BOOK REVIEWS

CHRISTIAN PERSPECTIVES ON THE LIMITS OF LAW, edited by PAUL BEAUMONT, Paternoster Press, Carlisle, 2002, vi + 149 pp (Paperback £17.99) ISBN 1-84227-156-3

The literature on the relationship of law and religion in Britain, previously rather sparse, has been augmented by some useful studies and collections of papers in recent years. The short book under review represents another addition. Following three earlier precedents, it is the fourth in the publisher's series of Christian Perspectives on Law, each of which has been developed from conference papers at a Lawyers' Christian Fellowship symposium. As the title suggests, the five papers in this latest collection are linked, if somewhat loosely, to the theme of the limits of law. In an introduction, Paul Beaumont acts not only as summariser but also as discussant, thus demonstrating by example his perfectly fair observation that Christians will often not be able to speak with one voice, but may at least engage in an informed debate within a range of Christian views.

Three of the essays are concerned with areas of law which do not obviously involve an interface with religious practice. Ewan McKendrick's consideration of contract law is lucid and insightful, but he is quick to concede that there is no such thing as a distinctively Christian law of contract, first because Christian perspectives provide no answers to many of the problems which currently confront the law, and secondly because contractual thinking is simply not central to the Christian gospel. At a fairly abstract level, some of contract's underpinning principles, such as *pacta sunt servanda*, may indeed be consistent with Christian values. However, as the maxim's Roman origins may remind us, such principles are likewise consistent with other values or accord with pragmatic considerations. Again, it may be proposed that, at a general level, the law of contract wrestles with problems that arise because of our imperfect or fallen nature. In this light, the recent fashion for extending what are broadly contractual approaches (although they may not involve legally enforceable contracts) into areas such as the health service, the relationship between parents and schools, and perhaps even family law, has interesting implications. McKendrick takes a sceptical view of those developments, concluding that 'the faith placed by policy-makers in the ability of "contracts" to transform the nature of relationships in society or to halt their decline is sadly misplaced'.

If contract law demonstrates no obviously Christian influence, it might be supposed that equity would offer more fertile ground. Yet, although Christian influences lay behind the concern with conscience which drove equitable intervention into the common law, the particular impact of those interventions has characteristically been individual and parochial rather than on the larger picture. So, when it comes to an issue such as trustees' investment practice, we find that the ability of trustees to employ ethical criteria is, in the absence of express authorisation to do so in a trust deed, much

more constricted by the law than one might expect. The point is carefully established by Alison Dunn in her essay, which not only deals with English law but finds space to cover Scotland and the United States. However, as she observes, contemporary practice presents something of a paradox, as churches and charities do increasingly seek to pursue ethical investment policies through attempting to find 'ways in which they can legitimately manoeuvre around the law's grey environs'. The active exercise of shareholder rights and a growing emphasis on corporate social responsibility go some way in this regard. Beyond this, greater leeway would require some kind of law reform, but Dunn does not underestimate the difficulties which would attend it.

The subject of Thomas Glyn Watkin's essay is ownership, more particularly landownership. With a broad sweep from Roman law to the present, he argues that there should be no embarrassment in suggesting that restrictions upon the powers of owners should be imposed for the good of the wider community, for such has been the rule rather than the exception in most countries in most ages. Conceding that different conceptions of the nature of ownership are identifiable in theological writing, his sympathy lies with a tradition which regards humanity's dominion as being a kind of stewardship of the created order. From there it is but a short step to environmental law, and the discussion segues into support for sustainable development, with an encouragement to join forces with interest groups which, albeit often unconsciously, have essentially Christian values within their thinking.

More evidently at the interface of religion and law, David Harte's subject is the legal framework for religion in schools in England and Wales. There are three ways in which religion is given a place in schools by the law: in provisions for religious education as a subject, in the requirement of collective worship, and in arrangements for schools with a religious ethos to be included in the state system. His exposition of the law, which has become regrettably prolix, is notably clear. Then, employing a typology of laws as being either coercive or enabling, he finds in the subject of religion in schools a microcosm illustrating the two approaches. By presenting the law providing for religious elements as actually enabling rather than enforcing Christian values, Harte articulates a defence of the present position which is valiant, although it may not persuade everyone. Secular liberalism, which emerges spectrally as a challenger from time to time, is not free of its own contradictions, as he notices.

The connections between political liberalism and the Christian tradition of political thought form the subject of a scholarly essay by Julian Rivers, which is more jurisprudential. From consideration of Augustine, William of Ockham, Roger Williams and Abraham Kuyper as theorists, he identifies strands of Christian liberal constitutionalism. Kuyper and others have even argued, with some historical justification, that liberalism was 'only able to flourish on the borrowed capital of Christian religion'. However, other foundations for liberalism are discoverable, and the resulting theories conceived of human activity as divided into the two realms of the public and the

private, rather than the two realms of Church and State. Rivers encourages some bridge-building, arguing that, rather than rejecting liberalism, Christians need to reclaim it.

Christian perspectives and legal scholarship are well displayed in this collection, in which the essays are hardly well matched but individually offer much that is of interest.

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LA LAICITÀ DELL'UNIONE EUROPEA: DIRITTI, MERCATO, RELIGIONE by MARCO VENTURA, G Giappichelli Editore, Torino, 2001, vii + 277 pp. (paperback €20.66) ISBN 88-348-1134-8.

In Britain, discussions of Church and State issues often focus on the concept of 'establishment', even though the term is so problematic that the Archbishops' Commission Report *Church and State* (1970) deliberately tried to avoid using it. In other parts of Europe, including Italy, the equally problematic concept of *laicità*, or similar, is regularly invoked in such discussions. It figures in the title of this book.

Ventura is a law professor at Siena university, and had this book contained biographical information then the reader would have seen the variety and distinction of his work. His intellectually sophisticated study, based on extensive documentation and close reading in various languages, analyses the interweaving of law and religion in the political context of increasing European integration. His exposition unfolds in three main sections, each divided into three chapters, ending with conclusions. In essence, the three sections consider respectively the impact of the European Union on religious freedom, its impact on the phenomenon of religion, and the response of religious groups. The volume's main drawback is that it so brims with ideas that they spill over into the numerous and at times lengthy footnotes, making reading difficult.

First there is a section on the European Union and religious freedom, which includes consideration of the emergence of what is characteristic and shared in that Union, within a trajectory that goes from mythological beginnings to today. The decisions of the international courts in Strasbourg (on Article 9 of the 1950 European Convention on Human Rights especially) and Luxembourg are given prominence. Less expected but welcome consideration is also given by Ventura to the economic dimension, recalling the word 'market' (*mercato*) in the title. There are also brief yet significant reflections on the need to renew methodologies for 'ecclesiastical law', going beyond inherited classifications and the dominance of the Church/State approach. This section ends with a subtle discussion of '*laicità europea*', the expression, really, of the principle of democratic pluralism from which the right to religious liberty derives.