

## A NOTE ON THE THEOLOGY OF BURIAL IN RELATION TO SOME CONTEMPORARY QUESTIONS

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Requests for exhumation are increasing. Home Office licences appear to be more easily granted than heretofore. Consistory Court applications have multiplied, as witness the case notes in this Journal, and both the Chancery Court of York in *Re Christ Church, Alsager*<sup>1</sup> and the Arches Court of Canterbury in *Re Blagdon Cemetery*<sup>2</sup> have given judgments on appeal. Significant articles have appeared in this Journal from Rupert Bursell<sup>3</sup> and Philip Petchey.<sup>4</sup> At the conclusion of Philip Petchey's examination of the *Alsager* case he wrote:

One may suspect that this is an issue which will not go away and that it is likely that in due course it will be addressed again by the Chancery Court or Court of Arches.

That indeed proved to be the case in the Court of Arches judgment in *Re Blagdon Cemetery*, which differed in some respects from the Chancery Court of York judgment. The Court of Arches considered a note on the theology of burial requested by the Dean of Arches. This note is a slightly expanded version of my Note for the Court. The expansion largely concerns matters to do with the re-use of graves, an issue currently under consideration by the Home Office in relation to cemeteries in the current government consultation paper *Burial Law and Policy in the 21st Century*.

In the original *Alsager* case the chancellor, on the basis of evidence from the archdeacon, had certified that the case did not involve a question of doctrine in accordance with section 10(3) of the Ecclesiastical Jurisdiction Measure 1963. The Chancery Court of York then commented that the archdeacon's evidence emphasised the pastoral aspect of the burial service and the importance of the committal of remains as underscoring the 'protective jurisdiction' of the ecclesiastical courts. This note is an attempt to indicate some *theological* connection between the normal reticence of the ecclesiastical courts to agree to exhumations, while allowing proper pastoral exceptions in individual cases.

My sources will be the worship of the Church: the Order for the Burial of

<sup>1</sup> *Re Christ Church, Alsager* [1999] Fam 142, [1999] 1 All ER 117, [1998] 3 WLR 1394, 17 CCC No 19, (1998) 5 Ecc LJ 214, Ch Ct of York.

<sup>2</sup> *Re Blagdon Cemetery* [2002] Fam 299, [2002] 4 All ER 482, [2002] 3 WLR 603, 21 CCC No 21, (2002) 6 Ecc LJ 420, Ct of Arches.

<sup>3</sup> 'Digging up Exhumation' 5 Ecc LJ 18.

<sup>4</sup> 'Exhumation Reconsidered' 6 Ecc LJ 122.

the Dead in the *Book of Common Prayer*, and the more flexible provision found in *Common Worship: Pastoral Services* (2000). While the *Book of Common Prayer* remains a doctrinal standard alongside the *Articles of Religion* and the *Ordinal*, the material in *Pastoral Services* has hybrid authority, parts being authorised by the General Synod; other parts, not being alternatives to the *Book of Common Prayer* but additional, being commended by the House of Bishops for approval by the Ordinary pursuant to Canon B4.<sup>5</sup> This paper does not rely on the technicalities of formal authorisation as a basis for theological comment on the practice of burial, rather on the more general Anglican principle of *lex orandi, lex credendi*: the law of praying is the law of believing. To explain what the Church intends by the burial of the dead, I point to what the Church officially says about it to God, to the people of God and to wider society in its official prayer. Personal views cannot be avoided but in principle I attempt to show what the Church teaches by what the Church says in her public worship.

In the *Book of Common Prayer* the burial service articulates belief in the resurrection of the body in the opening sentences, the mandatory lesson from 1 Corinthians 15, and the familiar words of the graveside committal. This has a simple three-fold logic: God in his great mercy has taken the soul of the departed; we commit his body to the ground, 'earth to earth, ashes to ashes, dust to dust'; we do this in sure and certain hope of the (general) resurrection in which *our* 'vile' body will hopefully be changed like Christ's 'glorious' body. The final prayers concern the mourners rather than the departed; the spectacle of human mortality is used to reinforce the teaching of Christian morality. Only in the *Order for the Visitation of the Sick* is there to be found a commendation of the dying person to a faithful Creator and merciful Saviour, and even so the emphasis is on judgment.

For the purposes of this reflection on Christian burial the most significant aspect of the 1662 *Book of Common Prayer* is the lesson from 1 Corinthians 15 at the burial, and in particular St Paul's analogy of the sowing of seed with the burial of the dead in verses 35 to 50. Two things are being said explicitly here. First, what is sown is not the body which is to be: 'it is sown a physical body, it is raised a spiritual body. If there is a physical body there is also a spiritual body' (v 44); the analogy is here the horticultural fact of the difference between seed and plant. Secondly, it is necessary to entrust to God the mortal remains of a human person on the analogy of trusting God to give growth and life to the 'dead' seed sown in the ground. Seeds need planting to grow.

*Common Worship* gives a considerably richer theology of death and dying than either the *Book of Common Prayer* or the superseded *Alternative Service Book* (1980), though the Pauline theology of the resurrection of the body remains central and an edited version of 1 Corinthians 15 is duly provided alongside other Scripture readings. The theme of 'journey'

<sup>5</sup> For details of the authorisation, see *Common Worship: Pastoral Services*, p 403.

is prominent in *Common Worship*. In *Ministry at the Time of Death* the Commendation of the dying particularly suggests the ancient (Christian and pagan) metaphor of journey, using traditional western Christian prayers (or versions of prayers) suggestive of the soul going forth from this world towards the heavenly Jerusalem and/or passing through the gates of death to dwell in light with Abraham to be in safe keeping till the day of judgment and the resurrection of the saints. This is followed by prayers of commendation suggesting the Pauline doctrine that nothing can separate us from the love of God in Christ and that the dying person is now in God's merciful arms, enfolded in mercy, rest and peace. In *The Funeral Service* the use of the *Nunc Dimittis* is encouraged, also suggestive of departing in peace. A translation of the Russian *Kontakion* is also permitted, suggestive of rest and that 'all of us go down to the dust', and yet we weep at the grave with the hopeful song of Alleluia. An additional prayer is from St Anselm of Canterbury and touches on dying and being born to new life, mercy and healing, and preparation by Jesus' love for the beauty of heaven. The alternative blessings speak of our eternal home/heavenly country/the inheritance of the saints in light. Additional prayers are also provided for use at home before the funeral or for those unable to be present. These prayers emphasise consolation for the mourners, hope in the resurrection and the 'change' spoken of by Paul in 1 Corinthians.

At the reception of the coffin additional optional ceremonies remind us of the deceased's baptism into Christ's death and his promises. One prayer speaks of falling asleep in the peace of Christ and an allusion to Lazarus. There may also be a vigil service with a variety of scriptural themes introduced by the notion of refreshment (an ancient Christian theme in relation to the dead). The extensive *Common Worship* provision articulates very clearly that our purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another. The prayers of Commendation and Farewell speak of 'entrusting' the departed to God (and offer a wide variety of alternative prayers, including those already referred to at the time of death speaking of 'a journey'). The Committal speaks of entrusting the departed to God's mercy and committing their body to the ground or for cremation in preparation for burial in the familiar words of the *Book of Common Prayer*. It speaks expectantly of resurrection and transformation. In summary, *Common Worship* restores to Anglican worship in relation to the burial of a body or cremated remains the ancient Christian metaphors of 'journey' and 'resting' to the expectation and hope of transformation and resurrection already found in the *Book of Common Prayer*.

Before considering the bearing of this on questions about exhumation something must be said about burial grounds. In the early days of the Christian Church, Christian tombs were clustered round each other in otherwise pagan cemeteries. The most dramatic example of this is the originally pagan necropolis now under St Peter's, Rome, originally a public cemetery on the Vatican Hill, outside the City, close to the Vatican

Circus, now still reflected in the shape of the Piazza San Pietro. During persecution, including 'games' in the circus with wild beasts, the bodies of martyred Christians, most notably St Peter, were hastily buried in the nearby cemeteries. Soon after this other Christians were buried in the Vatican cemetery to be 'close to' Peter. Constantine built the first Basilica over the cemetery, now excavated under the present St Peter's. Many other similar examples of Christian burial in originally pagan cemeteries are known. As burial *in* a city was forbidden by Roman law, churches were built over the catacombs outside the cities where martyrs were already buried. Christians wished to be buried proximately to both the saints and a praying community. When churches came to be built it was natural that Christians were buried close to them if possible. However, in times of unrest and social upheaval and migration it was not thought wrong to remove Christian remains for safety. While this could not be done in the case of all the Christian dead, it was done for the 'relics' of the saints (in Rome from the catacombs; in this country from Lindisfarne to avoid Viking spoliation, as for example the translation of Cuthbert's bones to Durham). However, in such circumstances the relation between mortal remains and the living community continued: the *whole community* fled taking their 'saints' with them.

What bearing does all this have on exhumation today and to the desire for 'portable' remains? The biblical understanding of resurrection as expressed in 1 Corinthians 15 allows for real continuity and real discontinuity. There must be reverence and respect for human remains, but they are not ultimately what matters. The permanent burial of the physical body/the burial of cremated remains should be seen as symbolic of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, in the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with 'portable remains', which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the 'symbol' of a human life, rather than a giving back to God. The risen Lord in St John's Gospel says enigmatically to Mary Magdalene: 'Do not hold/cling to me' (John 20v17). In general, therefore, the reluctance to agree to faculties for exhumation is well grounded in Christian theology and eschatology. It is also right generally from the point of view of the mourner, who must learn to let go for their psychological and spiritual health.

There can, however, be exceptions to the norm when there is a separation between the mortal remains of a person and the worshipping (or other) community of that person. For example a burial ground somewhere on the East coast, where church and community have moved inland because of erosion by the sea. Or, in the case of a deceased member of a religious community, when the residence of that community moves.<sup>6</sup> The principle

<sup>6</sup> As in *Re Talbot* [1901] P 1, London Cons Ct. noted by Bursell and Petchey in the articles referred to in notes 3 and 4 above.

here being that the dead are buried close to the place of worship of the living community—part of our theology of the interrelation of the living and departed in Christian (especially eucharistic) worship. This is signalled by the village churchyard around the parish church—a slightly ‘romantic’ picture, but one which conveys a sense of the transaction between the living and the dead in Christ *as one family* which we call the communion of saints. This principle established the *norm* of permanent burial but allows rare exceptions to the norm. These would include the legitimate desire for members of a family to be buried in proximity. The principle also has bearing in cases of mistake where a member of one faith community is accidentally buried in the burial ground of another.

In cases of Christian burial according to Anglican rites, prescinding from cases where there has been a mistake as to the faith of the deceased or other exceptional circumstances, I would argue that the intention of the rite is to say ‘farewell’ to the deceased for their ‘journey’; to commend them to the mercy and love of God in Christ to await the transformation of resurrection. Exhumation for sentiment, convenience, curiosity, or to ‘hang on’ to the remains of life, would deny this Christian intention.

As to the rather different question of disturbance for the deepening or re-use of graves, the Christian principle of the living and departed being in one communion and family would not seem to discourage the re-use of graves. In principle the family vault has always recognised this. So also in effect did the usual practice of continuous burial in churchyards until the eighteenth and nineteenth centuries, when monumental masons began to attempt the immortality of memorials. Re-use of graves has never been seen to conflict with Christian theology in places where burial space has been at a premium, as for example in the City of Venice where for centuries individual remains have only been kept in individual tombs a limited time before reverent removal to a communal tomb. There are also many examples of the re-use of sarcophagi in Christian history. While there are many questions of respect and reverence to consider in the necessary but limited disturbance involved in the deepening or re-use of graves, I can see no theological principle against the practice if done with proper care, respect and after due time.

In 1998 the General Synod invited the Archbishops’ Council to investigate the possibilities of a review of the law covering the re-use of old graves, and the re-opening of closed churchyards. The Legal Advisory Commission of the Church of England has completed an opinion on further burials in existing graves and in land already used for burials. This is due to be published in 2004 and will cover the legal aspects of this question. Popular sentiment may often be antipathetic to such re-use. But theology and law offer no insuperable obstacles and a theology of the good stewardship of land may demand it in the future.