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EDITORIAL

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To everything there is a season: even in the world of ecclesiastical law. But the patterns of national life and secular governance seem to affect the Church of England more than other faith communities. The current year will see elections for General Synod in readiness for a new quinqennium, but it will also see a general election for the Westminster Parliament. By the time this issue of the *Journal* is published a new government may well be in place, the political complexion of which is currently too close to call.

So the Spring of 2010 will be marked less by the traditional symbols of new life (bulbs, buds, lambs and ducklings) but by a wholesale clearing of the decks: a season of tidying up, finishing off, and throwing out. And with a focus on completion – and not innovation – there is a significant risk that initiatives may stall and work in progress may go into abeyance. The race is on to ensure that certain Measures secure Royal Assent before parliament is prorogued and Harriet Harman is fighting manfully [*sic*] to force through the Equality Bill in some form albeit battered with amendments on all sides.

Bob Morris, who will be a keynote speaker when the Ecclesiastical Law Society meets in Leeds from 8–10 April 2011 to consider high and low establishment has responded to my request for a debate within the pages of the *Journal* on the challenges for Church and State in the United Kingdom in the twenty-first century and I hope that his Comment piece will provoke further contributions. However, the frenzied atmosphere now current in the two Westminster villages (both the secular Houses of Parliament and the more spiritual Church House) with the pressing urge to complete projects within the limited lifespan of the institution obscures the enduring nature of the issues each is required to deal with. One such is immigration and asylum, a global political football. The law on immigration, as it engages with religion, is examined by David McClean, while Nicholas Coulton's researches demonstrate the superficiality of organs of the state in evaluating sincerity in the beliefs of others. The readiness of the Supreme Court to venture into matters of Jewish law and self-determination is discussed by Paul Barber in the wake of the *JFS* case; and in the unlikely event that the secular courts come to review the lawfulness of the Archbishops' guidelines on the receipt of communion in both kinds during the swine flu emergency, Colin Buchanan offers some Anglican observations. Similarly, at a time of challenge for the global Anglican Communion, Christopher Hill considers canon law and liturgy in relation to the personal ordinariate recently proposed by Pope Benedict XVI.

It is not yet clear whether there will be a Conservative manifesto pledge to revisit or rescind the Human Rights Act 1998, but the landscape of religious liberty has been irrevocably altered by the articulation of Article 9 in domestic jurisprudence and by careful judicial exposition of its extent and the balancing exercise between the right to freedom of religion and other rights which are perceived to be in competition – free speech, marriage, privacy and education for example. Topical consideration is given to this theme by Gideon Cohen, as well as Peter Cumper and Tom Lewis, whilst a particular Canadian perspective comes from Margaret Ogilvie.

Lecturing recently in South Africa, I found myself an unlikely apologist for the quirky anachronism of English establishment. Fashioned on the anvil of history, the legislative and judicial approach to religious freedom are the product of sweeping changes over centuries from persecution, through toleration, into accommodation, and it is now blossoming into a positive individual and collective right to religious liberty: what lies ahead is either secularism or pluralism or some amalgam of them both. South Africa, on the other hand, has a newly-minted constitution, a model of clarity and modernity. Justice Albie Sachs, I was reminded, commented on this when giving judgment in *Christian Education South Africa v Minister of Education*:[1]

> Given our dictatorial past in which those in power sought incessantly to command the behaviour, beliefs and taste of all in society, it is no accident that the right to be different has emerged as one of the most treasured aspects of our new constitutional order.

Only with a proper historical and social understanding of the place of religion in the public space can we seek to chart a course for the future. And the chance of new beginnings which we are afforded with the happy coincidence of a general synod election and a general Westminster election in 2010 provides an ideal opportunity.

Finally, I am delighted that a member of the Editorial Board of this *Journal*, Professor Richard Helmholz of Chicago University, whose reputation as a church historian and canonist is unrivalled, has accepted an invitation to deliver the 2010 Lyndwood Lecture in association with the Canon Law Society of Great Britain and Ireland. He will speak on the evening of Tuesday 23 November 2010 at Church House, Westminster. The title of his lecture is 'Legal Education in the English Universities, 1400–1650'.

1 2000 (4) SA 757, 18 August 2000.

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