

# Centre for Law and Religion Newsletter



*The Law School, Cardiff University*

## Church Lawyers Meet in Rome



*Centre members with His Holiness Pope John Paul II on 30th April 1999, presenting as a gift from Cardiff University an engraved crystal bowl: Left to right: His Holiness John Paul II, Anthony Jeremy, Brian Hanson, Norman Doe, Mark Hill and Fr Joseph Fox of the Angelicum*

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On 30 April and 1 May 1999, the Pontifical University of St Thomas in Rome (the Angelicum) hosted a Colloquium on the Comparative Canon Law of Church Property organised in collaboration with the Centre for Law and Religion. It was attended by members of the Centre, Roman Catholic canonists from the Angelicum, the Gregorian and the Lateran universities in Rome, and a representative of the Eastern Catholic church. It is believed that this was the

first meeting of its type since the Reformation and was a unique opportunity for canonists to engage in ecumenical dialogue. It represented a response to the welcome given by the Anglican Communion at the Lambeth Conference in 1998 to the encyclical letter of Pope John Paul II, *Ut Unum Sint*. Such a meeting would have been unimaginable ten years ago but the substantial common interest which canonical dialogue raises coupled with the strong friendships forged at the event uncovered a great potential. The Archbishop of Canterbury had expressed his support for the colloquium and the President of Ireland also sent a personal message of support for the event. The Centre members and the Roman Catholic team, on the basis of papers exchanged in advance, discussed amongst other matters, the canon laws of the respective communions dealing with the ownership and administration of church property, the care and maintenance of church buildings, the ecumenical use of church buildings,

and the assessment of ecclesiastical quotas and taxes. During the colloquium, the Cardiff team of Anglican canonists was presented to His Holiness Pope John Paul II at an audience on Wednesday 28 April. Greetings were extended by Brian Hanson on behalf of the Archbishop of Canterbury, and Norman Doe presented on behalf of Cardiff University an engraved crystal bowl. The participants were received in formal meetings by the Superior Prelates of three dicasteries of the Roman Curia. At the Roman Rota they were received by the Dean, Archbishop Mario Pompedda, and three Rotal judges, Monsignors Cormac Burke, Joseph Huber and Pio Pinto together with Monsignor Gerard McKay, Defender of the Bond. At the Pontifical Council for Christian Unity, Bishop Pierre Duprey (Secretary of the Council) received the colloquium members, together with a staff official, Fr Timothy Galligan. At the Pontifical Council for the Interpretation of Legislative Texts, its secretary, Bishop

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Bruno Bertagna received the group with Fr Bernard Hebda. In each dicastery warm encouragement was given to the work of the colloquium. On 30 April, Her Majesty's Ambassador to the Holy See hosted a dinner at his residence and welcomed the ecumenical work of the canonists. The law firm Buchanan Ingersoll also provided a dinner and a partial grant to fund expenses of the meetings. The Angelicum provided further hospitality and

particular thanks are due to Fr Angelo Urru, Dean of the Faculty of Canon Law, and to Fr Joseph Fox there who had worked so hard to make the colloquium such a success. The proceedings of the event are to be published later in the year (*Render Unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*, edited by Joseph Fox), and will include a paper by Fr Robert Ombres OP of Blackfriars, Oxford, who was

instrumental in setting up the colloquium. Due to its success, it was decided to reconvene next year and possibly annually thereafter, and to establish an Ecumenical Forum on Comparative Canon Law.

## New Centre for Law and Religion Established

The Cardiff LLM in Canon Law has been running now for some eight years. In that time, Dr Norman Doe has managed to prove to the world - in the United Kingdom at any rate, since much of Europe and the Roman Catholic Church had never forgotten - that the study of Canon Law was a worthwhile and rewarding area of study, materially affecting the well-being of Church and State. It also revealed the vastness of an academic

discipline which approaches the regulation and interaction of Law and Religion in our modern world, and stimulated much new thinking.

In 1998, Cardiff University formalised the study of this branch of human knowledge by creating the Centre for Law and Religion with Dr Doe as its first Director.

Since its formation, the life of the Centre has been growing at a formidable rate. Three research fellowships have come into being, together with sponsorship from both the Church in Wales and the Church of England. International conferences and overseas bodies have taken note of its existence and started issuing invitations to the members of the Centre to speak at conferences or contribute to their work, and this newsletter contains some reports on the Centre's

activities.

### The Centre's Work

The Centre itself exists to promote research in the field of Law and Religion at Cardiff Law School and the dissemination of knowledge in this area, and depends on active participation for its life. Dr Doe, of course, continues with his teaching and lecturing, and the management of the LLM course. But in addition, his name is becoming widely known as an authority on Canon Law, and his presence is increasingly sought in circles where Canon Law is the subject of discussion.

Mark Hill, one of the Research Fellows, is already acknowledged as a leading authority on the law of the Church of England, and together with Dr Doe, he has taken part in a number of international conferences. Anthony

*(Continued on page 3)*



## New Centre for Law and Religion Established (cont)

Jeremy and Gregory Cameron are also being invited to present papers at conferences both nationally and internationally.

One of the highlights of the Centre's first year was the Colloquium held in Rome at the end of April this year, as reported on page 1. This gathering, organised jointly by Fr. Joseph Fox of the Angelicum and by Dr Doe following initiatives by Mr Mark Hill and Fr Robert Ombres, was the first formal meeting ever held between Canonists of the Anglican and Roman Catholic churches, and proved to be a fertile ground for debate and discussion - so much so that a second colloquium will be held in the Spring of 2000.

### Participation

Associate Membership of the Centre is offered to graduate, academic and professional members, and the full prospectus of the Centre gives you further details. We very much hope that you will consider joining. (Please see below for contacts). Already activities for the next year are being finalised, including another Colloquium between Roman Catholic and Anglican canonists. In all these activities, 'It is hoped to encourage as much participation and involvement as possible, and the Centre aims to give a return to all its associate members by opening up activities and study days, and providing a resource of knowledge, research and expertise, upon which they can call. This newsletter and its future editions will

reflect the work of the Centre, and report on recent developments in ecclesiastical and canon law.

Nor should we forget the wider arenas of study that the Centre encompasses beyond Canon Law there is the relationship between religions and the State, their mutual influence, and the relationship of Law to other faiths, such as Islam, Sikhism and Buddhism. Whether your interest is narrowly professional, or broad-ranging intellectually, we would value your support.

**Gregory Cameron**

## Conference Reports

### European/American conference on religious freedoms

Washington DC 24-27 JUNE 1998 Last year, Dr Norman Doe and I were invited by the Columbus Law School at the Catholic University of America to attend a pioneering conference at which European and American academics and practitioners in the field of church/state relations met to discuss different national approaches to the law affecting religious organisations. The

methodology was a comparative analysis of two hypothetical case studies: one concerning the foundation of a church and the other, the running of institutions such as schools and hospitals. We were struck by the litigious nature of the American system and the wall of separation which by the First Amendment to the Constitution precludes the state from interfering in the affairs of the church, even to the extent of the refusal to fund social action programmes. Equally the

variety of the approaches throughout Europe gave plenty of scope for discussion. Dr Doe and I both presented papers.

In addition we participated in a briefing at the Senate building on Capitol Hill jointly organised by the Commission on Security and Co-operation in Europe (the Helsinki Commission) and the Centre for Jewish and Christian Values. It was moderated by Dr David Little of the US Institute for Peace and focused on religious human rights

## Conference Reports (cont)



National Assembly for Wales

worldwide and, in particular, the work of the newly established Presidential Advisory Committee on Religious Freedom Abroad being part of the US State Department. We also discussed extraterritorial legislation under consideration at that time by Congress. The Congress Law Library is in the process of establishing a collection of materials on the law of church/state worldwide and the Centre for Law and Religion has been invited to participate in this programme

Arrangements were also made for us to visit the John F Kennedy Assassination Records Review Board, to attend a session of the US Supreme Court when three judgments were delivered, and to see sittings of the Senate and House of Representatives. We travelled to New York to a meeting at the offices of the Archbishop of Canterbury's observer at the United Nations and managed to M in a Broadway musical.

It was resolved to hold a follow up conference which duly took place at the University of Trier, Germany on 27-30 May 1999 on the subject of Church Autonomy and Religious Liberty, a report of which will appear in *the* next newsletter.

**Mark Hill**

### The Welsh Assembly and Religion in Wales

On 12\* April, 1999, the Centre for Law and Religion convened a conference on the relationship between the National Assembly and Religious Organisations in Wales, recognising that the creation of the National Assembly represented a significant development in the shifting relationship between law and religion in Welsh society. The conference focused upon the activities of religious organisations which have fallen within the jurisdiction of the Assembly. Following a comprehensive introduction from the Archbishop of the Church in Wales, the Conference was addressed by the Executive Chair of the Scottish Constitutional Convention, Canon Kenyon Wright who recounted the valuable experience of the Churches in Scotland in dealing with the Scottish Parliament. David Lambert then gave a most authoritative analysis of the legislative process in the Assembly, and Dr. Norman Doe delivered a learned paper identifying the impact of Assembly functions on religious activities and examining the religious rights, duties and activities over which the Assembly has jurisdiction. The Right Honourable Alun Michael, Secretary of State for Wales, offered the Government Perspective in what was an essentially political analysis of the

Assembly's options in the process of legislation, from which it appears that a consensual approach may well emerge. After workshops on specialist areas such as Education, Places of Worship and the Voluntary Sector, the day ended with a plenary session involving a panel of representatives from the main political Parties, a session moderated by Mark Hill. Delegates were enthusiastic about a further convention or Conference in the near future.

**Anthony Jeremy**

## Case Comments

### Westminster Abbey

As a result of a disciplinary hearing, following a period of suspension, Dr Martin Neary was dismissed in April 1998 as organist and master of the choristers at Westminster Abbey. Dr Neary's wife was also dismissed as part-time concert secretary. The Abbey is a collegiate church and royal peculiar, designated as such by a Royal Charter 1560 under which Dr Neary's position was that of a collegiate officer. The charter empowered the Dean to appoint and remove collegiate officers. Dr Neary did not, however, enjoy freehold tenure: this had been abolished by a supplemental charter of 1951. The 1951 charter provides for appointment on such terms and conditions as may be agreed between the Dean and Chapter and the organist, subject to the Dean's powers of dismissal contained in the 1560 charter. The agreement between Dr Neary and the abbey provided for termination 'by immediate notice in writing given by the Dean in the event of gross misconduct'. The grounds relied on by the Dean in dismissing Dr Neary included: the unauthorised taking of fixing fees on the abbey choir; the wrongful and unauthorised retention of surpluses by the Nearys; the unauthorised retention of interest on sums due to the choir; overtime claims by Mrs Neary in relation to non-abbey promoted events for which she claimed a

fixing fee; the signing of contracts on behalf of the choir without authority; and failure to deal openly with the abbey and its auditors.

The Sovereign is the abbey visitor. Following a petition to the Queen, in *Neary and Another v Dean of Westminster (1999)* 5 Ecc LJ. Lord Jauncey, acting as the Queen's commissioner, determined the legality of the dismissals. Deciding that the matter would not be an appeal against dismissal but a *de novo* hearing, Lord Jauncey determined, as a matter of law, that: as between master and servant, there existed a fiduciary relationship of trust and confidence - an employee must act in good faith and make no profit out of his trust; the extent of this fiduciary duty depends on the facts of each case - the character of the institutional employer, the role played by the employee in that institution, and the degree of trust required of the employee in relation to the employer, whether misconduct justifies dismissal is a question of fact; dishonesty was not a precondition to a finding of misconduct; and, the conduct amounting to gross misconduct must be such as to undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant.

Lord Jauncey, decided that the setting up of a separate bank account indicated a lack of openness, but this

did not amount to gross misconduct. Charging fixing fees for the choir's salaried duties did not accord with prior abbey practice nor with the usual practice in similar ecclesiastical institutions. Lord Jauncey held that running a business whose main income earning assets were the lay vicars and choristers, deriving secret profits fatally undermined the trust and confidence which should have characterised their relationship with the abbey. Consequently, Lord Jauncey held that the dismissal was justified; this he reported to the Sovereign as visitor.

Whilst the visitatorial jurisdiction involved derived from ecclesiastical law, Lord Jauncey's determination represents a straight application of secular morality grafted onto the procedural morality contained in the two royal charters. Rather than applying any analogy to canonical tradition governing the dismissal of ecclesiastical officers, he employed a settled line of secular judicial decisions on master-servant relationships. From these he deduced a number of common law principles and rules of equity which he applied to the ecclesiastical dispute at hand. The classification of the office in question as one subsisting under a contract of employment is interesting, and it provides legal recognition of the possibility of jurisdiction over, and alternative recourse in, such cases in the State's industrial tribunals. We

await with interest the conclusions of the commission on royal peculiars, chaired by Avril Cameron, and whether it may impact on cases such as this.

### Norman Doe

#### The Church in Wales and clergy discipline

The Reverend Clifford Williams sought Judicial Review of two decisions made by the Provincial Court of the Church in Wales under which he was found guilty of misconduct and refused leave to appeal to the Supreme Court of the Province. In applying for leave to move for Judicial Review the Applicant's lawyers had first to persuade the High Court that it had jurisdiction at all. Of course it has long been established that the Consistory Courts in the Church of England are subject to Judicial Review, at least where principles of secular law were concerned. The Applicant argued that there was no justification for the courts of the Church in Wales to be excluded from this jurisdiction, and added that as a matter of principle, the High Court should have jurisdiction over any body exercising authority in such a way as to cause material prejudice to affected persons.

The Judge declined to accept analogy with the Consistory Courts which are regulated by Measures having the effect of

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## Case Comments (cont)

Parliamentary Acts and therefore, as he put it, form part of the fabric of the State. By contrast, he thought that the Church in Wales was a body whose legal authority arose from consensual submission to its jurisdiction, but with no statutory governmental function. It was therefore analogous to other religious bodies which were not established as part of the state, and he quoted a statement from a previous decision (*R v Dean and Chapter of St. Pauls Cathedral and Church in Wales ex parte Williamson*):

"Since no disestablishment by Act of Parliament in 1914 the Church in Wales, by Section 3(2) of the *Welsh Church Act 1914* had its continued existence as a *Voluntary Organisation of Individuals, held together by no more than the Contract implied by such mutuality*"

The Judge stated that the High Court has consistently declined to exercise jurisdiction over such bodies, and that, whatever justification might exist for

extending the High Courts jurisdiction over voluntary organisations, he could not disregard the limitations which the High Court had imposed upon itself.

The Applicant submitted in the alternative that on the footing that the Provincial Court exercised the jurisdiction on a consensual basis grounded on an implied contract, it must be implicit in such a contract that the Court would act fairly and lawfully, and that if they did not, then the case should continue as a private law claim. In particular the Applicant contended that the standard of proof was not appropriate, particularly bearing in mind that the Consistory Courts in the Church of England apply the criminal standard of proof and that the existing disciplinary procedure of the Church of England was intended to continue in Wales after disestablishment.

The argument was rejected as misconceived because the proceedings in the Provincial Court were

domestic and did not involve a criminal charge. First, in the absence of a provision to the contrary, the appropriate standard of proof in domestic proceedings was the civil standard. Second, the provisions in the *Welsh Church Act of 1914* were expressly subject to modifications or alterations as might be made thereafter, pointing out that the Constitution of the Church in Wales expressly disapplied the *Clergy Discipline Act of 1892* which was the foundation for the criminal standard of proof in English Consistory Courts.

A final contention of the Applicant, that the Bishop had effectively acted as both prosecutor and sentencer, which offended against natural justice was rejected. First, the Applicant had consented to the procedure set out in the Constitution of the Church in Wales. Second, there was no real risk of bias under the Constitution which separated the roles. The Bishop could not play any part in the decision as

to guilt and in sentencing he could not impose any greater sanction than that recommended by the Provincial Court. The analogy with the Court Martial (where the Convening Officer responsible for prosecuting also acted as Confirming Officer and had the power to vary sentence) was not apt because the jurisdiction of the Provincial Court did not involve the Applicants "Civil Rights and Obligations" within Article 6 of the European Convention of Human Rights, the foundation for the success of the Applicant in *Findlay v United Kingdom* 24 EHRR 221.

**Anthony Jeremy**

## Editorial

The Centre for Law and Religion, located within Cardiff Law School, offers a concentration of excellence which will enable lawyers to explore further the interface of law and religion.

This newsletter, which will appear three times a year for the benefit of Members of the Centre, aims to report on the work and progress of the

Centre, assisting those who possess an academic or professional interest to keep abreast of current developments and thinking and to encourage work in this area. The articles contained in this newsletter demonstrate the dynamic nature of this subject and the influence it casts over a wide area of law and government.

The Centre is not just concerned with Christianity but embraces wider religious groups. Membership of the Centre will give access to knowledge and research in the area and the opportunity to participate in its development. The recent work of the Centre in visiting canon lawyers in Rome is to be applauded.

Increased membership will support the work of the Centre, bringing together a wide range of religious and legal concerns, allowing future areas of research to be undertaken of value and interest to all.

The Editor

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[www.cf.ac.uk/claws/clr](http://www.cf.ac.uk/claws/clr)

## Forthcoming Events

November 1999

The director is due to deliver a course of lectures on Anglican canon law for the Gratianus programme at the University of Paris in

February 2000

Windsor Castle.

July 2000

Paper given by members of the Centre on comparative canon law of church property at Pittsburgh, USA.

30 May to 4 June 2000

November 1999.

The second Colloquium of Roman Catholic and Anglican canon lawyers. The planned subject for the colloquium is clergy discipline in Anglican and Roman Catholic Canon Law and the aim is to hold the event at St George's House,

May/June 2000

August 2000

Paper to be given by members of the Centre on human rights law and religion at the Third Euro/American Conference on Religious Liberty at Atlanta, USA

## Competition

The Centre invites subscribers to suggest a name for this newsletter which incorporates the ethos of the objectives of the Centre. A book token, to the value of £75, will be given to the winner.

Suggestions to:

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by the 15' December 1999.

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