Krakowskie Studia z Historii Państwa i Prawa
2025; 18 (1), s. 115–120
doi:10.4467/20844131KS.25.007.21627
https://ejournals.eu/czasopismo/kshpp

Łukasz Jan Korporowicz
https:/orcid.org/0000-0002-5725-5018
University of Łódź

Doe, Norman, and Coleman, Stephen, eds. The Legal History of the Church of England. From the Reformation to the Present. *Oxford–London–New York–New Delhi–Sydney: Hart, 2024 (pp. 268, ISBN 978-1-509970-319-4)*

Keywords: ecclesiastical law, history, England, Anglican Church

I

Anyone who undertakes research in the field of English legal history at some point in his/her scholarly career will confront the phenomenon of ecclesiastical jurisdiction. Admittedly, in modern English law, ecclesiastical regulations may not be that important, but the law of the Church of England is still technically part of the English legal system. The reason for this is the established nature (i.e., as a national church) of the Church of England.

Without much hesitation, it must be emphasized that canon law, which since the Reformation started to be known in England rather under the name of "ecclesiastical" law, has played an important role in the development of English law, for example, regarding ecclesiastical jurisdiction over marriage (which lasted until 1857), the early history of the tort of defamation, and the importance of the ecclesiastical law for the development of personal property and contract law, to name just a few.

Despite the long history of ecclesiastical law in England, until recently this topic was not properly systematized and described. A student of English legal history who tried to gather basic knowledge about the discussed issues would be left without a solid point of

reference. There were numerous fragmentary works devoted to the subject, but none of them dealt with the development of ecclesiastical law as such.

An attempt to change this is the recent publication of the multiauthor collection titled *The Legal History of the Church of England. From the Reformation to the Present*. The editors of the collection are Norman Doe (Professor of Law and Director of the Centre for Law and Religion at the University of Cardiff) and Stephen Coleman (academic lecturer, Anglican priest, and Assistant Director of the Centre for Law and Religion at the University of Cardiff). The two editors, joined by eleven other ecclesiastical law scholars, prepared the first ever work dedicated to focusing on the legal history of the Church of England.

II

Although, as I stated above, before the publication of *The Legal History of the Church of England* there was no single systematized work devoted to the legal development of English ecclesiastical law, nevertheless throughout the last few decades numerous works devoted to the history of ecclesiastical law have been published. In addition to many smaller works, such as articles and chapters of books, some major monographic works can also be mentioned here.

Probably the most important works that can be considered as partial attempts to offer a holistic description of the legal history of the Church of England are works written by Richard Helmholz. The largest and most detailed work that focuses on the above-mentioned topic is Helmholz's *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s*. The book, which is the first volume of the *Oxford History of the Laws of England* series, was published in 2004. It was predominantly to the history and the efficacy of the ecclesiastical jurisdiction in the pre-Reformation period of English history and in the first century of the Reformed Church.

In addition, Helmholz is the author of such books as *The Profession of Ecclesiastical Lawyers: An Historical Introduction* (2019), *Roman Canon Law in Reformation England* (1990), and *Marriage Litigation in Medieval England* (1974). He is also a co-editor of *The Great Christian Jurists in English History* (2017).

Among other authors and their works, it seems worthwhile to mention such studies as R.B. Outhwaite's two books – *Clandestine Marriage in England, 1500–1850* (1995) and *The Rise and Fall of the English Ecclesiastical Courts, 1500–1860* (2006), and two more recent books – Neil Patterson's *Ecclesiastical Law, Clergy and Laity: A History of Legal Discipline and the Anglican Church* (2019) and Andrew Thomson's *Church Courts and the People in Seventeenth-Century England: Ecclesiastical Justice in Peril at Winchester, Worcester and Wells* (2022). A very valuable work for the understanding of the work of ecclesiastical lawyers is also G.D. Squibb's *Doctors' Commons: A History of the College of Advocates and Doctors of Law* (1977).

There can be no doubt that the works enumerated above are only a small sample of many similar studies. However, it is important to notice their patchy character. Some

authors decided to focus on one institution or structure in the longer period, while others offered more complex analysis of the broader issues, but in a limited timeframe.

For this reason, *The Legal History of the Church of England* is a unique attempt to build a more thorough discussion related to the legal development of the Anglican Communion in England.

III

Having outlined the context, it is now necessary to answer the question regarding the content of the reviewed monograph. The book is a compilation of eleven chapters, preceded by a foreword written by David Ibbetson, a preface written by the editors of the book, and a substantive introduction also written by the editors.

The introduction reveals several pivotal elements underlying the methodology employed in composing the book. Each chapter, apart from the first, roughly aligns with a 50-year epoch in the history of the Church of England. As indicated by the editors, the narrative of the book is grounded in the examination of numerous legal statutes associated with the activities of the Church of England. Furthermore, the objective of the book is to provide commentary on the various facets of the Church's daily functions, such as governance, ministry, liturgy, rites of passage, and church property. The articulation of these objectives is significant and will be the focus of further analysis in the subsequent sections of the review.

Chapter one, titled "The Medieval Antecedents: Pre-Reformation Canon Law," is authored by Sarah White and presents a concise depiction of the legal milieu of the English Church preceding the Henrician Reformation. The presupposition that each chapter should encompass approximately fifty years is, for evident reasons, inapplicable to this chapter. White starts her chapter with an initial contextualization of the medieval Church and the organization of canon law, including collections of canons, the evolution of legal scholarship, the practice of decretals, and the post-*Corpus Iuris Canonici* status of the canon law of the Catholic Church. In the subsequent sections of the chapter, White directs her analytical lens towards the English Church, with a particular emphasis on ecclesiastical jurisdiction and legal practitioners. She concludes her chapter by examining the tension and reciprocal influence between secular and religious jurisdictions, particularly in the areas of testaments, juries, and writs of prohibition.

The second chapter ("The Reformation and the King's Ecclesiastical Law: 1533–58") is authored by Michelle L. Johnson and Will Adam and focuses on the English Reformation and its legal implications. In the initial section, the chapter expounds upon the reign of Henry VIII and his involvement in the Reformation through the "Great Matter," namely, his attempt to annul his marriage to Catherine of Aragon. The chapter's co-authors provide an engaging analysis of the establishment of a new legal order, as illustrated in the extensively circulated legal treatises of Christopher St. German and Thomas Starkey. Significantly less attention is allocated to the Reformation efforts and the Counter-Reformation during the reigns of Henry's immediate successors, Edward VI and Mary I, though the "ideological" aspect of the Reformation is highlighted.

In the third chapter, titled "The Elizabethan Settlement: 1558–1603" and authored by Paul Barber and Morag Ellis, the legal reforms that ensued as a result of the Reformation are detailed. The authors adopt an intriguing approach in their analysis. They partition the chapter into sections that correspond to the archiepiscopal tenures of three successive Archbishops of Canterbury – Matthew Parker (1559–1575), Edmund Grindal (1575–1583), and John Whitgift (1583–1603). Subsequently, the chapter addresses ecclesiastical courts and the legislation pertaining to Church-related social matters.

The subsequent chapter ("The Source and Limit of the King's Ecclesiastical Law: 1603–60") is authored by Ian Blaney and is dedicated to examining the evolution of royal ecclesiastical law during the first half of the 17th century. The chapter primarily focuses on the royal legislation of the Jacobean and Caroline periods, while also addressing ecclesiastical jurisdiction and the status of lawyers. A significant portion of the chapter is dedicated to the issues associated with the English Civil War and the establishment of the Commonwealth under Oliver Cromwell.

Chapter five, titled "The Restoration and Re-Establishment: 1660–1701," is authored by legal historian Russell Sandberg. It offers an exhaustive analysis of the reconstruction of the State-Church relationship in the period after the fall of Cromwell's regime. This chapter appears to be the most politically focused in the entire collection – the author primarily focused his narrative on the relations between the Church and the State, rather than on the internal policies or doctrinal developments of the Church of England.

Stephen Coleman, a co-editor of the book, also authored chapter six, entitled "The Church in Danger – Legal Perspective 1701–60." The chapter provides a comprehensive analysis of the impact of the Hanoverian reality on the Church of England. The author elucidates the significance of this period for the development of ecclesiastical law literature, as well as the evolving understanding of the legal nature of the Church of England and the legislative status of the Convocations. The chapter also addresses critical issues concerning the position and status of the Anglican clergy, including Queen Anne's Bounty and the Law of Patronage. Additionally, Coleman thoroughly examines reforms of marriage law, notably Lord Hardwick's Act, along with the functioning of ecclesiastical courts.

Chapter seven is authored by Norman Doe and entitled "The Ecclesiastical Law and Religious Pluralism: 1760–1837." It principally concentrates on the progressive introduction of religious freedom in England. This period witnessed the repeal of several "Anglican" acts and the consequent emancipation of Roman Catholics. Consistent with preceding chapters, Doe provides extensive analysis on the status of the clergy and the ecclesiastical courts. Additionally, Doe conducts an in-depth examination of the themes of liturgical legislation, alongside the Church's property and finances.

The Victorian era is explored in depth in chapter eight, authored by Charlotte Smith ("The Victorian Church: Revival, Reform, Ritualism: 1837–1901"). This chapter serves as a direct continuation of Doe's chapter. A substantial portion of the chapter is dedicated to examining the reform of ecclesiastical courts, addressing the reduction of their significance and the shrinking role of ecclesiastical lawyers. In the concluding section, Smith investigates the transformation in the Church's internal governance structure.

Russel Dewhurst is an author of the ninth chapter of the collection entitled "The «New World» of Ecclesiastical Law: 1901–47." The initial section of the chapter details

the establishment of the Church Assembly. Subsequent sections address liturgical and doctrinal reforms. In the concluding section, Dewhurst examines the role of Parliament and the ramifications of its legislation on Church affairs.

Chapter ten, authored by Neil Patterson, is dedicated to examining the Church of England following the Second World War ("The Post-War Church – Revision and Stability: 1947–94"). Patterson concentrated on various reforms implemented between the 1940s and 1990s, encompassing administrative reforms, changes in ecclesiastical law, reforms of the ecclesiastical courts, the status of the clergy (including the ordination of remarried priests and female priesthood), and liturgical revisions. He also addressed the ecumenical movement and its legal repercussions.

The concluding chapter of the book, authored by Mark Hill, provides an analysis of the recent legal developments within the Church of England, specifically addressing the period from 1994 to 2023 ("Change and Decay – The Twilight Years of an Established Church: 1994–2023"). This chapter bears resemblance to the preceding one, particularly with regard to its subject matter. It revisits the topic of women's ordinations,[1] including to the episcopate, and discusses the ongoing reforms of ecclesiastical courts. Additionally, Hill explores other topics, such as the simplification of contemporary English ecclesiastical law and the discourse surrounding the role of the Lords Spiritual in the House of Lords. The chapter concludes with projections concerning the future trajectory of the Church of England.

IV

Upon formulating an understanding of the book's content, one may attempt to address a complementary inquiry, namely, what this book does not encompass. Primarily, if readers anticipate encountering an exhaustive examination of English ecclesiastical law and its myriad doctrines within these pages, their expectations will remain unfulfilled. Although these subjects are addressed throughout various sections of the book, a coherent narrative focused on these matters is lacking. The book constitutes a comprehensive analysis of the structural, administrative, and judicial evolution of the Church of England. In essence, the book does not constitute a historical account of the canon law of the Church of England.

Consequently, comprehensive analyses addressing the dynamics or antagonisms between common law courts and ecclesiastical courts are scarcely found in the book.

There is also a visible gap in the narratives of the chapters about the history of courts and the history of legal practice. These issues are mentioned in several places, but they are not treated systematically.

[1] The year 1994, as indicated in the chapter's title, refers to the first ordination of women within the Church of England, which occurred at Bristol Cathedral in March 1994.

V

Notwithstanding the considerations addressed in the preceding section, it is essential to highlight that Doe and Coleman's collection is an exemplary work that has facilitated the advancement of systematic research concerning the legal developments within the Church of England.

It should also be noted that, notwithstanding the anticipations associated with the evolution of ecclesiastical legal doctrines or reforms in the judicial system, the compilation was principally intended to showcase the progression of the internal structures of the Church of England from the Reformation to contemporary times. Ibbetson, who authored the foreword to the volume, articulated a similar perspective by stating: "The editors and the contributors should be encouraged to see this volume as a bedrock on which further studies on the history of the law of the Church of England can be anchored."

The aforementioned assertion is indeed accurate. The book emerged as a result of an academic collaboration initiated by the Church Law History Consortium, which convened for the first time in Cambridge in the spring of 2022, and it appears to hold potential for further scholarly endeavors that will enhance our understanding of the widely understood legal history of the Church of England.