

Cambridge Studies in Law and Christianity

John Witte, Jr.

Over the past two generations, a major new field of law and religion field study has emerged, involving more than 1500 scholars around the globe. They are studying the religious dimensions of law, the legal dimensions of religion, and the interaction of legal and religious ideas and institutions, methods and practices -- historically and today. These scholars have shown that, at a fundamental level, religion gives law its spirit and inspires its adherence to ritual, tradition, and justice. Law gives religion its structure and encourages its devotion to order, organization, and orthodoxy. Law and religion share such ideas as fault, obligation, and covenant and such methods as ethics, rhetoric, and textual interpretation. Law and religion also balance each other by counterpoising justice and mercy, rule and equity, discipline and love. It is this dialectical interaction that gives these two disciplines and two dimensions of life their vitality and their strength. Without law at its backbone, religion slowly crumbles into shallow spiritualism. Without religion at its heart, law gradually crumbles into empty, and sometimes brutal, formalism.

To be sure, the spheres and sciences of law and religion have, on occasion, both converged and contradicted each other. Every major religious tradition has known both theonomism and antinomianism -- the excessive legalization and the excessive spiritualization of religion. Every major legal tradition has known both theocracy and totalitarianism -- the excessive sacralization and the excessive secularization of law. But the dominant reality in most eras and most cultures, many scholars now argue, is that law and religion relate dialectically. Every major religious tradition strives to come to terms with law by striking a balance between the rational and the mystical, the prophetic and the priestly, the structural and the spiritual. Every major legal tradition struggles to link its formal structures and processes with the beliefs and ideals of its people. Law and religion are distinct spheres and sciences of human life, but they exist in dialectical interaction, constantly crossing-over and cross-fertilizing each other.

It is these points of cross-over and cross-fertilization that are the special province of the scholarly field of law and religion. How do legal and religious ideas and institutions, methods and mechanisms, beliefs and believers influence each other -- for better and for worse, in the past, present, and future? These are the cardinal questions that the burgeoning field of law and religion study has set out to answer. Over the past two generations, scholars of various confessions and professions throughout the world have addressed these questions with growing alacrity.

The Cambridge Studies in Law and Christianity series takes up these questions within the Christian tradition. The series publishes cutting-edge work on Catholic, Protestant, and Orthodox Christian contributions to public, private, penal, and procedural law and legal theory. It aims to promote deep Christian reflection by leading

scholars on the fundamentals of law and politics, to build further ecumenical legal understanding across Christian denominations, and to link and amplify the diverse and sometimes isolated Christian legal voices and visions at work in the academy. The Series, established in 2015, is led by an editorial team of 20 distinguished European and North American scholars, and edited in our Center for the Study of Law and Religion at Emory University.

Two dozen volumes are on offer so far, divided into three clusters. The first are commissioned introductions to Christianity and discrete legal topics. Each such introduction is an anthology of 15-25 chapters written by leading scholars. Each volume has historical, doctrinal, and comparative materials designed to uncover Christian sources and dimensions of familiar legal topics. Each volume is authoritative but accessible, calibrated to reach students, scholars, and instructors in law, divinity, graduate, and advanced college courses as well as educated readers from various fields interested in what Christianity has, can, and perhaps should offer to the world of law. Cambridge had already published two prequel introductions on *Christianity and Law* (2008) and *Christianity and Human Rights* (2010) whose success helped launch this initiative. The Series now has in print two more introductions -- Norman Doe's *Christianity and Natural Law* (2017) and Gary Hauk's and my *Christianity and Family Law* (2017). Other introductory titles are under way on Christianity and "the Laws of Conscience," "Constitutional Law," "Criminal Law," "Private Law," "Economic Law," "Environmental Law," "International Law," and "Global Law."

A second cluster of titles are freshly commissioned studies of "Great Christian Jurists in World History." Each volume focuses on a specific country or region and samples the life and work of some twenty of its greatest legal minds over the centuries. This includes not only civil and canon lawyers and judges, but also theologians, philosophers, and church leaders who contributed decisively to legal ideas and institutions or who created landmark statutes, canons, or cases. So: familiar Christian jurists like Gratian, Grotius, Blackstone, and Scalia will appear in this subseries, but so will Augustine, Aquinas, Calvin, and Romero. Mark Hill and Dick Helmholz have already published a decisive collection on *Great Christian Jurists in English History* (2017), matched by an equally fine collection by Rafael Domingo and Javier Martínez Torrón on *Great Christian Jurists in Spanish History* (2018). Other titles will soon follow on great Christian jurists in the first millennium, and in the histories of France, Germany, Italy, the Lowlands, Russia, America, Latin America, and Australia. We hope to commission similar studies for other parts of the world in due course.

Alongside these two commissioned subseries are individual volumes on various historical and contemporary themes at the intersection of law and Christianity. Distinguished historian Philip Reynolds has published the definitive history on *How Marriage Became One of the Sacraments*. Matthew Tuininga has a powerful new monograph on John Calvin's political and legal theology. Kathleen Brady has summoned the American founders to defend the essential place of religious freedom in liberal society. I have written a comprehensive history of the Western case for monogamy over polygamy from biblical times until today and followed up with a title on

Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties (2019). More superb historical titles are in press by Dick Helmholz on the history of English ecclesiastical lawyers, by Andrew Forsyth on the interaction of natural law and common law in American history, by Gerard Bradley and Christian Brugger on the history of Catholic social and legal teachings, and by Davey Henreckson on early modern Protestant political thought.

Other individual titles explore cutting-edge topics of law and Christianity. Leading Italian judge Marta Cartabia has assembled a marvelous collection of studies on Pope Benedict XVI's legal thought. Frank Pasquale and Michael Perry offer stimulating reflections on "Laudato Si". Allen Hertzke and Timothy Shah have published a definitive two-volume collection on the state of *Christianity and Freedom* (2016) around the world. Shah then joined Daniel Philpott in amassing a sober up-to-date study on the persecution of Christians around the world and what to do about it. Robert W. Heimbürger offers a powerful Christian perspective voice on current immigration battles in *God and the Illegal Alien* (2018). Rafael Domingo has entered a highly original engagement with modern legal theorists in his *God and the Secular Legal System* (2016), which can be profitably read alongside Robert Cochran and Zachary Calo's excellent collection on *Agape, Justice and Law* (2018) and a pithy monograph in press by Joshua Neoh on *Law, Love, and Freedom*. Canon law scholars will find deeply engaging Judith Hahn's sparkling natural law defense of *Church Law in Modernity* (2019).

There is no other such focused series on Christianity and law published by an elite world press, even though there are now ample focused studies and series on Judaism, Islam, Hinduism, and other faith traditions and their interactions with issues of law, politics, and society. World Christianity needs an equally sturdy, systematic, and sweeping series of fresh scholarship that appeals across denominational, disciplinary, and geographical divides, and opens its rich teachings to those within and beyond the Christian tradition. This series is not a parochial exercise: there are two billion plus Christians around the world, divided into hundreds of different denominational, cultural, and linguistic groups. This is not a chauvinistic exercise: the series includes deep critical analysis of the interaction of law and Christianity historically and today, and with full recognition of how far short Christianity sometimes has come to its founding ideals. And this is not a confessional exercise: the point is to encourage all people of (the Christian) faith to mine their own texts and traditions, methods and institutions for deeper and richer wisdom about law and politics, justice and peace, liberty and rule of law.

John Witte, Jr. is Director of the Center for the Study of Law and Religion at Emory University, and Series Editor of Cambridge Studies in Law and Christianity.