

permits an understanding of the relation between concepts, to be found in the mind, and things in the world (cf. 35). This fundamental consideration leads Wallis to assign great relevance to the distinction between a logical-linguistic and an ontological mode of engagement with philosophical questions.

To sum up, we cannot but value highly the work here presented. It seems we need only add an observation about certain imprecisions regarding the exact location of *distinctiones rationis* in the *Disputationes metaphysicae* by Suárez. Specifically, *distinctio rationis ratiocinantis* is dealt with in *DM* 7,1,4, not in *DM* 7,1,8, as Rampelt says. Furthermore, *distinctio rationis ratiocinatae* is found in *DM* 7,1,5, not in *DM* 7,1,9, as Rampelt also claims. With this we wish nothing more than to contribute to enhance the already considerable scientific merit of this book.

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Caroline R. Sherman

The Uses of the Dead: The Early Modern Development of Cy-Près Doctrine. Studies in Medieval and Early Modern Canon Law, 16. Washington, DC: The Catholic University of America Press, 2018. Pp. xvii + 461. Hb, \$75.00.

Both chronologically and thematically, this book covers much more than its modest title suggests. Not only does it offer a meticulous study of the early modern developments of cy-près—a *common law* doctrine that gives judges the power to redirect charitable gifts to a new purpose. In fact, the first two chapters feature a broader intellectual history of ancient and medieval Christian attitudes towards wealth and gifts, while the third analyzes the development of the civil and canon law doctrine on the reinterpretation of gifts and testaments in the continental *ius commune* tradition. This long introduction is necessary to understand why the author cannot agree with the traditional account about the historical origins of cy-près. When the first cy-près rulings start being documented in the seventeenth century, common law judges claimed authority from the *ius commune* in applying the doctrine. Ever since, this argument from authority has been taken as corresponding to historical reality. However, Sherman argues that some of the most distinctive features of cy-près rulings, including the possibility that the judge completely ignores the rights of the heirs, cannot be retrieved in the *ius commune* doctrine about changing the purpose of gifts. In medieval canon law, the so-called conversion

of a gift, implying the change of its use or purpose under the authority of the bishop, required the consent of all interested parties, including the heirs.

According to Sherman, the origins of *cy-près* lie in the early modern period. Against the background of royal absolutism and the rejection of Roman Catholic institutions, prerogative *cy-près* allowed the English king to expropriate the church by reorienting religious gifts to new purposes supporting the Established Church. As the author notes, “The Pope could be ignored, a prior could be frightened into surrender, monks could be pensioned off, but the legal moral rights of a founder were more difficult to overcome” (263). Prerogative *cy-près* made possible precisely that legal transformation. By maintaining that the traditional purpose of a gift had become superstitious or non-conforming, it could be redirected towards new ends. Ultimately, prerogative *cy-près* may have set the stage for judicial *cy-près* to develop (5). Through judicial or “equitable” *cy-près*, judges could redirect charities and trusts by going back to a more general intent “approximating” the donor’s original but failing intent—etymologically speaking, *cy-près* is derived from the French “as close as one can get” (*aussi près que possible*). The author explains that *cy-près* differs from the power, granted to bishops on account of canon law, to give a specific destination to a general gift made “to the poor” or “to charity,” precisely because *cy-près* entails the substitution of one specific purpose by another (12). Moreover, *cy-près* prevents gifts from reverting to the original estate or its heirs.

Sherman demonstrates that the emergence of the distinctive features of *cy-près* doctrine coincide with the rise of cultural developments that are typical of the early modern period, such as (legal) humanism and Protestantism. For example, in answering the question what the Lutheran Church should do with church property acquired through pious gifts and bequests, Melanchthon answered that the property should not be returned to the heirs (233). Rather, the church endowments should be re-used by the reformers to new ends. Poor relief and education supervised by the public authorities became the most frequent alternative uses which the reformers and Christian humanists, including Juan Luis Vives (176), promoted. On the basis of an influential passage in Justinian’s Digest (the so-called “Modestinus opinion”), Jacques Cujas, the French legal humanist, supported Melanchthon’s assertion that old church property should not be returned to the heirs but used for educational purposes and other public goods. Similar viewpoints were advanced in England by Christopher Saint German, a common lawyer and protagonist of Henrician reform politics (292). As Sherman admits, however, the shift in understanding was not exclusive to Protestant-minded reformers. As a matter of fact, an advice concerning the reform of the Catholic Church commissioned in 1536 by Pope Paul III already contained the idea that pious gifts and the will of the testator should be enforced even at the expense of the heirs (255).

The notion that the heirs of the testator remain connected to the pious gift was loosened not only by Protestant reformers, but also by early modern canon lawyers, as Sherman explains in a fascinating paragraph on “canon law’s cy-près moment” (151). In this reviewer’s opinion, this section in the book could be a reason to question the author’s claim that modern common law cy-près did not originate in the *ius commune* tradition. If one is willing to accept that the *ius commune* tradition did not end in 1500 but continued to evolve afterwards, then early modern canon lawyers’ and Catholic moral theologians’ treatment of failing charitable gifts deserves even closer examination. However, the author of the book under review is persuaded that, although the connection to the heirs was loosened in the early modern canon law tradition, it was not altogether lost.

This is exactly the point where a brief, but interesting treatment of a couple of Jesuit authors is introduced in the monograph. Tomás Sánchez is cited as an example of canon lawyers in the early seventeenth century still affirming the relevance of the heirs’ consent in redirecting the purpose of charitable gift. Henri Pirhing, on the other hand, argued that the bishop could ignore the interest of the heirs if they had no just cause to refuse their collaboration in redirecting the purpose of the bequest. However, this cy-près-like viewpoint is said to be merely a reaction to the new views circulating in the mid-seventeenth century (157). Moreover, Francis Schmalzgrueber’s willingness to ignore the interests of incalcitrant heirs is downplayed as a minority viewpoint, which can be explained by the specific historical circumstances under which the Bavarian Jesuit operated. Whatever value the reader attaches to this argument, it is clear that Sherman has opened up new horizons for research not only about the history of cy-près doctrine in the strict common law sense word, but also about the relationship between Christianity, property, and last wills in general.

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Marianne P. Ritsema

The Holy Land in Observant Franciscan Texts (c.1480–1650): Theology, Travel, and Territoriality. Leiden: Brill, 2019. Pp. 260. Hb, €132.00.

Ritsema’s monograph is a recent contribution to a remarkably vigorous field of research on the Holy Land and the early modern pilgrimage. It is also a fine