freedom by discerning the original intent of the drafters. In Chapters 2–4 he argues persuasively that this is misconceived since the First Amendment was originally seen as jurisdictional rather than substantive in content and merely passed the matter to the state rather than involve the federal government: it did not have substantive content at all. Thus to the extent that the Fourteenth Amendment required states and the federal government to act in accordance with the First Amendment, it was impliedly "repealing" the constitutional settlement that the First Amendment represented and necessitated the quest for an understanding of its meaning. Obviously, the "original intent" is no place to start, since this has been abandoned.

Chapters 5–8 move on to a critique of the alternative approach that has been followed, that of seeking the most satisfactory "theory" of religious freedom. Not only does he argue that there is no such theory currently available, he claims that "no adequate theory or principle of religious freedom is possible" (p.61). Chapter 6 points to the central conundrum, that if the purpose of a theory of religious freedom is to mediate between competing religious and secular positions it will be flawed by bias for or against any particular position. Yet such bias inevitably flows from the preferred positions of the protagonists. Since it is simply not possible to be entirely disengaged from the debate (e.g. my agnosticism offends your religiosity, or vice versa) a coherent theory of religious freedom simply cannot be had. This, of course, is not an orthodox view and the US courts have devoted considerable time and trouble in investing the First Amendment with content deriving from concepts of neutrality in relation to religion. In Chapter 7 the author indulges in a withering exposure of the inadequacies of such approaches in their various guises, concluding that "the quest for neutrality ... is an attempt to grasp an illusion" (p.96). Chapter 8 then addresses the question of whether it is possible to bow to the inevitable and simply accept the secularist point of departure when constructing a theory of religious freedom on the grounds that this is at least "neutral" as between religions themselves. The answer, ultimately and, in the light of what has gone before, predictably, is that this cannot be done in a manner that truly reflects religious freedom and so the project is foreordained to fail.

So far, so good. Smith does not make any further claims for his argument and this may be as well since if pursued it hints at uncomfortable results which are best left to be drawn by each reader. The background to this project is the construction of a constitutionally cogent principle and in the context of a US Constitution that purports to provide for the freedom of religion. What, however, are the wider implications of his argument? Is it that the freedom of religion is itself a chimera that should be abandoned in favour of his own view of prudential pragmatism? But is this not a form of "theory" of religious freedom in its own right anyway? Indeed, right at the start, Smith argues that there is not a single version of religious freedom, but a plurality of versions, all equally capable of falling within that generic heading (pp.11–12). The gravaman of Smith's argument seems to be that the USA has wedded itself to a concept of the freedom of religion that is not realised in practice and cannot be rationalised by resort to "originism" or "theory". He may be right. But that does not mean that others who have not accorded the "freedom of religion" a constitutional status should refrain from doing so on the grounds that it is a hopeless enterprise. What it does mean is that one must be wary of zealotry in any cause, including the cause of freedom of religion. One exception might, however, be permitted—zealotry in favour of this accessible, well written, provocative and stimulating work.

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The Italian Legal Tradition. By THOMAS G. WATKINS. [Aldershot: Ashgate. 1997. xiv + 281 pp. ISBN 1–84014–062–3]

THIS new book on the Italian legal system offers both an historical and a simplified presentation of the Italian legal system. Cappelletti, Merryman and Perillo's *The Italian Legal System* (1967) remains the classic study of the Italian legal mind with the emphasis on its strong continuity with Roman law in terms of content and concepts. Watkin also adopts an historical approach, demonstrating the continuities with Roman law and adding also the influence of medieval canon law and, more recently, of European law. But, unlike Cappelletti, Merryman and Perillo, the emphasis is less on the way Italian lawyers interpret the law and conduct legal procedure and is more directed to an outline of substantive law. Such a focus is more similar to Certoma's *The Italian Legal System* (1985). But, unlike that work, Watkins' text is written more straightforwardly for an English audience, both in the order of its content and in the way concepts are explained. Deliberately written for a student audience, the text succeeds in providing a clear and well-written introduction to the basic features of the Italian legal system, which is informed by a breadth of scholarship. Watkins' work is admirably suited to any scholar wishing to obtain a succinct and contemporary grounding in the Italian legal system. Indeed, the explanation of some of the more complex Italian distinctions, e.g. between subjective rights and legitimate interests, in Chapter 10 is particularly good. As a work on the legal tradition, the book attempts not only to explain, but to account for legal development. In this he is successful, though perhaps more could have been made of the influence of the German doctrinal tradition on contemporary Italian law.

The book begins with a brief account of the history, concepts and sources of Italian law, before a discussion of the constitution and legislative process, civil, criminal and administrative justice, as well as the legal professions. The final six chapters cover the principal aspects of civil law. The aim of the chapters is to introduce the principal legal concepts and explain them, often with illustrations. The presentations rely on abstract principles and hypothetical cases, rather than actual examples from decided cases and there is neither explanation of the forms of Italian case reports nor their use. (Indeed, the absence of reference to D. N. MacCormick and R. S. Summers, *Interpreting Statutes* and *Interpreting Precedents* (from the same publisher) is an unfortunate oversight.) The work is successful in presenting the way the Italians analyse legal issues, e.g. a criminal fact situation (pp.123 ff).

The work offers a judicious balance of the use of original Italian terms and English translations which ensures that the reader is able to identify the key terms when taking her study of the subject further. Inevitably in a work of this breadth, some chapters are better than others. Those on civil, criminal and administrative justice make more use of actual and hypothetical situations than the chapter on property. That said, the overall quality of the work is high and it is highly commended.

JOHN BELL