that the imposition of strict cloister for women was, in some sense, a 'radical change in the discipline of female religious houses'. The goal of the cloister, since ancient times, has been to provide the religious house with peace and quiet, in a place where the members may effectively be able to dedicate themselves to the pursuit of evangelical perfection. The enclosure is also not unconnected to the protection of chastity, to avoid what may threaten it: it thus follows that the enclosure prohibits entrance into the monastery of persons of the other sex, with exceptions made either by law or by the house's own rule or typicon. Some elements of the cloister were found at the very beginning of monasticism: Pachomius (early fourth century AD) established enclosure in his monasteries, and regulated the cloister of women's monasteries in a different and much stricter fashion than in men's monasteries (*Praecepta* nn. 51–5). The Church's universal law, also, regulated the enclosure of women's communities (even in cases in which it did not do so for men's communities) through such enactments as c. 4 of Chalcedon (451), c. 46 of Trullo (691), and c. 20 of Nicaea II (787), as well as the legislation of Justinian. Even in such 'non-monastic' rules as that of Augustine, the female version of the rule contained different, and stricter, provisions for enclosure than did the male version (although, rather surprisingly given its influence in the Middle Ages, Augustine's rule is not mentioned in Makowski's book at all). The introduction to this book does not address the development of the canonical institution of enclosure for women's communities (as distinct from the enclosure of men's communities), but rather contends that there was a 'fundamental equality' between monks and nuns (reiterated, for the most part, based on the secondary sources). On the basis of the primary sources, however, one cannot support such a contention, given the numerous distinctions made between enclosure in communities of men and women, from the very beginnings of monastic history.

The provisions of *Periculoso* would certainly be seen in a different light if it were shown that they applied (for the first time by papal authority) regulations which were, in fact, already contained both in the Church's common law (both East and West) and the various rules of women's communities. The 'innovation' in *Periculoso* was not, as the author contends, that nuns were for the first time treated in a different way than monks, but rather that this difference became a matter for legislation on a new and higher level than it had before.

RELIGIOUS INSTITUTIONS AND THE LAW IN CANADA by M. H. OGILVIE. 1996. Carswell. ISBN 0–459–25392–1(hardback £42), ISBN 0–459–25398–0 (paperback).

A review by Professor Ian Leigh, University of Durham

For those interested in religious liberty, Canada is a fascinating test-bed. As in the United States and Australia, successive waves of immigration have left their mark so that the present population (especially in the major cities) is a remarkably diverse blend of ethnic and religious groups. This is partly the result of post-war immigration from South-East Asia, but long-standing Jewish and Orthodox communities exist also. Religious toleration has been written into the very fabric of the Constitution, dating back to the Confederation of 1867 when the predominantly Protestant Upper Canada joined with the predominantly Roman Catholic Lower Canada. Professor Ogilvie grounds her account of the law relating to religious institutions (predominantly churches and schools) and legal recognition of religion in this constitutional history.

After a valuable introductory chapter dealing with politico-theological theories of church-state relations, in chapters 2 to 4 the history and development of religious institutions in Canada and the impact of the Constitution upon religion are consid-

ered. To constitutional lawyers the Canadian Charter of Rights 1982 will immediately come to mind, with its protection in section 2(a) for the fundamental right of freedom of conscience and religion. Many British public lawyers will be familiar with two early Charter decisions of the Supreme Court on Sunday trading in *R v Big M Drug Mart* [1985] 1 SCR 295 and *R v Edwards Books and Art Ltd* [1986] 2 SCR 713, but as the account here shows there is a much richer Canadian jurisprudence of freedom of religion, both pre- and post-Charter. As the United Kingdom stands on the brink of incorporation of the European Convention of Human Rights in the Human Rights Bill, and the churches struggle to come to terms with the implications (whether or not the final version of the legislation imposes duties on them as 'public authorities'), the Canadian case law on the Charter will be one of several sources to be drawn on, especially in view of the relative paucity of authority on Article 9 of the European Convention. This book will be a useful introductory reference for United Kingdom lawyers to the freedom of religion case law. Professor Ogilvie describes the function of the Charter thus (p 44):

> 'The result is that since 1982, the religious history of Canada has come to be shaped more by the judiciary than by the religious institutions themselves as adherents of all religions try to make a space within Canada through the law, as well as adherents of none.'

Perhaps this is the shape of things to come in the United Kingdom also?

This, however, is a distinctly British diversion from the book's professed purpose, which is to provide a guide to the law for two groups: practising lawyers and those involved in church administration. Accordingly, there are substantial chapters on the governance and property of religious organisations as well as discipline of clergy and laity (chapters 8 and 9). Alongside these is a treatment of related matters in the law where religious belief is relevant, notably evidence, the criminal law, education (a substantial topic in view of the different provincial guarantees for denominational schools) and employment. Many of the issues, for example controversies of religious education and school prayer and Sunday trading, will be familiar to a British audience also. The overall effect is a Canadian work of rather similar scope to St John Robilliard's *Religion and the Law* (Manchester 1984). The depth of treatment is variable: a more contextual approach is taken to the law relating to religious institutions and education, while the remainder is generally descriptive, rather than critical, in keeping with the needs of the target readership. The one major weakness is one anticipated by the author in her preface (vi): the slight treatment given to non-Christian religions. Despite the historical justification for this emphasis, more could have been made of the implications of human rights (anti-discrimination) legislation and—a matter of an explosion of scholarly interest—the law relating to 'First Nations' (Aboriginal and Indian groups). If prediction made about the Charter of Rights comes to be fulfilled, no doubt the balance will have to be redressed in future editions.

SCANDAL IN THE CHURCH; DR EDWARD DRAX FREE by R. B. OUTHWAITE. 1997 The Hambledon Press, London and Rio Grande, xvi + 184 pp (hardback £19.95), ISBN 1–5285–165–1.

A review by D. W. Elliott, Emeritus Professor of Law in the University of Newcastle upon Tyne

On 15 February 1830 the High Court of Delegates confirmed the sentence of the Court of Arches depriving Dr Edward Drax Free of the living of Sutton in Bedfordshire. On 22 March sequestrators took possession of the church, but the