Introduction

OLIVIER DESCAMPS AND RAFAEL DOMINGO

This book aims to illustrate the fertile interactions and lasting synergies between Christianity and law in French history by exploring the contributions that brilliant legal figures have made over the centuries to juridical ideas and institutions. The volume is part of a larger project on Christian jurists in world history led by John Witte, Jr., director of the Center for the Study of Law and Religion at Emory University. The first two volumes, on English and Spanish Christian jurists, have already been published.[1] This volume on French Christian jurists is thus the third in a series projected to include at least seven more.

Like the other volumes in the collection, this one is biographical, juridical, ecumenical, and global in character. The biographical dimension emphasizes not only the great legal contributions of each jurist but also his or her links to Christianity. The juridical dimension highlights the impact of each jurist on public and private law and justice, whether from inside the legal profession or from a broader philosophical, theological, or intellectual tradition. The ecumenical dimension shows Christianity as a unity, taking into consideration the way different churches and denominations are part of a whole. Finally, the global dimension emphasizes that each volume in this series on great Christian jurists illustrates the distinctive contributions of different nations to the global conversation about law and Christianity.

This volume on French Christian jurists examines the lives of twenty-seven key legal thinkers in French history, particularly the ways their Christian faith and ideals were a factor in framing the evolution of law and justice.

[1] See Mark Hill and R. H. Helmholz (eds.), *Great Christian Jurists in English History* (Cambridge, New York: Cambridge University Press, 2017); and Rafael Domingo and Javier Martínez-Torrón (eds.), *Great Christian Jurists in Spanish History* (Cambridge, New York: Cambridge University Press, 2018).

All chapters have been written by distinguished legal scholars and historians, mainly from France but also from Belgium, Canada, Germany, Italy, Spain, Switzerland, the United Kingdom, and the United States. The collaboration among French and non-French scholars, and the diversity of international and methodological perspectives, gives the volume its unique character and value.

The expression *Christian jurist* has to be understood broadly to include not only civil and canon lawyers but also theologians, philosophers, and political thinkers who contributed decisively to building up the edifice of justice and law. A global and intercultural historical project, as this one aspires to be, cannot maintain a single, narrow understanding of the idea of jurist but must be inclusive. Reality is a single whole, and its legal dimension is just one among many dimensions. Often, in history, the legal dimension has been more intensely affected and influenced by other dimensions of human existence – moral, philosophical, historical, theological, spiritual, sociological, or economic – than by actors engaged exclusively within the artificial limits of the legal dimension. The term jurist, then, refers here to anyone involved with law and justice in the broadest sense.

Behind many legal developments, one finds Christian ideals as they were interpreted at a given time. And behind those ideals, one often finds a particular Christian legal thinker or practitioner who, perhaps unintentionally, left an indelible mark on our legal culture. This volume deals with these Christian jurists. How is it possible not to see, for instance, the Christian contribution to individual rights and liberties inherent in some of John Calvin's ideas; the Christian contribution to the French Civil Code arising from the brilliant works of Jean Domat, Robert-Joseph Pothier, or Jean-Étienne-Marie Portalis; the Christian contribution to the Universal Declaration of Human Rights latent in the ideas of Jacques Maritain; or the Christian contribution to the European process of integration shaped by Robert Schuman?

The selection of French Christian jurists for this volume has not been easy, owing to their great number and the distinctiveness of French law. Several considerations determined the selection. The first had to be the historical starting point. Since other volumes of the same series also examine Christian influences in legal thought of the first millennium,[2] our volume includes only the main periods of the second millennium – the medieval period of civil and canon law, the French modern period, and the contemporary age.

[2] See Philip L. Reynolds (ed.), *Great Christian Jurists and Legal Collections in the First Millennium* (Cambridge University Press, 2019).

The second consideration has been the interest in covering all periods of French history. Some periods – for instance, that of the French Revolution and afterwards – have fewer original Christian thinkers; in other periods, such as that of French humanism, most French legal scholars and practitioners were Christians (Catholic or Protestant); in still other periods, like the brilliant epoch at the end of the nineteenth century, notable legal figures included both Christians and non-Christians, as was also true of the twentieth century. In general, after the French Revolution, Christian contributions to French law and legal theory became more moderate, understated, and subtle, but even so, Christians continued to offer important contributions to law and justice as legal theorists of public law, canonists, legal historians, and legal philosophers.

The third consideration was the desire to cover different disciplines of the law. This volume would be justified if it did no more than assess the great contribution of French Christian jurists to, say, French civil law or canon law. This volume, however, aims to reflect the extent and variety of topics in which the interaction between law and Christianity has taken place (e.g., legal history, codification, constitutionalism, human rights, public law, legal sociology).

Finally, the fourth consideration concerns the reasonable editorial limits of the series in both the length of the volume and the number of selected jurists. Originally intending to limit the volume to twenty-five jurists, we raised the number to twenty-seven in view of the learned opinions and persuasive suggestions of contributors.

Of the twenty-seven selected jurists in this volume, six flourished during the second half of the sixteenth century, and nine lived during the nineteenth and twentieth centuries. The period of French humanism, when France snatched preeminence in legal scholarship from Italy to make the University of Bourges the leading law school in Europe, and the period of the late nineteenth century, when the science of public law was systematized, were momentous in legal creativity and imagination. Probably these periods exceed in importance the era of drafting the French civil code, although the civil code, without a doubt, has had the most global impact in French legal history.

All of the selected jurists were brilliant French Christian legal thinkers or actors. Yet many very important legal scholars – especially humanists of the sixteenth century, such as François Baudouin, Guillaume Budé, François Douaren, Michel de l'Hôpital, Pierre Grégoire, Antoine Loysel, and Pierre Pithou, to mention some of them – have been left out because they did not meet all of our criteria. Our volume is not a dictionary of jurists,[3] in which

[3] For a dictionary on French jurists, see Patrick Arabeyre, Jean Louis Halpérin, and Jacques Krynen (eds.), *Dictionnaire historique des juristes français: XII^e–XX^e siècle* (Paris: Presses

everybody and everything interesting must be alphabetically collected. It is, rather, a sample of the enormous and enduring interaction between law and Christianity in French culture.

FRENCH CHRISTIAN JURISTS IN THE MIDDLE AGES

In the twelfth and thirteenth centuries, the kings of French lands developed a feudal court system. Legal standards and the rule of the courts varied greatly between the north and the south. In northern French lands, customary law (*droit coutumier*) predominated. Customary law was the result of a complex process of legal development. It was an amalgam of Frankish capitularies, Germanic customary law, and canon law. Universities offered the study of Roman law, but its role was rather secondary and not very important in the northern courts. In the south of France, however, the written law (*droit écrit*) predominated.[4] Written law was the Roman law of the rediscovered Justinian *Corpus iuris*, adapted as a customary system and often modified by local statutes. In sum, in the north customary law prevailed over Roman law. In the south, however, the opposite obtained. This division of French lands into two portions was emphasized by Pope Honorius III, who in his famous decretal *Super speculum* (1219) banned the teaching of Roman law in the University of Paris in order not to entangle clerics in secular matters. Cultural exchanges between the south of France, with its concentration of important law schools, and Italy were very common. Some Italian professors taught in French schools, and many French students went to Bologna.

Ivo of Chartres (Chapter 1), bishop of Chartres and one of the *founding fathers* of classical canon law, was a solid rock on which to begin building our project. The most learned canonist of his time, Ivo lent a critical voice of moderation in the investiture crisis. The three "Ivonian collections" have a notable place among the canon-law collections before the *Decretum Gratiani* (*c.* 1140). The author of this chapter, Christof Rolker, points out Ivo's conception that canon law, as an expression of God's mercy and justice, must be

Universitaires de France, 2013). From a global perspective, including dozens of French jurists, see Rafael Domingo (ed.), *Juristas Universales*, 4 vols. (Madrid, Barcelona: Marcial Pons, 2004).

4 For a further explanation, see Manlio Bellomo, *The Common Legal Past of Europe: 1000–1800*, 2nd edn, trans. Lydia G. Cochrane (Washington, DC: Catholic University of America Press, 1995), 101–06. For a general overview, see R. C. van Caenegem, *An Historical Introduction to Private Law*, trans. D. E. L. Johnston (Cambridge: Cambridge University Press, 1992); and O. F. Robinson, T. D. Fergus, and W. N. Gordon, *European Legal History*, 3rd edn (Oxford: Oxford University Press, 2000).

applied in the spirit of charity. Ivo thus made a key contribution to the emerging field of canon law as a distinct discipline and to the development of the concept of law in general in Western legal culture.

Stephen of Tournai, our second selected jurist (Chapter 2), studied law in Bologna under the civil-law teacher Bulgarus, ten to fifteen years after Master Gratian had taught there. Named bishop of Tournai, Stephen authored a fully elaborated exposition (*summa*) on the *Decretum Gratiani* (*Summa in decretum Gratiani*), based on similar works prepared in Italy by Paucapalea, Rufinus, and Rolandus. In his *Summa*, Stephen used Roman law frequently to resolve canonical issues. In this chapter on Stephen, Kenneth Pennington aptly criticizes Johann Friedrich von Schulte's edition of Stephen's *Summa* and explains why his vision of the relationship between Roman law and canon law was so important for the development of canonical jurisprudence.

Orazio Condorelli introduces Guillaume Durand in Chapter 3. A student at Bologna, professor at Modena, and later bishop, Durand worked for the Roman Curia for a long time and in the papal government of Romagna. A practical-minded man and good administrator, Durand wrote a famous and widely read treatise on liturgy. It was the *Speculum iudiciale*, however, that gave him a worldwide reputation, including the nickname of Speculator. The *Speculum* represents the peak of the so-called *ordines iudiciarii*, that is, treatises devoted to the exposition of civil and criminal procedures.

Chapters 4 and 5 refer to two famous civil lawyers of the School of Orléans, also called Ultramontani by the Italians: Jacques de Revigny and Pierre Belleperche. Both shaped the renewal of Roman law teaching, and both rivaled the Glossators of Bologna in their mastery of the *Corpus iuris*. Influenced by French Scholasticism, Revigny and Belleperche gave legal reasoning a relevant role. Both were interested in practical questions, and both are considered precursors of the Italian school of commentators (*mos italicus*), which reached its peak with Bartolus de Saxoferrato and Baldus de Ubaldis.

In his chapter on Revigny (Chapter 4), Paul du Plessis explains the importance of Revigny's writings for understanding the interaction between Roman law and customary law during the thirteenth century. Focusing on the methods and approaches to research and teaching by scholars at Orléans, du Plessis evaluates the broader significance of the School of Orléans for successive generations of legal scholars in Italy and elsewhere.

Yves Mausen introduces Pierre de Belleperche in Chapter 5. Nicknamed the king of the legists (civil lawyers), Belleperche approached law systematically, emphasizing the internal harmony of the Justinian *Corpus iuris* as well as some moral principles. Although less innovative than Jacques de Revigny,

Pierre de Bellepeche was probably more influential. According to Mausen, however, despite Belleperche's station as a bishop, religion had little impact on his legal thinking. "If his religious convictions had any implications at all for his actions as a jurist," Mausen concludes, "they would consist precisely of his efforts for promoting social peace by strengthening royal power. To this extent, he can possibly be seen as devoted to a certain Realpolitik." Pierre de Belleperche was the last great French professor at Orléans. After he died in 1308, Italian doctrine came to dominate the French schools during the fourteenth century. In fact, our volume includes no French Christian jurist of the fourteenth century.

CHRISTIAN JURISTS OF MODERN FRANCE

After the invasion of the Italian peninsula by King Charles VIII of France, in 1494, the artistic and literary atmosphere of the Italian Renaissance influenced French culture. The legal field was no exception. The Italian jurist Andrea Alciato (1492–1550) became the forerunner of French humanism by introducing the historical method into legal teaching. He taught at Avignon (1518) – where he met the philologist and Hellenist Guillaume Budé (1467–1540), father of the French Renaissance – and at Bourges (1528), the leading university of Europe at that time. Distinguished professors at Bourges included Éguiner-François Baron (1495–1550), François Douaren (1509–1559), François Baudouin (1520–1573), Jacques Cujas (1522–1590), François Hotman (1524–1590), and Hugues Doneau (1527–1591).

Sixteenth-century French humanism provided Roman law a new intellectual framework. Fascinated by classical antiquity and historicism, the humanists approached the *Corpus iuris* in a different way than the medieval glossators and commentators (*mos italicus*). French humanism applied historical and philological methods to understand the meaning of legal texts in their historical context (*mos gallicus*). Humanists accepted the *Corpus iuris* for its technical skills and the quality of its pure arguments (*imperium rationis*), but not as a traditional source of legal authority (*ratio imperii*). As Franz Wieaker points out, the humanist "called for sources which were pure rather than traditional, for the recognition of the ideal rather than logical attestation of the authoritative, for system rather than exegesis."[5] For these reasons, humanists reproached medieval scholars for having corrupted ancient Latin through their barbaric linguistic abuses, their ignorance of Greek, and

[5] Franz Wieacker, *A History of Private Law in Europe*, trans. Tony Weir (Oxford: Clarendon Press, 1995), 64–65.

their anachronistic interpretations of the legal texts in adapting them to the needs of medieval society.

Reading this volume helps understand the significant connections among legal humanism, the Calvinist reformation, the University of Bourges, and the *mos gallicus*. Humanism is a many-branched cultural movement; Calvinism, a religious reform movement; the *mos gallicus*, a legal method to interpret the ancient sources; and the University of Bourges, a venerable French university. These four realities are quite varied, but they are all interconnected. Thus, for example, the reformer Calvin studied in Bourges and highly admired the humanist Budé. Many professors of Bourges (e.g., Hotman and Doneau) were Huguenots (French Calvinists) and, as result of the devastating Wars of Religion (1562–1598), were compelled into exile and taught at German and Dutch universities. The *mos gallicus* was not a Protestant method of interpretation (notable Catholics followed the French method), but it was important in the development of the Reformation.

Along with the flourishing of a great school of Roman law, legal humanism also stimulated the opposite: a nationalist reaction in defense of French national law against Roman law. The first book on French law written in French was published in that era. Charles Dumoulin, François Hotman, Guy Coquille, Louis Le Caron (who promoted the notion of French law), and René Choppin are some representatives of this French legal nationalism that culminated with the growing unification and later codification of French law under Napoléon.

Our six selected jurists of the sixteenth century are, chronologically, Charles Dumoulin, John Calvin, Jacques Cujas, François Hotman, Hugues Doneau, and Jean Bodin. In Chapter 6, Wim Decock introduces Charles Dumoulin as one of the most influential jurists in French history and a precursor to French national law. A man of strong character, nationalistic convictions, and Bartolist methods, Dumoulin exercised humanist intellectual attitudes. A fervent follower of Gallicanism, Dumoulin advocated for national churches instead of a universal ecclesiastical governance in a way compellingly similar to his primary efforts to distinguish clearly between the tradition of Roman law, which is universal, and the tradition of customary law, which is particular. As Decock explains, Dumoulin paved the way for the idea that French customary law, and not Roman law, should be considered the general law applicable within the French kingdom, thus disintegrating the hitherto unbreakable unity between Roman law and common law.

In Chapter 7, John Witte, Jr. vindicates the legal figure of John Calvin as a defender of the state rule of law, democratic process, and individual liberties. According to Witte, Calvin was primarily a Christian jurist who provided the

legal theoretical framework for the constitutional protection of freedom of conscience and free exercise of religion and a solid constitutional theory of republican government. Witte analyzes how Calvin and Calvinists based their doctrine of religious and civil rights on the Decalogue and established a strong connection between the idea of human rights and the rights of persons to do their duties as bearers of God's image.

In Chapter 8, Xavier Prévost introduces the reader to Jacques Cujas, the leading legal historian and most notable expositor of French humanism. A prolific author of remarkable clearness and precision, in his ten-volume *Opera omnia* Cujas dealt with a great variety of topics of Roman law, canon law, feudal law, and French customs and legislation. Cujas also devoted himself to the exegesis and publication of Roman legal sources, such as the *Collatio legum Mosaicarum et Romanarum*, a private comparative collection of Jewish and Roman sources of the fourth century, and the *Consultatio veteris cuiusdam iurisconsulti*, a fifth-century Roman legal treatise. He recovered and published part of the Theodosian Code (438 CE), a legal body of around twenty-five hundred imperial constitutions created from 306 to 437 CE. In 1566, Cujas published the first critical edition of the *Libri feudorum*, a twelfth-century collection of feudal customs. Cujas refused to take any part in the religious wars which filled all the thoughts of his contemporaries. His usual answer to those who asked him about the topic became famous: the conflict "has nothing to do with the edict of the praetor!" (*Nihil hoc ad edictum praetoris!*).

In Chapter 9, Mathias Schmoeckel introduces the controversial character of François Hotman, Calvin's secretary and translator, a champion of the Calvinist cause, and one of the most influential Calvinist lawyers of sixteenth-century France. A radical thinker and theorist who later became more moderate, Hotman in his famous work *Franco-Gallia* (1573) advocated for representative government and an elective monarchy. His work was a precursor to the doctrine of the separation of powers, and, along with Dumoulin, Hotman was a key figure in the development of French national law.

Another Calvinist lawyer was Hugues Doneau (Chapter 10). Like Hotman, Doneau escaped the massacres of St Bartholomew's Day (1572). Cujas's scientific and personal opponent, Doneau was the leader of the most dogmatic branch of legal humanism, which focused on the systematic foundations of the law. In his *Commentaries on Civil Law*, Doneau systematized the Roman civil law as it was applied in his time. Christian Hattenhauer, author of this chapter, explores the similarities between Doneau's approach and the rational approach of the German school of pandectists in the nineteenth century. According to Hattenhauer, Doneau's central innovation consisted

in interpreting private law by putting the human person as a whole at its heart. Contrary to the *Institutes* of Gaius and Justinian, divided into persons, things, and legal actions, the notion of *person* in Doneau's view should be the unique starting point of any legal development. Doneau oriented the restructuring of Roman law toward subjective rights, moving from a civil law excessively dependent on legal procedures to a more substantive and dogmatic civil law. Nineteenth-century German scholars used Doneau's basic concepts of civil law to build up their system of pandects. As an example, Doneau was a source of inspiration in the dogmatic grounding of the unique characteristic in German law, the so-called abstraction principle (*Abstraktionsprinzip*).

Daniel Lee explores in Chapter 11 the singular and still crucial contribution of Jean Bodin to law and political theory. Humanist and jurist, Bodin is especially celebrated for his *Six livres de la république* (1576), an impressive treatise on comparative law and politics which paved the way for the scientific study of public law in its modern framework. His theory of sovereignty constituted the first systematic analysis of the idea of absolute and indivisible power, and it is key to understanding the original structure of nation-states, national legal systems, and the international legal order. Bodin held that the prerogatives of sovereignty cannot be divided but only delegated, and therefore should be concentrated in a single person or group of persons. The absolute power of the king was limited by the law of nature and the divine law of God that are universally binding on all human beings, including the sovereigns.

Over the course of the seventeenth century, France continued the process of nationalization of its law, led more by judges and lawyers of the Parliament of Paris than by legal scholars. A French common law (*droit commun de la France*) arose based on customs, *droit écrit*, royal ordinances, and case law from the parliaments. French jurists tried to deal with this plurality of sources of French law by providing a unified and coherent systematization. The second part of the seventeenth century was dominated by the central figure of King Louis XIV, the "Sun King" (r. 1643–1715). During his reign of more than seventy years, one of the longest in world history, he consolidated the growing centralization of the sovereign nation-state and perfected the practice of royal absolutism, which endured until the French Revolution. Louis XIV issued the Great Ordinances (*Grandes Ordonnances*), including the civil ordinance on the reformation of justice (1667), the criminal ordinance (1670), the commercial ordinance (1673), and the maritime ordinance (1681). Each ordinance provided the complete and systematic regulation of a certain legal field, with exclusive jurisdiction for that specific area. In 1685, Louis issued the Edict of Fontainebleau and revoked the religious toleration that the Edict of Nantes had guaranteed the Huguenots for more than eighty

years. Protestant churches and schools were closed, and Huguenots were forced to leave France or convert to Catholicism. The Ordonnances of the eighteenth century – including, among others the ordinance on donations (1731), the ordinance on wills (1735), and the ordinance on substitutions (1747) – can be regarded as precursors of the French process of codification. The selected jurists from this period are Jean Domat (1665–1696), Henri François d'Aguesseau (1668–1751), and Robert-Joseph Pothier (1699–1772).

Written by David Gilles, Chapter 12 explores the life and works of Domat and his desire to construct both a civil law and a public-law system inspired by natural law and Christian principles. A Jansenist and a libertarian, as well as a close friend of Descartes, Domat believed that, although Roman law contains natural law, the great principles illuminating natural law had been lost. According to Gilles, Domat's originality lay in his effort to reconcile Christian thought with modern rationalism, and to reconcile the divine foundation of the legal system with his resolution to create a purely rational and geometric law. Louis XIV regarded Domat's contribution so highly that the Sun King sponsored his publications and paid him a pension for life.

In Chapter 13, Isabelle Brancourt approaches the figure of chancellor Henri François d'Aguesseau, a radical Gallican recognized and even applauded by the philosophers and free thinkers of the French Enlightenment. Chancellor of France three times between 1717 and 1750, an enlightened intellectual, and a notable and loyal administrator, d'Aguesseau carried out important reforms of the French legal system. He contributed to the law first by clarifying and simplifying legal standards in light of a very innovative and fresh interpretation of the corpus of the law. He sought full harmony between natural law and civil law and rejected any positive law contrary to natural reason. From a political point of view, he promoted legal uniformity as a necessary condition for the right development of sovereign government, and, ultimately, he served legal absolutism.

In Chapter 14, Olivier Descamps explores Robert-Joseph Pothier's contribution to the legal realm. One of the most celebrated jurists of French legal history, Pothier is consider the "French Papinian" and the father of the Civil Code. Appointed in 1749 by Chancellor d'Aguesseau as professor of French law at the University of Orléans, Pothier wrote treatises on Justinian law and French law that dominated the development of French private law, especially in the area of obligations. Pothier is for French law what William Blackstone is for English law, James Kent for American law, and Emer de Vattel for international law: the great writer of the first systematic treatise in accordance with the standards of the Age of Reason. Pothier was not very innovative, but he had an encyclopedic knowledge and a great capacity for conceptual clarity