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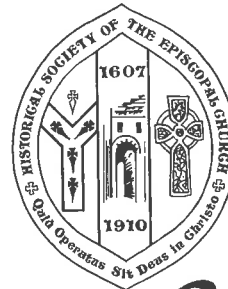
Edward L. Bond, Natchez, Mississippi
The John F. Woolverton Editor of *Anglican and Episcopal History*
aheditor@earthlink.net

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Diocese of Newark
churchrevieweditor@gmail.com

Book Review Editor

Sheryl A. Kujawa-Holbrook, Claremont School of Theology
sherylkujawa1@msn.com



ANGLICAN & EPISCOPAL HISTORY

Volume 86

September 2017

Number 3

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Anglican and Episcopal History (ISSN 0896-8039) is published quarterly (March, June, September, and December) by the Historical Society of the Episcopal Church (formerly the Church Historical Society), PO Box 1301, Appleton, WI 54912-1301. Membership dues are \$45.00 per year. Student and retiree memberships are available at \$25.00 per year. Institutional subscriptions are \$60.00 per year. There is a \$10 reduction for three-year memberships in the individual and institutional categories. Single copies cost \$10.00. Please add \$5.00 for foreign postage. Periodicals postage paid at Appleton, Wisconsin, and additional entry offices. Subscription and membership requests, orders for current and back issues of the Journal, as well as requests for information about advertising in *Anglican and Episcopal History* should be sent to Matthew P. Payne, Director of Operations, Historical Society of the Episcopal Church, PO Box 1301, Appleton, WI 54912-1301. Please make checks payable to HSEC. Online payment options are also available. Website: www.hsec.us/ah. *Anglican and Episcopal History* is a member of the Conference of Historical Journals.

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POSTMASTER: Please send address changes to Business Office, Historical Society of the Episcopal Church, PO Box 1301, Appleton, WI 54912-1301 (920) 383-1910.

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Printed by Sheridan PA, Hanover, PA

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Armsbearing by the Clergy in the History of the Canon Law of the Episcopal Church in the United States

LAWRENCE G. DUGGAN

Up to the American Revolution, the Church of England on the North American side of the Atlantic was governed by fundamentally the same canon law as in the Mother Country. One crucial difference was the absence of bishops in the colonies, which all fell under the jurisdiction of the bishop of London. Ordinands aspirant therefore had to make the long and difficult voyages to and from England. Furthermore, colonial vestries were much stronger than in England and little inclined to tolerate practices common there, such as pluralism. Otherwise the law was in nearly all other respects the same.

On the matter of armsbearing by the clergy, the Latin Church essentially forbade it until the twelfth century. (The Greek tradition believes it has always forbidden it.) For complex reasons having to do with both the Crusades and the "crisis of Church and State" of the eleventh and twelfth centuries, from 1129 onward the papacy authorized the creation of a series of military-religious orders like the Templars and the Teutonic Knights; and during the pontificate of Alexander III (1159-81), under whom the five major Iberian military orders received papal approbation, the crucial principle also came to be accepted that, in accordance with the right in natural and Roman law to repel violence with violence (*vim vi repellere*), the clergy could employ violence, but for defensive purposes only. By the thirteenth century, this novelty came to be registered in diocesan and provincial legislation throughout the Latin

LAWRENCE DUGAN is a professor of history at the University of Delaware.

Anglican and Episcopal History
Volume 86, No. 3, September 2017

Church.¹ In England, a series of statutes to this effect (allowing defensive but prohibiting offensive arms) was enacted between 1240 and 1268, culminating in a legatine council in that year presided over by Cardinal Ottobono (the future short-lived Pope Adrian V of 1276), and again in supplementary statutes for the Diocese of London sometime in the 1280s.² Since then, however, this matter has effectively never again been the subject of direct legislation at any level in the later history of the Church in England nor, after the introduction of Reformation and the break with Rome in the 1530s, the subsequent history of the Church of England.³ Yet for intricate reasons which I have sought to untangle elsewhere, the myth later developed (probably originating with the highly influential *Codex juris canonici anglicani* [1713] of Bishop Edmund Gibson [1669-1748]) that the Church in and of England has always forbidden clerical armsbearing, a myth so powerful that it prompted the learned modern editors of the legislation of the medieval English Church, F. M. Powicke and Christopher Cheney, to err in their understanding of what happened in 1268, where the legatine council undoubtedly forbade only arms of aggression.⁴ It is significant that when a sixteen-page pamphlet was published anonymously in Bath in 1798 on the clergy and military service, the author, a country curate, cited not a single ecclesiastical law forbidding military service or armsbearing, but only alluded vaguely to “the Laws and customs of this Kingdom” and, in a postscript, thanked the Lord Bishops for their “disapprobation” of such “improper” behavior.⁵

It is therefore revealing to consider the fate of colonial Anglican clergymen in Maryland, Virginia, and South Carolina who before or during the revolution are known to have taken

¹ Lawrence G. Duggan, *Armsbearing and the Clergy in the History and Canon Law of Western Christianity* (Woodbridge, Suffolk-Rochester, NY, 2013), 99-144.

² *Ibid.*, 181-91.

³ *Ibid.*, 191-220. The great bulk of the legislation of the Church of England has been conveniently gathered by Gerald Bray, ed., *The Anglican Canons, 1529-1947* (Woodbridge, Suffolk-Rochester, NY).

⁴ Duggan, *Armsbearing*, 187-91, 208-10.

⁵ *Considerations Addressed to the Clergy on the Propriety of their bearing Arms, and Appearing in a military capacity, by a country incumbent* (Bath, 1798). The author is usually identified as one Edmund Spencer (1739/40-1819).

up arms.⁶ Jonathan Boucher was rector of Queen Anne’s Parish in Prince George’s County, Maryland, in the early 1770s. So outspoken a royalist was he that he kept loaded pistols in his pulpit and on one occasion threatened to blow out the brains of the leader of two hundred men who occupied his church to prevent him from preaching. In September 1775 he left for England, received a rectorship in Surrey, and in the 1790s published an account of his travels.⁷ During the war, four and possibly five of the 122 incumbent Anglican clergy in Virginia took up arms. It is not clear whether Adam Smith, rector of Botecourt Parish, acted as a combatant as well as a chaplain.⁸ John Peter Muhlenberg, whose background was Lutheran before he was ordained an Anglican priest in 1771, resigned as rector of Beckford Parish, Dunmore City, when he decided to accept a commission as a colonel.⁹ But three other Anglican priests from Virginia—Charles Myron Thruston, Isaac Avery, and James Madison—all served in the military without resigning from the ministry, and in fact Madison (a cousin of the later president) was elected first Episcopal bishop of Virginia. And in South Carolina the first bishop, elected in 1795, was Robert Smith, rector of St. Philip’s Church in Charleston from 1759, who acted as a soldier in the siege of Charleston in 1780 and thereafter.¹⁰ None of these priests was in any way punished for having fought in the war.

⁶ See Duggan, *Armsbearing*, 43-44, for serious errors in the literature about clergy who allegedly participated as combatants in the Revolution.

⁷ *Ibid.*, 43-44; *Reminiscences of an American Loyalist 1738-1789, Being the Autobiography of the Rev. d. Jonathan Boucher, Rector of Annapolis in Maryland and afterwards Vicar of Epsom, Surrey, England*, ed. Jonathan Boucher (Boston, 1925), 106-07, 113, 121-22. Of the considerable literature on Boucher, see Ralph Emmett Fall, “The Rev. Jonathan Boucher, Turbulent Tory (1738-1804),” *HMPEC* 36 (1967): 323-356; Anne Young Zimmer and Alfred H. Kelly, “Jonathan Boucher: Constitutional Conservative,” *Journal of American History* 58 (1972): 897-922; and David C. Skaggs and Gerald E. Hartdagen, “Sinners and Saints: Anglican Clerical Conduct in Colonial Maryland,” *HMPEC* 47 (1978): 177-195.

⁸ G. MacLaren Brydon, “The Clergy of the Established Church in Virginia and the Revolution,” *Virginia Magazine of History and Biography* 41 (1933): 301.

⁹ Thomas Rightmyer, “The Holy Orders of Peter Muhlenberg,” *HMPEC* 30 (1961): 183-97; David Holmes, “The Episcopal Church and the American Revolution,” *HMPEC* 37 (1978): 281, n. 42.

¹⁰ Brydon, “Clergy in Virginia,” 16, 21-22, 239-40, 242-03, 301-03; Albert Thomas, “Robert Smith (1732-1801), First Bishop of South Carolina (1795-1801),” *HMPEC* 15 (1946): 15-29; Duggan, *Armsbearing*, 44-45.

THE BIRTH OF THE EPISCOPAL CHURCH IN THE UNITED STATES
OF AMERICA

The successful rebellion of the North American colonies, acknowledged by the Treaty of Paris of 1783, required the redefinition of the Church of England in the new United States of America. As a result of several General Conventions (the rough equivalent of convocation), beginning in 1785 and culminating in 1789 (and ordinarily meeting every three years thereafter), there emerged the Episcopal Church in the United States of America, which recognized the spiritual primacy of the See of Canterbury, but abjured the temporal and spiritual rights of the king. The convention of 1799 proposed, and that of 1801 adopted, new Articles of Religion, the last of which (17) replaced Article 37 of the Anglican Articles in accordance with the stipulations of the Constitution of the United States on the relationship between church and state.

The power of the civil magistrate extendeth to all men, as well Clergy as laity, in all things temporal—but hath no authority in things purely spiritual. And we hold it to be the duty of all men who are professors of the gospel, to pay a respectful obedience to the civil authority, regularly and legitimately constituted.¹¹

On most other matters, continuity with the laws and traditions of the Church of England remained. Such was the case with respect to clerical deportment. The original canons of the U.S. church were adopted by the Adjourned Convention of 1789. Canon 13, “Sober Conversation required in Ministers,” derived from Canon 75 of the Anglican Constitutions of 1603.

No ecclesiastical persons shall, other than for their honest necessities, resort to taverns or other places most liable to be abused to licentiousness. Further, they shall not give themselves to any base or servile labour, or to drinking or riot, or to the spending of their time idly. And if any offend in the above, they shall be liable to

¹¹ William Stevens Perry, ed., *Journals of the General Conventions of the Protestant Episcopal Church in the United States*, 3 vols. (Claremont, NH: 1874), 1:234. The adoption thereof is recorded on p. 280. Hereafter cited as *JGC* followed by the year.

the ecclesiastical censure of admonition, or suspension, or degradation.¹²

These specific provisions, which not even by implication embrace the bearing of arms, were amplified by the convention of 1792, which declared the same condign punishments “If a Clergyman of this Church . . . shall . . . conduct himself in such a way as is contrary to the rules of this Church, and disgraceful to his office.”¹³ It will turn out that on the issue of clerical armsbearing the Episcopal Church of the United States has never subsequently legislated more specifically than this. The convention of 1811, acting on a resolution made three years earlier, forbade clergy to conduct funeral services for anyone who gave or accepted a challenge to a duel.¹⁴ If this was meant to convey obliquely a condemnation of violence or gun-slinging by all, nothing more came of it in the law for the clergy. The convention of 1829 enumerated the following “Offences for which Ministers shall be tried and punished”: “scandalous, disorderly, or immoral conduct, . . . violating the canons, or preaching or inculcating heretical doctrine.”¹⁵ This language was evidently too slippery, for the next convention of 1832 stipulated that clergy could be prosecuted “for any crime or gross immorality, for disorderly conduct, for drunkenness, for profane swearing, for frequenting places most liable to be abused to licentiousness, and for violation of the Constitution or Canons of this Church, or of the Diocese to which he belongs,” or if he is “accused, by public rumor, . . . of being guilty of scandalous, disorderly, or immoral conduct.”¹⁶

The authoritative handbook on the canon law of the Episcopal Church glosses this last canon in this manner: “The offenses enumerated in this canon would seem to include nearly every conceivable offense against religion and morals, and every violation of the law of the Church, with two exceptions: that of a violation of the Rubrics of the Prayer Book, and violation of a clergyman’s

¹² *Ibid.*, 1:128.

¹³ *Ibid.*, 1:170.

¹⁴ *Ibid.*, 1:347-48, 378, 389.

¹⁵ *Ibid.*, 2:310-11.

¹⁶ *Ibid.*, 2:473-74, 542.

ordination vows, which offenses seem to have been overlooked in the drafting of the canon."¹⁷

THE U.S. CIVIL WAR

The Civil War put this interpretation to the test or, rather, raised the question whether an Episcopal clergyman taking up arms violated the canons or his ordination vows. It would appear not, to judge from the substantial numbers of those who did fight during the Civil War, were not prosecuted for having done so, and in fact either elicited support from others or expressed no reservations about their own conduct.¹⁸ A closer examination of three well-documented Episcopal priests can reveal much on all these facets of the question.

Bishop Leonidas Polk (1806-64) ultimately entertained no doubts about the rightness of his service in the cause of the Confederacy. A graduate of West Point, he had chosen the ministry for his career and became the first Episcopal bishop of Louisiana in 1841. When Jefferson Davis offered him a brigadier-generalship, Polk may initially have had some hesitation, which led him to visit Bishop William Meade, president of Virginia Theological Seminary. Meade evidently told Polk that despite his own opposition in principle, he could not oppose Polk after taking everything into consideration, and he may in fact have convinced Polk to accede to Davis' request. Thereafter Polk remained firm in his conviction of this "call of Providence" and announced that "I will do what I can for my country, our hearth-stones, and our altars."¹⁹ Far from resigning his see (as is often implied or assumed²⁰), he in fact regarded himself as only on temporary leave from his office and acted as a priest throughout the war, baptizing, for instance,

¹⁷ Edwin A. Whyte and Jackson A. Dykman, *Annotated Constitution and Canons for the Government of the Episcopal Church*, rev. ed., 2 vols., (New York, 1982), 2:279.

¹⁸ See Duggan, *Armsbearing*, 46-53, for participation of clergy from all denominations in the war.

¹⁹ Quoted in Joseph H. Parks, *General Leonidas Polk C.S.A. The Fighting Bishop* (Baton Rouge, 1962), 168.

²⁰ E.g., Paul Ashdown, "Commission from a Higher Source: Church and State in the Civil War," *HMPEC* 48 (1979):323.

General J. B. Hood at the age of thirty-two.²¹ Although historians have often noted that Polk sometimes expressed a desire to return to his diocese, they have taken less notice of his furious (and successful) protest when General Braxton Bragg removed him from command in September 1863.²² The incompatibility of his two offices was the last notion that seems to have entered his head. When a friend exclaimed, "What! You, a bishop, throw off the gown for the sword!," Polk retorted, "No, sir, I buckle the sword over the gown."²³ Today there hangs in the University of the South in Sewanee, Tennessee, a splendid portrait of Polk entitled with his own words, "Sword over the Gown": a bishop in low church regalia with a book in his left hand (presumably Holy Writ) and a sword in the right, standing next to an armchair with the uniform of a Confederate officer draped over it.

Were his contemporaries equally convinced? Like his friend, some correspondents voiced their astonishment or shock, but most of the letters he received were supportive.²⁴ The strongest clerical denunciation publicly voiced came from Bishop George Burgess of Maine in an address to the General Convention of 1862 in New York: "it is an act of dishonor to the Episcopate, unparalleled except in the darkest periods and the most corrupt communions. The hands of the ministry were always held back from bloodshed, even though the cause were most just."²⁵ But was this "act of dishonor" illegal? A more prolix but less sharp report was proposed by a committee of the House of Bishops in October 1862:

When the ordained Ministers of the Gospel of Christ, whose mission is so emphatically one of peace and goodwill, of tenderness and consolation, do so depart from their sacred calling as to take the sword and engage in the fierce and bloody conflicts of war; when in so doing they are fighting against authorities which, as "the

²¹ See the sleight of hand performed by Bishop Polk's son, William Polk, *Leonidas Polk. Bishop and General*, new ed. (New York, 1915), 1:363.

²² Parks, *Leonidas Polk*, 344, 348-49.

²³ Quoted in *ibid.*, 170.

²⁴ See *ibid.*, 169, which draws on the materials gathered in Polk, *Leonidas Polk*, 1:356-70.

²⁵ Quoted in Edward McPherson, *The Political History of the United States of America during the Great Rebellion* (Washington, 1865), 515n.

powers that be," the Scriptures declare "are ordained of God," so that in resisting them they resist the ordinance of God; when especially one comes out from the exalted spiritual duties of an Overseer of the flock of Christ, to exercise high command in such an awful work,—we cannot, as ourselves Overseers of the same flock, consistently with duty to Christ's Church, His Ministry and people, refrain from placing on such examples our strongest condemnation. We remember the words of our blessed Lord, uttered among His last words, and for the special admonition of His Ministers—"They that take the sword shall perish with the sword."²⁶

Yet when it came to issuing a pastoral letter, the bishops rejected this text and substituted a mild one, exhorting their clerical brethren in the South to gentleness and abstention from worldly activities, policies "laid down, with such solemn plainness, in the office of Ordination." The letter assiduously avoids any hint of open condemnation or any allusion to Polk by name.²⁷

Southerners were understandably little disposed to appreciate such solicitude at the time, since they overwhelmingly regarded themselves as victims of a monstrous iniquity. It is still astonishing to read today the writings of Southern clergymen, defending almost to a man the compatibility of Christianity and slavery, although it is well to remember that their attitudes represented those of the great majority in Western civilization only a century earlier.²⁸ Southern clergymen rallied to the cause of outraged honor, voluntarily taking up arms on a scale probably unprecedented in the whole history of Western civilization.²⁹

Reaction to Bishop Polk serves as a good indicator of Southern sentiment, especially of Southern clerical sentiment. While he enjoyed broad support among the laity, he experienced no open criticism from his fellow Episcopal clergy, and he was highly lauded in the funeral oration preached by Bishop Stephen Elliott Jr., bishop of Georgia and presiding bishop of the Confederate

²⁶ Quoted in *ibid.*, 486-47.

²⁷ The text of the pastoral letter is printed in *ibid.*, 490-93; see especially 492.

²⁸ See especially David Brion Davis, *Slavery and Human Progress* (New York, 1984).

²⁹ A salutary reminder of the centrality of honor in the Southern mind is Bertram Wyatt-Brown, *Southern Honor. Ethics and Behavior in the Old South* (New York, 1982).

Protestant Episcopal Church, who sketched a highly sympathetic picture of his late colleague. Polk had, he said, always regarded his military service as a "humiliation" and a "burden" from which he longed to be freed. "But the same necessity which called for his appointment required the continuance of his services, and our highest civil magistrate, the power which we believe to be ordained of God, denied his request."³⁰ (One may note here, aside from the want of any reference to ecclesiastical law, the suggestions that "necessity knows no law" and that absolute obedience is owed to the civil authority.³¹) Elliott went on misleadingly to suggest about Polk that "The duties of his episcopal office [as opposed to his priestly?] he laid down during his military career, in imitation of his Master."³² Elliott then passed from exculpation to exaltation:

Who can estimate the influence of such an act as that of our brother upon the cause which is so vital to every one of us? What could invest it with a higher moral grandeur than that a bishop of the Church of God should gird on the sword to do battle for it? A faction of the Northern Church pretended—some of them engaged in acts infinitely more derogatory to the glory of Christ's Church—to be shocked at it; but it, nevertheless, filled them with dismay. They saw in it an intensity of feeling and of purpose at which they trembled, and when they found no echo of their pious horror from the Church of England, they ceased their idle clamor.³³

³⁰ The text of Bishop Elliott's sermon appears in "The Bishop Polk Centennial Number 1838-1938," *HMPEC* 7 (1938): 405-18; the words quoted are on 415.

³¹ On "necessity knows no law," not a Roman legal principle (as so many think), but one developed by the Christian Church as far back as the fifth century, gaining widespread acceptance from Bede onward, and listed as one of the "Rules of Law" of both Pope Boniface VIII (1298) and of the Reformed Ecclesiastical Laws of England of 1552, see Duggan, *Armsbearing, passim*; Franck Roumy, "L'origine et la diffusion de l'adage canonique *Necessitas non habet legem* (VIIIe-XIIIe s.)," in Wolfgang P. Müller and Mary E. Sommar, eds., *Medieval Church Law and the Origins of the Western Legal Tradition. A Tribute to Kenneth Pennington* (Washington, DC, 2006), 301-19.; and Gerald Bray, ed. and trans., *Tudor Church Reform. The Henrician Canons of 1535 and the Reformatio legum ecclesiasticarum*, Church of England Record Society 8 (Woodbridge, Suffolk-Rochester, NY, 2000), 734-35.

³² "Bishop Polk Centennial Number," 415.

³³ *Ibid.*, 416.

A second Episcopal priest who rose to great prominence and offered some witness as to his feelings was William Nelson Pendleton of Virginia (1809-83). Like Polk, he had graduated from West Point and turned to ministry. After teaching at Newark College in Delaware, he became rector of Latimer Parish in Lexington, Virginia. As a specialist in artillery, he began to train Washington College students in the spring of 1861, and on 1 May received a request from the men of the Rockbridge Artillery to lead them. He penned a statement about his reluctance to serve: "If some one becomes ready to command this company, and my services are not important in strictly military offices, I should greatly prefer duties more appropriate to my spiritual relations, and may so signify to my official superiors." Nevertheless, he continued,

No man, in my judgment, whatever his calling and his love of peace, has a right to shelter himself from the common danger behind the bravely-exposed breasts of his fellow-citizens. I should therefore deem it my sacred duty, in some capacity, fairly to share the peril, as well as work for the welfare of my countrymen.³⁴

Whatever unspoken thoughts about law and decorum may have come to his mind, Pendleton placed his civic duty and his right to decide the question above them. Unlike Polk, whose death removed for the Episcopal bishops of the re-United States the possibly distasteful task of doing something about his wartime conduct (even if only to choose to do nothing), Pendleton returned to his parish and died there eighteen years later. Nothing vaguely savoring of reprimand or censure appears in the archival records of the diocese of Virginia.³⁵ Certainly it is highly unlikely that a bishop of one of the leading Confederate states would have taken action against one of his rectors who had risen to so great a place during the war; but the bishop's inaction is entirely

³⁴ *Memoirs of William Nelson Pendleton, D.D., Rector of Latimer Parish, Lexington, Virginia; Brigadier-General, C.S.A., Chief of Artillery, Army of Northern Virginia, by his Daughter Susan P. Lee* (Philadelphia, 1893), 137-40; the quotation is on 139.

³⁵ I am indebted to Peter James Lee, then bishop of Virginia (1985-2009), now of East Carolina, for having the diocesan archives culled with this question in mind.

consistent with a much larger pattern evident on both sides of the Atlantic for centuries.

A third Southern Episcopal priest, who himself did not take up arms, penned memoirs which illuminate in a different way clerical attitudes towards armsbearing. Charles Todd Quintard (1824-98) first earned an M.D. in New York City before being ordained priest in Tennessee in 1856. In 1859 he was elected chaplain of the Rock City Guard and in 1861 of the First Tennessee Regiment, which he served as priest and surgeon throughout the war. In 1865 he was elected bishop of Tennessee and was confirmed in that office by the General Convention meeting in Philadelphia. Around 1896 he wrote his recollections of the war and died two years later. These were edited, "extended" with supplementary material, and published by the Reverend Arthur Howard Noll, historiographer of the diocese of Tennessee. These two clergymen tell us as much about themselves as about Polk and Pendleton.

Quintard is not as forthcoming as Noll in describing his sentiments on clerical armsbearing, but nowhere does he register any surprise or misgivings about Polk or Pendleton in the several stories he tells about them. His meeting with Pendleton he relates rather matter-of-factly:

At the Rev. Mr. Peterkin's I had the pleasure of meeting the Rev. William Nelson Pendleton, then a Colonel in the Confederate Army, afterwards a Major-General in Command of Lee's Artillery. He had been in command of the artillery that did such execution at the battle of Manassas, and gave me a most interesting account of that fight.³⁶

Polk, whom Quintard saw more frequently and with whom he prayed, is treated no differently. Nor does Quintard perceive an incompatibility when Polk baptized Generals Hood, Johnston, and Hardee in two different ceremonies: "These were two of the four ecclesiastical acts performed by Bishop Polk after receiving his commission in the army"³⁷—clear proof that Polk did not lay aside his priesthood when he took up the sword, even if he

³⁶ Arthur Howard Noll, ed., *Doctor Quintard Chaplain C.S.A. and Second Bishop of Tennessee. Being His Story of the War (1861-1865)* (Sewanee, 1905), 14.

³⁷ *Ibid.*, 96.

perhaps no longer acted as a bishop in administering confirmation and holy orders.

Quintard also tells two puzzling stories. The first concerns Polk:

On another occasion the General and I were riding out together and he mentioned the following odd incident to me: His eldest son when at college in the North purchased a gold-headed walking-stick as a present to the Bishop. Wishing his name and seal engraved upon it, the son took it to an engraver in New York, giving him a picture of the Bishop's seal as published in the Church almanac. The seal was a simple shield having for its device a cross in the center, with a crozier and key laid across it. By some hocus pocus the artist engraved a crozier and a *sword* instead of the key. The Bishop had the cane still when he told me this, and I think it was his intention to adopt that device as his seal henceforth. But, of course, as well know, the Bishop's death before the close of the war prevented his adopting a seal for his future work in the Episcopate.³⁸

If Quintard understood Polk's intention correctly, then the oddness of the engraver's prescience is exceeded only by Polk's willingness to accept the substitution of the sword for the key on his seal.

The second story is about Quintard himself, on his own admission "not a military man."³⁹

My friend, General Washington Barrow, who had formerly been Minister to Portugal, thinking that I would have need of a weapon for my defence, sent me his old court sword, which had enjoyed a long and quiet rest,—so long, indeed, that it had become rusted in its scabbard. I remember well my first attempt to unsheathe the sword. I seized the handle and pulled with might and main, but to no effect. A friend came to my assistance. I took the sword handle,—he the scabbard. We pulled and we pulled, but the sword refused to come forth. I am not aware that I ever succeeded in drawing that sword "for the defence of my country." On my departure for Virginia I left it at home.⁴⁰

Would Quintard have left the sword at home had he been able to unsheathe it? Was he being ironically self-deprecatory in speaking of it as potentially useful "for the defence of my country"? It is

³⁸ Ibid., 71 ("sword" is italicized in the original).

³⁹ Ibid., 10.

⁴⁰ Ibid., 12.

hard to say, especially since he gave no sign of regarding it as incompatible with his priestly office. On the contrary, on the very first page of his memoirs he wrote that since Southerners regarded "their cause as a holy one, . . . it seemed in no way incongruous in the conduct of a war of such a character that commissions were offered to and accepted by priests like Pendleton and Polk."⁴¹

THE EPISCOPAL LAW OF ARMS AND THE CIVIL WAR

In the midst of all this uncertainty, controversy, and indifference with respect to the position of the Episcopal Church on the legality of clerical armsbearing, two attempts were made to clarify it, the first at the diocesan level during the war, the second at the national after its conclusion. In September 1864, Bishop William H. De Lancey of the diocese of Western New York wrote to William H. Seward, secretary of War. De Lancey came to the point immediately. He included the report of a special diocesan committee on clergy and the draft to support his petition for exemption of the clergy from combat service under the Enrollment Act of 1864. The report noted that "By section 17 [of the Act] members of religious denominations who shall, by oath or affirmation, declare that they are conscientiously opposed to the bearing of arms, *and who are prohibited from doing so by the rules and articles of faith and practice of said religious denominations*, shall, when drafted, be considered non-combatants." On this point the committee concluded that

The Protestant Episcopal Church has long held her clergy to be separate and set apart for the performance of sacred and holy duties, and that the actual bearing of arms in military service is incompatible with their office and duties. *While the committee cannot claim that such of the clergy as may be drafted are entitled to a legal exemption, or to an absolute right, under the section 17 above referred to, they think such cases should be favorably considered as within its spirit.*⁴²

⁴¹ Ibid., 1.

⁴² *The War of the Rebellion. A Compilation of the Official Records of the Union and Confederate Armies*, 70 vols. in 128 (Washington, 1880-1901), series 3, 4:691-92. Emphasis added in both quotations.

Bishop De Lancey also directed a lengthy letter to President Lincoln. He argued that the Episcopal Church in the United States, like the Church of England, had always adhered to the position of the primitive church in which "ministers were forbidden to take up arms." He cited no specific law, however, and instead employed throughout words like "principle," "universal view," and "implies." At one point, in fact, he admitted with some pride that the church had no such explicit rule and had no need of one, for the clergy's

Ordinations vows imply the principle of separation [of the clergy from secular pursuits]. It had hitherto needed no formal declaration in rules and canons. It is the common law of our church and a part of her vital principle of action. A candidate applying to be ordained and declaring that if called on he would take up arms and shed blood would be refused ordination.

On these accounts our ministers abstain from engaging in ordinary business, from holding public offices, and participating generally in politics. For these very things they are generally noted throughout the country. Any who do otherwise are exceptions to our practice. On these grounds, then, it is contrary to their consciences as officers of Christ's kingdom to bear arms as soldiers and shed blood.

To reinforce his argument, he included the resolution of his diocesan convention "That in the judgment of the convention the clergy of the church are bound in conscience and by their ordination vows to abstain from engaging as armed combatants in the military service."⁴³ It will be noted that whereas Bishop De Lancey suggested only that ordination vows implied abstention from warfare, his convention believed that the vows did more than that. Neither, in fact, was right, as would soon be made clear.

The General Convention which gathered in Philadelphia in October 1865 was made to face squarely the simple fact that the Episcopal Church did not have anywhere a law banning clerical armsbearing, even though such a law had been ritually alluded to for years.

⁴³ *Ibid.*, 4:692-4.

On the second day (5 October) a lay member of the House of Clerical and Lay Deputies moved "That the Committee on Canons be instructed to inquire into the expediency of amending the Canons of the Church so as to forbid any clergyman or candidate for Holy Orders from entering the army or navy, except in the capacity of chaplain."⁴⁴ No one is recorded as objecting that such a law already existed, thereby rendering the motion superfluous. In fact, the very next day the Committee on Canons, judging such a canon "expedient," submitted this resolution for consideration:

Resolved, The House of Bishops concurring, that the following canon be enacted, to be entitled, Of a Clergyman entering the Military Service.

No clergyman of this Church shall enter the Army or Navy, except in the capacity of Chaplain, nor shall hold a military or naval appointment other than that of instructor in a Military or Naval School.⁴⁵

When the question came before the House later that day, two motions were offered. The first requested that the proposed canon include candidates for orders as well as the ordained; the second, evidently building on the first, that "no Bishop, priest, deacon or candidate for holy orders shall accept, exercise, or hold, any commission in the army or navy, other than that of chaplain or instructor."⁴⁶ Whether the word "commission" was deliberately intended to restrict the scope of this canon to officers is not clear, although it could have been so interpreted; but discussion which might have brought clarity now had to be postponed because the hour of adjournment had arrived.

This was on 6 October. Over the next ten days no substantive discussion occurred, although three attempts were made to table the question or postpone it indefinitely.⁴⁷ On Monday the 16th, a motion passed that the proposed canon be made the Order of the Day at 11 a.m. on Wednesday the 18th, with the proviso that a vote be taken after thirty minutes of debate. When that debate began as scheduled on the 18th, this substitute canon was offered and adopted:

⁴⁴ *JGC 1865*, 21.

⁴⁵ *Ibid.*, 33.

⁴⁶ *Ibid.*, 40.

⁴⁷ *Ibid.*, 46, 49-50, 69.

No clergyman of this Church, whether bishop, priest, or deacon, shall voluntarily enter any military or naval service except as a non-combatant, or shall accept or hold any military or naval commission except that of chaplain or instructor.⁴⁸

While ruling out any form of voluntary combatant service for all ordained clergy, this canon unambiguously allowed for non-combatant service and implied that no ecclesiastical sanction would be imposed on any clergyman forced into the military.

An amendment to this substitute was now offered: "It is also the rule of this Church, that no duly admitted candidate for Holy Orders shall voluntarily bear arms in any military or naval service." This motion failed, which then prompted a clerical deputy to move reconsideration of the vote by which the substitute canon had just been adopted. This motion was tabled. Mr. Eli T. Wilder, lay deputy for Minnesota, then moved:

Resolved, That the whole subject of the proposed Canon, and the substitute therefor, be recommitted to the Committee on Canons, with instructions, in place of any Canon in the premises, to report a declaratory resolution, in substance as follows:- Resolved, the House of Bishops concurring, That it is the sense of the Protestant Episcopal Church in the United States of America, that it is incompatible with their duty, position, and sacred calling, for the clergy of this Church to bear arms.

The motion passed. Before the house adjourned for the day, another resolution was moved, seconded, and adopted that when the Committee on Canons reported to the house, the vote be taken without debate.⁴⁹

When the committee submitted its report on the next day (19 October), the house accepted it:

The Committee on Canons, to whom the whole subject of the proposed Canon relating to clergymen bearing arms, and the substitute for such canon adopted by the House of Clerical and Lay Deputies, were recommitted, with instructions, in place of any Canon in the premises, to report a declaratory resolution in

⁴⁸ Ibid., 85.

⁴⁹ Ibid., pp. 85-6, 88.

substance as expressed in the resolution of recommitment and of instructions,-

Respectfully report, that, being restricted by instructions of the House to the substance of a resolution which formed a part of those instructions, they are of the opinion that the resolution, clearly and without ambiguity, expresses its own substance; and they therefore report it in the words adopted by the House; viz:-

Resolved, the house of Bishops concurring, That it is the sense of the Protestant Episcopal Church in the United States of America that it is incompatible with their duty, position, and sacred calling, for the clergy of this Church to bear arms.

In thus reporting the resolution, the Committee deem it proper to say, that, in their judgment, the spirit and the intent of the resolution do not extend to the office of chaplain in either branch of the military service, nor to that of professor or instructor in any military or naval academy: the duties of these offices are civil, and entirely compatible with the duties of the sacred ministry.

Respectfully submitted,
M. A. DeWolfe Howe,
Chairman pro tem.⁵⁰

The House of Bishops responded on the same day by making two minor editorial changes. The House of Deputies accepted these and then appended an explanatory note to the final resolution, all of which was to be published as an Appendix to the Canons.⁵¹ The final legislation on clerical armsbearing enacted by the General Convention of the Protestant Episcopal Church in the United States of America, gathered in Philadelphia in October 1865, thus read:

APPENDIX

Joint resolution of the two Houses on the duty of the clergy of this Church in the matter of bearing arms:-

⁵⁰ Ibid., 90-91.

⁵¹ Ibid., 95, 97, 191.

“Resolved, that it is the sense of the Protestant Episcopal Church in the United States of America that it is incompatible with the duty, position, and sacred calling of the clergy of this church to bear arms.”

The House of Clerical and Lay Deputies passed the following resolution on the above, Oct. 19, 1865:-

“Resolved, That the declaratory resolution in relation to clergymen bearing arms, adopted this day by this House, and since concurred in by the House of Bishops, be, with the explanatory note of the Committee on Canons, printed in an Appendix to the Canons.”

The following is the explanatory note referred to:-

“In thus reporting the Resolution, the Committee deems it proper to say, that, in their judgment, the spirit and intent of the resolution do not extend to the office of Chaplain in either branch of the military service, nor to that of professor or instructor in any Military or Naval Academy: the duties of these offices are civil, and entirely compatible with the duties of the sacred ministry.”⁵²

It is very hard at this point not to recall the quip, variously ascribed to Otto von Bismarck and Mark Twain, that there are two things the making of which no one should witness—sausages and laws. The General Convention of 1865, after all, was seeking to bring about the reconciliation of the North and the South within the ranks of the church soon after the end of the war. The situation was therefore delicate in Philadelphia in October 1865. Once someone had the ill grace to raise clerical armsbearing as a public issue on the second day of the convention, it would not go away despite the best efforts of many people to table or scuttle it. Whatever the motives of the participants, bitter memory, prudent charity, high principle, and cumbrous parliamentary democracy all dovetailed to produce a compromise which could gain acceptance in a highly charged atmosphere. It probably would have been better had this explosive matter been postponed to the convention of 1868 or even later. One cannot predict what might have happened. The record of what did happen, however, is clear. What was proposed as a binding

⁵² *Ibid.*, 458-59 (Appendix S).

canon unequivocally prohibiting clerical armsbearing was, over the space of two weeks, transmuted into a prolix declaratory resolution, to be published only as an appendix to the canons, on the incompatibility of clerical status and armsbearing. It is difficult to decide which was weaker—the language of the resolution, or its status at law as an enforceable enactment. In any case, the convention which had opened without a canonical prohibition ended without one.⁵³

LATER DEVELOPMENTS

Some time would pass before the issue of clerical conduct was addressed again, and then only in vague terms. In 1892 General Convention amended the reasons for which a clergyman could be tried by adding “And for conduct unbecoming a Clergyman of this Church.”⁵⁴ This provision curiously disappeared in 1904, only to reappear in 1913.⁵⁵ The General Convention of 1916 made it more difficult to institute an action against a clergyman by adding, “*Provided* that, in case of a charge of conduct unbecoming a clergyman, before proceeding to a presentment, the consent of three-fourths of all the members of the Standing Committee or Council of Advice shall be required.”⁵⁶ This remains the most pertinent canon in force at the moment.

Can a bishop or a priest of the Episcopal Church be prosecuted for bearing arms under a canon which does not explicitly mention this as an offense? White and Dykman cite four cases from the last one-hundred-fifty years whose prosecution rested on the premise that the canons treating “Of Offenses for which Bishops, Presbyters or Deacons May Be Tried” do not provide an exhaustive list “Of *the* Offenses” for which clergy may be indicted. This seems like sound reasoning on the face of it, if a tad disingenuous. Yet in view of the lackluster achievement of the 1865 General

⁵³ Significantly, White and Dykman, *Annotated Constitution and Canons*, p. 279, completely ignore the Convention of 1865 in their extensive commentary on c. 53, “Of Offenses for which Bishops, Presbyters or Deacons May Be Tried.”

⁵⁴ *JGC 1892*, 92. The discussion of the amendment generated no heat (*ibid.*, 137, 143-44, 148, 390).

⁵⁵ White and Dykman, *Annotated Constitution*, pp. 280-81.

⁵⁶ *JGC 1916*, 78, c. 25.1.(h).

Convention and the conspicuous absence of any prosecution of a cleric for armsbearing in England or the United States for hundreds of years, it would difficult to argue on the basis of Bishop De Lancey's "common law" that this is a justiciable offense. History, cases and precedents, and a strict construction of the law would not sustain such an indictment.

Does this mean that the Episcopal Church in the United States is incapable of prosecuting clergy for offenses against the canons? Not at all. In characteristically American (and human) fashion, it has at times shown great zeal in doing so, and has been punctilious about the niceties of the law when it so chooses. Thus in 1798 Uzal Ogden was elected the first bishop of New Jersey, but the House of Deputies at the next General Convention rejected his testimonials because he had not, in accordance with the canons, been elected by at least six canonically resident clergy. More than six clergy had elected him, but a majority of them were only temporary incumbents and hence not canonically resident. What was probably more to the point was the view of many of Ogden's opponents that he was insufficiently attached to the teachings of the church.⁵⁷ The high point of prosecuting fervor was reached in the middle of the nineteenth century, when the whole question of the Protestant or Roman character of the Episcopal Church threatened to sunder it in two. Although they were technically "hanged" on other charges, the Onderdonk brothers, Henry and Benjamin, bishops respectively of Pennsylvania and New York, in the 1840s were effectively deposed from their offices in legal proceedings every bit as tortuous as anything the so-called legalistic Romish mind could devise; and the bishop of New Jersey, George Doane, was also tried in 1852-53.⁵⁸

⁵⁷ *Journals of the Conventions of the Protestant Episcopal Church of the State of New Jersey, 1785-1816* (New York, 1890), 194-95, 215-17, 220, 261, 273-78, 287-89; Nelson Burr, *The Anglican Church in New Jersey* (Philadelphia, 1954), 456-57; William Manross, *A History of the American Episcopal Church* (New York, 1950), 204.

⁵⁸ Manross, *History*, 279-81; *Proceedings of the Court Convened under the Third Canon of 1844 . . . for the Trial of the Right Rev. Benjamin T. Onderdonk* (New York, 1845); Clowes Chorley, "Benjamin Tredwell Onderdonk, Fourth Bishop of New York," *HMPEC* 9 (1940): 1-51; *The Record of the Proceedings of the Court of Bishops Assembled for the Trial of the Rt. Rev. George Washington Doane* (New York, 1852).

A tale of two other bishops shows how little things had changed by the time of World War I, the other reliable litmus test in United States history for the real position of the clergy with respect to war. To be sure, the Episcopal hierarchy and clergy of the United States did not wax as publicly enthusiastic about the war as did their English counterparts, a reflection both of their different relationship to American government and society and of America's distance from the war. Yet the fate of two men discloses something just below the surface. William Thomas Manning was rector of Trinity Church in New York City, one of the most prestigious Episcopal churches in the land. He had immigrated from England in 1882 and thus shared the background of the more jingoistic churchmen he had left behind rather than that of the clergy of the United States. Some of the latter, it is said, were painfully embarrassed by his fiery preaching during the war. Although he granted that the church should work to eliminate the causes of war, he also maintained that until this was accomplished it was the duty of a Christian to fight if necessary, for "peace must be built on righteousness." His most celebrated statement he delivered in a sermon on 28 March 1916: "Jesus Christ does not stand for peace at any price. He stands for righteousness at any cost."⁵⁹ However unseemly these remarks may have been considered during the war, in 1921 William Thomas Manning was elected bishop of New York, a position he held until 1946. He is buried in the Cathedral of St. John the Divine.

Manning was elected bishop of New York partly because many American Episcopal clergy agreed with such sentiments more than they were perhaps willing to admit publicly. These feelings surfaced in the fate of another man, already a bishop at the time of the war, who held beliefs opposed to Manning's. Paul Jones (1880-1941), missionary bishop of Utah, was effectively deposed by the House of Bishops in April 1918, basically for his pacifist stance, although ostensibly on other issues. His utterances and associations since 1914 had aroused doubts about his loyalty in many quarters. In October 1917 the House of Bishops, then holding a special

⁵⁹ John Seabrook, "Bishop Manning and World War I," *HMPEC* 36 (1967): 301-22, especially 308 and 310.

meeting, decided to take up his case. They ordered the presiding bishop to appoint an investigatory committee and granted Bishop Jones a leave of absence during the period of the investigation. At the committee's request, Jones submitted his resignation "in deference to an excited state of public opinion," but the bishops refused to accept it because of the impropriety of the reasons he gave. Jones then offered another resignation without any stated reasons. This the bishops accepted in the spring of 1918, "with full recognition of the right of every member of this House to freedom of speech in political and social matters, subject to the law of the land." The bishops then telegraphed congratulations to General John J. Pershing, who had just been confirmed in the Episcopal Church.⁶⁰

CONCLUSION

In their laudable determination to avoid excessive legalism and to allow sufficient latitude for individual judgment and freedom of conscience, the Anglican and Episcopal Churches have sometimes blundered into unexpected pitfalls. This complex tradition can be severely legalistic when it wishes and capable of self-delusion; and it can be quite arbitrary in the application of its own justice even while it appeals to reasonableness and charity. It is, after all, only human. It is unfortunate, and perhaps unfair, that the single-issue focus of this study has illuminated mostly weaknesses and few strengths in this branch of the church. Still, the facts over the course of many centuries and on both sides of the Atlantic are irrefutable: ritualistic allusions to laws which cannot be shown to exist as living texts, persistent disinclination to arraign clerics who do take up arms, and repeated refusal to enact clear canons and guidelines. It may be objected that "refusal" is too strong a word; yet the choices made in 1865 and 1892 to do nothing constituted explicit refusals to act in the face of clear knowledge. For the Anglican and Episcopal Churches, participation in war and violence by the clergy is a matter of laches.

⁶⁰ Manross, *History*, 345. White went on to help found Episcopal Peace Fellowship, and is commemorated in the church calendar on 4 September.

POSTSCRIPT: COMPARISON WITH ROMAN CATHOLIC CANON LAW

It was earlier noted that the Western Church began to relax the ban on clerical armsbearing in the twelfth century, allowing the emergence of military-religious orders and accepting that the clergy enjoyed the right in natural and Roman law to repel violence with violence. From the thirteenth century onward the defensive use of arms was permitted the clergy (including most of the religious orders), not only in self-defense, but also while traveling and in the defense of the faith, the Church, and sometimes even the *patria*.⁶¹ These exceptions appear in a remarkable correspondence during the U.S. Civil War between two Southern Catholic bishops, Patrick Lynch of Charleston (1858-92) and John McGill of Richmond (1850-72), even though very few Roman Catholic clergy seem to have participated as combatants on either side during the war. Lynch believed that clergy were simply forbidden to bear arms, but McGill knew better. In a long letter, dated 17 December 1863, he wrote: "There is no law direct and positive forbidding priests to bear arms under all possible circumstances, as far as I can discover. And writers on Canon Law say that a priest who carries arms and fights a *just defensive war pro ecclesia vel pro patria* does not therefore become irregular."⁶² After the war, the Second Plenary Council of Baltimore in October 1866 took a stronger line and condemned armsbearing by the clergy, especially those who had voluntarily rendered military service, and went on to cite the long decree from the first provincial council held in Milan in 1565 by Archbishop Carlo Cardinal Borromeo (1564-84, who was soon widely revered as one of the great heroes of the Counter Reformation), which forbade the use of either defensive or offensive weapons to clergy "unless perhaps they must undertake a journey outside cities in suspect places."⁶³ The invocation in the mid-nineteenth century of a decree three-hundred years old underscores the long continuity in Roman Catholic canon law in

⁶¹ Duggan, *Armsbearing*, 134-71.

⁶² Willard E. Wight, "War Letters of the Bishop of Richmond," *Virginia Magazine of History and Biography* 67 (1959): 268-70 (emphases in the original); Duggan, *Armsbearing*, 172-3.

⁶³ Duggan, *Armsbearing*, 162-63, 173.

allowing clerical armsbearing under restricted, largely defensive circumstances.

All this changed in 1904 when Pope Pius X ordered the complete overhaul of the law of the church, a task which might be compared with the work given by the Emperor Justinian to Tribonian and his team of Roman jurists in the 530s to revise and condense nearly a thousand years of Roman law. The new *Code of Canon Law* was issued in 1917, but took effect only on Pentecost 1918. There were two pertinent canons on armsbearing by clergy. Since World War I was still underway, canon 141 discouraged clergy in major orders from volunteering for military service in anticipation of conscription without the permission of their bishops, encouraged them to take advantage of possible exemptions, and flatly forbade participation in civil wars and other disturbances of public order. (Clerics in minor orders who volunteered for military service ipso facto lost their clerical status.) Canon 138 in six lines treated all manner of activities incompatible with clerical status, including armsbearing "except when a just cause for fear exists." This was in fact the largest loophole ever issued in the canon law of the Catholic Church, particularly since no permission was required from one's bishop or religious superior, "just cause for fear" sufficed, and the matter was effectively left to the discretion of the cleric.⁶⁴

That *Code* of 1918, however, was completely superseded in turn by the issuance of another new *Code* in 1983 after twenty years of work. As for military service, although the permission of one's superior is still required, gone is the earlier restriction allowing clergy to volunteer for military service only to forestall conscription, as is the injunction to avail themselves of possible exemptions allowed in civil law. A proposed ban on participation in civil conflicts was struck on 16 January 1980, and replaced by a pious reminder that "clerics are always to foster that peace and harmony based on justice which is to be observed among all persons." Finally, as for the earlier canon 138 which had enumerated in six lines specific activities incommensurate with clerical status, it was decided as early as 1971 that in the new canon 285 the determination of occupations and activities was

⁶⁴ Ibid., 173-76.

henceforth to be delegated to local ecclesiastical authorities. In short, unless specific bishops or dioceses enact a clear prohibition on armsbearing by the clergy, there is nothing any longer to keep Roman Catholic clergy (or religious, for the most part) from resorting to arms in a pinch. On this point, Rome and Canterbury seem finally to have converged to a remarkable degree.⁶⁵

⁶⁵ Ibid., 176-80. On the admittedly very profound complexities of the feelings and the moral issues facing the clergy in wartime, see the humane views of Michael J. Baxter, C.S.C., "In Place of an Afterward: My Argument with Fr. William Corby, C.S.C.," in Doris L. Bergen, ed., *The Sword of the Lord. Military Chaplains from the First to the Twenty-First Century* (Notre Dame, 2004), 251-69. Father Corby served as chaplain for three years with the 88th New York Regiment during the Civil War. His valor on Cemetery Ridge at Gettysburg was so stunning that he was commemorated there with a statue, the only chaplain on either side during the whole war who was so honored. A copy of that memorial also stands at the University of Notre Dame, of which he served as president twice (1866-72, 1877-86).