

*St Luke's, Maidstone*, in 1994. The general reader is specifically encouraged to refer to the extensive case law which has now been reported in this Journal.

Mynors, therefore, provides a welcome point of entry for the ordinary planning lawyer to the Church system. All fourteen chapters are also of great value for ecclesiastical lawyers and others concerned with the conservation of church buildings, whether or not they are specialists in secular planning law. Even where the ecclesiastical exemption applies, Mynors' clear and comprehensive discussion of listed building control is invaluable for those concerned to safeguard the faculty jurisdiction. He sets out the procedures and standards applied by the secular system in determining when alterations or additions may be made to listed buildings, how they are to relate to their wider setting and the positive steps which may be taken to ensure their upkeep. Clearly a parallel jurisdiction will be expected to maintain a comparable standard of protection. A final chapter, 14, on Scotland and Northern Ireland, provides a further brief basis for comparing differences of approach.

Mynors makes clear the manner in which, quite apart from listed building control, churches are subject to ordinary planning regulation and, equally, how the setting of a church may be protected from unsuitable development because planning decisions in the vicinity must take account of the effect on any listed building, including a listed church. Particularly where the church is in a conservation area, these other controls may be relevant if the church authorities wish to build; for example, if they wish to provide low cost housing on glebe, or a new vicarage, as in *South Lakeland District Council v Secretary of State*, in 1995, where the Court of Appeal held that permission had been wrongly refused for a new vicarage in the Cartmel Conservation Area.

As the index indicates, there are further matters here of vital importance for churches, notably grants. The conditions under which grants are made for church repairs are often more restrictive than either planning or faculty controls. Grants to churches are specifically dealt with in chapter 6, on 'Finance'. The penultimate two chapters, 12 and 13, respectively on 'Trees and Gardens' and 'Advertisements', are also of relevance for churches and particularly churchyards.

At £51.75, this is a competitively-priced practitioner's book. It is well laid out, printed and indexed. It is an indispensable part of any planning law library and ought to be in the library of anyone with a serious role in the conservation of the built heritage, including ecclesiastical buildings.

*THE COMMON LEGAL PAST OF EUROPE, 1000–1800, 2nd Edition*, M. BELLOMO, trans. LYDIA G. COCHRANE, 1995. The Catholic University of America Press, Washington DC, 252 pp (£35 but subject to increase) ISBN 08132 08 130.

and

*MEDIAEVAL CANON LAW*, J. A. BRUNDAGE, Longman, London and New York, 1995, 260 pp. (hb £38, pb £13.99) ISBN hb 1582 093 562, pb 0582 093 570.

A review by Francis Lyall, Professor of Law, Faculty of Law, the University of Aberdeen

In the older technical sense of the word, both these books are magisterial; that is they are schoolmasters for those who would learn. Written from a secure base of scholarship, they instruct, and—an equally important mark of the good teacher—

they transmit an enthusiasm which is infectious and encourages the reader to seek out other, more detailed treatments. Both books usefully conclude with bibliographic materials linked to their individual chapters, that of Bellomo being extended into English sourcing which, apparently, is not provided in the Italian edition. The problem is that much of the material cited and commented on is not readily available to the non-specialist.

Brundage's *Mediaeval Canon Law* has the more restricted aim, sketching the broad outlines of the canon law of the Western church down to the Protestant Reformation. The book deals first with the development of canon law from its roots down to the Middle Ages, culminating with Gratian and the schools of law of the twelfth to fourteenth century, and then shows its interaction with private and public life before turning to the courts and procedures and canonical jurisprudence. A final chapter comments on canon law and western societies.

Written lucidly, and with occasional flashes of good humour, *Mediaeval Canon Law* picks its way through the immense complexity of centuries and the variety and vagaries that the expectations of different societies produced. Despite the efforts of well-intentioned clerics, mediaeval canon law was never wholly monolithic, and how the scholars and legal advisers grappled with the requirements of their societies has much to teach us. The mediaeval lawyers, although often working with somewhat different presuppositions, were concerned with problems which remain with us. Given my own background, in Presbyterian Scotland with its own legal system distinct from that of England, I found particularly intriguing the discussion of the growth of concepts of legal personality, with the analogies of head and members and their interrelationships, together with the interaction of the theological concept of the church as the body of Christ. There were also extensive discussions of the power of the king and the concept of the rule of law which are precursors of the modern discussions of such matters. The modern company and the power of the state are two present-day problems which have long roots.

At the end of his book, apart from the bibliography mentioned above, Brundage provides in appendices two invaluable aids. The first is a short account of the Romano-Canonical Citation System. One needs to know this if one is to swim with any assurance in the deep and muddy waters of these materials, and it is good for the novice to have such matters so clearly set out. The second is a set of short biographical notes on the Major Canonists of the Classical Period. I dare say the periti might consider that superfluous, but again the purpose of the book in providing a general introduction, and a lure into such material, is well served.

Brundage does not wholly ignore the *ius commune*, but his dealing with it is restricted. The *ius commune* drew on both canon and Roman law, as well as to some extent on feudal law. Neither writer makes the analogy, but the *ius commune* is, as it were, the underlying geology, clearly manifested in the *utriusque iures*, and which is also to be detected in the *ius proprium*, the laws of individual legal systems, city laws, institutional laws and the like. It is not the 'common law' of Anglo-American tradition. Rather it provided concepts and analyses, principles and terminology which were found useful and convenient in the doing of justice across the centuries and through topography both legal and physical.

The Bellomo is a translation from the Italian. I have not the language ability to check the accuracy, but it does read very well indeed. Lydia Cochrane is to be congratulated. Although shorter by a number of pages, Bellomo's book is in a smaller type, and is more dense both in presentation and in data. It is directed to an exploration of both the formation and influence of the *ius commune*. It is, however, also directed to a thesis—that the *ius commune* has been hindered by the development of the continental codes in the nineteenth and twentieth centuries.

Bellomo starts with a discussion of the 'modern' move towards codes and argues that 'systematic' and 'dogmatic' responses to changing social and economic situa-

tions based on the exposition of the language of a code are dated, and exhausted. Thereafter he goes back to show through an examination of history how law was developed in Europe. Particularly interesting to myself as an academic is the chapter on the role of the University. Legal Science methods are also illuminating before we get on to the 'system of the *ius commune*' which takes twenty per cent of the book. Finally and more briefly 'In Time and Space' speaks of the *Secunda Scholastica* and the effect of doctrines of natural law. The book ends with the observation that the misrepresentations of the *ius commune* which are to be found in the proponents of codification could now be discarded. Indeed that will have to happen as we move towards (or back?) to the 'construction of a new European common law'. That thought is intriguing, particularly when read in a country which seems still to be wavering as to its place within that greater European tradition. Bellomo's exposition reveals much that attracts to participation.

Both books are, then, worth their price. They do different jobs, and do them well. For the expert they provide a useful and reasonably concise summary of their matter. For the novice they are good clear guides. My one slight cavil stems from the fact that as it happened, while I read them, I was also reading Sir Stephen Runciman's *The Sicilian Vespers*. As a result I feel that, although both authors make some reference to social and political developments contemporary with the times they discuss, perhaps a little more could have been done to set things in that context for the novice. But, probably such a novice would be better to obtain and read a general history before starting on either text. As Bellomo notes, law is not an autonomous science. Properly to understand it one needs to know its context.

But my point is minor. These books greatly assist our knowledge of the development of law, and, although we all travel 'back to the future', seeing where we have been will assist us to direct where we go. As Bellomo hints, we appear to be beginning to recover a *ius commune* in Europe, both through the European Union and through the European Convention on Human Rights. Decisions are being made in councils where the tradition of many is more firmly linked to the older *ius commune* than is that of England, and even Scotland. Their thought, principles and presuppositions are affected by it. We should know that tradition in order better to participate in that development.