

influence of the counter-Reformation councils at Mainz, Trier and Cologne upon Cardinal Pole's provisions. There is also a useful section outlining the development of ecclesiastical courts in England and a brief account of the origin and development of canon law.

Without in any way detracting from the scholarly achievement and usefulness of this volume, it must be said that there are some weaknesses, particularly in the introduction. Perhaps inevitably, the editor sees canon law as being something enshrined in his texts rather than a living system into which life was breathed by the writings and practice of jurists. Little attention is given to English canon law as part of the European *ius commune*, and even the 1917 Roman Catholic Code is presented as a substitute for the *Corpus Juris Canonici* rather than of the entire system based upon it. The end result therefore reads like an attempt to describe English law in terms of statutes only while ignoring the importance of case law. Nor is the editor consistent in his mode of citing statutes, sometimes using short titles (which are irritatingly given in lower case, e.g., 'ecclesiastical courts act') and sometimes simply by chapter and regnal year. Who, one wonders, readily recognises the statute cited as 15–16 George V, c. 23 as the Administration of Estates Act 1925? Cases are cited from the *English Reports*, giving a false impression of the uniformity of this collection in terms of the standards and reliability of reporting. Convention as well as caution demands that the original reference to the nominate reports be given as the essential minimum to which the *English Reports* citation might if wished be added. There are also a substantial number of minor errors; for example, the index references to statutes in the introduction are regularly one out, probably as the result of the late inclusion of an extra footnote.

Despite such blemishes, the editor is overall to be congratulated on having produced a substantial work which will undoubtedly prove to be an invaluable asset to many concerned with the promotion and practice of Anglican canon law.

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*DISCIPLINE AND JUSTICE IN THE CHURCH OF ENGLAND* by G. R. EVANS, Gracewing, 1998, xi + 163 pp (£12.99) ISBN 0-85244-470-2.

Cases involving the discipline of clergy, particularly in the established church, attract publicity out of all proportion to the number of cases that actually take place. An examination of the list of authorities in this work reflects that fact; the vast majority are more than a half century old. No one can pretend to have very much experience in cases of clergy discipline; the numbers are too small. From the point of view of the clergyman charged with misconduct the situation is even worse because those who have even some experience are likely to be in the service of the church; registrars or chancellors. As the author says: 'There is a need for study, education, training to bring all those who may be involved in the administration of discipline up to a standard and to "raise consciousness" about the kinds of problems addressed in this book'.

That is just what the book sets out to do. It is an excellent book on a subject which although of some substantial public interest has been ignored for many decades. Interestingly, it is written not by a lawyer but by a lecturer in Medieval Theology at Cambridge, with practical experience of the contemporary church, for example, as a member of the Faith and Order Advisory Group of the General Synod. The book deals with principles under the headings of jurisdiction, procedure, the purpose of clergy discipline and what is properly expected by way of behaviour of those in orders. It covers the ground carefully in an efficient and very readable style and is priced at a level which is affordable by anyone who is likely to be involved in the administration of discipline or wishes to understand the topic.

In regard to jurisdiction, the discussion concerns the jurisdiction of ecclesiastical legislation and courts generally and the principles which are supposed to govern them before turning to a central issue of the book—the employment status of ministers of religion. It is a principle of English law that ministers of religion are not employees, as the law makes a distinction between *office* and *employment*. It is on this distinction that much of the consideration in this book turns. Obviously if ministers are not employees they are not entitled to the protections that employees enjoy. This is because the nature of their employment requires the use of spiritual talents of one sort or another and the courts are naturally most reluctant to enter into questions of spirituality.

The book looks at those areas in which the courts have chipped away at the corners of those doctrines and advances the argument that, if in principle courts are unwilling to protect the employment rights of ministers, then it is up to those who control the various religious bodies that ordain them or install them in their work to see that they have at least as good protection as is available to employees in other walks of life.

In the chapter on behaviour the distinction is drawn between clergy and laity, and for purposes of the law this is obviously correct. Church courts have little if any control over the laity. Here the discussion is largely about nineteenth-century law and the extent to which it is still valid under more recent legislation. Complaint is made of the lack of clarity guiding a priest in his behaviour; particularly the phrase ‘conduct unbecoming the office and work of a clerk in holy orders’ found in the Ecclesiastical Jurisdiction Measure 1963. If there is a shortcoming of the book it is the tendency to see the position of a clergyman as more distinct from other walks of life than in fact it is. For those of us with experience of military courts the phrase ‘conduct unbecoming’ is one with which we are very familiar. It is probably much easier for a priest to understand the limitations implied in this than it is for a young serviceman to understand ‘conduct prejudicial to good order and discipline’, and yet millions of service men and women have learned to live with it.

Similarly it is suggested at page 44:

‘A cleric can thus be tried on a criminal charge under ecclesiastical law for offences for which a lay person could not be tried at all.

A Church of England clergyman is thus not equal before the law with other citizens. He is in every sense deprived of his “living” if he is found guilty. This can happen even if the matter never goes to court and it is merely the decision of his bishop that he merits removal of his licence because he has committed an offence against the law ecclesiastical.’

This may be so of a clergyman who does not have the security of a benefice. But so it is for many other walks of life. Anyone undergoing some sort of probationary period (and to some extent a clergyman who has no benefice may be seen as probationary) will be subject to the review of others. To the extent he is found wanting it may have life-long effects. A pupil barrister who does not find a tenancy may have wasted years of education; and unfortunately this is the position of most of them.

A final example of this sort dealing with the question of ‘conduct unbecoming’, page 50:

‘But this leaves things dangerously vague. In a secular court it is usually quite clear what is against the law. It is not in question that theft is in itself an offence. If theft is alleged and proved the only question is what sentence is proportionate to the specific offence committed in the specific circumstances.’

Would that it were so! Volumes have been written about the definition of theft in section 1 of the Theft Act 1968 and hundreds of pages of the law reports are concerned with the subject. It now embraces dishonestly taking the gifts of a senile old person. But if theft is unclear what about conspiracy to defraud? I doubt that anyone would

be bold enough to try to draw the limits of that common law offence. I would have thought the difficulty of a businessman pushing the limits of the law are just as great as those of a clergyman trying to understand what behaviour is going to get him into trouble.

But this quibble aside, this is an excellent book dealing with a real problem. Bishops have immense power over their clergy and it may be that such power is needed. But it should be subject to the principles of natural justice and fairness. The reluctance of courts to interfere with that power means that any such control must come from new legislation. This book carefully discusses the question, exploring what possible rights a clergyman may have in law. The section on judicial review is very clear and I would recommend it to anyone who would wish a straightforward guide to this difficult subject.

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*INFANT BAPTISM: The 1983 Code of Canon Law and Church of England Law* by ROBERT OMBRES OP, Pontificia Studiorum Universitas A.S. Thoma Aq. In Urbe Rome: 1999, 261 pp (paperback).

As the author himself stresses, Robert Ombres' doctoral thesis on infant baptism was motivated by the belief that 'Comparative canon law is an ecumenical necessity'. Although it does not ignore the law of the Eastern Catholic Churches, it is primarily concerned with the legal systems of the Latin Church and the Church of England. 'Each system is approached on its own terms and respecting its own inner juridical dynamic to avoid distortions by premature comparison' (p 1) and it is this that gives the work its particular strength, even though the author is naturally most at home when considering the law of the Latin Church. The study is written with the clarity of thought and expression that any of those lucky enough to have heard Robert Ombres at the Society's annual conference at York would naturally expect.

Proceeding from the bedrock of theology and tradition it compares the law relating to baptism in each Church with sympathy and understanding. The result is not only an impressive demonstration of the use of comparative law but also a useful reminder of the limitations of both legal systems due to their divergent approaches to jurisprudence. In sum, this study is an important stepping stone in ecumenical jurisprudence and should be warmly welcomed not only for its elucidation of infant baptism but also for its demonstration of the importance of both systems one to the other.

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*THE GOLDEN YOKE: The Legal Cosmology of Buddhist Tibet* by REBECCA REDWOOD FRENCH, Cornell University Press, 1995, xx + 404 pp (£27.95) ISBN 0-8014-3084-4.

Few places have exercised such a hold on the imagination as Tibet, the land of magic and mystery beyond the Himalayas. Tibetan Buddhism, initially received in the West as 'Lamaism', a corrupt and decadent form of the religion, is today recognised as a formidable philosophical and psychological system which has a powerful appeal for a great many in the secularised West. Recent Hollywood films have told the story of the present Dalai Lama from his 'discovery' to his flight into exile in India. Today he is probably the most respected religious leader in the world, attracting massive paying audiences for his teaching sessions in the capitals of the West.