

Book reviews

Grievous religious persecution: A conceptualisation of crimes against humanity of religious persecution

Werner Nicolaas Nel

VKW: Bonn, 2021. 496 pp. ISBN 978-3862692040, €34 or free download from iurf.global

Two frustrations strike those who study the international laws intended to protect human beings from “barbarous acts” and “unimaginable atrocities.” The first is a perceived (and often real) divide between theory and practice; the second is the lack of enforceability of the promise of human rights in modern international treaties. States can and do ignore judgments of human rights tribunals. Individuals may (and do) escape prosecution due to the International Criminal Court’s relatively narrow jurisdiction. And although the Rome Statute of the ICC does have the teeth needed for enforceable decisions and penalties, anyone who reads the Preamble’s lofty language and considers contemporary global conflict situations will conclude that the frustrations are real and persistent, and that more must be done. This book seeks to resolve both frustrations, in the realm of religious persecution.

Though the notion of “grievous persecution” is recognized almost universally today, it nonetheless lacks meaningful coherence in the context of international criminal justice. The Rome Statute, which applies to “the most serious crimes of international concern,” itself mentions only “persecution” – defined as “the intentional and severe deprivation of fundamental rights . . . by reason of the identity of the group or collectivity.” Thus, one ambiguity is how *severe* the deprivation must be to be termed and prosecuted as “grievous” persecution. The nature of a group’s “identity” is likewise an obstacle to concrete legal description. As a consequence, Werner Nel posits that “legal uncertainty and judicial unease” may well account for “the international criminal justice systems’ perceived reluctance to enforce prosecution measures based on ‘grievous persecution’” (179).

Nel’s book aims primarily to provide clarity on this topic by proposing a comprehensive yet workable and justifiable approach to investigating and prosecuting grievous religious persecution. The approach, an extensively developed taxonomy, seeks to convincingly resolve the ambiguities surrounding this category of crime. To do so, the taxonomy lays out the legal preconditions for establishing the ICC’s subject-matter jurisdiction over conduct constituting crimes against humanity in the category of religious persecution.

Nel conceives of “grievous persecution” as a *mass discriminatory crime resulting in severe deprivations of fundamental human rights*. As a result, the persecutor

must have acted with a conscious and preconceived discriminatory mindset to target a person by reason of his or her identity. Religion is one of several criminalized grounds of persecution under the Rome Statute, and Nel therefore focuses attention on the significance of *religious* identity. He carefully explains that the definitive factor is not whether the victims belong to a specific, objectively identifiable group, but rather how the persecutors subjectively perceive the identity of that group. Thus, it is vital to assess the role of the victim's religious identity, along with the persecutor's discriminatory intent. In this regard, Nel displays a thorough understanding of the context of persecution – for example, by considering the experiences of those persecuted versus the perceptions of the persecutors and their attempt to justify their conduct.

This focus on identity in the context of religious persecution is crucial. Nel recognizes that religion, arguably more than any other freedom, fundamentally constitutes and orders human identity. It grounds a person's conception of life and produces "profound, identity-shaping convictions and conviction-based practices" (109). Individuals and groups throughout the world not only manifest their religion in worship, teaching, practice, and observance but are also continually persecuted on the basis of their religious identity.

But how ought *religion* to be defined in order to determine who qualifies for legal protection? Nel meticulously works through the characteristics and provides a prudent conclusion: religion must be conceived in its broadest sense to avoid excluding some people from protection. "Regardless of their nature, all deep existential views are equally and non-discriminately protected grounds of religious freedom" (114). Doctrinal specificity here gives way to definitional generality – an expansive concept of religion gives us a broad concept of religious persecution – in order to provide the greatest scope of protection.

Nel is careful to highlight potential misunderstandings, such as the need to distinguish the motive or reason for committing persecution from the "discriminatory intent to target victims based on their religious identity, regardless of the reason or motive" (116). This particular distinction may lose some readers, although likely not those legally astute readers who are well-versed in this particular field and who constitute Nel's primary audience. Crucially, the book provides evidence of both motive and intent coming together, such as in the violent attacks by Da'esh against certain religious groups, inspired and motivated by religious ideology.

A notable highlight of the book is the appendix (one of three, all lengthy and helpfully detailed) that uses the proposed taxonomy to assess the evidence of contemporary religious persecution by Da'esh in Iraq and Syria. This case study provides an excellent model for future investigations and prosecutions. Da'esh is an interesting

choice for the case study, given the current improbability of prosecution: because neither Iraq nor Syria is a party to the Rome Statute, the ICC lacks jurisdiction to prosecute most Da'esh fighters, domestic prosecutions are unlikely, and attempts to establish an ad hoc international criminal tribunal face severe obstacles. Nel acknowledges that his case study is “premised on the presumption that the ICC has jurisdiction” (466). And his choice of case study is by no means a weakness in the taxonomy itself; on the contrary, it provides a thorough demonstration of how a case may be made against Da'esh (or other groups, such as the Tatmadaw in Myanmar) regarding grievous religious persecution, should the ICC acquire jurisdiction.

The framework proposed in this book, if adopted by the ICC, would almost certainly have a trickle-down effect on the prosecution of grievous religious persecution in domestic courts. Although the overall academic approach will appeal more to theorists and practitioners, all readers – and, with any luck, courts – will benefit from the lucid and exhaustive analysis, which is much needed in the fight to protect human rights and end impunity for religious persecution.

Andrew R. DeLoach, Director, Center for Human Rights, Trinity Law School

Liberty for all: Defending everyone's religious freedom in a pluralistic world

Andrew T. Walker

Grand Rapids: Brazos Press, 2021, xii + 258 pp., ISBN: 978-1587434495, \$19.99 paperback

Andrew T. Walker, associate professor of ethics at Southern Baptist Theological Seminary and executive director of the Carl F. H. Henry Institute for Evangelical Engagement, presents a compelling case for supporting and defending religious liberty for people of any (or no) religion.

As a movement with a history of being persecuted, Baptists have long emphasized religious liberty (although they have also failed to live up to that distinctive at times). Walker's work should be interpreted in the context of a larger Baptist historiography and theological tradition. Christians in the West in general, and the United States in particular (the intended audience of the book), are facing a move to the margins, away from the power they once held. Walker's book is a very helpful and timely resource for thinking about religious liberty in the midst of such changes. Walker seeks to cast a cohesive vision for his Baptist (and other evangelical) compatriots who are at a loss when facing vexing contemporary social and political changes.

The limits on state authority over the consciences of citizens have been frequently addressed, in the New Testament (see Acts 5:29) and by many writers on

political theology since then. What makes Walker's argument so interesting and compelling is that he bases his case primarily on biblical theology. He recognizes the value of pragmatic, legal, or philosophical arguments for religious liberty, but his main concern is to formulate a robust biblical case for religious liberty. In particular, Walker argues that the biblical narratives on eschatology, anthropology, and missiology all compel support for religious liberty. The chapters of the book are divided under those three headings, and the construction of the arguments is often quite innovative.

First, Walker describes "inaugurated eschatology" as an "essential foundation for religious liberty" due to how it shapes the Christian understanding of how God's purposes and rule are unfolding (25). In our present penultimate age, when God's Kingdom has been inaugurated but not consummated, God allows truth and error to co-exist, and there is no earthly institution – church or state or other – established by God to punish or coerce those who err in matters of metaphysics. That fact requires religious liberty for all. That religious liberty will not last forever, because at his future coming, Jesus will bring God's judgment and put an end to error, but for now, it must be sustained.

Drawing heavily from the work of Jonathan Leeman and David VanDrunen as well as the Noahic covenant, Walker argues for what he coins a "Christian secularism." He makes a compelling case that religious liberty must be a "social practice irrespective of whether the recipients of such liberty are Christians" (49). He does not advocate for a Christian retreat from the public square, or for the supposed neutrality of secularism over against religious views; rather, he endorses embracing this present period of "contestability" when competing and differing views will be up for grabs. I especially appreciate his comments on the dangers and failures of utopias (whether religious or secular).

As for anthropology, our status as created in the image of God (*imago Dei*) also shapes our view of religious liberty. Although all humanity has been impacted by the Fall, we retain an inherent dignity and a precious conscience that must be protected from misguided and meanspirited attacks by people or the state on all matters, including religious ones. In other words, Walker argues, the presence of the *imago Dei* compels just and kind treatment of all people, whatever their religious persuasion.

As for missiology, Walker contends that as the church spreads the Kingdom of God through missions, church planting, and discipleship, engaging the public square (where appropriate and possible) should be part of its mission works. Debate and discussion are part and parcel of the Christian mandate, but the church in its current penultimate stage must reflect the non-coercive nature of the Kingdom of God as modelled by Jesus. Christians may work to create a social milieu

that is conducive to the work of the church, but they must eschew any coercion, by either church or state, of those who choose a different (or no) religion.

The book is written primarily with a US audience in mind. It would have been helpful had Walker aimed at a more global readership. In fact, while the United States moves away from its historic Christian identity and all that that means for Christian engagement with the state, many nations in sub-Saharan Africa are on a trajectory towards being the Next Christendoms (Philip Jenkins's expression). Walker's perspective could help these countries avoid some of the egregious mistakes of Western Christendom.

It would also have been helpful had Walker addressed, even in a perfunctory manner, how other Christian traditions, past and present, understand the biblical narrative as endorsing notions of godly rulers supporting the work of the church in some manner (such as Calvin's view of a holy commonwealth). And an index would have been helpful, especially in keeping track of the host of authors Walker references. I hope the omission of an index is not becoming a trend among publishers.

This well-written and accessible work provides a detailed, thoughtful, and innovative approach to one of the most pressing and vexing questions facing Christians today. I happily recommend it to scholars, pastors, activists, and students in theological education.

Gordon L. Heath, professor of Christian history, McMaster Divinity College, Hamilton, Ontario

Faith in courts: Human rights advocacy and the transnational regulation of religion

Lisa Harms

Hart Publishing, 2022, 236 pp., ISBN 978-1509945047, US\$137.64

Lisa Harms presents an interesting exploration of the complex dynamics between religion, human rights and transnational legal frameworks. Harms aptly identifies the obstacles, power dynamics and ideological differences that affect legal mobilisation to defend religious freedom. Harms makes an important contribution to academic discourse, as little has been written on the role that religious actors and advocacy groups play in the process of the transnational judicialization of religious freedom conflicts.

The book is an adaptation of the author's PhD dissertation and forms part of the Hart Monographs in Transnational and International Law series. The objective of this series is to publish high-quality scholarship focused on public and private international law.

Harms aims to explore religious freedom as a transnational social field where competition between secular and religious actors is rife. These actors, including human rights lawyers and activists, religious communities, and politicians, compete for the authoritative interpretation of religious freedom. Harms seeks to understand how these actors frame their interventions during the judicial process and how they explain the legal outcomes. Her primary focus is on the jurisprudence of the European Court of Human Rights (ECtHR).

The book comprises five substantive chapters. Chapter 1 identifies the theoretical sociolegal basis for transnational legal mobilisation in view of religious freedom advocacy. It introduces a conceptual and methodological framework and explains the rationale behind the selection of cases that are discussed in subsequent chapters. Chapter 2 focuses on transatlantic religious networks and the emergence of a transnational legal field in religious freedom litigation, and it recognises Jehovah's Witnesses and Evangelicals as the "early pioneers of religious freedom litigation." Chapter 3 addresses legal mobilisation in light of diaspora politics, with a particular focus on Muslim and Sikh minorities who have asserted the right to wear religious symbols or attire in public. Chapter 4 elucidates the crucial role well-connected Christian NGOs play in carrying out successful religious freedom litigation. Chapter 5 centres on recursive mobilisation and on how litigants adjust their strategies and move towards new avenues of activism.

In delineating the parameters of freedom of religion on a transnational scale, Harms examines significant legal cases, international treaties, and the evolving ECtHR jurisprudence surrounding religious freedom and conscientious objection. The book sheds light on the complexities and challenges that arise in the process of navigating the tension between the exercise of religious beliefs and the promotion of human rights in a diverse and interconnected world. It also emphasises the invaluable contribution that religious organisations, human rights activists and lawyers, and civil society organisations in general play in helping individuals and groups to assert their religious rights throughout the judicial process.

Although *Faith in Courts* offers a comprehensive examination of the transnational regulation of religion, its in-depth exploration of legal systems is largely limited to Europe. Given the global relevance of the topic, and taking into consideration the book's title, readers may expect a broader analysis of jurisprudence and developments in other parts of the world, including other regional courts such as the African Court on Human and Peoples' Rights or the Inter-American Court of Human Rights. Additionally, more attention to the perspectives of religious communities from non-Abrahamic faiths would have further enriched the book's inclusivity and depth.

The book focuses primarily on the *who*, *why* and *how* of transnational litigation, rather than on a legal analysis of the jurisprudence relating to religious rights and freedoms. One of its most notable strengths lies in Harms's comprehensive examination of the various actors involved in the adjudication of religious freedom and the social dynamics that shape the discourse on the topic. From human rights organisations and religious communities to state institutions and supranational bodies, Harms demonstrates how these actors engage in dialogue, advocacy and legal strategies to shape and influence the trajectory of cases concerning religious freedom. The book effectively highlights the challenges faced by human rights advocates and religious communities in navigating the often conflicting demands of religious freedom and other fundamental rights.

The book's narrative style is engaging, and Harms skilfully blends legal theory with a compelling account of individuals whose lives have been affected by clashes between their religious convictions and the law. *Faith in Courts* is an enlightening work that navigates the intricate terrain of religion and litigation. Through her analysis, Harms invites readers to engage in a deeper exploration of the complexities surrounding the intersection of religion and justice, and she makes an important contribution to understanding the evolving relationship between religion and the courts at a transnational level.

Marieke Roos, Senior Policy Advisor, European Parliament

Religion and world politics: Connecting theory with practice

Erin K. Wilson

London and New York: Routledge, 2022, 148 pp., ISBN: 978-036747866, \$59.95 US (hardcover). Open access version available at www.taylorfrancis.com

In this short book, Erin Wilson establishes both the importance and the complexity of religion in global politics. She seeks to show how even the way in which governments and policy makers define religion limits their understanding of religion's impact in a particular situation. As the subtitle suggests, she wants to give practical assistance to practitioners. But she also seeks to counter the dominant secular narrative of the West.

Since 9/11, global policy makers have been seeking to understand how and why religion matters in a variety of contexts, including internal and external conflicts, international development and human rights. Many books and articles have examined this issue from a variety of standpoints. Wilson critically analyses the leading literature and identifies the shortcomings.

Wilson dismisses some academic objections but explains others. For example, she dismisses the argument that the Universal Declaration of Human Rights is

neo-colonialist, commenting that it provides a widely agreed upon set of norms for human rights. She spends several pages explaining why Americans use the term “religious freedom” while Europe and Canada prefer “FoRB.” The former has the connotation of protecting religions while the latter often suggests freedom *from* religion. However, the attempts by Western powers to promote religious freedom and FoRB are often viewed elsewhere as attempts to protect Christianity and its expansion.

The West understands religion in a particular way because it does so through the lens of Christianity, which is based on individual decisions to follow Christ. In other parts of the world, what the West identifies as “religion” is part of cultural communal identity. An individual’s conversion to another religion, therefore, is a threat to the entire community. As Wilson explains, this dynamic is the source of anti-conversion laws that largely target Christianity and Islam, the world’s two major proselytising religions.

Fortunately, Wilson does not leave the reader with intractable problems. She draws on her experience in a variety of countries to argue for cultural contextualization. The language of rights is antithetical and counter-productive in places like Myanmar and Indonesia. Instead, terminology such as “social harmony” is more productive.

Wilson is very inclusive in her analysis of global conflicts. Her primary case studies are Myanmar, Iraq and the rise of far-right extremism. Although the final example might surprise some, it is linked to anti-Muslim and anti-Semitic acts such as attacks on mosques and synagogues, and its anti-immigrant policies encourage hatred of certain religious groups.

Wilson covers a diverse range of topics to illustrate the complexity of religious engagement. In chapter 4, titled “From Secular Development to Global Partnership,” she addresses international development, gender equality and climate change. These topics are often addressed separately, but many religious development agencies address all three. Wilson analyses projects from Kenya, Indonesia and Fiji to illustrate how different religious traditions and cultures engage with these issues. Western countries often fund these projects, but using Western language and concepts will often undermine a project’s effectiveness.

In chapter 5, Wilson gets to my favourite topic, FoRB. After discussing the challenges related to the Western understanding of religion and FoRB, she uses examples from Indonesia and India to illustrate some approaches that work. The example of Indigenous religious rights in Australia demonstrates that Western countries have difficulty with religious rights that don’t fit the Christian model.

This book will be helpful to a variety of practitioners. It is full of helpful thinking and illustrations of on-the-ground projects that integrate religion and culture

into peacebuilding, international development or conflict resolution. Many organizations should find this book helpful when onboarding new staff. The book is interdisciplinary, bringing together law, sociology, political studies and religious studies.

This book will confuse secular policy makers who do not see a role for religion in any of the above issues. It will anger people who want simple answers. It may be an eye-opener for some in the West by demonstrating the extent to which the rest of the world does not see things through a secular Western lens. It will frustrate those who want simple resolution of issues, typically through actions of the US government or the UN Human Rights Council.

In my role with the World Evangelical Alliance, I work with regional and national leaders in many countries. Most of them would agree with Erin Wilson's emphasis on local answers, dialogue and community building. *Religion and World Politics* could just as easily be titled *Religion and Local Action*. But Wilson's greatest contribution is to show how religion and religious actors can and should be engaged in positive ways to resolve global problems in their local contexts.

Janet Epp Buckingham, Professor Emerita, Trinity Western University and Director, Global Advocacy, World Evangelical Alliance

Secularism(s) in contemporary France: Law, policy and religious diversity

David Koussens, translated by Peter Feldstein

Berlin: Springer, 2023, 177 pp., ISBN: 978- 3031182327, US\$39.99 (paperback)

This comprehensive study on French secularism by David Koussens, professor at the University of Sherbrooke, Canada, is part of the series "Boundaries of Religious Freedom: Regulating Religion in Diverse Societies." According to Koussens, "we must speak of French secularisms in the plural." His sociological analysis of developments in the relationship between the French state and religion over the past 30 years shows that French secularism is not a univocal phenomenon. It exhibits intrinsic diversity due to French history, various legal regimes in the different territories of the republic, and legal and political changes affecting religion up to today.

More recently, the issues and their political and legal responses have been varied and evolving in a context of growing religious diversity and the salience of religious identity, in particular due to the visible presence of Islam. Koussens points out that "Islam has become the prism through which successive governments have intervened in the regulation of religious diversity," in particular, discussing the focus placed on religious symbols and artifacts.

Koussens strongly criticizes how, through misrepresentation, secularism is used as a rhetoric to defend an inherited national identity in connection with the Judeo-Christian culture. In a paradoxical twist, secularism, which should be blind to religion, becomes a tool to favor one religion and is used to justify a form of racism. The author warns against the growing popularity of the “great replacement” theory, which is characterized by fears about the substitution of a non-European, primarily African population for the French population and is used to justify restricting the freedom of religion of Muslim believers. He illustrates this trend with several cases from the Council of State on the issue of nativity scenes displayed by municipalities at Christmas. The criteria for compliance with secularism is whether the scenes are of a traditional and cultural nature, such as in Provence, or whether, conversely, the display is of a religious nature with the presence of a priest on its opening night or religious signs. Koussens alleges that this recurring issue becomes a Trojan horse for the defense of national identity, rooted in Christianity and exclusive of other faiths. He is therefore critical of French secularism, shedding light on the paradoxes of so-called state neutrality, which in reality is used to shape the French religious landscape in many ways.

Part I of the book helpfully interprets French secularism(s) – presenting a comprehensive overview of the prevailing theoretical and legal framework, explaining its historical development and giving examples of legal diversity across territories.

In Part II, Koussens focuses on the collective expression of religion in the public sphere. Through the issue of defining religion, he shows how public policies have shaped the idea of acceptable religion in France, giving little space to full diversity and to real neutrality towards minority groups. French secularism was first established to organize separation between churches and state (beginning with the famous founding act of 1905) without legally defining religion. From 1905 to 2022, a doctrine of acceptable religion in the public sphere has been shaped by jurisprudence of the Council of State and the Constitutional Council, governmental policies on cults, the notion of culture and heritage as applied to Christian symbols, and the identification of “principal spiritual families” which represent the dominant faith groups in relation with the State. This doctrine benefits the oldest religious traditions, whereas newly arrived religious groups (including Islam, but also Evangelical groups) experience inequality. Koussens illustrates his argument by analyzing two types of examples: (1) a legal system that largely benefits the religions which existed in France before 1905, and (2) chaplaincy services in public institutions (prisons, hospitals, the military), which are open only to majority groups and directed to serve certain purposes (such as fighting radicalization among Muslim detainees).

With the passing of the Law of 24 August 2021 to strengthen respect for the principles of the Republic, loyalty to the republican pact became a new condition governing the doctrine of acceptable religion in the public sphere. France has deliberately tightened controls over places and associations of worship, implemented a republican engagement contract as a condition to receive public subsidies for all associations, and consigned homeschooling to the authorization of prefects, religious belief being excluded from the legitimate reasons for home instruction. In this situation, French secularism does not imply full state neutrality but a form of subtle state intervention into the religious landscape.

Part III deals with the rights of the individual believer. Koussens shows how “new secularism” emerged in the wake of the prohibition of headscarves at schools in 2004. This new secularism “distanced itself from guarantees of individual rights and embraced a nationalist conception of secularism.” Since then, secularism has been used by the French state as a mode of emancipation of individuals, invading the private sphere to do so. The author reflects on the obligation of civil servants to display a religiously neutral appearance, which demonstrates the French state’s discomfort with visible expression of religion; this provision bars access to public services for people of some faiths. This strict neutrality policy, which does find some echoes in Belgium and Quebec, tends to spread outside the civil service and conquer the private sector as well. Muslim women wearing a full veil (*burqa*) or *burkini* at the beach have been identified as the enemy of the emancipatory project of the Republic. In the contexts of employment and public spaces, domestic and European case law has often found in favor of strict neutrality, leading to the erosion of individual rights.

Koussens concludes his in-depth analysis, citing President Macron’s recent speeches, by contending that the French new secularism is nationalist and assimilationist, and therefore differentialist. It fails to ensure real neutrality towards religion and, paradoxically, runs counter to the very universal values it claims to serve.

Nancy Lefevre, legal counsel, French Council of French Evangelicals

A principled framework for the autonomy of religious communities: Reconciling freedom and discrimination

Alex Deagon

Oxford: Hart Publishing, 2023, ISBN 978-1509950638, 280 pp., £85 (hardcover)

Alex Deagon has attempted the impossible: developing a principled framework that maximizes freedom for religious communities and minimizes discrimination against sexual minorities, and that both groups can agree on! As this is one

of the biggest challenges for religious freedom in the West (and also increasingly in parts of the Caribbean, Latin America, and Africa), if Deagon's proposal could succeed, it may resolve a seemingly intractable conflict.

The foundation for Deagon's framework is Jesus's command to love our neighbour. He applies "theological virtues such as dignity, humility, patience, generosity, kindness, forgiveness and compassion" (16). This is a very promising start in appealing to Christians. He builds on John Milbank's approach to peaceful co-existence, which contends that we must accept difference, even profound moral difference, to live peacefully in communities. Although the premise seems simple enough, putting it into practice is quite challenging.

Deagon sets out his framework in a scriptural context of love and self-sacrifice (18-19). He calls on Christians "to truly act with humility, love and sacrifice just like Christ did in humbling himself to death on a cross for our forgiveness" (18). Deagon analyzes the situation in three jurisdictions – Australia, the United States and England – to assess their compatibility with his framework and make recommendations for changes. These three countries all have a Christian heritage but differ markedly in church-state relations. All three have recently legalized same-sex marriage. A legal scholar, Deagon analyzes the constitutional frameworks, laws and court decisions.

Australia, Deagon's home country, takes a principled pluralist approach to church-state relations. The Australian Constitution contains a provision similar to the First Amendment to the US Constitution, prohibiting the establishment of religion and guaranteeing the free exercise thereof. Deagon laments the limited interpretation Australian courts have accorded to this constitutional protection and surmises that there is weak protection for religious communities in Australia.

Deagon contrasts the weak protection for religious institutions with the robust protection against discrimination on the basis of sexual orientation in the Sex Discrimination Act 1984. However, subsection 37(1) of the act exempts religious communities. Section 38 gives religious schools the right to discriminate. This section has been the subject of considerable debate in Australia and may be amended in ways that Deagon says will not promote peaceful coexistence. Deagon is also critical of the exemptions, which he suggests give religious institutions the ability to discriminate maliciously against sexual minorities. Perhaps more controversially, he proposes that Australia adopt a mild establishment of Christianity, rather than principled pluralism, which he sees as undermining religious freedom.

The United States with its famous "wall of separation between church and state," from Thomas Jefferson's letter to the Danbury Baptist Association, has adopted a soft secular approach to church-state relations. Given the abundance of religious freedom jurisprudence in the US, Deagon analyzes only the most signif-

icant Supreme Court cases on religious liberty. He concludes, “The First Amendment provides significant protection for the autonomy of religious communities” (81). Relatively recent legislation such as the Religious Freedom Restoration Act enhances this protection. Cases such as *Masterpiece Cakeshop* and *Hobby Lobby* raise the larger question of whether religious business owners can discriminate based on their religious beliefs. I commend Deagon’s extensive analysis of this contentious issue. Deagon also notes that the Equality Act, currently before the US Senate, would considerably narrow exemptions for religious institutions and would remove exemptions from businesses, potentially violating the First Amendment. He proposes that the US adopt pluralism rather than secularism as a model that would better protect religious freedom.

England, as was on full display in the recent coronation of King Charles III, has an established religion, even though the Church of England is in steep decline. As a member of the Council of Europe, however, it is subject to the European Convention of Human Rights and the jurisprudence of the European Court of Human Rights. Furthermore, these have been incorporated into English law by the Human Rights Act. Article 9 of the Convention protects religious freedom and has been interpreted to include some associational rights. Unfortunately, UK courts have applied this provision restrictively.

The Equality Act 2010, which prohibits discrimination on the basis of religion and sexual orientation, provides exemptions to religious communities and schools. However, this conflict is inevitable when religious institutions are exempted from the Equality Act’s provisions on discrimination by sexual orientation. Deagon proposes “an approach which embraces mutual respect and understanding” (148) and applies it to education, employment and provision of goods and services.

Deagon concludes with policy recommendations for each of the three countries examined. He also urges policymakers to learn more about religion and to listen to religious adherents. He notes that religion has been treated as a choice rather than as an identity, whereas sexual orientation has been treated as an identity rather than a choice. This approach has placed religion lower in the equality hierarchy. Religious adherents, on the other hand, understand their faith and practices as part of their identity. Deagon provides a rationale for granting business owners religious freedom to follow their consciences. Finally, he would grant associational rights to religious communities over and against an individual within that community. That is, an individual does not have the right to fully belong to a community.

Although I have focused mainly on Deagon’s points in favour of religious institutional autonomy, he does offer some advice for religious institutions and ad-

herents: live at peace with those who are different from you. In effect, he says we should be willing to grant others the right to live as they wish, especially if we are asking to live in accordance with our beliefs.

There is much to be commended in Deagon's book. He has developed a principled framework for peaceful relations between religion and sexual orientation. It requires give and take on both sides. However, neither side seems willing to give and fearful that if they do, the other side will take without giving back. Given that the conflict between religious and LGBTQ ideologies seems intractable in these three countries and many others, it is certainly worth consideration.

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Religious accommodation and its limits

Farrah Raza

Oxford: Hart Publishers, 2023, ISBN: 978-1509937103, 248 pp., \$159.95 USD (hardcover)

'Reasonable accommodation' in the European context

Farrah Raza meticulously tackles the daunting task of exploring the limits of the accommodation of manifestations of religion or belief – a matter that has raised many questions and much debate in Europe and elsewhere. Raza argues for an inclusive approach to religious accommodation, using autonomy as the norm to determine which religious manifestations should be accommodated (based on the “harm principle” and a hierarchy of harms created).

“Reasonable accommodation” and its application to manifestations of religion or belief have been neglected in the jurisprudence of the European Court of Human Rights (ECtHR) and in European law in general. For that reason alone, Raza's proposal to use this principle in assessing matters of religion and belief in European jurisprudence makes this book a valuable contribution.

Raza advocates for the decision maker to take a sensitive stance on religious and non-religious beliefs, viewing them from the perspective of the adherent. For example, conscientious objections to abortion should be acknowledged through granting certain kinds of exemptions to healthcare professionals (173), although she argues that such exemptions should not easily be allowed.

Even though Raza displays a more nuanced approach to the accommodation of religion than the ECtHR has taken (for example, the ECtHR could have taken a less restrictive approach in *Grimmark v. Sweden* (App. No. 43726/17, 11 February 2020, ECtHR) where it stated that a midwife's right to freedom of conscience was not unjustifiably limited when she had to perform abortions against her belief

and conscience) the form of religious accommodation she supports still seems to fall short of fully protecting the right to freedom of religion or belief. Rather, reasonable accommodation as espoused by Raza remains bound by the limitations of secular ideology. Furthermore, some uncertainty remains as to how the practical recommendations regarding religious freedom accommodations should fit into the grounds of limitation provided in, for example, Article 9 of the European Convention on Human Rights (ECHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR).

The fundamental right to freedom of religion or belief exists prior to law

With regard to the former point (i.e. that Raza's view still falls short of what I would consider reasonable accommodation), the problem is that the definition of "reasonable" remains subject to some ideological interpretation of the values informing a democracy and, at least in Europe, to some version of secularism. Raza acknowledges secularism's lack of neutrality, noting that the scope of accommodation of religion and belief is contested, varied, and complex (8-9 and 109ff). She argues that "secularism as a constitutional norm should be interpreted in a way that upholds and protects individual autonomy" (118). She draws on the legal philosopher Joseph Raz's perfectionist liberalism as the most appropriate approach for the regulation of religion. As a result, the accommodation of religion will still be filtered through a version of the secular lens. I do appreciate that Raza argues for a more liberal and inclusive accommodation of religion as compared to a purely formalistic, secular approach (121). She states furthermore that: "Religious accommodation ... creates a presumption in favour of protecting religious views" (123). Nevertheless, I am not convinced that her approach sufficiently protects the right to freedom of religion and belief and the role it plays in the inherent human dignity and identity of a person.

With regard to freedom of expression, for example, it should not be necessary to advocate for reasonable accommodation. People express themselves in many contexts, and their right to do so is protected in international law. Only under strict criteria should this right be limited. Similarly, the public sphere should by default promote and welcome diverse expressions of religion and belief as the *status quo*. These principles offer much broader protection for religion and belief than Raza does. They favour religion as part of the inherent dignity and identity of human beings, rather than as something that has to be legally managed according to a higher normative criterion such as autonomy. Again, some limitations may be justified, but only under the strictly defined criteria provided for in Article 9 of the ECHR and Article 18 of the ICCPR.

Raza's model, consistent with secular tradition, continues to treat religion's role in public life as subject to legal regulation. For example, she writes, "Religious accommodation aims at maximizing the contexts in which religious or other beliefs can be practised" (122). Yet, the mere notion that the law can (pre-)determine contexts where religion and belief should or should not be practised denies the fact that religion is an indivisible part of human identity and dignity and not something that is shaped and invented by law.

The relationship of reasonable accommodation to the proportionality analysis

Raza does not address why we need a test to establish whether the accommodation of religion in the public sphere is reasonable, in addition to the proportionality test found in the limitation clauses of Article 9 of the ECHR and Article 18 of the ICCPR. She argues in favour of substantive secularism that upholds personal autonomy and an approach to religion based on the harm principle (15). She then identifies a hierarchy of four broad categories of harm to the autonomy of others that justify non-accommodation of religious claims (129, 134). Her version of reasonable accommodation is a way to achieve the least restrictive means possible, based on the criteria of autonomy and as determined by a hierarchy of harms (one step of the proportionality analysis) (140).

The question remains whether these harms and their hierarchical categorization provide for additional grounds of limitation to the strictly defined and closed lists of the relevant ECHR and ICCPR articles – namely, public safety, public order, health or morals, and the rights and freedoms of other people. An express explanation and justification of the integration of the author's proposal into the proportionality analyses of the ECHR and ICCPR would have been apt.

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