Book Review

Comparative Approaches to Law and Religion: Methods and Epistemologies of Comparative Legal Analysis

Comparative Approaches to Law and Religion: Methods and Epistemologies of Comparative Legal Analysis by Renae Barker, Camilla Baasch Andersen, and Mohammad Rasmi Alumari (eds). Routledge, 2025. Pp. 424. ISBN: 1032478888.

Review by Thomas A J White*

Perhaps better titled with the conjunction Law *on* Religion rather than Law *and* Religion to counter any over-anticipation of subject breadth, this Routledge edited volume offers a mix of accessible chapters on the comparative regulation of religion — as per its modern secular-liberal definition — in different (mostly) anglophone nation-states. These chapters of varying length are, in the main, offered as exemplars of different approaches to comparing legal provisions, principles, and processes used to regulate religion, typically across two different jurisdictions, including Australia, Canada, USA, and the UK, but also Italy and the EU courts. With more than half of the contributors being Australian lawyers, the focus on Australia, the UK, and other anglo-settler states and their judicial decision-making is understandable. Such focus, however, rarely pushes the authors or their conceptual tools outside their methodological comfort zones, which a broader comparative net necessily would. The final few chapters, however, do branch out further, including comparative analyses of parliamentary inquiries on hate speech and religion (Scotland and Australia), religious freedom rulings in India, and women's reflections on gender legislation among the Pakistani and Brazilian diaspora in Australia.

The book's principal arguments arrive at the very end of the book and are offered as a thematic summarising of the preceding chapters. These are twofold. One, that different approaches to comparative legal analysis on religion — and here I paraphrase — can be fruitfully divided by the type of data analysed and the researchers' evaluative ends. The book's classificatory scheme names these overlapping methods as the doctrinal, the historical, the functional, the analytical, the cultural, and 'the yardstick'. And two, that the choice of method(s) for comparative legal analysis on religion is necessarily subjective and contingent upon the researcher's objectives. Any charge of superficiality, say, levelled at a doctrinal comparative analysis lighter on historical and cultural contextualisation can be mitigated, first, by establishing a clearly defined measure against which law on religion is comparatively evaluated, namely 'the yardstick' (eg: compliance with the *European Convention on Human Rights*), and second, with the recognition that all comparison involves a brute reduction of complexity anyway. A line must be drawn somewhere, and according to the book's editors, that is for the researcher to decide appropriate to *their* ends. In a rallying cry of intellectual liberation (and license), the editing contributors Barker, Andersen, and Alumari quote the comparativist Kahn-Freud: 'on the professor of comparative law the gods bestowed the most dangerous of gifts, the gift of freedom'.[1]

* Postdoctoral Fellow, Religion Programme, University of Otago.

[1] Mohammad Rasmi Alumari, Camilla Baasch Andersen, and Renae Barker, 'Comments on Comparative Methodology Used throughout the Book' ('Comments') in Renae Barker, Camilla Baasch Andersen, and

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Before digging into these claims and offering broader thoughts on the book, it is important to note that this book is aimed primarily for lawyers, legal scholars, and law students with an interest in religion. In other words, it will be of greater utility to those more interested in the practical application of comparative legal analysis than its theoretical critique. With this in mind, the book is a salutary accomplishment. The five chapters of Part I fill key knowledge gaps for those trained in law but not the academic study of religion and who thus need assistance to navigate religion's highly normative and semantically beguiling character. For example, Patrick's chapter 'How to Do Comparative Law and Religion' provides a solid, if short, primer regarding the complexity of 'religious' subject matter, such as cautioning against reductionist and category errors (eg 'Hinduism believes x') that religious studies undergraduates learn to avoid in their first year. While Erlings' chapter on minors and law on religion offers a fine example of how scientific studies can clarify where lived religiosity deviates from a uniformity of type that law on religion often assumes. Erlings' argument that studies on children's participation in mortuary rituals affecting levels of religious maturity can inform legal age thresholds for religious agency, is a case in point. Barker and Clarke's analysis of different models for global variation in religion-state relations is also both thorough and systematic. Whereas in Part II, by far the longest section, nine chapters give detailed case study analyses on jurisdictional differences in doctrine and practice on matters ranging from religion in schools, Jehovah Witness blood tranfusions, Kirpan wearing, and homophobic Christian bakers, each respectively leaning into the different methods thematised at the end of the book. Given that these controversies repeat in modern states across the world, these chapters not only provide clear accounts of the competing interests and rights at stake in such clashes, but also provide intelligent and varied methodological approaches for examining how and why ostensibly similar liberal democracies are at odds on how to resolve them. All this analysis will be helpful to those in legal studies seeking a more versatile toolkit for thinking through law on religion differences across national jurisdictions.

For readers wrestling with more critical questions of theory and method in comparative law and religion however, the book's promise to 'equip researchers with the tools to navigate the complexities of interdiscipilinary and comparative legal studies'[2] leaves a key area of analysis unexamined: that is, the *distinctiveness* of religion as a subject of comparative law.[3] Given my training in religious studies, rather than law, it is scratching this itch that absorbs the rest of this review, which I hope is received in the constructive spirit with which it is offered. For it was unclear to me in the book's closing arguments — described as 'the heart of the book'[4] — precisely why the otherwise smart classificatory scheme of comparative approaches should be understood as any more pertinant to a comparative law on religion, than, say, to any other politicised and complex subject of law, such as comparative family law or comparative law and custom. The book's concluding emphasis on 'multivalence', asserting the integrity of different approaches against charges of superficiality is fine in itself, but also seemed to be offered in lieu of a methodological critique on comparative law and religion as a whole. The contemporary challenge for scholars working on comparative law and religion is not to be

Mohammad Rasmi Alumari (eds), *Comparative Approaches to Law and Religion: Methods and Epistemologies of Comparative Legal Analysis* (Routledge, 2025) 379, 384 ('*Comparative Approaches*') (quoting Otto Kahn Freund, *Comparative Law as an Academic Subject* (Clarendon Press, 1965) 40-41)).

[2] *Comparative Approaches* (n 1) i.

[3] For a quick and accessible introduction to this core observation, see Ben Schonthal, 'Why Religion is Different: Five Contradictions of Religion in Law', *The Immanent Frame* (Web Page, 25 July 2019) <https://tif.ssrc.org/2019/07/25/five-contradictions-of-religion-in-law/>.

[4] Camilla Baasch Andersen, Mohammad Rasmi Alumari, and Renae Barker, 'Introduction' in *Comparative Approaches* (n 1) 1, 3.

perfectly versed on the minutiae of theological doctrines or cultural histories (which reads a little bit like a strawman). Rather, it is to remain alert to how religion as a legal category shields interests and funnels power through its extraordinarily tensile semantics, bending but not breaking with multiple and contradictory meanings deployed intuitively and strategically in legal arenas. As governments assume to regulate the bodies, behaviours, and beliefs of their citizenry, or quietly integrate majority identities, ideologies, and institutions within the state, it is from this deep ambivalence of law on religion — *both* in its inclusions *and* its omissions — that such transformative change often occurs. One might hope that a book drawing together various comparative legal analyses on religion, then, would not only explain how scholars may variously identify and explain jurisdictional difference, but would reach for some comprehensive and *critical* understanding of comparative 'law on religion' as a whole.

It is regarding this specialness of law on religion that Patrick's observation in the abovementioned chapter, that 'most people working in comparative law and religion are lawyers by training, not sociologists of religion or cultural anthropologists',[5] hits home. In a book on 'methods and epistemologies' there is a striking dearth of the critical comparative law and religion scholarship written over the last two decades[6] examining the covert normativity and semantic instability of the field's core concepts. Indeed, lawyers and legal scholars working in this area, themselves often with religious skin in the game, can seem more comfortable working with theologians than with social scientists of religion precisely because religion as imagined in law operates more like a theological concept than a scientific one. Scientific studies tend to understand human religiosity as an effect of our evolved cognitive faculties, culturally differentiated and adaptive to our diverse social and environmental conditions. Whereas modern law, privileging the transcendent over the immanent aspects of religiosity, constructs religion from a political philosophy rooted in a European history of modernity, and a liberal, Protestant notion of salvation and the individual soul. Arguably the undergirding intellectual task of comparative law on religion is less the reconcilation of expertise between outsider lawyers and insider believers (a concern the book is careful to address). Rather it is to understand that the persisting challenge nation-states encounter in demarcating the limits to religion is less a bug in secular lawmaking, and more its core feature. It is a high bar to expect an edited volume juxtaposing different comparative methods to resolve the incommensurability of religion as variously understood across law, the human sciences, and critical theory. But to skate across these deep differences, and pass over the critical literature altogether, presents the professional expediencies of law on religion as requiring a preference for sticking one's head in the sand. For example, when a more critical line of reflection availed itself in the final pages, such as when the question is briefly raised why United States jurisprudence is so over-represented in comparative law on religion,[7] the issue is declared as beyond the book's scope.

In the comparative study of religion, care is paid to minimise the 'epistemic violence' that occurs when emic (insider) and etic (comparative) perspectives blur and categories of comparison smuggle in observer bias. What then for the comparative lawyer looking at religion? Must they more diligently bracket the normative assumptions of their (secular) legal training, carefully signalling and mitigating the unevenness of their founding concepts? With

[5] Jeremy Patrick, 'How to Do Comparative Law and Religion' in *Comparative Approaches* (n 1) 11, 12.
[6] Some of the more important of these texts include Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton University Press, 2005); Hussein Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (University of Chicago Press, 2012); Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton University Press, 2015); Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religion* (Princeton University Press, 2015).
[7] Alumari, Andersen, and Barker, 'Comments' (n 1) 396.

the book's intended audience of legal *practitioners*, the relevance of this critical reflexivity may be deemed less important, overly-abstract, even vexatious. And to recap, taken chapter-by-chapter, and as a reflection on questions of method in comparative law looking at socially and culturally complex subjects, the book is important and meritorious. Yet with the book assuming that merely the shared topic of religion is a sufficient thread of connection between its chapters, without going deeper into precisely why religion makes for a such a uniquely thorny issue for comparative law, the assemblage of chapters risks reading more like a conference proceedings than a carefully marshalled, if diverse, set of interventions on a shared methodological challenge. The concluding each-to-their-own ideal in this regard is an outcome of this critical approach not followed, as too is the section heading titled 'Critiquing Comparative Approaches' with the proceeding text disavowing doing any such thing.[8]

To conclude with an eye to the intellectual heavy-lifting to come for the comparative, interdisciplinary study of law on religion, it is worth sharing a brief anecdote about the New Zealand Religious Liberty Conference held in Auckland in early 2025 — which several contributors of this book attended — where a venerable Australian law professor dared venture into unfamilar scholarly territory. In a plea for stronger legal protections for religious ways of life, he quoted the findings of the celebrated sociologist of religion Rodney Stark — broadly confirmed in the field — that religious belief and behavour is positively associated with better health and well-being. Yet when presented with the observation that the science of religion is less interested in correlation, but in causation, and as such, follows a line of enquiry very much in tension with liberal ideals of religious freedom — the *demystification* of religion — the penny refused to drop. The allure of interdisciplinary research for comparative law and religion, particularly the human sciences, is that it offers lawyers and lawmakers the possibility of traction on a subject that is notoriously elusive, ineffable, and contentious. Yet the science of religion is rooted in profaning logics that, in reducing projects of transcendence to their materialistic causes and effects, can be deeply repugnant to the integrity of religious beliefs. While hardly uncontentious, the reigning political philosophy in modern law on religion, harking back to John Locke's *A Letter on Toleration* and his advice that lawmakers ought not to look too deeply into the beliefs of others, remains far more acceptable to the diverse religious groups such law governs. Perhaps the bigger question of interdisciplinarity in comparative law and religion then is not merely how can it be done more effectively, *but whether it should*; a question involving probing issues of equality before the law and the democratic participation of religious citizens, as much as the unsettled questions of epistemological bias and empirical rigour.

[8] Ibid 379.