

Church and State in Twenty-first Century Britain: The Future of Church Establishment

EDITED BY RM MORRIS

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With some notable exceptions, recent contributions to the burgeoning literature on establishment have tended towards the polemic, advancing *status quo* arguments in favour of the retention of the current constitutional arrangements or lobbying, often with greater passion than reason, for wholesale disestablishment. This book is different and falls to be commended, above its other obvious merits, for its scholarly neutrality and for its authoritative coverage. It is a compact book which, in common with similar academic texts, carries a disarmingly high price tag, which will put it beyond the reach of many. This is unfortunate since it comprises, in a clear and readable volume, the product of study initiated by the Constitution Unit at University College, London. This was previously disseminated in ephemeral form, first as a provisional Mapping Exercise in 2006, and subsequently as Reflections, in 2008. It is thorough but not dogmatic, rigorous but not partial; and it calls the reader to look again at church–state relations, which the author describes as being ‘locked constitutionally . . . in the geopolitics of the late seventeenth century’ (p 1). Significantly, this volume holds back from being prescriptive as to the outcome of the proposed re-examination.

Readers will look for different things from this book. Lawyers, both practitioners and academics, may feel disappointed that the treatment given to recent case law can be somewhat superficial. Morris asserts that the *Aston Cantlow* and *Percy* judgments dealt with difficult issues: ‘so difficult were they that on both occasions the House of Lords reversed the judgement [*sic*] of the lower court’ (p 101). The reversal of a judgment by a higher court merely demonstrates that the lower court decided the case wrongly, not that the underlying factual or legal dispute was difficult. The slightly simplistic analysis is compounded by treating *Aston Cantlow* and *Percy* as if they were bedfellows and, when taken cumulatively, provide the basis for divining principles of general application. This is doubly flawed: first because each case concerned a separate and discrete issue (chancel repairs and clergy employment respectively) and secondly because one was Scottish and the other English, where both the law and, more importantly, the nature of church–state settlement are profoundly different.

It is also a little misleading to refer to one commentator who criticised the decision in *Aston Cantlow* by reference to the history (p 100) without giving any mention of the scores of constitutional scholars and human rights lawyers who have welcomed it for its correctness. And it is perhaps surprising that, whilst noting the convention that the government will not seek to legislate on matters

internal to the Church of England without its consent (p 41), Morris does not speculate upon the current frailty of constitutional conventions, nor the fact that the government apparently now looks for consent not from the General Synod (being the successor of the Church Assembly and with power to legislate by Measure) but merely to the Archbishops' Council, which has no legislative function at all.

But these jurisprudential niceties are only irritating because the remainder of the narrative is so well balanced, thorough and elegantly expressed. The coverage given to Scotland, Ireland and Wales is probably the most comprehensive of any recent study and that of Scandinavia provides a healthy counterpoint. Where Morris is at his best is in incisive and non-judgmental policy analysis, putting the competing arguments (almost) always impartially. He does well to take the temperature of current establishmentarianism and ventures some teasingly engaging possibilities for the future. True, the focus is on the higher architecture of establishment, but unless and until there is intelligent thinking at a constitutional level, the trickle-down discussion of grass roots establishment at parish level will never begin. Few have succeeded as well as Morris in laying out the complex topography and in pointing out the significant landmarks which, if we are willing, will equip us to make an informed appraisal of the future of church establishment.

In my Editorial in the previous issue of this *Journal*,⁴ I issued a call to arms to the Church of England to give serious consideration to an urgent re-evaluation of the nature of establishment and its articulation. Morris' book serves as a timely checklist of the issues and flashpoints which need to be addressed and where sophisticated argumentation from those who value the place of the sacred in society needs to be mobilised to counter the unrelenting polemic of its detractors.

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A Secular Age

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We are 'denizens of the void'.⁵ We owe this bleak observation to Ferdinand Bardamu, the anti-hero, in Louis-Ferdinand Céline's novel, *Journey to the End of the Night*. Bardamu is a mess. He tells us that he feels 'empty'

⁴ (2009) 11 Ecc LJ 245–247.

⁵ L-F Céline, *Journey to the End of the Night* (London, 1988), 71.