(2007) 9 Ecc LJ 149–151 © The Ecclesiastical Law Society
doi: 10.1017/S0956618X07000300

EDITORIAL

Mark Hill

Any concern that the *Ecclesiastical Law Journal* might struggle to find sufficient material now that it is to be published three times a year, as opposed to twice, as had been the practice for the past twenty years, has proved wholly misplaced. There is no sign of any abatement of interest in the jurisprudence of the Church of England nor of religious organisations generally. Indeed, the *ius commune* of the Anglican Communion and the legal consequences of autonomous provinces co-existing through bonds of friendship provided for a lively and provocative residential conference of the Ecclesiastical Law Society in Liverpool in January. It was the ideal occasion to celebrate Cambridge University Press taking over the publication of the *Journal*, to take pride in its past and to articulate aspirations for its future. A review of this conference, together with summaries of other scholarly gatherings around the globe, is to be found in the regular conference reports section. Particular mention should be made of 'The European Union and the Religious Dimensions of Law', which was the theme of a gathering at Bristol University at its nascent Centre for the Study of Law and Religion, ably headed by Professor Malcolm Evans and Dr Julian Rivers.

As this *Journal* went to press the final chapter was being played out in the ongoing litigation in *Aston Cantlow Parochial Church Council v Wallbank*, which had commenced as long ago as 1995 by the issue of proceedings in the Stratford-upon-Avon County Court pursuant to the provisions of the Chancel Repairs Act 1932. The proceedings were then transferred to the High Court for the determination of a preliminary issue under the European Convention on Human Rights,[1] which was subsequently appealed to the Court of Appeal[2] and then appealed once more to the House of Lords.[3] Their Lordships found unanimously that there was nothing in the Human Rights Act 1998 to prevent a parochial church council recovering the costs of repair of the chancel from a lay rector upon whom such liability lay. All that remained was to evaluate in money terms the extent of that obligation. Such task fell to Lewison J, who on 5 February 2007 undertook the inquiry that the High Court had ordered take place some seven years earlier.

1 (2000) 5 Ecc LJ 494, Ferris J.
2 [2001] 2 All ER 363, (2001) 6 Ecc LJ 172, CA.
3 [2004] 1 AC 546; [2003] 3 All ER 1213; (2004) 7 Ecc LJ 364, HL.

In giving judgment, Lewison J rejected the contention advanced by Mr and Mrs Wallbank that the standard of repair required of a lay rector was merely to keep the chancel wind- and watertight. No authority for this proposition was advanced save for an entry on a website, which the judge held not to represent the law. Instead, Lewison J regarded the law as settled by *Wise v Metcalfe*,[4] in which Bayley J, giving the judgment of the court, held that:

> Upon the whole, we are of opinion the incumbent was bound to maintain the parsonage, . . . and also the chancel, and to keep them in good and substantial repair, restoring and rebuilding, when necessary, according to the original form, without addition or modern improvement . . .[5]

He also referred to the subsequent decision of Willes J in *Pell v Addison*,[6] which stated that 'the reasonable rule is, perhaps, to put the edifice into substantial repair, without ornament'.[7] Adopting the largely unchallenged evidence of the joint expert, Lewison J assessed the cost of putting the chancel into proper repair as £189,969 plus such value added tax as may be payable. This was more than double the sum of £95,000 originally sought when the proceedings were issued in 1995 and reflects the deterioration on the condition of the chancel in the interim. The lay rectors were also ordered to pay the costs of the inquiry.

Certain elements of the media were critical of the parochial church council for enforcing the liability, even though Mr and Mrs Wallbank conceded that they had knowledge of the liability at the time they acquired the property, and rented it out on a commercial basis. Perceptions of the church militant may not always be entirely rational. For example, the European Court of Human Rights recently had to consider the status of the Salvation Army.[8] The court held that its dissolution in Russia violated both Articles 11 and 9 of the European Convention on Human Rights:

> A refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association . . . [and] where the organisation of the religious community is at issue, a refusal to recognize it also constitutes interference with the applicants' right to freedom of religion . . .[9]

4 (1829) 10 B&C 299.
5 Ibid, at 316.
6 (1860) 2 F&F 291.
7 Ibid, at 292.
8 *Moscow Branch of the Salvation Army v Russia*, App No 72881/01, ECtHR, 5 October 2006. I am grateful to Professor Cole Durham of Brigham Young University for bringing this decision to my attention, whilst we were in Oslo in December 2006.
9 Ibid, para 71.

The Strasbourg court rejected the claim that the Salvation Army was an impermissible paramilitary organisation. It was not open to state officials to evaluate the fact that it chose to use ranks similar to those in the military and to wear uniforms: 'the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the state to determine whether religious beliefs or the means to express such beliefs are legitimate'.[10] Furthermore, there was no evidence that the Salvation Army 'advocated a violent change of constitutional foundations', threatened to undermine 'the integrity or security of the State' or had ever been engaged in unlawful conduct of any kind'.[11]

So religious affairs and ecclesiastical courts remain in the news. This issue reproduces the text of the Lyndwood Lecture delivered in St Paul's Cathedral in November 2006 by the Bishop of Sodor and Man, reflecting upon problems faced by religious organisations as involuntary custodians of large parts of the nation's heritage, and includes an expanded version of the presentation made by Adriana Opromolla to the Ecclesiastical Law Society's 2006 conference, giving a catholic perspective on law, gender and religious belief in Europe. These issues received much publicity as the Archbishop of Westminster, Cardinal Cormac Murphy-O'Connor sought an exemption for catholic adoption agencies from sexual-orientation discrimination legislation. He failed. Tensions such as these would become more acute were Turkey to accede to the EU, and Rosella Bottoni's timely contribution explores the origins of secularism in that country. Religious hate speech is tackled by Anthony Jeremy with some practical reflections on the Racial and Religious Hatred Act 2006.

The Comment section includes Frank Cranmer's explanation for the reorganisation of the governance of the Society of Friends in the light of provisions of the Charities Act. Also in this section is a particularly welcome response and rebuttal from Stephen Slack to my previous Editorial[12] in which I bemoaned the erosion of the autonomy of the Church of England cunningly effected by the Civil Partnership Act 2004. The *Journal* would welcome further comment and correspondence from readers in response to the views expressed within its pages. There is much to discuss and plenty of room for debate.

10 Ibid, para 92.
11 Ibid, paras 92–96.
12 (2007) 9 Ecc LJ 1.

https://doi.org/10.1017/S0956618X07000300 Published online by Cambridge University Press