Book Reviews


Education is a uniquely sensitive area for religion and religious freedom. It is a site of competing social claims on the value and meaning of religious freedom – intersecting, in turn, with the overlapping rights of parents, children and religious communities. Myriad moral and legal questions surround both the regulation of religious education in private spheres – where it threatens to undermine human rights or constitutional rights – as well as the involvement of religions in the provision of public education. Both raise issues concerning the autonomy and identity of religious communities, claims which potentially conflict, in turn, with the human rights of individuals, both parents and children. In modern democracies there is, broadly speaking, an acceptance, and indeed, an expectation, of the State’s duty to educate, but this gives rise to a considerable power on the part of the State to determine or interfere with the process of belief-formation. Across Europe, constitutions and human rights instruments will also mediate the conflict between dominant national identities and the protection of minority rights. Yet in reality, the role of the law in this area goes beyond merely that of protecting against the excessive encroachment of state power. In practice, legal issues surrounding the role of religion in education in Europe are bound up with deeper questions of identity, secularism, nationalism and multiculturalism. Clarke argues that religious freedom requires the State ‘to allow believers and non-believers alike to determine their own beliefs without any direct or indirect attempt on the part of state officials to influence the individual’s free choice’\(^1\) – but this broad, attractive proposition is notoriously difficult to interpret and apply in practice.

Despite important regional and national differences, a common theme is how the law must frame and limit the role of the public education apparatus in shaping children’s beliefs and identities, and in doing so how it mediates the competing needs and claims of parents, religious bodies, national and minority communities as well as the State itself. At a European human rights law

\(^1\) D. Clarke, Church and State: Essays in Political Philosophy (Cork: Cork University Press, 1984) p. 223.
level, the Strasbourg Court’s ruling on school crucifixes in *Lautsi v Italy*\(^2\) signals a conservative trend in the Court’s definition of religious freedom and minority rights in the school’s context – it underplayed the force of religious symbolism, as opposed to formalised indoctrination, in the broader school environment, and affirmed the legitimacy of States giving positive recognition and accommodation to dominant traditions. Some judges even depicted the claimant’s argument as a disruptive and excessively assertive stance against legitimate majoritarian identities. In fact, it provided a neat contrast to the stricter conception of church-state separation, in the education context, evident in the case law of the United States Supreme Court.

Competing rights claims arise, accordingly, in the State’s claim to include national religious traditions both symbolically and in teaching content, in the divestment or delegation of public education to religious bodies, in restrictions on individual religious expression both on the part of pupils and parents, in the state regulation of private religious schooling, in how ostensibly secular curricular content undermines religious beliefs and how opt-outs or accommodations facilitate this, and even in the content of general religious studies curricula in public schools.

These complex contemporary issues are approached from a diversity of angles in a recent volume edited by Myriam Hunter-Henin. *Law, Religious Freedoms and Education in Europe* brings together stimulating contributions by a number of important scholars on law and religion at both domestic and European levels, including Peter Cumper, Alison Mawhinney, Russell Sandberg, Frank Cranmer and Christopher McCrudden. France, England and Wales, Northern Ireland, Germany and Spain receive particularly close attention. This work is to be especially commended for its interdisciplinary approach, showing recognition of the close connection between the legal issues in this area of religion and education and the various sociological, political and theoretical background issues. Religious freedom, as a human right, is the subject of overlapping and competing claims in this particular area, which in turn, I have argued, are informed by deeper historical and political influences. In a sense, the discourse of human rights often becomes instrumentalised as a terminology through which different interest-groups can express and formulate their competing claims. In legal analyses, the doctrinal terminology of ‘balance’ and proportionality tends to obscure the salience of implicit value-judgements as to the substantive merit of the competing rights claims – as was evident, for example, in the Grand Chamber’s *Lautsi* ruling. Thus, the margin of appreciation tends to facilitate a certain recognition of the complex and fraught philosophical and political questions underlying this area – with the *Lautsi* ruling, indeed, exemplifying a certain deference to national models on the part of the

\(^{2}\) 3 November 2009, ECHR no. 30814/06.