

Famous English Canon Lawyers: VIII
EDMUND GIBSON, D.D. († 1748)
and
DAVID WILKINS, D.D. († 1745)

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Since our next pair were not lawyers at all, it may seem rather incongruous to include them in the company of 'canon lawyers'. Yet it would be pedantic to exclude them from a survey of English canonistic literature for want of the requisite formalities, especially since their collections of legal sources have been so widely consulted by ecclesiastical lawyers down to the present. Both their endeavours were prompted, indirectly, by a fierce controversy over the constitution of the Church of England and the historic role of Convocation; but, unlike much of the polemical literature spawned by that debate, the works of Gibson and Wilkins each made a more enduring contribution to the history of English ecclesiastical law.

Gibson and his Codex

Edmund Gibson was born in the parish of Bampton, Westmorland, in 1669 and educated at Bampton Grammer School.¹ From school he proceeded to The Queen's College, Oxford, in 1686, becoming a Taberdar in 1690 and a Fellow in 1696. The college nurtured a group of historians (including William Nicolson and Thomas Tanner²) who made their learning available to the Whig cause, especially in the controversy over synodical government.³ Gibson commenced his historical studies soon after graduation, and in 1692 completed an edition of the *Saxon Chronicle* begun by William Nicolson, a fellow of his college. He soon became interested in Roman Britain, and among other publications produced a new translation of Camden's *Britannia* which has been credited with exciting a new interest in local history. His work on Camden took him to London, where he stayed with an uncle, and while there he began to muse upon a legal career. He was actually admitted to the Middle Temple in 1694, but within six months he had changed his mind and was back in Oxford preparing for ordination. He was ordained deacon in 1695 and priest in 1697, whereupon – his merits having come to the notice of Archbishop Tenison – he was appointed librarian of Lambeth Palace at a salary of £10, and one of the archbishop's personal chaplains. Like his college contemporary Thomas Tanner, Gibson was already an enthusiastic manuscript scholar, keen to locate and catalogue the riches available in English libraries. His *Reliquiae Spelmannianae: The Posthumous Works of Sir Henry Spelman Kt. Relating to the Laws and Antiquities of England* (1698) was based on

1. Most of what follows is based on N. Sykes, *Edmund Gibson, Bishop of London, 1669-1748* (Oxford, 1926). This supersedes the entry in *DNB*. Cf. [R. Smalbrooke], *Some account of the Rt Reverend Dr Edmund Gibson* (1749).
2. It will also be recalled that Richard Burn, a member of the same college in a later generation, had interests in local history as well as in ecclesiastical law.
3. Cf. D. M. Owen, *The Medieval Canon Law* (Cambridge, 1990), pp. 60-61, on a wider Oxford group. Dr Owen quotes Bishop Stubbs' remark upon them, that 'the very dust of their writings is gold'.

papers he had discovered in London and Norfolk, and in the same year was published the monumental *Catalogi Manuscriptorum Angliae* to which he had made a major contribution.⁴ At the same time, however, his position at Lambeth was drawing him into the service of the archbishop in the growing controversy over the Convocation.

The Convocation had not been summoned under Charles II and James II, but in the 1690s some Tory clergymen were making constitutional claims for the Convocation as an ecclesiastical counterpart to Parliament, sitting whenever Parliament was in session, and exercising some control over the episcopacy. The debate became public when a pamphlet war was started in 1697 by Dr Francis Atterbury and Sir Bartholomew Shower, bencher of the Middle Temple, who contended that the king had no more right to refuse to call a Convocation than he had to refuse a Parliament. In 1700 William III was prevailed upon by the new ministry to call a Convocation, and warm contention raged in its two houses between then and 1717 when, after an attack by the Lower House on the bishop of Bangor (Benjamin Hoadly), the Synod was effectively silenced for more than a century. At an early stage in these proceedings Gibson was engaged to investigate the history of Convocation, and first joined issue with Atterbury in a pamphlet of 1700; he was supported by White Kennett, whose historical treatise on *Ecclesiastical Synods and Parliamentary Convocations in the Church of England* appeared in 1701. In 1702 Gibson began to fulfil his legal aspirations by producing *Synods Anglicana, or The Constitution and Proceedings of an English Convocation*, which he conceived as a non-partisan guide based on precedents.⁵

Although Gibson had furnished material to support the episcopal side of the debate, he regretted the complete disappearance of the Synod in 1717 and made some proposals for reform with a view to its reinstatement. He maintained that the Lower House should be allowed to meet and discuss whatever it saw fit, and to make representations to the Upper House, but he of course resisted the Atterbury position which equated the Lower House with the House of Commons and gave it legislative equality. The dispute had nevertheless, for the time being, become purely academic. It had been academic in another sense, in that it had caused anguish in Oxford. Gibson's doctorate was not obtained from his disgruntled *alma mater*, but was a Lambeth D.D. (1702).⁶

Gibson's services to Tenison and the Upper House brought him numerous preferments in the first decade of the eighteenth century: the rectory of Stisted in 1700, a canonry of Chichester in 1703, the rectory of Lambeth in 1704, and the archdeaconry of Surrey in 1710. These enabled him to marry, in 1704, Margaret Jones, daughter of a Shropshire clergyman and sister-in-law of the Dean of Arches.⁷ Inspired perhaps by his new role as a family man, Gibson wrote an extremely popular booklet called *Family Devotions* in 1705.⁸ Little is known of his own family life, save that there were numerous children.

4. It bears the name Dr Edward Bernard (d. 1697), the astronomer and bibliophile who acted as editor in chief, but the entries were compiled by different contributors.

5. A new edition, by Cardwell, was printed in 1854.

6. For the background, see Sykes, *op. cit.*, pp. 57-58. It occasioned some unresolved questions about the legality of Lambeth degrees.

7. Her sister Elizabeth was the wife of Dr John Bettesworth. Her father was the Rev. John Jones, rector of Selattyn.

8. 18th ed., 1750.

During the same period, Gibson had been engaged on his *magnum opus*, which was a collection of all 'the statutes, constitutions, canons, rubrics and articles of the Church of England, methodically digested under their proper heads',⁹ with the addition of relevant Acts of Parliament and decisions of the common-law courts. The headings were arranged according to the method laid down by Pope Gregory IX for the ordering of the decretals, and at the end of each individual text the editor added glosses in smaller type. By 1710 it was completed, and Gibson sent a specimen to the master of University College, Oxford, saying it had been for many years the employment of his spare hours. It had been necessary to obtain episcopal approval before publication, and (since publication was to be funded by subscription) Gibson was worried that this might cause it to be regarded as a partisan work. In the event it did prove difficult to recruit subscribers, but by July 1711 there were enough to satisfy the printers and the book went to press. It finally appeared in 1713, as *Codex Juris Ecclesiastici Anglicani*, a massive compilation of 1,291 pages in two folio volumes printed by the Queen's printer (John Baskett) and the common-law printers.¹⁰ In the introduction, Gibson made some contentious claims for the independence of the ecclesiastical courts, which he placed on an equal footing with the king's temporal courts, even for the purpose of interpreting the Acts of Parliament, and for the independence of ecclesiastical authority from lay encroachments, including legislative measures emanating from Parliament itself.¹¹ His views in this respect were outmoded and failed to carry persuasion to most contemporaries.¹² The body of the work, however, was uncontroversial. It was a painstaking assemblage of texts, including those which had been repealed or were no longer of direct use, these last being included to show 'how the law stood before, and what successive alterations it had undergone'. Even the statute of 1554, re-establishing the papal supremacy under Philip and Mary, found its appropriate place.¹³ The scholarship was textual rather than legal, for although Gibson was acquainted in an elementary way with legal sources he seems to have had no substantial knowledge of the old Canon law commentators and was doubtless anxious to avoid entering into areas of legal subtlety or complexity. The predominant sources are the old constitutions as found in Lyndwode, the Canons of 1603, and post-Reformation Acts of Parliament. Gibson naturally assumed that the clergy could read Latin, and so the old pre-Reformation constitutions are reproduced without benefit of translation. The less learned of the clergy had to wait until 1720 for English versions, in John Johnson's *Collection of Ecclesiastical Laws*, which also translated selected glosses from Lyndwode.

According to the Preface, Gibson's *Codex* was intended 'for the service of the clergy', and in support of the rights and privileges of the Church'. He had no intention of encroaching on the lawyers, who had their proper place in the

9. From the sub-title to the 1713 edition.

10. Cambridge Univ. Lib. Adv. a. 70.1. is Thomas Tanner's copy, with his notes.

11. Introduction, pp. xvii-xxxi.

12. See the comments (adverse to Gibson) by Sir William Holdsworth, *History of English Law*, Vol. XII (1938), pp. 609-610. Some opponents went so far as to accuse him of high treason for denying the king's jurisdiction in ecclesiastical matters, though Gibson's argument was that the ecclesiastical courts were as much the king's courts as the old courts of common law. A more measured response was made by Michael Foster (later Mr Justice Foster) in *An Examination of the Scheme of Church Power, laid down in the Codex Juris Ecclesiastici Anglicani* (1735; 5th ed., 1763).

13. 1 & 2 Phil. & Mar., c. 8, (see of Rome Act 1554) printed in Vol. I, p. 37.

conduct of litigation, and advising on difficult points; but much of the law could be readily understood by clergyman if only they had access to it. Indeed, if the clergy had recourse to the legislation itself, he wrote with some feeling, they would not need to rely on 'persons of mean figure and abilities . . . who are not otherwise qualified to direct than as they happen to be possessed of a statute book, and of a talent to talk decisively to those who want one'. Moreover, when the clergy did find it necessary to consult lawyers, they would be able to frame more precise and informed questions if they had read the relevant legislation first. But he added the hope that lawyers would also find it helpful to have all the legislation collected together and set out in such a way that successive changes in the law could easily be seen. Legal history was an essential guide to interpretation, for 'by the sight of all former laws upon the same heads, and such an easy opportunity of comparing them with the laws present, we are let into the true aim and intent of the legislators'. The work might, he admitted modestly, have been better done by a trained lawyer; but lawyers had not so far shown an inclination to do it, and the question was not whether it could have been done better but whether it was better done by him than not at all.

'Dr Codex' – as his detractors were wont to call him¹⁴ – originally intended to use the textual work as the basis for a 'plain analytical system of English Ecclesiastical Law, in the nature of an Institute' which he thought might become a set textbook for ordinands.¹⁵ But the demands soon to be made upon him prevented him from pursuing this plan.¹⁶ In 1716 he was given the see of Lincoln, and in 1723 he was translated to London. He was already suffering from ill health, which he blamed on the labour of compiling the *Codex*. He nevertheless survived a quarter of a century of heavy business and political turmoil as Bishop of London, during which period the disciplinary jurisdiction of the ecclesiastical courts over the laity came close to extinction.¹⁷ At the age of 79 he was offered the archbishopric of Canterbury, though he was obliged to decline it on grounds of old age and failing health.¹⁸ He died the following year, on 6 September 1748, and was buried at Fulham. An inscription upon his memorial wall-tablet remembers the *Codex*: 'His Lordship's Peculiar Care and Concern for the Constitution and Discipline of the Church of England were eminently distinguished not only by his Invaluable Collection of Her Laws, but by his prudent and steady Opposition to every Attack made upon Them.'

Gibson had for over thirty years collected notes towards a new edition of the *Codex*, including nine volumes of transcripts of relevant Acts of Parliament passed during that time.¹⁹ There was to be a second edition, but this one and only posthumous edition was the subject of a publishing wrangle revealed by letters now in California.²⁰ Three years after the bishop's death, his residuary legatees, acting in accordance with what they believed to have been his wishes,

14. E.g. *Authentick memoirs of the life of Dr Codex* (1725).

15. Preface, p. viii.

16. Note, however, R. Grey, *A System of English Ecclesiastical Law extracted from the Codex Juris Ecclesiastici Anglicani* (1730; 2nd ed. 1732; 3rd ed. 1735; 4th ed. 1743). Richard Grey was rector of Hinton, Northants.

17. In 1733 a Bill for removing the *ex officio* jurisdiction of the Church courts over the laity, unless the informer undertook to pay the costs, and to entitle defendants to trial by jury, passed the House of Commons but was abandoned in the Lords.

18. He had been generally expected to succeed Wake in the 1730s, but fell out with Walpole a year before Wake died in 1737.

19. See George Gibson's letter of 1756, quoted below.

20. In the H. E. Huntington Library, San Marino: Gibson collection.

authorised the executors to transfer the copyright in the *Codex* to Oxford University Press 'in order to their sending out a new edition of it, with such improvements and additions as he should leave behind him for that purpose', and to hand over all relevant notes in his hand. The Press were to give bonds for its publication by an agreed date. By 1754, however, the right of the Press had been questioned – apparently in the course of a dispute between the relatives²¹ – on the ground that the work fell within the terms of the patent which conferred on Henry Lintot the monopoly of printing 'all manner of law books which any way relate to the common or statute law',²² a contention which had been supported by an opinion from Mr Randalk Wilbraham, bencher of Lincoln's Inn. The Press were unwilling to delegate the printing, or to dispute the patent, and instead offered to print the edition and give Lintot thirty copies as compensation. These terms seem to have been acceptable to Lintot, and an agreement was on the point of being sealed when William Blackstone intervened to point out that the university's rights under its charter overrode patent rights such as Lintot's.²³ On 31 December 1755 a revised publishing agreement was drawn up between the University, George Gibson (as executor) and Thomas Baskett, the king's printer.²⁴ to print an edition of *Codex Juris Ecclesiastici Anglicani* within twelve months. In March 1756, George Gibson reported to Oxford that in accordance with their agreement he had delivered the *Codex* to Robert Palmer, solicitor in Chancery, adding:

'It will, Sir, be observed that there are only 4 folio volumes that have the title of *Codex*, the other nine volumes are a collection of acts relative to the Church and two universities which the Bishop intended as an appendix to a new edition of this work, and as you have received Mr Baskett's consent it can not but be of great consequence to have them preserved and digested into their respective diocesses as is already done in the 3 large folios, and in order to make the collections as compleat as may be would it not be very proper to desire Mr Basket to furnish you with all the publick and private acts relative to the Church or University since the year 1747? To which the Bishop was very punctual in procuring them as they respectively passed.'

The edition finally appeared in 1761. Five hundred copies were printed, of which only 150 were sold in the first ten years.²⁵ The small demand accounts for the absence of any further edition, though the work is still sought after by those who study or practise ecclesiastical law and a facsimile edition was published in 1969. Its principal value lies in the convenience of being able to find under alphabetical heads the ecclesiastical and parliamentary

21. The nature of the dispute is not clearly revealed by the correspondence. In a letter of 25 Nov. 1754, G. Scott reports to his brother that he is 'heartily sick' of the affair and 'now on very indifferent terms with a near relation of mine', and refers to 'that very extraordinary piece of advice of the late Dean of Arches'. This last was Dr Bettesworth, the husband of Bishop Gibson's wife's sister, and one of the bishop's executors.
22. For the troubled history of the patent, see W. M. Sale, *Samuel Richardson: Master Printer* (Ithaca, 1950), pp. 134-144. The sole printing of statutes belonged to the king's printer, though he seems never to have staked a claim to synodal legislation.
23. See H. Carter ed., *A History of the Oxford University Press*, Vol. I (Oxford, 1975), pp. 332-333. Cf. *Basket v University of Cambridge* (1758) 1 Wm Bl 105.
24. The king's printer had the monopoly of printing statutes, and the *Codex* included a number of statutory texts. However, Baskett was content with one copy as a formal acknowledgment of his interest.
25. *History of the Oxford University Press*, vol. I. p. 333. Copies of the 1713 edition seem to be more readily found even today.

legislation governing the Church of England up to the date of publication, though it is as well to remember that the texts which it contains are of no special authority and have been almost entirely superseded by later editions. Gibson's additions, in the form of brief commentaries on each text, though perhaps lacking in originality,²⁶ are of independent value and even authority. High praise, moreover, was bestowed upon the preface and introduction by the Archbishops' Commission of 1939-47, which went so far as to declare it the best account available of the sources of the law of the Church.²⁷

Wilkins' *Concilia*

We can hardly leave Gibson without comparing the nearly contemporary editorial work of David Wilkins. Wilkins came from a very different background. Born in Prussia in 1685, with the family name of Wilke, he travelled the Continent as a wandering student, immersing himself in languages ancient and modern. In his twenties he settled in England, continuing his studies at Oxford, and Anglicised his surname. He was ordained in 1711 and attracted the attention of Thomas Tenison, Archbishop of Canterbury, who appointed him to succeed Gibson as librarian of Lambeth Palace in 1715. Tenison and his successor William Wake procured various benefices for his support, and Wake appointed him one of his chaplains in 1719. Although his principal occupation in these years was that of a professional record searcher and transcriber, he was clearly a scholar of some standing. Admittedly Oxford declined to accept his qualifications for the degree of M.A., but Cambridge made good the omission, first by creating him Doctor of Divinity in 1717 and then, in 1724, by appointing him Professor of Arabic. Notwithstanding his reputation as a philologist his chief interest seems to have lain in early legal history and he is remembered today chiefly for the works which he edited in that connection.

In 1721, Wilkins brought out an edition of *Leges Anglo-Saxonicae Ecclesiasticae et Civiles*, which held the field until 1840. It included also some Anglo-Norman texts, Sir Henry Spelman's edition of the statutes from William I to Henry III, and William Nicholson's dissertation on Saxon feudal law. No doubt his oriental as well as his legal interests combined to draw him to the scholarship of John Selden, and in 1725 he produced the only complete edition of Selden's works, in three folio volumes.²⁸ But his best-known work was his edition of the provincial legislation of the English Church from the earliest times up to the last Convocation of 1717.

The *Concilia Magnae Britanniae et Hiberniae a Synodo Verolamiensi A.D. 446 ad Londinensem A.D. 1717; accedunt Constitutiones et alia ad Historiam Ecclesiae Anglicanae spectantia* appeared in four large volumes in 1737, with a fulsome Latin dedication to King George II. A letter dated 1733, also prefaced to the first volume, acknowledges the patronage of Archbishop Wake. The researches of Professor Jacob have uncovered a good deal of the background to the edition.²⁹ Wake does indeed seem to have been the moving

26. Cf. Sykes, *op. cit.*, p. 71: 'Although devoid of originality and imagination, he was at his best in the patient and minute research which such a publication demanded.'

27. *The Canon Law of the Church of England* (1947), p. 55. Cf. D. M. Owen, *op. cit.*, p. 61, who says that it is 'still of use to the modern scholar, a point on which Professor Cheney did not agree with me'.

28. *Seldeni Opera Omnia* (1725, 1726).

29. E. F. Jacob, 'Wilkins's *Concilia* and the 15th Century' (1931) 15 *Trans. Royal Historical Soc.* (4th series) 91-131.

force behind the project, and the context was the same controversy over synodical government which gave rise to Gibson's *Codex*. In writing his *State of the Church and Clergy of England* (1703), Wake had compiled several volumes of transcripts, and over the next twenty years or so he employed Wilkins to augment his collection. Twenty-four of Wake's volumes remain in the library of Christ Church College, Oxford, and they include one written in Wilkins' hand and others with notes by him. Wilkins' own historical collections passed after his death in 1745 to his wife's family, the Fairfaxes of Leeds Castle in Kent,³⁰ from whom they were acquired by Sir Thomas Phillipps in the early nineteenth century; they were dispersed at auction in 1898.³¹

The idea of a published collection of legislative and constitutional documents was Wake's, and it is credibly supposed that he had first entrusted the edition of Dr John Walker, who abandoned the task when he found himself unable to cope with the Anglo-Saxon. A letter from Thomas Tanner to Wilkins in November 1732, concerning what he called the latter's 'noble work', suggests that its precise scope was still unsettled.³² Nevertheless, it is clear that the scheme was essentially to produce a new edition of Spelman's *Concilia* and to extend it to modern times. Sir Henry Spelman (d. 1641) had sought to extend Lyndwode backwards from 1222 to Anglo-Saxon times, though he lived to see only the pre-1066 portion in print.³³ A continuation by Sir William Dugdale (d. 1686) had been published in 1664, though most of the copies were destroyed in the Great Fire of 1666. Dugdale planned a third volume, and some of his collections survive, though it did not materialise.³⁴ Wilkins' *Concilia* incorporated all of Spelman's material, including even his essay on the origins of the British Church, and thereby rendered Spelman's *Concilia* obsolete. Wilkins also extended Lyndwode forwards by adding the constitutions and canons down to the enactments of the last Synod in 1717, and for good measure incorporated a good deal of miscellaneous non-legal material relating to the history and constitution of the Church, some of it in abridged form.

The *Concilia* has generally been praised as a monumental work of scholarship, impressive for its time. But it became increasingly inadequate for the more exacting medieval historians of the nineteenth and twentieth centuries. Far fewer manuscripts were accessible in 1737 than nowadays: for example, while Wilkins used four texts of the constitutions of the Council of Oxford (1222), fifty are now known. Anglo-Saxon studies were still in their infancy in the 1730s, and some of Wilkins' transcriptions and translations of earlier materials were faulty. Irish and Celtic materials were omitted altogether. Wilkins was generally an accurate transcriber of Latin texts, though he did not always collate the various manuscripts which he cited. A more serious criticism is that he did not bring a historian's judgment to bear on his evidence. He could not always set his materials in a correct sequence or chronological context, and he was apt to select documents

30. Wilkins married Mary, daughter of Lord Fairfax, in 1725. He died at Hadleigh, in Suffolk, where he was rector, on 6 September 1745.

31. Bodl. Lib. MS. C. 64 is a Spelman collection, with additions by Tanner, which passed to Wilkins.

32. Bodl. Lib. MS. Autog. C.8, f.13, printed in (1931) 16 *Procs. British Academy* 377.

33. H. Spelman, *Concilia, decreta, leges, consuetudines in re ecclesiarum orbis Britannici* (1639).

34. For the history of this work, see F. M. Powicke, 'Sir Henry Spelman and the *Concilia*' (1931) 16 *Procs. British Academy* 345-379.

from a larger series in such a way as to create a misleading impression of their overall content. Nor did Wilkins have the same interest in law or procedure as Gibson, and the book was apparently conceived of as an adjunct to Church history rather than as a resource for ecclesiastical lawyers.

The first attempt to replace Wilkins was made by Haddan and Stubbs in 1869.³⁵ They modestly claimed merely to be attempting 'a reproduction of that great work in accordance with the present state of our knowledge and materials', and conceded that without Wilkins their endeavour would have been impossible. But they did not mince words in saying:

'it is no imputation either upon that indefatigable scholar's industry, or upon his critical skill, to say, that for our present needs, and with our present materials, and according to the sounder canons of present historical and philological knowledge, his work is inadequate, exceedingly defective and incomplete, and (especially in the earlier portions) uncritical; to say nothing of the not few blemishes which disfigure it. . .'

Their own edition replaced Wilkins, for the earliest period, and the remainder was overtaken by further scholarship in the present century. Sir Maurice Powicke proposed a new edition of the texts of the earliest *Councils and Synods*, and after many years of labour by Professor C. M. Cheney and more recent editors this has been completed (for the period from 871 to 1313) in four volumes.³⁶ All three projects adopted different principles of selection, the most recent excluding non-legislative material such as capitular statutes, statutes governing courts, and episcopal *acta*. It is therefore still necessary to have occasional recourse to Wilkins for printed texts of the more miscellaneous material contained in it. But Wilkins' contribution to ecclesiastical law, a subject in which he was not trained or particularly interested, must now be deemed spent.

35. A. W. Haddan and W. Stubbs, *Councils and Ecclesiastical Documents relating to Great Britain and Ireland* (Oxford, 1869), in three volumes.

36. *Councils and Synods with other Documents relating to the English Church*, vol. I, 871-1204 (Oxford, 1981); vol. II, 1205-1313 (Oxford, 1964). The 1981 instalment was, most regrettably, printed from typescript copy.