therefore include what is in effect a tacit representation that, in the absence of clear and effective notice to the contrary, there are no unknown terms that are beyond what would be reasonably and fairly expected in the circumstances" (p. 222). Any such unexpected and unreasonable terms would not be enforced.

Benson's work is theoretically ambitious, as it not only attempts to offer a theory of contract law that is consistent with doctrinal rules, but also one that fits with, on one hand, our general understanding of property rights, and is grounded, on the other hand, on a view of the status and equality of persons that is morally and politically attractive. This aspiration connects with a different, basic question: the objective of theories of doctrinal areas of law. The same inquiry might be put a different way: what are the criteria for success for such theories? For Benson, it is clear that consistency with contract law doctrine and practice is foremost, and he regularly criticises theoretical approaches that are grounded on or motivated by values "external" to contract law. The contract law, practice, and theory of *Justice in Transactions* is abstract and self-contained (one might say "formalistic", though without the pejorative tone that label has in some quarters). For some scholars, these would be reasons to support Benson's views; for others, they would be, and have been, grounds for criticism and a reason to search elsewhere for a more favourable model.

Without question, *Justice in Transactions* is an important and foundational work. It is careful, scholarly and meticulous – perhaps to a fault. At over 600 pages, one might be reminded of Samuel Johnson's comment on *Paradise Lost*: "None ever wished it longer than it is." Still, it is undoubtedly a work that should be read by all who are serious about contract law and contract law theory.

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The Use of Canon Law in Ecclesiastical Administration, 1000–1234. Edited by Melodie H. Eichbauer and Danica Summerlin [Leiden: Brill, 2019. xiii + 273 pp. Hardback €121.00. ISBN: 978-90-04-36433-2.]

The ten new studies of this volume on the emergence of the classical law of the medieval Church are written by specialists in their scholarly prime. Their findings are clearly presented and preceded by an admirable editorial introduction more than usually helpful to outsiders. A thoughtful and rather wise "Postface" sets their offerings into historiographical context. The contributors' brief was to "engage in textual analysis", the hard stuff, and to set their findings into a broader range of primary materials, in order to further *general* understanding of the period. They should "couple law with social, political, or intellectual developments in the medieval world" (pp. 3–4). The intended audience seems in the first instance historians rather than lawyer. This may not immediately attract the kind of legal scholar (who does exist) critical of efforts to find simple (read: simplistic) relations of law with a reality beyond its own logic (see John Hudson, "Power, Law and the Administration of Justice in England, 900–1200" in P. Anderson et al. (eds.), *Law and Power in the Middle Ages* (Copenhagen 2008), 153–54). Since most contributors are trained historians, as am I, this review will try to elucidate what aspects are most likely to engage legal minds and perhaps also why they should.

"Classical" canon law was the product of the central portion of the volume's period. The editors' long view of their subject sets it into context which brings out its

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distinctive character. It is a Civilian system designed for the medieval Church of Western Christendom and still governing the Roman Catholic Church to this day. It differs from most secular systems in its prime goal, which is to maximise the chances of salvation for all within its ambit. Thus, for example, a significant feature, albeit one seldom explicitly stated, is the avoidance of "scandal", if necessary by suppressing criticism. This is a kind of Weberian *qadi* law that incorporates the best intellectual methods of the new cathedral schools and what historians call the twelfth-century renaissance. Seeking to approach as closely as possible to the divine law of a Christian God, its other major source is the revealed Bible.

Yet its emergence and coalescence during the eleventh and twelfth centuries led the way through something like a root-and-branch transformation of the Church's previous law; systemic and some would say revolutionary, it transformed the secular laws of the West too, the result being what many term "Western Legal Tradition". Two major sets of texts designed to guide jurists, judges and lawyers alike, are central to this process. Gratian's *Decretum* selectively arranged past law, the *ius antiquum*, into a kind of code round which the new law schools could develop and teach new rational rules of law, for the equally new ecclesiastical "courts" to implement. Less well known, but just as transformational were the *Ordines Judiciarii*, procedural guides along mainly Roman lines to govern litigation. Little wonder that contemporary *litterati*, almost all initially churchmen themselves, considered the results as, in principle, superior to other forms of human justice, a judgment neatly absorbed by our own manifestation of the tradition, the Anglo-American common law.

But possibly the major achievement was to present the results, by the volume's closing date of 1234, as a single system. In an important sense, each significant part of the system implied use of the rest. In this, it was comparable only to Roman law as embodied in Justinian's *Corpus Iuris Civilis*, whose rediscovery enabled its birth and remained a major source of both doctrine and procedure. Much that had once depended on special favour to individuals became universalised into routine remedies available in principle to rich and poor alike. This feature too, seldom emphasised in the literature, was legally fundamental. Canon law acted as the portal through which Roman principles entered northern European secular law including, on a scale arguably still under-appreciated, our own common law system.

Although our volume tacitly assumes much of this, contributors were expected to "couple law with social, political or intellectual developments in the medieval world". This is more easily done for specific rules than on the reasonings of judges and advocates in actual cases, and the literature has traditionally focused on legal learning rather than practice. One reason is that the civil law, canon law's intellectual parent, never recognised judge-made law, and lacks a common law type of doctrine of precedent organised around "leading" cases. Papal decretals (clarifications of applicable law mandated for particular appeal cases) were indeed collected and certainly influenced legal thought and writing. But they have not been shown to bind judicial decisions in any routine fashion, and they functioned more like statutory rules than case precedents. Mia Münster-Swendsen's fascinating chapter on one "originally rather fishy case" (p. 68) concerning an archbishop's resignation stands alone here. A general study of the use of previous decisions in later litigation remains a desideratum and will be a challenge given the absence of assembled case reports.

The eleventh-century movement for Church Reform associated with pope Gregory VII (1073–85) is widely deemed revolutionary in intent and also understood in its own terms as central power radiating outwards from Rome to wherever

in Western Christendom letters, legates and councils could reach. Most contributors here, following their editorial brief, recognise that traffic flowed in both directions so that, for example, bishops could if they wished solicit papal mandates ordering them to make changes they already favoured. The patterns are easiest to see for doctrine, because such business was mostly conducted in writing, much of it still available for study. Thus, the new law schools could pass ideas on to the younger generation by way of texts like Gratian's *Decretum*, subsequent decretal collections and a plethora of commentary. By c. 1150, the intellectual excitement the new materials generated was expanding north of the Alps, drawing students to the law as a lucrative profession and starting to remake the old kinds of less formal judicial assembly ever more court-like.

The accompanying development of litigation in ecclesiastical councils and courts is harder to follow, due to that lack of organised and accessible case records already mentioned. Before the more intense differentiation of spiritual matters from the temporal, the assemblies that treated litigation and issued decrees had been much less distinct in form, with individuals often left to record them only as they needed. The purification of Church law and legal texts from politics remained a work in progress well into the twelfth century. Starting at the highest levels, synods hardened at various paces over the mid-twelfth century into adjudicatory shapes and defined jurisdictions – c. 1100, the term *iurisdictio* denoted a notion akin to power rather than a legal concept, ripe for definition in the new law schools. Eleventh-century prelates, like those helpfully elucidated here by Greta Austin, Louis Hamilton and, especially William North, might not have felt too out of place in early twelfth-century councils. Even our general "Lateran" councils were (as Summerlin notes) seldom singled out by name as different from the rest before 1200.

That the volume index lists councils but not courts is unfortunate. These were transformed in the twelfth century, though notably not under the institutional name, *curia*, which churchmen, themselves debarred from shedding blood, applied exclusively to the secular courts with their despised blood justice ("curia a cruore"!). As I understand it, churchmen derived their justicing powers from the *dignitas* of their office or order, not from the status of the assembly in which they sat. Their courts, as we may call them, were, despite all their forensic sophistication, much less institutionalised than lay ones. Like myself, readers need more guidance here. Some of this they get from Danica Summerlin's chapter, deeply researched as an offshoot of her *The Canons of the Third Lateran Council of 1179* (Cambridge 2019). Here she offers a broader explanation than the title promises of the ways in which local councils could pick, choose and adapt from the decrees and mandates issued by popes and councils. These are the keys to comparisons with the ways that other lawyers, including present-day ones, handle the rules enacted by the legal system. She has made a detailed comparison of the canons of the Third "Lateran" Council of 1179 against those of an English province, Canterbury, c. 1200. The exercise illuminates the process by which the ablest local prelates strove to assimilate and optimise for local conditions as they understood them the law that reached them from the centre. One might generalise for the whole volume her conclusion that what seems to have mattered most was the context of practical application of enacted law in these "local synods" (p. 226), even more perhaps than the better studied, because more easily accessible, academic analyses of the *Corpus Iuris Canonici* and its commentary literature. Where the general rules provided the framework, was it not local readings that determined the intensity and duration of law enforcement and implementation? Possibly, but the evidence is so hard to locate.

This is a fine volume on its own terms. These are that it addresses primarily other specialists who know their canon law. Every chapter adds something to specialist

knowledge. It is not for those without some previous acquaintance with the medieval Church's own legal system. It is no substitute for the accessible short history of the emergence of classical canon law in English which might really open the subject up for comparative treatment of medieval laws. Naturally, it cannot cover every current desideratum, though it goes some way in that direction. This review has, however, sought to give from the outside a historian's summary of some of the special features of canon law which strike him, but which the volume's contributors perhaps take for granted and not worth making explicit. It deserves a good readership of those with the lawyerly reading qualities to unpack closely reasoned argument and work the results into their own legal framework. They can use it as a portal into the new world of "Western Legal Tradition" in which we all still function, and not least into the very English common law's still incompletely acknowledged debts to the civil law and especially classical canon law.

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Irish Speakers, Interpreters and the Courts, 1754–1921. By MARY PHELAN. [Dublin: Four Courts Press/Irish Legal History Society, 2019. xiii + 271 pp. Hardback €49.50. ISBN 978-1-84682-811-9.]

Under Article 6 of the European Convention on Human Rights anyone charged with a criminal offence has a minimum right to be informed promptly, in a language which he or she understands, and in detail, of the nature and cause of any accusation made against him or her. The accused is entitled also to the free assistance of an interpreter "if he cannot understand or speak the language used in court".

One of the strengths of Mary Phelan's study of interpretation in the Irish courts prior to the creation of an independent Irish state in 1922 is the manner in which it throws up questions about the limitations of interpretation services even as provided by law. Another is her demonstration of the relevance of the relationship between power and language in that context. One has only to glance at the bitter nature of the contemporary dispute between the Democratic Unionist Party and Sinn Féin over the latter's demands for an Irish Language Act in Northern Ireland to recognise the symbolic power of language.

During the period examined by Phelan, there was a substantial if declining minority of monolingual Irish language speakers in Ireland, and there were many other people who spoke English only to a limited extent. Most of those were of the poorer social classes. Some legislative provision was made for interpreters, but Phelan demonstrates that this was at least as much to facilitate the administration of the courts system and the disposal of cases as it was to ensure that the accused received a fair trial.

It was long the policy of the English government in London and the Anglo-Irish administration in Dublin, supported by legislation, to encourage and compel the native Irish to speak English and to adopt English customs, manners and styles. For example, the Administration of Justice (Language) Act (Ireland) 1737 required all proceedings in courts of justice to be in the English language. This meant that judges and lawyers could not conduct cases in Irish even where they themselves spoke Irish (*Gaeilge*). Eventually grand juries and Parliament introduced systems of allowing interpreters to be paid in some criminal cases, albeit at the discretion of the court and with the task of translating often allocated to persons such as