BOOK REVIEWS

RELIGIOUS LIBERTY AND HUMAN RIGHTS, edited by MARK HILL, University of Wales Press, Cardiff, 2002, xx+224 (£35) ISBN 0-7083-1758-8[1]

Volumes looking at issues concerning the relationship between religion and human rights are no longer a rarity, but this new collection of scholarly, well written, essays (a number of which are based on presentations made at a conference organised by the Ecclesiastical Law Society on this topic in 2001) is a very welcome addition to the list. It opens with a substantial introductory preface by Sedley LJ which both reviews the background to the entry into force of the Human Rights Act 1998 (HRA) and considers its potential impact on religious bodies. He projects a fairly traditional liberal outlook emphasising the significance of the public/private divide and a minimalist view of the potential impact of section 13. Much of the rest of the work directly or indirectly challenges the first element of this portrayal.

The editor's opening chapter presents a helpful overview of the volume as well as an introduction to the essential elements of the HRA. The following four chapters then provide a series of background perspectives: historical and philosophical (chapter 2, Ruston); theological (chapter 3, Sagovsky); comparative (chapter 4, Chopko) and from the jurisprudence of the European Court of Human Rights (chapter 5, Martinez-Torrón). The final three chapters (by Leigh, Harte and Doe) have the clear goal of informing the Anglican community of issues that it needs to consider in the light of the HRA, though they also raise broader questions. Overall, the collection has a cohesive and convincing feel to it.

Ruston reviews the thinking that has historically pervaded approaches to rights discourse within and between religious communities. This is very well done, particularly the presentation of the debate between the Spanish scholastic theologians and humanists. It is a very useful summation of a complex debate, oriented in a helpful fashion towards the theme of the work as a whole and is one of the highlights of the collection. Sagovsky complements this in a chapter which argues that human rights present problems for churches from a theological perspective, given that there is no coherent view of the theological basis for human rights. This is well worth the arguing, though the case could be made in a tighter fashion.

Chopko then gives an introduction to the world of the United States First Amendment, stressing that it was founded upon the premise of a fruitful relationship existing between religious institutions and the state, rather than on the idea of a secular and secularised state. He charts the changes

[1] A limited number of copies of this volume, which was published in collaboration with the Ecclesiastical Law Society, may be obtained at the discounted price of £25 each. Requests should be directed to the Executive Officer, Canon Michael O'Connor at Little Missenden Vicarage, Amersham, Bucks. HP7 0RA.

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in thinking over the years, including the 'privatization'/'personalizing' of religion and then teases out a number of consequential challenges and problems which flow from, or are illustrated by, United States court decisions in recent years. The gist of the argument is that institutions need to assert their (collective) free exercise rights in order to redress the creeping secularisation of society and of religious institutions themselves and challenge the idea that a relationship between the church and state can exist only when the churches abandon their positions for those espoused by the state. This provides a salutary lesson to those who would wish practice under the HRA to follow a similar, 'neutral' route and seems to encapsulate the message at the heart of the collection as a whole.

Torrón then provides an overview of ECHR jurisprudence and its impact on church/state relations, minority groups and minority religions—important themes which do not always figure in writing about Article 9 of the European Convention on Human Rights and, like Chopko, points to the dangers of the secular-oriented courts exercising a 'neutral' approach to religion in a manner that becomes, *de facto*, intrusive and judgmental.

Moving on to the final set of three chapters, Leigh presents a clear and well-argued case that practice under the HRA—and in particular *Aston Cantlow Parochial Church Council v Wallbank* in the Court of Appeal—indicates a greater willingness for judicial intervention in church affairs than ECHR jurisprudence suggests is appropriate (though Torrón might take issue with this). He points out that too great a readiness to categorise religious bodies as exercising public functions undermines their capacity to be claimants under the HRA. The result is that practice under the HRA is less benign than that under the European Convention. It must be noted that the Court of Appeal decision in *Aston Cantlow* has now been reversed by the House of Lords, but that does not detract from the essential thrust of the chapter which clearly illustrates a danger that the author believes should be guarded against, and the force of that argument has now been acknowledged by the House of Lords.

Harte then follows the theme of the implications of the HRA, this time in the fields of employment and education, exploring a number of potential problem areas in a clear, well-illustrated and accessible fashion. He argues, *inter alia*, that it is not so much the letter but the spirit of the HRA that is likely to prove problematic, since it can exercise a 'chilling' effect in the employment sector that spills over into other practices, particularly regarding non-discrimination. Time may resolve some of these speculations but that does not detract from their usefulness in stimulating thinking at this juncture.

The final chapter, by Doe, looks at Lambeth Conference resolutions regarding human rights and considers how they find formal reflection within the 'extrovert' canon law; that is, in canonical promotion of human rights in civil society. He concludes that there is little evidence of this, particularly in England. Similarly, there is little systematic reflection in 'intro-

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vert' canon law, concerning internal regulation. He argues that this is at least in part due to the dominant positivist/duties-based judicial approach within the Anglican church and there is therefore a mismatch between what the church is saying and is doing as regards human rights— clear and convincing argument.

This, then, is a stimulating collection that has as its underlying theme the nature of the relationship between religion and society; between church and state and the problems posed by working that out in the light of the current legal framework. This is not a debate that is going to go away and this volume is a helpful contribution to an understanding of the issues.

Malcolm D Evans, Professor of International Law, University of Bristol

LOWER ECCLESIASTICAL JURISDICTION IN LATE-MEDIÆVAL ENGLAND—THE COURTS OF THE DEAN AND CHAPTER OF LINCOLN, 1336-1349, AND THE DEANERY OF WISBECH, 1458–1484, edited by L. R. POOS, Oxford University Press for the British Academy, 2001, lxv + 687 pp (including indexes), (£50) ISBN 0-19-726245-7.

In the days when ecclesiastical courts played a significantly greater role in everyday English life than they do now, it was not always the consistory court that handled the most interesting cases.

On the one hand, the bishop might create peculiars by permanently surrendering parts of his jurisdiction to other ecclesiastical authorities. The Bishop of Lincoln did this around 1160 for his cathedral precincts and for parishes belonging to cathedral prebends or the common capitular endowment. The Ordinary jurisdiction which thus passed to the Dean and Chapter was exercised by a canon appointed annually as *præpositus*; or sometimes, in the case of individual prebends, by the canon locally concerned. It was no longer an episcopal jurisdiction, and any appeal lay to instances further up the ecclesiastical hierarchy.

A bishop's officer might, on the other hand, be commissioned to exercise his own jurisdiction within stated spheres or geographical areas. The rights of English archdeacons, as is well known, later became so entrenched in legal custom that they lost most attributes of a delegated power and became instances in their own right; but in the fifteenth century other units, including the deanery, were occasionally significant. For Wisbech, a portion of the Ely diocese effectively outside archidiaconal authority, the bishop's justice was administered either directly by his Official [Principal] or by a delegate such as the rural dean.

Lawrence Poos of the Catholic University of America is best known as a social and legal historian of the late mediæval to early modern periods. His work under review is a painstaking *editio critica* of (a) the record of

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