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ART. I.—THE REFORM OF CONVOCATION.

IT is a remark not unfrequently made, when a proposal is put forward for entrusting some further powers or functions to Convocation, that such a proposal would be admirable if Convocation were a body truly representative of the Church, but that the idea cannot for a moment be entertained while its present constitution remains. We do not, however, observe that the holders of this opinion take any active steps for the reform of the body with whose composition they find fault. Its present functions are, in their opinion, too inconsiderable to justify the labour of doing so. And thus Convocation is involved in a vicious circle. Its powers remain insignificant on account of its unreformed constitution; and its constitution remains unreformed on account of the insignificance of its powers.

In the preceding remarks the common parlance has been adopted of using the word Convocation in the singular. This usage will, for convenience' sake, be for the most part retained throughout the discussion of the question. But it must of course be borne in mind that each Province has its distinct Convocation, and the constitution of the two bodies is not exactly the same. In both the Upper House is composed of the Archbishop and Bishops holding sees within the Province. But the Lower House of the Canterbury Convocation consists of 161 members, of whom 113, or seven-tenths of the whole number, owe their seats directly or indirectly to the nomination of the Crown or a Bishop; while the remaining 48, or three-tenths of the House, are elected as the proctors or representatives of the clergy of the Province. The first-mentioned number of 113 is composed of 24 Deans (of whom the 4 in Wales are each nominated by the Bishop of the diocese and the remaining 20 by the Crown); the

Provost of Eton, a nominee of the Crown; 64 Archdeacons, appointed by the Bishops in whose dioceses they officiate; and 24 proctors, elected by the Cathedral Chapters, the members of which have attained their position through royal or episcopal nomination. Of the 48 proctors for the clergy, two are elected by the beneficed clergy in each of the 24 dioceses of the Province.

On the other hand, the Lower House of the Northern Convocation consists of 77 members, 36 of whom, or not quite one-half of the whole number, are indebted for their seats either directly to royal or episcopal nomination, or else to the suffrages of persons who are themselves nominees of the Crown or a Bishop. The number is made up of 6 Deans, 21 Archdeacons, 7 proctors for the cathedral chapters and 2 proctors for the officialty of the Chapter of Durham. The remaining 41 members consist of 2 proctors elected by the beneficed clergy in each of the archdeaconries except that of Man, and of 1 proctor for the Diocese of Sodor and Man, which is coterminous with the Archdeaconry of Man. It appears, therefore, that the beneficed parochial clergy are better represented in the Northern Convocation than in the Southern. But the unbeneficed clergy have no representation in either; and in other respects the two bodies stand on the same footing. Their origin, history and constitutional status are practically identical. What is said of one may be said *mutatis mutandis* of the other. It will, therefore, be convenient to concentrate our attention mainly upon the Southern Convocation, and to it the following observations must be understood as primarily directed, unless the Convocation of York is specially mentioned. They will, however, be for the most part equally applicable to the Northern body.

By the terms of the writ which has from the earliest times been issued for convening it, Convocation is supposed to be an assembly, by representation or procuration, of the whole body of clergy in the Province. It is evident that as at present composed it is nothing of the sort. Thousands of the clergy are not in any way represented in it, and the representation of the beneficed parochial clergy, amounting in number to thousands more, is grossly inadequate when compared with those who may be called the official members of Convocation. Were there to be an amalgamation of the Northern and Southern bodies as at present constituted, it would be difficult to recognise in the united body that national synod with reference to which the 139th of the canons of 1603 declares that "Whosoever shall hereafter affirm that the sacred synod of this nation, in the name of Christ and by the King's authority assembled, is not the true Church of England by representation, let him be excommunicated and not restored until he repent and publicly revoke that

his wicked error." The problem before us is the mode of remedying this objectionable state of things.

It is not intended in the present article to enter upon the question of the introduction of a lay element into Convocation. More than four years have elapsed since a House of Laymen was first constituted in the Southern Province to deliberate and advise concurrently with Convocation. But it is a purely informal body, and has no legal or constitutional *status*. According to the present theory of Church government in England, the laity of the Church take part in it through the action of the Crown and Parliament. There is much to be said in favour of an alteration in this respect; but it would involve a radical change in the relations of Church and State, and the present is not the occasion for its discussion. Convocation has always been essentially a clerical assembly, and to deprive it of this characteristic would be, not to reform it, but to substitute a new body in its place. By the Reform of Convocation, therefore, in the present article, is meant such an alteration in the composition of the Lower House, and in the electorate who send proctors to it, as will secure in that House a fair and adequate representation of the clergy of the Province.

There are probably many persons who are under the impression that this would be a very simple matter, which could be no sooner said than done if there were a hearty desire for it. They imagine that the main obstacle to it lies in a disinclination on the part of Convocation to submit to the process of reform. This is an entirely mistaken idea. The real hindrance lies in the inherent difficulties of the question itself. The sittings of Convocation—after having been in abeyance for nearly a century and a half—were resumed in 1852; and since then repeated efforts have been made to deal with the subject. In 1855 a case upon it was submitted to Sir Richard Bethell (afterwards Lord Westbury), and Dr. (afterwards Sir Robert) Phillimore. In 1865, and again in 1868, Convocation presented an address to the Queen, praying for license to make a constitution, or canon, altering the composition of the Lower House. In 1866 that House appointed a committee to report on and advance the matter; and committees on the subject have been sitting since that time, and have issued no fewer than four reports. The last of these was presented to the Lower House in July, 1885. The Archbishop of Canterbury, in his address at the opening of the House of Laymen in February, 1886, pointed out to the newly-formed body that the urgent need for a reform of Convocation was not only patent to all, but had long been emphatically affirmed by Convocation itself. "The proper manner of reform," he added, "has received the careful study of great authorities, legal and

ecclesiastical, and the latest report on that subject is worthy of your own attention. The next step in the procedure is all-important, and is one of the points on which your opinion would be of great value." It was not until last year that the House of Laymen took up the subject, and they then appointed a committee to consider it. This committee reported to the House in February of the present year that they did not consider it expedient that further action in the matter should be taken at present. The House, however, was, not unnaturally, somewhat dissatisfied at this rather impotent conclusion, and referred the question back again to the committee, who are now charged with its reconsideration.

What, it may be asked, is the reason of all this difficulty and delay? If Convocation were unwilling to be reformed it would be intelligible. But with their evident eagerness on the subject, how is it to be accounted for? And, in particular, how are we to explain the extraordinary conclusion of the committee of the House of Laymen, which has the appearance of their being actually less zealous in the matter than the clergy themselves? The solution of the enigma is to be found in the peculiar constitutional position of Convocation, and the uncertainty which prevails as to what that position precisely is. For until this is defined, it is impossible to decide where the power to make the needed reform resides. There are four possible depositaries of it: (1) Convocation itself; (2) the Archbishop, as President of Convocation; (3) the Crown, by virtue of the Royal Supremacy; and (4) Parliament. The most natural and obvious conclusion would be that the reform of Convocation is the proper function of Convocation; but when the matter is regarded from a constitutional aspect this conclusion is seen to be open to grave doubts. The truth on the subject can only be ascertained by a careful historical inquiry, which is, unfortunately, beset by no little difficulty and uncertainty.

There can be no question that, to adopt the words of Lord Coleridge in his judgment in the case of *The Queen* v. *The Archbishop of York* (Law Reports, 20, Queen's Bench Div., 740, at p. 748), Convocation is "an ancient body, as old as Parliament and as independent." But when we attempt to trace the body further back than the period at which this assertion lands us, and to define more accurately its origin and early *status*, the investigation is involved in doubt and obscurity. This much, indeed, is clear, that, just as Parliament was evolved out of the Norman Great Council of the Realm, and this again out of the early English Witenagemote, so the two Convocations had their precursors in a series of synods of the Church of England, either national or provincial, held from the time of Archbishop Theodore in the seventh century onwards, and, in

fact, commencing with the Synod of Whitby, or Strenæshalch, as it was then called, in A.D. 664, four years before the consecration of that prelate. Lord Coke, in his description of Convocation ("Institutes," part iv., p. 322) evidently connects it with the very earliest period of our Church's history; though it is not very easy to understand what he means by saying that in "*Anno Domini* 686 Augustine assembled in council the Britain Bishops and held a great synod." Lord Coleridge, therefore, rather understated than overstated the case for the antiquity of Convocation when, in another part of the judgment already referred to, he said that "probably in some shape it is older than Parliament." At the same time, its modern form and time of meeting unquestionably dates from the same period as witnessed the final development of Parliament into its present shape—namely, the reigns of Edward I. and Edward II. Moreover, the main, if not the only, reason for the regular sessions, which were then initiated, of the two bodies, was identical. It was, in fact, nothing more nor less than the exigency of political finance. The knights of the shire and the burgesses of the towns were summoned to Parliament in order that the king might obtain the consent of the people, by their representatives, to the taxation which he desired to impose upon them. The clergy were required to attend in Convocation by their proctors, in order to vote subsidies out of the revenues of the Church. This they continued to do until 1664, when the practice was discontinued; and the clergy have thenceforth been taxed in common with the laity, although their right to tax themselves was at the time reserved.

So far we are on unassailable ground. But when we inquire whether Edward I. and his son created a new ecclesiastical assembly with the object of raising taxes from the clergy, or merely utilized for that purpose an existing body, we descend at once into an arena of doubt and conflict. The grounds for the former view are set forth in a Memorandum on the Representation of the Clergy in Convocation, drawn up by the Earl of Selborne, then Lord Chancellor, in January, 1881, as the result of an examination into the matter which he was requested to make at a conference between himself and Archbishop Tait and Mr. Gladstone. This memorandum is printed as a Supplement to the Fourth Report, presented in July, 1885, to the Lower House of the Canterbury Convocation by their committee on the election of proctors to Convocation. The latter view is stoutly maintained in the Report itself, in which the conclusions of the Memorandum are combated, and an endeavour is made to refute them.

Lord Selborne's position is shortly this: In the preceding ages of the Church of England, down to the thirteenth century,

no consent of the inferior clergy had ever been necessary to the validity of canons passed in provincial synods or councils. These assemblies might always have been, and in fact generally were, composed exclusively of Bishops, and if the Archbishop desired to be assisted at them by any other clergy, he could always make such selection as he pleased for that purpose. The attendance of proctors for the parochial clergy was, therefore, actually necessary only for the granting of subsidies and similar political matters. For that purpose it was introduced about the middle of the thirteenth century. But in 1293 Edward I. commenced to issue writs to all the Archbishops and Bishops, commanding each of them to attend Parliament, with his Dean and Archdeacons in person, and his cathedral chapter by one proctor, and the whole clergy of his diocese by two proctors, with a view to granting a subsidy. The clause in which this command was embodied was called the *Præmunientes* clause, from its opening word. The clergy resented the summons, on the ground that they could not be convened in this manner by the order of the King, or by any other authority than that of the Metropolitan of the Province. The struggle lasted for twenty-two years. It outlived the termination of Edward I.'s occupation of the throne, and was not ended until 1315, when his successor had entered upon the ninth year of his reign. Thenceforward, though the *Præmunientes* clause was retained in the writs summoning the Archbishops and Bishops to Parliament, it was tacitly allowed to become a dead letter; and, along with the Parliamentary writs, a writ was sent to each Archbishop commanding him to summon a convocation of the Bishops and clergy of his province to treat of and consent to a subsidy. The Archbishop thereupon issued his mandate to each Bishop of the Province, reciting the King's writ, and summoning the Bishop himself and his Dean and Archdeacons, and the whole body of his clergy, but adding a mode for the attendance of the inferior clergy by representation, similar to that prescribed by the *Præmunientes* clause in the Parliamentary writs. Lord Selborne considers this arrangement to have been a compromise between the King and the clergy. The issue of the Convocation writs was a concession to the clergy, by way of obviating the objections which they had made to attendance in Parliament under the King's order. Compliance with the writs was a concession to the King, in enabling his business to be done, which it had been impossible to transact in Parliament owing to the non-attendance of the clergy.

From that time onwards the Convocations became the recognised assemblies of the Church for transacting all ecclesiastical as well as secular business. And just as the Commons soon acquired the right to a voice in all State matters, in addition

to taxation, for the purpose of which alone they had been originally summoned to Parliament, so the proctors of the capitular and parochial clergy took part in all the ecclesiastical business which came before Convocation, and were not restricted to the sole question of subsidies. It is true that Convocation has, in the present day, nothing to do with subsidies, nor with any other secular matter. But this does not affect the mixed and semi-political character with which it was invested for all future time by the arrangement in the reign of Edward II.; and, in particular, the presence in it of the proctors for the capitular and parochial clergy continues to be incidental to its mixed and semi-political character. Consequently this representation could not be constitutionally varied by a mere ecclesiastical canon of Convocation.

This view is combated at some length by the Convocation Committee in the body of their Report. They maintain that proctors for the inferior clergy were summoned by the Archbishop to Convocation before the commencement, in 1293, of the struggle between the King and clergy, and those proctors not only dealt with the question of taxation, but also considered *gravamina* on ecclesiastical matters. They further assert that between the date of the arrangement in the ninth year of Edward II. and the passing of the Act for the Submission of the Clergy (25 Henry VIII., cap. 19) in 1534, besides the Convocations held under the mandate of the Archbishop issued in accordance with the King's writ, other Convocations were convened by the sole authority of the Archbishop, and that at these Convocations, no less than at the others, proctors for the inferior clergy were present, and took part in the business. These arguments do not appear to be conclusive. Early precedents cannot be implicitly relied on in a question of this kind. In the pre-Norman era neither our ecclesiastical nor our political assemblies had crystallized into that regular form which they afterwards assumed. The Witenagemotes were frequently attended by the ordinary thegns, and even by the ceorls of the particular neighbourhood in which they happened to meet. The presbyters of the locality, as thegns, would share in the privilege. And when their presence was permitted in the State Legislature along with its regular members—the Bishops, Abbots, and Priors, and the Earldomen and King's thegns—they would not be debarred from attending a Church council, if it happened to be held near their place of residence. It may be that after the Conquest their ecclesiastical right in this respect was lost, as was undoubtedly their secular privilege. But when in the reigns of John and Henry III. the practice of a representation of the Commons in the great Council of the realm began to be gradually, though fitfully, introduced, we cannot be surprised at

seeing, side by side with it, the habit growing up of the Archdeacons, or other proctors for the inferior clergy, attending the provincial synods of the Church. The only unquestionable basis of the existing representation of the presbyters of the Church in Convocation is the *Præmunientes* Clause, which was first inserted in the Parliamentary writs in 1293, and which, in respect of the details prescribed in it, was followed after 1315 in the composition of the assemblies convened in pursuance of the Convocation writs. The variation from it in the Northern Convocation of summoning two proctors for the parochial clergy from each archdeaconry, instead of from each diocese, is, of course, dwelt on by the Convocation Committee. But they have no explanation to offer for this variation as an alternative to Lord Selborne's suggestion that in the Province of York, where the number of dioceses was so small, it was adopted by the northern Primate, and permitted by the Crown, as a convenient, if not a necessary, modification of the method of representation prescribed by the *Præmunientes* Clause, and was not introduced in disregard or defiance of that clause. After 1315 the Convocations undoubtedly dealt with purely ecclesiastical matters, as well as with the granting of subsidies. But this fact cannot affect the question of their semi-political constitution.

It is, of course, conceded on all sides that Convocation could not make a canon for altering the representation of the clergy without the assent and license of the Crown. This assent and license is required to all canons and ordinances of Convocation by the Act for the Submission of the Clergy already referred to, which also declares that Convocation shall always be assembled by authority of the King's writ. But the same statute further contains a proviso that no canons shall be made or put in execution by authority of Convocation "which shall be contrariant or repugnant to the King's prerogative royal, or the customs, laws, or statutes of this realm." Lord Selborne sees in this enactment a further obstacle to the reform of Convocation by itself. No custom can be alleged in favour of Convocation altering its own constitution. Not a single instance of such a proceeding can be adduced. The one case which is sometimes brought forward as having occurred in 1279 is, on examination, found to be worthless as a precedent. This, however, is merely a negative argument. A positive and more serious objection is to be found in the fact that the present composition of Convocation has existed for something like 600 years, and therefore must, at the present time, be said to be, if anything is, a "custom of the realm." How, then, can a canon be lawfully made for changing it, in face of the express proviso of 25 Henry VIII., cap. 19? It can scarcely be argued that, in the teeth of this proviso, it would be

competent to Convocation to make a canon greatly restricting, or actually abolishing, the present representation of the parochial clergy. But if not, then it must be equally beyond their competence to make a canon enlarging the representation.

There is yet a further difficulty, which, perhaps, may be considered to be somewhat technical, but which, nevertheless, it would not be right to overlook. The Act for the Union of England and Scotland contemplates the maintenance *in statu quo* of the doctrine, worship, discipline, *and government* of the Church of England. An Act of Parliament can, of course, always be repealed by Parliament; but it cannot be lawfully set aside by any other authority. Consequently there are grounds for arguing that a change in the constitution of Convocation, being an alteration in the government of the Church, could not be made by Convocation without the authority of Parliament.

Possibly, if it rested with Convocation to take the initiative in the matter, that body, in spite of all these objections, might, so to speak, take the bit between its teeth and effect the desired reform, trusting that the step, when taken, would be acquiesced in, and be regarded as legal, or at any rate that the flaw, if any, in its legality would not lead to any serious practical mischief. But such a line of action is, of course, impossible. Whatever else is doubtful, it is perfectly clear that the royal assent and license must be granted before the reforming canon can be made. This assent and license will not be given except under the advice of the Ministers of the Crown; and in view of the grave doubts, to say the least, which, as has been shown, enshroud the legal aspect of the question, they have not seen their way in the past, and it is idle to expect that they will see their way in the future, to tender advice which would incur the risk of placing the Crown in the awkward and false position of having given its sanction to an unconstitutional and illegal proceeding.

The reform of Convocation by itself must, therefore, be regarded as, under present circumstances, impossible. It will be necessary to postpone until next month the consideration of the other instrumentalities by which the reform might conceivably be effected, as well as of the shape which it should take when it is actually entered upon.

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