

BOOK REVIEWS

Legal Systems of Scottish Churches

EDITED BY MARJORY A MACLEAN

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JT Cox's classic text, *Practice and Procedure in the Church of Scotland*, was last revised in 1976, while the last reasonably full treatment of the subject, James Weatherhead's *Constitution and Laws of the Church of Scotland*, is now over ten years old. Succeeding years have seen major developments in several areas, most notably clergy discipline; but life has moved on in other respects as well. The General Assembly's Acts and Regulations are now available on-line as is Gordon McGillivray's regularly-updated *Introduction to Practice and Procedure*,¹ and these developments have made a new version of Cox or Weatherhead virtually inconceivable. So instead, the Church of Scotland's Legal Questions Committee decided to produce a volume that also looked at the law in the other two major churches in Scotland: the Scottish Episcopal Church and the Roman Catholic Church.

Almost inevitably, *Legal Systems of Scottish Churches* says least about the law of the Roman Catholic Church in Scotland. As the brief final chapter points out, the Latin Church is governed by the *Codex Iuris Canonici* 1983, which 'does not allow for any local deviations' (p 83) – though it does provide a helpful description of the jurisdiction of the Scottish National Tribunal. The bulk of the book is therefore split evenly between the Church of Scotland and the Episcopal Church.

Both Churches grew out of the Scottish Reformation and retain a degree of family resemblance: distant cousins maybe, but cousins nonetheless. But the major ecclesiological differences between them are fundamental: in the Episcopal Church, 'on a historic understanding of the episcopate the Bishop is the chief pastor of his diocese in whom all legislative, judicial and administrative authority is vested' (p 47), while the Church of Scotland is emphatically non-episcopal and governed instead by a hierarchy of courts. Though, to the casual observer, the General Assembly of the Church of Scotland and the General Synod of the Episcopal Church may look fairly similar there are fundamental differences between them: principally, that the General Synod

1 A G McGillivray: *An Introduction to Practice and Procedure in the Church of Scotland*, revised up to 2008 and available at <<http://www.churchofscotland.org.uk/extranet/xchurchlaw/downloads/xchurchlawppintro.pdf>> accessed 4 August 2009.

includes lay representation while the General Assembly does not. All members of the courts of the Church of Scotland – ministers, elders and deacons – are ordained; and, notes Marjory MacLean, ‘It is wrong, but sadly quite common, to hear reference to “lay leadership/governance” in the Church of Scotland: the phrase fails to recognise the ordination of all elders’ (p 2). Moreover, even though the Assembly’s Judicial Commission makes the final judgments in matters of clergy discipline and pastoral breakdown, the General Assembly still remains the highest court of the Church – as evidenced by the recent judicial proceedings over the call of a minister to Aberdeen Queen’s Cross.² The Episcopal General Synod, on the other hand, ‘has no judicial power either at first instance or on appeal’ (p 49).

The book sets out for both Churches their principles of governance, the general procedures of their courts and synods and their clergy discipline procedures (which, in the case of the Church of Scotland, includes both permanent deacons and probationers who have not yet been ordained). For the Church of Scotland, clergy discipline proceedings were completely overhauled in 2001 when the traditional system of trial by libel before the presbytery of the bounds was abolished. Its replacement – a Presbyterian Commission with a legally-qualified Convener and Vice-Convener – is not unlike a Clergy Discipline Tribunal in the Episcopal Church, which includes a practising lawyer, a cleric and a lay member.

Both major treatments need to be read in conjunction with the major legislative texts of the two Churches; but both are clear, helpful and – crucially – written by experts in the field. The book is essential reading for students of Scots church law; but one would hope that it will also be of interest to researchers in comparative ecclesiastical law. Possibly as a result of sheer weight of academic numbers, the majority of research publications in English tend to be concerned with Roman Catholic and Anglican canon law. Because the Episcopal Church has never been part of the Church of England, even though its law and institutions are essentially Anglican they still retain a pronounced Scots accent. The Church of Scotland’s system of governance and adjudication is even more distinctive: neither better nor worse than those of the more commonly-studied systems, just different – and well worth the effort of comparative study.

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2 See F Cranmer: ‘Human sexuality and the Church of Scotland: *Aitken et al v Presbytery of Aberdeen*’ (2009) 11 *Ecc LJ* 334–339.