

Corecco is now in a position to consider Catholic theology, and he begins with an account of the ideas of A. M. Rouco Varela, a long-standing friend and collaborator, now Archbishop of Santiago de Compostela. Corecco's own ideas are rich and rewarding, if somewhat compressed. Consideration of some remarks on p. 147 and p. 138 will perhaps take us to the heart of his vision. Canon law, he states, must be defined as *ordinatio fidei* (rather than the Thomist *ordinatio rationis*) because it is not produced by any one human legislator but by the Church, whose decisive epistemological criterion is faith and not reason. The Church's human rationality remains intrinsically informed by faith, because the Church's function is not merely to produce a juridical order that is compatible with the philosophical concept of justice, but to produce an order derived from the theological notion of *communio*. Grace inserts the person in a new relationship with God and with other people. There comes about a new and specifically ecclesial modality of the *ius divinum*, the root of a visible sociality different from all forms of merely human sociality.

It should have emerged by now, just how challenging and exalted are Corecco's theories on canon law. Over the years his ideas have been discussed and debated, ranging from the jottings of L. Martini and A. Ippoliti, to be found in *Legge e Vangelo* (1972), to the book *Theology and Canon Law: The Theories of Klaus Mörsdorf and Eugenio Corecco* (1992) by M. Wijlens. The English edition under review misses the opportunity to bring the work fully up to date; even in terms of Corecco's own thinking. A presentation of this kind should have given more indications of what is the irreducible content of canon law, and discussed in some detail the kind of authority appropriately to be claimed by canon law. After all, Corecco maintains that law has always been considered an indispensable condition for salvation.

FACULTY JURISDICTION OF THE CHURCH OF ENGLAND

By G. H. NEWSOM and G. L. NEWSOM
Sweet & Maxwell, London, 1993, 2nd edition, xxxiv + 334 pp.
(Hardback £50)

A review by The Reverend R. D. H. Bursell, Q.C.
Chancellor of the Dioceses of Durham and St Albans

Neither author requires an introduction to members of this society and the late G. H. Newsom was, of course, the doyen of the faculty jurisdiction. It is therefore no surprise that this book is already a classic. Indeed it is indispensable for anyone with any interest in, or connection with, the faculty jurisdiction (including chancellors, although they are modestly omitted from the list of those for whom the Preface suggests it to be 'normal equipment': see p.x). In his forward the Archbishop of Canterbury rightly commends this book 'to all concerned, church wardens, diocesan officers, chancellors, bishops and national amenity societies alike'. Nevertheless it may be doubted whether the hope expressed in the Preface will be fulfilled, namely, that 'a copy of this edition will be seen by each and every parochial church council in England, and that it may

readily be at the disposal of the incumbent and churchwardens'. It certainly ought to be fulfilled – but how many parishes can afford the large outlay involved? In these circumstances was it really necessary for the second edition to be issued in hardback? My own much thumbed copy of the first edition is still intact in spite of being in softback.

The layout of the book remains clear, logical and attractive even to those making their first venture into this field.¹ The Introduction particularly is an improvement upon that in the first edition. In fact the whole book is full of wisdom (see, for example, p. 33 on temporary re-ordering) and learning; without it the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and the rules made under it would be even more daunting.

The learned authors are, of course, right to remind chancellors not to enter into the arena during a hearing (see p. 82) but all too frequently it becomes necessary for chancellors to assist unrepresented parties to present their cases and to examine witnesses. I, at least, would therefore have been grateful for more guidance in these circumstances, especially as it is possible that the consistory court (like the lay courts) may be moving slowly towards a more interventionist approach. For the same reason common lawyers may query whether 'the practice of the Chancery Division' (see p. 80) is necessarily the most convenient!

I also regret that further consideration is not given to what may become a major problem, namely, the position of the archdeacon on the D.A.C. (see p. 24) and his duty to decline to exercise jurisdiction 'where he has been personally involved with the petitioners in relation to the subject matter of the petition or otherwise to such extent that he deems it inappropriate to act in the matter' (see rule 7(1)(b)). It is my own view that the clause 'to such extent. . .', etc. only governs the words 'or otherwise' and does not govern any personal involvement. The wording of the rule is not felicitous but any other interpretation would run contrary to the rules of the natural law. Thus, wherever the archdeacon has had *any* personal involvement, other than merely procedural, he should decline jurisdiction.

It would also have been helpful to have had a reference to the requirements for planning permission in relation to some church notice boards. Far more disappointing, however, is the fact that there is only one reference to the citation of a case in the *Ecclesiastical Law Journal*. This omission is inexplicable and detracts from the utility of the book as a whole. Where else, for example, will one pick up such a case as *St Leonard, Middleton* (1989) 2 Ecc LJ 64 on the laying up of flags and standards? Moreover, *Re St Michael & All Angels, South Westoe* is not unreported (see p. 3, footnote 3) but is reported at (1990) 2 Ecc LJ 130. Lastly, it is a pity that there is no table of canons and that the index is rather limited; this is especially so when the book is aimed in part at those who are not themselves lawyers and therefore the more reliant on such matters.

Nevertheless, none of these comments should be seen as detracting from the enormous scholarship and worth of this book. To write the first edition from scratch was a tremendous task. The second edition is not only an improvement on the first but deals with all the new law with a clarity and lightness of touch which can only be admired. Thankfully, too, those who have the privilege to remember

1. It has relatively few misprints and errors. Those wishing to correct their copies will find a note at the end of this review.

the sole author of that first edition will smile at the flavour and wit that still shine through: 'Gift horses to a church should always be looked in the mouth, and no gift, however well intentioned, should be introduced without a faculty.' (see p. 126).

Annotations

The inaccuracy at p. 3 as to trees and s.6(1) is corrected at pp. 179 *et seq.* At p. 38, footnote 78, the reference should be to s.31(1); the last sentence of footnote 78 and footnote 79 should both be deleted (cp) footnotes 80 and 81. Page 46 should refer to rr. 14(1) and 22(1) of the new Rules and not to 'rule 10(2) of the F.J.R. 1967' which has been revoked. At p. 64 the reference should be to s.24 of the C.C.M. (*quaere* also whether this is technically a repeal, although it is so called in the marginal note). The apparent view as to not waiting for the D.A.C.'s advice at p. 68 is corrected, no doubt properly, at p. 69. In line 5 of p. 85 'agreement' should read 'disagreement' and line 6 of p. 91 should read 'so essential'. Pages 201-203 should read 'EJM 1963'. There has been a third edition of *The Churchyards Handbook* since 1988.

DAVIES' LAW OF BURIAL, CREMATION AND EXHUMATION

Sixth Edition by DAVID A. SMALE
Shaw & Sons, Kent, 288pp. (Paperback £29.95)

A review by George L. Newsom, Barrister

The first edition of this book was published in 1956. It is now a standard work of legal reference for those professionally concerned with the administration of burial and cremation. David Smale, a former Superintendent and Registrar of Cemeteries, Crematorium and Mortuary Services, Brighton, was thus well placed to edit this edition. His task was to incorporate changes in law and practice since the previous edition published over a decade ago.

The readership of "Davies' " is plainly not intended to be confined to members of the Institute of Burial and Cremation Administration, of which David Smale is a past president. Typical of the practical character of this book is an appendix giving details of several organisations and others associated with the book's subject matter. These include the British Institute of Funeral Directors, the National Association of Funeral Directors, the Cremation Society of Great Britain, the National Association of Memorial Masons, and H.M. Inspector of Anatomy. The Ecclesiastical Law Society is not among those listed, but members of the society would find it a useful work of reference when researching or applying the subject.

This edition is arranged in four parts: the first three are entitled respectively Funeral Arrangements, Burials, and Cremation. The fourth covers exhumation and disused burial grounds.

Earlier parts of the book explain the various certification and registration procedures following death. Many associated subjects are mentioned and considered: these include the removal of organs for medical purposes, reports to the coroner, notifiable diseases, and rights and responsibilities in relation to the deceased's body and in relation to funeral arrangements and expenses. As befits a work which is likely to be consulted by many who do not have a law library to