

*Ecclesiastical Law*

By Mark Hill

Butterworths (1995) xl + 519pp (hardback £98)  
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A review by Chancellor David McClean

It would have seemed an impossible dream only a few years ago. No one would produce, let alone publish, a one-volume *vade mecum* of ecclesiastical law, comprehensive and up to date, containing the essential legislation, a useful selection of cases, and a lucid commentary. But here it is; Mark Hill, and Butterworths, have done ecclesiastical law a distinct service.

Of the volume's five hundred pages, some 350 are devoted to the text of Canons, Measures, Rules, and a few Acts of Parliament (principally in the area of marriage). This material is arranged in eight chapters, each containing a commentary of some twenty pages which is clear, sometimes trenchant, and always well-judged. The selection of topics and material can scarcely be faulted. Most space is given to the synodical structures and to the parish, its officers, P.C.C., property and finance. The parish chapter, for example, contains a selection of relevant Canons, such as B20 ("Of the Musicians and Music of the Church") and B43 and B44 (the "ecumenical Canons"), the Church Representation Rules, the P.C.C. (Powers) Measure, the Repair of Benefice Buildings Measure, the Parochial Registers and Records Measure, the Pastoral Measure, and more. The only major omissions are those relating to church land or ecclesiastical conveyancing and to clergy pensions; on the former, I can only echo the author's plea for the reform of the sprawling mass of obscure legislation along the lines of the recommendations of the Society's Working Party.

The judgments in some twenty cases are included. Anyone inclined to regard ecclesiastical law as of merely antiquarian interest should note how recent is the date of most of them, with the oldest being the *St Gregory's Tredington* case from as long ago as 1971. It is good to have a number of sets of Rules, those dealing with the faculty jurisdiction, including the Injunctions and Restoration Orders Rules, and the rules under the Incumbents (Vacation of Benefices) Measure.

The material is notably up to date. *Re St Luke's Maidstone* is here, as is some of the *Williamson* saga of challenges to the women priests legislation. The text notes the impact the report of the Turnbull Commission may have on the Church's structures when it is published later this year. Any law book dates rapidly; one can only hope the success of this one will justify new editions with reasonable frequency.

Of course there are imperfections. It is understandable, but as time goes by it will become increasingly inconvenient, that the legislative texts are straight prints of the current text as at June 1994; no attempt is made to indicate where, or how or by what instrument, the original text has been amended, and, for example, there is nothing in the headings to the text of the Church Representation Rules to make it obvious that the amendments approved in 1994 and effective in 1995 are *not* included. For this sort of information, the reader must look elsewhere. [Perhaps the Society should take up corporately the issue I have raised, ineffectively, as an individual, the extraordinary failure of the editors of *Current Law Statutes*, which now covers almost every conceivable type of legislation, to take proper account of Measures.]

The commentary contains a few, but very few, statements which I would query. The Enabling Act did not mark, “the *removal* from temporal government of legislative powers concerning the Church of England” [p. 19; my emphasis], and recent days have seen suggestions that Parliament should reassert the powers it undoubtedly retains. A P.C.C. may pass both Resolutions A and B on women priests; the text at p. 91 is misleading when it says that the Council may pass “one of two resolutions”. Ecclesiologists will dispute whether the parish, rather than the diocese, is “the basic building block of the Church”. Lawyers may be surprised, but not too offended, that the author does not always observe the convention that the “shall” of the legislature becomes the “must” of the commentator. The index has some eccentricities. Resolutions A and B are indexed under “Absolution”, but there is no corresponding entry under “Holy Communion”; and the index entries sometimes lead to the commentary and sometimes to the materials, but not always to both.

A few weeks’ experience has convinced me that this is an immensely useful book. I find myself thinking “It’s probably in *Hill*”, and it almost always is. An excellent addition to the tools of the ecclesiastical lawyer’s trade.

#### *Canon Law in Protestant Lands*

(*Comparative Studies in Continental and Anglo-American Legal History, Volume II*, edited by Richard H. Helmholz)

Duncker & Humblot, Berlin, 1992; 272 pp, paperback, DM 128.

A review by C. C. Augur Pearce, Solicitor, Humboldt-Universität zu Berlin

Professor Helmholz’s *Roman Canon Law in Reformation England* is well-known to many members of the Society. Perhaps less well-known is the fact that England was by no means alone among countries of the Reformation in its continued recourse to the *jus commune*, and that scholars have been engaged for some time in comparing the approaches of the different strands of Protestantism to this question.

Five years’ research by an international working group of legal historians led in 1992 to the publication of this revealing collection of essays in English and German. Lutheran Germany, Calvinist Switzerland, France and Holland, Anglican England, Ireland and the American Colonies are covered by different specialists, and Richard Helmholz himself draws the strings together in a lucid introduction.

The researchers’ conclusion seems clear: at least on this side of the Atlantic, the canon law, shorn of the papal claims, retained its usefulness to the churches of the Reformation and was used – albeit selectively – by each of the three main traditions, Calvinism tended to formulate its own principles, but under the *jus commune*’s influence and using its procedures; while Lutheranism and Anglicanism applied the canon law as such, subjecting it to tests of scriptural acceptability or of consistency with common law and the royal prerogative.

Bringing together such a wide variety of scholars, all holders of professorial chairs, was bound to lead to the pursuit of particular interests which do not necessarily lend themselves to easy comparison. There are contributions, for example, on Swiss marriage law and Dutch legal education. The periods treated vary likewise: the German articles begin with Luther’s bonfire, while the