THE SPIRIT OF THE CANON LAW AND ITS APPLICATION IN ENGLAND

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The word Canon means a rule or norm and it was used at quite an early stage of the Church's history to denote both general principles governing the life of the Christian society and particular enactments of Christian assemblies. The subject matter of the canons is as wide as the life of the Church itself and consequently very varied in its nature. At one end of its range it is concerned with matters fundamental to the Church's existence such as the creeds and sacraments. At the other it deals with practical arrangements such as the ownership and use of buildings. At a recent conference with German Lutherans I was asked whether the canon law was jus divinum or jus humanum, and I felt bound to reply, 'Both', because of this wide range which stretches from revelation to convenience.

In the first two or three centuries of the Christian era the canon law has to be sought in the writings of the New Testament and of the Fathers. Later as the Church expanded and it became necessary for bishops, as the heads and representatives of their dioceses, to meet and settle disputed questions, their various decisions came to be called canons. Still later, certain of the letters of the popes, usually those written in answer to questions and called decretals, were incorporated in collections along with the canons of councils and extracts from patristic writings. The earliest papal decretal is usually reckoned to be a letter of Pope Siricius written in 385 A.D. The first substantial collection of canon law is that made by the monk Dionysius Exiguus early in the sixth century.

The canon law was, by that time, not only extensive in its range of subject matter, but also in geographical origin and application. The Dionysian collection contains, in addition to papal decretals, the canons of councils as wide apart as, for example, Nicea and Chalcedon in Asia Minor, Arles in Gaul and Carthage in North Africa. As the volume of canons increased, so there grew the need for a jurisprudence to distinguish among them and provide principles for their application. I shall return to this development later.

From the fifth century the churches in the east and in the west grew further and further apart, and this very much under secular influence. In the east, the churches came to be controlled by strong imperial rule, and the development of their law followed that. In the sixth century, there existed in the east, collections of canons of councils, but no attempt at a synthesis. Many rules which had been made in particular circumstances, were now pointless, while new situations had developed, concerning which there was no guidance. The ecclesiastical legislation of Justinian was an attempt to deal with this situation, and from that point, civil law and canon law became closely mixed together.

In the west, on the contrary, the breakdown of secular authority left the way open for the Church as a force in maintaining and directing public order. The influence and authority of canonical collections was evident before a new imperial

power was established by Charlemagne. The False decretals, a collection purporting to be the work of Isidore of Seville who died in 636, but actually compiled by an unknown person or persons in the middle of the ninth century, bear witness to this. The aim of the collection is reform, and in order to bring this about, the compilers have inserted alongside genuine ancient texts forged letters attributed to Popes of the early centuries which speak of the ordering of the Church as the forgers would like to see it in their own day. Thus a supposed ancient authority is brought to bear to influence a modern situation.

The False Decretals influenced several of the canonical collections made during the next two centuries and particularly those used as instruments of the reforming movement associated with the name of Pope Gregory VII. The number of these collections prompted reflection about their use and at the beginning of the twelfth century Ivo, Bishop of Chartres, wrote a prologue to one of three collections for which he was responsible in which he discussed the principles which should govern the use of canon law and especially the use of dispensation. In the middle of that century, Gratian, a teacher at Bologna, produced a vast compilation called Concordantia Discordantium Canonum, usually referred to as the Decretum of Gratian, in one section of which he uses the scholastic method to cope with the problem of differing canons bearing on the same subject. This work became the first part of what was subsequently known as the Corpus Juris Canonici, being supplemented over the next two hundred years by collections of papal decretals. The whole was not only of authority in the courts, but also the principal text book of canon law in the Universities. The teachers of canon law commented on it and expounded it and developed from it the medieval system of canonical jurisprudence.

The church courts in Western Europe drew extensively on the Roman Civil Law for their procedure, and consequently were more investigative (to use a less tendentious word than inquisitorial) than adversarial in their character. Those who practised in them, therefore, had to have training in that law as well as in the canon law. It it common to find medieval graduates described as Doctor of both laws and there can be no doubt that the development of the canon law was greatly influenced by the civil law.

I have mentioned dispensation in speaking about the work of Ivo of Chartres. This was one of two ways in which the law was adjusted in practice to particular circumstances. Insofar as canon law expressed natural law and the Scriptures, it was immutable, but much of it was human law made by ecclesiastical authority and therefore mutable. Ivo says that the greater part of the canon law is made up of precepts of the church which are only means for the salvation of souls and, as means, of varying value. It is not sufficient for a law to be just, it must harmonize with the age and country in which it is applied, and if it ceases to do so, then authority should dispense from its observance. The right of dispensation belongs to all ecclesiastical superiors who use it under the control of the Pope. Dispensations ought only to be given for grave reasons but may be for private as well as for public considerations. The very complicated law which developed concerning the impediments to matrimony was simplified in practice by the use of dispensation. A less estimable use was in the matters of pluralities and non-residence.

The other way in which the written law was adjusted to practical circumstances was custom. In order to understand this, we have to think again about the mutable and immutable parts of the canon law. The Decretum of Gratian

starts with the sentence "*The human race is governed by two small things, namely natural law and custom.*" The natural law, he holds, is implanted in human nature by the Creator and is not subject to any dispensation save when a man is compelled to choose between two evils. In the nineteenth century the concept of natural law fell into disrepute among philosophers and legal theorists. Many theologians, however, have clung to it and it received a powerful restatement in 1961 in Professor Herbert Hart's book, The Concept of Law. My impression is that with the general movement away from the logical positivism which dominated philosophy for half a century, the idea of natural law has become once again respectable. But the immutable part of canon law does not consist solely of the natural law. It includes also those things which are given by revelation in the Scriptures and in the Church's understanding of the Scriptures.

The rest of canon law is human law and, Gratian holds, all human law is properly speaking a form of custom. Written law is instituted by promulgation but is confirmed by the custom of those who use it and abrogated by their disuse of it. This whole concept insists that law is for the service of the community and is intended to help the community and its individual members to live and develop in the way that God wishes them to. In a sense, therefore, it springs from the Holy Spirit's guidance of the community. St Thomas Aquinas says that custom is the expression in act of the human will enlightened by reason just as law is the expression in writing of the same will. His contemporary, the canonist Hostiensis, described custom as "*a reasonable use, prescribed and established for a suitable time, uninterrupted by any contrary act, brought in by two actions or a judgement or before the limit of memory, and approved by general usage*". During the fourteenth and fifteenth centuries there was much discussion about the nature and limits of custom. Various periods of time were considered and the general tendency seemed to be to require evidence of forty years uninterrupted use for a custom which was contra legem but a shorter period, as little as ten years, for one which was praeter legam. The question of whether the consent of authority is necessary was also discussed, the general view being that that consent is necessary to give the force of law to custom. It was, however, agreed that that consent would be tacit.

The medieval church was composed of a multitude of communities. The basic structure was the diocese, and dioceses were grouped into provinces. These were recognized by the canon law. Not formally defined as entities but nevertheless recognized in practice were some regional or national groupings. Such was Ecclesia Anglicana, the two provinces of Canterbury and York, the former of which included the four Welsh dioceses. Within the dioceses were multitudes of small communities – cathedral and collegiate churches, abbeys, priories, convents, guilds, chantries, as well as parishes. Certain of the greater abbeys such as in England, St Albans, Westminster, St Augustine's at Canterbury, claimed exemption from diocesan authority. Some Religious Orders were organised on an international basis and their local houses often claimed a degree of independence.

This multitude of communities meant that it was difficult to regulate their relationships by a common law. Moreover they were tenacious of their rights and privileges. Any office holder was conscious that he was a temporary trustee and conceived it his duty at all costs to preserve intact what he had received. Consequently there were frequent legal conflicts and in this complex situation there was great scope for the development of a jurisprudence of custom.

The history of the canon law down to the Reformation and in the Roman Catholic Church since is, from one point of view, a history of alternation between the growth of variety by custom and attempts at establishing greater uniformity. It would not be far wide off the mark to say that most reforming movements sought greater uniformity and attempted to bring about reform by the action of a strengthened centralised authority. To that extent the English Reformation fits into a regular pattern of history. It would also be true to say that the life of the Church in its diversity has always contended against these efforts and with some success. Written law, which in some form tends to be the instrument most often used to increase uniformity, fairly rapidly becomes out of date and can then be oppressive or inapplicable. This is more acute and obvious when one is dealing with a highly complex community and body of subject matter such as are the church, its faith and its life. There is need in the case of any living society for some form of regulating its affairs which is reasonably flexible and responsive to changed circumstances.

In the Roman Catholic Church the Corpus Juris Canonici, whose formation I have already described, continued to be the basic collection of law until the early years of this century. It was the subject of immense treatises and commentaries. As the years passed, canonists had to take account of papal letters and decisions of the courts which supplemented or modified the content of the Corpus. The principal body of supplementary legislation consisted of the canons of the Council of Trent.

In the Roman Catholic Church, however, there were tensions between Rome and some of the churches north of the Alps. The strongest evidence of this is to be seen in Gallicanism, the movement in France which tended towards a certain independence of Rome. A smaller and less known movement, but one of more direct interest to us, is the claim of the successors of the medieval church of the Netherlands to maintain their historic continuity in face of attempts by the Jesuits to have the old constitution suppressed, and Holland made a missionary territory under their control. The story is too long and complicated to tell in any detail. Suffice it to say that matters came to a head when the Chapter of Utrecht, having been deprived of episcopal ministrations for twenty years by the refusal of Rome to allow the election of an archbishop, found themselves faced with the possibility of having a bishop again through the presence in Amsterdam of a French missionary bishop, Dominique Marie Varlet. They consulted the canonists at Louvain, chief of whom was a learned and distinguished scholar, Z. B. Van Espen, as to whether, in the circumstances in which they found themselves, they would be justified in proceeding to an election without permission from Rome. The answer was in the affirmative and they proceeded to elect one of their number, Cornelius van Steenoven. Formal notification was sent to Rome with a request for the usual authority for his consecration. This was refused. The canonists were again consulted and also asked whether in case of need it would be legitimate to dispense with the Nicene requirements of three bishops for a consecration and have Steenoven consecrated by Varlet alone. Again they were told that the unreasonableness of Rome's refusal warranted them in going ahead and that in the circumstances, consecration by one bishop could be held valid and lawful. The authorities in Utrecht acted on this advice and were excommunicated by Rome for doing so. That is the origin of The Old Catholic Movement and of the churches of the Union of Utrecht with which our own church is in full communion. The particular interest for the purpose of this paper lies in the careful distinction drawn by the canonists between that which could not be dispensed with, namely

episcopal consecration and ordination, and that which could be left aside in case of need, namely the canonical requirements of three bishops for a consecration and the various permissions normally obtained from Rome.

Resistance to Roman authority in the countries north of the Alps was greatly weakened by the French Revolution and the Napoleonic conquests after which Ultramontanism was in the ascendant, leading to the decrees of the First Vatican Council. It was, I think, realised that the diffuse and unwieldy nature of the canon law assisted those who were less enthusiastic about Roman authority and this was probably one of the reasons for the decision of Pius X in 1904 to appoint a commission to revise the canon law. Under the presidency of Cardinal Gasparri the work was completed by 1917 when the new Codex Iuris Canonici was promulgated by Benedict XV and came into force the following year.

This was in some ways an extreme example of centralisation but in fact the next forty years showed again the power of the life of the Church to break out of its legal limits. The Second Vatican Council was the result of movements which had been gathering strength for some years and in 1963, John XXIII set up a new commission to revise the canon law once more and bring it into line with the outlook and decisions of Vatican II. The new Codex was published in 1983. It remains to be seen how strictly it will be followed.

It is of some interest to observe that Title II of Book I of the new Codex is called De Consuetudine. It contains six canons. The first states that only customs introduced by the community of the faithful which have been approved by the legislator have the force of law. The second states that no custom can obtain the force of law if it is contrary to the divine law, nor can any custom obtain the force of law against or beside the canons unless it is reasonable. The fourth provides that thirty years continuous use is necessary for a custom which is contrary to the law in force or beside it to obtain itself the force of law. The fifth states briefly that custom is the best interpreter of the law. These and some other provisions of the Codex indicate that there is still a recognition that a central legislative authority cannot adequately control the whole life of the Church and that within fairly broad limits, provision must be made for the life of the community to develop as the spirit leads it.

I turn now more particularly to the Church of England. The separation of the provinces of Canterbury and York, together with the four Irish provinces from the rest of the Western Church was an act of State followed later by a doctrinal upheaval which did not reach its settlement until 1662. Apart from the replacement of the supremacy of the Pope by that of the Crown, the other major legal and administrative changes in the church did not take place until the second and third quarters of the nineteenth century. I have found in doing historical research that it is often possible to use evidence of eighteenth century practice as a reasonably reliable guide to what was being done in the fourteenth and fifteenth centuries.

The official documents of the Church of England do not in any way suggest that it is a new church. Even the repudiation of the authority of the Bishop of Rome is represented as merely a formal recognition of what has always been

the case. The most elaborate and pretentious statement of this theme, is the preamble to the Act of Restraint of Appeals of 1533: "*Where by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same, unto whom a body politic, compact of all sorts and degrees of people divided in terms and by names of spirituality and temporalty, be bounden and ought to bear, next to God, a natural and humble obedience: etc...*"

It was intended in 1534 that the canon law should be revised, but the commission set up to undertake this work only produced a comparatively short and partial code which was never given authority. The Act in Restraint of Appeals which provided for the revision to take place, also provided "*that such canons, constitutions, ordinances, and synodals provincial being already made, which be not contrariant or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the king's prerogative roll, shall more still be used and executed as they were afore the making of this Act, till such time as they be viewed, searched, or otherwise ordered and determined by the said two-and-thirty persons, or the more part of them, according to the tenor, form and effect of this present Act.*" Neither the making of the code of canons of 1603 nor that resulting from the work of Canon Law Commissions of 1946 was sufficiently comprehensive to obliterate totally the effect of that proviso. Behind our present canons, therefore, stands the ancient canon law of the church and with it its principles of interpretation.

Little need be said about dispensation. This is a common feature of our church in the shape of marriage licences which dispense from certain of the normal formalities. It is provided for at various levels by custom or legislation. Thus the Archbishop of Canterbury may dispense from the normal minimum age for ordination to the diaconate and may allow a person to be ordained deacon and priest on the same day.

The question of custom is more complicated. In my Lichfield Lectures I have given some evidence that the operation of custom was recognised as legitimate by English ecclesiastical lawyers in the eighteenth century and that there has been the occasional reference to it since then. At the time that those lectures were given, liturgical revision was only just over the horizon and the importance of custom in relation to it had hardly begun to be discussed. It is in relation to liturgy that custom has its most immediate and practical application, and for that reason I propose to devote most of the rest of this paper to it.

In the middle of the sixteenth century the revised forms of service were, for the first time, imposed by Act of Parliament. They became statutory in a succession of Acts of Uniformity, the last of them being that of 1662 which closed the Reformation era. Although there were some attempts at further revision after that, notably connected with the Revolution of 1689, I am not aware of any court cases or major disputes about the performance of these services during the eighteenth century other than the case of George and Cook v Tilsley to which I have referred in the lectures already quoted. Most of the charges against Tilsley concerned dereliction of specific duties enjoined by the Prayer Book and the canons. The eighth charge was "*That ever since 9 March 1740 he had forbidden the Clerk to give out a psalm after the sermon, to the grief of those in the parish who delight in Psalmody*". There is in the Prayer Book no provision for a psalm to be

sung after the sermon, nevertheless the judge ordered Tilsley "*to desist from restraining the Parish Clerk to give out a Psalm to be sung at such times as Psalms have been heretofore usually sung in the parish Church of Chartham.*" This appears to be a distinct recognition of the force of liturgical custom.

It seems that during the century and a half that followed the Restoration, many departures from the liturgical practice laid down in the Prayer Book and canons became customary. Copies were rarely used in cathedrals, the surplice not worn in many parish churches and the rubric requiring weekly Communion at least in cathedrals and collegiate churches was widely neglected. Round about the year 1680 a student from the Inns of Court set himself to try to find "*an intire service performed exactly according to the rubric, without any exercise of the prudence of a private man.*" He had to confess that he was unable to discover one such in all London. He wrote to Dean Granville of Durham: "*Sir, If I should prosecute the clergy in this point of their irregularities, I should make my letter like a fanatic sermon, and come up to one and thirteenthly, which would tire both you and me also.*" *(Surtees Society, Vol. 47 1865. pp.101-107).*

There is little evidence that any greater degree of uniformity developed during the following century and yet in a case of 1811 the Dean of the Arches, Sir John Nicholl, laid down as a governing principle that "*The law directs that a clergyman is not to diminish in any respect, or add to the prescribed form of worship: uniformity, in this respect, is one of the leading and distinguishing principles of the Church of England – nothing is left to the discretion and fancy of the individual.*" Sixty years later the Judicial Committee of the Privy Council stated that "*Their Lordships are of the opinion that it is not open to a minister of the Church, or even to their Lordships . . . to draw a distinction in acts which are a departure from, or a violation of, the Rubric, between those which are important and those which appear to be trivial.*"

In the middle of the nineteenth century it was not so much neglect of the rubrics as careful observance of them that caused trouble initially and from that developed controversy over what the rubrics, and particularly the Ornaments Rubric, really meant. In the Court of Arches in 1870 Sir Robert Phillimore held that the Ornaments Rubric referred back to the First Prayer Book of Edward VI and that it was lawful to wear the vestments prescribed there. The Privy Council in the following year reversed this decision and declared the eucharistic vestments unlawful. That did not prevent them from being worn but they remained technically illegal until the passing of the Canon B8 and the Measure which supported it.

By the beginning of this century the gap between law and practice in the matter of public worship had become so wide that a Royal Commission on Ecclesiastical Discipline was set up to investigate the matter. The Commission was supplied with a large number of reports made chiefly by members of the Church Association who had travelled round the country recording what they saw happening in various churches. Many of their letters, and still more the comments on them by the various incumbents and in some cases the bishops, make entertaining reading. I ask the indulgence of the Conference to read part of one of the letters of Lord Alwyn Compton, then Bishop of Ely and a letter from an incumbent.

The bishop wrote: I may state that I do not consider it my duty to inquire into minute points of the manner of performing the services, which are in themselves of no importance whatever. I am of course aware that they are objected to by some persons because they are supposed to show that the clergy who practise them are unsound members of the Church of England, or, to express it more briefly, hold Romish doctrine. Except for this reason no one would suppose it mattered what was the exact shape of the clothes worn, or the exact posture in which a clergyman said his prayers before celebrating the Holy Communion. But the doctrine which is really attacked through these minutiae, the doctrine of "*the real presence*", is one that may legally be held by clergy and laity in the Church of England as was judicially determined by the final court of appeal in the Bennet Case, and I cannot approve of the attacks made by unauthorised persons on hardworking clergy of most devoted lives and of perfect loyalty to the Church of England. If those to whom the law gives authority – for example, parishioners – choose to raise the legality of trifles in the courts of law they are perfectly entitled to do so, and I can only regret that time and money should be wasted which would be better used in deepening the spiritual life of all concerned. *(Royal Commission on Ecclesiastical Discipline, 1906, Vo. IV. p.17)*

The Incumbent whom I quote was the Reverend Charles Marson, Vicar of Hambridge in Somerset. He began: "*I beg to acknowledge your letter of 22nd February, 1905, with the report of a spy, concerning the High Mass at Hambridge church on the Sunday within the Octave of Hallowmas MCMIV. I gathered from the copious conversation bestowed upon me by your agent (while I took a much needed breakfast after my third Mass) that he was a Donatist heretic and no doubt belonged to the Sect of the Anabaptists. May I protest against your employment of an agent of this sort? It was a great indecency. It was also unnecessary, for I shall always be delighted to give to any serious persons, a full account of our public doings; but your agent has supplied you with an ignorant and inaccurate account of the services he witnessed.*" Marson then commented with some humour on the details of the service as it had been described, and then concluded: "*If the Commissioners wish for any further information as to our clothes, chandlery, or as to which of our joints we crook in worship, I shall be delighted to give them every information. But I beg leave to point out that the lives of Christ's poor people are starved and stunted; that their wages are low, their houses often bad and insanitary and their minds full of darkness and despair. These are the real disorders of the Church and not any faults in my stage management, which is, perhaps, amateur.*"

One member of the Commission, the Bishop of Gloucester, Dr Gibson, supplied an Appendix of nine pages of Historical Notes on the Administration of the Acts of Uniformity. He concluded that the facts collected showed how much latitude had actually been enjoyed by the clergy in their ministrations in every period since the passing of Elizabeth I's Act of Uniformity, and he observed: "*They show, further, that every attempt to enforce the letter of the law universally has proved a complete failure, and has ended disastrously for the Church*". *(Vol. 4. p.49)*

The conclusion of the Commission was that the law of public worship was too narrow to be enforced. In consequence, Letters of Business were issued to the Convocations to undertake a revision of the Prayer Book. Unfortunately the lessons of the past had not been learned and an attempt was again made to use liturgy as an instrument of ecclesiastical discipline. As we all know, that attempt ended in the rejection of the Revised Book by the House of Commons in 1927 and 1928.

The matter was not taken up again until after the Second World War when, as a result of the Canon Law Commissions's Report, the procedure of experimental revision was introduced and eventually in the Worship and Doctrine Measure Parliament handed over liturgical change to the General Synod, subject to a carefully defined procedure and the requirement that the Book of Common Prayer of 1662 should remain a standard of doctrine and be always legally available for use. During the same process canons were made which allowed a certain flexibility in minor changes, and enabled bishops and archbishops to issue services for occasions not provided for in the Prayer Book or Alternative Service Book. In the debates in the Convocations, the Church Assembly and the General Synod, most of which since 1950 I have attended, great emphasis has been laid on the importance of custom in relation to Liturgy and the need for greater recognition of the place of custom in the legal process.

We are not out of the wood yet in relation to all this, and shall not be until our ecclesiastical lawyers are able to divest themselves much more than they have done of what I may call "*the Act of Uniformity approach*" to these problems. By that I mean the attempt to restrict any diversion from the authorised texts to what the canon calls variations "*which are not of substantial importance*". This question has arisen particularly in connection with the services of the Book of Common Prayer. As those of us who are old enough to remember will recall, thirty years ago the Prayer Book services were used in most churches with a wide range of customary variations, some derived from the 1927 and 1928 Books rejected by Parliament, others, and notably that rearrangement of the Eucharistic Prayer called The Interim Rite, based on what is known to have been the practice of some bishops in the seventeenth century supported by revisions of the Prayer Book which had taken place in other parts of the Anglican Communion. In recent years these variations have almost all been held to be illegal, to the great distress of many who long for the Prayer Book Services in the form to which they have been accustomed. The assumption appears to be that the provision of a procedure for the synodical production of services alternative to those in the Book of Common Prayer has automatically rendered customary variations from that Book, which are in most cases of much more than forty years standing, illegal.

This is an argument that I would find easier to accept if the Alternative Services Book were itself given the status of a new Prayer Book intended to supersede all that had gone before. I believe that that would have been a mistake but it would have been a clear indication that the legislator intended to suppress all previous liturgical practice customary or otherwise. In the absence of such clear intention to render all previous practice illegal then it would seem to me that the normal operation of custom is allowed and we are not limited to those variations which are not of substantial importance. Rather it falls to the appropriate authority, which in most cases is the bishop, to decide whether any custom that is objected to is reasonable. That seems to me to be in line both with the spirit of the canon law and with the fact that our present pattern of liturgical revision is experimental.

An interesting interpretation of the term "*substantial importance*" is given by the editors of the 1975 edition of the Ecclesiastical Law volume of Halsbury's Laws of England. They say: "*In determining whether or not a variation is of substantial importance some guidance may perhaps be derived from a comparison of the rubrics of the Books of Common Prayer with those of other authorised forms of service: thus it might be argued that matters in respect of which mandatory directions are given in the former but not in the latter should not be regarded as of substantial importance.*" *(Para. 941, n.1.)*

Arising from all that I end this paper with the question of what qualifications should be required in those who are to practise in the ecclesiastical law, and whose responsibilities, whether as chancellors or as registrars, are much wider than the matters which come to a court hearing. The law of the church cannot be properly understood and properly administered without something more than a perfunctory knowledge of theology and church history. The second edition of Phillimore's Ecclesiastical Law is a monumental work because it is so soundly based on theology and history. In its details it has been superseded by later enactments and consequently by later text-books that deal with them, but there is nothing that supersedes it in its general picture of the essential principles of the law and constitution of the church.

It is worth recalling that the two fat black volumes with which we are familiar are Walter Phillimore's revision of his father's revision of Dr Burn's Ecclesiastical Law which had itself gone through five editions by 1788. Walter Phillimore was the end of a long line of scholars bred in a legal tradition which went back into pre-Reformation times. They had the knowledge and, one might almost say the instinct, to distinguish between those parts of the law which articulate the divine revelation and are permanent and those which are essentially written custom and changeable by custom. The tradition did not entirely disappear with Doctors' Commons. Something of it lived in recent memory in Harry Vaisey and Walter Wigglesworth, but it has been gravely weakened.

Forty years ago the Canon Law Commission recognized that it is impossible now to revive anything like Doctors' Commons but suggested the formation of a society consisting of clergy, professional historians and lawyers for the purpose of studying the Ecclesiastical Law and of suggesting ways in which the law either needs alteration or can be developed to meet new needs. "*As a rule*", the Report said, "*there is far too little contact and interchange of ideas and points of view between the clergy and ecclesiastical lawyers, and such a society would give opportunities for this. Such a society would train up a number of people competent to advise and help the clergy in the particular problems of Ecclesiastical Law with which from time to time they are confronted.*" Those words were written before the Church had embarked on a mass of legislation which has produced the new code of canons, the Ecclesiastical Jurisdiction Measure, Synodical Government and liturgical revision. This development compels us to look more deeply into the questions of how the law is to be interpreted and enforced, of how we distinguish between the permanent and the transitory. For some years in the fifties and early sixties Chancellor Garth Moore and I convened such a gathering as the Canon Law Report had suggested. We did not form a society but a few people, clergy, lawyers and historians met in alternative years at his college in Cambridge and mine in Oxford. At least one of those who attended is with us today and I should be interested to know whether he thinks that we achieved any kind of training by what we did. I hope that our gathering this weekend will produce something more lasting, something which will renew the spirit of the canon law in the life of the Church of England.