

EDITORIAL

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The Clergy Discipline Measure 2003 has now passed its tenth birthday and, in the first article of this new volume, Adrian Iles writes a progress report on the implementation of the Measure and the cases that have been brought under it. The title of the Measure echoes the early Victorian statute, the Church Discipline Act 1840, but the cases brought under each are very different. The 1840 Act and its ill-fated successor, the Public Worship Regulation Act 1874, allowed suits to be brought against clergy for ritual and doctrinal offences. The Measure of 2003 does not deal with ritual or doctrinal matters. Back in 2004 the Ecclesiastical Law Society held a day conference focussing on proposals for the setting up of a new system for the administration of doctrinal and ritual discipline in the Church of England.¹ However, just as in the nineteenth century, the subject was surrounded by difficulty and the reforms have not yet taken place. The enforcement of the discipline of the Church of England in such matters remains, therefore, in the lap of the Court of Ecclesiastical Causes Reserved, which is distinguished among Her Majesty's courts for having sat on just two occasions since coming into being in 1963.

The two cases that did come before that Court both concerned the introduction into parish churches of controversial furnishings and ornaments; neither related to purported offences of a ritual or doctrinal nature committed by clergy. That does not mean, however, that there are no clergy or lay people contravening either the liturgical law of the Church or its doctrine. James Prendergast's article in this issue outlines a growing trend in the Episcopal Church in the United States of America to admit the unbaptised to communion, in contravention of the canon law. It is undoubtedly the case that such breaches of the law happen in the Church of England and that the lack of an effective means of restraining such breaches results in their becoming entrenched and even accepted.

It is difficult to predict whether and how an effective system for enforcing ritual and doctrinal law in the Church of England might be brought into place. The lessons from history are not encouraging. Uniformity enforced in the centuries following the Reformation resulted, for good or ill, in the

1 A report on the conference was printed at (2004) 7 Ecc LJ 475–476.

proliferation of separation in the church in England, which division was then exported around the world. The nineteenth-century attempts to restrain the emerging ritualism of the age resulted in little more than bad public relations and enormous legal bills. And in the wake of the rejection by Parliament of the proposed Prayer Books of 1927 and 1928 the bishops took it upon themselves simply to sanction the use of the unlawful liturgy. With such historical precedent it is not surprising that the bringing in of a new system alongside the Clergy Discipline Measure has not proved easy.

Those who are involved in the administration of the law of the Church in any way will be well used to accusations that the law inhibits the mission and ministry of the church by placing unduly harsh restrictions on local churches working hard in the ministry entrusted to them at local level. Such criticism was levelled at those in authority in the nineteenth century too. This has never been the case, however, and recent legislative changes (including the Mission and Pastoral Measure 2011 and the new Faculty Jurisdiction Rules coming into force this month and detailed by Mark Hill QC below²) show that, far from seeking to restrict mission, the law of the Church of England seeks to enable mission and ministry but within a framework that ensures consistency, protects the vulnerable and promotes the ends of the Church – the mission of God in the world. We may see in the current proposals for reform in the Church in Wales an imaginative plan for restructuring boundaries and remodelling provision of ministry.³ Once again law is seen not only to restrict but to enable.

² See below pp 47–56.

³ See the report on the Governing Body of the Church in Wales, below pp 83–86.