

CONFERENCE REPORTS

THE EUROPEAN CONSORTIUM FOR CHURCH AND STATE RESEARCH

OVIEDO, NOVEMBER 2003

DAVID McCLEAN QC

Chancellor of the Dioceses of Newcastle and Sheffield

The ancient city of Oviedo lies between the Cordillera Cantábrica and the sea. Not exactly a plain, but the rain in Spain appeared to be concentrated there during the annual meeting of the European Consortium for Church and State Research in November 2003. Members took comfort from the 18th century splendours of the Hotel de la Reconquista, a national monument in which the meeting was housed.

Traditionally, the annual Consortium gatherings are devoted to the exploration of a theme, commonly on the basis of national papers, and it is possible to report to colleagues in England some findings of a comparative law nature. The 2003 meeting had a comparative component but was also devoted to considering the future of a very successful but inevitably ageing group to ensure that it continued to make a significant contribution to the international discussion of Church and State issues.

The comparative theme was on the teaching (in universities and elsewhere) of Law and Religion issues, and took place on the basis of regional surveys, the authors of which sought to synthesise input from individual national commentators. That proved a difficult process to operate and the overall exercise was only partially successful. A contributory factor was the pervading ambiguity of the field of study being described. Was it Canon Law? If so, the teaching of the subject was concentrated in the Mediterranean countries, in Catholic seminaries and Pontifical Institutes. Or was it *Staatskirchenrecht*, the law on the relationship between Church and State? That could now feature in Human Rights courses, if only in one lecture on the Freedom of Conscience article of the European Convention on Human Rights, as well as in some traditional Constitutional Law courses. Or was a similar area approached via the concordats, with the status of treaties under International Law, between individual countries and the Holy See? Or, indeed, did it embrace ethical and philosophical issues which could well be taught in any faculty, and not necessarily those of Law or Theology?

Two things can be said with confidence. The first is that there was repeated acknowledgment of the excellence of what is done in the Centre for Law and Religion at Cardiff under Norman Doe's leadership. The tributes were all the more impressive given Norman Doe's absence from the meeting: they were no mere courtesy. Only the Centre 'Société Droit et Religion en

Europe' at the Université Robert Schuman in Strasbourg is seen as in the same league, and that may have a narrower focus. The Cardiff Centre, like this Journal and the Ecclesiastical Law Society itself, covers the whole area with a typically British pragmatism which eschews sterile debates about legal categories.

The second point is that many of our continental colleagues have a fairly fixed understanding of the appropriate field for study. This is illustrated in a remarkable publication of the European Consortium, the so-called *Code Européen Droit et Religions*, published by Giuffrè of Milan in 2001 and the brain-child of Salvatore Berlingò, one of the leading Italian scholars. Volume I of a projected series reproduces, in French and without annotation or commentary, a selection of constitutional texts and statutory material from the European Community and from France, Greece, Italy, Spain, and Portugal. In 650 pages of small print, we have material on freedom of religion, '*assistance religieuse*' (which covers chaplaincy provision in the armed forces, hospitals, prisons and schools), the status of ministers of religion (e.g. their inclusion in social security arrangements), relevant aspects of matrimonial law, and agreements between governments and the churches (whether the Concordats or the related agreements with non-Catholic Churches). The editors have been able to apply that scheme in each country, although there are some special features such as the twenty-six pages of material on the status of Mount Athos.

Coming from England, with its particular church history and its particular style of higher education, I find it difficult to know what to make of that book. It does gather together some material which would otherwise need some searching for, but it is difficult to see it as the basis for an interesting programme of study. How many students would have their interest in ecclesiastical law excited by five pages setting out the text of the French Law of 15 November 1909 concerning the pensions of ministers of religion in Alsace-Moselle, their widows and orphans? It is a reflection of differing assumptions that colleagues in Northern Europe, which a second volume might cover, are proving notably reluctant to contribute equivalent material.

The Consortium is undertaking a study of what might be called 'continuing education' in Church and State matters, through Master's courses such as that in Cardiff, short residential courses at various centres, etc. There is clearly a sense that the issues have a current, and growing, importance but are in danger of being 'squeezed out' of university and theological courses; and we in the United Kingdom can readily identify with that.

I can report the appearance of two other Consortium publications which might well have greater appeal to readers of the Journal. One contains, rather belatedly, the papers of the 1999 meeting on *Social Welfare, Religious Organizations and the State* (published by Giuffrè of Milan, 2003). As its editor, Inger Dübeck of Denmark, observes, there is a sense in which the crisis of the Welfare State in many countries has given the voluntary sector a new, or perhaps better a restored, importance in the 'welfare mix'.

Much of this work is church-related, the nature of the relationship being influenced by the legal framework. The volume is a survey of the relevant law in each EU country, with statistics on the scope of charitable activity where these are available. In view of more recent developments, the words of Axel von Campenhausen seem prophetic:

The credibility of the churches, not least in labour law provisions, ultimately depends on the extent to which the convictions and commitment of church staff are sufficient and able to endow a church facility with a special character. Here the churches face a challenge, which will possibly affect the organisation of Christian diaconia and charity much more strongly than the money issues.

On this score, great dangers threaten from the European Community, which of course has no mandate regarding church-state legislation. Through its profane economic view of things, however, it constitutes a danger to the work of private bodies when suddenly church regulations which seemed a matter of course [i.e. those requiring employees to share the ethos of the church] are interpreted as a restriction on a naturally free labour market, instead of being understood as the exercise of the basic rights of adherents of a religion and their religious communities.

The second publication is the first in the Consortium's Law and Religion Studies. This is *Law and Religion in Post-Communist Europe* (edited by Silvio Ferrari and W Cole Durham, and published by Peeters of Leuven, 2003). Those who know Gerhard Robbers' *Church and State in the European Union*, which is shortly to appear in a second edition, will recognise a similar format: the new book surveys in English church and state issues in Albania, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Russia, Serbia, Slovakia, Slovenia and Ukraine. Well-produced and with full references, this gives a wealth of information not only about the law but about the state of the churches in countries many of which are about to become fellow-Member States of the European Union.

Gerhard Robbers, whom many members of the Society met in Durham last year, is president of the Consortium for 2004. The November 2004 meeting is to study the concordats and similar Church-State accords, a topic which is alas again one to which those of us from North-West Europe find it difficult to relate.