

Jacqueline Hoareau-Dodinau and Guillaume Métairie (eds), *La religiosité du droit*, Cahiers de l'Institut d'Anthropologie Juridique 35 (Limoges University Press, 2013), 328 pp, €28, ISBN 978-2842875817

This volume collects essays on the religious character of law in historical and cross-cultural perspective. It opens with a timely contribution by Jean-Pierre Levet on the religious foundations of political power in the Persian empire in the sixth century BC and closes with Néji Baccouche's critical observations on the persistence of Islamic thought in modern Tunisian law. In between, the reader will find papers that deal with the relationship between Christianity and French constitutional culture from the time of Charlemagne until the Revolution of 1789. The French perspective is completed by papers on Roman law, the German-Dutch natural law tradition, the debate about the religious origins of the US Constitution, and the adoption of Islamic criminal law in modern legal systems. Although the thematic scope of the book is limited to the impact of religion on political power, constitutional thought and criminal law, *La religiosité du droit* succeeds in giving both a broad and in-depth picture of the interaction between the secular and the spiritual throughout the ages. The authors' ability to communicate their quite sophisticated knowledge to the non-specialist with Cartesian clarity is certainly to praise for that. Non-francophone readers might just regret that the book does not include English abstracts.

A critical, if not sceptical view of the interconnectedness between religion and law dominates. For example, Mohamed Mahfoudh expresses his dismay at the repressive, almost tyrannical character of sharia-based criminal law in countries such as Iran, Oman, Pakistan, Sudan and Saudi Arabia. It prevents those countries from providing procedural safeguards to criminal defendants. Moreover, Mahfoudh sees the arbitrary nature of the substance of sharia-based criminal law as the basis of a culture of blind submission to authority ('culture de suivisme,' 301-02). The author regrets that even in Arab countries that have adapted their criminal codes to Western notions of rule of law, such as Egypt and Tunisia, the 'liberation' from Islamic thought has not been complete in practice. By the same token, Jean-Pierre Levet deconstructs the rhetoric of the divine origins of political power during

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the reign of Persian kings such as Darius and Xerxes, highlighting the arbitrary [decisions that](#) ensued from the religious justification of political authority (17). Opposite to this theocratic model from the East is the secular model of Roman law as the basis of Western civilization—at least that is the message brought [by Dominique Gaurier](#) in an article on the Roman law as the model of a secular legal system. Incidentally, Gaurier criticizes the dogmatic and anachronistic way of teaching Roman private law in modern law schools (50-51).

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The French republican ideal of 'laïcité' is, [however](#), never far away [and](#) American scholars will [want](#) to confront their view of the allegedly religious foundations of the US Constitution with that of [Blandine Chelini-Pont](#), a French historian from Aix-Marseille University. In a brilliant article, she analyses the conservative reinterpretation of the allegedly Christian origins of the American constitution that [began](#) in the second half of the twentieth century. In Chelini-Pont's view, the conservative turn in American constitutional thought as it appears in the work of Catholic law professors such as Charles Rice and Brent Bozell or in the political advice of theologians such as George Weigel and Richard John Neuhaus, must be explained against the background of the twin struggle against communism and a couple of left-wing, liberal decisions by the Supreme Court on abortion and sexual issues in the 1960s (271). It is not unlikely that Chelini-Pont's analysis differs from that of many American [constitutional scholars](#), certainly when she goes on to discuss the 'Ten Commandment'-cases brought before US courts since the 1990s. In accordance with the French doctrine of strict separation between Church and State, the author has little or no understanding for decisions by US courts that allow for explicit references to the Bible in public spaces (286). Chelini-Pont sees a stark contrast between the US constitution and Biblical principles, thereby accusing the "theo-conservatives" with distorting historical facts about the religious views of the founding fathers (292).

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The modern French [mind-set](#) of 'laïcité' contrasts with the profound symbiosis of law, politics and religion in pre-revolutionary France. For example, [in his essay Christian Cheminade demonstrates that](#) in seventeenth century France the monarch claimed to be the sole interpreter of true Christian morality, thus justifying his military campaigns from a religious point of view [\(204\)](#). In the mind of

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pre-revolutionary French citizens, the realms of the sacred and the political were not separated at all, as is further testified by Olivier Guillot's analysis of the stories about the heavenly support granted by Saint Martin of Tours to French kings such as Egid, Clovis, Charles Martel and Charlemagne (95), or by the miracles of justice in late medieval hagiographical texts [analysed](#) by Catherine Vincent (131). [Through an examination of the adaptation of Biblical texts such as Paul's letter to the Romans to medieval class society](#), Dominique Alibert shows how the Christian worldview permeated political views about the ordering of society in Carolingian times, (53). The iconographic expression of the emergence of a Christian normative system in twelfth century France, including architectural references to the 'weighing of souls' upon death, is the subject of a fascinating study by Esther Dehoux (69). It shows the usefulness of combining legal historical scholarship with art history. In addition, Gérard Guyon describes the impact of Christian notions of truth on the historical development of criminal procedure in the West (157). Mathias Schmoeckel reveals the theological convictions of natural lawyers such as [de](#) Soto, Grotius and Pufendorf, who profoundly shaped the Western legal tradition.

The contrast between modern French legal culture and the Christian legacy of the past is the subject of Joël Hautebert's thought-provoking chapter on the semantic shift in the notions of deontology and good morals in the wake of the French Revolution (225). He contemplates the consequences of the removal of any reference to the religious foundations of the legal system in the field of criminal law, in particular. In the same vein, Yvon Le Gall investigates the meaning of the notion that the natural and inalienable rights accorded by the French Declaration of the Rights of Man and Citizen are also to be considered as 'sacred.' She concludes that the meaning of this reference to the sacred should not be exaggerated (259). In this regard, the French Revolution truly constitutes a break with the past. As the eminent legal historian Jean-Marie Carbasse rightly notes in his compelling analysis of the pragmatic interpretation of the evangelic prohibition to kill in twelfth century canon law, modern French law has emerged from denying religion its role in the public space in the first place (173). This French model of separating law and religion is being challenged, however, by the

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realities of the day, especially the rise of a ‘French Islam,’ as the editors are bound to note in their foreword (10).

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