BOOK REVIEWS

THE LAW RELATING TO SCHOOLS

By N. HARRIS
Fourmat Publishing, 1990. xxiii + 311.pp.
(£25).

A review by The Ven. T. Hughie Jones

The volume of legislation since the 'Butler' Education Act 1944, culminating, but by no means ending with the Education Reform Act 1988, has demanded such a guide as Dr. Harris provides in this wide-ranging survey. Its accuracy is as expected of its author, an academic lawyer of distinction, while its exposition of major themes like local management of schools, grant-maintained status, and special educational needs will commend it to legally literate governors, head-teachers and administrators alike.

For Anglicans in general, and such in particular as are interested in ecclesiastical law, the book has, however, some shortcomings. A topic of current importance, commanding the interest and assiduous activity of no less than a retired Master of the Rolls, is the disposal of premises formerly used as church schools, particularly aided schools established by a trust deed. The interplay of the School Sites Acts (notably 1841), the Law of Property Act 1925, the Education Act 1973 and the Reverter of Sites Act 1987, has produced for diocesan boards of education, whose own functions have been altered by the Diocesan Boards of Education Measure 1991, tensions with parishes which are both regrettable and difficult of removal. Of this Harris has nothing to say.

Technically, the lack of a bibliography is inexcusable, as is the omission from the abbreviations list of references in the text to journals such as JSWL, MBC, MLR and TES, not all of which will be familiar reading matter to most of Harris's readers. 'Footnotes' which are neither at the foot of the page, nor at the end of the chapter, but incorporated in the text, are an added irritant, as is the unhelpful, though common, confusion between 'can' and 'may'. In a legal work the distinction of usage is sometimes important. The index is incomplete. 'Homosexuality' in it does not refer to the text treatment of Saunders v Scottish National Camps (1980), an important Employment Appeal Tribunal decision.

Nonetheless, the book will be useful, though it has its rivals, along with which, in this field of education law more than in most others, it was doomed to be outdated even before publication.

ESSAYS IN CANON LAW
A STUDY OF THE LAW OF THE CHURCH IN WALES

Edited by NORMAN DOE
Cardiff University of Wales Press, Cardiff, 1992, xxv + 200pp.
(Hardback £14.95)

A review by Chancellor George Spafford

It may be a sign of hubris for me to review this book! Norman Doe is its editor, and is a part contributor. He is also the tutor at Cardiff of the University of Wales' post-graduate degree course on canon law. I am one of his pupils. In consequence I can confirm the book's erudition.

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In his Introduction Doe discusses the nature of canon law, i.e. that it is about rules created for the Church by God, by the Church itself and by the State. The main interest of the book for a canonist who is not a member of the Church in Wales is likely to be in a comparison of what is disclosed in each essay with the position in the reader's own Church.

Turning now to the essays, the Reverend Roger L. Brown discusses the historical problem caused by patrons selecting incumbents who did not speak Welsh. Many preferred to worship in the language used in their homes, and there was, he says, a mass defection to chapels. Welsh curates sometimes were appointed as a palliative. Some incumbents promised to learn Welsh, 'but we understand even less of their Welsh than we do of their English'.

The first part of Enid Pierce Roberts' essay also deals with this problem. She stresses that 'we are a different people, and a people can be reached only through its own culture', but surely there can be more ways than one of reaching people, particularly when there is a mixing of cultures? Does the teaching of Christian truths depend on culture?

In a brief historical survey she brings out that the pre-reformation Welsh clergy had its own practices on clerical celibacy, succession to endowments and marriage within the prohibited degrees. Was this confined to Welsh clergy? She makes a number of assumptions – 'Wales was ignorant of canon law', 'probably correct to say', 'one cannot help feeling'. When these are coupled with emotive phrases like 'the Methodist revival which lulled Wales into a religious stupor', and 'it cannot be denied that many among the middle classes betrayed their orgin', it makes the reviewer wonder how impartial is her selection of facts.

Her discussion of problems involved in translating into Welsh is outstandingly good.

These two essays bring out the risks involved when a parish lacks a large 'say' in the choice of its incumbent. Should the Church of England abolish patronage?

Thomas Glyn Watkin discusses Disestablishment, brought about, he believes, against the will of most Welsh Anglicans, and caused by nonconformist 'resentment at the privileges and wealth of the established church.' It provided, however, a chance of independent development under the guidance of the Holy Spirit. His discussion of the method now used to appoint bishops, and of the power of the Governing Body, could be very useful if the Church of England was ever disestablished. The decision to have Archdeacon's Courts was interesting. How has it worked out?

The Constitution of the Church in Wales after disestablishment reflected to a great degree the views of Charles Green, the future Archbishop. The Reverend Canon Arthur J. Edwards explains how this came about. Green believed in a monarchical church. He saw the Church in Wales as a branch of the universal church, so that the alteration of a universal custom (e.g. solely male clergy?) would require ecumenical action. Canon law to Green was coercive. Are Green's views valid?

Norman Doe tackles a problem that at times should affect all Christians, namely the apparent conflict between punishing a wrongdoer and the duty to forgive. He finds a solution in the purpose of punishing, namely to deter and to reconcile. It should not be imposed out of resentment. This is all very well in an ideal world, but would such purpose usually be clear to other Christians – or to the wrongdoer?

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Doe sees canon law as facilitative – enabling the church to live a liturgical, pastoral, missionary and sacramental life.

Mental handicap may affect any Christian by personal experience or by having to assist those with it. The Reverend John Griffiths goes to the root of the problem when he differentiates 'faith', 'belief', 'reason' and 'understanding'. He sees mental handicap as usually a case of learning difficulties. He states the need for a broad Christian approach – and stops there. He praises the Roman Catholic 1983 Code's dealing with mental handicap. He regrets the silence of Anglican and Welsh canon law.

When there is a church custom, and then the matter is dealt with by way of canon, does the custom survive, the canon being merely declaratory, or does the canon extinguish the custom? The matter is raised by the Reverend Jeffrey Gainer in his discussion of the Bishop's 'Ius Liturgicum'. Your reviewer suggests that the answer may be found in David Lambert and Doe's joint essay on Enforceability. If canons bind only by convention, then a custom could survive. But if canons bind under an implied contract between church members or as a form of subordinate legislation, then surely a custom is extinguished by operation of law?

Gainer holds that in the Church in Wales the Ius Liturgicum survives in the right of a bishop to approve services not already covered by the 1984 prayer book, and in the right to decide the manner in which prayer book services should be carried out. In the Church of England Canon B5 appears to cover all eventualities.

Lambert and Doe's discussion of Enforcement is a reminder to all canonists of the desirability of certainty as to which are divine laws, and, in the case of the Church in Wales and the Church of England, what were in 1920 'the existing articles, doctrines, rites, roles, discipline and ordinances' of the Church of England which Section 3 of the Welsh Church Act 1914 held to be binding on the Welsh Church until altered? How do they compare with Rules in, say, the Methodist Church, the United Reformed Church and the Orthodox Church? What in each church is the theoretical and practical position over enforcement?

Antony T. Lewis sees the Constitution of the Church of Wales to be monarchical, legalistic and unhelpful to ecumenical enterprises. He pleads for radical constitutional renewal. His essay is followed by one by the Right Reverend R. T. Davies, who pleads for a more tolerant view of the Constitution.

Returning to the Introduction, Doe there considers canon law to be a dynamic function of the church, and hopes that the book would lead to a specifically Welsh conception of canon law. Would not this be too provincial a goal? Doe wisely stresses the need of a canonist to bear in mind basic Christian theological doctrines and also practical church life. However he goes on to maintain that 'canon law is an attempt by the church to express in a concrete way the church's view of itself'. This may well be true of the Church of Rome; but in the Church in Wales or Church of England have most actual worshippers – the living church – even heard of canons?

This is a stimulating book. It contains much original thought, helpful tables and an index.

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