

Exorcism and the Law: Is the ghost of the Reformation haunting contemporary debates on safeguarding versus autonomy?

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Abstract

This article explores how secular and Canon Law on exorcism have evolved in tandem in England, each subject to the influence of the other, as well as wider cultural changes. It considers how the historical cautious and strictly regulated approach of the Church of England still influences the legal contemporary framework, and explores how the present day judicial approach in this jurisdiction contrasts with other contexts in the Common Law world.

Keywords

Exorcism, Church of England, consent, history, regulation

Introduction

Exorcism is a phenomenon on the rise in the United Kingdom, as well as other Western societies,¹ and there is, undoubtedly, need for further research into the social causes underlying this trend. Nevertheless, it is reasonable to speculate that the dramatic growth in religious and cultural diversity in Britain from the mid twentieth century onwards,² along with the cross-pollination of ideas and beliefs which this brought, have played a crucial role.

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¹ 'Exorcisms are back and people are getting hurt', *The Guardian* 06/03/18; 'Exorcisms booming as Christian faith declines and internet offers easy access to black magic, priests told', *The Telegraph* 16/04/18; 'Exorcism: How does it work and why is it on the rise?', *The Independent*, 29/04/18

² R. Hansen, *Citizenship and Immigration in Post-war Britain* (Oxford: OUP) 2000

Equally, influential charismatic and mystical movements within Christianity, Islam and Judaism,³ and an upsurge in New Age practitioners and paranormal investigators plying their services may be amongst the factors involved.⁴

It is crucial to acknowledge, at the very outset, that 'exorcism' is an extremely broad term, encompassing a vast spectrum of beliefs and practices. This English word is used, for example, to describe 'the great purification' in Shinto which takes place at the end of the sixth month,⁵ but also the prayers of a Pentecostal preacher striving to expel an evil spirit from a woman.⁶ It is unquestionable that both the outward actions, and also the internal understanding, of the participants in the respective events would be entirely distinct, and consequently, there is a real danger that in applying the same label, we risk conflating what are in fact radically different situations.

However, it is also fair to observe that the term is adopted in a variety of contexts because, alongside the distinctions, there are significant points of commonality. If we take exorcism to be an umbrella under which we gather any rite or practice aimed at freeing a person, place or object from a negative, external spiritual influence, it is possible to usefully explore phenomena with shared characteristics, and potentially, shared pitfalls.

³ T. Atay, 'A Muslim Mystic Community in Britain', *Studies in Comparative Social Pedagogies and International Social Work and Social Policy*, Vol XVII (2012); A. Walker, 'Thoroughly Modern: Sociological Reflections on the Charismatic Movement from the End of the Twentieth Century', in S.Hunt, M. Hamilton and T. Walter (eds), *Charismatic Christianity: Sociological Perspectives* (London: Macmillan) 1997, 17-42

⁴ W. Hanegraaff, *New Age Religion and Western Culture: Esotericism in the Mirror of Secular Thought* (New York: State University of New York) 1998

⁵ P. Hartz, *Shinto* (New York: Chelsea House) 3rd edition, 2009, 39

⁶ M. Wilkinson, 'Pentecostalism, the Body and Embodiment', in M. Wilkinson and P. Althouse (eds), *Annual Review of the Sociology of Religion* (Leiden: Brill) 2017, 17-35, 25

Exorcism is of interest to legal scholars and practitioners because it is a sphere of religious activity which at times requires the secular law to intervene. At the most extreme and tragic end of cases, there are instances when an exorcism results in the death of the recipient,⁷ but there are also concerns at times about vulnerable individuals being damaged or exploited in ways which may be detrimental to their mental health and emotional well-being. For example, the charity 'SANE' recently expressed disquiet about individuals with severe mental illnesses receiving exorcism.⁸ Obviously, there is a complex balance to be struck between respecting religious freedom, on the one hand, and safeguarding those who may not be in a position to make informed choices, on the other.

It is uncontroversial that exorcism can be problematic, public authorities in the United Kingdom expressly acknowledge this, and for instance, non-statutory guidance has been issued to agencies dealing with children or others in jeopardy of experiencing harm from beliefs linked to possession.⁹ It is also well established that the general mechanisms of criminal and civil law will be mobilised if actual bodily harm, or trespass to the person, are inflicted in the course of an exorcism ritual.¹⁰ The least touch without consent constitutes trespass,¹¹ and if an adult lacks mental capacity to give such consent, only necessity or normal

⁷ 'The exorcism that turned to murder', *BBC News* (28/02/18) https://www.bbc.co.uk/news/resources/idt-sh/nicaragua_exorcism_vilma_trujillo_murder; 'Priest jailed for exorcism death', *BBC News* (19/02/07) <http://news.bbc.co.uk/1/hi/world/europe/6376211.stm>

⁸ 'Why I went to a faith-healer to have an exorcism', <https://www.bbc.co.uk/news/av/uk-england-south-yorkshire-44223662/why-i-went-to-a-faith-healer-to-have-an-exorcism>, *BBC News* (24/05/18)

⁹ See government guidance on protecting children in this context: H. M. Government, 'Safeguarding Children from Abuse Linked to Spirit Possession, Non-Statutory Guidance', available at: http://oxfordshirescb.proceduresonline.com/pdf/sg_ch_a_belief_spirit.pdf (accessed 3 March 2017). Also, Metropolitan Police, 'Project Violet: The Metropolitan Police Service Response to Abuse Linked to Faith and Belief', available at: <http://content.met.police.uk/Article/Project-Violet--The-Metropolitan-Police-Service-MPS-response-to-abuse-related-to-faith-and-belief/1400010000897/1400010000897> (accessed 3 March 2017).

¹⁰ See, for example, *R v Rabiya Patel and Others* [1995] 16 Cr App R (5) 827, in which the defendants were convicted of manslaughter, following the death of a young woman during a violent exorcism process.

¹¹ *R v Ireland* [1997] 3 WLR 534

social interaction may justify it.¹² In fact, it is highly unlikely that an exorcism ritual would meet the criteria for establishing a defence to a non-consensual exorcism in this jurisdiction, but interestingly, as we shall discuss below, this is *not* the case in some other Common Law paradigms.¹³ It is striking that in a national context which has retained a religious Constitution,¹⁴ and generally adopts an accommodating stance towards faith-based practices, there is a wary juridical stance in this regard. When it comes to exorcism, the United Kingdom is actually *less* permissive in terms of religious freedom than some other, culturally related Anglophone contexts, such as the USA and New Zealand.

This article seeks to explore the reasons of this stance, in particular assessing the role which the canon law and theology of the Church of England has had in the development of the wider legal framework. Strikingly, commentators like Milner have argued that the regulation of exorcism¹⁵ by the Church of England has been driven by an institutional need to maintain control in order to preserve autonomy, and in his view the social and legal context within which exorcism rites are generally situated gives rise to the risk of intervention by secular law and authorities. Bearing this in mind, in this commentator's analysis, the Church attempts to avoid external interference by robustly self-policing in this area.¹⁶ In other words, the Church has been at pains to put its own house in order and safeguard the vulnerable from abusive or

¹² *Collins v Wilcock* [1984] 3 All ER 374

¹³ *Pleasant Glade Assembly of God v Schubert* (2008) 264 S W 3d 1

¹⁴ J. García Oliva and H. Hall, *Religion Law and the Constitution: Balancing Beliefs in Britain* (Abingdon: Routledge) 2017, chapter 2

¹⁵ Exorcism was term used by Milner, although we acknowledge that the more usual contemporary terminology within the Church of England is 'deliverance'. The latter word has wider and partly positive connotations of freeing individuals from negative forces and influences. See further: M Perry (ed), *Deliverance: Psychic, Disturbances and Occult Involvement* (London: SPCK Publishing) 1996, 2

¹⁶ *Ibid*, 249

misguided exorcists, with the express objective of deterring the State from coming along and imposing constraints in this arena.¹⁷

We would be inclined, however, to suggest that this contention is based upon a distorted view of Church/State relations. Surveying their historical development reveals that both the canon law, and the 'soft law'¹⁸ of the Church of England, developed in tandem with the approach of secular law, and we would suggest that the cautious approach of the British courts towards exorcism is directly related to the stance taken by the Anglican Church.

In order to explore this hypothesis, we need to trace the way in which both ecclesiastical and secular law have dealt with exorcism, from the genesis of Anglicanism in the era of European Reformations, and follow this forward into the present day, given that our present Constitution and legal framework formed with the Church of England set within them. As we shall discuss, for several hundred years support for the official Church and its aims was axiomatic for members of the judiciary, executive and legislature, all of whom were required to be Anglican.¹⁹ Even when this position altered, and those adhering to other religious viewpoints were gradually permitted to join the three branches of State, the process was very much one of widening, rather than stripping away, Church of England privilege. Other citizens gained rights, but by and large Anglicans did not lose them. In fact, bishops continued to occupy their place in the Upper House of the legislature, and a large number of MPs and

¹⁷ An interesting, if slightly strange, parallel might be made with the Faculty jurisdiction here. The Church of England and Church in Wales both enjoy significant exemptions from generally applicable planning law, but in order to retain this privilege they must apply a rigorous internal regulatory system.

¹⁸ Used here to mean regulations and guidance which do not directly have the status of canon law, but with which other mandatory frameworks, such as the Clergy Terms of Service, may require compliance.

¹⁹ See further J. García Oliva and H. Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Abingdon: Routledge) 2017, Chapter 2

judges in practice remained Anglican, and so were still directly influenced by the Church. Understandably, in dealing with exorcism, an issue which was rooted in religious practice, prevailing spiritual attitudes were especially relevant, and because Common Law is required to evolve by building on the foundations laid by previous decisions, as Hartshorne argues,²⁰ continuity was the driving force.

Taking all of this into account, it is only possible to understand how the current secular law approach to exorcism came into being, by tracing its development, and this is inextricably linked with the trajectory which the established Church took in this regard. Therefore, we shall begin our investigation by examining how the law and its underlying assumptions gradually took shape over the centuries. Although the story of the journey up until the current period is interesting for its own sake, it is also necessary if we are to make sense of where we find ourselves. Having looked at the building blocks which went into constructing the current framework, we can appreciate why it operates as it does, and understand some of the differences between Britain and other ostensibly similar contexts nowadays. With this goal in mind, following on from our historical analysis, we shall consider the contemporary position in the UK, and how it is observably distinct from some other Common Law paradigms.

The Reformation and the Background to the 1604 Canon

²⁰ J. Hartshorne, 'The need for an intrusion upon seclusion privacy tort within English law' (2017) *CWLR* 46(4) 287

During the turbulent era of European Reformations, anxiety about demonic possession, and the related, but distinct phenomenon of witchcraft, was common throughout Europe.²¹ In theory, possessed individuals or demoniacs had their bodies and wills usurped by the Devil or his agents, whereas witches entered into pacts with Satan.²² The plight of the demoniac was not necessarily the result of spiritual or moral weakness, whereas the witch had made a conscious choice to rebel against God. Although these situations could be distinguished in abstract terms, nevertheless, as Levack argues, they were frequently conflated in both academic and popular culture.²³ There were widespread fears about the powers of the Devil in the world, and the harm which he inflicted with and through human beings.

The anthropological and historical reasons behind these beliefs were undoubtedly complex. As Sidky²⁴ argues, the trauma of the Black Death was in all probability one factor in generating these perceptions, and when searching for the cause of this mysterious and terrifying disease, contemporaries looked to the Devil and identified witches as plague-spreaders. Neither was it coincidental that Jews were also scape-goated by communities in the grip of epidemic disease.²⁵ Religious deviance was seen as a very real threat to society, and witches, Jews and heretics were regarded as having aligned themselves against the Almighty. As such, any

²¹ B. Levack, *The Devil Within: Possession and Exorcism in the Christian West* (Yale: Yale University Press) 2013, 191-214

²² The character of Satan in seventeenth century Christianity was widely identified with the Devil or Anti-Christ. We would, however, note that theological and cultural understandings of the role of this figure have varied greatly over time. See further, M. De La Torre and A. Hernández, *The Quest for the Historical Satan* (Minneapolis: Fortress Press) 2011

²³ B. Levack, *The Devil Within: Possession and Exorcism in the Christian West* (Yale: Yale University Press) 2013 200

²⁴ H. Sidky, *Witchcraft, Lycanthropy, Drugs and Disease: An Anthropological Study of the European Witch-hunt* (Oregon: Peter Lang) 1997, 87-90

²⁵ S. Cohn, 'The Black Death and the Burning of the Jews' (2007) *Past Present* 196 (1) 3-36

failure (or perceived failure) to conform to the dominant faith culture was a danger in both physical and political terms.

With the coming of the era of Reformations, questions of religious deviance and orthodoxy became even more complex for Christian populations. Roman Catholics and Protestants each believed that eternal salvation was at stake²⁶ and assumed their religious opponents to be damned,²⁷ a reality made still more tangled by the rapid fragmentation of Protestantism.²⁸ This paved the way for the action of the Devil, manifested through witchcraft or demonic possession, to take centre stage, and in a world in which neighbours and even family members were suspected of being allied to the Anti-Christ, it was easy for fear and suspicion to breed.

However, the protracted nature of the long reformation in England may partly explain why its experience was, in certain respects, different from that of its continental European neighbours. With the frequent changes of state policy during the Tudor era, as authors like Duffy²⁹ evocatively depict, it took longer for the nation to establish a settled post-Reformation identity, and it was arguably more difficult at a local level to ascribe a diabolical character to religious practices which were mandated and proscribed by the ruling authorities. There clearly were instances of reported possession and witchcraft panics in England, but

²⁶ A. Atherstone, *Reformation: A World in Turmoil* (Oxford: Lion) 2015, 2

²⁷ A. Walsham, A. Caravale, G. Keen, R. Warner and J Christopher, *Catholic Reformation in Protestant Britain* (Abingdon: Routledge) 2014, Chapter 10: 'The New Army of Satan: The Jesuit Mission and the Formation of Public Opinion', 315-340

²⁸ A. McGrath, *Christianity's Dangerous Idea* (New York: Harper Collins) 2008, 61-82

²⁹ E. Duffy, *The Voices of Morebath: Reformation and Rebellion in an English Village* (London: Yale University Press) 2003

fewer than in Scotland or continental Europe, and Hodgkinson³⁰ argues that one reason for this may have been the reluctance amongst social and political elite to accept diabolism.

It is demonstrable that the English intelligentsia were inclined to take a sceptical view of supernatural claims, a feature also found in other northern European countries like Norway and Denmark.³¹ Some of this may have been rooted in the academic and theological ideas, such as the doctrine of the cessation of miracles.³² The essential concept of cessationism was that miracles were a feature of Christ's ministry and the Early Church, but were no longer needed after the establishment of Christianity. Accordingly, God had ended this kind of intervention into temporal matters. Furthermore, rational cynicism based on observation may have also played a part, as it did in the thirteenth century when the Church withdrew its assistance for trial by ordeal.³³ It is significant that when King James I and VI published his 'Daemonologie', he explicitly stated his intent to refute the 'damnable' opinions of authors who had denied the reality of witchcraft a spirits, and the first of these writers was English.³⁴

However, it is undeniable that the Church and State authorities, at this period clearly acting in tandem, had a political agenda in adopting a cautious stance towards possession and exorcism. The emotional and theatrical displays of Puritan and Roman Catholic exorcists, and indeed demoniacs, could be powerful weapons in the war of religious propaganda, and high profile cases of miraculous deliverance could sway hearts and minds in the direction of the

³⁰ R. Hodgkinson, 'Which did regional variations exist in the prosecution of witches between 1580-1650?' (2003) *The Historian* 79, 16-21, 17

³¹ Ibid

³² B. Levack, *The Devil Within: Possession and Exorcism in the Christian West* (Yale: Yale University Press) 2013, 40

³³ J. Baker, *An Introduction to English Legal History* (London: Butterworths) 1990, 5-6

³⁴ J. Stuart, *Daemonologie* 1597 xi-xii

exorcist's cause. Consequently, for those wishing to promote and protect the established religion, there was a vested interest in suppressing these activities, particularly as the Church of England was not able, or inclined, to offer an alternative to these practitioners.

In the sixteenth and seventeenth centuries, as it happens nowadays, there existed a spectrum of opinion amongst Church of England clergy about the reality of the demonic and how best to deal with pastoral issues linked to possession. As Purkiss³⁵ observes, internal disputes within the Church of England about the reality and nature of witchcraft and possession did not assist in formulating a coherent response, especially when combined with fears of Counter-Reformation conversions through the spectacular casting-out of devils. Bowd³⁶ also notes the agenda of the Church of England to control or ideally suppress the activities of both Catholic and Protestant exorcists.

Added to which, the beginning of the seventeenth century saw some high profile cases of fraudulent demoniacs, who were prosecuted in the secular courts.³⁷ Anne Gunter, the sister-in-law of the Regius Professor of Divinity at Oxford accused two women of witchcraft as well as causing her possession, and after they were acquitted, Sir Edward Coke brought charges in the Star Chamber against Anne and her father for having conspired to indict the women. A second case, also arising from an elite context, saw the defendants Thomas and Elizabeth Saunders tried in the Star Chamber for having coached their granddaughter to pretend to be possessed and accuse third parties of witchcraft.

³⁵ D. Purkiss, *The Witch in History* (Abingdon: Routledge) 2003, 70

³⁶ S. Bowd, 'John Dee and the Seven in Lancashire: Possession, Exorcism and the Apocalypse in Elizabethan England' (2010) *Northern History*, 233-246, 234

³⁷ B. Levack, *The Devil Within: Possession and Exorcism in the Christian West* (Yale: Yale University Press) 2013, 25-26

Clearly, fraudulent demoniacs were a societal menace. At worst their accusations could result in the execution of an innocent person, and even where this did not transpire, they might use their possessed status to gain donations of money, attention and sympathy, or even an excuse to violate social norms with impunity.

This was the backdrop to the 1604 Canon.³⁸ The Church of England was wary of the phenomenon of possession and the activity of exorcists and had an institutional interest in suppressing, rather than encouraging, these rites, and the language of the canon itself demonstrates this:

'nor without such licence, to attempt on any pretence whatsoever, either of possession or obsession, by fasting and prayer, to cast out any Devil or Devils, under pain of imputation of imposture or cozenage, and disposition from the Ministry'.

The words 'imposture or cozenage' make the concern about fraudulent demoniacs and exorcists apparent, but it is significant that the Church did not opt to close the door on exorcism altogether. The possibility of an episcopal licence was evidence of an admission, that at least in the minds of some influential clergy, there were circumstances in which recourse to exorcism was appropriate.

³⁸ Constitutions and Canons Ecclesiastical of the Church of England 1604, Canon 72

Thus at this point, ecclesiastical and secular law were adopting a similar approach towards the issue of possession: in both contexts there were efforts to crack down on individuals cynically dissembling for the purpose of gain (material or otherwise), but in neither context was there an absolute prohibition. As a result, the door was open to either belief or scepticism.

Furthermore, whilst it is striking that in 1604 Parliament passed legislation imposing the death penalty on anyone who invoked or conjured evil spirits,³⁹ it must be acknowledged that this was directly connected with James I and VI and his personal obsession with witchcraft.⁴⁰ He had been nurtured by the Kirk and moulded in a very different theological tradition than that of his newly acquired southern kingdom,⁴¹ and although the possibilities of witchcraft and demonic possession were undeniably part of the worldview of some Church of England clergy, these matters were not in the foreground of church life or law.

Exorcism and the Age of Reason (late XVII/XVIII centuries)

The 1604 canon remained part of the law of the Church of England until the overhaul of canon law in 1969. Commentators such as Giordan and Possamai⁴² argue that as modernity developed, the Age of Reason influenced religious, as well as secular thought, and in their analysis, a belief in the Devil and exorcism declined amongst educated church-hierarchies,

³⁹ Witchcraft Act 1604

⁴⁰ W. Burns, *Witch Hunts in Europe and America* (London: Greenwood) 2003, 151

⁴¹ See further, J McCallum (ed), *Scotland's Long Reformation: New Perspectives on Scottish Religion, c1500-1660* (Leiden: Brill) 2017

⁴² G. Giordan and A. Possamai, 'The over-policing of the devil: a sociology of exorcism' (2016) *Social Compass* 63(4) 444-460, 450

whilst only surviving in the arena of popular religion. This would explain why the canon on exorcism was repealed and not given an immediate successor in the second half of the twentieth century. However, a closer examination of the Church of England in the course of the XVIII, XIX or XX centuries suggests that the picture may be slightly more nuanced than this, and that the legal regulation of exorcism was neither dormant nor irrelevant.

On one level, it is demonstrably the case that the approach of the legal framework and wider society towards the supernatural shifted somewhat. The Witchcraft Act 1736 repealed the statutes of 1563 and 1604 prohibiting witchcraft, and also made it a criminal offence for anyone to purport to have magical powers.⁴³ Effectively, secular law now denied the existence of witchcraft as a phenomenon. At first sight, this represented a blatant contrast with the position of the previous century when the 1604 Witchcraft Act had been passed. However, when the influence of James I and VI is weighed in the balance, and obvious political cache in pleasing the new monarch, it is less clear cut that the ruling elite had changed their stance so radically, and the legislation may have reflected short-term political expediency, rather than a widespread and deep-rooted acceptance of some of the beliefs under-pinning it.⁴⁴

It is evident in examining the statute of 1736 that, once again, the mischief which the Act is seeking to address is that generated by fraudulent claims in relation to the supernatural, and this had been one of the driving concerns behind the 1604 canon on exorcism. Whilst elite

⁴³ J. Cromer, 'It's in the Cards: The law of Tarot (and Other Fortunes Told)', in C. Corcos (ed), *Law and Magic: A Collection of Essays* (Durham North Carolina: Carolina Academic Press) 2010, 15-29, 21

⁴⁴ C. Little, *Union of Crowns: Forging of Europe's Most Independent State* (Castle Douglas: Neil Wilson Publishing) 2003, Chapter 8

perceptions of the supernatural were changing, it would be overstating the case to present this as a straight-forward transformation from credulity to dismissal. There had always been a strong stream of sceptical thought in England on this issue,⁴⁵ but despite the fact that scepticism was prevalent it was, by no means, universal in either the seventeenth or the eighteenth centuries. As Davies⁴⁶ argues, serious belief in witchcraft continued long after 1736, and was certainly not confined to rural or uneducated members of the population.

For instance, Samuel Johnson and William Blackstone were both convinced of the reality and seriousness of witchcraft. Blackstone, in fact, typified both the Anglican and Common Law response to the question, asserting that such things did indeed exist, but were rare and difficult to reliably prove. The dangers of innocent people being falsely accused were fundamentally what made criminal prosecution undesirable.⁴⁷ This was a rationalist and pragmatic outlook, but one which left the door ajar to the possibility of more things in Heaven and Earth, and he also quoted Montesquieu with approval for having taken essentially the same line on the legal sanction for witchcraft. It is worth noting in passing that Montesquieu in his *Spirit of Law*⁴⁸ expressly linked the prosecution of witches and heretics, categorising both as undesirable because of their subjective nature, as well as openness to abuse and the difficulty which blameless citizens might have in defending themselves against accusations. He also made reference, in the same discussion, to the injustice and absurdity of persecution which Jewish communities had faced in the past.

⁴⁵ R. Hodgkinson, 'Which did regional variations exist in the prosecution of witches between 1580-1650?' (2003) *The Historian* 79, 16-21, 17

⁴⁶ O. Davies, 'Witchcraft: The Spell That Didn't Break' *History Today* (1999) 49(8) 7-13, 8

⁴⁷ W. Blackstone, *Commentaries on the Laws of England-Book the Fourth* (Oxford: Clarendon Press) 1769, 59-60

⁴⁸ *The Complete Works of Monsieur de Montesquieu translated from the French, Spirit of Laws*, Chapter 5, (Watson: Dublin) 1777, 247-248

Therefore, the association between fears about witchcraft and insecurity about those perceived as 'other' was well recognised by jurists. Yet at the same time, the acknowledgement that legal criminal processes were too open to manipulation and abuse in these contexts to be useful, did not amount to a denial of the reality of witchcraft. Both Blackstone and Montesquieu were careful to insist upon that caveat.

Whilst witchcraft and demonic possession were not the same, the two beliefs were linked with each other. Both concepts required those who endorsed them to accept the existence in an unseen world of malevolent spirits which could work tangible and corporeal harm, and which engaged in traffic with human beings. In fact, not all of the intellectual ferment of the Georgian era was rationalist in nature. Isaac Newton obsessed over alchemy and deciphering biblical prophecies, and as Dobbs⁴⁹ has argued, considered all of his studies (including mathematics and physics) to be evidence of divine activity in the world.

There was continuity, as well as change, between the Jacobean times and the age of Newton, in so far as there had always been a spectrum of belief in demonic activity and related phenomena within the intellectual and social elites of England, and therefore also within the Anglican Church. The institutional position remained one of extreme caution, but not outright denial.

⁴⁹ B. Dobbs, *The Janus Face of Genius: The Role of Alchemy in Newton's Thought* (Cambridge: CUP) 1991, 17

Wesleyan Methodism was one arena within which claims of possession arose within the eighteenth century Church of England. It should be remembered that although John Wesley was a complicated and controversial figure, he regarded himself as a priest of the established Church and resolutely refused to depart for the entirety of his life.⁵⁰ Commentators like Levack⁵¹ treat Methodism as an almost entirely separate religious tradition, but in an eighteenth century context it should be seen as part of the Church of England landscape. It is unquestionable that Wesley came increasingly into conflict with the ecclesiastical hierarchy, but he saw himself as attempting to revive the life of the denomination into which he was ordained, rather than break away from it.

Some of the charismatic phenomena associated with Wesley's ministry involved individuals understood to be experiencing demonic possession, and being cured by prayer.⁵² It is unclear whether the type of prayer involved would have violated the 1604 canon, but given the breadth of the wording it is likely that it would, and any prayer which was in any way directed at casting out '*any Devil or devils*' would have been caught.⁵³ If the afflicted was brought into the prayer-meeting and spontaneously cured by the general prayer and the sanctity of the atmosphere, then there would probably be no breach of the canon, although it seems improbable that this kind of passive deliverance is what was being described. It is also worth noting that canon 72 did not prohibit only exorcism, and consequently, charismatic aspects of some Methodist gatherings (e.g. holding or permitting meetings for the purposes of '*prophecies*') would also contravene other elements within this canon.

⁵⁰ F. Baker, *John Wesley and the Church of England* (London: Epworth) 2000

⁵¹ B. Levack, *The Devil Within: Possession and Exorcism in the Christian West* (Yale: Yale University Press) 2013, 223

⁵² H. Rack, *Reasonable Enthusiast: John Wesley and the Rise of Methodism* (London: Epworth) 2002, 194

⁵³ Constitutions and Canons Ecclesiastical of the Church of England 1604, Canon 72

Levack observes a connection between Methodist activities and accounts of possession within the South West of England, describing Methodism as *'an enthusiastic religion that continued to profess a belief in witchcraft and possession'*.⁵⁴ He refers to the famous case of George Lukins, a carrier from Somerset who displayed various symptoms, including apparent fits, contorting his body, howling and shouting abuse at clergy. The Rev'd Joseph Easterbrook, a local Anglican priest, diagnosed this as demonic possession, attempted to arrange an exorcism,⁵⁵ and appealed to those of the other Church of England clergy in the district, whom he conceived *'most cordial in the belief of supernatural influences'*.⁵⁶ According to Easterbrook, his colleagues accepted that Lukins' symptoms were of supernatural origin, but were not prepared to take part in an exorcism ritual. Levack⁵⁷ cites the 1604 canon as the reason for this, but the extent to which the ecclesiastical prohibition actually figured in their thinking is not wholly clear from Easterbrook's account. They could equally have been worried about scandal and reputational damage, and might have plausibly been lukewarm about supernatural diagnosis and more willing to humour Easterbrook in private, than come out in public support. In the end he had recourse to *'certain persons in connection with John Wesley'*.⁵⁸ Levack describes them as 'Ministers', but this term is misleading, and although Wesley had, to say the least, a complicated attitude towards Anglican ecclesiology,⁵⁹ as we

⁵⁴ B. Levack, *The Devil Within: Possession and Exorcism in the Christian West* (Yale: Yale University Press) 2013, 223

⁵⁵ J. Priest, *The Wonders of Nature and Providence, Compiled from Authentic Sources Both Ancient and Modern, Giving an Account of Various Strange Phenomena Existing in Nature* (New York: Albany,)1825, 384

⁵⁶ Ibid, 385

⁵⁷ B. Levack, *The Devil Within: Possession and Exorcism in the Christian West* (Yale: Yale University Press) 2013, 224

⁵⁸ J. Priest, *The Wonders of Nature and Providence, Compiled from Authentic Sources Both Ancient and Modern, Giving an Account of Various Strange Phenomena Existing in Nature* (New York: Albany) 1825) 384

⁵⁸ Ibid, 385

⁵⁹ H. Rack, *Reasonable Enthusiast: John Wesley and the Rise of Methodism* (London: Epworth) 2002, 237-250

have insisted, he was not attempting to found a denomination, and the High Church environment in which he had been nurtured encouraged a serious and reverential stance towards Holy Orders. Wesley did not take it upon himself to claim the right or capacity to ordain others until the close of his life, and even then his brother Charles was convinced that it happened in part because he had been manipulated by the recipient Coke.⁶⁰ Charles Wesley and many others within the Methodist camp were utterly scandalised,⁶¹ despite protestations that the initial intention was for the ministers Wesley had ordained to be active only in America, as this was effectively deprived of Church of England priests and bishops when the colonialists rebelled. As in 1787, when the Lukins exorcism took place, the controversy was still raging, and it is highly unlikely that any of the persons involved should properly be termed 'Methodist Ministers'.

In other words, as stated earlier, this was an episode taking place *within* the Church of England, albeit amongst a marginal and controversial group, and Easterbrooke himself was an Anglican clergyman. It should also be noted that of all of the many things which Methodists did which caused controversy, exorcism made limited impression, but at that stage, as it happens now, this field had the ample potential to attract the attention of secular authorities. Reports of demoniacs garnered interest and curiosity and the Lukins case was covered in the local press.⁶² The behaviour of persons suspected of being possessed might itself be cause for scandal and social censure, and in some instances could even transgress the criminal law.

⁶⁰ S. Tomkins, *John Wesley: A Biography* (Oxford: Lion) 2003, 185

⁶¹ Charles Wesley responded in verse: '*So easily are Bishops made, By men's or women's whim? W- his hands on C- hath laid, but who laid hands on him? W- himself and friends betrays, By his good sense forsook, While suddenly his hands he lays, On the hot head of C-*' Quoted H. Rack, *Reasonable Enthusiast: John Wesley and the Rise of Methodism* (London: Epworth) 2002, 518

⁶² J. Priest, *The Wonders of Nature and Providence, Compiled from Authentic Sources Both Ancient and Modern, Giving an Account of Various Strange Phenomena Existing in Nature* (New York: Albany) 1825, 385

Another important consideration is that the clinical understanding of mental health was growing during this period. Contemporary rationalist commentators praised clergy who directed individuals convinced that they were possessed away from supernatural ideas, and adopted a pathological understanding of the situation.⁶³ As Laragy⁶⁴ argues, for example, by the nineteenth century suicide was understood as a medical problem, and one which doctors could avert. The roots of this thinking were firmly in the eighteenth century and the firmer medical management of mental illness. Furthermore, some influential figures in the new science, like Francis Willis, who famously treated King George III, were themselves clergymen,⁶⁵ and contemporaries did not in general perceive any tension between faith and medicine.

In social terms, this backdrop undeniably raised stakes in misdiagnosing and mismanaging cases of mental illness masquerading as possession, as mental health conditions became progressively pathologised. As societal perceptions altered, clergy purporting to carry out exorcism rituals were at risk of exposing themselves to ridicule and external criticism from the medical profession. The way in which contemporaries viewed the Lukins case itself illustrates this. The Gentleman's Magazine and Historical Chronicle of 1788 described it as "*epilepsy and St Vitus dance effecting a person of weak mind.*"⁶⁶ The author accepted the honesty of the clergymen involved, but despaired of their credulity. Yet the Church did not

⁶³ M. Foucault, *Madness and Civilisation* (Abingdon: Routledge) 2001, 244-245

⁶⁴ G. Laragy, 'A Peculiar Species of Felony: Suicide, Medicine and the Law in Victorian Britain and Ireland' (2013) *Journal of Social History*, 732-743, 739

⁶⁵ A Chapman, *Physicians, Plagues and Progress: The History of Western Medicine from Antiquity to Antibiotics* (London: Lion) 2016, 315

⁶⁶ 'Epileptic Case of George Lukins', *The Gentleman's Magazine and Historical Chronicle* (1788) 58(II) 609

see the need to revisit or bolster the canon of 1604 at this stage, despite the Methodist movement stirring up enthusiastic and charismatic practices which included exorcism.

Taking all of this into account, had the need to self-police in order to guard autonomy, and also the desire to safeguard institutional reputation, been as dominant within Anglican culture as Milner suggests, a more robust response to this revival of exorcism might have been expected at this point. One counter to that argument might be that these practices were on the fringe of the Church of England, and that in the nineteenth century Methodism had become a distinct religious tradition. After the death of Wesley, the final ties with the established Church had been cut, the movement fragmented in various directions on both sides of the Atlantic,⁶⁷ and it might be suggested that there was no need for the Church of England to regulate exorcism, because at this period in history it had receded almost to the point of non-existence. However, an examination of the picture in the nineteenth century demonstrates that this was not in fact the case.

Exorcism in the Nineteenth Century

In this context it is important to appreciate two aspects of the factual paradigm. Firstly, the clergy of the Church of England were not separate from the mainstream of elite, educated society in this era. They were drawn from and continued to form part of these social and

⁶⁷ K. Watson, 'The Price of Respectability: Methodism in Britain and the United States 1791-1865', 31-50, in W. Gibson, P. Forsaith and M. Wellings (eds), *The Ashgate Research Companion to World Methodism* (London: Ashgate), 2013

cultural circles, which is why the novels of Austen are populated with clergy like the sycophantic Mr Collins,⁶⁸ numerous priests feature in the work of the Brontës,⁶⁹ and in the early twentieth century P G Wodehouse gives Bertie Wooster distant relations like the Bishop of Godalming.⁷⁰ As a result, it is inaccurate to present a frontier of separation between the established Church and the wider intellectual ferment. Secondly, it is important to notice that in both the general population and the Church, opinions and ideas varied greatly in relation to exorcism and the supernatural, and because there was a diversity of belief, there was an equally wide range in the manner in which both the clergy and others interpreted the pastoral situations in which they were involved. Clerical and non-clerical observers alike could plausibly view the same scenario and perceive it to be the consequence of physical or mental illness, moral depravity or non-natural agency. Consider the way in which all of these ideas are woven into the novels of the time with themes around mental illness, for example, *Jane Eyre*⁷¹ and *The Woman in White*.⁷² As we previously stated, scientific advances and cultural changes were altering perceptions within the Anglican Church and outside of it.

Furthermore, during the course of the nineteenth century there was a loosening of official control over belief, which was felt inside and outside of the Church. For example, many of the legal disadvantages suffered by Roman Catholics were removed in 1829,⁷³ a major and controversial step, given that this faith had traditionally been regarded as the politically dangerous and subversive religious minority.⁷⁴ In addition, various other aspects of Anglican

⁶⁸ J. Austen, *Pride and Prejudice* (First edition 1813)

⁶⁹ For example, St John Rivers and Mr Brocklehurst in *Jane Eyre*: C. Brontë, *Jane Eyre* (First edition 1847)

⁷⁰ P. G. Wodehouse *Something Fresh* 2016 (First edition 1915)

⁷¹ C. Brontë, *Jane Eyre* (1847)

⁷² W. Collins, *The Woman in White* (1859)

⁷³ Catholic Emancipation Act 1829

⁷⁴ S. Mann, *Supremacy and Survival: How Catholics Endured the English Reformation* (New York: Scepter) 2007, 127

privilege and monopolies were dismantled in the course of the century (e.g. the University Tests Act 1871 permitted non-Anglicans to attend Cambridge and Oxford),⁷⁵ and groups and individuals who did not conform to the established faith were no longer seen as a threat to the State, nor persons who should automatically be excluded from public life.

There were also debates about the scope for freedom of thought and belief within the Church of England, and for present purposes it is of particular interest that two high profile controversies played out in relation to ideas of hell and the Devil.⁷⁶ Nevertheless, as Henderson⁷⁷ demonstrates in his analysis of the 'Devil's Law' cases, it is contextually important that they were decided after *Gorham v Bishop of Exeter*.⁷⁸ The Gorham case was a decision on baptism by the Judicial Committee of the Privy Council, which established that ecclesiastical tribunals only had the capacity to rule on interpreting the language of doctrinal statements if these were ambiguous, and nothing in the Rubrics and Formularies clarified the issue. Under these circumstances, the matters in question were for individuals to judge privately. As Parker justly observes, this decision was received badly by conservatives, especially from the Anglo-Catholic wing of the Church, and was instrumental in the conversion of figures like Manning to the Roman Catholic fold.⁷⁹ It was doubly repugnant in their eyes: not only was a temporal body adjudicating on spiritual matters, it was failing to safeguard sound doctrine.

⁷⁵ R. Sandberg, *Law and Religion* (Cambridge: CUP) 2011, 153

⁷⁶ *Wilson v Fendall*; sub nom *Williams v Bishop of Salisbury* (1863) II Moore New Series 375; *Jenkins v Cook* (1872–75) LR 4 A & E 463 (Court of Arches), (1875–76) LR 1 PD 80 (Privy Council).

⁷⁷ D. Henderson, 'The Devil's Law Cases' (2013) *Ecclesiastical Law Journal* 15, 28-58, 33

⁷⁸ *Gorham v Bishop of Exeter* (1850) Brod & F 64

⁷⁹ K. Parker, 'H Manning and Neo-Ultramontaniam: The Anglican Context for an Oxford Movement Convert's Faith in Papal Infallibility', in K. Parker and M. Pahls (eds), *Authority Dogma and History: The Role of Oxford Movement Converts in Papal Infallibility Debates* (Dublin: Academica Press) 2009, 95-114, 109

However, whilst *Gorham* was not universally popular, it is significant that the tide was flowing strongly in the direction of diversity. The outcome of the Devil's law cases meant that clergy could not be disciplined simply for rejecting the idea of a literal hell as a place of everlasting punishment, and also that the private intellectual rejection of the Devil and hell by a lay person was not appropriate ground for the refusal of communion. Again, as Henderson⁸⁰ notes, the judgment provoked anger from many clerical and lay observers, and pleas for tolerance did not amount to approbation. Even amongst the bishops who supported the outcome of the cases, and the right of individuals to hold, and within appropriate parameters to express, these opinions without censure, there were a substantial number who considered the opinions in question misguided and undesirable.

Consequently, two phenomena are observable. Firstly, there had been a marked shift in attitudes towards the supernatural since the sixteenth century, but there remained a diversity of opinions on the same, and secondly, such diversity was no longer regarded as legally and practically dangerous in the way that it once had been. It is also worth noting in passing that the bitter ecclesiastical battles between Tractarian and Evangelical Anglicans⁸¹ did not relate to exorcism, because this was not an issue which divided Anglicans along party lines. Although Anglo-Catholics might perhaps have been more at ease with the performative aspects of traditional rites of exorcism, belief in evil spirits was not a High Church versus Low Church debate, and believers and sceptics were to be found in both camps. Crucially, it was more acceptable than it had been in previous generations for clergy and lay people to formulate

⁸⁰ D. Henderson 'The Devil's Law Cases' (2013) *Ecclesiastical Law Journal* 15, 28-58, 44

⁸¹ P. Nockles, *The Oxford Movement in Context: Anglican High Churchmanship 1760-1857* (Cambridge: CUP) 1994; J. Shelton Reed, *The Glorious Battle: The Cultural Politics of Victorian Anglo-Catholicism* (Nashville: Vanderbilt University Press) 2000

responses as individuals to mysterious and challenging situations, and at the same time, the context within which those individual responses were being formulated had changed.

The behaviour of disturbed or distressed individuals was likely to be interpreted differently, and consequently, some of the incentive to make fraudulent claims had disappeared. The greater the proportion of sceptics in relation to possession and exorcism, the lesser the chance of gaining social cache or material support from sympathisers. With supernatural explanations being less plausible than in former times, those breaking social taboos were more likely to be treated for mental illness (which could involve confinement in an asylum and subjection to a sometimes dehumanising medical regime)⁸² or seen to be transgressing the law. The social divide was stark. Genuine sufferers and family members of those with unexplained afflictions were more inclined to persist with medicine, and those who did seek supernatural relief were ordinarily from poor rural communities, and more likely to go to the local cunning man or woman than the parish priest.⁸³

All things considered, there are good logical reasons as to why the Church of England would not be aiming to alter its regulation of exorcism at this time. Its clergy were being presented with fewer cases, there was no clear doctrinal position on the subject, and individual priests were free to use their own intellectual and freedom to discern an appropriate response to concerns about the supernatural. However, crucially, it must be stressed that it was not the

⁸² Although treatment of mental illness was gradually becoming more enlightened and humane, life as a patient in an asylum was still often regimented, uncomfortable and invasive. See further: M. Stevens, *Life in the Victorian Asylum: The World of Nineteenth Century Mental Health Care* (Barnsley: Pen and Sword) 2014

⁸³ O. Davies 'Witchcraft: The Spell That Didn't Break' (1999) *History Today* 49(8) 7-13, 12

case that nothing was happening or that the clergy were not active in what we would now describe as deliverance ministry.

As noted at the beginning of this article, one issue in this arena relates very much to terminology, not just in terms of language, but also intellectual categories. In contemporary British Anglicanism, as the work of authors like Walker⁸⁴ illustrates, there is a widespread understanding of different kinds of situations in which people might seek deliverance and healing from clergy. Many of these, such as place memory and “poltergeist” activity, would not be today interpreted as in any sense demonic in origin, but in the nineteenth century, parish clergy did not have access to a body of accepted theological study on this topic, advisers or pool of collective expertise. Therefore, when presented with pastoral problems, they would have had to formulate a response which was in keeping with their personal beliefs and also the beliefs and perceptions of the people they were ministering too. In some cases, these would have included an acceptance of demonic forces, and clergy convinced of such forces were free to apply to their bishops for a license to carry out exorcism. Equally, others might have viewed the same factual situation very differently, and treated the problem as natural in origin, or adopted a spiritual response which they did not classify as exorcism. Attempting to lay to rest an unquiet spirit is not the same as intending to expel ‘devils’ in the language of the canon.

Furthermore, it should be remembered that many sectors of Victorian society were fascinated by the mysterious and supernatural. Séances and table-turning were fashionable, and the

⁸⁴ D. Walker , *The Ministry of Deliverance* (London: DLT) 1997

subject of lively debate. Brunel⁸⁵ took great delight in his spare time discovering and demonstrating the tricks of some of the charlatans involved in this field, and others who were curious, but slightly less sceptical, tried to take a scientific approach to investigating what in the twenty-first century might be loosely termed the paranormal. The Ghost Club, which describes itself as '*the world's oldest organisation for psychical research*',⁸⁶ was founded in 1862 and had Anglican clergymen amongst its first members.

Whilst the stories of M R James were fictional and written for entertainment purposes, he grew up in a vicarage as the son of an evangelical parish priest.⁸⁷ The clergy which he depicts in many of his tales, for example, 'The Treasure of Abbot Thomas',⁸⁸ are rational, open-minded, and tend to deal pragmatically with the situations in front of them. There are sometimes references to rituals to 'lay-ghosts' of having been performed in centuries past, appearing in stories like 'The Rose Garden', but few, if any, liturgical or formalised interventions from the contemporary protagonists.⁸⁹ Exorcism was not at the forefront of the pastoral arsenal of responses, although this did not mean that Church of England priests were not called to deal with what in modern terminology we would describe as deliverance issues.

⁸⁵ I. Brunel, *The Life of Isambard Kingdom Brunel: Civil Engineer* (Cambridge: CUP) 2010 (First published 1870) 504

⁸⁶ The Ghost Club, <http://www.ghostclub.org.uk/history.html> (accessed 14/03/2017)

⁸⁷ M. Cox, *M. R. James: An Informal Portrait* (Oxford : OUP) 1983, 6

⁸⁸ M. R. James, *Ghost Stories of an Antiquary* (First published 1904)

⁸⁹ Ibid

The Twentieth Century and Beyond

As previously stated, the Church of England evolved its responses as the cultural climate shifted, both internally and externally. The way in which pastoral situations were understood and interpreted by clergy and others involved changed, but both canon law and practice accommodated the possibility of the demonic, and a spiritual response. Under these circumstances, a canon of 1604 which had been aimed at dealing with fraudulent claims of possession arising out of Reformation and Counter Reformation fervour was clearly not fulfilling an obvious function by the 1960s, and was accordingly removed when the Church of England overhauled its legal framework.

Nevertheless, a number of other social developments had meant that neither exorcism nor deliverance ministry understood more widely could be obsolete terms by the late twentieth century. There had been indeed a revival of charismatic Christianity across denominational borders, which generated, as Collins⁹⁰ notes, an increase in the practice of exorcism in those charismatic contexts. Alongside which, the interest which the Victorians had shown in the occult did not dissipate in the twentieth century.⁹¹ The popular fascination continued, fed by and feeding the entertainment industry, with high profile films such as 'The Exorcist', 'Poltergeist' and 'The Blair Witch Project', as well as reality TV phenomena such as 'Most Haunted'. Now more than ever, supernatural stories of spiritual evil had become part of mainstream popular culture.

⁹⁰ J. Collins, *Exorcism and Deliverance Ministry in the Twentieth Century: An Analysis of the Practice and Theology of Exorcism in Modern Western Christianity* (Milton Keynes: Paternoster) 2009, 42

⁹¹ O. Davies, 'Witchcraft: The Spell That Didn't Break' (1999) *History Today* (1999) 49(8) 7-13, 12

Combined into this mix are the demographic changes which the United Kingdom has experienced since the end of the Second World War.⁹² An increasing level of cultural and religious pluralism has meant that many cultural groups have brought their own beliefs and ideas into the common intellectual and imaginative space. Beliefs in ghosts, witches and evil spirits are common-place in many parts of the contemporary world, and naturally within British communities with close ties to those regions.

All of these factors taken together have changed the kind of pastoral situations which Anglican clergy encounter in respect of deliverance ministry, and this changing context is what prompted the Exeter Report, produced by a Commission chaired by the then Bishop of Exeter,⁹³ to instigate study and regulation of exorcism and deliverance ministry. This led to the contemporary position, with guidelines issued in 1975 and updated in 2012.⁹⁴ These include five key points about deliverance ministry: 1) It should only be undertaken by experienced persons authorised by the diocesan bishop; 2) It should be done in the context of prayer and sacrament; 3) It should be done in collaboration with the resources of medicine; 4) It should be followed up by continuing pastoral care; and 5) It should be done with the minimum of publicity.

One of the many motivating factors behind the introduction of these provisions may have been to avoid external interference and legal consequences if the Church involves itself in

⁹² J. Wolffe, 'How many ways to God? Christians and Religious Pluralism', in G. Parsons (ed), *The Growth of Religious Diversity: Britain from 1945: Vol II* (London: Routledge) 1994

⁹³ H. Montefiore, *The Paranormal: A Bishop Investigates* (Leicester: Upfront) 2002, 114

⁹⁴ Church of England, *House of Bishops Guidelines for Good Practice in Deliverance Ministry 1975 (Revised 2012)* <https://www.churchofengland.org/sites/default/files/2018-01/House%20of%20Bishops%E2%80%99%20Guidelines%20for%20Good%20Practice%20in%20the%20Deliverance%20Ministry%201975%20%28revised%202012%29.pdf>

practices which cause or contribute towards harm. However, as stated earlier, in our view, Milner's narrative of a Church barricading itself against marauding secular regulation is simply not viable.

The reality, as we have seen, is that the Church of England has *always* encompassed, and been surrounded by, a diversity of opinion on exorcism and related matters. The 1604 canon closely regulated, but did not forbid, the practice of exorcism itself, and exactly the same is true to the episcopal guidelines issued by contemporary dioceses pursuant to the advice of the Christian Deliverance Ministry Study Group.⁹⁵ Now exorcism rituals should only ever be carried out after consultation with episcopally appointed experts and after appropriate psychiatric expert opinion has been sought, and any failure to abide by these requirements would leave clergy involved open to discipline pursuant to the Clergy Terms of Service.⁹⁶ Nevertheless, to fit this into a thesis of control and maintaining boundaries is to miss the complexity of the context.

The truth is that secular and canon law have coevolved in this area, as the Church of England influenced, and was in turn influenced by wider societal change. The nature of this two way exchange can be appreciated by considering the contemporary position of State law in this regard, and also critically how it compares and contrasts with the paradigm in other jurisdictions. This perspective reveals how the journey which the Church of England has

⁹⁵ M. Perry (ed), *Deliverance: Psychic Disturbance and Occult Involvement* (London: SPCK) 1996, 127-135

⁹⁶ The Church Of England, *Clergy Terms and Conditions of Service*, <https://www.churchofengland.org/more/clergy-resources/national-clergy-hr/clergy-terms-and-conditions-service>

played in parts has shaped the current legal framework into a form which differs from other contexts.

Exorcism in the contemporary legal landscape in England and other Common Law jurisdictions

As a starting point in this final section of our article, we should stress that it is uncontroversial that where rites of exorcism involve non-consensual touching, or behaviours which amount to the abuse of children or vulnerable adults, they will be unlawful. This, as might be anticipated, is a shared feature of legal frameworks across the Common Law world, but the position is rather more telling and interesting with regard to the question of consensual participation.

Hall has previously examined the issue of the capacity of adults to consent to actual bodily harm in the context of exorcism rituals in Britain.⁹⁷ In short, the default position following *R v Brown* is that inflicting any injury more serious than common assault⁹⁸ upon another person will be a criminal offence, regardless of the victim's ostensible consent, *unless* the harm was caused in the course of an exempt category of activity.⁹⁹ Categories of activity include medical treatment and contact sports, but also *some* faith based practices, namely *ritual male circumcision* and *religious mortification*. Although there has never been an express judicial

⁹⁷ H. Hall, 'Exorcism, Religious Freedom and Consent: The Devil in the Detail' (2016) *The Journal of Criminal Law*, Vol 80(4) 241-253

⁹⁸ *R v Brown* (1994) 1 AC 212

⁹⁹ *Ibid* per Lord Templeman, 3

pronouncement on the question, there are cogent reasons to infer that exorcism is not included within these exempt categories, and does not constitute a distinct category of its own either.

Firstly, it does not easily fit within the natural meaning of religious mortification and certainly could not be shoe-horned into ritual male circumcision. Secondly, although the House of Lords in *Brown* did not assert that the list of exemptions referred to was exhaustive, courts have had opportunities to bring exorcism within the sphere of protected activities and have not taken them up.¹⁰⁰ In the case of Rabiya Patel, a young woman was beaten to death by family members who loved her, at the instigation of a female spiritual adviser from their mosque. Although tragically misguided, the evidence did show that they genuinely believed that they were helping the victim, who had initially wanted to participate. The case might reveal that there are in fact good reasons *not* to permit consent as a defence, but it is striking that this possibility was not even aired.

Certainly the judicial response was in marked contrast with the approach of an appellate court in New Zealand, when confronted with the question of whether a person could, *in principle*, give operative legal consent to bodily harm inflicted during the course of a religious ritual, even if this carried a risk of death.¹⁰¹ In *R v Lee* they criticised the decision in *Brown* for undervaluing the importance of autonomy, and found that if a woman who had died whilst receiving an exorcism had genuinely given full and free consent, then the minister who caused

¹⁰⁰ *R v Rabiya Patel and Others* [1995] 16 Cr App R (5) 827

¹⁰¹ *R v Lee* (2006) 5 LRC 216 (New Zealand)

her injuries should accordingly have been given the opportunity to use this as a defence to criminal charges brought against him.

On the one hand, it is important to acknowledge that these questions relate to a much wider debate about autonomy versus paternalism when it comes to legal systems recognising the choices of individuals in respect of their own bodies.¹⁰² The New Zealand court was critical of *Brown* in terms which went beyond the context of exorcism, but at the same time, this was the arena in which remarks were being made. Furthermore, it is key to appreciate that for English courts allowing the possibility of a consent defence in this context would not require any departure from the doctrine in *Brown*, and this could be achieved simply by classifying exorcism as another sphere of exempt activity. And yet, when faced with a case of an individual who accidentally died during the course of an exorcism ritual, there was no suggestion that consent should be considered as a possible defence. When boiled down, the New Zealand court was prepared to allow a person accused of beating someone to death the opportunity to argue that it was consensual, as it formed part of the victim's desired religious practices, whereas the English courts did not accept that this was even a theoretical possibility.

Under the current English regime, there is undoubtedly a value judgement being made in respect of the categorisation of activities, and the House of Lords' conclusion was unequivocally that boxing was more socially desirable than sadomasochistic sexual activity.

¹⁰² See, for example, M. Giles, 'R v Brown: Consensual Harm and the Public Interest' (1994) 57 *MLR* 101, S. Streets, 'S & M in the House of Lords' (1993) 18(5) *Alternative Law Journal* 233; J. Tolmie, 'Consent to Harmful Assaults: The Case for Moving Away from Category Based Decision Making' (2012) 9 *Crim LR* 656 and B. Bix, 'Assault, Sado-Masochism and Consent' (1993) 109 *LQR* 540

The English courts have been given opportunities to ascribe a positive value to violent exorcism rituals which outweigh the negative consequences of permitting them, but have chosen not to do so. In fact, the possibility of consent as a defence has not been accepted in cases where individuals have died during these rites.¹⁰³

A very different approach can be seen from a Texan court in *Pleasant Glade Assembly of God v Schubert*.¹⁰⁴ Whilst this case involved civil, rather than criminal proceedings, and the victim survived the experience, the facts are nevertheless arresting. A young woman in her late teens was held down and forcibly subjected to an exorcism ritual, by members of the Pentecostal church community of which she was part. The plaintiff protested whilst this was taking place, making it clear that as far as she was concerned, she was not consenting to the physical contact. Not surprisingly, she found the experience deeply distressing, and suffered long term mental health problems as a result. However, the Supreme Court of Texas refused to allow her to bring a claim in tort, finding that it would be contrary to the constitutional right to free exercise of religion.

Koploy¹⁰⁵ criticises this decision as being out of step with judgments in leading cases like *Boerne*¹⁰⁶ and *Smith*.¹⁰⁷ In Koploy's analysis, the position which has emerged from previous case law is that facially neutral laws will be applicable in religious contexts, and free exercise

¹⁰³ *R v Rabiya Patel and Others* [1995] 16 Cr App R (5) 827

¹⁰⁴ *Pleasant Glade Assembly of God v Schubert* (2008) 264 S W 3d 1

¹⁰⁵ C. Koploy, 'Free Exorcise Clause? Whether Exorcism Can Survive America's 'New Neutrality' (2009) *Northwestern University Law Review*

¹⁰⁶ *City of Boerne v Flores* (1997) 521 US 507

¹⁰⁷ *Employment Division v Smith* (1990) 494 US 872

cannot be used as a cover to justify harm to third parties, especially physical harm. She suggests that there were three considerations underlying the court's conclusion here: 1) The Texan court regarded exorcism as a religious practice which was worth protecting, and feared an unconstitutional chilling of religious freedom if a church in this situation was found to be liable; 2) The judges regarded themselves as having generous scope to adapt and develop case law; and 3) The plaintiff had in fact given consent, by virtue of her voluntary membership of this particular church.

For our current purposes, the first and third of these points are of particular significance, and we would endorse Koploy's conclusions in both instances. The implications of the latter observation give powerful support for the former: in adopting such an unusual and expansive understanding of consent, the court engaged in some dramatic interpretative gymnastics in order to reach its ultimate conclusion, and it seems likely that ideological motivation was a powerful factor in this. The truth is that this decision is at odds with the general judicial trend, as in US civil and criminal law alike, a person can withdraw consent to bodily invasion at any time they choose. For example, when it became apparent that in North Carolina a defendant would not be guilty of rape if he ignored the victim's request to stop in circumstances where she had initially consented, this revelation generated national outrage,¹⁰⁸ and a bill to remedy this lamentable situation is currently making its way through the state legislature, and unsurprisingly facing no concerted challenge.¹⁰⁹ There is a widespread consensus that if

¹⁰⁸ T. Thomas, 'NC Bill Clarifies that Consent to Sex Can be Revoked Mid Course', *Gender and the Law Prof Blog* (14/03/18), http://lawprofessors.typepad.com/gender_law/2018/03/nc-bill-proposes-to-clarify-that-consent-to-sex-can-be-revoked-mid-course.html

¹⁰⁹ North Carolina General Assembly, Senate Bill 553, 2017-2018 Session, Revoke Consent for Intercourse, <https://www2.ncleg.net/BillLookup/2017/S553>

corporeal autonomy and human dignity are to be robustly defended, then a person must be free to change their mind, whether in sexual, medical or other settings. Therefore, we are bound to test why the plaintiff's withdrawal of consent was not operative in *Schubert*, and to what extent the relevant consent had ever been given in the first place.

It is less than clear than in opting to become a member of a church, a person is truly consenting to be exorcised by whichever fellow member, or even whichever person in authority, happens to discern a need to do this at any given moment. Did the plaintiff, or others within the congregation, ever truly understand themselves to be signing up to being jumped on and exorcised at choir practice, or whilst making the post-service coffee? It seems highly doubtful that this interpretation can ever have been more than a legal fiction, and all things considered, the court must have deemed that there were compelling reasons to impose an irrebuttable presumption of consent.

We would agree with Koploy that the objective of judges in preserving religious freedom could have been served by setting "safe parameters" within which exorcism could be practiced, as opposed to giving faith groups an effective carte-blanche in this area. One of the tragic ironies is that exorcism has potential to be so dangerous in part because the recipient's pleas for it to end are liable to go unheeded, the voice being ascribed to the demon, rather than the victim, and in light of this, too much latitude has the potential to be extremely dangerous.

Nevertheless, we are not at present concerned primarily with the desirability of the decision, but with the way in which it contrasts with the restrictive approach taken by the English courts. In one case, the concept of consent is stretched dramatically, and in another it is not even placed upon the table as a possibility. Whilst there might be some argument that the facts of *Patel* and *Schubert* are very different, as being held down and aggressively prayed over does not equate to being beaten to death, it is none the less a serious violation of an individual's freedom, and one with the potential to have a serious impact on their well-being. Moreover, the facts of *Patel* and *Lee* are extremely similar, and the contrasting approach of the courts could not be more marked.

In summary, despite the fact that the United Kingdom has an established Church, and generally takes a supportive approach towards religious practice, founded both upon Common Law and Convention rights, in relation to the specific issue of exorcism, it adopts a more restrictive stance than other Anglophone jurisdictions.

Conclusions

This key finding supports our thesis that secular law and Church of England policy have evolved side by side on the subject of exorcism, and clearly, the way in which this matter is dealt with is shaped by the religious milieu in which the courts move. This is apparent from *Schubert*, in which the judges evidently regarded such prayers as part and parcel of mainstream religious practice that should not be stifled or problematized by the law.

It must not be underestimated that the Church of England still has an important influence on the religious background noise of the United Kingdom. The features of High Establishment are maintained, including the Queen as Supreme Governor of the Church of England, bishops in the House of Lords and prayers in Parliament, etc.¹¹⁰ Moreover, Low Establishment remains a powerful reality,¹¹¹ and the 'earthed' impact of the Church can be found in the everyday life of citizens in areas such as schools, sacraments and prisons. Bearing this in mind, when exorcism is debated in the press, Church of England spokespeople are almost invariably brought in to comment,¹¹² and their position is certainly different from other denominations.

The modern day highly regulated approach to exorcism taken by the Church of England, analysed throughout this article, continues to have a powerful social influence, and may consciously or subconsciously feed in to judicial deliberations on the topic. The unease with which exorcism has been regarded since the Reformation still bubbles to the surface in the contemporary conservative judicial approach to this topic, and the caution with which it is treated in comparison with other faith related activities. Case law tells us that actual bodily harm may be inflicted for some specified religious purposes, but not for a rite of exorcism, and the reasons for this can only be adequately understood in light of the coevolution of Church and State throughout the last few centuries.

¹¹⁰ J. García Oliva, 'Church, State and Establishment in the United Kingdom in the XXI Century: Anachronism or Idiosyncrasy?' (July 2010) *Public Law*, 482-504

¹¹¹ W. Carr, 'A Developing Establishment' (1999) *Theology*, 2-10

¹¹² *The Guardian*, 'Like being raped: Three claims of coerced exorcism in the UK' (30/03/18), <https://www.theguardian.com/uk-news/2018/mar/30/like-being-raped-three-claims-of-coerced-exorcism-in-the-uk>