

## CROWN, MITRE AND PEOPLE IN THE NINETEENTH CENTURY

Throughout the nineteenth century the relationship between the State and the Established Church of England engaged Parliament, the Church, the courts and – to an increasing degree – the people. During this period, the spectre of disestablishment periodically loomed over these debates, in the cause – as Trollope put it – of ‘the renewal of inquiry as to the connection which exists between the Crown and the Mitre’. As our own twenty-first century gathers pace, disestablishment has still not materialised, though a very different kind of dynamic between Church and State has anyway come into being in England. Professor Evans here tells the stories of the controversies which have made such change possible – including the revival of Convocation, the Church’s own parliament – as well as the many memorable characters involved. The author’s lively narrative includes much valuable material about key areas of ecclesiastical law that is of relevance to the future Church of England.

G. R. EVANS is Professor Emeritus of Medieval Theology and Intellectual History in the University of Cambridge and is a graduate of the University of Oxford. She has written many well-received books in the fields of medieval and ecumenical theology, intellectual and ecclesiastical history, and public policy in higher education.

This is a very stimulating reflection on church-state relations in nineteenth-century England by a very distinguished scholar. I am confident that it will be of enormous interest to scholars and practitioners of ecclesiastical law not only in the Church of England but beyond to Anglicans more widely and indeed to historians of the free churches. The study is also richly documented (the author's use of the records of debate in Parliament and in Convocation is superb), and it contains a host of examples which indicate the hugely personal elements of the wider story. The writing style is very cultured – it is also tight and lucid. I have very much enjoyed reading the book, which I found fascinating, refreshingly novel and very thought-provoking.

– *Norman Doe, Professor of Law, Cardiff University*

Gillian Evans' study deals with a topic of undoubted significance and is undergirded by a significant amount of research. It will be of interest to scholars of nineteenth century history, church historians, ecclesiastical lawyers and those interested in the future direction of the Church of England.

– *Frances Knight, Professor of the History of Modern Christianity,  
University of Nottingham*

CROWN, MITRE AND  
PEOPLE IN THE  
NINETEENTH CENTURY  
*The Church of England, Establishment and the State*

G. R. EVANS  
*University of Cambridge*



Cambridge University Press  
 978-1-316-51597-6 — Crown, Mitre and People in the Nineteenth Century  
 G. R. Evans  
 Frontmatter  
[More Information](#)

CAMBRIDGE  
 UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
 314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,  
 New Delhi – 110025, India  
 103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)  
 Information on this title: [www.cambridge.org/9781316515976](http://www.cambridge.org/9781316515976)  
 DOI: 10.1017/9781009031424

© G. R. Evans 2021

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2021

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

NAMES: Evans, G. R. (Gillian Rosemary), author.

TITLE: Crown, mitre and people in the nineteenth century : the Church of England, establishment and the state / G R Evans.

DESCRIPTION: Cambridge ; New York, NY : Cambridge University Press, 2021. | Includes bibliographical references and index.

IDENTIFIERS: LCCN 2021025367 (print) | LCCN 2021025368 (ebook) | ISBN 9781316515976 (hardback) | ISBN 9781009031424 (ebook)

SUBJECTS: LCSH: Church and state – Church of England – History – 19th century. | Church and state – England – History – 19th century. | Church and state – Great Britain – History – 19th century. | Christianity and politics – Church of England – History – 19th century. | Christianity and politics – England – History – 19th century. | Christianity and politics – Great Britain – History – 19th century. | England – Church history – 19th century. | Great Britain – Religion – 19th century. | Great Britain – Politics and government – 19th century. | BISAC: RELIGION / Christian Church / History

CLASSIFICATION: LCC BX5157 .E93 2021 (print) | LCC BX5157 (ebook) | DDC 261.70941–dc23

LC record available at <https://lcn.loc.gov/2021025367>

LC ebook record available at <https://lcn.loc.gov/2021025368>

ISBN 978-1-316-51597-6 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

## *Contents*

<i>Preface</i>	<i>page</i> vii
<i>List of Abbreviations</i>	ix
<i>Legislation</i>	xii
<i>Table of Cases</i>	xv
Introduction: a National Church in the National Life	i
1 The Disputed Boundary between Church and State	33
2 What Happened in an Ecclesiastical Court?	98
3 Taking the Clergy to Court	126
4 Taking the Laity to Court	202
5 Not in the Church of England but . . .	242
Conclusion	292
<i>Bibliography</i>	308
<i>Index</i>	317

## *Preface*

In 1874, supported by the Prime Minister, Disraeli's Home Secretary opened a debate in the Commons with the insistence that a Church of England clergyman entered at his ordination into 'a solemn contract with the nation'. For its part in forming the contract, he said, the nation had 'accepted' the 'great charters of the Church'.<sup>1</sup> The 'ecclesiastical' law of the Church formed part of the law of England, with the Church's legislation approved by Parliament and canon law giving way to statute law.

The Church of England entered into its 'contract with the nation' under the Act of Supremacy of 1558.<sup>2</sup> Whether that 'contract' should continue to be honoured was a lively current controversy. When Anthony Trollope published his novel *Phineas Redux* in 1873 he was confident that the 'connection which exists between the Crown and the Mitre' would be of popular interest to his readers.<sup>3</sup> The House of Lords had debated further disestablishment more than once since the disestablishment of the Church of Ireland in 1869, and Trollope describes one of his characters as 'a horror-stricken lord', anxious at the very suggestion that that might happen in England.<sup>4</sup>

At the time of writing, the disestablishment of the Church of England has not happened yet, but in a multitude of ways that 'contract' has been modified, decoupling Church and State piecemeal in many respects. Those changes were already well under way in the second half of the nineteenth century. They were fired by personal initiative and popular demand in a period of social change, but they necessitated legislative adjustment and hard work by the courts in applying the law case by case.

<sup>1</sup> HC Deb 15 July 1874, vol. 221, col. 13–89.

<sup>2</sup> Only one clause of that Act now remains in force, Act of Supremacy 1558, s.8.

<sup>3</sup> Anthony Trollope, *Phineas Redux* (London: Chapman and Hall, 1874), chapter 5. Available at: [www.gutenberg.org/files/18640/18640-h/18640-h.htm#c5](http://www.gutenberg.org/files/18640/18640-h/18640-h.htm#c5)

<sup>4</sup> Trollope, *Phineas Redux*, chapter 5.

A leading concern of the late sixteenth century was to make it clear that the reformed Church of England was no longer under the jurisdiction of the Bishop of Rome, but that a secular monarch could not be given spiritual as well as temporal jurisdiction. In the Thirty-Nine Articles, Article 37 added for clarification that ‘Princes’ should not involve themselves with ‘the ministering either of God’s Word, or of the Sacraments’. Defining the exact boundary of the State’s control of the Church became the work of centuries. It would continue to present many challenges during the controversies explored in this book.

Popular demand for change is understandable. When the nineteenth century began, disputes affecting the laity – about marriage, burial, probate of wills – still went to the ‘ecclesiastical courts’. ‘Church-rates’ had to be paid, for the upkeep of church buildings, even by indignant Dissenters and Roman Catholics who happened to live in the parish. The right of landowners and others to nominate clergy to particular ‘livings’ was robustly defended in Parliament as a legitimate property right, despite the manifest scandals attaching to it. All this was debated and reviewed and variously adjusted.

Reforming legislation of the late 1820s driven by social as well as religious opinion allowed Dissenters and Roman Catholics to become MPs.<sup>5</sup> There were soon petitions to Parliament for ‘relief’ from the ‘disabilities’ such non-Anglicans suffered as citizens. When would-be reformers demanded that ecclesiastical law should cease to control this or that aspect of the life of the nation, members of both Houses of Parliament were quickly on their feet,<sup>6</sup> claiming that a call for change would undermine the nation’s constitution and its very sense of self. In the middle of the century, the Church’s own historic ‘parliament’ of Convocation was revived and began to hold debates in its own two ‘houses’, with some crossover of membership with the House of Lords, in which sat a ‘bench’ of a dozen bishops.

The press dwelt enjoyably on the arguments, with members of Parliament protesting that they had been misrepresented in the media of the day. In the absence of social media, the combatants on both sides simply published their stories at length. The people held protests and sometimes expressed themselves in riots. The literature recording all this survives to form the rich resource on which this book relies in mapping these changes.

<sup>5</sup> Repeal of the Test and Corporation Acts in 1828 and the Catholic Emancipation Act of 1829.

<sup>6</sup> For some of the background up to 1860, see R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts 1500–1860* (Cambridge: Cambridge University Press, 2007).

## Abbreviations

(Abbreviations in cases cited take the standard legal form)

Bateman	Josiah Bateman, <i>The Life of the Right Rev. Daniel Wilson DD</i> , 2nd ed. (John Murray, London, 1861).
Bulteel	Henry Bulteel, <i>A Sermon on 1 Corinthians ii. 12, Preached before the University of Oxford, Feb. 6, 1831. To Which Is Added, a Sequel, Containing an Account of the Author's Ejectment from His Curacy by the Bishop of Oxford for Indiscriminate Preaching</i> (Oxford: W. Baxter, 1831).
<i>Chronicle of Convocation</i>	<i>The Chronicle of Convocation [Canterbury] from November 19 1847 to February 6 1857</i> (London: Rivingtons, 1889).
<i>Church and State</i>	<i>Church and State, Report of the Archbishops' Commission on Church and State</i> (London: Church Information Office, 1970).
<i>Church and State</i> , 1935	<i>Church and State: Report of the Archbishops' Commission on the Relations between Church and State</i> , (London: Church Assembly, 1935).
CMS	Church Missionary Society
<i>Comedy of Convocation</i>	Arthur Featherstone Marshall and Thomas W. M. Marshall, <i>The Comedy of Convocation in the English Church, in Two Scenes</i> (London: R. Washbourne, 1868).
EIC	East India Company
ER	English Reports



- |                                       |   |
|---------------------------------------|---|
| Everett                               | James Everett, <i>Wesleyan Takings: or Centenary Sketches of Ministerial Character as Exhibited in the Wesleyan Connexion during the First Hundred Years</i> (London: Hamilton, Adams and Co., 1840).             |
| <i>Five Lambeth Conferences</i>       | Randall T. Davidson, <i>The Five Lambeth Conferences</i> (London: SPCK, 1920).  |
| <i>From Death into Life</i>           | William Haslam, <i>From Death into Life</i> (London, 1894).   |
| HC Deb                                | House of Commons debate   |
| Hetherington                          | Henry Hetherington, <i>A Full Report of the Trial of Henry Hetherington, on an Indictment for Blasphemy, before Lord Denman and a Special Jury ... on ... December 8, 1840</i> (London: Henry Hetherington, 1840) |
| HL Deb                                | House of Lords debate   |
| Huntingdon                            | William Reed Huntingdon, <i>The Church-Idea: an Essay toward Unity</i> (New York: E. P. Dutton, 1870).  |
| <i>Letter to the Provost</i>          | Joseph Charles Philpot, <i>Letter to the Provost of Worcester College</i> (London: E. Fowler, 1835).  |
| <i>Modern State Trials</i>            | William Charles Townsend, <i>Modern State Trials</i> (London: Longman, Brown, Green, and Longmans, 1850).   |
| <i>Sale, Exchange and Resignation</i> | <i>Royal Commission to Inquire into Law and Practice as to Sale, Exchange and Resignation of Ecclesiastical Benefices Report, Minutes of Evidence, Appendix</i> (1880) Cm. 2507.                                  |
| Shutte                                | Reginald Neale Shutte, <i>The Life, Times, and Writings of ... Dr. Henry Phillpotts</i> (London: n.p., 1863).   |
| Towle                                 | E. A. Towle, <i>Alexander Heriot Mackonochie: a Memoir</i> (London, Kegan Paul: 1890).  |

*List of Abbreviations*

xi

*Under the Parson's Nose*

*Under the Parson's Nose: Further Extracts from the Diary of Revd Benjamin Armstrong, Vicar of East Dereham 1850–88*, ed. Christopher Armstrong (Dereham: The Lark's Press, 2012).

Waddams

S. M. Waddams, *Law, Politics and the Church of England: The Career of Stephen Lushington 1782–1873* (Cambridge: Cambridge University Press, 1992).

## *Legislation*

Act of Supremacy 1558  
 Act of Uniformity 1559  
 Act of Uniformity of 1662  
 Admiralty Court Act 1840  
 Benefices Act 1898  
 Bishopric of Manchester Act 1847  
 Bishopricks Act 1878  
 The Bishops in Foreign Countries Act 1841  
 Bishops and Priests (Consecration and Ordination of Women) Measure  
     2014  
 Blasphemy Act 1698  
 Burial Act 1854  
 Cathedrals Measure 1963  
 Catholic Emancipation Act 1829  
 Chancel Repairs Act 1932  
 Church Commissioners Measure 1947  
 Church Discipline Act 1840  
 Church of England Assembly (Powers) Act 1919  
 Church of England (Ecumenical Relations) Measure 1988  
 Church Temporalities (Ireland) Act 1833  
 Clergy Discipline Act 1892  
 Clergy Discipline Measure 2003  
 Clerical Subscription Act 1865  
 Colonial Bishops Act 1853  
 Colonial Clergy Act 1874  
 Colonies Act 1819  
 Constitutional Act (Canada Act) 1791  
 Conventicle Act 1664  
 Corporation Act 1661

*List of Legislation*

xiii

- Court of Probate Act 1857
- Courts (Contempt) Act 1832
- Criminal Law At 1827
- Deaconesses and Lay Ministry Measure 1972
- Dean and Chapter Act 1840
- Dissenters Chapels Act 1844.
- Doctrine of the Trinity Act (Unitarian Relief Act (Trinity) Act 1813
- Ecclesiastical Courts Act 1829
- Ecclesiastical Courts Act 1832
- Ecclesiastical Courts Act 1840
- Ecclesiastical Courts Act 1844
- Ecclesiastical Courts Act 1847
- Ecclesiastical Courts Act 1854
- Ecclesiastical Courts Act 1858
- Ecclesiastical Courts Act 1860
- Ecclesiastical and Church Estates Commissioners for England Act 1836
- Ecclesiastical Commissioners Act 1840
- Ecclesiastical Courts (Contempt) Act 1832
- Ecclesiastical Courts Jurisdiction Act 1860
- Ecclesiastical Jurisdiction Act 1847
- Ecclesiastical Jurisdiction Measure 1963
- Ecclesiastical offices (Terms of Service) Measure
- Ecclesiastical Titles Act 1851
- Ecclesiastical Titles Act 1871
- Finance Act 1977
- Irish Church Act 1869
- Judicature Act of 1875
- Judicial Committee Act 1833
- Judgment of Death Act 1823
- Land Registration Act 2002
- Marriage Act 1836
- Metropolitan Burial Act 1857
- New Churches Act 1818
- Ordination for the Colonies Act 1819
- Overseas and Other Clergy (Ministry and Ordination) Measure 1967
- Parliamentary Papers Act 1840
- Pastoral Measure 1968.
- Pluralities Act 1838
- Prisons Act 1835
- Public Worship Regulation Act 1874

Religious Disabilities Act 1946  
Representation of the People Act 1832  
Share of Church Buildings Measure 1970  
Simony Act 1588  
Synodical Government Measure 1969  
Test Act 1673  
Test Act 1819 Tithe Act 1936  
Toleration Act of 1689  
Welsh Church Act 1914  
Wills Act 1837

## Table of Cases

- Anonymous* (1857) 164 ER 581 at 593  
*Aston Cantlow Parochial Church Council v. Wallbank* (2003) UKHL 37  
*Austen v. Graham* (1854) 164 ER 206  
*Barnes v. Shore* (1845) 163 ER 1074–80  
*Blake v. Osborne* (1832) 162 ER 1323  
*Bowerbank v. Bishop of Jamaica* (1838–9) 12 ER 1077  
*Boyd v. Phillpotts* (1875) LR 6 PC 435  
*Breeks v. Woolfrey* (1838) 163 ER 604  
*Churchwardens of the parish of St. George, Jamaica, v. Charles Thuthell May*  
 (1858) 14 ER 918.  
*Cooper v. Wickham* (1839) 163 ER 420  
*Cory v. Byron* (1840) 163 ER 451  
*Courtail v. Homfrey* (1828) 162 ER 765  
*Cowan v. Milbourn* (1867) LR 2 Ex 23  
*D—E v. A—G* (1845) 163 ER 1039  
*Dalrymple v. Dalrymple* (1809) 161 ER 802  
*Dalrymple v. Dalrymple* (1811) 161 ER 665  
*Dawe and Nockolds v. Williams* (1824) 162 ER 243  
*Dysart v. Dysart* (1844) 163 ER 980  
*Ewing v. Wheatley* (1814) 161 ER 706 at 710  
*Faulkner v. Litchfield* (1845) 3 ER 1007  
*Fendall v. Wilson* (1863) 15 ER 943  
*Fox v. Bishop of Chester* (1829) 6 ER 581  
*Gaudern v. Selby* (1799) 163 ER 135  
*Gethin v. Gethin* (1862) 164 ER 1114  
*Giels v. Dickenson* [1851] HL 1 Paterson 1, 13 D  
*Gorham v. Bishop of Exeter* (1848) 15 QB 55  
*Gorham v. Bishop of Exeter* (1850) 15 QB 52  
*Gosling v. Veley* (1850) 116 ER 891

- Harwood v. Baker* (1840) 13 ER 117  
*Hebbert v. Purchas* (1870) LR, 3 PC 605  
*Hodgson v. Oakley* (1845) 163 ER 1053  
*Hyde v. Hyde* (1866) LR 1 P & D 130  
*In the Goods of David Downer* (1853) 164 ER 61  
*Jenkyn v. Jenkyn* (1856) 164 ER 573  
*Jersey (Dean of) v. Rector of* [1840] UKPC 18  
*Kemp v. Wickes* (1809) 161 ER 1320  
*King's Proctor v. Stone* (1808) 1 Hag Con 426, John Haggard, *Reports of Cases Argued and determined in the Consistory Court of London* (London, 1822), 2 vols., I 426.  
*Long v. Bishop of Capetown* (1863) 15 ER 756  
*Macdonald v. Bell* (1840) 13 ER 129  
*Martin v. Mackonochie* (1868) 16 ER 603  
*Martin v. Mackonochie* (1869) 16 ER 729  
*Masters v. Durst* [1876] PC 43  
*Mastin v. Escott* (1841–2) 163 ER 553  
*Meddowcraft v. Gregory* (1816) 161 ER 717  
*Mudway v. Croft* (1830) 163 ER 863  
*Palmer v. Roffey* (1824) 162 ER 246  
*Palmer v. Tijou* (1824) 162 ER 266  
*Pearce and Hughes, Churchwardens of Clapham v. the Rector, Parishioners, and inhabitants thereof* (1830) 162 ER 1063  
*Pettman v. Bridger* (1811) 161 ER 998  
*Poole v. The Bishop of London*, Report, Lambeth Palace Library VB1/17/500 (23 March 1859)  
*R. v. Boulter* (1908) 72 JP 188  
*R. v. Cape* (1840) 12 Ad and Eccl. 382  
*R. v. Carlile* (1819) 161 ER 621  
*R. v. Woolston* 94 ER 655  
*Robson v. Rocke* (1824) 162 ER 215  
*Sanders v. Head* (1843) 163 ER 827  
*Searle v. Price* (1816) 161 ER 710  
*Sheppard v. Bennett* (1869) LR 2 Adm. and Eccl. 335, LR 3 Adm. and Eccl. 167  
*Sheppard v. Bennett* (1870) LR 2 PC 450  
*Sheppard v. Phillimore and Bennett* [1869] 16 ER 649  
*Simpson v. Flamank* (1866) 15 ER 363  
*Smith v. Dixon* (1839) 163 ER 406  
*Spry v. Flood* (1840) 163 ER 437 Consistory Court of London

*Table of Cases*

xvii

- Steward v. Bateman* (1842) 163 ER 702  
*Stockdale v. Hansard* (1839) 162 ER 1112  
*Swift v. Kelly* (1835) 12 ER 648  
*Taylor v. Morley* (1837) 163 ER 165  
*Titchmarsh v. Chapman* (1843) 163 ER 920  
*Veley v. Burder* (1837) 163 ER 127  
*Veley v. Gosling* (1843) 163 ER 720  
*Walter v. Montague and Lamprell* (1836) 163 ER 85  
*Westmeath v. Westmeath* (1829) ER 987  
*Williams v. Bishop of Salisbury* (1863) 15 ER 943  
*Williams v. Hall* (1837) 163 ER 209  
*Wing v. Taylor* (1861) 164 ER 1003  
*Woolley v. Morgan* (1843) 163 ER 749