

In some parishes of the Church of England, there obtains the custom of celebrating the Holy Communion according to the liturgical books of the Roman Catholic Church. To what extent is this practice legal?

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Course Leader: Professor Norman Doe

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From the middle of the sixteenth century, the Church of England required all its clergy to make exclusive use of the new Book of Common Prayer, replacing liturgies which had been substantially the same as those used throughout Western Europe. However, the middle of the nineteenth century saw some priests in the Church of England— influenced by the Oxford and ritualist movements— beginning to experiment with the use of *Missale Romanum*. For example, the Anglican order the Sisters of the Poor always used the *Missale Romanum* (in Latin) from their foundation in 1865¹, and in 1868-9 the Society of the Holy Cross ‘expressed a corporate preference from the Roman rite’². In the twentieth century, the use of the Roman rite was occasionally found in parishes, either translated into English and combined with Prayer book texts (the ‘English missal’ tradition³) or, even more unusually, Latin was used throughout⁴. Since the introduction of the *novus ordo* vernacular mass in the Roman Catholic church in the years following the Second Vatican Council, there has been available an official English version of the Roman rite. This liturgy has become the usual rite celebrated in a number of parish churches in the Church of England, and, based on anecdotal evidence, their number has increased in recent years.

There were many prosecutions— and even imprisonment of clergy— in the ritualist controversies of the late 19th century. None of these, as far as the present author has been able to ascertain, alleged the use of the entire Roman mass. From the end of the 19th century, prosecutions became extremely rare, if not unknown, as the public mood had turned against imprisoning ritualists, and bishops tended to use their episcopal vetos to prevent cases coming to court. There seem to be no cases— and certainly none from recent decades— covering the question of whether or not the use of the Roman rite mass is legal in the Church of England.

Prima facie, it might be thought that the answer to this question is obvious: the Roman rite mass is not an authorized service of the Church of England and therefore cannot be used by that Church’s priests under Canon B1.2 which says:

‘Every minister shall use only the forms of service authorized by this Canon...’

However, we will consider three main lines of argument which clergy or parishes might use to defend their practice of using the Roman rite mass in the Church of England:

1. The argument that the Declaration of Assent refers to services “authorized or allowed by canon”, and canons do in fact regulate the Roman mass, namely, the Roman Catholic *Code*.
2. The argument that the Roman rite mass is a service permitted under canon B5.2, at the discretion of the minister having the cure of souls.
3. The argument that the Common Worship Eucharist can be made identical to the Roman rite mass using variations explicitly permitted within Common Worship and otherwise by Canon B5.1.

Having discussed these three possible legal justifications of the use of the Roman rite mass, we will consider whether the use of the Roman rite mass entails doctrinal or ceremonial offences. Finally, we will look at what legal remedies might be available, in theory and in practice.

‘Authorized or allowed by canon’

Clergy have sometimes made the argument (in this author’s hearing) that the Declaration of Assent⁵

¹ Anson (1964), p.402

² Dalby (1998), p. 9

³ As still used in a handful of parishes even now, such as St Luke’s, Southport.

⁴ e.g. St Saviour’s, Hoxtoth under E. E. Kilburn as described in Yates (1999), pp342-3.

⁵ Canon C 15.1

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does not specify the source of the canons which authorize forms of service⁶. The Declaration says,

‘... in public prayer and in administration of the sacraments, I will use only the forms of service which are authorized or allowed by Canon.’

The Roman Catholic canon law, so the argument runs, does allow the Roman rite mass, and it is therefore not a breach of the Declaration of Assent to use that liturgy.

In fact, this argument is specious. Firstly, the Declaration of Assent is included in Canon 15 of the Canons of the Church of England, and the meaning of the word ‘Canon’ throughout that body of law is clear: it refers to the canons in force in the Church of England, and not any other church. Secondly, whatever a priest may or may not declare in the Declaration of Assent, he or she is still bound by the ecclesiastical law. A priest not making the Declaration for some reason would not thereby be exempted from obedience to canons governing liturgy or anything else.

It is therefore easy to dismiss this first argument as having no legal basis.

‘Occasions for which no provision is made’

Some clergy seek to defend their use of the Roman rite by appeal to Canon B5.2, which states,

‘The minister having the cure of souls may on occasions for which no provision is made in *The Book of Common Prayer* or by the General Synod under Canon B2 or by the Convocations, archbishops, or Ordinary under Canon B4 use forms of service considered suitable by him for those occasions and may permit another minister to use the said forms of service.’

The argument runs that none of the authorized services contains a sufficient expression of the catholic understanding of Eucharistic theology, and therefore ‘no provision is made’ for occasions when such a service is required. It is further argued that every Sunday, or indeed every single day, is an occasion when a mass is required which expresses the fullness of catholic faith.

This argument seems subtle— if not sophistical!— and indeed, is in conflict with the paragraph of the canon immediately following, B5.3 which states that

‘... all forms of service used under this Canon... shall be neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter.’

The argument that the Church of England’s own liturgies are so theologically lacking that they cannot be used Sunday by Sunday seems to be in direct conflict with this provision. It seems, therefore, that Canon B5.2 could not be successfully invoked to permit the use of the Roman rite on a regular basis.

It might be possible, though, to use this argument on particular occasions. For example, an Anglican priest who was asked to celebrate an additional mass by a group of visiting Roman Catholic pilgrims wanting a liturgy familiar to them might justifiably consider that to be an occasion ‘for which no provision’ was otherwise made. In such a case, a court might find it permissible for him to use the Roman rite under Canon B5.2 –but only subject to the doctrinal questions raised later in this essay.

‘Variations which are not of substantial importance’

The third means of arguing for the legality of the Roman rite is to claim that, in fact, the service in question is a Celebration of the Holy Communion according to Common Worship Order One, with permitted variations that make the service look like the Roman rite mass.

⁶ A similar argument used to be made over the phrase ‘lawful authority’ in the Clerical Subscription Act 1865, qv Vaisey (1947)

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The Common Worship Eucharist is a very flexible form of service, with variations explicitly permitted in the text and in the rubrics. In addition, further variations are permitted under canon B5.1. Common Worship Order One is already similar to the English-language Roman rite mass in structure⁷ and language⁸. In this author's experience, many Roman Catholics coming to a standard Common Worship eucharist for the first time are hard-pressed to notice the difference if they have not made a study of liturgy. There is, of course, no suggestion that this use of Common Worship is anything other than completely legitimate. We are here considering whether the range of possible variations authorized by Common Worship encompasses a form of service identical, in most or all details, to the Roman rite mass.

Some parts of Order One are already identical to the Roman rite, such as the *Gloria in Excelsis*. In other places, one or more of the options given in Order One is the same as one or more options given in the Roman rite, such as the greeting 'The Lord be with you.'

In many places in Order One, phrases such as 'suitable blessing'⁹, 'suitable words'¹⁰ etc. specifically permit variations. In these cases, it is open to the celebrant to find a 'suitable blessing' etc. from the Roman rite as much as from any other source (always remembering the doctrinal test, of which more later.)

Sometimes Order One uses translations slightly different from the Roman rite. A trivial example would be the *Gloria tibi domine* which is rendered 'Glory to you, O Lord' in Order One and 'Glory to you, Lord!' in the Roman rite. Different translations are permitted in Order One by the *Rules for Regulating Authorized Forms of Service*,

'Where parts of a service make use of well-known and traditional texts, other translations or versions, particularly when used in musical compositions, may be used.'¹¹

So the particular translations in the Roman Catholic lectionary, slightly different said and sung canticles, and so on, are permitted.

These are just a few examples of places where variations specifically included in Order One can be used to make the liturgy identical to the Roman rite. Beyond these specific variations, a celebrant wanting to justify further changes towards the pattern of the Roman rite would have to rely on canon B5.1, which allows the minister who is to conduct the service to make

'variations which are not of substantial importance'.

An example: in Order One there is no explicit provision for further prayers to be added at to the one prayer mentioned at the Preparation of the Table. However, as long as the prayer were doctrinally acceptable, it would probably be a variation 'not of substantial importance' to interpolate the *Orate Fratres*¹² from the Roman rite, and therefore permissible.

But how far can the phrase 'variations not of substantial importance' be stretched? Hunwicke says that this formula

'according to the House of Bishops in 1984 and 1990 includes unauthorised Greetings; unauthorised Confessions; unauthorised Collects; unauthorised Readings; unauthorised Prefaces; unauthorised Invitations to

⁷ The only major difference in structure is the position of the Peace, but Order One specifically allows the Peace in the 'Roman position': see Common Worship (2000), p.333, §16.

⁸ At the time of writing the language of much of the English mass of the Roman rite is substantially the same as Order One. The forthcoming new English translations of the *Missale Romanum* will have the effect of making the language of the two rites much more distinct.

⁹ Common Worship (2000), p. 183

¹⁰ Ibid, p. 168

¹¹ Ibid, p.525, §4

¹² "Pray, brethren, that our sacrifice may be acceptable to God, the almighty Father."

*In some parishes of the Church of England, there obtains the custom of celebrating the Holy Communion according to the liturgical books of the Roman Catholic Church. To what extent is this practice legal? Communion.*¹³

The court, of course, ultimately determines the meaning of ‘substantial importance’ rather than the House of Bishops. However, without any cases to pin down the extent of permissible variations, a priest could be excused if he or she decides to follow the opinion of the House of Bishops.

Nevertheless, the House of Bishops’ advice concerned additional material for use on particular occasions which did not, at the time, have any authorized equivalent. It may be a variation not of substantial importance to enrich a special occasion or feast with an unauthorized collect and preface; but it might well be a variation that *is* of substantial importance to substitute wholesale all collects, prefaces, confessions, and so on, with Roman equivalents on every occasion.

It is even harder to justify the use of Roman Eucharistic Prayers. The word ‘authorized’ is used only occasionally in Order One: the Eucharistic Prayer, translations of the Nicene Creed, Affirmations of Faith, and the words of distribution at communion are explicitly required to be ‘authorized’.

None of the Church of England’s Eucharistic Prayers is identical to the four permitted Eucharistic Prayers of the Roman rite¹⁴, therefore any Roman Eucharistic Prayer is unauthorized for our present purposes. When one considers the central place of the Eucharistic Prayer in the rite, and the fact that so few parts of the Order explicitly require an ‘authorized’ text, it is difficult to argue that the use of an unauthorized Eucharistic Prayer is ‘not of substantial importance.’

Overall then, Common Worship Order One and Canon B5.1 together permit a priest to celebrate a Eucharist that is similar to, and in many respects identical with, the Roman rite mass. However, a Roman rite Eucharistic prayer cannot be justified legally, and neither, in all probability, can the invariable use of Roman prefaces and collects on every occasion.

Doctrine

We have been discussing variations to forms of service permitted under canon law, and found that many kinds of variation seem to be permissible. However, any variations introduced under canon B5 must also pass a doctrinal test. Under canon B5.3,

‘all variations in forms of service and all forms of service used under this Canon... shall be neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter.’

Therefore, a variation, or a form of service, which would otherwise be permitted may be illegal if the court finds that it fails this doctrine test. If, for the sake of argument, the Roman rite mass were found permissible under canon B5.1 or B5.2, is it nonetheless ‘contrary to’ or ‘indicative of any departure from’ the Church of England’s doctrine ‘in any essential matter’?

Canon A5, “Of the doctrine of the Church of England”, cites the Thirty-nine Articles of Religion as a place in which the Church of England’s doctrine may be found ‘in particular.’ The 28th of those articles speaks of transubstantiation (which clearly forms a part of the Roman Catholic understanding of the mass) as being ‘repugnant to the plain words of Scripture.’

Since at least the publication of Tract XC¹⁵, however, Anglicans have argued that the Thirty-nine Articles can be understood in a way not incompatible with Roman Catholic theology. As the subsequent reaction to Tract XC demonstrated, at that time it was not a position that enjoyed a large number of supporters.

However, recent ecumenical agreements have suggested that the differences in Eucharistic theology

¹³ Hunwicke (2007), p. xv

¹⁴ Order One’s Prayer B and the Roman Missal’s Prayer 2 are both based on the ancient Hippolytan canon, but are not similar enough to be called two different translations of the same text.

¹⁵ Newman (1865)

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between the Church of England and the Roman Catholic church have been substantially resolved. In 1971, the Anglican/Roman Catholic International Commission spoke of having ‘reached substantial agreement on the doctrine of the eucharist’ between the two communions.¹⁶ This statement may not, legally speaking, be a source of the doctrine of the Church of England as included in Canon A5, but is nonetheless of significant persuasive authority because of its official standing and importance in the life of the Church. Indeed, the House of Bishops has said that Anglicans

‘can, with a good conscience, say a heartfelt Amen at the end of the [Roman] Eucharistic Prayer.’¹⁷

There is therefore a strong case for saying that the Eucharistic theology of the Roman mass is not today ‘contrary to’ or ‘indicative of any departure from’ the Church of England’s doctrine ‘in any essential matter’.

However, if *eucharistic* theology is unlikely to cause the Roman rite to fall foul of Canon B5.3, a subtler, *ecclesiological* point of doctrine nonetheless may. It could be argued that a minister habitually using the Roman rite was making a doctrinal point to the effect that the Church of England’s own forms of service were insufficient¹⁸, or that the Church of England did not have the authority to decree rites.¹⁹ In determining whether a particular minister had committed a doctrinal offence on this point, a court might well pay regard to the teaching accompanying the use of the Roman rite, for example, any sermons or pew sheets that explained why the Roman mass was regularly being used.

Ceremony

Whereas most authorized services of the Church of England are rather sparsely accompanied by ceremonial direction, the Roman rite mass includes more detailed instructions concerning ceremonies and ornaments. We will now consider whether such ceremonial usages are legal in the Church of England. (Of course, most Church of England priests who use ornaments and ceremonies such as incense and processions do not use the Roman rite: but we are considering this question here because priests who use the Roman rite are among those do use these ceremonies.)

Vestments, as also used in the Roman rite, are specifically permitted by Canon B8.3, at least if ‘customary’. The Roman rite also makes certain instructions as to posture, such as genuflections: these are permitted by Common Worship, the Notes to which say

‘Local custom may be followed and developed in relation to posture.’²⁰

Other ceremonies not mentioned in Church of England authorized services, such as the use of candles in procession, incense, and so forth, have in the past been found to be illegal: in, for example, *Martin v Mackonochie*²¹. However, as Bursell Ch make clear in *In re St Thomas, Pennywell*²² the ‘rigorist interpretation’ of Prayer book rubrics has now disappeared, and so many things that were once illegal are now allowed. Thus Bursell²³ argues that the use of candles, processions, incense, holy water, anointing with oil, and bells are all now legal in services, if ‘reverent and seemly.’ Since the publication of Bursell’s book, the range of Common Worship services have been published. In one Common Worship volume, Times and Seasons, processions

¹⁶ ARCIC (1971)

¹⁷ GS Misc 632, as quoted in Hunwicke (2007) p. xviii

¹⁸ Against canon A3

¹⁹ Against article 20 of the 39 articles.

²⁰ Common Worship (2000), p. 330.

²¹ (1868) LR 2 PC 365 at pp. 387-392

²² [1995] 2 WLR 154 at pp. 68-9

²³ (1996) pp 71-79

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with lighted candles²⁴, the sprinkling of water²⁵, the imposition of ashes²⁶, and so on are commended by the House of Bishops for use by a priest ‘in exercise of his or her discretion under Canon B5’²⁷. Thus the House of Bishops seems still to be in agreement with Bursell that these ceremonies are not matters of ‘substantial importance’ that would, of themselves, make a particular service illegal.

Remedies

If the celebration of the Roman rite mass is considered to be an ecclesiastical offence, how would an aggrieved parishioner (for example) seek a remedy? If the alleged offence is contrary to a rubric in a form of service (e.g. the service is considered to be Common Worship Order One with excessive variations included), this certainly seems to be a ritual matter. The Clergy Discipline Measure 2003 (CDM 2003) provides that

‘Proceedings in relation to matters involving doctrine, ritual or ceremonial shall continue to be conducted in accordance with the 1963 Measure.’²⁸

It might at first seem therefore that the complainant would have to use the more cumbersome and expensive 1963 Ecclesiastical Jurisdiction Measure. However, proceedings under the CDM 2003 may be instituted concerning

any act in contravention of the laws ecclesiastical;²⁹

Therefore, any offence which may be a doctrinal or ritual offence, but which is also a contravention of a canon or measure, could be the subject of proceedings under the CDM. Thus Bursell writes:

‘It seems likely, too, that an allegation that an Anglican priest has celebrated mass according to the rite in the Roman Missal would be properly laid as a breach of Canon B3 and therefore commenced under the same Measure, even though the motive for such a celebration would almost certainly be doctrinal.’³⁰

If, however, the respondent were to hold that he or she were in fact celebrating Common Worship Order One with variations, it might be beyond the jurisdiction of a tribunal convened under the CDM 2003 to ascertain the legality of the ritual variations in question. The case might, after all, have to be considered by the Court of Ecclesiastical Causes Reserved under the 1963 Measure.

In fact, this question is largely moot, as ritual offences are extremely rarely, if ever, tried in the ecclesiastical courts. Even if ritual complaints are made under the EJM 1963, diocesan bishops usually avail themselves of the provision³¹ that permits them to veto the complaint being pursued. There is a similar provision in the CDM 2003³², although in this case the bishop’s right of veto is not absolute.³³

Even if these ritual cases never come to court, legal opinions about the permissibility of particular forms of service, or variations in forms of service, are still important. Canon law has a role in shaping practice, even if no action is taken in the court or disciplinary tribunal. Many priests’ consciences will foster a desire to remain faithful to their Declaration of Assent. Also, discussions about a parish’s liturgy which might, for example, take place in a PCC meeting could be guided by

²⁴ Times and Seasons (2006), p.194

²⁵ Ibid, p.192

²⁶ Ibid, p.230

²⁷ Ibid, p.5

²⁸ Clergy Discipline Measure 2003, S7(2)

²⁹ Ibid, S8(1)(a)

³⁰ Bursell (2007), p.253

³¹ Ecclesiastical Jurisdiction Measure 1963, S29(1)(a)

³² Clergy Discipline Measure 2003, S12(1)(a)

³³ Ibid, S13(3)

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learned opinions about the legality or otherwise of using parts of the Roman rite.

Conclusion

Of the three arguments we considered which purport to justify the use of the Roman rite mass in the Church of England, only the third seems even partly convincing. A Church of England priest who celebrates the Common Worship Order One eucharist, retaining authorized eucharistic prayers and (at least most of the time) collects, calendar, and lectionary, but otherwise using options and variations that approximate the service to the Roman rite is probably on safe ground, legally speaking. The regular use of the entire Roman rite mass, however, cannot be legally justified in the Church of England. We have seen that priests of the Church of England are bound to use only authorized services and the considerable latitude allowed by Canon B5 does not extend as far as allowing the whole Roman rite mass.

It would, of course, be open to the General Synod to authorize the Roman rite mass for use in the Church of England. As we have discussed above, there would not necessarily be any great doctrinal barriers in terms of eucharistic theology. As there seems to be no desire to discipline those who use the Roman rite, the General Synod might think it better to legalize that liturgy. Legalization would allow the Synod to regulate the extent of its use. However, for reasons including those of churchmanship, it seems extremely unlikely that the General Synod would in fact authorize the Roman liturgy at any time in the foreseeable future. Those clergy of the Church of England who wish to persist in the use of the Roman rite ought therefore to be aware that their liturgical practice is, and is likely to remain, an ecclesiastical offence.

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