

## EDITORIAL

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In the continuing selfless discharge of burdens of editorship, I have undertaken many tasks abroad. I have particular recollections of penning an editorial in the shadow of Table Mountain as Cape Town was preparing to host the football World Cup, of correcting the wayward grammar of an author in the poolside bar of Caesar's Palace in a stifling Las Vegas, and of marking up proofs among the *moai* of Easter Island, as well as in various Tuscan restaurants. If the publishing schedule runs to time – and I am confident it will with the welcome return of Dr Hester Highton as copy-editor – I shall be in South America when this issue hits the doormats and airport bookstalls.

Latin America has much to offer. My journey will take me via Brazil to the Amazon jungle in Ecuador, the Galapagos, Bolivia and Peru, visiting Machu Picchu, La Paz, Lake Titicaca and the Atacama Desert. My ultimate destination is Santiago and the second conference of the International Consortium for Law and Religion Studies, addressing *Religion and Constitution*, hosted at Chile's Catholic University by Professor Ana María Celis Brunet, a valued member of the Editorial Board of this *Journal*.

There are some interesting resonances for English ecclesiastical law in South America. Some years ago Oxford Consistory Court dealt with a petition for an exhumation in *Re St Mary the Virgin, Hurley*.<sup>1</sup> The case concerned Hipólito José Da Costa, a Brazilian national hero who had lived in England for the last 18 years of his life, prior to his death in 1823. He was regarded as the founder of the free press in Brazil. In 1802 he had been arrested and convicted by the Tribunal of the Inquisition for crimes against the Roman Catholic faith. He was imprisoned and tortured for two and a half years. Escaping in 1805, he made his way to England via Spain and Gibraltar, founding the *Correio Braziliense*, the first uncensored Brazilian publication. Chancellor Boydell QC described him as follows:

He was a talented writer, a staunch defender of human rights, an enemy of despotism and corruption and a strong opponent of the colonial status of Brazil. His writings, which were highly influential, materially contributed to the gradual transition of Brazil from a colony to an independent sovereign state.

1 [2001] 1 WLR 831.

Upon the declaration of independence of Brazil on 7 September 1822 he was appointed Brazilian Counsellor in London. By that point he had married an English woman, whose family lived in Hurley, Berkshire. Their only son, an officer in the Royal Engineers, died on active service in Hong Kong. Da Costa died in Kensington and was buried in a vault in the parish church at Hurley. In 1823 a sea journey from England to Brazil would have taken between three and four months, making transportation of his remains impractical.

The case was decided in the period between the judgment of the Auditor in the Chancery Court of York in *Re Christ Church, Alsager*,<sup>2</sup> and that of the Dean in the Court of Arches in *Re Blagdon Cemetery*.<sup>3</sup> This is not the place to address the subtle and nuanced differences between these decisions of the appellate courts of the Northern and Southern Provinces: Chancellor Boydell's pithy description of the law of exhumation being 'firm and stern' is, however, wholly consistent with the tenor of both decisions. In answering the critical question of whether there was a good and proper reason for the exhumation, the chancellor noted that the 200 years that had passed since the interment was a factor adverse to the petitioner. However, he noted the highly unusual nature of the application: 'it is not every day that the remains of a national hero of a friendly foreign state are to be found beneath the nave of a Berkshire church'. He considered the principle of comity of nations to be a relevant factor, describing it as relating to the body of rules that sovereign states observe towards one another from courtesy or convenience, but that are not binding as rules of international law. The chancellor noted that the petitioner in this instance was Sergio Silva Do Amaral, the Ambassador of the Federal Republic of Brazil to the Court of St James. In the circumstances, there being no individual or organisation opposed to the exhumation, which had the unanimous support of the PCC, a faculty was granted for the removal of the remains from beneath the church to permit their re-interment in a consecrated mausoleum in Brasília.

In stark contrast, mention might also be made of the Argentine invasion of the Falkland Islands in 1982, properly styled a conflict as there was never a declaration of war. These events were revisited during the election of Sepp Blatter as President of FIFA in June 2011 amid allegations of widespread corruption in the organisation. An Argentine representative apparently indicated that his vote could have been secured for England hosting the 2018 World Cup were the United Kingdom government to have agreed to hand back the Falklands. There is a small museum in Stanley that contains exhibits dealing with the history of the islands and of South Georgia. When staying with Clare Faulds, the resident magistrate in the Islands at the time, now safely returned

2 [1999] Fam 142.

3 [2002] Fam 299.

to the Isle of Man as Vicar-General of the diocese of Sodor and Man, I spent some time in the museum and was fascinated by several of the exhibits. As I recall, there was a document recording ten changes introduced by the Argentine military authorities when the Islands were captured. These included requiring traffic to drive on the right, a bizarrely inconsequential edict considering how few vehicles there were and that the majority of the Islands' paved roads were single track. More striking, however, was the introduction or restoration of freedom of religion. On the eve of the invasion, the Argentine invasion force had apparently been addressed on the nature of their mission as something of a crusade, to recover catholic territory that had fallen into protestant hands. On the butts of many of the rifles seized from hungry and demoralised Argentine conscripts were images of the Virgin Mary. I recollect little, if any, media or political comment at the time on the religious element lying behind the military activity in the South Atlantic. A fruitful area for doctoral research perhaps?

Another interesting feature is that the Anglican Diocese of the Falkland Islands is an extra-provincial diocese under the direct authority of the Archbishop of Canterbury, currently delegated to the Bishop of Dover. The Roman Catholic Church has designated the Falkland Islands as an Apostolic Prefecture; they were expressly excluded from the Diocese of Punta Arenas, which was formed in 1947. This deftly avoided the Vatican having to make any explicit or implicit statement on the controversial issues of territoriality or sovereignty. This subject could likewise prove a source of study to the canonist and military historian.

The exotic world of ecclesiastical law cannot be contained in the northern hemisphere any more than can the editor of this *Journal*.