

BOOK REVIEWS

LAW AND PROTESTANTISM: THE LEGAL TEACHINGS OF THE LUTHERAN REFORMATION by JOHN WITTE JR, Cambridge University Press, 2002, xix + 337 pp incl bibliography and index (paperback £17) ISBN 0-521-01299-6

John Witte of Emory University is a legal historian and long-standing student of the interplay of law and religion, also by no means unfamiliar with the theology of the German Reformation. In this carefully researched and illuminating volume he has combined his areas of expertise to challenge a time-honoured account of the effect Luther's activity had on the legal environment of later generations.

The chief target of Witte's argument is Ernst Troeltsch, early twentieth-century propagator of the notion that Luther left law and religion in mutual isolation, reforming religion but leaving a still-mediæval law to await the liberating wind of the Enlightenment. Witte contends such a dichotomy would have been untrue to the Reformer's key doctrine of the Two Kingdoms, earthly and heavenly, both subject to God; and that in fact Luther's emphasis on the divine authority and Christian calling of the civil magistrate significantly coloured later temporal, as well as ecclesiastical, law in Germany's Protestant territories.

In support of his argument, Witte has delved into the writings of some of Germany's earliest Lutheran jurists, from the troubled period of religious tensions before the Peace of Augsburg provided a stable context for legal development. Besides the well-known figure of Luther's colleague Melancthon, Witte names two founding professors at the law faculty in Marburg, Johannes Eisermann and Johann Oldendorp, leaders in translating reforming theology into legal theory. He admits that the Lutheran jurists drew some conclusions from which Luther himself might have held back, but disputes the classical analysis that these were departures from a radical separation of Law and Gospel for which Luther would have wished.

Lutheran teaching, for example, denied to church organs, within a Christian commonwealth, both legislative authority and the 'power of the sword'. But it called for the prince to give effect to the Ten Commandments in his own legislation, and to be guided therein by those whose office it was to preach and interpret Scripture. Emphasising the high authority the prince enjoyed as God's agent for the general weal, the jurists simultaneously held him to a high moral standard and justified resistance or emigration in the face of clearly anti-scriptural demands.

Witte confirms what readers of Helmholz would expect to find, that Lutheran jurists did in fact identify and draw upon the more innocuous elements of the inherited canon law, once the Peasants' War and other

antinomian excesses had shown religion could not countenance a legal vacuum in the name of Christian freedom. He also argues that Lutheran thinking was responsible for the penetration of equity into German temporal justice, Oldendorp in particular taking credit for the notion that a strict law still needed the moderating effect of the judge's conscience, which princely courts could provide no less than mediæval clerical judges had done.

But even where canonical rules continued in force, the *basis* for law might well have changed and new implications be drawn out. In separate chapters on marriage and education law, Witte describes how radically novel concepts of marriage and ministry found legal expression through the Lutheran jurists' work.

Witte's book is not for the 'pure ecclesiastical' lawyer. The structures and rules of public religion in individual German principalities and free cities are not its concern. But for the general legal historian, and for those reflecting on how far religious conviction still finds an echo in modern law, *Law and Protestantism* renders impressive service. It is not, perhaps, a light read: but its arguments are developed gradually and recapitulated at the end of almost every chapter, in such a way as to get the author's viewpoint across to readers irrespective of background knowledge. Only its title irritates: Lutheranism is the *only* branch of Protestantism of which the book treats. This was, admittedly, the only Protestant tradition Germany knew in the era in question; but still for the modern reader (especially in Britain, where Protestantism shows a Reformed rather than a Lutheran face) the primary title can mislead when severed from the subtitle.

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A DICTIONARY OF CHRISTIAN DENOMINATIONS by PETER DAY, Continuum, 2003, 528pp (hardback £45) ISBN 0826457452

Canonists who venture outside the confines of their own jurisdictions into the wider world of ecclesiology are likely to come across organisations of which they were previously unaware. The first question that one asks oneself in such circumstances is 'Precisely what *is* the "Purified Orthodox Church of the Inner Hebrides"?' or whatever; and Peter Day's book attempts to provide notes on the multiplicity of churches, denominations and sects on offer. Given that Day is himself Orthodox, it is no surprise that his book is strongest in that area. It also offers helpful notes on the multiplicity of small churches that stemmed from the legitimate, if unfortunate, consecration of Arnold Harris Mathew by the Dutch Old Catholics. Perhaps the choicest of these is on page 345: the Old Catholic Orthodox Church, founded (and presumably funded) by 'the Most Reverend James Bartholomew Banks, affectionately known to his friends as *Piggy* on account of the happy conjunction of his surname and his vast inherited wealth'.