

CHRISTIANITY AND LAW

What impact has Christianity had on the law from its beginnings to the present day? This introduction explores the main legal teachings of Western Christianity, set out in the texts and traditions of Scripture and theology, philosophy and jurisprudence. It takes up the weightier matters of the law that Christianity has profoundly shaped – justice and mercy, rule and equity, discipline and love – as well as more technical topics of canon law, natural law, and state law. Some of these legal creations were wholly original to Christianity. Others were converted from Jewish and classical traditions. Still others were reformed by Renaissance humanists and Enlightenment philosophers. But whether original or reformed, these Christian teachings on law, politics and society have made and can continue to make fundamental contributions to modern law in the West and beyond.

JOHN WITTE, JR. is Jonas Robitscher Professor of Law and Director of the Center for the Study of Law and Religion at Emory University. His many publications include *The Reformation of Rights: Law, Religion and Human Rights in Early Modern Calvinism* (2007) and *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (2002).

FRANK S. ALEXANDER is Professor of Law and Founding Director of the Center of the Study of Law and Religion at Emory University. He is co-editor with John Witte Jr. of *The Teachings of Modern Christianity on Law, Politics and Human Nature* (2006).

Cambridge University Press
978-0-521-69749-1 — Christianity and Law
Edited by John Witte, Jr. , Frank S. Alexander
Frontmatter
[More Information](#)

CHRISTIANITY AND LAW: AN INTRODUCTION

Edited by

JOHN WITTE, JR.
FRANK S. ALEXANDER

*Center for the Study of Law and Religion
Emory University*



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-0-521-69749-1 — Christianity and Law
Edited by John Witte, Jr. , Frank S. Alexander
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Tokyo, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521697491

© Cambridge University Press 2008

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2008

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

ISBN 978-0-521-87462-5 Hardback
ISBN 978-0-521-69749-1 Paperback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to in
this publication, and does not guarantee that any content on such websites is,
or will remain, accurate or appropriate. Information regarding prices, travel
timetables, and other factual information given in this work is correct at
the time of first printing but Cambridge University Press does not guarantee
the accuracy of such information thereafter.

Cambridge University Press
978-0-521-69749-1 — Christianity and Law
Edited by John Witte, Jr. , Frank S. Alexander
Frontmatter
[More Information](#)

To Milner S. Ball
Inspiring leader, courageous scholar

Contents

<i>List of illustrations</i>	Page	ix
<i>List of contributors</i>		xii
<i>Preface</i>		xiv
 Introduction		I
<i>John Witte, Jr., Emory University</i>		
 1. Law and religion in Judaism		33
<i>David Novak, University of Toronto</i>		
 2. Law in early Christianity		53
<i>Luke Timothy Johnson, Emory University</i>		
 3. Western canon law		71
<i>R.H. Helmholz, University of Chicago</i>		
 4. Natural law and natural rights		89
<i>Brian Tierney, Cornell University</i>		
 5. Conscientious objection, civil disobedience, and resistance		105
<i>Kent Greenawalt, Columbia University</i>		
 6. The Christian sources of general contract law		125
<i>Harold J. Berman, Emory University</i>		
 7. Proof, procedure, and evidence		143
<i>Mathias Schmoeckel, University of Bonn</i>		
 8. Family law and Christian jurisprudence		163
<i>Don S. Browning, University of Chicago</i>		
 9. Poverty, charity, and social welfare		185
<i>Brian S. Pullan, University of Manchester</i>		

viii	<i>List of contents</i>	
10.	Property and Christian theology <i>Frank S. Alexander, Emory University</i>	205
11.	Christian love and criminal punishment <i>Jeffrie G. Murphy, Arizona State University</i>	219
12.	Christianity and human rights <i>Michael J. Perry, Emory University</i>	237
13.	Religious liberty <i>David Little, Harvard University</i>	249
14.	Modern church law <i>Norman Doe, Cardiff University</i>	271
15.	Religious organizations and the state: the laws of ecclesiastical polity and the civil courts <i>William W. Bassett, University of San Francisco</i>	293
16.	Christianity and the large-scale corporation <i>David A. Skeel, Jr., University of Pennsylvania</i>	311
	<i>Index to biblical texts</i>	329
	<i>General index</i>	333

Illustrations

Cover frontispiece	
“The King Administering Justice,” from <i>Justiniani in Fortiatum</i> (vellum), folio 3r, French School (fourteenth century). Used by permission of the Bridgeman Art Library.	
1 “The Newly Discovered Book of the Law Read to King Josiah,” from Nicolas Fontaine, <i>The History of the Old and New Testament: Extracted out of Sacred Scripture and Writings of the Fathers</i> (Exeter, 1780), s.v. 2 Kings 22. Used by permission of the Pitts Theological Library, Emory University.	2
2 “Moses and the People Make a Sacrifice to God Confirming the Covenant,” from Christoph Weigel, <i>Biblia ectypa: Bildnussen auss heiliger Schrifft Alt und Neuen Testaments</i> (Augsburg, 1695), s.v. Exodus 24. Used by permission of the Pitts Theological Library, Emory University.	34
3 “Paul Arrives in Rome,” from Julius Schnorr von Carolsfeld, <i>Die Bibel in Bildern</i> (Leipzig, 1853), s.v. Acts 28. Used by permission of the Pitts Theological Library, Emory University.	54
4 “Table Showing the Forbidden Degrees of Affinity,” (vellum) (Italian, fourteenth century). Used by permission of the Fitzwilliam Museum, University of Cambridge and Bridgeman Art Library.	70
5 “Historiated Title Page Border Depicting Thomas Aquinas with Several Classical and Medieval Authorities,” cover page from Thomas Aquinas, <i>Summa Contra Gentiles</i> [1523], repr. edn (Turin, 1933). Used by permission of the Pitts Theological Library, Emory University.	88

- x *List of illustrations*
- 6 “Martin Luther King, Jr. Waits to Address the Combined Session of the Massachusetts State Legislature at the Massachusetts State House in Boston on April 23, 1965.” Used by permission of Bettmann/CORBIS. 104
- 7 “Boaz Purchases all the Property of Ruth’s Dead Husband by Removing his Sandal,” from Christoph Weigel, *Biblia ectypa: Bildnussen auss heiliger Schrifft Alt und Neuen Testaments* (Augsburg, 1695), s.v. Ruth 4. Used by permission of the Pitts Theological Library, Emory University. 124
- 8 “The Judicial Duel,” (litho), from Paul Lacroix, *Le Moyen Age et la Renaissance* (Paris, 1847). Used by permission of the Bridgeman Art Library. 144
- 9 “A Proposal,” by Otto Erdmann (1834–1905): German private collection (nineteenth century). Used by permission of the Bridgeman Art Library. 164
- 10 “The Good Samaritan,” from Christoph Weigel, *Biblia ectypa: Bildnussen auss heiliger Schrifft Alt und Neuen Testaments* (Augsburg, 1695), s.v. Luke 10. Used by permission of the Pitts Theological Library, Emory University. 184
- 11 “Lazarus Begging for Scraps from the Rich Man’s Table,” from Julius Schnorr von Carolsfeld, *Die Bibel in Bildern* (Leipzig, 1853), s.v. Luke 16. Used by permission of the Pitts Theological Library, Emory University. 204
- 12 “Jesus Forgiving the Adulteress,” from Julius Schnorr von Carolsfeld, *Die Bibel in Bildern* (Leipzig, 1853), s.v. Luke 7. Used by permission of the Pitts Theological Library, Emory University. 218
- 13 Eleanor Roosevelt holding a poster of the Universal Declaration of Human Rights, November 1949. In the public domain and reproduced from: <http://www.nps.gov/archive/elro/teach-er-vk/lesson-plans/er-and-udhr.htm>. 236
- 14 “Decree Instituting the Freedom of Worship, November 1799” (colored engraving) French School (eighteenth century). Used by permission of the Bridgeman Art Library. 250

List of illustrations xi

15	“Christ Giving the Keys to St. Peter,” from a Psalter of Don Appiano from the Church of the Badia Fiorentina, Florence, 1514–1515. Used by permission of the Bridgeman Art Library.	272
16	“United States Supreme Court Building,” Washington, DC. Used by permission of Dennis Degnan/CORBIS.	292
17	“Erie Railway, Bradford Division, Bridge 27.66.” In the public domain and reproduced from: http://commons.wikimedia.org/w/index.php?title=Image:Kinzuabridgeold3.jpg&oldid=3214582	312

Contributors

FRANK S. ALEXANDER is Professor of Law and Founding Director of the Center for the Study of Law and Religion at Emory University.

WILLIAM W. BASSETT is Professor of Law at the University of San Francisco.

HAROLD J. BERMAN is Robert W. Woodruff Professor of Law and Senior Fellow at the Center for the Study of Law and Religion at Emory University and James Barr Ames Professor of Law Emeritus at Harvard University.

DON S. BROWNING is Alexander Campbell Professor of Religious Ethics and the Social Sciences Emeritus at the University of Chicago Divinity School and Senior Fellow in the Center for the Study of Law and Religion at Emory University.

NORMAN DOE is Professor of Law at Cardiff University and Director for the Centre for Law and Religion, Cardiff Law School.

KENT GREENAWALT is University Professor at Columbia University.

R. H. HELMHOLZ is Ruth Wyatt Rosenson Distinguished Service Professor of Law at the University of Chicago.

LUKE TIMOTHY JOHNSON is Robert W. Woodruff Professor of New Testament and Christian Origins in the Candler School of Theology and Senior Fellow in the Center for the Study of Law and Religion at Emory University.

DAVID LITTLE is Professor in the Practice of Religion, Ethnicity, and Global Conflict at Harvard University.

JEFFRIE G. MURPHY is Regents' Professor of Law, Philosophy, and Religious Studies at Arizona State University.

List of contributors

xiii

DAVID NOVAK is J. Richard and Dorothy Shiff Chair of Jewish Studies, Professor of the Study of Religion, and Professor of Philosophy at the University of Toronto.

MICHAEL J. PERRY is Robert W. Woodruff Professor of Law and Senior Fellow of the Center for the Study of Law and Religion at Emory University.

BRIAN S. PULLAN is Professor of History Emeritus at the University of Manchester, UK.

MATHIAS SCHMOECKEL is Professor of Private Law and German Legal History at the University of Bonn.

DAVID A. SKEEL, JR. is S. Samuel Arsht Professor of Corporate Law at University of Pennsylvania Law School.

BRIAN TIERNEY is Bryce and Edith M. Bowmar Professor of Humanistic Studies Emeritus at Cornell University.

JOHN WITTE, JR. is Jonas Robitscher Professor of Law and Director of the Center for the Study of Law and Religion at Emory University.

Preface

This volume provides an authoritative but accessible introduction to some of the main legal teachings of the Western Christian tradition – as set out in the texts and traditions of Scripture and theology, philosophy and jurisprudence. The sixteen chapters that follow address “the weightier matters of the law” (Matthew 23:23) – justice and mercy, rule and equity, discipline and love. They also address the more technical topics of canon law and natural law, conscience and commandment, contract and promise, evidence and proof, marriage and family, crime and punishment, property and poverty, liberty and dignity, church and state, business and commerce. These topics and others were perennial staples of both jurisprudence and theology in the West, and Christianity gave rise to many of the legal ideas and institutions that still dominate the West today. Some of these legal creations were wholly original to Christianity, born of keen new biblical insight and theological ingenuity. Others were converted and recast from Hebrew and classical prototypes. Still others were reworked and reformed by Renaissance humanists and Enlightenment *philosophes* and their ample modern progeny. But whether original or reformed, canonical or casuistical, Western Christian teachings on law, politics, and society have made enduring contributions to the development of law as we know it today. And these teachings still hold essential insights for legal reform and renewal in the new millennium.

This volume focuses on the Western Christian tradition – the Patristic, Catholic, and Protestant worlds of Western Europe and eventually North America – and leaves the legal analysis of non-Western and non-Christian religious traditions to other volumes. The interaction of law and Christianity in Europe and North America is a huge topic, and it has proved hard enough to wrestle the most essential material into a manageably sized volume. This volume of necessity only introduces part of the story of law and Christianity. Particularly the riches of the historical and contemporary Eastern Orthodox Churches as well as the numerous forms

Preface

xv

of Asian, African, and Latin American Christianity deserve their own treatment. Many of these forms of Christianity now rival Western Christianity in sheer numbers if not world influence, and many of them have made and are making their own unique contributions to law, politics, and society. We hope that the publication of this volume will catalyze the production of parallel volumes on law and religion in these other quarters of Christianity – as well as in Judaism, Islam, Hinduism, Buddhism, and Confucianism.

This volume is part and product of an ongoing project on Christian Legal Studies, undertaken by our Center for the Study of Law and Religion at Emory University. This project, which has involved more than 200 scholars over the past twenty years, explores the historical and contemporary influence of Christian ideas, institutions, and individuals on Western law, politics, and society. In its earlier phases, the project analyzed some of the Christian foundations and fundamentals of Western constitutionalism, democracy, religious liberty, and human rights, yielding a score of volumes that have appeared in a score of languages. In its current phase, the project has commissioned thirty new volumes on the past and potential contributions of Catholic, Protestant, and Orthodox Christianity to the cardinal legal and political questions that are now challenging and dividing church, state, and society.

This volume provides a brief introduction to some of these questions and some of the answers that the Western Christian tradition has offered. A general introduction puts the main themes of the volume in historical context. Each chapter fills in more detail and nuance about discrete figures and themes, charts the challenges that remain open in each area of law under discussion, and concludes with recommended readings to enhance the value of this text as a teaching resource and research guide. Further research guidance is available through the other volumes and projects described on our Law and Religion Center website (www.law.emory.edu/clsr).

This volume – and the broader project of Christian legal studies of which it is a part – was made possible by generous grants to our Center for the Study of Law and Religion by the Alonzo L. McDonald Family Foundation and the Lilly Endowment, Inc. We express our profound gratitude to Alonzo, Peter, and Suzie McDonald, and Robert Pool of the McDonald Foundation and to Craig Dykstra and his Lilly colleagues for their generous and genial support. We express our warm thanks to our Center colleagues – April Bogle, Eliza Ellison, Linda King, Anita Mann, and Amy Wheeler – for their effective and efficient administrative work on this and related projects, as well as to our students, Amos Davis and Judd Treeman, for their careful editorial work. Finally, we wish to thank Kate Brett, Gillian

Cambridge University Press
978-0-521-69749-1 — Christianity and Law
Edited by John Witte, Jr. , Frank S. Alexander
Frontmatter
[More Information](#)

xvi

Preface

Dadd, and their colleagues at Cambridge University Press for taking on this volume and bringing it to print with their usual excellence and professionalism.

This volume is dedicated to our dear friend and brother, Milner S. Ball, who has long been a great leader of the field of law and religion and has long blessed us with his wit, wisdom, and *Wissenschaft*. May it long continue!

John Witte, Jr. and Frank S. Alexander