BOOK REVIEWS

SEXUAL SLANDER IN NINETEENTH CENTURY ENGLAND: Defamation in the Ecclesiastical Courts, 1815–1833 by S.M. WADDAMS, University of Toronto Press, Toronto, 2000, xvi+315 pp (£48; $75) ISBN 0-8020-4750-5

This study is both a legal and a social history. It raises a number of questions of wider interest; among them, the ending of the jurisdiction of ecclesiastical courts over lay people and the way in which a single case can change an area of the law.

In the first half of the nineteenth century ecclesiastical courts still had exclusive jurisdiction over matrimonial disputes. the probate of wills and defamation cases of certain kinds. The defamation jurisdiction dated from a Constitution of the Province of Canterbury 1222, in a period when 'notoriety' had become a ground for trial by inquisition and a corrective was perhaps needed to any tendency to believe that one need only point the finger to get an enemy convicted. The Constitution of 1222 provided for the excommunication of those who maliciously impute a crime, for the sake of gain, hatred, favour or for any other cause, to someone who was thereby defamed in the eyes of good and respectable persons.

The ecclesiastical courts lost their jurisdiction over defamation in 1855. The prompter was the case of Charlotte Jones and Louisa Roberts. In 1853. in a slanging match with a neighbour, Charlotte called Louisa a 'whore'. Charlotte was summoned to appear before the Consistory Court of the Diocese of Llandaff. She is said to have tried to dismiss the idea that the court could have jurisdiction over her. It was explained to her that it had. She was sent to Cardiff jail for contempt. William Simons, a solicitor in Merthyr Tydfil keen to attack the power of the ecclesiastical courts, took this as a test case. He got up a petition. He wrote to the newspapers. He made the point that Charlotte Jones was unwilling to take the oath which would have got her out of prison 'to obey the lawful commands of the ordinary', because she did not understand what she was being asked; she did not know what an 'ordinary' was. It began to seem absurd that bishops should retain such powers over the lives of the poor and ignorant laity that between 1827 and 1829 of sixty-eight persons imprisoned by the ecclesiastical courts, thirty-four were there for defamation. The Ecclesiastical Courts Commission had already reported in 1832 that proceedings in defamation suits had 'caused much odium' to the Ecclesiastical Courts.

The story Waddams tells is of the erosion of public confidence in the ecclesiastical courts, coupled with a lack of professionalism in the way they were run (which also has its mediæval antecedents in England, for example in the use of non-lawyers as judges delegate in appeal cases). The case prompted Phillimore to propose a middle way, that the power of imprisonment should be removed, but that there should continue to be a requirement that slanderers should apologise in the parish church to those they had injured. The jurisdiction of ecclesiastical courts over the laity was removed bit by bit: defamation in 1855; matrimonial and probate jurisdiction in 1857; jurisdiction to punish brawling on church premises in 1860; compulsory church rates in 1868.

The core of the book, for the lawyer, lies in the excellent chapters setting side by side the common law and the ecclesiastical law on defamation by sexual slander. For the latter the lack of straightforward evidence means that Waddams has had to piece together the principles from small and allusive scraps. The result is a coherent and convincing picture.

There is an analysis of the courts and their officers, patterns of litigation, evidence, costs and penance. The remarks on penance touch on the persistence of 'the penance of public exposure in a white dress', a practice of the early Church (for the serious sins of adultery, murder, apostasy), which had gone out of use from Carolingian times and was not a mediaeval practice at all. To find it revived after the Reformation in England, albeit only in some dioceses, with private penance the more usual requirement, is striking; further study of the records might yield valuable results here.

The final section of the book covers the parties, the injury, motives and consequences, with tables summarising the distribution of cases and a set of illustrative case papers.

This is a pioneering, solid and impressive book about larger matters than its ostensible subject and it will be the starting-point, one hopes, for further researches tracing the survival of mediæval ecclesiastical court usages and assumptions in a changed world.

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LAW AND RELIGION, edited by REX J. AHDAR, Aldershot: Ashgate, 2000, xiii + 221 + bibliography and index. ISBN 1-84014-745-8 (paperback £19.50) 1-84014-757-1 (hardback £55)

This is a collection of nine essays and an introduction by the editor, who has brought together a stimulating mix of disciplines and approaches, including traditional legal analysis, criminal justice, human rights reasoning, ethics and international policy. The blend is generally harmonious, although Calum Carmichael's analysis of the Ten Commandments seems slightly out of place, being located more specifically within a subset of religious traditions than the other contributions. Papers come from leading scholars from Australia, England, the United States, The Netherlands, and New Zealand, and in some cases represent a continuation of a well-established specialism, such as the essay by James Richardson on controversial religious groups and satanic ritual abuse allegations. The essay by Davina Cooper on the Barnet *eruv* is a slightly revised version of her well-known 1996 paper in the Journal of Law and Society.

Rex Ahdar's introduction to the collection brings the papers together well. He sees an increased collision between the worlds of religion and law, which can be explained by two interdependent and conflicting phenomena: the pervasiveness of the modern state (and thus the reach of the law), and the resurgence of religion. This can certainly be defended in relation to the particular jurisdictions discussed (the United Kingdom, Australia, New Zealand, and the United States), and to a large extent in the transnational bodies discussed (the European Union, Council of Europe and Organisation for Security and Co-operation in Europe; and the Human Rights Committee).

Carmichael's concerns are with the interdependency of law and religion, principally in the context of the Ten Commandments, although he draws parallels with teaching in contemporary US law schools and with Greek mythology. He argues that every system of law needs an augmentation of its rules to give it authority, and that in the Decalogue this is achieved partly through the supernatural aura surrounding its reception. If one of his concerns is the extent to which law draws upon the power of religion for its own authority, Malcolm Evans's discussion of the work of the Human Rights Committee shows the extent to which this power can be seen as a threat to state authority. In a fine discussion of Article 18 of the International Covenant on