

*TUDOR CHURCH REFORM: THE HENRICIAN CANONS OF 1535 AND THE REFORMATIO LEGUM ECCLESIASTICARUM* edited by GERALD BRAY, Church of England Record Society, volume 8, Boydell & Brewer, Woodbridge, Suffolk and Rochester NY, 2000, clx + 892pp, incl. Indexes (£70) ISBN 0 85115 809 9. ISSN 1351-3087.

Gerald Bray's first contribution to the publications of the Church of England Record Society took the form of *The Anglican Canons 1529–1947*, an edition of the canons of the Church of England, and the Anglican churches within Scotland and Ireland, from the time of the Reformation to the reforms of English canon law following the Second World War. It was a considerable work, which your reviewer was, subject to some limited criticisms, pleased to welcome warmly (5 Ecc LJ 373–375). Omitted from that volume were the proposed canons prepared but never brought into force and effect under Henry VIII in 1535 and the text of a major recension of English canon law prepared but again never promulgated at the close of the reign of Edward VI, namely the *Reformatio Legum Ecclesiasticarum*. The inclusion of these items would have virtually doubled the size of the original volume which ran in any event to almost a thousand pages, a length which this, its successor, exceeds. Both of those texts are now published in a critical edition by Professor Bray, an edition which provides the text of both compilations in Latin and English, seeking by its typeface to reveal where the works rigorously followed canonical precedents, where they followed them in principle but not in detail, and where they innovated. Footnotes reveal the sources from which the texts were derived, and the work comes complete with elaborate indexes setting out the relationship between the two texts, the Scriptures, other sources of canon law including the writings of the leading medieval canonists, the *Corpus Iuris Civilis*, and English legal sources. The whole is admirably presented in this the eighth volume from the Church of England Record Society.

In his very substantial introduction to the texts, Professor Bray considers the background history to both compilations, the methodology employed by the compilers, the reasons why the texts never passed into law and their subsequent history and influence with the Church of England. With regard to the Henrician canons, he notes that they were in the main the work of a drafting committee of four men, each learned in the canon law. These were Dr Richard Gwent, Edward Carne, Dean John Oliver and John Hewys. All of these men were members of Doctors' Commons and, your reviewer cannot help remarking, all were either from Wales or from just over the as yet undefined border between Wales and England (John Oliver being from what was to become Herefordshire in the Welsh Marches). There is as yet no explanation of why so many Welshmen chose to practise within the civilian jurisdictions during the sixteenth century, albeit fairly obvious that their education and careers followed upon the Tudor ascent to the English throne. The four-man team drew upon sources derived from the *Corpus Iuris Canonici*, the *Corpus Iuris Civilis* and more local English sources, but they noticeably departed from the traditional order in which canonical texts were constructed—*iudex*, *iudicium*, *clerus*, *connubium*, *crimen*—in favour of their own scheme. They were also prepared to innovate where there were loose ends to be tied up, for instance in stating that marriages between persons related in the direct line were prohibited regardless of the degree of relationship, and even with regard to details such as that where the parties to a marriage were resident in different parishes, they were bound to marry in the bride's parish.

The larger of the two texts however is the *Reformatio*. It differs from its Henrician predecessor in that it uses the sources upon which it is based much more loosely, treating them according to Professor Bray as precedents and being prepared to

change them to suit the compilers' own designs. Professor Bray suggests, however, that these changes may not have been quite so radical as has sometimes been assumed, at least with the exception of matters of doctrine, where the needs of the English Reformation made for change, and in the area of marriage and divorce. Professor Bray's introduction revisits his fascinating account of the history of the *Reformatio* written as his contribution to *English Canon Law*, the *Festschrift* for Bishop Eric Kemp edited by Norman Doe, Mark Hill and Robert Ombres (Cardiff, 1998). Having been rejected by Lord Protector Northumberland at the close of Edward VI's reign, the work was unsurprisingly shelved under the Catholic regime of Mary, and achieved little more popularity under her sister Elizabeth. Despite a brief revival of the work's fortunes at the start of the Commonwealth period, when many of its perspectives found favour with the Puritans, it failed to find favour once again after the Restoration. After being passed off somewhat as an authority of convenience by Edmund Gibson when it suited his purposes in his *Codex Iuris Ecclesiastici Anglicani* (1713), it became the *bête noire* of opponents of the secularisation of the marriage laws and the introduction of civil divorce in the middle of the nineteenth century. Professor Bray does much to restore the balance between the rather sensational manner in which its matrimonial content has been received and the many other merits which deserve recognition within the work as a whole.

The introduction is interestingly and entertainingly written, dealing with the manuscript tradition, the history of the respective works in English canon law and reviews of their contents. Regrettably, the editor persists in refusing to refer to statutes by their short titles, preferring regnal year and chapter number, and is at his least happy, surprisingly given his subject, when relating matters concerning classical and medieval civil law. It is odd in the extreme to read that study of the *Corpus Iuris Civilis* revived in the fifteenth century, albeit that that title for the Emperor Justinian's compilations became current about then, and it is equally odd, in a book which refers to the works of the civilian commentators of the fourteenth century, to read that the reception of Roman law was a post-1450 phenomenon. In writing of divorce in Roman times, Professor Bray does not distinguish between repudiation of one spouse by another, which the Church sought to limit, and divorce which was by consent, a distinction which is germane to his arguments. It is decidedly odd to read that for the Romans adultery was a crime 'like any other felony' and that for them divorce was 'just the dissolution of a marriage and was more about the restitution of the dowry than about punishment in the usual sense', a statement the conclusion of which baffles your reviewer. Likewise, protection of the family's right to inherit under Roman law is confused with the Falcidian quarter, which was introduced to protect the inheritance of heirs, who might be persons completely unrelated to the deceased.

Despite these worrying aberrations, the publication of this edition of the Henrician canons and the *Reformatio* is greatly to be welcomed. It and its predecessor will become indispensable aids in the library of Anglican canonists and historians of canon law. Professor Bray is once more to be congratulated on the fruit of his labours.

Thomas Glyn Watkin, Professor of Law, University of Wales, Cardiff

*CHURCH, STATE AND ESTABLISHMENT* by PAUL AVIS, SPCK, 2001, xii + 100 pp (£8.99) ISBN 0281054045

One hundred and seventy years have passed since Thomas Arnold pleaded for a Church that is 'thoroughly national, thoroughly united, thoroughly Christian'. It is