

LETTERS TO THE EDITOR

The Diocese in Europe and Education in Canon Law

Dear Sir,

I was both interested and delighted to read the Bishop of Stafford's article on Education in Canon Law (5 Ecc LJ 46). Such an initiative is long overdue.

It is, however, regrettable that neither the article itself nor (more seriously) the syllabus makes any reference to the Diocese in Europe Measure 1980 or its implications for the self understanding and legal framework of the Church of England.

Since 1980 the Church of England has undoubtedly remained the 'Church by law established', but the Church of England has, since then, not only been in England. The canonical and juridical, not to mention the ecclesial and theological, implications of the formation of the Diocese in Europe have not even begun to be asked, much less answered.

This might be an interesting topic for a dissertation for an LL M in Canon Law — not to mention an essential part of any comprehensive basic syllabus in the Canon and Ecclesiastical Law of the Church of England.

Yours sincerely
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The Diocese in Europe and Education in Canon Law—a reply

Dear Sir,

The Bishop in Europe, the Right Reverend John Hind, raises the interesting question of the legal significance of the creation of the Diocese in Europe. I fully endorse his encouragement for the subject as a Topic for an LL M Dissertation!

On the question of the Syllabus attached to my article on Education in Canon Law I would make the following observation. The Syllabus is not a full systematic and comprehensive study of Canon and Ecclesiastical Law. It is rather a list of Topics in approximate order of interest to ordinands and clergy as they progress through training and continuing ministerial development. In other words a topic only arises when it is *practically* relevant. The interesting issue to do with the legalities in the Diocese in Europe, including the national law in the various countries concerned, would certainly need to be included in any presentation to ordinands or clergy in Continental Europe. The Syllabus assumes that there will be a person presenting Topics for Discussion to ordinands or clergy and clearly in Continental Europe such presentations would be very different. For example the allocation of time for the Faculty Jurisdiction would need to be replaced by something equivalent on planning legislation in the relevant countries.

Yours sincerely
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Liability for Church Repairs in the Church in Wales

Dear Sir,

It is commonly assumed that at the disestablishment of the Church in Wales the liability of a lay impropiator of a tithe rentcharge to repair and maintain the chancel of the parish church of which he was, ipso facto, lay rector, ceased. Those who were aware that this was not the case could point to the Tithe Act 1936 as extinguishing this obligation. But I wonder if this is the case in so far as it applies to Oxford or Cambridge colleges? My reading of the position would be that such colleges are still obliged by law to maintain the chancels of the parish churches in Wales in which they were once the lay impropiators, and consequently they maintain the status of being lay rectors of these parishes.

Section 28 of the Welsh Church Act 1914 clearly states:

‘(1) Nothing in this Act shall affect any liability to pay tithe rentcharge, or the liability of any lay impropiator of any tithe rentcharge to repair any ecclesiastical building, but a county council shall not, by reason of being entitled to or receiving any tithe rentcharge under this Act, be liable for the repair of any ecclesiastical building.

(2) Such liability as aforesaid of a lay impropiator may be enforced in the temporal courts at the instance of the representative body in like manner as if such liability arose under a covenant made with the representative body and running with the tithe rentcharge.’

This sense is further confirmed by section 7(2) of the Welsh Church (Temporalities) Act 1919:

‘Where by any charter, deed, or other document any association, institution, or society, whether corporate or unincorporate, is empowered, or is under a duty, to make any grant or payment to any persons or body of persons, whether corporate or unincorporate, in Wales and Monmouthshire, such power or duty shall not be affected by reason of any parish of the Church in Wales ceasing to be a part of the province of Canterbury or York, notwithstanding anything contained in any such charter, deed, or document.’

The Tithe Act 1936 extinguished all tithe rentcharge (s 1) and compensated those with an interest in tithe rentcharge by the issue of redemption stock, charged by way of guarantee on the Consolidated Fund (s 2(1)). The amount of stock issued was as much as would yield interest equal in amount to the gross annual value of the rentcharge less certain deductions (s 2(2), Sch 1 (repealed)). The Treasury had the right to redeem the stock at par on or after 1 October 1986, and before 1 October 1996 (s 24(3), (4); Treasury Notice dated 17 August 1937). In those cases where the owner of a tithe rentcharge was liable for chancel repairs, and was entitled to receive compensation for the loss of the tithe rentcharge, part of the redemption stock, representing the capital value of his liability, was paid instead to the diocesan board of finance. The amount was calculated as to what sum might be reasonably sufficient, having regard to the condition of the chancel on 2 October 1936, to provide for the cost of further repairs and for the adequate insurance of the chancel against fire up to the cost of reinstatement (s 31(2)).

The Tithe Act 1936 did not extinguish this liability of chancel repair in a number of cases, even though compensation was given for the loss of the tithe rentcharge. Those universities and colleges to which the Universities and College Estates Act 1925 applied (namely the Universities of Oxford, Cambridge and Durham, their respective colleges and Winchester and Eton Colleges: s 1) were specifically excluded from this extinguishment (Tithe Act 1936, s 31(2) proviso). In these cases there

was no diversion of a part of the redemption stock to the diocesan board of finance, with the result that such universities and colleges may be said to remain subject to this liability of chancel repair in the same manner as if the rentcharge had continued in existence and in their ownership (s 31(2) proviso). The provision allowed in the Act for the compounding of this liability in a similar way to that noted above appears to be restricted to 'persons' or individuals rather than to corporate bodies.

Regretfully, although *Halsbury's Laws of England* (ECCLESIASTICAL LAW (4th Edn), vol 14, para 326) in its discussion on the Church in Wales notes the liability for chancel repairs with regard to the Tithe Act 1936, it does not discuss this particular exclusion, although it is mentioned elsewhere (para 1103). The *Church in Wales Handbook* for 1959 (pp 231 ff) makes clear that in the case of Oxford and Cambridge colleges the liability of chancel repair within the Church in Wales continues. This applies to a limited number of parishes, possibly about ten in all, four of which are in the former county of Montgomeryshire. There is evidence that at least one college accepted this responsibility as late as 1958. Possibly through a lack of information only one parish church known to me has applied since then to 'its' college for repair to its chancel under the terms of this legislation. The college, claiming it was an ecclesiastical owner rather than a lay owner, offered a grant to cover the cost of these repairs 'without prejudice', and this was accepted in the same spirit.

I have three queries. First, is the statement in the 1959 *Handbook* correct, namely that those Oxford and Cambridge colleges which were tithe owners of particular Welsh parishes are still liable for the chancel repairs of their parish churches? Secondly, can a distinction be made between an ecclesiastical and a lay owner with respect to the Tithe Act 1936? And thirdly (if the first matter is granted), can such a college be termed the lay rector of the parish? Any views would be gratefully received.

Yours sincerely
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