

## EDITORIAL

For what will last year be remembered? For some it will be the crushing defeat inflicted on the government with its proposed legislation on detention without trial, and the controversy surrounding the Racial and Religious Hatred Bill. History may regard 2005 as the beginning of the end of Blair's administration. For others it may be the fifth anniversary of the coming into force of the Human Rights Act bringing with it (amongst other things) a re-articulation of freedom of religion in contemporary English jurisprudence. It is hard to reconcile the civil liberties which the latter seeks to protect with the totalitarianism which underlies the former. This dissonance in the heart of government is a source of unease. And, to a large extent, religious organisations are inevitably caught up in the current muddled thinking. Are we becoming a secular nation, or do we seek to foster a religious pluralism which values the spiritual in all its various guises?

The past year has seen a forthright discussion on whether it is lawful for a member of the Royal Family to marry in a registry office. As is well known, civil marriage is a creature of statute. It was introduced in England by the Marriage Act 1836, section 45 of which said that the Act shall not extend to the marriage of any of the Royal Family. Then came the Marriage Act 1949 and the Registration Service Act 1953, neither of which extended the concept of civil marriage to royalty. Indeed this was the advice given to ministers at the time of Princess Margaret's proposed marriage to Group Captain Peter Townsend. But on 24 February 2005, the Lord Chancellor provided a written statement in the House of Lords expressing the opinion that this earlier advice was 'overcautious'. He further asserted that read in the light of Article 12 of the European Convention on Human Rights (the right to marry) and Article 14 (discrimination) the 1949 Act would permit a civil marriage. Some may think it a little surprising that the Lord Chancellor declared the proposed civil ceremony to be lawful by means of parliamentary statement rather than using the specific powers contained in the Human Rights Act 1998 allowing remedial action to remedy legislation which is incompatible with the European Convention, as the Marriage Acts so clearly were and remain. However benign the intention, the re-writing of legislation by the executive without the checks and balances of judicial process and parliamentary procedure is not a happy precedent: it represents the usurpation by a minister of state of the judiciary's constitutional function of statutory interpretation. Rather than putting the matter beyond doubt under the procedure expressly created under the Human Rights Act, there remains dubiety as to the lawfulness of the purported civil marriage of the heir to the throne and future Defender of the Faith. The Society looks forward to welcoming Lord Falconer of Thoroton to address its annual conference on 1 April 2006.

The year 2005 also saw the end of the criminal jurisdiction of the consistory court in matters of clergy discipline. With effect from January 2006 errant

clergy fall to be judged in a Bishop's Disciplinary Tribunal under the auspices of the Clergy Discipline Commission. The Clergy Discipline Measure (or Ecclesiastical Jurisdiction (Amendment) Measure as it was inelegantly entitled until the convenor of the Ecclesiastical Law Society's working party modestly suggested the better title) is not without its critics. It may not serve the Church well, but it will be a useful source of income for the legal profession. It is therefore to be welcomed.

The past year has seen decisions by the higher courts on religious objections to Sunday working, the chastisement of children as an expression of religious belief, and the prohibition on the wearing of religious garb in schools. On the latter matter, an appeal to the House of Lords is pending. We live in interesting times, and this Issue reflects some of these contemporary concerns. Jacky Humphreys offers a detailed critique of the Civil Partnership Act. The Act will have a profound effect on our collective understanding of society. Her article merits thoughtful reflection. I have the misfortune of differing from her in one minor but significant respect. I do not consider that the existence of a civil partnership carries with it by implication the inference that it is a sexual union. Far from it – the partnership is financial in nature dealing with joint ownership of possessions and rights of inheritance. I would therefore consider any enquiry of a civil partner into the nature of his or her partnership to be unacceptably intrusive and a breach of the right to respect for one's private and family life.

Also topical are questions of child protection in relation to religious orders and the concept of public benefit for religious charities. These subjects are addressed by Helen Costigane and Miguel Rodríguez Blanco. In addition, Frank Cranmer in the first of his regular Parliamentary Reports, considers the likely passage of the Charities Bill as well as other legislative enactments. Graham Watson and Sylvie Langlaude provide critiques on important decisions in the Court of Appeal and House of Lords respectively whilst John Ford, recently consecrated to the See of Plymouth, considers the reordering of church buildings as part of the mission of today's Church.

Whilst many involved in matters of Church and State seem recently to have lost sight of the historic as part of our inheritance of faith and constitutional tradition, this Journal has not. Oswald Clark's piece on parish clerks, first delivered as one of the Society's London Lectures, is charming and erudite in equal measure. Poor health and a nasty fall at the Old Bailey have not diminished his style or scholarship. Equally, I am pleased to reproduce the edited text of the late Philip Barrett's study on cathedral visitations.

There is a vibrancy and animation in the world of ecclesiastical law as General Synod embarks upon a fresh quinquennium. I hope you will find this reflected in the pages of this Issue.

Mark Hill  
Editor