Great Christian Jurists in English History, part of the Cambridge University Press Law and Christianity series, examines the lives of fourteen of the most influential men in the history of English jurisprudence. The editors, Mark Hill QC and Professor R. H. Helmholz, introduce to the reader essays written by accomplished legal historians. The essays reveal fourteen lives worth considering with fresh eyes, and provide some new insights. But they do more. This collection of essays offers a snapshot of the history of English law and the role of human agency within it, with special focus on the thoughts and actions of men who understood themselves to be agents of the Christian God. It makes sense of the idea that the English common law, though primarily consisting of ancient usage, is in important ways, Christian.

The selection of jurists for the collection was likely driven by the interests of the respective authors. There appear to be no criteria for selection that privilege any class of jurists over others. The collection includes chapters on common lawyers, civilians, and canonists; medieval jurists and moderns. However, especially after the Reformation, Protestant members of the Church of England are most prominent in the collection. Perhaps this is because all the jurists included were representative of their respective times. Even those who dissented on occasion, such as Sir Edward Coke and John Selden, were ultimately vindicated in the judgments of the legal traditions in which they participated.

Because of this, the jurists included in this volume reflect the assumptions and ideas of the cultures in which they were immersed, including the prevailing religious commitments and sentiments of their respective times. William Lyndwood (fifteenth century) obtained a papal dispensation (48). Coke (seventeenth century) “strenuously opposed ‘popery’” (98). F. W. Maitland (late nineteenth century) “had a detachment and perhaps disdain for the institutional churches” (306). Yet despite these differences, all of these men were shaped in mind and character by Christianity. All of them in turn shaped legal conceptions, and many shaped the law itself as judges and practitioners.

Jurists who did not warrant their own chapters make cameo appearances. These include notable dissenters whose lasting influence outside English law exceeded their influence within it. Thomas More appears to debate Christopher St. German concerning the prosecution of heretics (75–76). Edward Coke’s clerk Roger Williams briefly appears before decamping for the New World (96, 107). Coke’s influence on, and later disappointment in, Williams, illustrates Coke’s own conflicted attitude toward religious liberty. Both of those examples also demonstrate the lasting effect English jurists had on the Roman Catholic Church and American jurisprudence, and vice versa.

Because the interests of the great English jurists were so varied, and because the authors explore many of them, several different themes might be drawn out of the book according to reader interest. One such theme is moderation. Most of the jurists moderated between the extremes of their times. For example, St. German mixed into his medieval orthodoxy a Protestant reverence for Scripture and a Roman insistence on the sacraments (73–74). Hooker famously wrote the victorious apology for Anglicanism as via media between Geneva and Rome. And William Blackstone, the great champion of “High Church” Anglicanism, consulted “a surprisingly heterogeneous assortment” of seventeenth- and eighteenth-century divines, including both Calvinists and “ultra-orthodox” thinkers, “a volume of Port Royal or Jansenist tracts, and a Greek psalter,” along with the “antiquarian, historical and legal material” that he is better known to have read and cited (219).
Another theme is the role of practical reason in English jurisprudence. Nearly all of the great jurists made use of natural law. Many of them served as judges and in other offices, and they employed natural law no less in practice than in theory. Lord Mansfield rested his jurisprudence on the “eternal and immutable moral code,” and his successor as Chief Justice of King’s Bench, Lord Kenyon, explained his decisions and his overtly Christian jury instructions with the maxim that the law of the land is “subservient to the laws of morality and religion” (196, 245). But none taught—and some expressly eschewed—abstract philosophy, such as that of Descartes and Hobbes. All studied closely and extolled the particular determinations of natural law in Roman, canon, civil, Jewish, or common law, according to their primary pursuits within jurisprudence.

Matthew Hale, the subject of chapter 8 in the exact middle of this volume (with introduction, the book has fifteen chapters), was a central figure in the preservation and development of the natural-law strand of common-law jurisprudence. Typical among English jurists, Hale made an alloy of different ideas: classical natural law theory from Aristotle and Cicero, Roman law and concepts of dominion, scholastic concepts from Aquinas and Suárez, Puritan divinity, Reformation and Enlightenment teachings about sovereignty, and English institutions such as due process. But David Sytsma shows in his chapter about Hale, as he recently showed in his edited publication of Hale’s *Of the Law of Nature*, that Hale also made original contributions to the tradition. Combining natural law theory with “Arminian ideas on salvation,” Hale argued that virtuous pagans could be saved (168). His extended reflections on judicial offices (he held several) led him to propose not only judicial virtues and rules to enable judges to achieve them (175–76) but also a foundational argument for the presumption of innocence (178). And Hale supplied an extended explanation of “permissive law,” that vast area of law governing matters of indifference that are partly determined by nature and reason and partly specified by the will of the lawmaker (182–85).

Perhaps because of the predominance of seventeenth-century jurists—crucial figures in the security of common law rights and the rule of law—one theme that emerges most clearly is the role that English jurists played in developing the idea of liberty under law. The idea itself developed haltingly, unevenly, and incompletely in English history, but it did develop there. Jurists played a lead role in that development. And all of the features of that development, including its beauty and its disfigurement, appear in the thinking of the jurists surveyed in this book.

Consider first religious toleration. Controversies about religious freedom were foundational to ideas of freedom generally from the Reformation on. English law’s mixed record reflects the mixed ideas of English jurists. Many of them, especially Coke and Blackstone, associated “popery” with tyranny and supported restrictions on political participation by Roman Catholics and Protestant dissenters. Coke used the writ of prohibition to review decisions of ecclesiastical courts and even prosecuted radical Puritans who challenged royal supremacy. However, Coke also helped draft and secure the Petition of Right and he favored toleration of Roman Catholics who remained loyal to the crown. Blackstone opposed using law to punish vice “unless it carries with it some public inconvenience . . . or some social injury” (231). Other common-law jurists, especially Selden and Mansfield, supported more robust religious liberty. And, of course, the canonists William Lyndwood and Richard Hooker made forceful arguments for the liberties and powers of the church.

The jurists surveyed in this book had views concerning freedom of expression that might seem, from an American perspective, complicated. The English jurists reflected and shaped a moderate and relatively minor role for a right that Americans and others around the world have codified and secured as fundamental. But to understand their views, it is enough to see that they thought liberty to be both secured and bounded by law and speech made with an intention to cause...
harm to be wrongful. So, for example, Selden stood with the people’s representatives in Parliament in defense of their “freedom of speech in the making of laws” (141). But the jurists did not doubt that a jury had power to impose liability for false and defamatory expressions. One sees in their writings and judgments a reticence to coerce people to disclose their thoughts or betray their conscience. But when published expressions caused unlawful harm, the great jurists did not hesitate to condemn, prosecute, and convict. Thus, Lord Kenyon, presiding over a libel prosecution in 1797 for publication of part of Thomas Paine’s Age of Reason, instructed the jury that the “great truths” of Christianity are “part of the law of the land,” the same law that the jury was charged to administer (242). It followed that publishing an attack on revealed religion was unlawful and prosecution for the act, far from oppressing the publisher, upheld the law.

More generally, the story of liberty in English law is largely a story about how the royal prerogative came first to be shackled by, and then, over the course of centuries, subject to, the law. As early as Bracton (Henry of Bratton), covered in chapter 2, one finds expressions of the idea that the king cannot act alone because he is beneath the law. Later jurists cultivated this idea to full flower, and by the time of the Glorious Revolution the supremacy of law over crown had become the law of the land. St. German argued that lawyers and officials charged with obeying conscience should pledge their oath not to the king, but to the “law of god and the law of reason,” which the individual can apprehend and follow (88). Hooker articulated an argument for the consent of the governed upon which Locke would later build. Coke worked to limit the jurisdiction of prerogative tribunals such as commissions. And Coke and Selden designed the Petition of Right.

Thus, the story of the great Christian jurists in English history is a story of men who were formed by the times in which they lived and who in turn shaped the law and culture of their times. This book persuasively demonstrates that Christianity was a foundational and formative influence on them and, through them, on the law. The great jurists in English history turn out to be nearly all Christians. If one were to select fourteen English jurists who were most influential in the development of English legal norms and institutions, one could do much worse than to choose the fourteen discussed in this book. The story of English Christian jurists, told expertly in this book, comprises the best parts of the story of English jurisprudence.

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