

otherwise knowledge will decline not advance. Sadly, this work is yet another victim of this trend.

Of course, the above comments generally reflect this reviewer's criticisms. This, though, should not mask the fact that this is a very good and highly recommended book. On the whole, Riggsby has successfully undertaken a near impossible task: to explain, in a little over 200 pages, a highly sophisticated, complex and sometimes idiosyncratic system of law. It will be most useful as a first text for students of Roman law, prior to commencing their course (summer reading perhaps). It cannot though, in this reviewer's opinion, function as a textbook. Professional lawyers who did not study Roman law 'at school' should also be directed to the book. By avoiding 'stuffy tones', it would be a delightful book for such to take on holiday; should they wish to be informed and entertained, but not left feeling slightly depressed. A work such as this will draw more (not fewer) people to the pleasures of Roman law, and for this Professor Riggsby deserves both congratulations and thanks.

TIM POTIER

*Select Ecclesiastical Cases from the King's Courts 1272–1307.* By DAVID MILLON (ed). [London: Selden Society. 2009. cxxviii and 103 pp. Hardback £60. ISBN 9780854231270.]

At a time when the legitimate place of religion in English national life has become a matter of controversy and debate, with the relationship between secular and ecclesiastical norms being brought into question by British legislation and Roman scandal, it is good to seek some historical perspective on the issue. Professor David Millon's volume of *Select Ecclesiastical Cases*, edited with a superb analytical and learned introduction for the Selden Society, does precisely that. Based on work from his doctoral thesis, Millon offers an account of the relationship between the royal and ecclesiastical jurisdictions in the reign of Edward I (1272–1307). A key period for the development of "legislative and judicial initiatives in the growth of a national legal system", the reign also saw the appearance of "several clashes between church and state" at both national and international level (p. xv). The interpretation of his records offered by the editor in his introduction thus has two, complementary aims: firstly, to assess the effect that the changing nature of the developing common law had on the church courts and secondly, to see more precisely if and how the great political dramas and controversies played out between monarch, popes and archbishops affected the relationships of the courts. Millon here seeks to provide a counterpoint to grand constitutional and political narratives of church and state by a focus on the records of the common law courts themselves. His "comprehensive examination", "membrane by membrane, for every term of the reign" of the manuscript rolls – both King's Bench and Common Pleas, as well as the eyres of eight counties – has enabled him to build up an equally comprehensive sense of the way in which the "king's courts resolved jurisdictional controversies" (pp. xvi–ii) and present conclusions about the relationship between the two legal systems that will be of interest to every historian of the period.

Unsurprisingly for a book published by the Selden Society and based on such detailed legal manuscript research, this is something of a technical work.

Millon's main task has been to select, transcribe, edit and translate records of pleas before the king's justices pertaining to his chosen theme of "areas that were contested or were potential sources of controversy" (p. xvii). Despite this choice of topic, he is keen to question the theme of discord and conflict that runs through much of the historiography discussing the relationship. He uses his detailed knowledge of the record evidence to reject views which see the crown as applying "steady pressure" on the church (W.R. Jones, "Relations of the Two Jurisdictions: Conflict and Cooperation in England during the Thirteenth and Fourteenth Centuries" (1970) 7 *Studies in Medieval and Renaissance History* 94) by "a distinct increase in aggression" (J.H. Denton, *Robert Winchelsey and the Crown 1294–1313: A Study in the Defence of Ecclesial Liberty* (Cambridge 1980), p. 3) in "an unusually strong offensive" (G.B. Flahiff, "The Writ of Prohibition to Court Christian in the Thirteenth Century I" (1944) 6 *Mediaeval Studies* 305) during the reign. Instead, he offers an interpretation in which neither church nor state exerted steady pressure on the other, and the occasional jurisdictional skirmishes never reached true crisis proportions. Edward I did not mount a campaign against the church courts and the clergy made no serious effort to extend the scope of their judicial authority beyond the frontiers established by the crown earlier in the thirteenth century. (p. xvii).

He notes that the royal courts "only occasionally interfered with the activities of the ecclesiastical courts during the middle ages, but church court judges and suitors rarely stepped across the jurisdictional lines mapped out for them" (p. xvii). The overwhelming picture is one of largely peaceful co-operation between the two fora, each carefully respecting what it sees as the legitimate preserve of the other.

The editor has organised his selected cases according to the different means by which the royal courts came to exert influence on those of the church. He has divided the bulk of his material into two main sections: one dealing exclusively with cases of prohibition (actions where the royal chancery had issued a writ prohibiting further ecclesiastical action) and another covering the more generic topic of "Other Ecclesiastical Cases at Common Law". This division of the material represents a broader conceptual one in his thinking between direct and indirect ways in which the royal courts sought to influence ecclesiastical procedure. Within his category of indirect ways of influence, Millon places those forms of action whose effect consisted of "bringing disputes before the royal courts that might otherwise have been settled by church courts", selecting within that group only those "that deserve special attention because they involved particularly significant ecclesiastical interests" (p. lxxxviii). A third and final section of the main text contains a selection of cases from the rolls of the Norwich eyre of 1286, which seem to have been undertaken as part of a royal inquest into the actions of ecclesiastical courts in Norfolk. These cases are appended on membranes at the end of the main eyre roll and are all concerned with ecclesiastical infringements on royal jurisdiction. The inquest seems to have been unique, despite the survival of a writ announcing one to the clergy of Somerset and Dorset, and clearly represents the most direct attempt by royal government to influence the ecclesiastical judicature.

These broad divisions of his main text are mirrored in the structure of his extremely detailed introduction, where he seeks – while justifying the selections made for the volume and highlighting their interest – to present a coherent and novel account of the relationship between the government of Edward I and the

church courts. He thus begins with a detailed account of the nature of prohibition proceedings, building on and correcting the account offered by G.B. Flahiff in a series of articles from the 1940s. Millon's account offers explanations of three key procedural problems relating to the nature of prohibitions. Firstly, he offers a reinterpretation of the so-called Statute of Consultation of 1290. The mid-century treatise *Bracton* contains references to an informal procedure whereby an ecclesiastical judge may approach a king's justice for permission to proceed where it is clear that the prohibition writ was obtained under false pretences. It has long been assumed that the 1290 statute acted to merely formalise that procedure, yet Millon's study of the records has led him to conclude that its aim was in fact to extend its range to prohibition plea defendants. Thus, in cases where an ecclesiastical judge was being overtimid in the face of a prohibition, Millon successfully shows that the statute allowed defendants to use the consultation process on their own initiative. His second major procedural problem is the continued use of the prohibition plea despite the ease with which defendants could acquit themselves through wager of law (and he has found several cases involving jury verdicts that contradicted successfully waged assertions to demonstrate the problem). His elegant solution is to notice that, in all cases where the defence to the main action did not rest on a positive assertion that the cause of the original dispute was spiritual, the royal judges coupled the verdict that a defendant who successfully waged his law could go *sine die* with an injunction prohibiting further action by the church courts. This injunction was then enforceable by an action for contempt which, since it always by definition touched royal interests, could only be tried by jury. Millon plausibly shows how this elaborate sequence of actions allowed the royal courts to maintain their traditional form of proof whilst continuing to protect all parties to the dispute in a way that rendered the action attractive. Contempt actions also had a role to play in the third procedural problem he discusses: that of the imposition of ecclesiastical sanctions (such as excommunication) during the prohibition process. Here, the author contents himself with noting that the use of contempt proceedings in this respect in his period supports the general pattern already established by Flahiff. More importantly, he is keen to stress the litigant-driven nature of the procedure he describes, emphasising that writs of prohibition cannot in his period be seen as royal weapons but must be seen as moves in the chess game of individual litigation.

From procedure he moves to substance, enumerating first the various grounds on which prohibitions were available and then, shifting perspective, discussing his miscellaneous forms of action whose effect consisted of "bringing disputes before the royal courts that might otherwise have been settled by church courts" (p. lxxxviii). Throughout his impressively comprehensive survey of the types of prohibitions, Millon is keen to stress the essential continuity with the forms available under Henry III. The only serious novelties in this area are prohibitions *de transgressionem*, prohibiting ecclesiastical actions for wrongs committed against the king's peace. As the author himself points out, such a development is hardly surprising in an era when the common law action for trespass is itself beginning to appear. He is keen to stress that this is very much an exception to a general rule of continuity with previous reigns, a pattern which he also claims to find in his category of "indirect" influence (i.e. common law actions that could be said to touch on spiritual matters). The exception in the latter group is the common law action for recovery of an annual rent, which developed "largely, though not exclusively, during Edward's reign"

(p. lxxxviii). This action is joined in the category by actions concerning ecclesiastical patronage, such as *darrein presentment*, and a discussion of benefit of clergy, both of which conform to Millon's general narrative of continuity. The final member of the group is perhaps the most interesting, having seemingly not been systematically studied before: the use of trespass actions to regulate collection of tithes. Just as with writs of prohibition *de transgressione*, this development seems to be a novelty under Edward I based on the development of the action for trespass and one is led to wonder whether it is due to Millon's laudable eagerness to emphasise continuity in jurisdictional boundaries that he fails to note this.

In the final section of his introduction, Millon turns to offer an interpretation of the Norfolk records printed at the end of his volume. Here, he essentially offers a restatement of his views on *Circumspecte Agatis* offered in the *Law and History Review* for 1984, linking and supporting them with the Norfolk evidence. Consistent with his desire to revise a view of the jurisdictions during the reign as essentially in conflict, he is equally keen to challenge a view of the writ that sees it as clarifying previously blurred boundaries by making substantive grants to the clergy. Instead, he notes that all the points of clarification in the writ revolve around goods and money and suggests the real purpose of the writ was to clarify the application of a new "prosecutorial process, based on lay inquests" rather than one dependant on "the initiative of individual complainants" (p. cxxvii). His central highly persuasive thesis is that the innovations of the Crown in the years surrounding 1286 were designed to maintain and support existing jurisdictional boundaries, not redefine or challenge them.

This is a solid and sound piece of legal historical research which is comprehensive in its coverage of an extremely important topic. As one would expect from this particular author, it offers well-reasoned, innovative and challenging revisions of orthodox views on the nature of the two major jurisdictions in medieval England. Both for the valuable records it brings into the printed domain and for the insightful and thought-provoking views of their editor, this volume is essential reading for anyone interested in the field. Doubtless the interpretation offered by Professor Millon will continue to both stimulate historical debate and, one hopes, inform contemporary discussion for many years to come.

JAMES LAWSON

*The Law of Organized Religions: Between Establishment and Secularism.*

By JULIAN RIVERS. [Oxford: Oxford University Press. 2010. li and 368 pp. Hardback £50. ISBN 9780199226108.]

In this important new text Professor Rivers seeks to undertake a systematic study of English law as it applies to organized religion, and in the process has produced a meticulously researched and insightful text which will be of great value to students, scholars, and legal practitioners working in the field of law and religion. The text provides comprehensive analysis of doctrines drawn from a wide range of areas within English law, but at the same time seeks to develop an understanding of the constitutional principles concerning organised religion – as he says "it has largely been the systematic articulation of legal