the Committee leads to a conclusion that there are no legal restrictions. However ministry across parish boundaries raises profound pastoral issues for our fellowship in the Diocese. While this particular report does not canvass these issues, it does not follow that the Committee does not regard pastoral issues as important or does not have views on them.

The Law

4. A "parish" is defined in *Cripps on Church and Clergy* (8th ed p179) as "that circuit of ground which is committed to the care of one parson". Similar definitions occur in other works, but more recently other concepts of "parish" have appeared. A parish may now be under a team ministry, while in some places territorial parishes do not exist. In this latter case, a parish is a definite community of Christian people meeting in certain buildings.

5. Because of the definition of "parish" in England, only the bishop and one parson were in charge of the ministry in the parish. This was so that parishioners might identify the one to whom they should resort for spiritual comfort. As Holt, CJ said in *Britton v Standish* (1704) 90 ER 976 -

> "Parishes were instituted for the ease and benefit of the people and not the parson, that they might have a place certain to repair to when they thought convenient, and a parson from whom they had a right to receive instruction.".

Powel, J said in the same case -

> "The reason why parishioners ought to go to their parish churches is not for the parson's benefit; but because he having charged himself with the cure of their souls, he may be able to take care of that charge."

There were, of course, considerable benefits to the clergyman in the traditional English parish system. For example, he had the benefit of all the income of the parish other than offertories.

6. There are a few English court decisions that state without explanation that no person can "procure divine service" within the boundaries of a parish without the assent of the incumbent (see *Carr v Marsh* (1814) 161 ER 1118; *Girt v Fillingham* [1901] P 176 & St Albans (Bishop) v Fillingham [1906] P 163.)

7. The statutes affecting the Diocese of Sydney and its ordinances imply that a geographical parish with boundaries is the basic unit of the Diocese. In Australia this parish system still enables the laity to identify their clergyman, but while defining his area of responsibility, it does not of itself confer any exclusive rights on him.

8. Nonetheless there is a view in the Diocese that the minister in charge of a parish has control of all ministry in the parish. The basis of this belief is not clear but may derive from our system of licences.

9. The Canons of 1603 were clear in the need for a licence of a bishop. For example -

> "49. No person whatsoever not examined and approved by the bishop of the Diocese, or not licenced, as is aforesaid, for a sufficient or convenient preacher, shall take upon him to expound in his own cure, or elsewhere, any scripture or matter of doctrine ...
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> 50. Neither the minister, church wardens nor any other officers of the church, shall suffer any man to preach within their churches or chapels, but such as, by shewing their licence to preach, shall appear unto them to be sufficiently authorised thereunto ...".

These canons were superseded in New South Wales by the first of the Church Acts (8 William IV c5). Section 19 of that Act provided effectively that no person could conduct a service or preach in any Anglican church unless first approved and licensed by the bishop.

10. Where a minister is licensed only to a specific parish, then strictly speaking the licence confers no authority beyond the boundaries of the parish. However historically speaking such a strict reading of licences has never been adhered to.

11. Insofar as the canons of 1603 had any operation after the enactment of 8 William IV c5, that ceased with the adoption of the Canon Law Repeal Canon 1989. 8 William IV c5 was itself repealed in 1897 by the Church Acts

Repealing Act, although Section 19 had already been replaced for this Diocese by Clause 41 of The Sydney Church Ordinance 1891. This ordinance was in turn repealed so that the current rules are to be found in clause 43(1) of the Church Administration Ordinance -

> "Subject to the powers of the Archbishop, the minister has control of the policy, organisation and affairs of any Sunday School, bible class, study group, youth fellowship, guild or other organisation of the parish or any church of the parish and for those purposes may appoint and remove such superintendents, teachers, leaders or other officers as he thinks fit.".

and clause 7 of the Church Grounds and Buildings Ordinance 1990 -

> "No person is permitted to celebrate divine service or preach any sermon in any church unless -
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> (a) in the case of a clergyman other than a deacon, he has been licensed or approved by the Archbishop or an Assistant Bishop; or
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> (b) in the case of a deacon, he or she has been licensed or approved by the Archbishop or an Assistant Bishop; or
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> (c) in the case of a lay person, he or she has been authorised so to do pursuant to the Deaconesses, Readers and Other Lay Persons Ordinance 1981.".

12. However the current rules must be read down by Section 4 of the Anglican Church of Australia Constitutions Act 1902. Clause 43(1) and Clause 7 only apply -

> "for all purposes connected with or in any way relating to the property of the Anglican Church of Australia within the State of New South Wales.".

These clauses are binding on all members to the extent that they apply, but have no effect beyond the property of the church.

13. There is thus no law to prevent lay members of the Anglican Church establishing a church in any parish on property which is not church property. There is also nothing to prevent those members from holding out that the church is an Anglican church although it may only be a church of members of the Anglican Church. It would be wrong for those members to hold out that the church is officially recognised by the Anglican Church but, if they did, it is difficult to see any court intervening to stop them in the absence of damage to person or property.

14. It may well be that the licence of a clergyman confers limited authority in relation to a particular parish and the control of its property. However when limited by Section 4 of the 1902 Act, Clauses 43 and 7 of the Ordinances mentioned earlier do not prevent the clergyman from being involved in ministry in another parish on property which is not church property.

15. There may be an argument to the effect that a minister of a parish who involves himself in connection with planting a church in another parish or with a church planted by others in another parish commits an ecclesiastical offence. Given the ambit of the present offences, we do not consider the argument to be sound. Synod could enact a new category by providing that a clergyman commits an offence when ministering outside the boundaries of the parish to which he is licensed. However such an offence would create severe practical problems.

Conclusion

16. There is no rule in the Diocese inhibiting ministry across parish boundaries, either because there had never been such a rule or because any such rule has been repealed. There may have been a custom in the Diocese which preserved exclusive ministry to incumbents within their parishes. However no such custom has the force of law and need not be put to rest by legislation.

For and on behalf of the Committee

T. W. EDWARDS
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16 July 1998