BOOK REVIEWS

FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS by CAROLYN EVANS, Oxford University Press, 2001, xxv + 222 pp (hardback £40.00) ISBN 0-19-924364-6.

The giving of further effect to the European Convention on Human Rights in domestic law has resulted in an explosion of interest in the European Court's jurisprudence in the United Kingdom. This interest has, to some extent, been fuelled by publishers trying to convince everyone, if they so needed, that the Human Rights Act 1998 was of profound importance. In the published literature, especially since 1998, one can increasingly categorise United Kingdom published monographs on the basis of whether a book deals with the Convention in general, and will thus be of interest internationally to human rights and public international lawyers, or whether it is aimed primarily at a domestic legal audience, attempting to further inform them as to the workings of the Strasbourg bodies and the constitutional devices to be found in the 1998 Act. The book under review falls very firmly into the former category, as it is a general treatment of Article 9 of the Convention. It is almost certain, however, that how favourable or unfavourable a review of this book will be depends on which perspective one approaches it from. For a domestic lawyer, with an interest or specialism in ecclesiastical or religious legal issues, who wishes to determine the impact of the 1998 Act and the Convention upon such issues, this book, while possibly an interesting treatise on Article 9, will not be of great practical usage. If it were reviewed by such a person I can imagine that the review might not be entirely flattering. Approached from a public international law perspective, however, this book becomes something quite different; a well written and thorough account of the development and interpretation of Article 9 by the European Court. This reviewer's approach is the latter.

The book is based upon a doctoral thesis submitted and successfully defended at Oxford University. The structure and scope of the book are very much in the doctoral tradition of being quite narrow and focused in approach. The book does not, for example, in its earlier chapters deal extensively or more generally with the conceptual and philosophical issues concerned with freedom of religion but does so in a relatively narrow manner. It is not, however, its aim to look at religion in a global context but in a European one and thus the relatively narrower focus is not entirely out of place. Those theoretical issues which are explored in an early chapter, however, are not really developed or used as a theme in the later chapters, which is somewhat disappointing. Having developed and discussed a theoretical framework it is difficult to see why it does not form the conceptual tool for analysis in the later chapters. The relatively narrow focus of the book is also reflected in the fact that there is limited discussion throughout the text of other international treaties and documents which protect and articulate the components of the right being considered.

The later chapters of the book do, however, discuss in significant depth the different issues the Court and Commission have had to deal with in applications invoking Article 9. Different chapters, therefore, deal with how the Court and Commission have defined religion or belief, the positive and negative aspects of protecting the freedom to such belief and the limitations on those rights as recognised in Article 9(2). Article 9, like Articles 8, 10 and 11, illustrates the clear balancing exercise the European Court has to engage in when determining the respective interests of the State and individual. Logically analysing and describing the different issues raised by these provisions is not a simple or straightforward task but one which the author

here achieves admirably. The structure of the book and the approach adopted ensure that the topic is manageable and dealt with in a coherent logical manner. While it is not always possible to agree with the author's conclusions that much is to be expected. Where the author is very susceptible to criticism, however, is the fact that despite some trenchant criticism of the Court's jurisprudence, aspects of which are rightly considered to be incoherent and inconsistent, she fails to discuss what alternatives the Court had or the inadequacies of the Court's jurisprudence through the lens of her opening theoretical framework. This would have ensured that the opening analysis was utilised and provided a sounder basis for later discussion. Perhaps this is something that can be addressed in a later edition.

The real strength of this book lies, however, not in the analyses and critique that are presented but in the fact that although it is no longer difficult to find well written books which deal generally with the Convention, as the series editor notes, books which deal with one particular provision of the Convention are still a rarity. Although the standard texts which deal with the Convention, such as Harris *et al.*, and Van Dijk and Van Hoof, on the whole, deal magnificently with the Convention provisions in the space available, the explosion in Convention jurisprudence makes it increasingly difficult to feel that each provision and all its different facets are being adequately analysed and dealt with. This book, which is the first in a series by Oxford University Press dealing with specific provisions of the Convention is, therefore, a very welcome addition to the literature. The extensive bibliography, reference to the *travaux préparatoires* and exhaustive referral to Commission and Court decisions will ensure that this is compulsory reading for anyone who wishes significantly to further their knowledge of Article 9 beyond the treatment in the above mentioned textbooks. Despite the niggles noted above, overall this is a well written, enjoyable and thought-provoking read. It is to be hoped that the subsequent titles in this series maintain the standards which have been set by Dr. Evans.

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MARRIAGE DISPUTES IN MEDIEVAL ENGLAND by FREDERIK PEDERSEN, Hambledon Press, 2000, vii-xi + 235pp (hardback £25), ISBN 1 85285 198 8

A student of modern family law would be excused for thinking that the jurisdiction of the ecclesiastical courts mattered little, such has been the predominance of the secular courts in this area since 1857. In this study of the Church courts of the province of York mainly during the 14th century, Frederik Pedersen demonstrates just how much things have changed. Not only were medieval marriage disputes resolved by ecclesiastical courts, the legal rules governing marriage appear to have permeated through all strata of medieval society and to have influenced the marital behaviour of much of the population.

Pedersen begins his study with a brief and useful introduction to medieval marriage. The outstanding feature of the medieval ecclesiastical law of marriage was its informality. The appropriate exchange of words was sufficient for the parties uttering them to be married, subject to each having the requisite capacity. The presence of a priest, or the soleminisation of the proceedings in a church, were not necessary, although they were clearly relevant as evidence of a marriage. This simplicity, however, carried two difficulties. The first was that the type of words used by the parties mattered a great deal, as ecclesiastical law made a distinction between statements of intent to marry immediately ('*verba de presenti*') and promises to marry in the future