

Book Review

Law and Religion in the Liberal State

Law and Religion in the Liberal State. Edited by Md Jahid Hossain Bhuiyan and Darryn Jensen. Hart Publishing, 2021. Pp. 262. ISBN: 9781509943845

Review by Jeremy Patrick*

Law and Religion in the Liberal State is an edited collection of 13 essays grouped loosely into two parts: ‘Religious Freedom and Particular Traditions’ and ‘Contested Issues’. The essays cover a broad range of topics—everything from exorcism to Shari’a—and also involve a variety of jurisdictions, with the United States and Europe receiving particular attention. Although it is inevitable that some essays in a collection like this will be better than others, the standard across the board is high. The editors obviously chose material carefully and the essays that made the final cut are well-researched and interesting.

The introduction articulates a useful distinction between different understandings of the role of the liberal state when it comes to dealing with religious pluralism: ‘liberalism as a truce’¹ (accommodating religious pluralism) versus ‘comprehensive liberalism’² (displaying hostility toward religious values). The high-profile debates over how the oft-clashing values of equality and religious freedom should be resolved in the context of anti-discrimination laws are a good example of the challenges that liberal societies face.

Part I of the collection, ‘Religious Freedom and Particular Traditions’, contains three essays. Charlotte Carrington-Farmer’s ‘Roger Williams and the Architecture of Religious Liberty’ is a fascinating and well-written discussion of Williams’ role in bringing what was, at the time, a truly radical vision of religious freedom and the separation of church and state into reality. The essay clearly demonstrates that ideas—and a single proponent of them—really can shape the world. Daniel Kalkandjieva offers a fine overview of his topic in ‘Orthodox Churches in Post-Communist Countries and the Separation between Religion and State’. One could argue that most of the nation-states discussed within it do not properly fit under the label of ‘liberal states’ to begin with, but that may be neither here nor there. The last essay in Part I is Zachary Calo’s ‘Catholic Social Thought, Religious Liberty and Liberal Order’. It is a very good, readable discussion detailing the history of the Catholic Church’s opposition to religious freedom and the separation of church and state, followed by a discussion of *Dignitatis Humanae* and the influence of John Courtney Murray on later Catholic thought.

From a stylistic point of view, Part II (‘Contested Issues’) serves as an inelegant catch-all grouping of the book’s 10 remaining essays. Nonetheless, the essays are generally good. Anthony Bradney contributes ‘The Right to be Different: Religious Life in Twenty-First Century Great Britain’. The focus is much narrower than the title indicates, as it is really about the use of government inspection agencies to suppress faith-based schools in Britain. Less impressive was the constant hand-wringing on display in Rafael Palomino’s ‘Law, Religion

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¹ Md Jahid Bhuiyan and Darryn Jensen, ‘Introduction: Law and Religion in the Liberal State’ in Md Jahid Bhuiyan and Darryn Jensen (eds), *Law and Religion in the Liberal State* (Hart Publishing, 2021) 1, 3.

² Ibid 4.

and States: Searching for a Soul for Europe'. Palomino's concern is that the lack of a reference to God and/or the purported Christian heritage of Europe in the foundational documents of the EU means that the region lacks a shared sense of value and purpose — as if a few ceremonial deisms would instantly address the deep political and practical challenges of unifying such a disparate collection of peoples. Carlo Panara's essay has a mouthful for a title, but essentially provides an overview of the role of the crucifix in Italian religious and political life — it is interesting to see the real ebb and flow of its perceived importance by government authorities, as well as its adoption by nationalist movements. Carla Zoethout also discusses crucifixes, but in the context of the European Court of Human Rights' caselaw over them, face-covering veils, and insults to religious sensibilities. From the Court's varied rationales and decisions, it may just be that no clear synthesis of them is possible.

Three essays in the book are focussed specifically on modern American issues involving law and religion. 'Religious Exemptions from Civil Laws and Free Exercise of Religion in the USA' by Maimon Schwarzschild is a short but interesting history of the Supreme Court's roller-coaster ride on the meaning of the Free Exercise Clause. Schwarzschild makes the interesting point that the liberal-conservative alliance in favour of exemptions in the 1990s may be eroding under a growing fear among liberals that widespread exemptions undermine progressive legislation. He also suggests that by focussing on exemptions, religious groups may be gradually distancing themselves from influence over the general content (or wisdom) of legislation in the first place. Chad Flanders and Sean Oliveira contribute an essay arguing that United States' courts fail in their written opinions to give proper weight to the burdens suffered both by queer and by religious communities in litigation over anti-discrimination cases. However, the proffered solution (better, more sensitively-written opinions) would seem to offer little solace to most litigants who are likely more concerned with the outcome of their case rather than a court's written justification for it — someone is always going to lose when disputes have to be resolved through litigation. Dorothy Rogers offers 'Sanctuary: Religion and Law in the United States'; an illuminating essay on the history of the refugee sanctuary movement in the United States in the 1980s (likened by some to the Underground Railroad) and its renewal in the Trump years.

The final three essays are on very different topics. Whether a harmful exorcism could create liability for professional negligence (or other tort-based claims) in the UK is the focus of Javier García Oliva's and Helen Hall's essay, although the paucity of caselaw on the topic means the answer can only be speculative. The incredible, long-running Ayodhya temple controversy is the theme of Peter Edge and MC Rajan's essay. Although much has been written on the dispute, the essay provides a good introduction to it. Finally, co-editor Md Jahid Hossain Bhuiyan contributes the only Australia-specific essay in the collection, 'The Place of Shari'a in Australia'. Bhuiyan's excellent essay discusses, among other things, the dichotomy between the country's stiff rejection of Islamic family law but gradually warming approach to Islamic finance law.

Reviewing an edited collection like *Law and Religion in the Liberal State* is always a difficult task. The nature of specialised academic writing means that most readers will only find a few essays that speak directly to their interests. What can be said about this particular collection, at least, is that a reader is likely to find those few essays well-written, credible contributions to their topic.