

and Canadian courts, it highlights those matters relating to Islam which have had an effect on substantive and procedural legal issues, including areas such as jury selection, the wearing of religious attire in court, the defence of provocation (in, for example, so-called 'honour killings') and child custody disputes. The empirical research undertaken in this field appears to produce mixed (and in some instances surprising) results, although, as the author observes, the topic is at present understudied (p 263).

This book is, for the most part, an intriguing read. The underlying research, which underpins many of the chapters, is particularly important and appears to demonstrate a number of trends that are emerging as regards societal (and judicial) attitudes towards new religious movements. The legal, political, social and ethical implications of what is discussed here should not be overlooked.

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Magna Carta, Religion and the Rule of Law

Edited by ROBIN GRIFFITH-JONES AND MARK HILL QC

Cambridge University Press, Cambridge, 2015, xliii + 388 pp (hardback £64.99)

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When as a law student I studied Magna Carta, the clauses we had to read were those on the system of justice, due process and individual liberty, but they did not include Chapter 1, with its declaration that the English Church shall be free and shall have its rights undiminished and its liberties unimpaired. Nor did the great Maitland mention this declaration in his *Constitutional History of England*. The reasons for this neglect of religion probably include the profound change that the 'English Church' underwent 300 years after Magna Carta, and the fact that eventually (after many struggles) the diversity of Christian and other faiths came to be accepted. But it now is evident that in the mid-twentieth century, at least for constitutional lawyers in the West, religion and its related freedoms had ceased to be problematic. Today, 800 years after Runnymede, the scene has radically changed. This excellently edited volume brings together work by many scholars that examines the significance of the Great Charter in its historical setting, and explores its resonance against an ever-changing background that culminates in what the editors describe as 'our contested present' (p 9).

It is possible here to mention only some of the 18 contributions. The opening chapters by Lord Judge and John Baldwin explain how the 1215 Charter, and its chief pilot, Archbishop Langton, sought to subject royal authority to the need for due process that had been expressed in ancient English law, in Roman law and in canon law. Although the product of Runnymede might have been no more than a transient stage in an ongoing civil war, Margaret McGlynn shows how interpretation of the Charter became a matter for the common lawyers as they reacted to the rights and liberties of the pre-Reformation Church. Richard Helmholz examines Magna Carta from a European perspective – it was one among many mediaeval compilations of fundamental provisions and local rules – and compares it with the *ius gentium*, ‘the law which men of all nations use’ (p 75).

But what emphasis did Magna Carta give to freedom of religion? Sir John Baker’s answer is clear: ‘There was nothing in Magna Carta guaranteeing liberty of religious belief. The Charter began by guaranteeing freedom for the English Church, but whatever that meant it had nothing to do with individual conscience’ (p 86). While the ‘chief obstacle to freedom of religion’ in the sixteenth and seventeenth centuries was the Church (p 88), and heresy was not a concern of the common law, the prelude to the First Civil War in 1641 saw the repeal of the High Commission, with Parliament declaring that no new court should be created with similar powers. Baker concludes that Magna Carta had ‘in the end’ played its part in ending the coercive procedures connected with the oath *ex officio*, which had made possible ‘forcible prying into men’s hearts and minds with a view to punishment for their thoughts’ (p 108).

In this and other ways, the turbulent seventeenth century saw what John Witte Jr describes as ‘vibrant new life’ being given to Magna Carta as the freedoms of religion, speech and the press ‘gradually made their way into the common law’ (p 110). Witte deals in depth with John Milton’s extensive views of freedom of conscience and religion. In the same century, the influence of Magna Carta was felt in the foundation of new structures of government in the New World. David Little’s conclusion, after examining contrasting opinions on the ideological origins of the American Revolution, is that the New England experience ‘introduced into the American bloodstream a conception of the foundation of law, constitutional government and the protection of rights that was logically quite distinct from (however intertwined with) the English tradition of Magna Carta and common law’ (p 153).

Three essays provide both instruction and much food for thought on the challenge of Islam to the familiar claims made for Western faiths. Waal Hallaq illuminates the influence of the Qur’an in providing the foundation for the ‘robust system of the rule of law’ (p 157) under Islam that lasted from the seventh to the eighteenth centuries, and outlines a cluster of central Quranic terms. Emphasising that the Islamic concept of justice has avoided the secularisation

of law that is characteristic of Western legal systems, Ali Gomaa explains why the jurists of Islam are 'directly and overtly governed by the foundational texts of their religion' (p 179). In discussing sharia and the rule of law, Anver M Emon first adopts a historical analysis under which rule of law is 'a claim space within which arguments of justice are made' (p 198), before exploring the boundaries governing religious minorities that ranges from the provision for Jews in Chapters 10 and 11 of Magna Carta to the ancient rules in sharia that applied to non-Muslims in the Ottoman Empire.

Other chapters, which are no less stimulating, cover subjects that include thoughts from India on the relation between democracy and the power of religion (Sudipta Kaviraj), an analysis of whether the case law of the Strasbourg Court on freedom of conscience and religion under the European Convention on Human Rights discloses a Christian bias (Javier Martínez-Torrón) and a reasoned argument by Lord Sacks that Magna Carta 'was first and foremost a *religious* document', its primary role being as 'as an English Deuteronomy, establishing a three-way relationship between God, king and people' (p 308). In a brief coda, Lord Dyson reflects that 'the equality of all religions under the state's secular law is the best guarantee in a secular society of equal freedom for each religion and its adherents' (p 337). An appendix to the book includes English translations of the 1215 and 1225 Charters.

This is a wide-ranging and thought-provoking collection of scholarly essays that does ample justice to the book's title and is designed both to inform and to inspire further reflection. Many of the essays serve as a call for dialogue, a call which it has not been possible to answer in a short review of such a rich volume.

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Religion and Legal Pluralism

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If anything, the reverberations from Rowan Williams' 2008 supernova, rather than dying away into cosmic undetectability, have actually become louder.⁴ On the evidence of this compilation of 15 essays by 14 contributors marshalled by a rising – risen? – star of Norman Doe's stable at the Cardiff University Law

4 R Williams, 'Civil and religious law in England: a religious perspective', (2008) 10 Ecc LJ 262–282.