

Christianity and Criminal Law

This collection, by leading legal scholars, judges and practitioners, together with theologians and church historians, presents historical, theological, philosophical and legal perspectives on Christianity and criminal law.

Following a Preface by Lord Judge, formerly Lord Chief Justice of England and Wales, and an introductory chapter, the book is divided into four thematic sections. Part I addresses the historical contributions of Christianity to criminal law drawing on biblical sources, early church fathers and canonists, as far as the Enlightenment. Part II, titled Christianity and the principles of criminal law, compares crime and sin, examines concepts of *mens rea* and intention, and considers the virtue of due process within criminal justice. Part III looks at Christianity and criminal offences, considering their Christian origins and continuing relevance for several basic crimes that every legal system prohibits. Finally, in Part IV, the authors consider Christianity and the enforcement of criminal law, looking at defences, punishment and forgiveness.

The book will be an invaluable resource for students and academics working in the areas of Law and Religion, Legal Philosophy and Theology.

Mark Hill QC practises from Chambers in the Inner Temple, London, and is Associate Professor at Cardiff University, UK; the University of Pretoria, South Africa; King's College London, UK; and Notre Dame University Law School, Sydney, Australia.

Norman Doe is Professor of Law at Cardiff University, UK, and Director of its Centre for Law and Religion.

RH Helmholz is Ruth Wyatt Rosenson Distinguished Service Professor of Law at the University of Chicago, USA.

John Witte, Jr is Woodruff University Professor of Law, McDonald Distinguished Professor of Religion and Director of the Center for the Study of Law and Religion at Emory University, USA.

Law and Religion

The practice of religion by individuals and groups, the rise of religious diversity and the fear of religious extremism, raise profound questions for the interaction between law and religion in society. The regulatory systems involved, the religion laws of secular government (national and international) and the religious laws of faith communities are valuable tools for our understanding of the dynamics of mutual accommodation and the analysis and resolution of issues in such areas as: religious freedom; discrimination; the autonomy of religious organisations; doctrine, worship and religious symbols; the property and finances of religion; religion, education and public institutions; and religion, marriage and children. In this series, scholars at the forefront of law and religion contribute to the debates in this area. The books in the series are analytical with a key target audience of scholars and practitioners, including lawyers, religious leaders and others with an interest in this rapidly developing discipline.

Series Editor: Professor Norman Doe, Director of the Centre for Law and Religion, Cardiff University, UK

Series Board: Carmen Asiaín, Professor, University of Montevideo, Uruguay
Paul Babie, Professor and Associate Dean (International), Adelaide Law School, Australia
Pieter Coertzen, Chairperson, Unit for the Study of Law and Religion, University of Stellenbosch, South Africa
Alison Mawhinney, Reader, Bangor University, UK
Michael John Perry, Senior Fellow, Center for the Study of Law and Religion, Emory University, USA

Titles in this series include:

Ecclesiastical Law, Clergy and Laity

A History of Legal Discipline and the Anglican Church
Revd Neil Patterson

Christianity and Global Law

Edited by Rafael Domingo and John Witte, Jr.

Christianity and Criminal Law

Edited by Mark Hill QC, Norman Doe, RH Helmholtz and John Witte, Jr

Law and the Christian Tradition in Italy

The Legacy of the Great Jurists
Edited by Rafael Domingo and Orazio Condorelli

For more information about this series, please visit:

www.routledge.com/Law-and-Religion/book-series/LAWRELIG

Christianity and Criminal Law

Edited by Mark Hill QC,
Norman Doe, RH Helmholz
and John Witte, Jr

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

Produced by the Center for the Study of Law and Religion, Emory University

First published 2020
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
52 Vanderbilt Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2020 The Center for the Study of Law and Religion at Emory University.

The right of Mark Hill QC, Norman Doe, RH Helmholz and John Witte, Jr to be identified as the authors of the editorial material, and of the authors for their individual chapters, has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing-in-Publication Data

Names: Hill, Mark, 1965- editor. | Doe, Norman, editor. | Helmholz, R.H., editor. | Witte, John, Jr., 1959- editor. | Emory University.

Center for the Study of Law and Religion, sponsoring body

Title: Christianity and criminal law / edited by Mark Hill, Norman Doe, R.H. Helmholz and John Witte, Jr.

Description: Abingdon, Oxon; New York, NY: Routledge, 2020. |

Series: Law and religion | "Produced by the Center for the Study of Law and Religion, Emory University" | Includes bibliographical references and index.

Identifiers: LCCN 2020002866 (print) | LCCN 2020002867 (ebook) |

ISBN 9780367858254 (hardback) | ISBN 9781003015260 (ebook)

Subjects: LCSH: Criminal law--Philosophy. | Law--Christian influences. |

Criminal liability--Religious aspects--Christianity. | Justice--Religious

aspects--Christianity. | Christianity and law.

Classification: LCC K5018 . C47 2020 (print) | LCC K5018 (ebook) |

DDC 261.8--dc23

LC record available at <https://lcn.loc.gov/2020002866>

LC ebook record available at <https://lcn.loc.gov/2020002867>

ISBN: 978-0-367-85825-4 (hbk)

ISBN: 978-1-003-01526-0 (ebk)

Typeset in Galliard

by Deanta Global Publishing Services, Chennai, India

In Memoriam

The Right Honourable Sir John Laws
Sometime Lord Justice of Appeal
1945–2020

Jurist, scholar and friend
Husband, father and grandfather

Requiescat in pace



Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Contents

<i>List of contributors</i>	x
<i>Preface</i>	xvi
LORD JUDGE	
<i>Acknowledgments</i>	xxi
1 Introduction	1
MARK HILL QC	
PART I	
Historical contributions of Christianity to criminal law	11
2 Criminal law in the Old Testament: Homicide, the problem of <i>mens rea</i> and God	13
BRENT A. STRAWN	
3 Conflicting criminal jurisdictions in early Christianity	31
MARKUS BOCKMUEHL	
4 Crime and the canon law	47
RH HELMHOLZ	
5 Retaliation: Christian reasons for punishment: an overview	62
MATHIAS SCHMOECKEL	
6 Christianity and the liberal enlightenment reforms of criminal law	80
HEIKKI PIHLAJAMÄKI	

PART II

Christianity and the principles of criminal law 97

7 The nature of sin and crime: Spiritual and civil jurisdictions compared 99

NORMAN DOE

8 Christianity, *mens rea* and the boundaries of criminal liability 116

DAVID MCILROY

9 Christianity, human dignity and due process 133

PETER COLLIER QC

PART III

Christianity and criminal offences 151

10 Christianity and crimes against the State 153

NATHAN S. CHAPMAN

11 Christianity and offences against the person 170

DAVID ETHERINGTON QC

12 Law like love like language: The Christian uses of property crime 188

JOHN F. STINNEFORD

13 Crimes against God and the Church 204

JEROEN TEMPERMAN

14 Sex crimes and Christianity 220

JOHN WITTE

15 Attempts, complicity, virtue and the limits of law 238

RICHARD W. GARNETT

PART IV

Christianity and the enforcement of criminal law 251

16 Defences: justification, excuse and provocation 253

CHLOË KENNEDY

17 Punishment, forgiveness and mercy	269
JEFFRIE G. MURPHY	
18 Justice, mercy and equality in discretionary criminal justice decision-making	283
ALBERT W. ALSCHULER	
19 Parole, risk assessment of offenders and Christianity	301
SIR JOHN SAUNDERS	
20 Judicial punishment in transitional justice: A Christian restorative approach	314
DANIEL PHILPOTT	
21 The weight of judgment	332
NATHAN S. CHAPMAN	
<i>Index</i>	349

Contributors

Albert W. Alschuler is the Julius Kreeger Professor Emeritus of Criminal Law and Criminology at the University of Chicago Law School, USA. He has also taught at Northwestern, Texas, Colorado, Penn, Berkeley, Michigan, NYU, Columbia, Brooklyn and San Diego. Alschuler has written on plea bargaining, sentencing guidelines, the exclusionary rule, jury selection, police hunches, confessions, bribery, campaign funding, Oliver Wendell Holmes, William Blackstone, the privilege against self-incrimination and other topics, most of them in the field of criminal justice. A convert from agnosticism to Christianity at age 48, he is currently Moderator of the Congregational Church in Cumberland, Maine (UCC).

Markus Bockmuehl is the Dean Ireland's Professor in the Exegesis of Holy Scripture at the University of Oxford, UK, and a Fellow of Keble College; he has also served as Associate Head of the university's Humanities Division (with responsibility for graduate studies). Until 2007, he was a professor at the Universities of Cambridge and St Andrews, and previously taught at Regent College and the University of British Columbia, Canada. Among his books is *Jewish Law in Gentile Churches* (2003); more recent titles include *Simon Peter in Scripture and Memory* (2012), *Ancient Apocryphal Gospels* (2017) and *Creation ex Nihilo: Origins, Development, Contemporary Challenges* (2018, ed. with G.A. Anderson). His teaching covers the New Testament as well as Jewish and early Christian studies, while his current research focuses on aspects of early Christian eschatology.

Nathan S. Chapman is Associate Professor of Law at the University of Georgia, USA. He was formerly Executive Director of the Stanford Constitutional Law Center. His scholarship focuses on due process of law, religious liberty, and Christianity and the law. He holds degrees in law and theology from Duke University, and is a McDonald Distinguished Fellow at the Center for the Study of Law and Religion at Emory University, Atlanta.

His Honour Peter Collier QC is a recently retired Senior Circuit Judge, having for over 10 years been the Resident Judge at Leeds Crown Court and the Honorary Recorder of Leeds. He sat as an additional judge in the Court of Appeal Criminal Division 2011–2018. He had spent the previous 35 years as

a barrister practising principally in the area of criminal law, and was appointed Queen's Counsel in 1992. He is also a diocesan chancellor (Wakefield 1992–2006; Lincoln 1998–2006; and currently York since 2006) and Vicar General for the Province of York since 2008. He is a member of the Legal Advisory Commission of the General Synod of the Church of England.

Norman Doe is Professor of Law at Cardiff University, UK, and Director of its Centre for Law and Religion. His books include *Fundamental Authority in Late Medieval English Law* (1990), *The Legal Framework of the Church of England* (1996), *Canon Law in the Anglican Communion* (1998), *The Law of the Church in Wales* (2002), *An Anglican Covenant* (2008), *Law and Religion in Europe* (2011), *Christian Law* (2013), *The Legal Architecture of English Cathedrals* (2017) and *Comparative Religious Law: Judaism, Christianity, Islam* (2018). A Visiting Professor at Paris University, he was a Visiting Fellow or Scholar at Trinity College Oxford (2011), Corpus Christi College Oxford (2015) and Jesus College Oxford (2018), and founding member of the Colloquium of Anglican and Roman Catholic Canon Lawyers (1990). He is Chancellor of the Diocese of Bangor and Director of the LLM in Canon Law at Cardiff Law School which he established in 1991.

David Etherington QC read Jurisprudence at Keble College, Oxford, UK, followed by a Special Diploma in Public and Social Administration in which he was awarded a distinction. He joined the Chambers of Michael Havers, then Attorney General and later Lord Chancellor, in 1982 and took Silk in 1998. He specialises in fraud and serious organised crime, and was appointed a Recorder of the Crown Court in 2000. He served on the Professional Conduct Committee and Professional Practice Committees of the Bar Council and was chairman of both for several years. He is Chancellor of the dioceses of Norwich and St Edmundsbury & Ipswich and Deputy Chancellor of Ely. David has advised a number of television dramas and other legal programmes including *Kavanagh QC*, *Judge John Deed*, *Hypotheticals* and Channel 4's *The Trial – A Murder in the Family*, and lectures on both advocacy and professional ethics.

Richard W. Garnett is the Paul J. Schierl/Fort Howard Corporation Professor of Law, Concurrent Professor of Political Science and the Director of the Program on Church, State & Society at the University of Notre Dame, USA. He was raised in Anchorage, Alaska, and received his BA in philosophy *summa cum laude* from Duke University in 1990 and his JD from Yale Law School in 1995. He served as a law clerk to the Chief Justice of the United States, William H. Rehnquist, and to Chief Judge Richard S. Arnold of the United States Court of Appeals for the Eighth Circuit. In 1999, he joined the faculty at Notre Dame Law School where he teaches and writes about criminal law, constitutional law and the freedoms of speech and religion. His current book project, *Two There Are: Understanding the Separation of Church and State*, will be published by Cambridge University Press.

RH Helmholz is Ruth Wyatt Rosenson Distinguished Service Professor of Law at the University of Chicago, USA. A graduate of Princeton University, Harvard Law School and the University of California, Berkeley, he teaches the modern American law of real and personal property, including the law of natural resources. However, most of his research interests have been devoted to the history of the European *ius commune*, with particular attention to its place in the development of the English legal system. Working from their manuscript records, he has taken a hand in tracing the history of the jurisdiction of the ecclesiastical courts in England from their beginning in the thirteenth century to their temporary abolition in the 1640s. His most recent book is *Natural Law in Court* (Harvard University Press, 2015), in which he traces the role played by the law of nature in the legal practice of the courts of Europe, England and the United States from 1500 to the mid nineteenth century.

Mark Hill QC is Associate Professor at Cardiff University, UK; the University of Pretoria, South Africa; King's College London, UK; and Notre Dame University, Sydney, Australia; and a Fellow of the Center for the Study of Law and Religion at Emory University, USA. He is Chairman of the Ecclesiastical Law Society and Vice-President of the International Consortium for Law and Religion Studies. He holds various judicial appointments including a Recorder assigned to the Midland Circuit hearing criminal, civil and family cases, and sits as a judge in the Consistory Courts of the dioceses of Chichester and Leeds. His recent publications include the fourth edition of the practitioner text *Ecclesiastical Law* (2018), *Religion, Law and Security* (2018), *Great Christian Jurists in English History* (2017), *The Confluence of Law and Religion* (2016) and *Magna Carta, Religion and the Rule of Law* (2015).

Lord Judge was Lord Chief Justice of England and Wales from 2008 until his retirement in 2013. He was called to the Bar by Middle Temple, elected a Bencher in 1987 and served as the Treasurer in 2014. He was appointed a Justice of the High Court in 1988, assigned to the Queen's Bench Division. In 1996, he was appointed a Lord Justice of Appeal, becoming a Privy Councillor. He was the Senior Presiding Judge from 1998 to 2003, and appointed the first President of the Queen's Bench Division in 2005. Lord Judge is the convenor of the crossbenchers in the House of Lords. He is an Honorary Fellow of Magdalene College, Cambridge, and an Honorary Doctor of Laws at Cambridge University, where he is the Commissary of the university. He is a Distinguished Fellow and Visiting Professor at King's College London. He was President of the Selden Society between 2007 and 2013. He is co-author of *Magna Carta Uncovered* (2014) and the author of *The Safest Shield* (2016).

Chloë Kennedy is Senior Lecturer in Criminal Law at the University of Edinburgh, UK. She holds a PhD and LL.M. from the University of Edinburgh and an LL.B. (hons) from the University of Glasgow. Chloë's research is mainly focused on criminal law, legal theory, legal history and the relationship between these

areas. She is also interested in the interrelations between law and religion and law and gender. As well as authoring various articles, Chloë is co-editor of *Scottish Feminist Judgments: (Re)Creating Law from the Outside In*. Chloë currently holds an Arts and Humanities Research Council early career research leader fellowship, during which she is researching and writing a critical history of identity deception.

David McIlroy is a barrister specialising in banking law, including civil claims for fraud, at the English Bar. He is Visiting Professor at Queen Mary University of London, UK, having previously taught banking law for 19 years at SOAS University of London. He holds Master's degrees in law from the Universities of Cambridge and Toulouse and a PhD in theology from the University of Wales. In addition to his work on banking law, David's other major research area is the theology and philosophy of law. As well as numerous articles, he is the author of *A Biblical View of Law and Justice* (2003), *A Trinitarian Theology of Law: In Conversation with Jürgen Moltmann, Oliver O'Donovan and Thomas Aquinas* (2008) and *The End of Law* (2019). He is an Associate Tutor at Spurgeon's College where he teaches a course on the Mission of Justice and the Theology of Law.

Jeffrie G Murphy is the Regents' Professor of Law, Philosophy and Religious Studies at Arizona State University, USA. He has written extensively on Kant's moral and legal philosophy, the philosophy of crime and punishment, the moral emotions, forgiveness and mercy and (most recently) humility as a moral virtue. He is a past president of the American Philosophical Association and was invited by the Divinity Faculty at the University of Cambridge to present the 2010 Stanton Lectures. His most recent book is *Punishment and the Moral Emotions—Essays in Law, Morality, and Religion*.

Daniel Philpott is Professor of Political Science at the University of Notre Dame, USA. He conducts scholarship on religion and global politics, with emphasis on reconciliation, religious freedom, theories of the political behaviour of religious actors and religious political ethics. Among his books are *God's Century: Resurgent Religion in Global Politics* (2011), *Just and Unjust Peace: An Ethic of Political Reconciliation* (2012) and *Religious Freedom in Islam? The Fate of a Universal Human Right in the Muslim World Today*. Since 2014, he has co-directed the *Under Caesar's Sword* initiative, a global research project on Christian responses to persecution. He has also facilitated faith-based reconciliation in Kashmir and the Great Lakes Region of Africa, and is conducting research on Christian political theology.

Heikki Pihlajamäki is Professor of Comparative Legal History at the Faculty of Law, University of Helsinki, Finland. He has written on themes such as the history of evidence law and lay judges, police law and different aspects related to the history of criminal law. Recently, his interests have increasingly shifted towards the history of commercial law and the theory of comparative legal history. Comparative aspects have been important throughout his production,

and geographically his work comprises not only Scandinavia and Europe, but also the United States and Latin America. He was co-founder of the journal *Comparative Legal History*, and is a member of the Finnish Academy of Science and Letters and of the Teachers' Academy of the University of Helsinki.

Sir John Saunders is a member of the Parole Board for England and Wales. He is a retired High Court Judge and has presided over a number of high-profile trials in recent years, including those concerning abuse of parliamentary expenses and telephone tapping by the media. He began practice at the criminal bar on the Midland Circuit in 1972 and was appointed Queen's Counsel in 1991. He became a Senior Circuit Judge and the Honorary Recorder of Birmingham in 2004 and was elevated to the High Court Bench in 2007. He is President of the Court of Appeal of St Helena, and chairs the public inquiry into the deaths of the victims of the Manchester Arena Attack in 2017.

Mathias Schmoeckel is Professor for Civil Law and Legal History in Bonn University, Germany, corresponding member of the Istituto Lombardo, board of directors of the Stephan-Kuttner-Institute and teaches also in Paris and Catania. He focuses on the relationship of Christianity and law since the Church Fathers, mostly in matters of evidence, procedure, private and international relation. He is co-editor of the commentary on the history of the German Civil Code, and of the *Zeitschrift für Rechtsgeschichte – Kanonistische Abteilung* as well as of the *Revue d'histoire de droit français et étranger*. He has authored, among other books, *Jugend der Justitia* (Tübingen: Mohr Siebeck, 2013) and *Recht der Reformation* (Tübingen: Mohr Siebeck, 2013), and has edited over 30 volumes on the history of German and canon law.

John F. Stinneford teaches and writes about legal ethics, criminal law, criminal procedure and constitutional law. His work has been published in numerous scholarly journals, including the *Georgetown Law Journal*, the *Northwestern University Law Review*, the *Virginia Law Review* and the *William & Mary Law Review*. Stinneford's work has been cited by the United States Supreme Court, state supreme courts, federal courts of appeal and numerous scholars. In the fall of 2015, he was a Visiting Scholar at the Georgetown Law Center, Center for the Constitution. Stinneford clerked for the Hon. James Moran of the United States District Court for the Northern District of Illinois. He teaches first-year courses in criminal law and constitutional law, and upper-level courses in professional responsibility, criminal procedure, federal criminal law, law & literature and white collar crime.

Brent A. Strawn is Professor of Old Testament at Duke Divinity School and a Professor of Law at Duke University School of Law in Durham, North Carolina, USA, where he also has a secondary appointment at the Law School. He has authored *What Is Stronger Than a Lion? Leonine Image and Metaphor in the Hebrew Bible and the Ancient Near East* (2005), *The Old Testament is Dying: A Diagnosis and Recommended Treatment* (2017) and *The Old*

Testament: A Concise Introduction (Routledge, 2020). He has edited more than 20 other volumes, including *The Bible and the Pursuit of Happiness: What the Old and New Testaments Teach Us about the Good Life* (2012) and *The Oxford Encyclopedia of the Bible and Law* (2015), which won the American Library Association's Dartmouth Medal for Excellence in Reference (2016). He was one of the editors and translators for the *Common English Bible* (2011) and serves on the editorial boards of various monograph series, including *Old Testament Theology* (Cambridge University Press). He is an ordained elder in the United Methodist Church.

Jeroen Temperman is Professor of International Law and Religion and Head of the Department of International and European Union Law at the Erasmus School of Law, Erasmus University Rotterdam, the Netherlands. He is also the Editor-in-Chief of *Religion & Human Rights* and a member of the Organization for Security and Cooperation in Europe's Panel of Experts on Freedom of Religion or Belief. He has authored, among other books, *Religious Hatred and International Law* (Cambridge: Cambridge University Press, 2016) and *State-Religion Relationships and Human Rights Law* (Leiden: Martinus Nijhoff, 2010); and edited *Blasphemy and Freedom of Expression* (Cambridge: Cambridge University Press, 2017) and *The Lautsi Papers* (Leiden: Martinus Nijhoff, 2012).

John Witte, Jr is Woodruff University Professor of Law, McDonald Distinguished Professor of Religion and Director of the Center for the Study of Law and Religion at Emory University, USA. A leading specialist in legal history, family law, religious liberty, human rights, and law and Christianity, he has published 260 articles, 18 journal symposia and 32 books. Recent titles include *The Western Case for Monogamy over Polygamy* (Cambridge University Press, 2015); *Religion and the American Constitutional Experiment* (Oxford University Press, 4th ed., 2016); and *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties* (Cambridge University Press, 2019).

Preface

Lord Judge

The Temple, where the London symposium met to debate drafts of the chapters which follow,¹ is quite literally the very same ground trodden by King John, the Barons, loyal and rebel, Archbishop Langton and the Princes of the Church as they tried to negotiate a settlement, thrashing out a solution for the dispute between the King and the Barons and embodying it in a charter, which in the following June became the first clause of Magna Carta itself.² Our brilliant, emblematic Temple Church had only just been consecrated. The Temple was a place of sanctuary. To shed blood here would have been a sin imperilling the immortal soul. It was also somewhere the immortal soul – and the day of judgment was inevitable – would probably feel safe to negotiate.

And it is in this church that one of the great unsung heroes of history, William Marshal, was laid to rest, unsung although without him Magna Carta would have been a mere footnote in history, just one of many charters to much the same effect as those that were dished out by mediaeval European rulers.³ We all know its provisions that justice was not to be denied or delayed or sold: but the charter also provided that people would not be at risk of any penalty unless they had contravened the law of the land – not some generalised law of God, but the law of the land. The judges were required to know that law and uphold it; and law enforcement officials, such as sheriffs and bailiffs, were not to act in a judicial capacity. Those principles stand today: quite what the law in 2018 orders and prohibits has become more convoluted. One simple phrase in Chapter 2 in this volume says it all: “Criminal law is a vast subject”.⁴

1 This Preface comprises the lightly edited text of the introductory remarks made by Lord Judge at the opening of the Christianity and Criminal Law symposium convened in Inner Temple, London on 13–15 October 2018.

2 See generally Anthony Arlidge and Igor Judge, *Magna Carta Uncovered* (London: Bloomsbury Press, 2014).

3 See various of the essays in Robin Griffith-Jones and Mark Hill, eds., *Magna Carta, Religion and the Rule of Law* (Cambridge: Cambridge University Press, 2015).

4 Chapter 2, Brent Strawn, “Criminal Law in the Old Testament: Homicide, the Problem of *Mens Rea* and God”, p. 13.

Here in England, and no doubt elsewhere in what I shall describe as the Christian world, we are now inundated with prohibitions or directions which, disregarded, may produce a penalty. Where there were once Ten Commandments, we now have tens of hundreds, thousands of criminal offences, well in excess of five figures. They range from laws against driving at a prohibited speed, to a relatively recent law prohibiting anyone from causing a nuclear explosion.⁵ Quite who will survive to investigate the crime, bring the perpetrator to whichever court has survived the explosion, and where the judge, the jury, the prison and prison officers to keep the defendant secure will be found are not explained. But one could argue that both speeding and causing a nuclear explosion are derived from continuing attention to the exhortation to us all to love our neighbour. With the distinction that in many situations, exhortation is no longer believed to be adequate and enforcement by criminal penalties is deemed necessary.

The following chapters represent a fascinating group of studies: stimulating, learned, provocative and profound. I have had the privilege of reading them. They make a scholarly read. My attention has been drawn to Aeschylus, war veteran of the Battle of Marathon, whose plays I tried reading at 17 years of age, and which I never did complete, to Kubrick's *Clockwork Orange*, which I never saw. I have noted *Bushell's Case*,⁶ which I know well, and *Barnette's Case*,⁷ of which I was ignorant. Today's world has been represented by commentary among many others on restorative justice and plea bargains and presidential pardons. We have been enlightened from Plato to the modern day via all the Fathers of the Church. Christianity is some 2000 years old, but its roots are found in mysticism from the Middle East, Greek philosophy, Roman law and, of course, Judaism. This history and these foundations and the inexorable revolution of time have commanded concentrated attention, and they have received it.⁸

Where to begin? As more than one of the chapters does, perhaps we should start at the very beginning, the Book of Genesis itself. The Garden of Eden, where the first crime was committed, the first trial took place and the first sentence was imposed. The defendants were not represented. If you were defending Adam and Eve, your mitigation plea would have proceeded along the lines that this was mere theft of an apple, no doubt one of many on the same tree, and unless eaten, an apple which would have become a wizened windfall by the end of the summer. This message was undoubtedly given to the defendants by the serpent, which it is not to be forgotten was itself part of God's creation. With forensic courage, the advocate might have asked why such an evil creature was created at all. In any event, the serpent was largely to blame for introducing the idea, offering the temptation and distorting their judgement. The Prosecution

5 Nuclear Explosions (Prohibition and Inspections) Act 1998.

6 (1670) 124 ER 1006.

7 *West Virginia State Board of Education v Barnette* (1943) 319 U.S. 624.

8 See e.g. Diarmaid MacCulloch, *A History of Christianity: The First Three Thousand Years* (London: Penguin, 2010).

argument would have been quite different. This was not eating any old apple. This was not a minor offence against property. This was eating an apple from a particular tree. It represented direct defiance of the only law in the Garden, a law of utmost simplicity, and constituted an irremediable breach of trust. The motive was shameful, seeking knowledge which would have made them almost Godlike. The offence constituted a terrible threat to the whole of His magnificent creation. Every judge trying criminal cases has listened to beguiling but mutually contradictory submissions of this kind. And must resolve how, justly, to balance them.

The sentence was expulsion from the Garden, with the additional physical punishment on Eve, extended to all her daughters for eternity. Beyond that, all children, every boy baby and every girl baby, were marked with original sin. All humanity's tribulations followed. The very next crime was fratricide, when one of their sons, Cain, killed another son, Abel. Was that not a direct consequence of the expulsion, just for eating an apple? Or was it an inevitable consequence of man's fall? Or both? So that raises the question whether the sentence for stealing an apple, even this particular apple from this particular tree, was excessive? Did it do any good? Should there have been a short period outside the Garden – to show the defendants what the world outside would be like? But would not any period outside have contaminated their innocence irretrievably? So, maybe a warning would have sufficed? In the High Court of Eden, mercy did not temper justice. So what was the point of the expulsion sentence? Was it simply the vindication of the law, a better society, with future generations understanding or having a clear understanding of the need to earn eternal life? Maybe a truly merciful sentence was not realistically available. Or again, maybe mercy was indeed shown. They were not executed. They were given the opportunity to earn ultimate redemption, assuming that is that they were not predestined to fail. Again, any sentencing judge will identify with these problems. And it can perhaps be argued that the fact that problems like these are identified daily in the criminal justice process, and are expected to be so identified, may itself be derived from the long history addressed in the following chapters.

In passing, I underline that there was no mitigation plea. The defendants were unrepresented. The judge who had laid down the law himself concluded that they were guilty and he himself passed sentence. In the Garden of Eden the trial process was unfair. It is perhaps too late for a prerogative pardon.

The story of the first crime provides a vivid illustration of the societal impact of crime. Every society, even the most primitive, has laws. And breaches of society's laws, even when based exclusively on religious belief, it was very quickly discovered, could not just be left to the hereafter. Even a theocracy enforces its laws on Earth. It does not leave what are asserted to be divine laws to divine justice, but rather purports to imbue the enforcing authorities on Earth with the investment of divine agency.

This volume directly addresses Christianity and criminal law. Today, Christianity includes numerous, not always consistent beliefs and traditions, which include, let us not forget, among others, the Coptic Church and the Greek Orthodox Church, and in the Western world not least Protestantism and Catholicism with

their different manifestations and beliefs. Men and women died horrible deaths because of their belief in or rejection of predestination, or the alternative belief, free will. In this history, the Reformation is really pretty recent, and over 20 centuries the authority of the Christian Church, or more accurately Churches, has varied within different societies, sometimes waxing, sometimes waning.⁹

The secular arm of the State and religious authority have at times been virtually indivisible, at others, at loggerheads. Usually that is a consequence of the struggle for power, political power, often dressed up as a religious issue, but sometimes the struggle for political power is directed to a moral issue. Was Henry VIII in breach of the law of God when he married his dead brother's wife, and so cursed? The short answer is that he cannot have been, because he became, and apparently always had been, the Supreme Head of the Church in England. So, it was just the marriage that was cursed. In passing, everyone ignores that his second marriage was equally cursed, because before he met Anne Boleyn, he had slept with her older sister; instead of dismissal suffered by Catherine of Aragon, Anne Boleyn faced trumped-up charges of infidelity. But Henry's struggle with the Pope, however dressed up in biblical texts, was about power. If the Pope would not provide him with the outcome he wanted, then that power should be placed where the desired outcome could be guaranteed.¹⁰

Every society has had to address the immediate problem, the daily problem, of the appropriate way to deal with the individual who has committed an offence. That responsibility is ultimately carried by judges, themselves fallible fellow human beings. With the possible exception of cases involving children, and the very rare cases involving life and death decisions, if you asked most judges to identify their most burdensome responsibility, it would rarely be the law, however complicated and difficult that may often be, but how to deal with the post-conviction decision. So many factors are in play. There is the crime itself and how contemporary society views the crime; there is the victim and the consequences for and impact of the crime on that individual, and sometimes on wider society; there is the defendant, with all their history, and their level of culpability and their intention at the time when the crime was committed; there is the future as well as the past. What is most appropriate, punishment or rehabilitation? This obligation to carefully balance many factors, some of which at least are in conflict (and I could give an entire lecture on the subject), is a responsibility shared by every judicial authority, the pagan and Christian, Mohammedan or atheist, whether society has or does not have a religious foundation, or indeed is a theocracy.

One of the constant themes in this volume is achieving the appropriate balance between justice and mercy. Assessing the proper balance between them is an awesome responsibility, and perhaps throughout these discussions we should bear in mind that in every Christian country, every day, every week, men and women will be exercising it. For them all, the Christian heritage does not diminish the

9 See e.g. Euan Cameron, *The European Reformation* (Oxford: Clarendon Press, 1991).

10 See e.g. Arthur Geoffrey Dickens, *The English Reformation* (London: Batsford, 1964).

burdens. I began practice at just about the time when the death penalty was abolished and went to the Court at Nottingham the day after one of the very last such sentences had been imposed. The atmosphere was bleak. The court where that sentence had been passed was shut. I was told that the judge, a member of the Anglican faith, was spending the whole of that day praying in the nearby church.

The story of sin and crime, and their possible overlap and the confusion between them has been a vivid aspect of history. To me, one of the most interesting aspects of studying the chapters that follow has been the distinction between the crimes which constitute offences against what might fairly be described as religious crimes (alleged to be against God in Heaven) and those which are crimes against the Church on Earth (for example, sacrilege), and the impact of the distinction on developing thinking. On a personal level, I remember with fondest love my Catholic grandmother, the most devout of women, with a burning faith and belief in the afterlife who would have been much more concerned about sin, which she would have seen as an offence offered to God, an insult to Our Saviour, who died on the cross to expiate our guilt, than about the place occupied by such a sin in the list of crimes. To her, I suspect, suicide was a sin, a mortal sin, and by comparison with mortal sin the question whether it was a crime or not, would have been trivial.

Largely, today, we live in a secular society in which that authority of the Christian Church has significantly diminished. Our beautiful churches, every single village offering testament to the worship and devotion of previous generations, are now largely empty. How many really believe, as my grandmother did, that this present life is a mere testing ground for eternity, with the immortal soul facing judgment by the Almighty, just as Adam and Eve did? The continuing role to be played by Christianity, or indeed any other faith, in the development of the criminal law will inevitably become less intense than it once was. Even if it were to diminish to extinction, even if we no longer believe in sin, as the following distinguished chapters demonstrate, Christianity's continuing influence on criminal justice in Western society will abide.

Acknowledgments

This volume on *Christianity and Criminal Law* is one of several new introductions to Christianity and Law commissioned by the Center for the Study of Law and Religion at Emory University. Each volume is an anthology of some two dozen chapters written by leading scholars. The volumes contain historical, doctrinal and comparative materials designed to uncover Christian sources and dimensions of familiar legal topics. Each 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. Earlier titles in this series include *Christianity and Law* (2008); *Christianity and Human Rights* (2010); *Christianity and Family Law* (2017); and *Christianity and Natural Law* (2017). Other titles are forthcoming on Christianity and: Conscience, Constitutionalism, Economic Law, Global Law, International Law, Migration Law and Private Law. We aim, over time, to commission other such volumes on Christianity and bankruptcy law, education law, elder law, environmental law, health law, labour law, procedural law, remedies and other familiar legal topics.

This volume on *Christianity and Criminal Law* – together with the parallel volumes in press on Global Law and Private Law – was made possible by a generous grant from Fieldstead and Company, a private California foundation. We give thanks to the Fieldstead board and directors for their generous support, and to the programme officers, Dr Stephen Erikson and Dr Joe Gorra, for their wise counsel as we planned these volumes. We are deeply grateful to Dr Hester Higton for so generously sharing her superb editorial talents in copyediting this manuscript. We also express our warm thanks to Ms Anita Mann and Ms Amy Wheeler for their skilful administration of this and other scholarly projects.

It was a joy for us to work with such a range of leading scholars from North America and Europe who contributed fresh and perceptive chapters to this volume. Our collective efforts were greatly enhanced by the two round-table conferences held at Emory University in 2017 and in Mark Hill QC's Chambers at the Inner Temple, London, in 2018. Those intense discussions helped us identify the

major themes for this study of Christianity and Criminal Law, a topic which has not been well explored in recent scholarship. We give thanks to our Emory colleagues, Professor Rafael Domingo and Dr Justin Latterell, for their help in the first Emory conference, and Dr Robin Griffith-Jones, the Reverend and Valiant Master of the Temple, for his generous hospitality during the second symposium in the heart of legal London, not least for designing a splendid service of choral matins at which Professor Witte preached a rousing sermon.

The purpose of the round-table sessions was to stress-test the views expressed in a multi-disciplinary hot-house environment. Hence, the discussions were robust and demanding, not unlike doctoral defences. The idea was not to produce a comprehensive narrative of every conceivable interaction between Christianity and the criminal law. Such would be an impossible task. Each discrete subject is vast, subjectively understood and amenable to a range of interpretations. The hope was that by selecting leading experts in the field of Christian theology and criminal law and practice, each contributor would bring an insightful perspective on a particular matter, in territory which was often contested. Thus, this volume represents a gallery of individual canvasses, and not a complete holistic mural. In some instances, the chapters talk to one another both within and across the two principal disciplines. But each contributor brings his or her own voice such that the chapters can be read independently, unlocking one or more aspects of the rich and enriching world of Christianity and criminal law, and pointing the reader to further reading on the subject.

We are delighted to publish this volume and several others in Routledge's distinguished Law and Religion series edited by one of the world's preeminent scholars of law and religion, Norman Doe. Professor Doe and his many colleagues in the Centre for Law and Religion at Cardiff University have been vital trans-Atlantic allies with the Emory Center for the Study of Law and Religion. We are grateful for their leadership in this expanding global field of inter-disciplinary legal study, and for their partnership with the Emory Center in publishing this and parallel volumes on law and Christianity. We are also deeply grateful for the generous collaboration of Dick Helmholtz, the world's leading historian of English ecclesiastical law, and a scholarly giant in the study of legal history, and of law and religion on both sides of the Atlantic. His wise counsel and contributions throughout the preparation of this volume have greatly improved the pages that follow. The mundane but essential task of organising the round tables, managing the contributors and ensuring consistency of style throughout the manuscript fell on the lead editor, Mark Hill QC, a long-standing friend and collaborator. While this book was in production, he was made honorary chief of the Erinmo people in Nigeria by their king, The Elerinmo of Erinmo, and given the title *Bameto*, which translates as "an adept organizer with understanding of religion". Although with characteristic modesty he rarely uses his chieftain's title, it neatly encapsulates Mark's contribution to this and many other projects.

Finally, we express our warm thanks to Alison Kirk, Emily Summers and their colleagues at Routledge in taking on these volumes and applying their usual standards of excellence in their editing, production and marketing of this one in particular.

Mark Hill QC and John Witte, Jr
Center for the Study of Law and Religion
Emory University

Feast of the Epiphany, 2020



Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

1 Introduction

*Mark Hill QC*¹

In the view of the famous student of comparative law Henry Sumner Maine (1822–88), the earliest days of European criminal law were marked by a decidedly religious character.² It was God who first instructed men that they were not to commit murder. It was God who alerted men to the dangers of perjury. If a king issued a similar law, he did so as God’s chosen ruler, giving specific form and force to what was at bottom a religious command. Maine was far from alone in this characterisation of religion’s early link to law. Indeed, variations of the theme of religion’s relevance to the growth of Western legal systems continue to appear in the works of modern historians.³ Maine’s view also long held the field among European and American lawyers, theologians and historians. Brent Strawn’s chapter, which opens this volume, supports our recognition of Maine’s characterisation of the historical tie between law and religion. The law of crimes, Strawn demonstrates, is “profoundly godlike when seen through ancient eyes”.

Today’s law, however, appears to have lost this ancient character. Making a causal connection between our criminal law and religious commands is a habit we are widely regarded as having outgrown. Time and opinion move on. Religion now belongs within the private side of modern lives, not the public world of courts and crime. The Age of Enlightenment’s signal achievement was to break the existing link between law and religion. Heikki Pihlajamäki’s magisterial contribution to this volume explores the complexity of this subject. He shows that

1 This introduction is the work of several hands – those of Norman Doe, Dick Helmholz and John Witte, as well as my own. Not only have they brought into the light the points of continuity and similarity we had identified in planning this project, but they have also uncovered several additional connections which emerged from the revised drafts of the chapters. I am grateful for their help and for their company in completing this project.

2 Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*, 1st ed. 1861, republished in Beacon Series in Classics of the Law (Boston: Beacon Press, 1963), 1–19.

3 See, by way of example, James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial* (New Haven and London: Yale University Press, 2008); Reinhard Zimmermann, ed., *Der Einfluss religiöser Vorstellungen auf die Entwicklung des Erbrechts* (Tübingen: Mohr Siebeck, 2012); Thomas Oakley, *English Penitential Discipline and Anglo-Saxon Law in Their Joint Influence* (New York: Columbia University Press, 1923).

religion did remain a force to be reckoned with even among most Enlightenment thinkers. Subject to this amendment, a significant one, Pihlajamäki's chapter does not deny the gradual impact of secularism on this subject. He would agree. To many recent commentators the Christian religion appears to stand as an obstacle in the way of reaching desirable goals within their own systems of criminal law. Religious history – replete with witch hunts and incineration of heretical dissenters – is thought to be ample evidence of the wisdom of religion's relegation to the sidelines of public life and penal law.

Why, then, does it make any sense to produce a volume devoted to investigating the relationship between Christianity and the criminal law? And once produced, why should anyone read it? Answers to this objection are found in the chapters which follow, but it is worthwhile identifying some of the threads that tie them together. Several good reasons exist for undertaking an investigation into the connections between crime and religion. Different sorts of readers will take an interest in the subjects found in this book's chapters. Some of these interests will seem immediately obvious to most of us. Others require more thoughtful consideration of religion's legitimate role in modern criminal law. While more challenging, they are also the more deserving of scholarly attention and thought.

1.1 The immediate interests of the subject

Several groups of potential readers will profit in an immediate way from the essays in this volume. The first is made up of the men and women whose professional careers intersect with its subjects – religion and criminal law. The clergy are the most obvious members of this group. Virtually all Churches – Catholic, Protestant and Orthodox – have canons. They contain rules and legal principles touching offences and offenders.⁴ They establish court systems, enact procedural rules and provide definitions of both wrongful conduct and available remedies and penalties. Norman Doe's chapter draws upon his own pioneering spade work in exploring this subject,⁵ and several other chapters in the volume add to what he has done. The chapter by R.H. Helmholz on the mediaeval canon law's treatment of criminal law provides an historical example. A good number of basic Western criminal law concepts of *mens rea*, *actus reus* and causation, as well as basic crimes against persons, property, religion and morality have roots in the mediaeval Christian sources and their antecedents in the first millennium.⁶

A real need exists today for greater knowledge of this subject among the parochial clergy. Few would dispute that this knowledge is too often slight or even non-existent, and Doe's chapter provides an attractive starting point. Not only

4 See, e.g. Mark Hill, *Ecclesiastical Law*, 4th ed. (Oxford: Oxford University Press, 2018).

5 See most recently Norman Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013).

6 See, e.g. R.H. Helmholz, *The Spirit of Classical Canon Law* (Athens, GA: University of Georgia Press, 2010).

that. The book's utility may prove immediately useful to the clergy in several ways. For instance, it provides an abundance of material that is of potential use to the clergy in their capacity as preachers. Some of it will enliven their sermons. John Stinneford's chapter, to take just one example, includes the fascinating showing that today Adam might have been convicted of the English offence of "scrumpling" (taking fruit from a common orchard or garden). This is, at most, a misdemeanour, a minor infraction of the law, but the story in the Book of Genesis reminds us that God's commands go beyond simple obedience to existing law. A comparison with Adam's action and the modern law of scrumping will bring that point into dramatic focus. His fate will confirm the preacher's point. This book is full of such treasures.

Another group of professional men and women who will profit in an immediate way from the essays that follow are lawyers – lawyers whose practice includes disputes in matters connected to religious life. This has been a perennial field of contention, and it remains an area of litigation to this day. It sometimes seems to be growing in frequency and importance. The laws of most Western countries guarantee religious freedom to its citizens. What, then, happens when that freedom comes into conflict with secular laws? This is not a new question. It has a long history. Consider, for instance, the example and the effects of the fourteenth-century English statutes of *Praemunire*.⁷ They sought to curtail the Church's freedom of action by restricting rights of appeal to the papal court. Nathan Chapman's chapter on crimes against the State addresses similar large questions which laws like this one now raise. It is a continuing problem, one that involves conflicting but legitimate loyalties. His analysis begins, as does that of several other of the present authors, with the writings of St Augustine. The treatment of this subject by the ingenious Bishop of Hippo is not identical with what today's analysis will yield, but the chapter demonstrates both how old the question is and how varied Christian responses to it have been. Augustine also still has something of value to say about the legal treatment of the conflicts that arise, and this volume provides a ready entry into his thought on the subject.

A further group of readers who will find subjects of immediate utility in this volume's chapters consists of the students and teachers in universities and law schools that offer courses and seminars in law and religion. This has become a growing field of study. The current *Directory of Law Teachers* in the United States lists 104 teachers of courses and seminars on the subject, and the Association of American Law Schools' section on law and religion claims more than 450 members.⁸ Academic centres devoted to the study of law and religion have also sprung

7 25 Edw. III, st. 3, c. 22 (1351); 27 Edw. III, st. 1, c. 1 (1353); 16 Ric. II, c. 5 (1392). See also W.T. Waugh, "The Great Statute of *Praemunire* of 1353", (1922) 37 *English Historical Review* 173–205; E.B. Graves, "The Legal Significance of the Statute of *Praemunire* of 1353", in Charles Taylor, ed., *Anniversary Essays in Mediaeval History by Students of Charles Homer Haskins* (Boston and New York: Houghton Mifflin, 1929), 57–80.

8 See *The AALS Directory of Law Teachers 2017–2018* (Washington, DC: West Publishing and Foundation Press, 2018), 1567–8.

up to become established institutions at several American universities – Emory, Brigham Young, Pepperdine, St John’s in New York, Notre Dame and Villanova, for example. Since 1998, Cardiff University in the United Kingdom has had a successful Centre for Law and Religion, and other centres have popped up on the Continent, in South Africa, Southeast Asia and Australia. There is now an International Consortium for Law and Religion Studies, together with various regional consortia. Several of the chapters in this volume will help students in these institutions go beyond a concentration on the constitutional disputes that test the limits of religious freedom. The breadth of its essays, including both history and future possibilities for change, will help lawyers and theologians gain an inside look at the character of religious law itself. Such a look will also take them well beyond the current case law. It will put current controversies into a larger perspective.

A still further group of readers who will find material of interest in this book’s chapters is that made up of men and women who take a serious interest in their own religion. Although there has been an apparent decline in the size of this population over the last 50 years, the professedly Christian share of the population in the United States is still over two-thirds.⁹ How many among that number take a serious enough interest in the faith they profess, to prompt them to take up and read a volume about law and religion is anyone’s guess. No surveyor’s list attempts to distinguish between the nominal and the serious. The latter cannot be an empty category, however, and the chapters that follow will interest its members in several ways. Lord Judge’s Preface to this volume is testimony to the interest the contents of this volume have had for him, and his is only one example among many. There are readers who have found and will find interest in the intersection of past and present thought about crime and religion. What is laid out in the books of the Bible and is explored in the works of interpreters of Scripture is capable of deepening the faith of religious men and women. Likewise, the second of Nathan Chapman’s chapters, which concludes the volume, raises questions over the participation of Christians in matters of governmental judgment, firm in the faith that God uses human judgment. What better note on which to finish but to return to the profoundly theological questions which are ever-present in the intersection of Christianity and the criminal law, which will continue to be asked in the current and future generations.

1.2 The wider interests of the subject

The worth of this volume’s chapters is more than a matter of immediate utility. They provide a good deal of food for thought, thought that both can and should have real consequences. Law and the Christian ministry are learned professions.

⁹ In 2014, it stood at 70.6%; see the statistics compiled by the Pew Research Center, “America’s Changing Religious Landscape”, 12 May 2015, <https://www.pewforum.org/2015/05/12/americas-changing-religious-landscape>.

To be complete, even to be respectable, each field of inquiry requires some familiarity with history. Several aspects of current criminal law are hard to understand without it. Theology is also shallow and unconvincing if its history is ignored. The nature of both professions thus invites attention to basic questions of legal theory. It is natural for us to ask why certain acts deserve to be condemned and punished while other apparently similar acts do not, and religion always requires thinking seriously about the basic problems of right and wrong. This volume helps in the process of giving serious consideration to the future possibilities of present actions. Richard Garnett's thoughtful and fascinating study of today's law dealing with attempts to commit criminal acts provides one example. In fact, several of the book's chapters also illustrate the possibilities for profiting from the subject's past, as well as shedding light on some questions of current moment and dispute. Three particular themes, found in several of the following chapters, demonstrate the volume's value.

The first of the three is the ubiquity of concern in the chapters for questions of criminal law in the works of the great theologians of earlier centuries. A concern for law and crime appears in the works of virtually all the greatest Christian thinkers. The treatment of crime in the works of St Augustine, Thomas Aquinas, Martin Luther, John Calvin and many other theologians from the past figures prominently in several of the chapters. As a matter of course, these theologians dealt with crimes against God and the Church, religious matters such as simony, blasphemy and heresy. That coverage was almost as a matter of necessity. The need is made explicit in Jeroen Temperman's chapter on the subject. He shows how inevitable and valuable criminal law's inclusion in the thought of Christian theologians and canon lawyers has always been. The questions they touched on ranged widely, well beyond subjects intimately tied to the immediate interests of the Churches. For instance, most crimes were also sins. Their inclusion in manuals used to direct human beings' conduct in the world was only to be expected. It is also worthy of particular note in the Protestant tradition. The great reformers discussed in the volume's pages were not antinomians. Even Martin Luther, whose scathing remarks about lawyers and Christianity are sometimes quoted to demonstrate his antipathy towards law, actually had useful and positive things to say about law's value, not excluding its criminal side.¹⁰ As the volume's chapter by Mathias Schmoeckel convincingly demonstrates, Luther differed from his Catholic opponents about the proper forum for administering a public regime suited for the detection and punishment of criminals. He did not differ with them about its necessity.

Perhaps the most thought-provoking examples of the volume's utility for serious thought are those chapters that discuss aspects of the modern criminal law that have their origins in Christian law and thought, but which in their modern form have largely lost touch with those origins. We have forgotten

¹⁰ See also John Witte, Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002).

where they came from. A person's right to remain silent in the face of a charge of criminal conduct, a privilege enshrined in the Constitution of the United States, found initial support in the mediaeval Church's laws. *Nemo tenetur prodere se ipsum* (no-one is bound to betray himself):¹¹ confession of one's private sins was owed to God, but not to one's temporal governors – just one of the several similar examples brought forward and discussed in Peter Collier's helpful chapter in this volume, in which the practical experience of recently serving judges and practitioners augments the high-vaulted scholarship of the academy. Nor has this connection entirely disappeared from modern law. David McIlroy's chapter on the historical influence of Christianity on the development of *mens rea* as a requirement for punishing criminals provides a clear example, even though modern criminal lawyers rarely recognise the connection.¹² Chloë Kennedy's essay also demonstrates that many parts of modern criminal law have their roots in traditional Christian beliefs. What she calls the "tenacity of Christian norms" is illustrated by the modern resistance to permitting assisted suicide. Suicide (self-murder according to mediaeval ways of thought) is no favourite of our own legal systems. Few of us living today would wish to see a stake driven through the heart of the man or woman who has committed suicide, but we still punish anyone who drives the stake at the request of a volunteer. Similarly, David Etherington's chapter, which deals with several aspects of our law's treatment of offences against the person, opens up a subject of continuing importance by exploring its roots in its Christian past.

A second long-term appeal of this volume, one touched upon by several of its contributors' essays, is the help Christianity provides in the evaluation, criticism and reform of modern systems of criminal law. Not all imperfections of the past have disappeared, and the Bible itself invites the justified criticism of some of today's practices, as Markus Bockmuehl's chapter demonstrates in scholarly detail. The trial of Jesus provides the most prominent of the several examples upon which his essay touches. Condemnation at the behest of a mob is a stain upon the administration of justice in any age, and Pilate's capitulation to one stands as a warning against it. The possibility has not gone away. The "War on Crime" that was declared by American President Lyndon Johnson in 1965, and re-voiced by Prime Minister Tony Blair in the 1990s, as a way of combatting urban unrest may have had some positive results, but it also went too far by a large margin. Too often, people have been imprisoned for trifling offences. Today, the United States imprisons the same number of people with criminal records as it has four-year college graduates. Nearly half of black American

11 See *Decretales Gregorii IX* (the *Liber Extra* of 1234), at X 5.1.14 (*Veniens ad sedem*), in Aemilius Friedburg, ed., *Corpus iuris canonici*, 2 vols. (Graz: Akademische Druck- und Verlagsanstalt, 1959), 2:col. 737.

12 See Elizabeth Papp Kamali, *Felony and the Guilty Mind in Medieval England* (Cambridge: Cambridge University Press, 2019).

men have been arrested for criminal activity by the age of 23.¹³ At bottom, the dramatic overcrowding and inhuman conditions in American prisons that have followed this Declaration of War have been the unfortunate aftermath of a surrender to the crowd. The chapter by Sir John Saunders gives a detailed account of the current intent of the English system of parole, whereby offenders are rehabilitated into life outside the overcrowded and under-funded prison regime.

A particularly telling criticism of the misuse of a religiously inspired institution is also found in Albert Alschuler's exploration of the current exercise of the pardoning power vested in the American president and also in the governors of most U.S. states. Mercy in the exercise of jurisdiction over crime is a part of the inheritance of Christianity. There is little doubt about that. Jeffrie Murphy's authoritative chapter explores the benefits which the Christian duty of showing mercy brings to all those who administer the criminal law. The law itself can sometimes go very wrong when this duty is forgotten or ignored. The example of Jesus' treatment of the woman taken in adultery is one example among many. God himself is merciful (Deut. 4:31). "Blessed are the merciful, for they shall receive mercy" (Matt. 5:7). The Christian roots of the modern pardoning power, the power to temper justice with mercy, are evident in its history.

However, as the chapters also demonstrate, these are powers that can be misused. Alschuler shows that in the United States today they are being misused. The power to pardon was meant to be a force for good. It was designed to remedy individual injustices. Instead, recent American presidents have employed it to reward those who have made large monetary contributions to their own political and personal funds. Pardons, like mediaeval indulgences, seem to be for sale. As his chapter demonstrates, the biblical records make it clear that Jesus "would have disapproved of partisanship towards the rich and powerful in granting clemency". An analogy with the sin of simony – the payment of money for obtaining a spiritual office – also provides a telling argument against the modern misuse of a religiously based institution. The connection between law and Christianity provides a way, perhaps the best way, of demonstrating that the right to pardon was not meant to be converted into a fund-raising technique.

A third source of interest in the contents of this volume inheres in Christianity's power to generate new ideas and institutions in the administration of criminal law. Daniel Philpott's chapter is particularly eloquent on this score. It shows the utility that initiatives based on the Christian duty to forgive have served in the commissions established in the wake of transitions from dictatorships to democratic regimes. South Africa's Truth and Reconciliation Commission led by Archbishop Tutu is the most celebrated of these transitional bodies. There

13 See Matthew Friedman, "Just Facts: As Many Americans Have Criminal Records as College Diplomas", 17 November 2015, <https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas>.

have been a surprising number of them, as Philpott's chapter demonstrates, and a connection with the Christian religion has been a feature of many of them. He treads on solid ground in finding the inspiration for their establishment in "God's willingness continually to restore his covenant with the people of Israel". Both institutions have within them a similar mixture of mercy and practical sense. The commissions not only promote forgiveness and reconciliation, but they also call for the public recognition of past wrongs on the part of the perpetrators of those wrongs. This requires an open admission of guilt, wherever it is feasible, by the men who have done wrong. It is not "cheap grace". Open repentance is required. These commissions provide an example of Christian principles being put to a novel and profitable use.

John Witte's chapter on what he calls "sex crimes" provides an equally fascinating example of religious law's capacity for new uses. Adultery, sodomy and the like were long public crimes in Western law, acts condemned and punished in the courts of both Churches and kings. The justification given for their criminalisation is spelled out in his chapter's exploration of the thought of Thomas Aquinas, who stated it clearly and connected its purposes with the law of nature. Somewhat surprisingly, Aquinas also provided a partial justification for permitting the practice of prostitution. Attempts to abolish it, he held, and the consequences would be worse. "[T]he carnal appetite is always alive" and "prudential and practical concerns" must be considered in shaping the law designed to govern human conduct. In recent centuries, as Witte recognises, the "modern secular State" has undone most of the traditional criminalisation of sexual offences, including most aspects of prostitution. But his chapter also shows that this development has not rendered Christianity irrelevant. The Churches have a responsibility to promote a higher standard of behaviour than does much of our criminal law. Their members should not be silent simply because a question of criminal law has arisen which conflicts with religion. There are also contentious modern questions of public law where the voice of Christianity still needs to be heard. The question of polygamy's possible legalisation in Western law, a question once thought to have been settled in the negative by its conjunction with the growth of the Church of Latter Day Saints in the nineteenth century, is bound to arise again. Witte's contribution calls for Christian voices to be heard when it does.¹⁴

1.3 Conclusion

Each chapter in this collection of essays is followed by a list of books and articles which provide fuller treatments of the themes covered in the chapter itself. In a few cases, they lead to fuller treatments written by the authors of the chapters themselves. In all cases, they amplify and refine what is found in each of the texts that precedes them. These references are well worth following up. Taken

¹⁴ For fuller treatment, see John Witte, Jr., *The Western Case for Monogamy over Polygamy* (New York: Cambridge University Press, 2015).

all together, they demonstrate that this volume is more than the sum of its parts. Virtually all of its subjects demonstrate that the connection between law and religion, one akin to the connection that Henry Sumner Maine perceived so many years ago, is worth study today. Christianity's place in the criminal law has been diminished. But it has not been wholly lost.

Further reading

- Barmash, Pamela. *Homicide in the Biblical World* (Cambridge: Cambridge University Press, 2005).
- Burnside, Jonathan. *God, Justice, and Society: Aspects of Law and Legality in the Bible* (Oxford: Oxford University Press, 2011).
- Falk, Ze'ev W. *Hebrew Law in Biblical Times*, 2d ed. (Provo, UT: Brigham Young University Press/Winona Lake, IN: Eisenbrauns, 2001).
- Frymer-Kenski, Tikva. "Israel", in Raymond Westbrook, ed., *A History of Ancient Near Eastern Law*, 2 vols (Leiden: Brill, 2003), 2:975–1046.
- Greengus, Samuel. *Laws in the Bible and in Early Rabbinic Collections: The Legal Legacy of the Ancient Near East* (Eugene: Cascade, 2011).
- Hayes, Christine. *What's Divine About Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2015).
- Knight, Douglas A. *Law, Power, and Justice in Ancient Israel* (Louisville: Westminster John Knox, 2011).
- Morrow, William S. *An Introduction to Biblical Law* (Grand Rapids: Eerdmans, 2017).
- Strawn, Brent A., ed. *The Oxford Encyclopedia of the Bible and Law*, 2 vols (Oxford: Oxford University Press, 2015).
- Westbrook, Raymond, ed. *A History of Ancient Near Eastern Law*, 2 vols (Leiden: Brill, 2003).
- Westbrook, Raymond and Bruce Wells. *Everyday Law in Biblical Israel: An Introduction* (Louisville: Westminster John Knox, 2009).
- Aubert, Jean-Jacques. "A Double Standard in Roman Criminal Law? The Death Penalty and Social Structure in Late Republican and Early Imperial Rome", in I.J.-J. Aubert and A.J.B. Sirks, eds., *Speculum Iuris: Roman Law as a Reflection of Social and Economic Life in Antiquity* (Ann Arbor: University of Michigan Press, 2002), 94–133.
- Cook, John Granger. *Crucifixion in the Mediterranean World* (Tübingen: Mohr Siebeck, 2014).
- Egger, Peter. "Crucifixus sub Pontio Pilato". *Das "Crimen" Jesu von Nazareth im Spannungsfeld römischer und jüdischer Verwaltungs- und Rechtsstrukturen* (Münster: Aschendorff, 1997).
- Heusler, Erika. *Kapitalprozesse im lukanischen Doppelwerk. Die Verfahren gegen Jesus und Paulus in exegetischer und rechtshistorischer Analyse* (Münster: Aschendorff, 2000).

- Horbury, William. "Extirpation and Excommunication", in W. Horbury, ed., *Jews and Christians in Contact and Controversy* (Edinburgh: T&T Clark, 1998), 43–66.
- Joseph, Simon J. *Jesus and the Temple: The Crucifixion in Its Jewish Context* (Cambridge/New York: Cambridge University Press, 2016).
- Loader, William R.G. "Jesus and the Law", in T. Holmén and S.E. Porter, eds., *Handbook for the Study of the Historical Jesus*, 4 vols (Leiden/Boston: Brill, 2011), 3:2745–2772.
- Omerzu, Heike. *Der Prozess des Paulus. Eine exegetische und rechtshistorische Untersuchung der Apostelgeschichte* (Berlin/New York: De Gruyter, 2002).
- Rapske, Brian. *The Book of Acts and Paul in Roman Custody* (Grand Rapids: Eerdmans/Paternoster, 1994).
- Tajra, Harry W. *The Martyrdom of St. Paul: Historical and Judicial Context, Traditions, and Legends* (Tübingen: Mohr Siebeck, 1994).
- Tajra, Harry W. *The Trial of St. Paul: A Juridical Exegesis of the Second Half of the Acts of the Apostles* (Tübingen: Mohr Siebeck, 1989).
- Bradley, Gerard, ed. *Essays on Law, Morality and Religion* (South Bend, IN: Notre Dame University Press, 2014).
- Deutscher, Thomas. *Punishment and Penance: Two Phases in the History of the Bishop's Tribunal of Novara* (Toronto: University of Toronto Press, 2013).
- Dubber, Marcus and Lindsay Farmer, eds. *Modern Histories of Crime and Punishment* (Palo Alto: Stanford University Press, 2007).
- Goebel, Julius. *Felony and Misdemeanor: Study in the History of Criminal Law* (Philadelphia: University of Pennsylvania Press, 1976).
- Hale, William. *A Series of Precedents and Proceedings in Criminal Causes, 1475–1640* (Edinburgh: Bratton Publishing, 1973).
- Kotiranta, M. and Norman Doe, eds. *Religion and Criminal Law* (Louvain: Peeters, 2013).
- Maine, Henry Sumner. *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (London: John Murray, 1861; most recent ed. Cambridge: Cambridge University Press, 2012).
- Sullivan, W.F. *Prison Religion: Faith-Based Reform and the Constitution* (Princeton: Princeton University Press, 2009).
- Whitman, James Q. *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial* (New Haven: Yale University Press, 2008).
- Bohatec, Josef. *Calvin und das Recht* (Graz: Böhlau, 1934).
- Günther, Louis. *Die Idee der Wiedervergeltung in der Geschichte und Philosophie des Strafrechts. Ein Beitrag zur Universal-Historischen Entwicklung desselben* (Erlangen: Bläsing, 1891).
- Guyon, Gérard. *Justice de Dieu, justice des hommes. Christianisme et histoire du droit pénal* (Bouère: D.M. Morin, 2009).
- Hoffmann, Peter. "Zum Verhältnis der Strafzwecke Vergeltung und Generalprävention in ihrer Entwicklung und im heutigen Strafrecht", Diss. jur., University of Göttingen (1992).
- Kéry, Lotte. *Gottesfurcht und irdische Strafe. Der Beitrag des mittelalterlichen Kirchenrechts zur Entstehung des öffentlichen Strafrechts* (Cologne: Böhlau, 2006).
- Pahud de Mortanges, René. "Strafzwecke bei Gratian und den Dekretisten", (1992) 78 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 121–58.

- Pahud de Mortanges, René. *Zwischen Vergebung und Vergeltung. Eine Analyse des kirchlichen Straf- und Disziplinarrechts* (Baden-Baden: Nomos, 1992).
- Puigelier, C. and F. Terré, eds. *La vengeance* (Paris: Éd Panthéon-Assas, 2011).
- Rothkamm, Jan. *Talio esto. Recherches sur les origines de la formule “oeil pour oeil, dent pour dent” dans les droits du Proche-Orient ancien, et sur son devenir dans le monde gréco-romain* (Berlin/New York: de Gruyter, 2011).
- Schmoeckel, Mathias. *Das Recht der Reformation. Die epistemologische Revolution der Wissenschaft und die Spaltung der Rechtsordnung in der Frühen Neuzeit* (Tübingen: Mohr Siebeck, 2014).
- Strohm, Christoph. *Ethik im frühen Calvinismus* (Berlin/New York: de Gruyter, 1996).
- Terradas Saborit, I. *Justicia vindicatoria* (Madrid: Consejo Superior de Investigaciones Científicas, 2008).
- Witte, John Jr. *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002).
- Witte, John Jr. *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007).
- Ahnert, Thomas. *Religion and the Origins of the German Enlightenment: Faith and the Reform of Learning in the Thought of Christian Thomasius* (Rochester, NY: University of Rochester Press, 2006).
- Graber, Jennifer. *The Furnace of Affliction: Prisons and Religion in Antebellum America* (Chapel Hill: University of North Carolina Press, 2011).
- Hostettler, John. *Cesare Beccaria: The Genius of “On Crimes and Punishments”* (Hook, Hampshire: Waterside Press, 2011).
- Hunter, Ian. *The Secularisation of the Confessional State: The Political Thought of Christian Thomasius* (Cambridge: Cambridge University Press, 2007).
- Ignatieff, Michael. *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750–1850* (New York: Pantheon Books, 1978).
- Kuttner, Stephan. *Kanonistische Schuldehre von Gratian bis auf die Dekretalen Gregors IX systematisch auf Grund der handschriftlichen Quellen dargestellt* (Vatican City: Biblioteca Apostolica Vaticana, 1935).
- Langbein, John. *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 1976).
- Schmoeckel, Mathias. *Humanität und Staatsräson. Die Abschaffung der Folter in Europa und die Entwicklung des gemeinen Straf- und Beweisrechts seit dem hohen Mittelalter* (Cologne: Böhlau, 2000).
- Whitman, James Q. “The Transition to Modernity”, in Markus D. Dubber and Tatjana Hörnle, eds., *The Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2013), 84–110.
- Beck, Brian. “Ministerial Discipline in the Methodist Church in Great Britain”, (1993) 3 *Ecclesiastical Law Journal* 36–40.
- Doe, Norman. *Canon Law in the Anglican Communion: A Worldwide Perspective* (Oxford: Clarendon Press, 1998), 80–102.
- Doe, Norman. *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013), 154–87.
- Domingo, Rafael. “Penal Law in the Roman Catholic Church”, (2018) 20 *Ecclesiastical Law Journal* 158–72.
- Duncan, Graham A. “Church Discipline: *semper reformanda* in Reformation Perspective”, (2010) 66 *HTS Theological Studies* 789–95.

- Foster, Richard J. *Celebration of Discipline: The Path to Spiritual Growth* (London: Hodder and Stoughton, 1980).
- Herron, Andrew. *The Law and Practice of the Kirk* (Glasgow: Chapter House, 1995), 237–47.
- Hill, Mark, ed. *Faithful Discipleship: Clergy Discipline in Anglican and Roman Catholic Canon Law* (Cardiff: Centre for Law and Religion, 2001).
- Koffeman, Leo. *In Order to Serve: An Ecumenical Introduction to Church Polity* (Zurich: LIT, 2014).
- Panteleimon, Rodopoulos. *Overview of Orthodox Canon Law* (Rollinsford, NH: Orthodox Research Institute, 2007), 166–78.
- Weatherhead, James L., ed. *The Constitution and Laws of the Church of Scotland* (Edinburgh: Board of Practice and Procedure, Church of Scotland, 1997), 62–77.
- Winger, Thomas M. “Ruminations on Church Discipline”, (2006–7) 19 *Lutheran Theological Review* 107–23.
- Badar, M.E. *The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach* (Oxford: Hart, 2015).
- Budziszewski, J. *Commentary on Thomas Aquinas’s Treatise on Law* (Cambridge: Cambridge University Press, 2014).
- Burnside, J. *God, Justice and Society: Aspects of Law and Legality in the Bible* (Oxford: Oxford University Press, 2011).
- Crawford, J.M.B. and, J.F. Quinn. *The Christian Foundations of Criminal Responsibility: A Philosophical Study of Legal Reasoning* (Lewiston: Edwin Mellen, 1991).
- Kamali, E.P. “A Felonious State of Mind: Mens Rea in Thirteenth- and Fourteenth-Century England”, Unpublished PhD thesis, University of Michigan (2015). Available at <https://deepblue.lib.umich.edu/handle/2027.42/113574> (accessed 7 January 2019).
- Lewis, C.S. “The Humanitarian Theory of Punishment”, in W. Hooper, ed., *God in the Dock* (Grand Rapids: Eerdmans, 1970), 287–94.
- Bingham, Tom. *The Rule of Law* (London: Penguin, 2011).
- Griffith-Jones, Robin and Mark Hill. *Magna Carta, Religion and the Rule of Law* (Cambridge: Cambridge University Press, 2015).
- McCrudden, Christopher. “Human Dignity and Judicial Interpretation of Human Rights”, (2008) 19.4 *European Journal of International Law* 655–724.
- Nurser, John S. *For All Peoples and All Nations* (Washington, DC: Georgetown University Press, 2005).
- Pennington, Kenneth. *The Prince and the Law* (Berkeley: University of California Press, 1993).
- Rosen, Michael. *Dignity: Its History and Meaning* (Cambridge, MA: Harvard University Press, 2012).
- Waldron, Jeremy. *Dignity, Rank, and Rights* (New York: Oxford University Press, 2012).
- Augustine. *The City of God Against the Pagans*, ed. and trans. R.W. Dyson (Cambridge: Cambridge University Press, 1998), books 19 and 20.
- Gordon, Sarah Barringer. *The Spirit of the Law* (Cambridge, MA: Belknap Press of Harvard University Press, 2010).
- Hays, Richard B. *The Moral Vision of the New Testament: Community, Cross, New Creation* (San Francisco: Harper, 1996).

- Marshall, Peter. *Heretics and Believers: A History of the English Reformation* (New Haven: Yale University Press, 2017).
- O'Donovan, Oliver. *The Desire of the Nations* (Cambridge: Cambridge University Press, 1999).
- O'Donovan, Oliver and Joan Lockwood O'Donovan, eds. *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100–1625* (Grand Rapids: Wm. B. Eerdmans, 1999).
- Rowe, C. Kavin. *World Upside Down: Reading Acts in the Graeco-Roman Age* (Oxford: Oxford University Press, 2009).
- Collins, John J., ed. *Does the Bible Justify Violence?* (Minneapolis: Augsburg Fortress, 2004).
- Hobbes, Thomas. *Leviathan* (London: A. Crooke, 1651).
- King, Peter J., ed. *Christianity and Violence* (Scotts Valley, CA: CreateSpace Independent Publishing Platform, 2016).
- Ormerod, David and K. Laird, eds. *Smith, Hogan, and Ormerod's Criminal Law* (Oxford: Oxford University Press, 2018).
- Reed, Alan and M. Bolander. *Loss of Control and Diminished Responsibility – Domestic, Comparative and International Perspectives* (Farnham: Ashgate, 2011).
- Smith, John C. *Justification and Excuse in the Criminal Law*, Hamlyn Lectures (London: Stevens & Sons, 1989).
- Steffen, Lloyd. “Religion and Violence in Christian Traditions”, in M. Jerryson, M. Juergensmeyer, and M. Kitts, eds., *The Oxford Handbook of Religion and Violence* (Oxford: Oxford University Press, 2013).
- Augustine. *Confessions*, ed. and trans. William Watts, 2 vols (Cambridge, MA: Harvard University Press, 1960).
- Augustine. *On Christian Doctrine*, <http://www.ntslibrary.com/PDF%20Books/Augustine%20doctrine.pdf> (accessed 22 January 2019).
- Brown, Peter. *Augustine of Hippo: A Biography* (Berkeley: University of California Press, 2000; first published 1967).
- Clement of Alexandria. *The Rich Man's Salvation*, ed. and trans. G.W. Butterworth (Cambridge, MA: Harvard University Press, 2003).
- Gregory, Eric. *Politics and the Order of Love: An Augustinian Ethic of Democratic Citizenship* (Chicago: University of Chicago Press, 2010).
- Hays, Christopher M. *Luke's Wealth Ethics: A Study in Their Coherence and Character* (Tübingen: Mohr Siebeck, 2010).
- Jackson, Timothy P. *The Priority of Love: Christian Charity and Social Justice* (Princeton: Princeton University Press, 2000).
- O'Donovan, Oliver. *The Problem of Self-Love in St. Augustine* (Eugene: Wipf & Stock, 2006).
- Stephen, James Fitzjames. *A History of the Criminal Law of England*, 3 vols (London: Macmillan, 1883).
- Wilken, Robert Louis. *The Spirit of Early Christian Thought: Seeking the Face of God* (New Haven: Yale University Press, 2003).
- Witte, John Jr. and Frank S. Alexander, eds. *Christianity and Law: An Introduction* (Cambridge: Cambridge University Press, 2008).
- Blackstone, William. *Commentaries on the Laws of England*, 4 vols (Oxford: Clarendon Press, 1765–9).
- Marshall, Paul and Nina Shea. *Silenced: How Apostasy and Blasphemy Codes Are Choking Freedom Worldwide* (Oxford: Oxford University Press, 2011).

- Robinson, Olivia. "Blasphemy and Sacrilege in Roman Law", (1973) 8 *Irish Jurist* 356–71.
- Temperman, Jeroen. "Blasphemy, Defamation of Religions and Human Rights Law", (2008) 26.4 *Netherlands Quarterly of Human Rights* 517–45.
- Temperman, Jeroen. *Religious Hatred and International Law: The Prohibition of Incitement to Violence or Discrimination* (Cambridge: Cambridge University Press, 2016).
- Temperman, Jeroen and András Koltay, eds. *Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections After the Charlie Hebdo Massacre* (Cambridge: Cambridge University Press, 2017).
- Brundage, James A. *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987).
- Bullough, Vern L. and James A. Brundage. *Sexual Practices and the Medieval Church* (Buffalo: Prometheus Books, 1982).
- Epstein, Louis M. *Sex, Laws, and Customs in Judaism* (New York: KTAV Publishing House, 1948).
- Feinberg, Joel A. *The Moral Limits of the Criminal Law*, 4 vols (Oxford: Oxford University Press, 1988).
- Fuller, Lon L. *The Morality of Law*, 2d ed. (New Haven: Yale University Press, 1964).
- Glendon, Mary Ann. *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (Chicago: University of Chicago Press, 1996).
- Griffith, R. Marie. *Moral Combat: How Sex Divided American Christians and Fractured American Politics* (New York: Basic Books, 2017).
- Helmholz, R.H. *Marriage Litigation in Medieval England*, repr. ed. (Cambridge: Cambridge University Press, 2007).
- Ingram, Martin. *Carnal Knowledge: Regulating Sex in England, 1470–1600* (Cambridge: Cambridge University Press, 2017).
- Payer, Pierre J. *Sex and the Penitentials: The Development of a Sexual Code, 550–1150* (Toronto: University of Toronto Press, 1994).
- Payer, Pierre J. *Sex and the New Medieval Literature of Confession, 1150–1350* (Toronto: University of Toronto Press, 2009).
- Witte, John Jr. *The Sins of the Fathers: The Law and Theology of Illegitimacy Reconsidered* (Cambridge: Cambridge University Press, 2009).
- Witte, John Jr. *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties* (Cambridge: Cambridge University Press, 2019).
- Aquinas, Thomas. *Treatise on Law: The Complete Text*, trans. Alfred J. Freddoso (South Bend: St. Augustine's Press, 2009).
- Besser-Jones, Lorraine and Michael Slote, eds. *The Routledge Companion to Virtue Ethics* (London: Routledge, 2015).
- Cloutier, David and William C. Mattison III. "Review Essay: The Resurgence of Virtue in Recent Moral Theology", (2014) 3.1 *Journal of Moral Theology* 228–59.
- Crawford, J.M.B. and J.F. Quinn. *The Christian Foundations of Criminal Responsibility: A Philosophical Study of Legal Reasoning* (Lewiston: Edwin Mellen, 1991).
- Dressler, Joshua. *Understanding Criminal Law*, 8th ed. (Durham, NC: Carolina Academic Press, 2018).
- Farrelly, Colin and Lawrence B. Solum, eds. *Virtue Jurisprudence* (Basingstoke: Palgrave Macmillan, 2008).
- Flannery, Kevin L. *Cooperation with Evil: Thomistic Tools of Analysis* (Washington, DC: Catholic University of America Press, 2019).

- MacIntyre, Alasdair. *After Virtue: A Study in Moral Theory*, 3rd ed. (London: Duckworth, 2007).
- Mattison, William C. III. *Introducing Moral Theology: True Happiness and the Virtues* (Grand Rapids: Brazos Press, 2008).
- Meilaender, Gilbert C. *The Theory and Practice of Virtue* (Notre Dame: University of Notre Dame Press, 1984).
- Pieper, Josef. *The Four Cardinal Virtues*, trans. Richard Winston and Clara Winston (Notre Dame: University of Notre Dame Press, 1966).
- Porter, Jean. *The Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (London: SPCK, 1994).
- Solum, Lawrence B. "Virtue Jurisprudence: Towards an Aretaic Theory of Law", in Liesbeth Huppel-Cluysenaer and Nuno M.M.S. Coelho, eds., *Aristotle and the Philosophy of Law: Theory, Practice and Justice, Ius Gentium: Comparative Perspectives on Law and Justice 23* (Dordrecht: Springer, 2013), 1–31.
- Yaffé, Gideon. *Attempts: In the Philosophy of Action and the Criminal Law* (Oxford: Oxford University Press, 2010).
- Blumenthal, Susanna. *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture* (Cambridge, MA: Harvard University Press, 2016).
- Chambers, Clare. *Against Marriage: An Egalitarian Defence of the Marriage-Free State* (Oxford: Oxford University Press, 2017).
- Fletcher, George. *Rethinking Criminal Law* (Boston: Little, Brown, 1978).
- Gruber, Aya. "A Provocative Defense", (2015) 103.2 *California Law Review* 273–334.
- Horder, Jeremy. *Provocation and Responsibility* (Oxford: Oxford University Press, 1992).
- Scrutton, Anastasia Philippa. "Is Depression a Sin or a Disease? A Critique of Moralizing and Medicalizing Models of Mental Illness", (2015) 19.4 *Journal of Disability and Religion* 285–311.
- Spain, Eimear. *The Role of Emotions in Criminal Law Defences: Duress, Necessity and Lesser Evils* (Cambridge: Cambridge University Press, 2011).
- Sumerau, Edward J. "'Little Girls Unwilling To Do What's Best for Them': Resurrecting Patriarchy in an LGBT Christian Church", (2015) 44.3 *Journal of Contemporary Ethnography* 306–34.
- Tonstad, Linn Marie. *God and Difference: The Trinity, Sexuality, and the Transformation of Finitude* (London: Routledge, 2015).
- Wiener, Martin J. *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830–1914* (Cambridge: Cambridge University Press, 1994).
- Wiener, Martin J. *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004).
- Witte, John Jr. *From Sacrament to Contract: Marriage Religion, and Law in the Western Tradition*, 2d ed. (Louisville: Westminster John Knox Press, 2012).
- Adams, Marilyn McCord. "Forgiveness: A Christian Model", (1991) 8.3 *Faith and Philosophy* 277–304.
- Bash, Anthony. *Forgiveness: A Theology* (Eugene: Cascade Books, 2015).
- Butler, Joseph. "Sermons 8 ("Upon Resentment") and 9 ("Upon Forgiveness of Injuries")", in David McNaughton, ed., *Fifteen Sermons and Other Writings on Ethics* (Oxford: Oxford University Press, 2017), 68–74 and 75–83.

- Hampton, Jean. "Forgiveness, Resentment and Hatred" and "The Retributive Idea", in Jeffrie G. Murphy and Jean Hampton, eds., *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1998), 35–87 and 111–61.
- Holmgren, Margaret. *Forgiveness and Retribution* (Cambridge: Cambridge University Press, 2014).
- Murphy, Jeffrie G. *Getting Even: Forgiveness and Its Limits* (Oxford: Oxford University Press, 2003).
- Nussbaum, Martha. *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford: Oxford University Press, 2016).
- Pettigrove, Glen. *Forgiveness and Love* (Oxford: Oxford University Press, 2012).
- Rushdy, Ashraf. *After Injury: A Historical Anatomy of Forgiveness, Resentment, and Apology* (Oxford: Oxford University Press, 2018).
- Crouch, Jeffrey. *The Presidential Pardon Power* (Lawrence, KS: University of Kansas Press, 2009).
- Griswold, Charles. *Forgiveness: A Philosophical Exploration* (Cambridge: Cambridge University Press, 2007).
- Moore, Kathleen Dean. *Pardons: Justice, Mercy and the Public Interest* (Oxford: Oxford University Press, 1989).
- Murphy, Jeffrie G. *Getting Even: Forgiveness and Its Limits* (Oxford: Oxford University Press, 2003).
- Osler, Mark. "A Biblical Value in the Constitution: Mercy, Clemency, Faith, and History", (2012) 9 *University of St. Thomas Law Journal* 769–81.
- Rothchild, Jonathan, Matthew Myer Bolton and Kevin Jung, eds. *Doing Justice to Mercy: Religion, Law, and Criminal Justice* (Charlottesville, VA: University of Virginia Press, 2007).
- Rushdy, Ashraf H.A. *After Injury: A Historical Anatomy of Forgiveness, Resentment, and Apology* (Oxford: Oxford University Press, 2018).
- Tuckness, Alex and John M. Parrish. *The Decline of Mercy in Public Life* (Cambridge: Cambridge University Press, 2014).
- Caplan, Joel M. "Parole Release Decisions: Impact of Positive and Negative Victim and Nonvictim Input on a Representative Sample of Parole-Eligible Inmates", (2010) 25.2 *Violence and Victims* 224–42.
- Evans, Donald G. "Community-Focused Parole", (December 2006) 68.7 *Corrections Today* 216–18.
- McBride, Elizabeth C. "Note: Policing Parole: The Constitutional Limits of Back-End Sentencing", (2009) 20.2 *Stanford Law and Policy Review* 597–621.
- Ogletree, Charles J. Jr. and Austin Sarat. *Life Without Parole: America's New Death Penalty?* (New York: New York University Press, 2012).
- Petersilia, Joan. *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003).
- Phillips, Dan. *Probation and Parole: Current Issues* (New York: Routledge, 2009).
- Stevens, Duncan N. "Off the Mapp: Parole Revocation Hearings and the Fourth Amendment", (1999) 89.3 *Journal of Criminal Law and Criminology* 1047–60.
- Tewksbury, Richard and David Patrick Connor. "Predicting the Outcome of Parole Hearings", (June–July 2012) 74.3 *Corrections Today* 54–6.
- Thompson, Anthony C., *Releasing Prisoners, Redeeming Communities: Reentry, Race, and Politics* (New York: New York University Press, 2008).
- Llewellyn, Jennifer and Daniel Philpott, eds. *Restorative Justice, Reconciliation, and Peacebuilding* (Oxford: Oxford University Press, 2014).

- Lu, Catherine. *Justice and Reconciliation in World Politics* (Cambridge: Cambridge University Press, 2017).
- Marshall, Christopher D. *Beyond Retribution: A New Testament Vision for Justice, Crime and Punishment* (Grand Rapids: Eerdmans, 2001).
- Murphy, Colleen. *A Moral Theory of Political Reconciliation* (Cambridge: Cambridge University Press, 2010).
- Murphy, Colleen. *The Conceptual Foundations of Transitional Justice* (Cambridge: Cambridge University Press, 2017).
- Murphy, Jeffrie and Jean Hampton. *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988).
- Philpott, Daniel. *Just and Unjust Peace: An Ethic of Political Reconciliation* (Oxford: Oxford University Press, 2012).
- Tutu, Desmond. *No Future Without Forgiveness* (New York: Random House, 1999).
- Volf, Miroslav. *Exclusion and Embrace: A Theological Exploration of Identity, Otherness, and Reconciliation* (Nashville: Abingdon Press, 1996).
- Zehr, Howard. *Changing Lenses: Restorative Justice for Our Times* (Harrisonburg, VA: Herald Press, 2015).
- Augustine. *The City of God Against the Pagans*, ed. and trans. R.W. Dyson (Cambridge: Cambridge University Press, 1998), Books 19 and 20.
- Calvin, John. *Institutes of the Christian Religion*, ed. John T. McNeill, trans. Ford Lewis Battles, 2 vols (Philadelphia: Westminster Press, 1960), Book 4, ch. 20.
- Gregory, Eric. *Politics and the Order of Love: An Augustinian Ethic of Democratic Citizenship* (Chicago: University of Chicago Press, 2008).
- Hauerwas, Stanley. *The Peaceable Kingdom: A Primer in Christian Ethics* (Notre Dame: University of Notre Dame Press, 2016).
- Mathewes, Charles. *A Theology of Public Life* (Cambridge: Cambridge University Press, 2007).
- Murphy, Jeffrie G. "Mercy and Legal Justice", (1986) 4.1 *Social Philosophy and Policy* 1–14.
- O'Donovan, Oliver. *The Ways of Judgment* (Grand Rapids: Wm. B. Eerdmans, 2005).
- O'Donovan, Oliver and Joan Lockwood O'Donovan, eds. *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100–1625* (Grand Rapids: Wm. B. Eerdmans, 1999).
- VanDrunen, David. *Divine Commandments and Moral Order: A Biblical Theology of Natural Law* (Grand Rapids: Wm. B. Eerdmans, 2014).
- Wolterstorff, Nicholas. *Justice in Love* (Grand Rapids: Wm. B. Eerdmans, 2011).