

the volume of the Church courts' business and their ability to function. On the evidence of the sources, there was no concerted or widespread attempt to widen the jurisdictional scope of the common law at the expense of the Church courts during this period. Nor do those records bear testimony to routine and serious clashes between the two jurisdictions. On the contrary, rather than wholesale conflict they reveal widespread co-operation and consensus between the royal and ecclesiastical courts. Prohibitions had always been rare and remained so during this period. No attempt was made by the royal courts to encourage the use of writs of prohibition by ameliorating the procedural difficulties that litigants faced. Furthermore, far from being a writ used by the Crown to suppress ecclesiastical jurisdiction, prohibition actions were, as the sources here show us, more commonly instigated by individuals for their own purposes.

In conclusion, this volume makes two great contributions to the academic literature. First, it makes readily available a collection of records that would otherwise have remained beyond the practical reach and use of the majority of interested scholars. The second contribution comes from the light that the introduction sheds on those records, and what it tells us about what they say, with the implications of that for the existing literature. Far from bearing out the commonly told tale of conflict and discord between the jurisdictions, these records indicate that relations between them never in fact reached crisis point. Nor do they reveal the existence of any 'steady pressure' (p xvii) exerted by the royal courts against the ecclesiastical ones. This reading of the sources leads Millon to re-evaluate the common understanding of *Circumspecte agatis* as a defining event in the setting of the boundaries between the royal and Church courts. Instead, looking at its political and legal setting, he offers the view that it was merely a restatement of the existing boundaries between the jurisdictions. *Circumspecte agatis* was not, then, part of a deliberate policy to limit ecclesiastical jurisdiction and to expand the reach of royal justice. Rather, it clarified what the accepted boundaries were in the light of an earlier decree relating to abuses in Norfolk.

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## Christianity and Human Rights: An Introduction

EDITED BY JOHN WITTE JR AND FRANK S ALEXANDER

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I do not know whether today's undergraduate law students write, as I did long ago, an essay on Hohfeld's *Fundamental Legal Conceptions*, with its careful

analysis of rights, liberties, powers and immunities and their correlatives. The reader will find more in this book about Hohfeld than about the European Convention on Human Rights, quite a bit about the Investiture Controversy, two references to Anglicanism (seen as sharing with the Anabaptists an ‘intensely communitarian tradition’), but no mention of the World Council of Churches.

Perhaps none of that is too surprising, given that the great majority of the 20 contributors to this book of essays are North American scholars, roughly half from Emory University. Understandably there is an emphasis on issues such as the separation of Church and state, on the freedom of the Churches in America and on the history of the Orthodox Churches, which a British reader might not expect.

What is surprising about this volume is its basic design. John Witte explains that it has two main parts. One sets out to ‘analyze the foundations of rights talk in the first millennium of the common era, and the gradual development of rights ideas and institutions within the mainline Catholic, Protestant and Orthodox traditions’ (p 15). The second, rather smaller, part addresses ‘several modern human rights themes and issues that are of central importance to persons of (the Christian) faith today’ (p 15). The difficulty with this design is that ‘rights talk’ has no essential link to what we now label ‘human rights’. For example, in Charles Donahue’s analysis of 254 appearances of *ius* in the *Digest*, we have four pages on servitudes and rights over the property of another, *iura in re aliena*. I suspect that this is the first ever appearance of the law of easements in a human rights text. For much of the first part of the book, the reader may well feel that the content is not ‘what it says on the tin’.

It is a hundred pages into the book before we find Richard Helmholz’s brave attempt to see whether mediaeval canon law might be said to embody some notion of human rights. He finds, for example, a (very restricted) right not to incriminate oneself and a *ius eligendi* (a right to take part in the election of some Church officials), but admits that these are only distant cousins of modern freedoms. So far as Catholic thought is concerned, we then jump to the nineteenth century, with Gregory XVI declaring freedom of conscience to be ‘an insanity’, and the transformation in the following century culminating in John XXIII’s encyclical *Pacem in Terris*.

There is more meat in John Witte’s essay on rights and liberties in early modern protestantism (Calvin, Beza, Althusius and Milton) and in Nicholas Wolterstorff’s account of modern protestant thinking. He follows Oliver O’Donovan in identifying a shift from a view of political rights based on some sort of social compact to the assertion that human rights are original and not derived.

There are two essays on religious freedom, both looking at the autonomy of churches rather than issues affecting individuals, and chapters on the rights of

children and women and on the right to clean water. One of the best essays is Silvio Ferrari's admirable essay on proselytism, which does emphasise individual freedom, for Christianity is a personal faith. He, of course, writes from a European perspective: it is a striking feature of the volume as a whole that many of the issues that concern European human rights lawyers – issues of discrimination, employment, same-sex unions, immigration and the like – are nowhere mentioned.

'God created man in his own image.' Mentioned often, that text is central to two of the best parts of the book. One is a brilliant piece, a sermon really, by Desmond Tutu. The other, outstanding in a volume that is not always strong on critical analysis, is an essay by Jeremy Waldron in which he examines some difficulties in the use of *imago Dei* as a foundation for human rights, how it can be properly used and what the implications are for the content of human, and especially political, rights. He asks some hard questions, such as what is the relation between *imago Dei* and our fallen sinful nature? And he cautions against 'just grabbing at the doctrine because it seems like an impressive bauble to produce as a distinctive religious foundation' (p 220). Waldron's piece *does* therefore examine the relationship between Christian doctrine and human rights, which the book's title suggests as its whole focus.

The essays, whether introductory surveys or detailed studies of particular topics, are well informed and accessible. The ingredients are good, but the meal as a whole is surprisingly foreign to British or European taste.

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## **Law and Religion in the 21st Century: Relations Between States and Religious Communities**

EDITED BY SILVIO FERRARI AND RINALDO CRISTOFORI

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The relationship between law and religion has been undergoing a radical reassessment across the world in the last few decades, as states and governments begin to reassess what the relationship between the two should be in modern pluralist democracies. Far from witnessing a decline in the importance of religion, most legal systems are seeing the regulation of religion by law becoming