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Book Review: Law and Religion: Current Legal Issues 2001 - Volume 4

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uncertainty by imposing liability *for* uncertainty: if causal indeterminacy results from the defendant's wrongdoing, he is liable for the evidential incapacitation he has inflicted upon the claimant. The full consequences of this idea cannot be conveyed here, but it can be said that a number of orthodox principles of tort law would need stretching to accommodate such liability. Firstly, the courts' reluctance to allow claims for pure economic loss would need to be overcome: a claim for evidential damage redresses the reduced prospects of obtaining compensation at trial. Further, in many of the difficult cases the causal uncertainty stems not from the defendant's actions but from a lack of scientific proof. In *Hotson v. East Berkshire Area Health Authority* [1987] A.C. 750, for example, the claimant failed because he could not prove that when he arrived at hospital there were sufficient live blood vessels to prevent the onset of permanent disability. This uncertainty was assured before the negligent doctor became involved; therefore (despite what the authors say at p. 195) it does not seem appropriate to make the defendant liable for the evidential uncertainty. Likewise, in many of the industrial disease claims, uncertainty would have existed even if the defendant had contributed to the risk non-negligently (*e.g.* by reducing emissions to a reasonable level or by giving a suitable warning); thus it is difficult to say that any evidential damage was caused by the defendant's *wrongdoing*.

But the above points are only minor criticisms. Overall, this is a bold, stimulating, and original contribution to the literature. It deserves to be widely read and discussed.

BENJAMIN PARKER

Law and Religion: Current Legal Issues 2001—Volume 4. Edited by RICHARD O'DAIR and ANDREW LEWIS. [Oxford: Oxford University Press. 2001. xliii and 558 pp. Hardback. £70.00. ISBN 0-18-824550-2.]

As volume four of *Current Legal Issues* demonstrates, commentary on the interplay between law and religion in the UK is growing, although the subject still attracts nowhere near the level of attention it does in other countries. The newest addition to the literature constitutes a welcome advance to lawyers working or interested in the field. For example, many existing collections of essays on law and religion focus primarily on sociological issues. This compilation, on the other hand, contains many essays that stress truly legal dilemmas, although sociological, philosophical and other approaches to the question are still well represented among the thirty contributions.

However, the project illustrates two problems common in this field. First, its very diversity indicates a lack of consensus on what direction research in the area should take. Second, the content of some of the contributions suggests a need for increased sophistication in analysis of the legal issues at hand. It may be that commentary in this country suffers when compared to analysis in other countries simply because other nations' constitutional or legislative concerns have given rise to a large amount of complex litigation. However, as the contributors to this collection amply demonstrate, the situation in the UK is not so clear-cut as to eliminate the

need for critical analysis. Indeed, recent legislation on religious matters makes academic research more necessary than ever.

Those who are interested in the direction of research into law and religion should begin with Anthony Bradney's contribution. Not only does he offer a brief overview of the evolution of this field to explain why commentary on law and religion is less developed in the UK than in other countries, he also provides an intriguing proposal for new research agendas in this area. While others may prefer to follow different directions in their research, Bradney nevertheless brings to the reader's attention the need to begin to conceptualise the future shape of this area of law.

Another essay that addresses the question of first principles (one of the editors' broad subject matters) concerns the proper conception of religion in a postmodern world. The author, Gary Watt, brings a fine jurisprudential turn to his discussion of the extent to which rationality is relevant to accommodations granted to religious beliefs and practices. The piece demonstrates nicely that critical analysis need not rely on a massive backlog of case law.

The second major grouping of essays concerns "Religion and the Constitution", a topic which overlaps somewhat with the third grouping on human rights. Not surprisingly, essays in these sections are orientated more towards lawyers than some of the other selections, which tend more towards philosophy, hermeneutics and religious law *per se*, including Jewish and Islamic law. Unfortunately, at least for those interested in the status of domestic law, only one contributor, Peter Edge, focusses primarily on matters in the UK. While his evaluation of the religious elements in Parliament is helpful, the scope of his article does not allow him to consider two questions that he rightly acknowledges as important: the religious commitment of elected officials whose offices are not explicitly "religious" and the extent to which religious ideas affect legislative policy. These issues are often termed questions of public reason and are the subject of hot academic debate in other jurisdictions. It would be interesting to see how scholars in the UK view the matter, and this might be a fruitful area for future research.

The other pieces in this section focus less specifically on matters in the UK. For example, Peter Cumper considers the case law from the European Court of Human Rights ("ECtHR") and discusses the extent to which judges in the UK can and should rely on European jurisprudence in applying the Human Rights Act 1998. While this topic is of considerable importance in the UK, the discussion might have benefited from a longer format. Javier Martínez-Torrón also deals with the jurisprudence of the ECtHR, investigating the various strengths and weaknesses in the European case law with respect to freedom of religion and belief. He concludes that while the ECtHR has condemned religious intolerance, it has failed to realise the threat that secular intolerance poses to religious liberty.

While there is much of merit in the contributions appearing in these sections, several of the essays seem to operate under the assumption that the reader has little, if any, familiarity with the subject matter. For example, in his essay entitled "Human Rights, Religious Liberty, and the Universality Debate," Malcolm Evans spends a great deal of time reciting the provisions of various human rights instruments which concern religion. While his later discussion about the manner in which human rights and

religion offer competing claims to universal truth is more of the calibre that one expects of a scholar of Evans's stature, the opening section appears unnecessarily expository. It may be that Evans, like other authors in this section, believed it necessary to establish a certain amount of common ground. However, when so much time is spent laying the groundwork, little time is left for more complex analysis.

Yet another group of papers emphasises the role that group rights theory plays in ideas of religious liberty. Julian Rivers looks at the individual and collective aspects of the freedom of religious association, while Rex Adhar and Ian Leigh place the debate about whether the state should be able to interfere in the internal workings of religious groups in the context of discrimination on the grounds of sexual orientation. These last two papers segue easily into a series of papers related expressly to the extent to which the law of the state is and should be allowed to regulate purely internal affairs.

This collection of essays is full of positive messages about research in the field of law and religion. Broad support for and interest in this type of research obviously exists. If this field of inquiry is to progress, however, there must be more opportunity for lawyers to discuss issues of particular concern to them. Not only will this focus the research agenda on matters that are of legal (as opposed to sociological or philosophical) import, it will increase the degree of sophistication in the analyses offered as authors no longer feel the need to familiarise their readers with the existing state of affairs. The current collection shows there is no shortage of talent in this field. Each of the commentators offers able and novel insights. Now it is merely a matter of taking the analysis to the next level.

S.I. STRONG

Labour Law in an Era of Globalisation. Edited by JOANNE CONAGHAN, RICHARD MICHAEL FISCHL, and KARL KLARE. [Oxford: Oxford University Press, 2002. xxxii, 534 and (Index) 12pp. Hardback. £60. ISBN 0-19-924247-X.]

THE conception of Labour law as a distinctive branch of legal studies was a product of the late 19th century and the first half of the 20th century. The underlying theories (such as British collective *laissez faire* and US industrial pluralism) and the categories of legal thinking (such as "employee" and "contract of employment") were shaped in industrialised nation states where the typical subjects of the law were Fordist manufacturing companies employing full-time male workers in life-time jobs on standardised contracts often regulated by collective agreements with trade unions. That "classical" model of labour law is plainly untenable in the post-industrial 21st century world in which union density and collective bargaining coverage have dramatically declined, and the "contract of employment" has lost much of its analytical value as paid work is increasingly performed outside conventional employment relationships. The feminisation of the workforce is now an irreversible fact, with profound consequences for the division between "work" and "family", between paid and unpaid work, and between "jobs" and "careers". Perhaps, the most important changes are those resulting from modern