

Book Review:

Bhuiyan Md JH and Jensen D (eds) *Law and Religion in the Liberal State* (Hart Publishing 2020) ISBN 978 1 50992 633 6 (cased); 978 1 50992 635 0 (eBook); ePub 978 1 50992 634 3

C Rautenbach*

Online ISSN
1727-3781



Pioneer in peer-reviewed,
open access online law publications

Author

Christa Rautenbach

Affiliation

North-West University
South Africa

Email

Christa.Rautenbach@nwu.ac.za

Date Submission

27 October 2020

Date Revised

28 October 2020

Date Accepted

29 October 2020

Date published

3 November 2020

Editor Prof C Rautenbach

How to cite this article

Rautenbach C, "Bhuiyan Md JH and Jensen D (eds) *Law and Religion in the Liberal State* (Hart Publishing 2020) ISBN 978 1 50992 633 6 (cased); 978 1 50992 635 0 (eBook); ePub 978 1 50992 634 3" *PER / PELJ* 2020(23) - DOI <http://dx.doi.org/10.17159/1727-3781/2020/v23i0a9130>

Copyright



DOI

<http://dx.doi.org/10.17159/1727-3781/2020/v23i0a9130>

Abstract

This contribution reviews the book titled *Law and Religion in the Liberal State*, and edited by two scholars, namely Md Jahid Hossain Bhuiyan and Darryn Jensen. The book contains a collection of papers dealing with the relationship between law and religion in liberal jurisdictions such as Great Britain, Europe, Italy, the USA, Australia and India. It also contains a few contributions that explore the relationship between religious freedom and certain traditions, such as Roman Catholicism and Orthodox Christianity. It also has a contribution on the theological ideas of Roger Williams, who is regarded as the founder of the Rhode Island's colony.

Keywords

Religious freedom; religious plurality; liberalism; Rhode Island; modernity; religious symbols; state and religion.

.....

Review

'Law' and 'religion' denote vast, imperial realms that are, for the most part, each understood to be clearly bounded and independent. On closer inspection, these terms prove to be curiously amorphous and resistant to precise definition. Each is also, in present common usage, peculiarly the product of modernity. The ancient roots of these two terms, the definitional difficulties associated with employing them cross-culturally, and, above all, the problematic understanding of 'modernity' they encode are only some of the challenges that complicate an analysis of their interconnection.¹

The interconnection between law and religion in the context of modernity is exactly the focus of this collection. In the introduction, the authors - the two editors of this book - base their views on the influence of modernity on religion on the ideas of Berger² and two other scholars, Finke and Stark.³ They seem to agree with Berger, who argues that modernity does not necessarily lead to a decline in or secularisation of religions but rather to a plurality of different or competing beliefs, values and world views in societies. Societies can survive and adapt to modern influences, which results in a plurality of religions. According to Finke and Stark, modernity is thus the impetus for religious growth, albeit in a new, adapted form.⁴

Bhuiyan and Jensen believe that the ostensible decline of religion in western jurisdictions since the late 20th century does not necessarily mean a decrease in religiosity but merely a "decline of traditional practice of religion within the institutional framework of monopolistic or oligopolistic 'established' or 'mainline' churches."⁵ They concede, however, that this pluralising has also led to tensions within liberalism, which they explain as follows:⁶

In its essence, the tension is between, on the one hand, a view of the state (and the public sphere) as non-religious, however much religion might be allowed to flourish away from public spaces. Berger spoke of the *first view* in terms of 'institutional differentiation'. On this view, the state 'is not hostile to religion but draws back from direct involvement in religious matters and

* Christa Rautenbach. B *luris* (*cum laude*) LLB (*cum laude*) LLM LLD (NWU). Professor at the faculty of law, North-West University (Potchefstroom Campus), South Africa. Email: christa.rautenbach@nwu.ac.za. ORCID: <https://orcid.org/0000-0001-6641-0123>. The review was completed during my fellowship at the Käte Hamburger Centre for Advanced Study in the Humanities "Law as Culture", Bonn.

¹ Sullivan and Yelle 2005 <https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/law-and-religion-overview>.

² Berger *The Desecularization of the World* 4.

³ Finke and Stark 1988 *American Sociological Review* 41.

⁴ Bhuiyan and Jensen "Introduction" 1, note 5.

⁵ Bhuiyan and Jensen "Introduction" 2.

⁶ Bhuiyan and Jensen "Introduction" 2. Footnotes omitted, and emphasis added.

recognizes the autonomy of religious institutions'. The *second view* is, for Berger, 'characterized precisely by antireligious animus'.

The first type of pluralising involves a "neutral stance" from the government. Here, the state "maintains a neutral stance between religious traditions and accommodates religious differences."⁷ France is one example where such a neutral approach is followed. The country does not allow religious symbols in public spaces but protects religion in the private sphere. This kind of approach, according to Bhuiyan and Jensen, can be referred to as "liberalism as a truce".⁸

Bhuiyan and Jensen label the second type of pluralising "comprehensive liberalism".⁹ According to them, comprehensive liberalism entails state involvement where the values of a religion conflict with those of the state, which carries with it the danger of greater state involvement. As explained by them,¹⁰

[c]omprehensive liberalism, to the extent that it prioritises the state's values over religious sensibilities, involves a 'dogmatic secularism' that 'aims to privatize religions altogether, to render religiously informed moral judgment irrelevant to public affairs and public life, and to establish itself, secularist ideology, as the nation's public philosophy'.

It appears that comprehensive liberalism goes hand in hand with globalisation. Bhuiyan and Jensen refer to Berger's explanation that a connection seems to exist where like-minded secularised people with a western background interact globally.¹¹ According to Berger, most notably the people from the humanities and social sciences that travel abroad regularly generally have control over mainstream institutions and values such as the education system, social media, and the legal system. From there, they try to instil their secular values into the rest of society, which values are in turn resisted by religious movements. Therefore, the viewpoint is that "[m]odernity has led not to a pervasive secularism but a heightened tension between religious and dogmatic secularist outlooks." An investigation into the place of religion in liberal nation-states and the accommodation of religion in those states is what Bhuiyan and Jensen set out to explore in this book.¹²

Excluding Chapter 1, the introductory chapter by Bhuiyan and Jensen, there are 13 chapters. The book is divided into two parts. Part 1 contains three

⁷ Bhuiyan and Jensen "Introduction" 3.

⁸ Bhuiyan and Jensen "Introduction" 3.

⁹ Bhuiyan and Jensen "Introduction" 4.

¹⁰ Bhuiyan and Jensen "Introduction" 5. Footnotes omitted.

¹¹ Bhuiyan and Jensen "Introduction" 2.

¹² Bhuiyan and Jensen "Introduction" 6.

contributions dealing with the relationship between religious authorities and states in general (Chapters 2 to 4). Part II has ten chapters (Chapters 5 to 14) focussing on specific areas of tension between religious and secular authority within a few jurisdictions as examples.

Chapter 2, by Charlotte Carrington-Farmer, is titled "Roger Williams and the Architecture of Religious Liberty".¹³ As the title suggests, she discusses the role of Roger Williams, regarded as the founder of the Rhode Island colony, on the development of the idea of separation between the state and church. She illustrates that Williams supported religious liberty despite being a deeply religious man himself. He was the first person to succeed in putting "the abstract idea of religion into practice."¹⁴

Chapter 3, authored by Daniela Kalkandjieva, is titled, "Orthodox Churches in the Post-Communist Countries and the Separation between Religion and State."¹⁵ She tracks the development of Orthodox Christianity in states of Eastern Europe, such as Poland and Hungary. She illustrates that Orthodox churches have succeeded in influencing government policies without giving up their autonomy.

Zachary R Calo deals with "Catholic Social Thought, Religious Liberty and Liberal Order" in Chapter 4.¹⁶ He traces the development of religious freedom and liberalism in specific streams of Roman Catholic thought from 1832 to modernity.

In Chapter 5 - the first contribution in Part II - Anthony Bradney discusses "The Right to be Different: Religious Life in Twenty-First Century Great Britain."¹⁷ He illustrates that few people seem to experience religious discrimination but acknowledges that religious education policies are not as neutral and uncontentious as they are made out to be.

Rafael Palomino remains in Europe with his title in Chapter 6, "Law, Religion and States: Searching for a Soul for Europe."¹⁸ He investigates the

¹³ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 13-34. The author is a historian from Rhode Island.

¹⁴ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 6.

¹⁵ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 35-52. The author is a Bulgarian scholar working in the fields of history, religion, archival studies and the sociology of knowledge.

¹⁶ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 53-72. The author is a legal scholar from Qatar.

¹⁷ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 73-88. The author is a retired legal scholar from United Kingdom.

¹⁸ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 89-106. The author is a legal scholar from Madrid.

possibility of identifying a "soul" for the European Union in which religion could or should be integrated.

Chapter 7, titled "How to Deal with Religion in the Increasingly Pluralistic European Societies? The European Court of Human Rights on Crucifixes, Face-covering Veils and Disparaging Muhammad", is authored by Carla M Zoethout.¹⁹ She discusses recent decisions of the European Court of Human Rights that highlight the tension between the impartiality of states and the protection of the rights of religious minorities.

In Chapter 8 Carlo Panara continues with a discussion on the display of religious symbols in public spaces in Italy with her contribution titled "Religious Symbol or Something Else? The Legal and Political Significance of the Crucifix in Italy from the Unification of the Country (1861) to the Present Day."²⁰

Chapter 9 provides a view on freedom of religion in the USA. In his contribution titled "Religious Exemptions from Civil Laws and Free Exercise of Religion", Malmon Schwarzschild raises concerns over the state's expansion of control over everyday life that threatens freedom of religion. According to him this control requires religious believers to appeal for exemptions.²¹ He argues for a reconsideration of state policies that interfere with freedom of religion.

Religious exemptions are also the theme in Chapter 10 titled "Whose Conscience? Which Complicity? Reconciling Burdens and Interests in the Law of Religious Liberty."²² The authors, Chad Flanders and Sean Oliviera, argue that religious exemption litigation does not promote a pluralist agenda because litigants are either for or against the exemption, which means that there can be only one winner.²³

Chapter 11 stays in the USA with a contribution by Dorothy Rogers on "Sanctuary: Religion and Law in the United States."²⁴ She comments on the creation of so-called "safe havens" in religious communities where the sanctuary is provided to undocumented immigrants. States are generally

¹⁹ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 107-124. The author is a legal scholar in the Netherlands.

²⁰ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 125-146. He is a scholar from the United Kingdom.

²¹ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 147-160. The author is a legal scholar from the USA.

²² Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 161-176.

²³ Both authors are from the USA. Flanders is a legal academic and Oliviera a legal practitioner.

²⁴ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 177-196. The author is a legal scholar from the USA.

hesitant to invade these spaces, leading to their being regarded as "safe havens".

The interconnectedness between religious traditions and private law litigation is the theme for discussion by Javier Garcia Oliva and Helen Hall in Chapter 12 titled "Exorcism: Faith versus Fraud: The Balance Struck between Freedom of Religion and Protecting the Vulnerable from Exploitation."²⁵ Their focus is on the practice of exorcism and spiritual advice in England and Wales.

Peter W Edge and MC Rajan's Chapter on "Sacred Sites and State Failures: A Case Study of the Babri Masjid/Ram temple Dispute in Ayodhya" is the second last.²⁶ They provide a critical discussion of the long-running dispute concerning the Babri Masjid/Ram temple in Ayodhya.

In Chapter 14, the final chapter, the co-editor Md Jahid Hossain Bhuiyan comments on "The Place of Shari'a in Australia."²⁷ He concludes that Australian policies do not leave much space for the accommodation of Shari'a family law, although there is evidence that Islamic finance is looked upon more favourably.

In conclusion, the book is a collection of chapters that deal with religious issues in liberal societies in some or other way. There is no apparent link between the different chapters or the jurisdictions covered, besides the fact that they all deal with the challenges brought to the fore where disharmony exists between religious freedom and modernity. However, as explained by the editors,²⁸

It is not the object of this book to propose a single recipe for the accommodation of religious beliefs and practices in liberal legal systems. A simple appeal to 'liberalism' certainly cannot provide any such recipe, because liberalism is not a monolithic tradition. Indeed, the place of religion in a liberal polity is, more than perhaps any other matter, a matter of deep disagreement within that tradition of political thought. *It is hoped that the essays in this book will shed at least a little light on the benefits and challenges that religious differences present for contemporary societies and the conditions under which religious beliefs and civil authority can co-exist happily.*

²⁵ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 197-216. Both authors are legal scholars in the United Kingdom.

²⁶ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 217-232. Edge is a legal scholar from the United Kingdom and Rajan is both a Roman Catholic priest and a legal scholar from India.

²⁷ Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 233-252. He is a legal scholar from Bangladesh and at the time of the publication of the book a postdoctoral fellow at the faculty of law, North-West University.
Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State* 9. Emphasis added.

The "happy" co-existence of religious beliefs and civil authority remains a forlorn hope, and it is doubtful whether we will achieve it in our lifetime. Nevertheless, the collection is a valuable contribution to every comparative law scholar's bookshelf. It provides us with a glimpse of the uneasy relationship between religion and modernity in jurisdictions other than our own.

Bibliography

Berger *The Desecularization of the World*

Berger PL (ed) *The Desecularization of the World: Resurgent Religion and World Politics* (Williams B Eerdmans Publishing Company Michigan 1999)

Bhuiyan and Jensen (eds) *Law and Religion in the Liberal State*

Bhuiyan Md JH and Jensen D (eds) *Law and Religion in the Liberal State* (Hart Publishing Oxford 2020)

Finke and Stark 1988 *American Sociological Review*

Finke R and Stark R "Religious Economies and Sacred Canopies: Religious Mobilization in American Cities, 1906" 1988 *American Sociological Review* 41-49

Sullivan and Yelle 2005

<https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/law-and-religion-overview>

Sullivan WF and Yelle RA *Law and Religion: An Overview* 2005

<https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/law-and-religion-overview> accessed 27 October 2020