LAW AND RELIGION EDITED BY REX J AHDAR [Ashgate, 2000; xiii + 229 pp (including index): £19.50].

THE legal philosophies underlying the common law on either side of the Atlantic are studies in contrasts (see generally Atiyah and Summers, *Form and Substance in Anglo-American Law* (1987)). Crudely put, the English position has been one rooted in positivism, which entails a conceptual separation between law and morality (see the classic work of Professor HLA Hart in *The Concept of Law* (2nd ed, 1994) as well as Atiyah and Summers, *supra,* and Phang, "Positivism in the English Law of Contract" (1992) 55 MLR 102), whilst the American position has been far more substantive (see *eg,* Duxbury, *Patterns of American Jurisprudence* (1995), and (again) Atiyah and Summers, *supra).*

The contrast could not be greater, as evidenced by the extreme particularism and (consequent) relativism that have characterized American legal thought, particularly during the twentieth century. In even more extreme versions, American

jurisprudence has embraced the nihilistic postmodernism that is present, for instance, in the main forms of Critical Legal Studies. Nor does the positivism that is so much a part of the English system provide satisfactory answers either: it is one thing to recognize a doctrinal structure as essential to legal analysis and discourse; it is quite another to rely on that structure – and that structure alone – to furnish one with satisfactory answers to the pressing issues of law that (for the most part) entail a resolution of extra-legal issues as well (such as morality). Is there, then, an overarching objective as well as universal basis that avoids the pitfalls engendered by such contrasting concepts as relativism and formalism?

One answer lies in the sphere of natural law. Yet, even within that particular sphere, there have been contrasting approaches. On the one hand, there is the attempt to formulate a basically secular approach (see *eg,* Fuller, *The Morality of Law* (Revised ed, 1969)). On the other hand, there is the so-called 'old-fashioned' approach that is premised on transcendent concepts, *ie,* on *religion (cf* Finnis's *Natural Law and Natural Rights* (1981), which (in the present reviewer's opinion) attempts to straddle both approaches rather awkwardly; see also Tan, "Justification in Finnis's Natural Law Theory" [2000] SJLS 590). Given the pluralism present within the multifarious worldviews that are very much a part of our everyday lives, there is an understandable reluctance to discuss theories of law that have as their root source and justification a particular conception of religion. Yet, such so-called 'tolerance' does not accord any religion the respect it deserves, which respect can only be located in the dialogue and discourse present in the freemarket place of ideas. Looked at in this light, the present book under review is to be greatly welcomed. In the first instance, there are so very few books of this nature around: for precisely the reason just mentioned. It is hoped that this volume will herald more works in this genre.

This book, as its title suggests, is a volume of essays that focuses on various aspects of the relationship between law and religion. The contributors are all experts in the field. There is also an excellent analytical overview of the various essays in the first chapter by the editor, Dr Rex J Ahdar (entitled "The Inevitability of Law and Religion: An Introduction"), and so it would serve very little purpose to attempt yet another summary of the contents of the essays themselves. Hence, only the briefest of sketches will be undertaken here. Before proceeding to do so, however, mention should be made of the illuminating foreword by Lord Mackay of Clashfern, who points pertinently to the revival and resurgence of religion and the related need for more information that contributes (in turn) to a more nuanced as well as effective resolution of the various issues of law and religion.

Insofar as the editor's own introduction (mentioned in the preceding paragraph) is concerned, one should also add that it contains many valuable insights of its own. And it does not mince words: for example, the learned author points to the obvious (but little discussed) proposition that the ultimate source of legal authority in a legal system must be either transcendent or temporal. This has, in fact, tremendous implications for the way one perceives and applies the law. His capsule summary of the gradual parting of company between law and religion is instructive as it is succinct. He also points (as Lord Mackay does) to the (countervailing) fact today that "the worlds of religion and law appear to be increasingly colliding" (see p 3) – the aridity of the material world appears, not surprisingly, to have proven too much as more and more seek the oases of spirituality. That raises, of course, other issues: for instance, whether reason is *necessarily* distinct from faith and, if not, what the extent and content of the integration is (*cf* Phang, "Security of Contract and the Pursuit of Fairness" (2000) 16 JCL 158). A related issue, also touched on by the editor of the present volume as well as many of the contributors

themselves, is the manner in which the law is to be utilised in a world comprising so very many worldviews.

Returning to an extremely cursory overview of the various essays, the first, by Professor Calum Carmichael (entitled "The Ten Commandments: In What Sense Religious?"), is an intriguing study which seeks to relate the Biblical rules contained within the Ten Commandments (or, more accurately, the Decalogue) to the Biblical narratives (principally, that in the Book of Genesis in general and the story of Abel and Cain in particular). Looked at from another perspective, however, the learned author could perhaps have gone one stage further: are there any reasons that might support the *divine origin* of the content that he so ingeniously links together? If so, then religion gives authority to law in more than just an instrumental sense (see also, in this regard, the editor's own views at pp 5-6).

Professor Malcolm D Evans's essay (entitled "The United Nations and Freedom of Religion: The Work of the Human Rights Committee") reveals the various difficulties faced by the United Nations Human Rights Committee in applying Article 18 of the International Covenant on Civil and Political Rights.

Professors Michael W McConnell and Marie A Failinger both give us extremely illuminating and thought-provoking essays centring around that very problematic part of the American Constitution, *viz,* the Religion Clause contained within the First Amendment (the essays are entitled "Neutrality, Separation and Accommodation: Tensions in the American First Amendment Doctrine" and "Wondering after Babel: Power, Freedom and Ideology in US Supreme Court Interpretations of the Religion Clauses", respectively). Professor McConnell points to the intractable clashes that find their source (in part at least) in the quite different approaches to constitutional interpretation adopted by the American courts. He also quite correctly indicates the internal inconsistency inherent within the Clause itself inasmuch as "the Free Exercise Clause required what the Establishment Clause forbade; and the Establishment Clause required what the Free Exercise Clause forbade" (see p 74). As the title of her essay suggests, Profesor Failinger focuses on the relevant Supreme Court jurisprudence, which she quite persuasively demonstrates to have been "traveling in somewhat of a doctrinal circle" (see p 82) – although she also usefully summarises everything by way of theoretical reflection in the second substantive part of her essay. These are both fascinating studies, particularly for non-Americans seeking an understanding of how such few words could have provoked so very much controversy.

Professor James T Richardson's essay (entitled "Discretion and Discrimination in Legal Cases involving Controversial Religious Groups and Allegations of Ritual Abuse") points, amongst other things, to the very real dangers surrounding the introduction of prejudicial evidence in very sensitive religious cases, whilst Mr Julian Rivers, in his essay entitled "From Toleration to Pluralism: Religious Liberty and Religious Establishment under the United Kingdom's Human Rights Act", is a very informative account of the Human Rights Act of 1998 which simultaneously demonstrates the vagueness that is to be found therein. Of interest, too, is his observation that "the Human Rights Act would appear to be shifting the nature of religious liberty in the UK from a model of Christian toleration to one of religious pluralism" (see p 155).

Professor Sophie C van Bijsterveld's essay (entitled "Religion, International Law and Policy in the Wider European Arena: New Dimensions and Developments") is, as the title itself suggests, informative but (for this reviewer at least) is particularly striking in its succinct attempt to delineate the very relevant social and political *context* of religious liberty itself.

The final two essays are rather more specific in focus but nevertheless give much food for thought in the more universal sphere. This is of course not surprising in the least because one cannot really draw a strict dichotomy between the universal on the one hand and the particular on the other. Indeed, the whole point of universal theory is that it might guide particular action. Dr Reid Mortensen's essay (entitled "Art, Expression and the Offended Believer") is one that finds resonances in every country, focusing (as it does) on balancing the difficulties engendered by a strict application of blasphemy laws on the one hand and the need to avoid offending religious sensibilities on the other. Professor Davina Cooper's essay (entitled "'And was Jerusalem Builded Here?' Talmudic Territory and the Modernist Defensive") is a very interesting study of the conflicts engendered by the installation of an *eruv* in an English borough. The *eruv* itself is an extension of space, which enables a relaxation of Jewish Sabbath carrying restrictions *vis-à-vis* objects (the restriction is one pertaining to the transporting of objects between the public and the private domain during the Sabbath, and the *eruv,* by notionally extending the private domain (in this instance, by the erection of a series of poles joined by thin, high wire), results in the extension of the permissible space, thus allowing transportation legitmately to take place). What appears at first blush to be a highly specific topic actually conceals much broader issues: for instance, the very important perspectives and philosophies (and, even possibly, prejudices) underlying the views of the opponents to the installation of this particular *eruv.*

The essays are certainly informative and analytical. If there is one theme that informs all of them, it is that of conflict and controversy in all their multifarious forms. Given the inherent nature of the subject, this is not surprising. It is therefore somewhat disappointing that the essays (apart from the editor's own introductory piece) did not really grapple with the issue of *and* possible justifications for an objective approach that might take, for example, the form of a religious natural law theory. This is *itself* a controversial issue but it is, in my view, unavoidable. It is one thing to discuss the various points of stress and conflict but it is also imperative that some attempt be made to resolve such conflicts by recourse to arguments of objective theory and value. In a world of many worldviews, this is a tall (some would even argue, impossible) order. But it is surely worth the attempt. However, in all fairness, the nature of the present work (a collection of essays) was perhaps not conducive to such an enterprise which, ideally, demands a much more extended and holistic study. As I have already mentioned, the various essays themselves are scholarly, interesting and thought-provoking and the entire volume constitutes an excellent addition to the existing literature in this increasingly important area of the law.

ANDREW PHANG