

GEORGE CORNELIUS GORHAM, CLERK  
 V  
 HENRY PHILLPOTTS, BISHOP OF EXETER  
 A CASE OF ANGLICAN ANXIETIES

ANDREW JORDAN  
*Barrister*

### INTRODUCTION

In March 1847, in his vicarage at Bramford Speke in Devon, the Reverend John Mudge slipped into unconsciousness and death. His passing would have gone unnoticed in the world beyond, had it not been that his death and the vacancy in the living it produced sparked off the most bitter and the most celebrated controversy in Victorian Church history. Bramford Speke was in the diocese of Exeter where Bishop Phillpotts presided. The advowson did not lie with the Bishop. Rather, the right had devolved upon the Crown and was exercised by the Liberal Government headed by Lord Russell.

There are two distinct strands in the controversy that ensued. First was anxiety felt by the Established Church as to its own identity or, rather, the breadth of views that members might legitimately hold and still remain within its body. In Gorham's case, this revolved around the Church's thinking on baptism, but the problems that were raised were of a much more general character and were an integral part of the process by which the Church elected to resist exclusivity and adopt Broad Church principles. The second strand involved the precarious nature of the relationship between Church and State and, more particularly, the legitimacy of influence wielded by Government in the affairs of the Church over ritual and doctrine which the Church felt were its exclusive domain. It is central to this aspect that it was a Liberal Government which was at odds with a House of Bishops that was dominated by Tories. The case thus became an example of the Church and State debate which sought to resolve the tension inherent in an *Established* Church anxious to maintain its independence from the political arm of the State. The Gorham case exemplifies the dilemma faced by the Victorian Church: the twin anxieties caused by pressures from *within* and pressures from *without*.

### THE PROTAGONISTS

Whilst principally this is a case about the forces just identified, it is also a case centred upon the personalities of two men whose mutual loathing fired the combustion.

George Cornelius Gorham (1787–1857), a Fellow of Queens' College, Cambridge, since 1829, had obtained his degree as a Bachelor of Divinity there and, in 1811, at the age of twenty-three, had been made deacon. On 23 February 1812 he entered the priesthood. Thereafter, he followed his vocation for thirty-five years. In January 1846 he was presented by the Crown to the parish of St Just-in-Penwith, Cornwall, in the Diocese of Exeter and entrusted with the cure of 7,000 souls. He had been instituted on 6 February without examination by the bishop. However, later that year, he had crossed swords with his bishop when he had advertised for a curate '*free from Tractarian error*' which had excited correspondence between priest and ordinary that had obviously touched upon Gorham's theological views, including those on baptism.

Gorham himself expressed his Calvinist theology in these terms:

'Our Church holds, and I hold, that no spiritual grace is conveyed in baptism,

except to *worthy recipients*, and as infants are by nature *unworthy recipients*, 'being born in sin and the children of wrath', they cannot receive any benefit from baptism, except there shall have been a prevenient act of grace to make them worthy'.<sup>1</sup>

God's offer of salvation was made conditional. The 'prevenient act of grace' might or might not occur. The child, still sinless, was undoubtedly saved. But what happened if sin intervened before that prevenient act of grace? What if that act of grace never occurred? The answer, though unspoken in all the thousands of words that form the reports, was obvious.

Henry Phillpotts (1778–1869) was a man of a very different mould. Nine years senior to Gorham, he was a High Tory churchman who administered his see from his palace at Bishopstowe, Torquay. This was not an obvious place to find sympathy with George Cornelius Gorham's theology. Phillpotts' view was that baptism of the infant required no action on the part of the child, although his sponsors made promises on his behalf. Baptism was an unsolicited—and unilateral—outpouring of grace where God gave salvation without requiring anything in return. This was the conventional reading of the words in the Prayer Book. It was not, of course, coincidental that it was in accordance with the increasingly more liberal theology of the nineteenth century. This more liberal approach was not the preserve of the evangelical wing of the Established Church.

The bishop's Tory approach is strikingly demonstrated by one or two *aperçus* into his history as related by Owen Chadwick. He was created a bishop in 1830 at the age of fifty-two. Shortly after, the House of Lords rejected the first Reform Bill on 8 October 1831 by forty-one votes. Phillpotts was amongst them. Had the twenty-one bishops who voted down the measure voted the other way, the Bill would have been passed. From 5 to 7 November 1831, the palace, under siege, was filled with men of the 7th Yeomanry cavalry. The crowd burnt a guy of Phillpotts with hollow turnip as head and candle as nose, clad in mitre and lawn sleeves. An urchin made the bishop jump by throwing a fire-cracker at his feet.<sup>2</sup> The event did not deter him.

Later, in October 1847, the ninety-one-year old Archbishop of York fell into his ornamental fish-pond at Bishopthorpe, took cold and died. Lord Russell chose the Regius Professor of Divinity at Oxford, Dr Hampden, to fill the see made vacant by the new Archbishop's elevation. It was Hampden's appointment to the chair of divinity in 1836 and whose Bampton Lectures of 1832 had been the subject of Newman's scourge.<sup>3</sup> It was, of course, Hampden who had been subjected to a vote in the Oxford Convocation on 22 March 1836 that his theology failed to possess the confidence of the university. Phillpotts had written to the College in Oxford of which he was Visitor, Exeter, saying that he would dispense with certificates of attendance at Hampden's lectures. Inevitably it was Phillpotts who acted as ringleader in the condemnation that followed Dr Hampden's appointment as bishop. Owen Chadwick fondly describes him as 'never backward in joining a fray'.<sup>4</sup> He was pugnacious and self-opinionated and with all the confidence of a Tory High Churchman.

#### THE EVENTS LEADING UP TO THE FIRST ACTION

In June 1847, the Lord Chancellor offered the living at Brampford Speke to Gorham and with it the responsibility for a mere 400 parishioners. Bishop Phillpotts was not a party to the choice. However, he only too clearly remembered

<sup>1</sup> *Gorham v Bishop of Exeter* (1849) 2 Rob Eccl 1 at 62. Ct of Arches.

<sup>2</sup> Owen Chadwick, *The Victorian Church* (SCM Press, 1987), vol 1, pp 28, 29.

<sup>3</sup> *The Victorian Church*, p 116.

<sup>4</sup> *The Victorian Church*, pp 237, 238.

the correspondence of the previous year which had followed the unfortunate advertisement for a curate. Thus, when on 12 August the bishop was provided with a testimonial concerning Gorham (effectively a reference as to his good character) for him to countersign, the bishop refused to certify his consent and, in a marginal note, referred to the earlier correspondence about Gorham's views on baptism. Whatever correspondence with Gorham had been exchanged, it must have been sufficiently inflammatory to prompt Phillpotts to make a stand.

On 11 September Gorham wrote to the Lord Chancellor saying that he had been unable to obtain the countersignature of the bishop to the testimonial. Exactly a month later, the Lord Chancellor rejected the bishop's protest and decided to sign the fiat for his presentation notwithstanding the bishop's comments. This has to be construed as a political act. There was nothing to say that the Lord Chancellor was by law *required* to have the consent of the bishop. However, the bishop's obvious comments that he believed Gorham to be unsuitable raised the issue as to who had the authority of appointments when the advowson was with the Crown: Lord Chancellor or Bishop; State or Church? Clearly, Phillpotts decided the matter in favour of the Church. Equally clearly, the Lord Chancellor sought to decide the matter in favour of the State. Lord Russell's Liberal Government consciously pitted itself against the Tory high-and-drys.

On 2 November 1847, Gorham received under the Great Seal the presentation to the living. Four days later, he applied to be instituted. Correspondence ensued between Gorham and the bishop's secretary in which the bishop declined to institute until he had been given an opportunity to examine Gorham. On 8 November, although the bishop was present, Gorham attended at Bishopstowe but was told to return on 12 November, without being notified of any intention on the bishop's part to examine him. Both on 9 and 10 November, Gorham made attempts to be instituted but was snubbed by Phillpotts. Finally, on 13 November, the bishop's secretary wrote telling Gorham that he was to be examined. And examined he was.

Friday, 17 December was appointed as the day on which his examination at Bishopstowe was to commence. Gorham arrived at 10.30 in the morning. He protested. The bishop decided the protest should be reduced to writing. It was. The examination continued until 6.30 pm. The examination continued the next day, a Saturday, commencing at 12 noon and continued until 11.30 at night by which time the exhausted Mr Gorham had had a mere forty-five minutes of respite from his questioner. The examination resumed on the following Monday from 10.30 in the morning to 6.00 at night. Then, on Tuesday 21 December, the questions continued from 1.30 to 6.30 pm; on Wednesday from 11.30 in the morning to 5.30 in the evening. Between 30 December and 7 January 1848, five other days were spent by Gorham in Torquay answering further questions put by the bishop. The hearing resumed on the 8 March 1848 and continued over the next two days. There must have been an air of inevitability when, on 11 March 1848, the Bishop informed Gorham that he declined to institute him. The formal letter of 21 March gave the reason as his unsound doctrine. In all, some 149 questions were posed by the bishop, each rather in the form of an examination question.

### THE FIRST ACTION

On 15 June 1848, Gorham commenced his litigation. He sought what was then called a monition requiring the bishop to show cause why he should not be instituted. On 3 July, the bishop formally indicated his intention to contest the case. Gorham sued the bishop in an action known as *duplex querela*. He sued in the Court of the Arches where the Dean of the Arches was Sir Herbert Jenner Fust. Meanwhile, the Attorney General, reflecting the Government's concern, issued proceedings against the bishop in an action of *quare impedit*.

Another significant event preceded the hearing. Gorham, in a bold piece of self-publicity that has a striking modernity about it, published a book called *Examination before Admission to a Benefice by the Bishop of Exeter followed by Refusal to Institute etc.* It was an accurate transcript of his days of cross-examination before the bishop, recorded verbatim. It thus became Gorham's *Apologia* as well as attempt to vindicate himself, not simply before the eyes of the court but before the eyes of the *world*. He saw himself as a Daniel squaring up to the Goliath of Henry Phillpotts.

The case was argued in the spring of 1849 but it was not until 2 August that the Dean of the Arches gave his judgment. Sir Herbert Jenner Fust set out his approach to the dispute:

All that the Court is called upon to do is to endeavour to ascertain whether the Church has determined any thing upon the subject, and, having done so, to pronounce accordingly . . . I repeat, therefore, I desire it to be distinctly understood, that the observations I am about to make are to be considered as applied to the doctrine of the Church solely, as far as I am able to ascertain that doctrine, without any allusion to . . . Holy Writ . . .<sup>5</sup>

The Dean's express concern was to decide the case purely as a legal issue and to decline any attempt to be drawn into matters of theology—to consider the doctrine as set out in the texts and decide whether Gorham's views were consistent with those texts. This was exactly the same approach adopted by the Privy Council on appeal. It is not insignificant. Critics alleged that the civil authority was deciding matters of doctrine. It was not. The case revolved on the construction of the governing texts and was a linguistic exercise in order to determine whether Gorham's views were consistent with the Prayer Book.

Gorham relied upon the argument that the English Reformers embraced the opinions of Calvin and that they, therefore, approved his tenets on predestination and election and, in particular, the seventeenth of the thirty-nine Articles which deals with predestination.

The Dean of the Arches was a lawyer. His expressed aim was to determine whether Gorham's view was supported by a declaration of the Church. It was not a theological exercise and he rejected approaching the answer by reference to Scripture. He did not permit himself the right to express any opinion on its correctness or erroneousness. In those circumstances, it was relatively easy to say that Gorham's views were unsupported by authority in the Prayer Book or elsewhere. He, therefore, decided that Mr Gorham maintained opinions opposed to that Church of which he professed himself a member and minister.<sup>6</sup>

In December 1849, Gorham appealed to the Judicial Committee of the Privy Council.

Before 1833 appeals on ecclesiastical cases were heard by an *ad hoc* tribunal known as the Court of Delegates. Like a royal commission, its members could be whomever the sovereign acting through his ministers might choose. Doubtless, in an ecclesiastical case, the choice might conveniently fall on persons with some knowledge of the matter under appeal. But there was no requirement that it should be so. Thus, an ecclesiastical case, including one involving issues of doctrine or ritual, might be determined by someone other than a churchman. Further, the decision as to whom to appoint was *not* made by a churchman. In 1833, William IV enacted that a Judicial Committee of the Privy Council should hear such appeals, its members selected from senior judges. There was in reality no difference between the two tribunals and the system had operated well enough since the 1540s. The

<sup>5</sup> *Gorham v Bishop of Exeter* (1849) 2 Rob Eccl 1 at 47, 48. Ct of Arches.

<sup>6</sup> *Gorham v Bishop of Exeter* (1849) 2 Rob Eccl 1 at 103, 104. Ct of Arches.

position was improved by permitting bishops to sit alongside the judges. No one complained in 1833.

The Committee of the Privy Council selected to hear Gorham's appeal included the three senior prelates, the two archbishops and Blomfield of London. Dr Lushington, one of the most celebrated ecclesiastical lawyers of the age, was one of the court. The remainder were senior judges. The hearing took place over five days between 11 and 18 December 1849. On 15 January of the following year, all the judges, save two (one of whom was Blomfield), were against the decision in the Court of Arches. The committee's report was given on 8 March 1850. The Order in Council followed the day after.

The opinion of the Committee was given by Lord Langdale M R.<sup>7</sup> The Articles, he concluded, whilst determining those matters which it was proper, prudent and practicable to decide, were not intended as an authoritative statement of all Christian doctrine. Undecided issues were left to the private judgment of pious and conscientious persons. Where the Articles permit different interpretations, any sense which the words fairly admit, may be allowed, provided that sense is not expressly contradicted elsewhere. The Book of Common Prayer was, in his judgment, part strictly dogmatical, 'declaring what is to be believed or not doubted',<sup>8</sup> part instructional and part devotional. Devotional expressions, involving assertions, must not be taken to bear an absolute or unconditional sense as a matter of course. The services abound with expressions which had to be construed in a charitable and qualified sense and could not 'with any appearance of reason, be taken as proofs of doctrine'.<sup>9</sup>

The Committee concluded that there were points of doctrine related to baptism that were capable of being honestly understood in different senses and 'upon these points all ministers of the Church, having duly made the subscriptions required by law, and taking Holy Scripture for their guide, are at liberty honestly to exercise their private judgment without offence or censure'.<sup>10</sup> Gorham's views, applying such a test, were not contrary or repugnant to the declared doctrine of the Church of England, and he ought not, therefore, to be refused admission to the living at Bramford Speke.

The decision plainly reflected the views of the senior churchmen that the Church had to be broad enough to tolerate a divergency of opinion. They must inevitably have feared for its future if the like of Gorham could not remain within it. The judgment of the Privy Council that Gorham's views did not fall outside the Establishment pale was a pragmatic one. The Church would not benefit from the purge that would logically follow the Dean's decision at first instance.

The Bishop of Exeter was appalled. Within days, he had taken a page out of his opponent's book and used the press to publicise an open letter to the Archbishop of Canterbury containing his thinly-veiled threat to excommunicate him. It was no idle threat. On 20 July 1850, the bishop did indeed excommunicate all those who should institute Mr Gorham, although not the priest himself.<sup>11</sup> History does not relate what happened to none other than Sir Herbert Jenner Fust, Dean of the Arches when, after long delay, he performed the institution, albeit having first obtained the *fiat* of the Archbishop of Canterbury.

## THE SECOND ACTION

Meanwhile on 10 April 1850, the bishop, through his counsel Sir Fitzroy Kelly,

<sup>7</sup> *Gorham v Bishop of Exeter* (1850) 7 Notes of Cases 413, 1 Cripps' Church and Clergy Cases 266, PC.

<sup>8</sup> *Gorham v Bishop of Exeter* (1850) 1 Cripps' Church and Clergy Cases 266 at 279, PC.

<sup>9</sup> *Gorham v Bishop of Exeter* (1850) 1 Cripps' Church and Clergy Cases 266 at 284, PC.

<sup>10</sup> *Gorham v Bishop of Exeter* (1850) 1 Cripps' Church and Clergy Cases 266 at 284, PC.

<sup>11</sup> Owen Chadwick, *The Victorian Church*, vol 1, pp 263, 264.

had sought an order by way of an injunction seeking to prevent the Dean of the Arches and the Archbishop of Canterbury requiring him to institute Gorham as vicar of Bramford Speke.<sup>12</sup> His lawyers had obviously been hard at work. In spite of the appeal to the Privy Council which they had fought and lost, in which no breath of the issue had arisen, they argued that the proceedings before the Privy Council were and always had been a nullity because the correct route should have been to appeal to the Upper House of Convocation. The motive for this approach was clear: having lost in the highest civil (by which one also means secular) appeal court, the High Church wished to make an express appeal to the Church's own Parliament.

It was a hopeless appeal based on arcane legal principles. In 1534, Henry VIII, finding that there was no chance of Pope Clement permitting him annulment and thereby opening his way to marry Ann Boleyn, enacted legislation that prohibited further papal jurisdiction in England. There were to be no more appeals to Rome. Appeals from the Arches Court were to be determined by the King in Chancery, which, as the law developed, meant the King acting on the advice of his Privy Council. So it went on for 300 years.

It was boldly stated that this process had always been wrong. Lord Campbell, the Lord Chief Justice, who had sat on the Privy Council appeal, sat again as one of the court and gave the judgment.<sup>13</sup> Since, he said, the matter had not been raised in the Privy Council, there was no reason why he should feel embarrassed about sitting in what was, in effect, a way of setting aside his own decision in the Privy Council. He made short work of it. He dismissed the application. Undeterred, the bishop made further identical applications in the Court of Common Pleas<sup>14</sup> and the Court of Exchequer.<sup>15</sup> All were unsuccessful. The Bishop of Exeter had reached the end of the legal process.

He was ordered to institute Gorham. Unrepentant, but surely realising the hopelessness of his position, the bishop protested once again to the Court of the Arches on 20 July. The protest was dismissed. Still he refused to institute; he never did so. On 6 August 1850, Sir Herbert acted as his substitute.<sup>16</sup>

### THE SIGNIFICANCE OF THE CASE

Gorham's case came at a sensitive moment for Established Churchmen. The Church of England was under pressure from a multitude of directions. Those pressures came from both without and within. The external difficulties were, of course, the forces of non-conformity, the gathering strength of Roman Catholicism, the perception (if not the reality) of growing indifference particularly amongst the unchurched urban working class.

It is of course significant that 1850 saw the restoration of the Catholic hierarchy. There followed the period of so-called papal aggression which was, in reality, the re-emergence of a self-confident Roman Catholicism, restored both in hierarchy and by the fresh blood of the English converts. More were to follow. Of Manning's departure to the Roman Catholic fold, Owen Chadwick commented pithily that

'The Gorham judgment and not papal aggression converted Manning'.<sup>17</sup>

The perception that the Privy Council could determine the fate of the Church was alarming. It had been the fear of State intervention that had prompted Keble's Assize sermon in 1833 and had spawned the Oxford Movement. The anxiety of the

<sup>12</sup> *Gorham v Bishop of Exeter* (1850) 15 QB 52, Ct of Queen's Bench.

<sup>13</sup> *Gorham v Bishop of Exeter* (1850) 15 QB 52 at 64.

<sup>14</sup> *Gorham v Bishop of Exeter* (1850) 10 CB 102 and (1850) 5 Ex. 630.

<sup>15</sup> *Gorham v Bishop of Exeter* (1850) 5 Exch 630, Ct of Exchequer.

<sup>16</sup> Noted in *Gorham v Bishop of Exeter* (1849) 2 Rob Eccl 1 at 105, 106.

<sup>17</sup> Owen Chadwick, *The Victorian Church*, vol 1, p 301.



Established Church to free itself from State interference went uneasily with the Church's preoccupations with its position of pre-eminence amongst non-conformists and Roman Catholics. That pre-eminence depended upon its being a national Church and that was, at the very least, made easier by its being an Established Church: part of the very fabric of society, indivisible from Crown and Parliament. That favoured position inevitably led it into a relationship with the State which sapped its independence.

The self-confidence of the Established Church in 1850 was weakened by the growing sense of doubt. Geology, Darwin and biblical criticism undermined the conventional belief in the Mosaic provenance of the Pentateuch. Doubt was mixed with heterodoxy. The tension that is implicit in the Gorham case arose because of divergency of opinion which increased as the century progressed. This tension took time to resolve but eventually did so without schism. One is bound to ask whether the bitter controversy over baptism represented the gulf that the parties perceived it to be in 1847. A split on this issue, effectively driving one group into an excluded sect, could well have been repeated about similar controversies on other matters. With hindsight, it is possible to see that the Dean of the Arches' narrow approach to orthodoxy was not the answer to the problem faced by the Church of England.

The question remains as to whether the perceived threat to the Church from the State, at least as far as concerned doctrine, was real. There is no reason to think that a revived Convocation would have reached a different or a better result than the Privy Council. The Privy Council was not (save in purely constitutional theory) an emanation of the State which was defining Church policy. It voiced the opinions of the two archbishops. The other members of the Committee were independent of the State. Dr Lushington, although a layman, was an ecclesiastical lawyer. No one had previously complained that such lawyers were in no position to deal with the Church's affairs. The Bishop of London, in seeking to uphold the views of his brother of Exeter, was not only in the absolute minority, but also in the ecclesiastical minority. It was the senior Churchmen who decided the issue in favour of inclusivity of belief, albeit that, in doing so, they ruffled the lawn sleeves of the Bishop of Exeter.

It was not a contest between Church and State in any real sense. The perception that the State was determining the Church's ritual and doctrine was wide of the mark. The court expressly refused to make a decision on the subject of doctrine. Nevertheless, the perception was widely held that such was the case. It is difficult to imagine Manning leaving the Church if this had merely been a decision which permitted a certain latitude in the range of opinion within the Church.

## CONCLUSION

Owen Chadwick touchingly tells of Gorham's uneventful life after the celebrated case. After the brawls and the wrangles, the two protagonists finally sought and obtained a reconciliation. On Gorham's death, Phillpotts offered the living to Gorham's son, an offer which the son tactfully declined.<sup>18</sup>

The nerves touched by the case remained raw. In many respects the controversies became more intense: in the Colenso case, it was a bishop whose doctrines were questioned and the charge was heresy.<sup>19</sup> It was not a civil but a criminal case that heard the prosecution of some of those who wrote *Essays and Reviews*. However, the underlying tide of opinion remained uniform. The Church of England had to come to terms with opinions that were fundamentally different from those current in the first quar-

<sup>18</sup> Owen Chadwick, *The Victorian Church*, vol 1, p 269.

<sup>19</sup> *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115.

ter of the century and individual members of the Church had to come to terms with the fact that certain of their colleagues held views that were fundamentally different from their own. Either the Church would permit itself no room for such divergence and, as if by attrition, see an increasing number of its members excluded or it had to embrace a variety of belief with a pragmatism which refused to classify heterodoxy as heresy. The reconciliation that George Cornelius Gorham and Henry Phillpotts effected was a reconciliation that was mirrored in the internal relations of the Church with itself and the external relations of the Church with the State.