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REDISCOVERING ANGLICAN PRIEST-JURISTS

# VII: Edmund Wood (1841–1932)

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## Introduction

The late Eric Mascall in his entertaining memoir *Saraband*[1] gives an engaging pen portrait of Canon Edmund Gough de Salis Wood, assistant curate of the parish of St Clement, Cambridge from 1863 to 1883, and then vicar until his death aged 91 in 1931. Wood was a rigid Anglo-Catholic of unwavering ascetical and liturgical rectitude, who served three terms as Master of the Society of the Holy Cross, founded the Society for the Maintenance of the Faith, and who played an energetic role – 'critical and controversial, often in the minority and out of sympathy with the various popular tendencies of the day'[2] – as a proctor in Convocation. But his reputation in life depended most on his legendary canonical erudition, an erudition so compendious and so singular that the facetious twinned him with that colossus of patristic learning Canon Darwell Stone of Pusey House, in the words of Heber's hymn: The heathen in his blindness/Bows down to Wood and Stone.[3] However, unlike Stone, Wood's learning did not transmute itself into publication, and although as his *Church Times* obituary makes clear he exercised an extensive ministry of consultation, the fruits of this in the form of papers and memoranda remained 'fugitive, but weighty, although sometimes dry'.

## The regal power of the Church

The one exception to this is a short dissertation he published in 1888, entitled *The Regal Power of the Church or The Fundamentals of the Canon Law.*[4] This dissertation is a gem of canonical jurisprudence, so much so that Eric Kemp arranged to have it republished in 1948 by the Dacre Press,[5] calling it 'probably the best extant

[1] E Mascall, *Saraband* (Leominster, 1992).
[2] C Gray, 'In Memoriam Canon EG Wood', *The Church Times* (London, 30 December 1932), 815.
[3] Mascall (note 1), 71–72.
[4] E Wood, *The Regal Power of the Church or the Fundamentals of the Canon Law* (Cambridge, 1888).
[5] E Wood, *The Regal Power of the Church or the Fundamentals of the Canon Law, With a Preface and a Supplementary Bibliography by E Kemp* (Westminster, 1948).

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introduction in English to the principles of the Canon Law',[6] and a key text in his view for the education of the clergy especially as the revision of the 1604 Canons got underway.

Two principles stand out in Wood's treatment of his topic. First, his interest is not 'in the ecclesiastical law commonly quoted by lawyers and referred to by the greater number of church dignitaries and officials, which meant nothing more than Privy Council rulings and statute law of Erastian birth, but the Canon Law of the Catholic Church supplemented by the local legislation of the English Provincial Synods'.[7] Second, his insistence that Canon Law is fundamentally a science and a branch of the study of theology:

> A man is not a canonist because he can quote canons and is acquainted with the literature of councils. Canon law is the science which enables him rightly to understand and apply those canons. Ability to quote from the records of councils no more makes a man a canonist than ability to quote Acts of Parliament makes a man an English lawyer.[8]

As a consequence, *The Regal Power of the Church* barely touches on any of the particular agitations of the 1880s, whether ritual or legislative – there is one sentence in which the word 'Establishment' is used[9] – and confines itself to the fundamental exposition of how the Church might call itself possessed of a distinctive *Jus*, and how that *Jus* is exercised and for what purpose. It is ironically this very un-Victorian determination to avoid both ecclesiastical polemic and massive weight of argument that gives the book its enduring value, as it comes without the freight of the dead controversies of its age. Wood begins with a preliminary consideration of the Church's regal power:

> The claim of the Catholic Church to be the representative of Christ on earth, his vicegerent and instrument in regard to the spiritual and moral government of mankind, implies a claim to the possession of a threefold power.[10]

This threefold power – prophetical, priestly and regal – belongs properly to Christ Himself, who has received it as man from the Father, and is given mediately to the Church by Christ's commission: 'As my Father hath sent me even so I send you'. So the Church exercises a delegated power which is sacramental, as pertaining to its note as Holy; didactic, as pertaining to its note as Catholic; and governmental, as pertaining to its note as Apostolic. This regal or governmental power is both legislative and executive, and is properly called apostolic because its exercise is in the hands of the hierarchy appointed to carry out the delegation made originally to the apostles, and properly called regal because Christ himself elects to use the language of 'kingdom' to describe his Church.

[6] Wood (note 5), vi.
[7] Gray (note 2), 815.
[8] Wood (note 4), 111.
[9] Ibid, 64.
[10] Ibid, 1.

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Having so established the theological origin and ground for the exercise of government in the Church, Wood is then at pains to emphasise that the canonist must always be first and foremost not a lawyer but a theologian:

> The canonist must begin with theology. Unless he is a theologian he can never be really a canonist. The study of the canon law is a holy study, because the canon law itself is a very holy thing, and among all holy studies we venture to say none is more sacred than that of the jus canonicum.[11]

Wood is conscious in exercising this claim of the apparent corruption of the medieval ecclesiastical jurisdiction which was so marked a theme in contemporary historians such as Bishop Stubbs.[12] To this he argues that this was a consequence of the adoption – for want of anything else to hand – of civil procedure in ecclesiastical tribunals, the unwelcome inroads of civil practice and principles into the common law, and the burgeoning of appeals to the Papal court. Against this Wood sets the example of the more notably pastoral English canonists, and in particular the work of Lyndwood, to whom he has a particular attachment and to whom he gives special attention later in the dissertation. But the fundamental theological vocation of the canonists remains Wood's cardinal principle:

> It is a very solemn thing to tread the heights of Carmel; and we must indeed put off our shoes from off our feet when we venture to do so; but it is no less solemn a thing to enter the praetorium, and we must bare our heads and bend the knee as we enter the curia of Christ our King.[13]

Having set out his preliminary review of the theological justification for the Church's exercise of a true regal power, Wood continues with his definition of what Canon Law is. He begins with the Italian canonist Lancelotti (1522–1590): the canon law consists of the precepts of the Divine law, of customs, and of constitutions. It is a true law – *Jus* – having a fundamental governing principle in the constitution and mission of the Church, and not simply a *lex canonical*, a collection of rules.[14] Thus it has an organic unity because it flows from a true power of legislation, and is not simply the compilation of a variety of sanctions with different origins, whether they be within the Church hierarchy or outside it. Just as the *jus gentium* relates to humankind with regard to its natural relations, and the *jus civile* with regard to membership of human society, so the *jus ecclesiasticum* is concerned with the spiritual society of the Church, and as such because the Church is universal is not part of any national public law, as the Roman *jus sacrum* was, but independent of both public and private municipal law. Having established this point with reference to Savigny (1779–1861),[15] Wood goes on to quote the definition of the canonist Schmalzgrüber (1663–1735) at some length: the canon law is positive law, constituted or approved by

[11] Ibid, 10.
[12] Ibid, 11.
[13] Ibid.
[14] Ibid, 17.
[15] Ibid, 19.

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lawful authority, and duly promulgated to the Church; its proximate purpose being to direct the faithful in matters relating to divine worship, and to preserve peace and righteousness, its ultimate end being to guide the faithful to eternal blessedness.[16] It is a human law, because even where it declares divine precepts it does so by an act of human application; it is a positive law because although it contains precepts of the natural law it adds to them the instrumentality of human authority; it is constituted or approved because it consists of canons and decrees, and the sanction by authority of custom; it is promulgated, because the faithful who are drawn towards salvation through its application, must be properly made aware of it. Wood concludes by emphasising the difference between canon law and moral theology properly so called: the former deals with the external acts of Christians directed by canons, customs and decrees and concerning divine cult and moral discipline; the latter, the so called *forum conscientiae*, in which human positive law is considered only in the light of the sanction by which either divine or natural law binds the conscience of the Christian.

Wood then goes on to consider the divisions of the canon law, and most importantly that between public and private canon law, the one having regard to the constitution of the Church, and the other the 'reduction' of the power inherent in her constitution to action, either leglislative, or judicial, or executive. He notes in particular at this point that whereas most works concerning canon law are in fact almost entirely occupied with private canon law, his concern is exclusively with public canon law.[17] This is a key characteristic of Wood's project: his ambition in the *Regal Power of the Church* is not to produce the sort of Handbook of Church Law that deals with tithe and glebe crops and churchyard grazing rights. It is a constitutional work, and in that respect as we shall see a significant contribution to the reinterpretation of the Anglican formularies in the light of 19th century Catholic revival in the Church of England and the concomitant burgeoning of the Anglican Communion. Further divisions are those between the *lex scripta* – Scripture, Canons, Maxims of the Fathers, Decrees – and the *lex non scripta*, under which falls that vast body of tradition, custom and usages which characterise the church's life. Laws may be universal or particular, and here Wood mentions how laws may apply only in certain countries, provinces or dioceses: provincial particular law being particularly important in articulating his later defence of the authority of the Legatine constitutions bound up with Lyndwood's *Provinciale*.[18]

One of the fundamental difficulties that Wood has to face is the degree to which the canon law was perceived to depend on the jurisdiction of the Pope. Here he relies on the so-called 'Gallican' jurists, who themselves make an emphatic distinction between the 'old' law and the 'new', in which the former embraces the law of the Church as it existed for the first eight centuries, and the 'new' that arose after the forged decretals of pseudo-Isidore allowed the Papal jurisdiction to expand beyond the modest constraints of more primitive times. The principal evil Wood identifies here – one which is key to his whole project – is the eclipse of the juridical and legislative responsibilities of the provincial synods, and their

[16] Ibid, 19–20.
[17] Ibid, 24.
[18] Ibid, 100–105.

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wholesale absorption into the work of the Papal court, thus causing not only an inapposite accumulation of power over and above that primacy of honour belonging by right to the Bishop of old Rome, but also a massive expansion in the bulk of the so-called *jus novum* as contained in the Corpus *Juris Canonici*, to which the *jus novissimum* largely derived from the work of the Council of Trent adds yet more. It is worth noting here that Wood's proposition that the science of canon law still maintains its integrity despite the massive impact of Papal juridical, legislative and executive activity corresponds to similar Anglo-Catholic ressourcement projects such as James Skinner's *A Synopsis of Moral and Ascetical Theology* published in 1882,[19] which attempt to align the authentic course of development through Gallican authors and anti-papal assertions. Both Wood and Skinner avoid taking their stand on the Reformation: for them both, it is the course and eventual triumph of ultramontanism[20] in the churches in communion with Rome that justifies Anglican particularity.

The question of conscience which Wood raises in relation to the proper sphere of canon law proposes the issue of the authority of that law with regard to its subjects, and the obligation to obey it. Here Wood follows Gerson in considering the *potestas ecclesiastica* to be supernatural and bestowed by Christ on the apostles and their successors forever, 'for the edification of the Church militant according to the laws of the Gospel in order to the attainment of everlasting felicity'.[21] The efficient cause of this power is Christ's own delegation; the material cause is the hierarchy that succeeds to the apostles; the formal cause the co-ordination of this power to the laws of the Gospel; the final cause, the edification of the Church militant. Wood rests the force of this claim on Christ's commission to the apostles 'He that heareth you heareth me, and he that despiseth you despiseth me' and adduces in particular the decree of the Council of Jerusalem (Acts 15.28) as evidence that this power was known and exercised from the beginning of the church's organised life.[22]

Thus the preamble to the decree 'It seemed good to the Holy Ghost and to us to lay upon you no greater burden than these necessary things' demonstrates a claim to bind the conscience of the church's members, an authority exercised in co-operation with the Holy Spirit himself, a dispensing power from the ceremonial law of Moses which of itself was imposed by divine authority, and an imposition of precepts regarding food which are not of themselves apparent from either natural or divine positive law, but which are stated in clear conjunction with the requirement to abstain from fornication, which is. Wood notes that S. Paul and S. Silas promulge these decrees to the Christians in the places to which they travel (Acts 16.4) and that he speaks of his authority to the Corinthian church as being 'the authority which the Lord hath given us for edification and not for your destruction' (2 Cor 8.10).[23] Going on to adumbrate a succession of patristic authorities, Wood emphasises that the reality of a true legislative and judicial power was present and acknowledged

[19] J Skinner, *A Synopsis of Moral and Ascetical Theology* (London, 1882).

[20] That is, a political conception within the Roman Catholic Church that advocates for supreme Papal authority in matters of faith and discipline.

[21] Wood (note 4), 29.

[22] Ibid, 31–32.

[23] Ibid, 33.

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in the church even before the compilation of collections of canons, and that these positive ecclesiastical laws were binding not simply on the clergy but on the laity as well, a significant point given the reluctance of received English legal opinion to consider the Canons of 1604 as authoritative for the laity.[24]

From the authority of the canonical power, Wood moves to the obligation it imposes. It was a fundamental argument of both Luther and Calvin that canon law, and indeed all human positive law, was not binding in conscience.[25] Here Wood considers S. Paul's statement in Romans 13.5 'Wherefore ye musts needs be subject not only for wrath, but for conscience sake': provided that a law is just, in that it does not contradict either divine or natural law, its promulgation by lawful authority comes with an obligation to obey in conscience that rests on the authority of God himself as the efficient cause of all just and human positive law, whether civil or ecclesiastical.[26] Wood goes on to qualify this in certain respects by making a distinction between the *lex moralis* and the *lex poenalis*: laws that simply impose a penalty for a particular act are not in themselves binding in conscience, although he notes that laws of this sort, and mixed laws that share the characteristics of both the *lex moralis* and the *lex poenalis*, are hardly ever found in ecclesiastical law.[27] And here he reverts to the argument given earlier with regard to the decree of the Jerusalem Council: that prohibitions on the eating of certain foods killed in certain ways are promulged in exactly the same way and with no distinction as the reiteration of the prohibition of fornication, which is binding in conscience by virtue of the natural law.[28]

Wood notes that the consequence of this is that the church in many instances 'prohibits, under pain of excommunication, many things so indifferent in themselves that if not prohibited they would not be wrong, and so does bind the conscience under mortal sin; and that not only in respect to the circumstances of the action, but in respect also to its substance'.[29] Moreover, even with regard to those things *quoad substantiam* which are binding *ex jure divino*, the church makes rules that are binding in conscience, for which Wood quotes by way of example the precept of Easter Communion: Christ makes no commandment himself as to the frequency of the reception of holy communion, only as to its necessity; it is the regal power of the church that imposes the Easter obligation.[30]

However, these canonical precepts that bind the conscience must fulfil two conditions to do so: first, they must be just and rational in themselves, not commanding what is injurious to humankind, or an illegitimate exercise of power, or contrary to what is owed by way of justice to God; second, they must be properly promulged, so that those subject to them are made properly aware of them.[31] Wood

[24] Ibid, 34–35, 37. See further, *Middleton v Crofts* (1736) 26 ER 788, which held that the laity are not bound by the canons of the Church of England.

[25] On the issue of law binding conscience see further N Doe, 'Robert Sanderson (1587–1663)' (2022) Ecc LJ 68–86.

[26] Wood (note 4), 39.

[27] Ibid, 44.

[28] Ibid, 45.

[29] Ibid, 48.

[30] Ibid, 48–49.

[31] Ibid, 49.

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has a particular interest in this point because of what he has to say later about the abrogation of law by desuetude: promulgation must be by proclamation to the community affected, and not simply an act of the legislator's public court.[32] He notes that Suarez elucidates the common opinion that the solemn sanction of synodical decrees made at the final session of such assemblies does not in and of itself constitute promulgation, but requires formal dissemination afterwards.[33] The marriage decree Tametsi of the Council of Trent, is given as an example of this, as also are the disciplinary degrees of Trent more generally as they were received in the Kingdom of France.[34] A final note concerns the need for 'approbation': no just law should harm those for whom it is made, and although the law is not dependent on the consent of those subject to it, nevertheless if the harm done by the law is sufficient to rob it of the approbation of those affected by it, the law may be held void because by unforeseen consequences it subverts the fundamental intention of the legislator.[35]

Having considered the obligation that canon law imposes on the conscience of those who are subject to it, Wood next considers certain specific characteristics of that law. First, the *potestas ecclesiae* is not given as ordination is, as a character by consecration, but rather by election and tradition, being both supernatural and spiritual because the end to which it is directed, the salvation of souls, is supernatural and spiritual. The power of order requires this power of jurisdiction, as without it its capacities are only potential, undirected towards specific subjects. This supernatural power is not only executive but legislative, not in the sense that canon law overrides civil law within its proper sphere, but in that it has a spiritual end, even when dealing with topics and matters which are temporal. Thus although God as author of nature is the efficient cause of civil law, he is the efficient cause of canon law in that he is the author of the supernatural order, which is a superior end and which is not mediated through principles inherent in the natural order by through the person and delegation of Christ himself. Wood concludes this peroration on the excellence of the ecclesiastical power which has as its end the salvation of souls with a consideration of whether canon law be superior to dogmatic theology as a science. He considers that it is not, as it is a science that has not God himself but man as related to God; however, he also concludes that on the whole canonists should be preferred to theologians for ecclesiastical appointments, as they know enough about theology anyway and have a much better sense of how to exercise ecclesiastical discipline, particularly 'in a place where heretics abounded, or the time were one when schism and ecclesiastical disorder were rife', or as he puts it quoting Hostiensis (1194–1271), '*Canonista est mixtus et mixtum est preferendum*'.[36]

Wood now turns to the subject matter of canon law, which he divides in the usual way into the law of Persons, the law of Things, and the law of Actions or Causes.[37] Considering the law of Persons, he returns to the distinction made earlier

[32] Ibid, 50.
[33] Ibid, 51.
[34] Ibid, 52–53.
[35] Ibid, 55.
[36] Ibid, 61.
[37] Ibid, 62.

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between the power of order which appertains to sacred things and the distribution of spiritual goods, and the hierarchy of jurisdiction, which pertains to ruling and governing and which may vary even between those possessing the same order, such as a bishop with metropolitical authority in contrast to one without.[38] Jurisdiction is either ordinary or delegated: ordinary jurisdiction attaches to an office and remains lawfully exercised by the holder of the office for as long as the holder possesses it, whether the person holds by way of the *lex inanimate*, entrance to an office which by law or custom has jurisdiction attached to it, or by way of the *lex animata*, when a superior gives an office to an inferior to which jurisdiction is attached, even if the office itself is held only at pleasure of the superior. In contrast to this, delegated jurisdiction is given by either verbal or written permission by one possessing ordinary jurisdiction, and may be removed at any time without due process.[39]

Jurisdiction in itself can be voluntary, contentious, and coercive: the first is needed for the exercise of the power of order, either licitly or validly depending on the case; the second, for correction of those submitting to the jurisdiction; the third, for the imposition of sentence in the case of disobedience to the directions of contentious jurisdiction. The penalties of coercive jurisdiction properly so called are exclusively spiritual and generally negative rather than positive: excommunication and interdict are the examples given. At this point Wood makes the only reference to the authority of the civil power with reference to canon law in the whole dissertation:

> So far as ecclesiastical persons have exercised positive or material coercive jurisdiction, that has only been so by grant from the State. It is beside our purpose to discuss whether such grant ever has been to the good of the Church. Such grant is really what is meant by the term 'Establishment'.[40]

Wood concludes his consideration of the law of Persons by mentioning the rights and responsibilities of various bodies such as Bishops, Metropolitans, Cathedral Chapters, Vicars-General, Archdeacons Rural Deans, incumbents and their assistants, and other clerks such as they might be.[41]

Of the law of Things Wood has less to say: he begins with the law concerning the administration of the sacraments, noting that the canonist does not deal in this respect with the internal dispositions or effects of the sacraments proper to those administering and receiving them. Marriage and Holy Order predominate here as topics of particular complexity, although he makes it clear that the doctrinal aspect of both is not a part of the canonist's direct concern. The law of buildings, boundaries whether of parishes or dioceses, and benefices follows, together with what is required for the celebration of divine worship with regard to 'place, time and circumstances of its celebration' and the responsibilities of those both clerical and lay who are to participate in it.[42]

[38] Ibid.
[39] Ibid, 64.
[40] Ibid.
[41] Ibid, 64–65.
[42] Ibid, 65.

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The law of Actions or Causes deals with assemblies, from Ecumenical Councils to diocesan Synods, and visitations, whether provincial, diocesan, archidiaconal or ruridecanal. To these are added the law of burial, procedure in the ecclesiastical courts, the carrying out of ecclesiastical penalties, and the definition of ecclesiastical crimes. As it pertains to voluntary jurisdiction, the law of Actions is concerned principally with dispensations, exemptions, privileges and prescriptions, topics to which Wood returns later at more length.[43]

From the nature of jurisdiction and its exercise, Wood turns to those who have the authority to exercise the *potestas ecclesiae*, whom he identifies exclusively as the apostles and their successors the bishops: to them belongs the power of governance, whether legislative, judicial or executive. The fullest exercise of this power is in a council of the whole church, but Wood emphasises that although provincial councils and diocesan synods demonstrate a more limited execution of episcopal authority, they are no less binding provided that the matters considered are not contrary to a more general custom or practice of the church, or a usurpation locally of what ought to be decided ecumenically. But this power is not an autocratic one: consent of the presbyterate is necessary, given in synod after due notice and free discussion. Although the presbyterate has no power of itself to act without the bishop or constrain the bishop, nevertheless Wood asserts with a catena of authorities both English and Gallican that the bishop may not impose canons or statutes on his diocese without the consent of his clergy in synod. He treats this as an axiom of ecclesiastical unity: 'the *jus canonicum* is a great whole, and must be regarded and treated as such. So the process of ecclesiastical legislation is a complex whole, and the valid action of each part must contribute to the valid action of the whole'. [44]

However, with regard to judicial power, the authority to exercise this jurisdiction in *foro externo* belongs to the bishop: spiritual penalties are imposed by the bishop alone, from whom an appeal ought only be lodged to the synod of the province, and not to the metropolitan in his own capacity, which Wood calls a development of ultramontane practice.[45] He concludes with a brief paragraph about those subject to the canon law, about whom he says, 'it is not necessary to say much'!, 'Every baptised person is subject to this law', and consequently 'however exalted or lowly be their social status, all owe a loyal, a conscientious, obedience to this sacred law. The canon law is not for the clergy only, but for the layfolk also. It is for the bishops as well as for the clergy under them'.[46]

Wood finishes his consideration of the jurisprudence of the canon law with a detailed exposition of the law of abrogation: how an obligation ceases to bind, whether by repeal, by dispensation, or by desuetude.[47] Repeal is straightforward: it is universal, perfect, permanent but it must be enacted by an authority equal to or greater than the originating legislator, according to the maxim '*ejusdem est solvere cujus est ligare*'. Dispensation by contrast is particular, limited, generally personal and temporary. It may be voluntary, the merciful grant of the one empowered

[43] Ibid, 65–66.
[44] Ibid, 70.
[45] Ibid, 71.
[46] Ibid, 71–72.
[47] Ibid, 72.

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to dispense; reasonable but not necessary, which Wood says is very rare; and reasonable and necessary, when a dispensation is given usually because an obligation of necessity arising from the natural law is judged to weigh against the positive law that is in force. This latter process is essentially judicial, a judging between laws, and so is not strictly speaking a dispensation properly so called, which is a legislative suspension. Wood goes on to give six rules which are intended to determine when an inferior may give a judicial dispensation from a positive law imposed by a superior, while ensuring that the principle that no one may be judge in their own case is maintained.[48]

Desuetude offers more complexities: insofar as it abrogates a canonical obligation it does so definitively, so that a canon requires fresh legislation to be revived, but not all law can be abrogated in this way, and not all custom abrogates.[49] So the natural law and the divine law cannot be abrogated by a contrary custom in any circumstances, and neither is non-user sufficient, the abrogating custom must be a contrary one. Custom is here so defined as to mean the custom of the community which the superior power accepts, either explicitly or tacitly: the custom must be rational, and '*legitime prescripta*'. To be rational the custom must be in conformity with propriety, and not a *jure reprobata*, that is irrational by way of opposing a law intended to promote a greater propriety in ecclesiastical life. No amount of standing or usage can make an irrational custom legitimate as a true contrary custom abrogating a legitimate law in possession. As far as legitimate prescription is concerned, the custom must demonstrate uninterrupted use, usually for a canonical term of 40 years; it must enjoy the consent of the majority of those for whom the law to be abrogated was made; it must arise from an intention to abrogate, and not from ignorance of the law, an intention which would be sinful when carried into effect but for the final condition for abrogation, the consent of the superior who has power to abrogate by legislation, consent given either explicit and personal, or implicit and impersonal. Wood concludes by saying:

> the question whether any particular law has been abrogated by desuetude is one far from being easy of solution. It is one requiring the application of a highly technical set of rules, maxims and limitations by an expert possessed of considerable skill and canonico-legal instinct. It is, moreover, only within a very limited area that desuetude can effect abrogation of canon law.[50]

Wood's summary of the question of abrogation is cited as authoritative by Kenneth Kirk in his work *Ignorance, Faith and Conformity*, where he deals with the binding nature or otherwise of custom as regards the forum of conscience.[51]

Wood now moves on to set out the sources of Canon Law, and the authority of its various collections, not least in an English context.[52] Returning to the definition of

[48] Ibid, 77.

[49] For a further discussion the role of custom in ecclesiastical law see M Hill, *Ecclesiastical Law*, 4th edn (Oxford, 2018), paras 1.37–1.38, who cites the key cases of *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 at 53–56 and *Re St Mary, Westwell* [1968] 1 WLR 513, Commissary Ct.

[50] Wood (note 4), 78–84.

[51] K Kirk, *Ignorance, Faith and Conformity* (London, 1933), 158.

[52] Wood (note 4), 85–88.

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Lancelotti that the canon law consists of 'divine law, of usages, and of constitutions', he begins with dividing the divine law into written and unwritten law, the former consisting of Sacred Scripture, and the latter as tradition and the natural law. By tradition is meant what Augustine calls those things universally held and practised in the Church, but which cannot be traced to any conciliar origin. This is different from usages or custom, which relate chiefly to divine worship and rites, and which may be universal or local. Constitutions consist of the canons of councils, the authority of which depends on the originating body whether universal, provincial or diocesan; judicial decrees, which although possessing initially only the authority proper to the particular case in hand, come to acquire a more general authority through approbation and usage; and the opinions of the Fathers, which have value both as a testimony to the consensus of the church's teaching and as authorities which have received general endorsement through their reception as reliable.

As far as these constitutions are concerned, Wood enumerates them in the conventional form: first, the so called 'Old Collections', consisting of all the canonical collections up to the advent of work of Gratian, drawing particular attention to the work of Dionysius Exiguus and the Spanish collectors working under the name of S. Isidore, and deprecating once more the influence of the *False Decretals*. Second, the *Corpus Juris Canonici*, consisting of the *Decretum of Gratian*, the *Decretals of Gregory*, the *Sext Decretalium*, the *Clementines*, and the *Extravagants*. Wood notes both the state of historical enquiry into the production of these works as it was in the 1880s, and provides the student with some help in recognising how to find citations. Wood then moves to consider in particular the status and character of the canon law in England, noting the steady promulgation of canons and decrees by local councils from the time of Archbishop Theodore, and the contribution made to the consolidation and elucidation of this material by Archbishop Theobald assisted by John of Salisbury, and lastly by William Lyndwood in the *Provinciale*. Wood greatly admires Lyndwood's work: 'Such a provincial canon law book as this exists nowhere else in Christendom. It is a grand production, especially when we join with it the legatine constitutions … to form the English Provincial Corpus Juris Canonici'.[53] The legatine constitutions of Otho and Othobon which are included in the *Provinciale* offer Wood no embarrassment: he rests their authority not on the Popes who sent them as legates, but on their reception and endorsement by 'the two great Pan-Anglican Councils at S. Paul's in 1236 and 1268'.[54] After some further deprecation of Papal authority, he then gives the briefest consideration to the status of the canon law in England since the Reformation: not only the ecclesiastic but the lawyer needs admit the continuing force of the canon law where not contrary to statute,[55] which Wood compares to the continuing reception of English Common Law authorities in the USA.[56] The book concludes with a brief chapter on the importance of canon law study, especially for the younger clergy, although he notes with concern how many of them seem to forget their Latin completely despite the canonical

[53] Ibid, 100.

[54] Ibid, 102.

[55] On which, see further N Doe, 'Pre-Reformation Roman Canon Law in Post-Reformation English Ecclesiastical Law' (2022) Ecc LJ 273–294.

[56] Wood (note 4), 107.

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obligation to the contrary.[57] The bibliography which he provides is updated by Eric Kemp in the 1948 re-printing: the only substantive change.[58]

## Wood's lasting influence

Is Wood's work of any enduring value? At the time of its writing, it had almost no bearing whatsoever on the actual practice of ecclesiastical law in England, what Wood calls private canon law, nor does it seem to have any ambition to do so. If Wood's dissertation is compared with the only other example of substantial canonical writing from the 1880s produced from within the Church of England, Oswald Reichel's *The Elements of Canon Law*,[59] the contrast could not be more stark. Reichel's work is a full blown exercise in Anglo-Catholic fantasy, mapping out a paper church in which everyday realities are ignored and the canonical *corpus* treated as a bran tub of precepts into which the enthusiast may dip at his or her leisure. Wood is too learned and indeed to wise to fall into this trap, and the key to the value of his work and the influence it subsequently came to have must rest on the way in which he seeks to remain firmly attached to the elucidation of basic principles. His project is perhaps best seen in the light of his own fundamental articulation of the church as possessing a threefold power, and the radical way in which the catholic revival in the Church of England in the 19th century sought to inhabit this concept.

By the 1880s, it was evident that despite the initial resistance of the hierarchy, and the loss of many of its principal leaders to Rome, the Catholic Movement in the Church of England had managed to articulate a convincing and solid account of the Catholic credentials of the Anglican formularies: priestly, with regard to the sacramental doctrine and system proposed in the *Book of Common Prayer* and the *Ordinal*; and prophetic, with regard to its authority to teach in continuity with the credal orthodoxy of the early church. However, with regard to the regal power, matters were less certain: the end of the old ecclesiastical jurisdiction and the closure of Doctors Commons; the exercise of the Royal Supremacy, Parliamentary scrutiny and Privy Council jurisdiction; the revival of the Convocations; the expansion of the Anglican Communion and its relation to the Imperial power outside England; the particular battles over ritualism, that were to culminate in the Lincoln trial in 1888; all contributed to a sense that a new ecclesiology was emerging, but in an inchoate and conflicted way. For those seeking to affirm the catholic character of the Church of England, while denying the validity of the claims of the Church of Rome as articulated at the First Vatican Council, the task was particularly acute and particularly challenging.

The Anglo-Catholic position required the defence of two core propositions: first, that the Reformation settlement in England had not fundamentally compromised

[57] Ibid, 109.

[58] Wood (note 5), 85–86.

[59] O Reichel, *The Elements of Canon Law* (London, 1887). Another comparator would be Robert Owen's *The Institutes of Canon Law* (1884), discussed further in N Doe, 'Robert Owen (1820–1902)' (2019) Ecc LJ 54–68, see 60–66. As Doe explains, at 60, Owen is critical of the books on English church law from that time 'which he sees as either "ever in humble vassalage to the Statute Law"'.

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the catholic credentials of the Church of England despite the somewhat unpromising character of its history and some of its formularies; second, that a non-papal Catholicism looking to a patristic polity of episcopal government was both feasible and workable, and a more authentic expression of catholic Christianity than what was on offer from Pius IX and Roman ultramontanism. Wood argues that the key to defending the Anglo-Catholic position is the authority of authentic synodical government, and in particular the capacity of provincial synods to legislate for their provinces. Thus, the medieval canon law remains binding, despite the influence upon it of the forged decretals and exertion of unwarranted Papal claims, because the English provincial synods formally consented to be bound by it and never repealed this consent. This canonical key proved to have a significant afterlife: the immensely learned companion to the Anglican Prayer Books of the day *Liturgy and Worship* published by the SPCK on behalf of the English Church Union in 1932, refers to the '1661' *Book of Common Prayer* throughout, taking the date not from the passage of the Act of Uniformity, but from the adoption of the Book by the Convocations of Canterbury and York in the preceding year.[60] Consciences unsettled by the Erastianism of the English Reformation could be reconciled by the knowledge that at least at the most crucial moments, the changes had received the authentic endorsement of the fundamental power of regality exercised not by the State, but by the Church herself.

Of course this might simply have amounted to little more than the ecclesiastical faddism of a tiny group of clergy, such as the incumbent on the island of Jersey who wrote to Darwell Stone to ask if he was actually in schism from the church, given that there was no synodical endorsement of the transfer of the Channel Islands from the diocese of Countances to Winchester.[61] But as Eric Kemp realised when he acknowledged the value of Wood's work and arranged for it to be reprinted, the whole movement of the Church of England away from the governance and structures that prevailed partly by policy and partly by happenstance between the Restoration and the Great Reform Bill, and towards a form of polity that revived long dormant forms of self-government, first through the revival of the Convocations and then from the Enabling Act of 1919 to the introduction of full synodical government in 1970, required a theological account of the power of the church to order its canonical economy, an account which Wood supplies. Kemp's own principal work in this respect, *Counsel and Consent*,[62] explicitly seeks to extract from the miscellaneous mixed functions of the English Convocations the various strands of authority both judicial and legislative that they came to exercise, as the functions more properly belonging to provincial synods merged with the taxing responsibilities that continued in place from the reign of Henry III to the Restoration. In doing so Kemp incidentally comes to side with Gibson against the authorities cited by Wood, in stating that the consent of the inferior clergy to legislation as well as taxation is an English anomaly, unknown elsewhere in the church.[63] Similarly

[60] WL Clarke and C Harris, *Liturgy and Worship* (London, 1932).
[61] E Kemp, *Darwell Stone Churchman and Counsellor* (Westminster, 1943), 296.
[62] E Kemp, *Counsel and Consent* (London, 1961).
[63] Kemp (note 61), 112.

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Kemp's own *An Introduction to the Canon Law of the Church of England*[64] emphasises, as Wood does, the importance of the law found in the *Corpus Juris Canonici* in general, and in Lyndwood's *Provinciale* in particular, as authoritative, but ill-serviced by the collapse of any systematic education in its principles and methods since the demise of the civilian advocates and the body of learning represented by Doctors Commons.

Wood can hardly be presented as a precursor of the sort of synodical government that now prevails in the Church of England, nor the sort of provincial autonomy that is now proving such a fragile means of incorporating diversity within the Anglican Communion. These were not his concerns, and no doubt he would have been alarmed by the lay voice in synod, and still more alarmed by the exercise of jurisdiction by women, whom he calls incapable of exercising the *potestas jurisdictionis*.[65] But he remains a valuable and original voice, from a time when the old world of the English ecclesiastical jurisdiction had passed away, and the new world of ecclesiastical self-government at home and abroad was still inchoate and untested. By defining the Regal Power of the church as theological and ecclesiological in nature, he moves the ground for canonical jurisprudence away from the sort of Erastian considerations that the late Victorian state was no longer wholly willing to exercise or endorse, and opens up new possibilities of independent life which avoid the Scylla of Papal pretensions and the Charybdis of a polity unmoored to the 'public' law of the once undivided church. In doing so he identifies and addresses the last part of the Anglo-Catholic theological project that began with the Tracts and which has at its heart an elucidation of the threefold power: how the Church of England, and the Anglican communion more widely, might be understood as being authentically catholic in the regal power of governance, as well as in the priestly power of liturgical cult and the prophetic power of teaching sound doctrine. His great merit is in fact the simplicity of what he proposes: canon law is a theological discipline, which takes its material from authentic sources that are straightforward to identify, if not to master, and which for all the damage apparently done by Papal pretensions and Protestant Erastianism, nevertheless could be demonstrated to preserve at least in England enough integrity to be an authentic and working system of ecclesial jurisprudence. In this sense he anticipates the splendid judgement made by Louis Bouyer at the conclusion of *Life and Liturgy*, when he writes, 'For Canon Law, far from being the dusty and abstract science it is too often supposed to be today, is actually the only means to ascertain what the mind of the Church actually is, what she wants to be, or what she wants to be done'.[66]

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[64] E Kemp, *An Introduction to Canon Law in the Church of England* (London, 1957), 74.
[65] Wood (note 4), 59.
[66] L Bouyer, *Life and Liturgy* (London, 1956), 281.

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