who invests time and attentiveness in this magisterial and comprehensive synthesis of history, law and theology.

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Church and State in Scotland: Developing Law

Francis Lyall

Routledge, London and New York, ICLARS Series on Law and Religion, 2016, xiii + 239 pp (hardback £120.99) ISBN: 978-1-4094-5064-1

This is a welcome addition to Scottish literature on the relationship between church and state. In recent years there have been useful works which address this topic, such as the late Lord Rodger's study of the Disruption of 1843 (*The Courts, the Church and the Constitution* (2008)) and Dr Finlay Macdonald's short history of the Church of Scotland (*From Reform to Renewal* (2017)). Professor Lyall's contribution takes a broader perspective, looking at the law in relation not only to the established church but also to other denominations and also discussing the relationship between religion and legal regulation in modern society.

After an introductory chapter, Chapter 2 contains a brief overview of the Church of Scotland from the start of the Reformation in 1560 until the events which led to the Disruption of 1843. Lyall portrays the origins of the Disruption in the conflict between the Crown's attempts to control the Church and the idea of a church which was truly independent of the state, an idea which was included in Andrew Melville's *Second Book of Discipline*, which the General Assembly approved in 1578.

Chapter 3 recounts the sad history of the unnecessary conflict between church and state which led to the Disruption and its aftermath. The conflict was manifested in court cases about the right of patronage, which the civil law treated as a right of property, and the asserted right of a congregation to nominate and appoint its own minister. When in 1834 the Evangelical movement gained a majority in the General Assembly of the Church, it passed what came to be called the Veto Act, prohibiting the appointment of a minister to a congregation against the will of the people. In the same year the General Assembly passed the Chapel Act, which gave full membership within the court structures of the Church to the ministers of new churches which had been created within existing parishes in order to cater for social and demographic change. Nine years of

litigation followed, starting with the Auchterarder cases, in which a patron challenged the legality of the Church's Veto Act. A challenge was also made to the Chapel Act by a patron and heritors in the Stewarton case. On each issue the civil courts found against the Church, often in rather trenchant terms.

Unable to obtain redress from the state, about one-third of the ministers left the Church of Scotland to form the Free Church of Scotland. Subsequent statutory reforms facilitated the creation of new parishes, abolished patronage and gave the Church greater liberty of action in discipline and internal governance. The diversion of energies to the schism, and the steady takeover by government of the Church's responsibilities for social welfare and education greatly diminished the role and influence of the Church of Scotland.

Chapter 4 traces the reunion of the Church of Scotland and the United Free Church which Parliament facilitated by enacting the Church of Scotland Act 1921. This recognised the spiritual independence of the Church while preserving the civil jurisdiction of the courts in relation to matters of a civil nature. The 1921 Act continues to regulate the modern Church. Professor Lyall points out the (perhaps unavoidable) lack of legal clarity in the declaratory articles in the 1921 Act on what doctrines are fundamental or involve the substance of the faith, and the scope for liberty of opinion. He discusses the controversial *Percy* case (2006), which sharply demonstrated how the 1921 Act could not protect the Church against later parliamentary legislation, and the recent controversy over homosexuality, which the Church has sought to resolve by allowing a congregation to call a minister or deacon who is in a civil partnership.

Chapter 5 contains a very valuable discussion of the position of churches in Scotland which are outside the establishment. The law has treated them as voluntary associations without legal personality and many have structures which have made them difficult to sue. There has been a rich vein of ecclesiastical litigation in Scotland which has enabled the civil courts to lay down the scope of their jurisdiction. The courts do not involve themselves in matters of pure doctrine but have jurisdiction (a) in matters affecting civil rights, (b) where a body acts beyond its constitution in a manner affecting the patrimonial rights of its members, (c) if the body is guilty of gross irregularity of procedure which attacks the fundamentals of the contract between its members or (d) where malice is proved in what were otherwise regular proceedings. Where a religious body does not have power to alter its fundamental doctrines, disputes over who is entitled to property where one group alleges that another has deviated from the body's founding doctrines have been a fertile source of litigation. The civil law applies the law of trusts, holding that the property is held for the principles of the Church, and does not recognise majoritarian rule. The rich seam of jurisprudence resulting from Scots people taking stances on a matter of principle helped inform the Supreme Court when it had to address similar issues in the

context of a property dispute concerning Sikh temples in England in *Shergill v Khaira* in 2014.

In the final three substantive chapters Professor Lyall discusses the historical changes to the role of the Church in education and in personal relationships (especially marriage), and considers the other interactions of religion and law, including human rights and religion, broadcasting, Sunday observance and modern charity law. In these chapters one can trace the increasing secularisation of society, including the ceding of control or influence over education to the state, the declining significance attached to the institution of marriage, and the difficulties which religious bodies have faced from the assertive application of equality and human rights legislation, in a society in which religious belief has become a minority interest.

Professor Lyall makes several interesting suggestions to address the role of churches in an increasingly secular society, including that there should be a civil marriage ceremony separate from a religious ceremony (p 160) and that the dissemination of religious belief should no longer be a charitable purpose which the state supports through tax relief (pp 214–215).

There are little errors which can be corrected in a later edition, such as the statement in the introduction that 391 years had passed between 1707 and 1998, the misattribution of a judicial opinion of Lord Glennie to Lord Grieve (p 119), the repeated definition of the BBC in Chapter 8 and the omission of '4' when referring to an earlier chapter (p 226). But these do not distract from a very valuable work.

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Religion, Equality and Employment in Europe: The Case for Reasonable Accommodation

KATAYOUN ALIDADI
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The concept of reasonable accommodation is developing into a highly debated issue. It has been debated in the Supreme Court (*Bull v Hall* in 2013), by the Equality and Human Rights Commission (the report on 'Religion or belief in the workplace: an explanation of recent European Court of Human Rights judgments') and by the European Court of Human Rights (*Eweida and Others v The United Kingdom* in 2013). Alidadi's contribution is therefore timely. The