

CHURCH AND STATE IN THE POST-COLONIAL ERA: THE ANGLICAN CHURCH AND THE CONSTITUTION IN NEW ZEALAND. By Noel Cox. Polygraphia Ltd. 2008. Pp. 338. NZ \$65.00. ISBN: 978-1-877332-60-9.

In 1857, the Anglican Church in New Zealand was among the first colonial churches to shape its own constitution. In giving powers legislative as well as deliberative to elected lay and clerical membership, the Church was doing something new. Yet inasmuch as its members came from the Established Church of England and Ireland, they shaped a constitution that inherited not only the formalities of style from the British parliament but also many assumptions about the place of law as applied to the Church, and indeed their own personal interpretations of the contemporary Church back home.

Much of the church membership would have been content for the British parliament to control the church in New Zealand, and for the British monarch to take responsibility for the appointment of its prelates. The issues around specific identity of Anglicans outside Britain, its continuities and discontinuities with the Mother Church, were not easily faced and not always noticed. The one hundred fifty years since the Constitution was signed by representatives of the contemporary New Zealand church, prelates, clergy, and lay—but not Maori—form the book's backdrop.

In the last decades, there has been a significant reshaping of the Anglican Church of New Zealand into a structure which sets together—but in parallel—three cultural identities; the indigenous Maori people, the traditions of the settler or European inheritance, and the diffuse cultures and languages of the people in the diocese of Polynesia. As a result, many questions have needed new attention.

Noel Cox sets out to do several things. He emphasizes that far from mandating a separate legal identity apart from the secular state, the Anglican Church works within the requirements of the legal system of New Zealand. It has its own canon law—in which subject the author is the only barrister or solicitor with formal qualifications in New Zealand. Further, though it is an insubstantial achievement so far, the Church has inherited assumptions of co-habitation with the secular law systems from not just the nineteenth century but also the Middle Ages and all eras before and after. Special ways are being tried and special experiences achieved in this Church, and they are significant enough to

deserve a consideration of the sources of their meaning and purpose. Thus the book.

The chief interest of the book lies in Chapter Three “The Nature of Legislative Power,” and Chapter Four “The Nature of Judicial Power.” The author expands on the issues important in any community brought together (as this church has been since 1857) in “voluntary compact,” but more particularly, he focuses on the issues which have been of particular importance in these last decades for the Anglican Church in the Antipodes—the place of ordained women, the responsible ownership of property, the legal powers of supervision and control of members, and most of all, the cultural identity and claims of the indigenous Maori people. This last matter is anchored in the relationship of the New Zealand Anglican Church with te Tiriti o Waitangi (The Treaty of Waitangi), the formative agreement between the Crown and the Maori people, an agreement largely brokered by the (Anglican) Church Missionary Society missionaries in 1841.

Chapter One, “Sources of Authority—Ecclesiastical,” and Chapter Two, “Sources of Authority—Secular” move across centuries, from the Holy Roman Empire to the later Middle Ages and into the political issues raised by legal systems and powers in a monarchy as it changes or is challenged towards democracy. His preamble has become more significant than his subject. The author provides a vast range of citations from a variety of sources, making for a hard read. By sweeping so widely, the author gathers much material, but centuries cannot be compressed adequately into a couple of chapters, and the oscillation across themes and authorities and centuries is not shaped to a purpose. It is a long wait before we really get down to business at about page eighty-two.

The foreword from the Right Revd John Paterson notes that the author contends that the New Zealand Church is “quasi-established.” While he certainly underlines the ways in which we do assume a consonance and cooperation between the laws of the land and the circumstances of the Church, I would hesitate to agree with the author that that term best summarizes what he does describe in this book.

He regularly makes much in the text of his conviction that Church law is partly sourced in the Divine Will. This conviction begs far too many questions about the authority of scripture, and (for that matter) of the divine guidance of human reason. While all religious societies organize themselves in accordance with their faith’s most ideal principles, daily realities discredit any claim for believing their legal system to be thus half divine and half human. So while it is a pleasure

to meet up with canon lawyers and medievalists like Dr. Hubert Box once more in the citations, somehow the present era has not found their categories as useful as we once did.

In ranging so far and wide and bringing in so much material from other disciplines and subjects, the author naturally becomes liable to criticism on points of balance and interpretation. These jar. For instance, footnote sixty on page 226 is distinctly misleading in stating that the title “Patriarch” is used by “the heads of some Churches which separated from Rome during the first millennium.” The Patriarch Cyril of Moscow would not see it that way, for that bishopric was elevated to a patriarchate in 1589—nothing to do with “Rome and the first millennium.” Another example, the Episcopal Church in the U.S.A. is known as just that, The Episcopal Church (TEC), the preferred title since 1964, and not as Cox has it several times.

Back to New Zealand. The author is clearly right: ecclesiastical courts or tribunals have not had much to do and have not therefore left a body of debates and decisions. However Cox gives attention to but one case, *Gregory v. the Bishop of Waiapu*¹ (1975) and the reader will wrongly assume there are no others. What about the prosecution of the Revd Hubert Carlyon in 1877? This brought a loss of job and broken man’s return to England, condemned under a Constitution wielded by people whose ideals were more rigid and constrained than were those obtaining in the contemporary Church of England. Or again surely worth mentioning, the prosecution brought by Archdeacon Gosset against Fr. Charles Perry, the vicar of Christchurch S Michael in 1918 and 1919, brings into focus questions around the identity of the Church as expressed in liturgy and church life. These examples have clergy taken to court, not as sinners against divine law nor as immoral citizens but as Anglo-Catholics. Again, the development of the *caveat* system (from the 1870s) is not mentioned. This was the quiet way in which bishops notified other bishops of a problem priest—once listed, the priest on the black-list had to keep on moving. But not always instantly—the *caveat* against the Revd Samuel Ingle reached the bishop of Sydney a week after he had licensed Ingle as curate at S Saviour Redfern. Ingle lasted three weeks.

The double standard for disciplining clergy and laity deserves but gets no discussion. Drunkard or sexually profligate clergy were disciplined under the Constitution’s provisions. The ready withdrawal of the bishop’s license put them out at one strike. Drunken or profligate

1. *Gregory v. Bishop of Waipu*, [1975] 1 N.Z.L.R. 705 (H.C.).

lay leaders were not so readily pulled or pushed. This unreflective carelessness again is at hand in the author's loose-wording around the failed appointment of a priest as a suffragan bishop of Reading in England in 2003—footnote 167 on page 280 says the man is “a homosexual.” Surely the point is not that he like many priests is gay but that he was honestly gay and declaredly celibate: and yet was rejected. Should a gay lay person similarly be rejected, and by whom? Divine law, church law, civil law?

The book is well produced. I counted some eighteen typos or misprints. Two might mislead—the final paragraph on page six, has “that” where “than” is needed. The final paragraph of the book, on page 287 has “deticence” where “reticence” is needed. Footnote twenty-nine on page 223 has the Greek letters for “laos” with an incorrect letter for that terminal s, an error not repeated elsewhere. The notes and bibliography are impeccably thorough and comprehensive, the index is inclusive but again raises that problem of balance, with the marginally relevant obscuring the directly important. Those such as Pope Hildebrand, feudalism, Pharaoh, Pharisee, Latin Church all get an entry but no discussion in the text, and their invocation is not relevant to the declared purpose of the book.

The author's conclusion, pages 284-287, is more valuable. The book as a whole would serve better if it worked with discussion and examples directly shaped toward that conclusion.

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