

It is probably unfair to complain that there is not a fuller examination of the place of custom in modern English canon law. This is a most elusive subject and the editors in self defence say that the book is an Introduction and not a Treatise. Yet it is arguable that the doctrines of custom and its counterpart, desuetude, have a place in canon law distinct from their operation in the common law. At common law rights are not lost because they are not exercised nor gained by the forbearance of others. In canon law what is lawful and canonically regular may depend on what is customary.

The editors may in a future edition have to come to terms with the limits of judicial review in relation to the courts of the Church of England and the commissions set up under the Care of Cathedrals Measure 1990. It has recently been held in an unreported case that, notwithstanding the decision in *R v Chancellor of St. Edmundsbury and Ipswich ex parte White* [1948] 1KB 195, consistory courts are amenable to judicial review. It remains to be seen whether disgruntled parties will have recourse to this method of calling into question the decisions of ecclesiastical tribunals. At present it may be too soon to know what the limits to the exercise of this jurisdiction will be but the subject will undoubtedly merit some discussion; in the present edition it is not mentioned.

These are all criticisms of detail. The work remains a valuable statement of the canon law of the Church of England which is just as much part of the law of the land as the common law or the statute book. For that reason the book should find a place in every law library in all places of learning and practice of the law.

*THIS HOUSE I HAVE BUILT*

*A STUDY OF THE LEGAL HISTORY OF ESTABLISHMENT IN ENGLAND*

Two Volumes: Vol. 1 Lay Authority and Reformation in the English Church, Edward I to the Civil War.

Vol. 2 Law and Modernisation in the Church of England, Charles II to the Welfare State.

By ROBERT E. RODES Jr.

The University of Notre Dame Press, Vol. 1 1982, Vol. 2 1991.

Vol. 1 1982 i-xii + 319 pp. (Hardback £29.95)

Vol. 2 1911 i-xiii + 497 pp. (Hardback £33.95)

A review by The Right Reverend Eric Kemp, Bishop of Chichester

These two volumes follow on from an earlier work by Professor Rodes called *Ecclesiastical Administration in Medieval England*, a title which is self-explanatory. In the two volumes under review Professor Rodes, to use his own words, takes 'up the operation of the lay power that impinged on the church's jurisdiction in the Middle Ages, and took possession of it at the Reformation.' His aim is to show the juridical, and some aspects of the ideological, forms in which all this took place.

The first volume shows how developments of royal authority and conflicts between it and the church in the fourteenth and fifteenth centuries prepared the way for the Henrician revolution which produced the Tudor and Caroline forms of Establishment. More than half the space is taken up by the chapter called *By Law Established* which contains a thorough and detailed account of the problems which arose and the attempts made to deal with them.

The first chapter of the second volume begins with the Restoration of the Monarchy and covers the century and a half during which affairs were conducted on the principle that nothing had substantially changed in the basis of policy and administration. The author then moves on to the very different outlook which resulted from the recognition of religious pluralism and the financial and administrative changes which followed in the nineteenth century.

The fourth chapter of this volume deals with the doctrinal and ritual conflicts of that century, leading to the final chapter which is called *The Quest for Autonomy* and looks at the changes of the last forty years which have made big inroads into the State control of worship and of appointments.

Professor Rodes is an American and a convert from Anglicanism to Roman Catholicism. Nevertheless he handles the vast mass of detailed, complicated and often controversial material which forms the subject of his study with great sympathy, sensitivity and understanding. It were to be wished that all who talk about Establishment today showed a similar understanding of what it is.

There is no other work which covers this extensive field so thoroughly and illuminatingly. It should be required reading for all ecclesiastical lawyers, all bishops and all archdeacons for it will give them that understanding of the past which is necessary for right judgment in the present.