the Lincoln capitular provost's court, covering thirteen years of the reign of Edward III, and (b) the combined minutes and probate register of the court held for the Wisbech Deanery during the Wars of the Roses. The texts, retained in the easily readable church-Latin of their time, are fully annotated and presented with indexes of subject-matter, persons and places.

Students of church legal history, as well as historians preparing to approach the sources themselves, will be able to benefit from the editor's lucid introduction. Besides commenting on the County Record Office manuscripts from which he worked, Professor Poos explains the basis of (and the contrasts between) the two jurisdictions, the types of case encountered—mainly office causes in Wisbech, the peculiar court enjoying a wider scope—and the procedures that were applied.

He concludes with remarks on the texts' value to scholars in several historical sub-disciplines, which is both substantial and wide-ranging. The frequent moral, probate and debt cases throw light on social behaviour and control, popular piety and the local economy; but the records also contain evidence of extra-judicial arbitration, of proto-contract (*fidei læsio*) restricting worker mobility, of defamation proceedings investigating villein status, and of feoffment of land being compelled in the course of testamentary enforcement.

The records edited by Professor Poos are of a type sometimes neglected, but whose instructive—and entertainment—potential is clear even from a cursory browse. Even while leaving to others a full analysis of what the records reveal, his book, evidently a product of considerable hard work, deserves to be acclaimed for the masterly reference volume that it is.

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LAW AND THEOLOGY IN THE MIDDLE AGES, by G R EVANS, Routledge, London and New York. 2002, viii + 259pp (incl. Index), (Hardback £62.50, Paperback £19.99) ISBN 0-415-25327-6 hardback; 0-415-25328-4 paperback.

The first three centuries of the second Christian millennium saw a great upsurge in learning. It was during this period that the great universities of mediaeval Europe flourished upon foundations that had been laid by the earlier cathedral schools. Not surprisingly, therefore, the study of the faith itself was central to intellectual endeavour within both institutions, and as the works and the skills of the classical past found fresh appreciation and gave new inspiration to the scholars of the twelfth and thirteenth centuries, it was often to the materials of theology that the ideas and techniques of the ancients were applied.

Often this was the case, but not always. Other disciplines developed along-

side theology in the institutions of higher learning. Law was one of the most important if not the most important other subject. Starting at Bologna in northern Italy in the late eleventh century, the study of Roman civil law and later the canon law of the western Church formed together the staple of legal study in mainland Europe until the sixteenth century and beyond. The question of how far the approaches and techniques of the students of these two great disciplines interacted upon and influenced one another has excited interest for generations.

That the question needs to be asked is unsurprising. The similarities between the work of the theologians and the jurists are many. To begin with, both focused their work upon an authoritative text. For the theologians, it was the revealed truth of the Bible, a truth which could be supplemented but not contradicted by the truth revealed through the proper use of the divine gift of human reason. Apparent contradictions in sacred texts lay in the imperfect understanding of the reader, and reason could be used to resolve such misunderstandings and thereby guide the reader to the truth of the text. The technique of dialectic reasoning, as exemplified for instance by Peter Abelard's *Sic et non*, was one such device; indeed for the twelfth century thinkers, it was the principal method.

The legal scholars proceeded likewise. They too had an authoritative text. Theirs was not the revealed truth of the Bible, but the written reason as they termed it, the *ratio scripta*, of Justinian's *Digest*, the great compilation of classical Roman jurisprudence achieved on the initiative of the sixth-century Byzantine emperor, and over one-and-a-half times as long as the Bible. Traditionally, this is said to have been rediscovered by the Italian jurists of the later eleventh century, and even if some knowledge of it had survived in the west, it remains true that it was the scholars of that generation who realised its potential as a supreme text upon which a scholarly discipline could be founded.

Faced with contradictions and inconsistencies in the *Digest*, the jurists who studied it responded with a humility to match that of the theologians, believing that through the application of reason, the essential consistency and unity of the compilation could be demonstrated. Hence, from the time of Irnerius in the eleventh century to that of Accursius in the thirteenth, the leading students of the *Digest* worked to produce a gloss of the text which would reveal its unique status. For that reason, they became known as the glossators.

It was not only the perspective of the scholars upon their texts and the techniques which they employed which united the theologians and jurists of the period. They also had common concerns. Both faced the vexed question of resolving the claims of a central authority with those of local customs, and both addressed questions with regard to human conduct, its regulation, the standards by which it should be judged, and the severity with which it was appropriate to punish. To modern eyes, the disciplines are distinct and have something approaching firm boundaries. That

would not necessarily have been so for the scholastics and the glossators, and in particular it would not have been the case for those who embarked upon the enterprise of applying the techniques of the students of Roman civil law to the law of the Church, where the authority of Scripture and written reason, the opinions of classical jurists and the decrees of the Papacy, all had a part to play. More than one lawyer during these years sat in the seat of St. Peter.

The question of the extent of the mutual influence and understanding of lawyers and theologians in this age is therefore fascinating, in that it goes to the heart of the intellectuals' concerns and their culture, but it is also perilous in that it demands a knowledge and an expertise in what have since become separate areas of discourse. Professor Evans is highly qualified to essay the task, being a distinguished scholar in both mediaeval theology and the history of ideas. In a series of lucidly presented, brief and densely-argued chapters, she leads the reader through a range of pertinent questions and areas ripe for a dual examination from the perspective of both the theologian and the jurist. She begins with a recognition that a similarity of vocabulary may conceal a divergence of conceptual meaning; terms such as 'justice' may not have had the same meaning for the theologian as the lawyer, just as today a simple word such as 'insane' has a different connotation for the lawyer than for the clinical psychiatrist, and the word 'positivism' has a different import according to whether it is preceded by the adjective 'legal' or 'logical'. She considers how both disciplines address questions of human behaviour, how both seek to achieve a rational order in their presentation and structures, and how the education, indeed the formation, of the ecclesiastic resembled and differed from that of the lawyer. From there, she proceeds to examine the part played by ideals such as equity and natural justice in shaping the legal processes of the age, addresses the influences which shaped the emerging inquisitorial procedures of the age and assesses the manner in which litigation was ultimately disposed of both by the judge at first instance and on appeal, comparing this with the Church's internal jurisdiction over penitents in the confessional. No one who reads these chapters can fail to be impressed by the breadth and the depth of the author's learning, her mastery of a vast range of primary and secondary sources in law and theology, and the skilful synthesis which she has constructed to convey both her interest and her argument.

There are however difficulties with the work. Such a work must define its readership, and it is perhaps too optimistic to expect the reader to be well versed in both the theology and the legal history of the period. Little space is given to setting the writers quoted, most usefully in the Latin original and English translation, in their historical context. The reader is expected to know. The approach has its traps for the writer also. If each author was allowed some biography, some errors and inconsistencies might have been avoided. For instance, the twelfth-century Azo of Bologna is repeatedly described as being of the fourteenth century, and William Durantis suddenly becomes William Durant on page 142. Brevity also runs the risk of

allowing a less fully-informed reader to draw misleading inferences. The phrase 'from the *Digest* onwards' (page 115) could be taken to mean that the text had enjoyed unbroken legal authority in the west since its compilation in the sixth century, and it is misleading to speak of Justinian's compilations as being of the law 'of his time' when so much of what follows in argument concerns his *Digest* of the writings of the classical jurists who flourished some centuries earlier. *Iniuria* in Roman law was concerned with reparation for insult and hurt feelings, and not with reputation as asserted on page 123 in reliance on a secondary source.

Professor Evans does not always distinguish texts relating to civil procedure from discussion of criminal justice. For instance, when it is stated on page 167 that the best proof that an offence has been committed is for the accused to admit it, the *Digest* text cited in support is concerned with civil liability not criminal responsibility, so that the use of words such as 'offence' and 'accused' is inappropriate. Concepts are also introduced without being fully explained, inviting an anachronistic modern understanding. This is particularly so with the concept of proof. The idea of there being legal proofs, which if present in sufficient quantity, would literally add up to the full proof, the *plena probatio*, mentioned on pages 135–136, is never properly explained. The reader is left with the misleading impression that much was left to the intimate conviction of the judge as in a modern trial, whereas the developing canonical procedures which were destined to shape so much of the inquisitorial procedures of the continent, left little room for judicial discretion, as little in truth as was left by the ordeal which they replaced. Also mentioned, but not explained, is the classical mode of trial, the *ordo*, and, in relation to the simpler, summary form of trial which overtook it, the reader is seemingly also expected both to know in advance what the *Clementina Saepe* was and appreciate its significance. The distinction between dilatory and peremptory exceptions gets a less than clear explanation on page 99 (the former challenged the court's jurisdiction or the legality of the cause of action while the latter went to the merits of the case), while presumptions are mentioned on page 128 with no attempt to distinguish between the force of proximate and remote presumptions in relation to the rules of legal proof (proximate presumptions, which were not full proof, included for instance two witnesses having seen the accused running away from the scene of the crime, but not the crime's commission; remote presumptions included the accused having changed his story or having become nervous or sweaty when questioned).

Putting aside the almost inevitable difficulties which arise for the scholar seeking to tackle the literature of distinct disciplines, there is much which will inform and fascinate the modern reader approaching the work from a legal background. '*Ibi est aequitas ubi est aequalitas*', wrote Baldus in the fourteenth century, perhaps inspiring the modern English maxim that 'Equality is equity', although Baldus would have recognised its application more clearly perhaps in Lord Woolf's recent insistence that justice demands a level playing field between litigants of sometimes great dispar-

ity of wealth more than in allocating beneficial interests under a trust. The challenges entertained against modern jurors in England and America echo the objections allowed against judges in earlier times, and Stephen of Tournai's discussion of the guilty will suggests a heavy influence upon the later law relating to conspiracies and attempts.

The description on the back cover of the paperback edition of this work rightly asserts that this is a unique, fascinating and thought-provoking book, which Professor Evans deserves both thanks and admiration for having accomplished. Given what is expected of the reader in advance of tackling the work and the need for some wariness with regard to the treatment of some of the legal issues, your reviewer is not so convinced that it is a suitable introduction.

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THE FIRST GRACE: REDISCOVERING THE NATURAL LAW IN A POST-CHRISTIAN WORLD, by RUSSELL HITTINGER, Wilmington, Delaware: ISI Books, 2003, xlvi+334, ($24.95) ISBN 188-92682 X

Russell Hittinger is well-known as a Roman Catholic legal philosopher, and I read the opening chapters of *The First Grace* with a mounting sense of excitement. However—and this is perhaps one of the disadvantages of having an already excellent reputation—by the end of the book I was rather disappointed. What had promised to be a comprehensive restatement of constitutional theology turned out to be still fragmentary.

As Hittinger explains, the 'First Grace' refers to the natural law, and Section One of the book, 'Rediscovering the Natural law', is a sustained and powerful critique of the modernist attempt to build natural law on non-theistic foundations. In chapter 1 ('Natural Law and Catholic Moral Theology'), the author argues that modern natural law discourse is anti-theological, that correct natural law theory cannot be divorced from a doctrine of God, and that as a consequence Christians should be wary of buying into current natural law discourse. In chapter 2 ('Natural Law as Law') Hittinger supports his thesis by pointing out that modern natural law theory has great difficulties in establishing the law-like nature of its subject-matter; a problem which the existence of a divine legislator resolves. Chapter 3 ('Natural Law in the Positive Laws') disentangles philosophical questions about the existence and effect of natural law from political and constitutional questions about the proper scope of judicial power. This is particularly necessary in the American context, in which natural law theory is too often associated with judicial supremacism. This is, of course, a *non sequitur*, and a mistake British readers are less likely to make. The final chapter in this section, 'Authority to Render Judgment' goes into the judicial role in the face of unjust laws in more depth, concluding that 'the higher law might obligate the judge not to render judg-