

*MOORE'S INTRODUCTION TO ENGLISH CANON LAW,
THIRD EDITION*

By TIMOTHY BRIDEN and BRIAN HANSON
Mowbray 1992 176 pp. (Hardback £35 Paperback £14.99)

A review by Quentin Edwards QC

Every member of the Ecclesiastical Law Society will welcome with gratitude the third edition of *Moore's Introduction to English Canon Law*. He or she can now confidently reply to any enquirer who asks 'What is English Canon Law?' – 'Read the up-to-date *Moore's Introduction* and you will know your way about the subject'.

The book, when first published in 1967, filled a gap which had existed for many years – since, indeed, the last edition of Watson's *Clergyman's Law* was published in the eighteenth century. There simply was no primer in the subject, only the large practitioners' works of Phillimore and Cripps.

To call the work a primer may be thought slighting though it is not so intended. The book is full of the wisdom of its first author, Garth Moore, a most distinguished ecclesiastical lawyer and priest. I regret that the two editors of the third edition have not written an editors' preface to let readers know what they have excised and what added. Both have, figuratively, sat at Garth Moore's feet, Timothy Briden as a pupil of Moore in the profession of the law and Brian Hanson as Secretary of the Legal Advisory Commission of the General Synod when Garth Moore was its Chairman. Both editors are themselves distinguished ecclesiastical lawyers and they owe the readers of a book they have edited their own observations on the work. As it is, only owners of the earlier editions will know which parts of the interesting *Introduction* are theirs and which are Garth Moore's.

The book is, as it always was, much more than a legal textbook. Garth Moore said in the *Introduction* that a canonist can 'never be simply a lawyer; he must always be in some measure a theologian and he will frequently require the assistance of historians'. There is much in the work which reflects that approach to the subject, particularly in the chapters on worship and doctrine. Garth Moore was interested in the doctrine of necessity which is discussed in several passages in the book. On p.58 it is said that the doctrine is 'known to all branches of the law of England', and it is that doctrine which 'justifies the surgeon in committing what is *prima facie* a crime when, for health of the patient, he plunges his knife into the abdomen in order to remove a troublesome appendix'. The width of this proposition is questionable: the recognition of the doctrine of necessity by the canon law is one of the distinctions between the canon law and the common law. As I understand the common law the justification for the doctor in the instance given is the consent of the patient and, in the case of the unconscious, presumed consent. It is a weakness of the common law that it has no developed doctrine of necessity. A person cannot justify a trespass to land on the ground that he was helping the owner by putting out a fire. The common law does not acknowledge the true justification for what would otherwise be a trespass to the person during medical treatment, namely the fellowship of man. Because mankind lives in societies and we are all dependent upon and have mutual obligations and expectations, one to another, medical treatment even to someone unconscious or, in an extreme case, withholding consent, is justifiable.

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.

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

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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.