

papal authority and made the king the supreme head of the Church, but prohibited the academic study of Canon Law, and closed the Canon Law schools. Accordingly the libraries in the kingdom were wrecked by being purged 'of all superstitious books'. As Maitland has remarked, the significance of the change is sometimes overlooked, as it is very largely by the Canon Law Commission.

In 1604 canons were published which had received the sanction of Convocation and the king, though they were never confirmed by Parliament. These were state-made laws. It is these which have formed the basis for the drafting of the new canons. But the Commission considers that 'it would be premature and unwise to ask for the abrogation of all pre-Reformation law not included in the proposed new canons, for later experience might show that we had inadvertently jettisoned canons which are still of value along with many which are admittedly obsolete'. The uncertainty regarding lawful authority and the meaning and origin of jurisdiction can only result in conflict and compromise.

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CANON LAW IN THE CHURCH OF ENGLAND

THE newspapers, some months ago, announced and commented on the proposal to revise the canon law of the Church of England, and a handsome volume was produced by the Commission appointed in 1939 by the Archbishops of Canterbury and York. It was published by the S.P.C.K. in 1947, and contains, together with a number of very scholarly introductory articles, the draft of a proposed scheme of 'The constitutions and canons ecclesiastical of the Church of England, 194—, with annotations'.

This publication is of the greatest interest, not only to members of the Church of England, but to all students of canon law, who cannot but welcome the perfecting of ecclesiastical discipline, wherever it may be, and the reading of these proposed canons will most certainly evoke in every canonist's breast sentiments of sincere admiration, of puzzled wonder, or of charitable disapproval, as the case may be. Therefore, it should cause no offence if, in a review like *BLACKFRIARS*, we take the liberty of putting on paper some observations which it has occurred to us to make when running through this interesting document. This we do in no spirit of carping criticism, but with the sincere desire of contributing something objective, and possibly constructive, to this important undertaking.

Starting with Can. I, we would venture to say that the very expression 'Church of England' is not strictly canonical. Though the appellation *Ecclesia anglicana* has a respectable history, it would be more correct to speak of 'the Churches of England' or 'in England'—the Churches, i.e., of Canterbury and York, of Lincoln and Winchester, and even of Chipping Norton and of Little Munden. The words, 'established according to the laws of this realm' convey the notion that the Church in this country owes its origin to civil legislation, rather than to the will of Christ and to the activities of the Apostles and of their successors. The canon goes on to constitute and ordain that no member of the Church of England shall be at liberty to maintain or hold that he does not belong to the true and apostolical Church of Christ. But surely anyone who did so would cease to be a member of the Church of England.

Can. VIII declares that the general canon law of the Church, which was in force in England in 1533, is still in force, except insofar as it has been abrogated or modified. And so it comes about that many ancient ecclesiastical laws which have disappeared from the jurisprudence of the Latin Church are still in vigour in the Church of England.

While admiring the sentiments expressed in the first part of Can. XI, which regrets separations and schisms among Christians and urges members of the Church of England to seek in penitence and brotherly charity to heal such divisions, one cannot but be surprised by the proposal that bishops may authorise ministers of nonconformist denominations to preach and to officiate at Church of England services. Since the differences which separate these bodies from the Church of England are doctrinal ones, both sides cannot be right, and such authorisation amounts to putting truth and error on the same footing.

Can. XIV introduces a new distinction between what it calls 'Principal feasts', which number six over and above Sundays, and 'Other feast Days'—commonly called Red-letter days—which are nineteen in number. On the former days all members of the Church of England 'shall attend Divine Service', while on the latter they 'ought to endeavour themselves so to do'. Only on Sundays shall they 'refrain from all unnecessary labour and business', which latter may include intellectual work. Our ecclesiastical precept forbids only *servile* work. Attendance at divine worship is also prescribed on Good Friday and recommended on the forty days of Lent, particularly Ash Wednesday and the days of Holy Week. The other vigils, fasts, and days of abstinence ordered by the Prayer-book are referred to, but nothing is said as to how they are to be observed.

Can. XVII would seem to prescribe a scarf or stole, even for the Epistoler at the Holy Communion. The alternative of an alb 'with the customary vestments' is strangely imprecise. A cope may be worn at baptisms, marriages and 'other appropriate times', but what are these latter? Nothing is said of confirmation or of ordinations. All persons present are to kneel when the prayers are read at Divine Service, according to Can. XVIII, but ancient discipline prescribes this only in penitential seasons; at other times, especially during Paschaltide, Christians stand to pray. The much-debated question as to whether one should stand or sit for the psalms is passed over in silence by this canon.

Can. XIX prescribes the due celebration in cathedrals of the morning and evening offices, and there is no question of the whole of the day's liturgy being recited in one sitting, as is, alas! the custom in several continental cathedrals, where compline is said at 10 a.m. But the concession merely to *say* these offices is regrettable. The ancient tradition of both East and West is that public worship should be *sung*. 'Qui cantat, bis orat'. Low mumbling in a conversational voice is not worthy of cathedral worship. It is not necessary that elaborate music should always be performed. A few persons of good will could generally manage to sing the psalms and canticles to simple tones. At one time even the scripture lessons were sung. (cf. rubric in first Prayer-book of Edward VI.)

Very edifying is the prescription (repeated from the Prayer-book) that the minister, or ministers, of a parish shall resort morning and evening to the church, at the tolling of the bell, to say or sing the common prayers. This was done by the saintly George Herbert, John Keble, and many others. It is a common practice in orthodox Eastern churches, and recent news from France relates that some zealous parish priests there have revived a custom, which was prescribed by the medieval *Pontificale romanum*.

Can. XXI is strangely worded, for it says that no one (before he be ordained) shall presume to consecrate the holy Eucharist, thus conveying the idea that such consecration would not be invalid, but merely illicit.

According to Can. XXV those are excluded from Holy Communion who have 'maliciously or openly contended with their neighbours', but who is to ascertain and judge their guilt in these circumstances?

Children 'of a meet age' are to be confirmed according to Can. XXXV, but what is this 'meet age'? The same canon allows the person to be confirmed to change his Christian name, but the Prayer-book rite does not provide for any mention of the names of those confirmed. Moreover, such a change does not conform to ancient practice.

Can. XXXVI recapitulates the Prayer-book doctrine on matrimony, omitting, however, the second cause for which it was ordained, viz., 'for a remedy against sin'. Then we have the much-discussed paragraph empowering the bishop, if satisfied that there were good grounds upon which a marriage dissolved by secular law could have been declared null and void, to allow (no doubt by a decree which would be made as public as possible) the re-marriage of the parties. But nowhere in these Canons are we told what grounds the Church would consider sufficient in such cases. Can. XXXVIII only enumerates 'certain' impediments, but the list can hardly be considered exhaustive. Are marriages between baptised and unbaptised persons invalid or merely illicit? The minister is merely told to refer the matter to the bishop, but we are not told if the bishop can dispense from the impediment or not. What about religious vows, which are certainly not considered a diriment impediment by English law? What about impotence, rape and crime? Could the Church institute a trial to examine these impediments if the civil court has not pronounced on them?

Can. XLII does not make it clear if marriages must always be celebrated by the minister of the parish himself, or if he can delegate one of his curates, or even a stranger, to do so.

Registry Office marriages are evidently considered as being valid for members of the Church of England, and consequently a real sacrament. Surely then the Divine Service suggested by Can. XLIII, which has merely the character of a nuptial blessing, should be officially provided and the 'appropriate modifications' not left to the discretion of the minister.

It would seem that both the rite for the solemnization of matrimony and that for the burial of the dead may be used for non-members of the Church of England, provided they are validly baptised. This is not unreasonable in the case of those who were born and brought up in non-conformism, but what is the position of those who have left the Church of England to join another denomination? Are they ex-communicate, or can they be admitted to these rites, and even to Holy Communion, without any form of reconciliation?

The delay of seven days, allowed by Can. XLVIII for the registration of baptisms, seems somewhat too indulgent, being given the weakness of memories at the present day. That a person's confirmation should be registered in his own parish church is eminently desirable, but it would be well to register it also in the church where the ceremony takes place.

Can. XLIX, which forbids the recitation of the common prayers elsewhere than in a consecrated building, is in contradiction with Can.

LXXXI, which orders all clerics to say daily morning and evening prayer, either privately or openly. If a cleric may say them privately, why may not a group of clerics and others say them together without necessarily resorting to a consecrated building?

Can. LII does not say that a Metropolitan owes due obedience to the Primate. Who, then, is to settle dispute between the two Archbishops, who are both of them styled Primates?

Can. LVI, as is indeed the practice of some of our own seminaries, seems to imply that a man may *petition* his bishop for ordination, but surely it is the bishop who should *call* a subject, whom he considers fitted and called by God, to come and serve the Church in the sacred ministry. One becomes a priest, not for one's own satisfaction or sanctification, but for the public service of the community.

The 'urgent or weighty' causes which, according to Can. LXV, would clearly authorise any Priest to hear a confession anywhere, should be defined clearly and not left to the subjective appreciation of individuals.

The declaration of the doctrinal orthodoxy of the Book of Common Prayer, required by Can. LIX of those holding office in the Church, is more than is required of us in respect of our liturgical books.

The licence granted by canons LXXIV and LXXIX for suffragan bishops and archdeacons to hold two benefices with cure, maintains one of the oldest abuses of ecclesiastical economics.

The first and foremost duty of cathedral canons is, not to preach the Word of God, as implied by Can. LXXV, par. 3, but to carry out Divine Service worthily, as prescribed by par. 4.

It is a contradiction in terms to say that an Archdeacon must be a *priest*, as does Can. LXXVI, just as it is illogical to say that a cardinal deacon must be a priest, as does Can. 232, p.1., C.J.C.

Can. LXXXI requires all clerics at least to be present at Holy Communion on Sundays, but Can. XXII requires cathedral clergy to *receive* the Communion.

Canons LXXXIV-V-VI deal with deaconesses, but they do not say to whom they are responsible, with what funds they are to be maintained, where they are to live, how they are to dress, if they may be married or not.

Lay readers are admitted, according to Can. XCIII, by the delivery of the New Testament, but apparently without any 'form'.

Stone altars are at last authorised by Can. XCVII, but there is no question of their consecration. Wooden altars are often used in the byzantine rite, but at least a consecrated antimension, or corporal, must be placed on them. The prescription to use an altar frontal is more generally observed in Anglican churches than it is in ours.

Can. CVIII most praiseworthily orders churchwardens 'not to suffer any person to stand idle, or walk or talk either in the church, church porch or churchyard, during the time of Divine Service, but shall cause them to come in or depart'.

But a regrettable confession of weakness is contained in Can. CXII, which rather fulsomely authorises churchmen, who feel aggrieved by their treatment in ecclesiastical courts, to appeal to His Majesty's High Court of Justice; while Can. CXIII most astonishingly allows an archbishop to be tried and judged by his own subjects, and inferiors.

Finally we must mention two subjects which are hardly referred to in these proposed canons, but which are of the greatest importance. One is the education of the clergy in theological colleges or elsewhere, and the other is the religious life, which re-appeared in the Church of England in the middle of the last century and which has since developed very considerably. It is strange, too, that the much-disputed question of the reservation of the holy Eucharist for the sick is nowhere mentioned in this draft. There is no reference to altar lights, though these are prescribed by the Injunctions of Edward VI. Incense is nowhere mentioned in these canons, but neither is it in the *Codex Juris Canonici*! One would have expected some regulations with regard to processions, which are now a familiar feature of Anglican worship, but nothing is here said of them. Neither is there any legislation on sacred images. Most surprising of all is the absence of any reference to the election of bishops, though this is referred to in an introductory article.

Of course, it may be urged, as it is stated in chapter VI of *The Report*, that it is not intended to put forward a complete code of canon law, but even so it cannot be denied that these subjects call for some sort of legislation. On the other hand, if the new canons are to specialise in certain matters only, we should expect from them much greater precision and attention to detail.

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