Introduction

This volume represents a collaborative but necessarily preliminary investigation of a remarkably rich and complex topic. Christian societies generally nurture a faith for which the legal terminology of judgment, law, commandments, sanctions, covenant, punishment and forgiveness is fundamental. Law and jurisdiction underpin the events recorded in the Christian Gospels and Acts of the Apostles and are especially evident in relation to the tensions and conflict between secular authorities, Jewish religious leaders and the earliest Christians. The Christian church of course has made its 'own' law since the letters of St Paul and his successors, but the degree to which this law can be distinguished from secular law has been challenged time and time again. The early history of 'canon law' and the promulgation of the codes of the Emperors Theodosius (438) and Justinian (534) exerted a very considerable influence on the development of law and of the church thereafter. The prominence of secular authorities in church matters and the formal endorsement as 'law', for example, by the Emperor Justinian in 545 of the conciliar decisions made at Nicaea (325), Constantinople (381), Ephesus (431) and Chalcedon (451) are usually taken as being of great significance. Quite what the impact was of Justinian's endorsement beyond Constantinople, or what his endorsement meant in practice, are questions that still need to be clarified, despite the wealth of scholarship expended on the decisions made by those assembled, the precedents on which they drew and the conduct of the councils themselves. Other instances can readily be found of the church in newly converted regions coming under the special protection and legislative remit of secular rulers. Yet examination of intentions voiced in legislation can only get us so far. How knowledge of such legal prescriptions was disseminated, and what people actually did with them when faced with specific and practical problems of jurisdiction, misdemeanour, organization and aspiration, not least when they clashed with aspects of their observance of their faith, their ethical standards or their understanding of the ultimate source of authority, can only be explored through evidence of cases of challenge, conflict and resolution. My own current preoccupation with the history of the early

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medieval popes has inevitably involved considerations of various representations and manifestations of papal authority in Rome, Italy and the rest of early medieval Europe in the centuries immediately following the deposition in 476 of the last Roman emperor in the West. Whatever else that event precipitated, it changed the status of Roman law in the West, and created a new context and set of political and social configurations in which the law might be acknowledged or practised.

All this provides the background to my choice of the theme for the Ecclesiastical History Society's conferences for the year 2018–19. Yet the precipitating point was a contemporary matter, given a good deal of media coverage in Britain, that coincided with the invitation extended to me to become president of the society. This was the conflict between the Marriage (Same Sex Couples) Act passed by the British parliament in 2013 and the canon law of the Church of England on marriage. This was addressed at the General Synod in 2016, which refused to 'note' the Bishops' Report; it was the vicars, rectors and priests who decided that they could not continue with the current prohibition on blessing or marrying same-sex couples in church. Such a clash between a law of parliament and the law of the church is a clear indication of the reverberations of the relationship between the church and the law and the necessity for a historical understanding of that relationship. One way to achieve such an understanding is through an appeal to contextualized case studies from Late Antiquity to the present day, such as those offered in this volume.

The theme of the church and the law can, of course, be explored from a number of different perspectives. First of all, there are the legal issues and legal consequences underlying relations between secular and religious authorities in the context of the Christian church, from its earliest emergence within Roman Palestine as a persecuted minority sect through to the period when it became legally recognized within the Roman empire, its many institutional manifestations in East and West throughout the Middle Ages, the reconfigurations associated with the Reformation and Counter-Reformation, the legal and constitutional complications (such as in the German territories that introduced Luther's Reformation, Reformation England or Calvin's Geneva), and the variable consequences of so-called secularization thereafter. What were the legal consequences and implications of the Reformation, the French Wars of Religion, the French

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Revolution or the political transformations of the nineteenth and twentieth centuries? All these developments might include the confiscation and restitution of property. In the English context, the reforms of 1828–32 precipitated profound reflections on the role of the church within the state. At a conceptual level, in what circumstances is heresy an offence against the state and how is heresy defined? How does secular law incorporate, or legislate for, the church? The particular complications of the introduction of Christianity to other regions and peoples in imperial and colonial contexts are not just a modern phenomenon. Tensions between local or national political jurisdictions and the membership of a worldwide religion can be observed in many areas. Numerous other questions arise. What are the constitutional peculiarities of particular churches or ecclesiastical institutions? How did missionaries (and the rulers of the regions concerned) in conversion contexts cope with the clash between what they thought of as law and required social mores, and the laws and mores they encountered in the societies into which they were introducing the Christian church and faith? Particular case studies can shed light on the many ways in which law is invoked and acted upon.

So much work is currently being done on law and history, on legal sources in historical research and on legal culture in its social and historical contexts, that reflection on the role of the church in relation to the law seems especially timely. My own interest in codification and compilation underlies a further aspect of the theme, namely, the formation of bodies of law and the degree of historical understanding brought to the use (and abuse) or study of the law by legal practitioners. The development of canon law is a case in point. There is also the problem of definition. How early, for example, can a 'code of canon law' be said to have been defined, and what are the processes by which opinion, advice on a specific problem and conciliar decision became perceived as 'law'? What light does the transmission and reception of canon law throw on such questions? Court cases, legal challenges to authority, discussions of legal culture and legal practice, legally orchestrated clashes between secular and ecclesiastical law, and legal documents of many kinds are all considered in this volume. On many occasions in recent years, as I have indicated above with just one example from the many possible, we have been confronted with contemporary discrepancies, contradictions and even rejection by religious communities of secular laws,

modern social mores or social attitudes. Particular instances where church law and civil law came into conflict are considered in this volume. A further consideration is the practice of history and the evidence on which historians can draw in order to pursue these questions. What new interpretations and perspectives has recent scholarship thrown into relief? What influence does secular governance exert on ecclesiastical governance, administration and legal records, or the conduct of courts and judicial procedure? Conversely, what influence does the church exert on the conduct of legal practice and the formation of legal culture, the definition of criminal acts or the role of punishment, or such legal and social fundamentals as property ownership, inheritance, marriage practice and legitimacy?

This volume represents a selection from the papers presented in response to the theme, the questions it raises and the possible contexts in which it might be considered, at two conferences on 'The Church and the Law' organized by the Ecclesiastical History Society, in July 2018 at Sidney Sussex College in Cambridge and January 2019 at the Institute for Historical Research in London. A wonderfully diverse range of case studies was offered by scholars from Britain, continental Europe, North America, Australia and Hong Kong. Chronologically, papers ranged from Late Antiquity to the present day; geographically, topics extended from Britain and the many countries of continental Europe as far afield as Russia, China, Australia and the Americas. Constraints of space meant that not all papers offered for publication could be included, but the wealth of case studies in this volume address specific and sometimes lurid legal cases, such as the murder of papal officials in eighth-century Rome. Further considerations are of law in theory and practice, both within the church and the wider Christian community; of communities attempting compliance with, or defiance of, the law; of the problems with both the formation of bodies of church law and variable knowledge and application thereof; and of the clashes of jurisdiction between ecclesiastical or civil courts in a number of different contexts.

The articles in this volume are illustrative not only of particular contexts and specific legal problems, and instances of resistance to secular law on the part of church groups, but also of more general topics concerning the conceptualization of law, the codification of law and the principles invoked in clashes between secular law, morality and ecclesiastical regulations. A very fruitful outcome of the emphasis

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on case studies is the way particular, personal and individual reactions or understandings have been set within wider regional or national developments. One example is excommunication, studied in the instance of general sentences of excommunication of unknown malefactors in twelfth-century England; another concerns procedures relating to proof by witnesses. Generally, the extraordinary social and legal history that can be dug out of bishops' registers and visitation records is striking. Many case studies are of particular individuals who were instrumental in the formation or interpretation of the law of the church, and who took particular stands as a result of their understanding of the law. A number of articles throw into relief the day-to-day working of the law by administrative officials, and the role of the clergy in the maintenance of law and order, whether in the magistracy in England or more generally in local communities elsewhere. Some political crises, such as the means by which a king might be deposed, spawned new legal procedure in which the bishops, at least in the case of the deposition of the English King Edward II, played a decisive role. Personal crises of conscience in conflict with secular laws in the cases of seventeenth-century dissenting printers, legislation regarding freedom of worship in the German states of the eighteenth and nineteenth centuries, attitudes to illegitimacy in nineteenth- and twentieth-century Austria, passive resistance to the 1906 Education Act in the United Kingdom, or the complex conjunction of emotional, aesthetic and legal judgments centred on the erection of World War I memorials, for example, all yield precious evidence about the actions and thinking of many ordinary individuals. The legal records of judicial hearings in secular and ecclesiastical courts on matters of justice, moreover, reflect how difficult it was to compartmentalize faith and trust. Another striking feature of the articles selected is the number which are based on the rich resources of parish, diocesan and national archives and court records, not least those of England. Many articles, such as those discussing dispute resolution and the taking of oaths, or what might be described as the laicization of perjury in early Tudor England, have implications far beyond the ostensibly local context in which these topics are considered. Time and again, contributions show the extent to which ecclesiastical thinking fed into the formation of secular law and judgments, as well as the ways in which secular law came under scrutiny in relation to interpretations of the law of God.

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Special mention should be made of the two prize-winning articles by Dan D. Cruickshank and Robert A. H. Evans. The Kennedy and President's Prizes are awarded to contributions from a postgraduate and an early career scholar respectively. Cruickshank addresses the conflict between Protestant and Ritualist Anglicans between the Royal Commissions of 1867–70, formed to investigate 'the Rubrics, Orders and Directions for Regulating the Course and Conduct of Public Worship', and that of 1904–6 on Ecclesiastical Discipline. He focuses in particular on the disputes about the use of the Prayer Book, vestments and ornaments. As with so many of the articles in this volume, the general issues, and here specifically the degree to which secular government could regulate the church's liturgy, are given life and extra significance by the precise individual examples of the impact of legislation on ordinary people's actions, in this case their formalized devotion in the churches. Evans also addresses wider concerns by looking at the degree to which thinking about God's judgement provided the theological context for formulating the practical requirements of law and justice in relation to religious, moral and theological beliefs in ninth-century western Europe. He argues that Carolingian conceptions of law and justice were informed by a belief in divine help and mercy that left room for repentance and correction.

Finally, it is a pleasure to record my thanks to all the participants in the two conferences, as well as to the contributors to this volume, who have offered such a stimulating and many-faceted set of discussions from which all of us learnt so much. I am especially grateful to my two coeditors Charlotte Methuen and Andrew Spicer and the assistant editor Tim Grass for their critical and constructive assessments and their meticulous editorial care in the preparation of all the articles in this volume for publication.

Rosamond McKitterick