

adversaries in a conflictual legal process.

Given that it is the product of a PhD thesis it is a surprisingly readable book. The footnotes are footnotes rather than endnotes and you can choose to read them or not depending whether you feel the need to know which church can possibly have behaved in the way described in the text. Who will benefit from reading this book? The answer has to be anyone who is concerned with disputes between Christians: Bishops and Senior Staff who may want to give thought to setting up a diocesan policy and training people to act as mediators; Chancellors and Registrars who may feel able to suggest to potential petitioners that there might be alternative ways of resolving some disputes; and any Christian people who have become embroiled in a conflict and want help in resolving it.

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THE CANON LAW AND ECCLESIASTICAL JURISDICTION FROM 597 TO THE 1640s by R H HELMHOLZ, [THE OXFORD HISTORY OF THE LAWS OF ENGLAND volume I], Oxford University Press, 2004. xxxii + 693 pp (hardback £125) ISBN 0-19-825897-6

In 1888 Maitland gave his celebrated lecture 'Why the History of English Law is not Written'. He and others, not least Holdsworth, made excellent contributions towards writing that history, and under the general editorship of Sir John Baker a whole series of volumes on the history of the laws of England has just started publication. In 1984 Charles Donahue lectured to the Selden Society on 'Why the History of Canon Law is not Written'. As far as England is concerned, Professor Richard Helmholz has now built on his own distinguished researches and those of others to publish a history of canon law, in the series edited by Baker, that is truly monumental and accomplished.

To appreciate the scale of Helmholz's achievement, one need only recall what Donahue thought were the failings of existing general histories of canon law: they did not take sufficient account of the unpublished sources, they dealt hardly at all with the practice of the ecclesiastical courts, and their focus on the history of institutions made them something different from the history of canon law. Helmholz has now set standards for legal historians of other countries and of canon law in general. He admits to approaching the history of English ecclesiastical jurisdiction with four convictions: the study of the implementation of the law of the church, as shown in the court records, is worthwhile for a historian interested in the *ius commune*; the jurisdiction of the English ecclesiastical courts will be best understood by taking account of the Roman and canon laws, as found in the medieval jurists; the history of ecclesiastical law in England should be treated as part of the history of the canon law in the Latin church as a whole; it will be profitable to be conscious of possible links with the English common law.

Guided by these shaping convictions, Helmholz divides his volume into two parts of almost equal length. The first part consists of chapters 1 to 4 and deals with the history of canon law, paying special attention to England. Chapters 5 to 12, the second part, deal individually with the kinds of litigation that came before the spiritual tribunals. Even a large work on a vast subject involves selectivity and exclusion—but Helmholz's *Canon Law and the Law of England* (1987) and *The Spirit of Classical Canon Law* (1996) make good companion volumes to the history under review. Although Helmholz is at home in historical research and aware of theological implications, he writes primarily as a lawyer; no doubt sharing Maitland's aim to 'stick to our legal last'.

The first part, then, unfolds the story from the Anglo-Saxon church to the Elizabethan settlement and the abolition of episcopacy, covering more or less the millennium that goes from 597 to the 1640s. A characteristic feature of Helmholz's methodology, shown throughout this volume too, is the asking of carefully framed questions and the giving of answers that do not stray far from the available evidence. He thus comments that, in the time before the Norman Conquest, England cannot be described as a centre of canonistic activity of even the modest level of production attained elsewhere, yet paucity of production does not preclude widespread *use* of the collections and probably this is the more important question to ask. Helmholz also likes to enumerate points, and to use short sentences, making for ease of comprehension and facilitating evaluation and assessment. His second chapter records the many changes that occurred between 1066 and 1300, none being more salient than the rise of the procedural system characteristic of the *ius commune*. Unwilling to adjudicate on the wisdom of a change that could be described better as the rule of law than the rule of lawyers, Helmholz restricts himself to drawing out connected points of lasting consequences. The third chapter presents the period from the thirteenth century to Elizabeth I's accession as a time of stability, and Helmholz gives an account of it free from polemic even though it involves topics (for example, provincial and diocesan legislation, custom, the extent of papal jurisdiction) made familiar by 'the Stubbs-Maitland' dispute. Helmholz's general evaluation is reliable if negative: there had been a promising start, as with the Anglo-Norman canonists, yet it is very striking that the medieval English universities produced so few canonists and civilians of note. Chapter 4 ends with the 1640s, attacks on the spiritual courts and the larger system of episcopacy being related objectives for the Puritan and Parliamentary cause, yet Helmholz does not let the outcome blot out the evidence of upsurge in the preceding century.

The second part of Helmholz's volume contains masterly chapters on civil procedure and the law of proof (ch 5); monetary obligations and economic regulation (ch 6); testamentary law and probate jurisdiction (ch 7); tithes and spiritual dues (ch 8); churches and the clergy (ch 9); marriage and divorce (ch 10); defamation (ch 11); and crimes and criminal procedure (ch 12).

The advantages of legal history being written by lawyers are evident from these chapters, as is the necessity of a good grounding in the universal canon law and English secular law if the canon law operative in England is to be accurately assessed. Only a few scattered indications can be given here of these accomplished pages. By the thirteenth century the ecclesiastical procedural system was quite distinct from that of the royal courts, noteworthy being ecclesiastical reliance on judicial evaluation of evidence produced by the parties rather than on the verdict of juries. Whatever the common law rule, in reality the English ecclesiastical courts came to exercise a very considerable jurisdiction over promises coupled with an oath; whilst, however puzzling, the church's jurisdiction over succession was real and extensive. As we would expect, canon law was much concerned with the clergy and churches, but the laity too were within its scope, and if tithes (close to an 'income tax') were the greatest financial burden on the laity there were also other spiritual dues. In the area of marriage and divorce, study of actual legal practice has altered the received picture in important ways, and of course it is in precisely this area that Helmholz made his first major contribution with the publication of his revised doctoral thesis in 1974 (*Marriage Litigation in Medieval England*). The chapter on defamation begins with the intriguing observation that spoken words gave rise to the great majority of causes heard by the late medieval English ecclesiastical courts, and it expresses puzzlement over the regular presence of defamation litigation in England. As for crimes, it was all but inevitable that the church should take a hand in their public repression.

Helmholz offers no general conclusions on the thousand-year history he has recounted. My conclusion is that the one person best qualified to write this history has done so—it is a lasting achievement.

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THE 1917 PIO-BENEDICTINE CODE OF CANON LAW: IN ENGLISH TRANSLATION WITH EXTENSIVE SCHOLARLY APPARATUS translated and edited by EDWARD PETERS, Ignatius Press, San Francisco, 2001, xlvii + 777pp (hardback, £38.95) ISBN 0-89870-831-1; and *TABULÆ CONGRUENTIÆ INTER CODICEM JURIS CANONICI ET VERSIONES ANTERIORES CANONUM: WITH A MULTILINGUAL INTRODUCTION* compiled by EDWARD PETERS, Gratianus Series, Wilson & Lafleur, Montreal, 2000, lix + 198pp (paperback, ring-bound Can. \$34.95) ISBN 2-89127-500-4

The 1917 Pio-Benedictine Code of Canon Law is the first ever English translation of the *Codex Juris Canonici* of Pope Benedict XV to be published despite its having been abrogated as law since 1983. So has this book missed its mark by 18 years or is it aimed purely at the legal historian? I suggest that the answer to both these questions is no.