
This collection of articles by a wide range of scholars is comprised of key papers from the Law, Religion and Social Change Conference held at the Australian National University in May 2006. The purpose of the conference and indeed the volume is to examine issues surrounding “the nature and scope of the engagements between law and religion”, including those surrounding the role of religion in society particularly in respect of Muslim immigrants in Europe, the role of the established churches vis-à-vis the State, the effects of the September 2001 terrorist attacks on law and religion and the headscarf debate. The papers cover a wide range of topics, including such diverse subject matters as pluralism in law and religion and the conflict between Aboriginal spiritual beliefs and the Australian legal system. The approach varies in each of the articles and, as noted in the introductory chapter by Carolyn Evans, the majority of the papers tend to focus on either the theoretical or the historical aspects of each issue, with few attempting to bring the two strands together. However, despite such a large range of topics being covered, the papers are to some extent interconnected. They are helpfully split into three sections—theory, history and contexts—and as a result follow in general a logical pattern and consequently enable the reader to cross-reference conflicting arguments and standpoints on similar issues.

Chapters 2–5 focus on the theory of law and religion. In this section the chapters engage closely with one another with points of contention brought out and debated. In Chapter 2 Lawrence Sager considers the value that religion has in society, whether it deserves a privileged position among all other forms of belief or not. While Sager considers the issue to be equality between religion and other forms of belief, on the other, Webber in the following chapter considers the main issue to be equality between religions, particularly between the majority religion and minority religions. This is a compelling “dialog”. Meyerson’s discussion of the separation of State and religion and Davies’ consideration of the increasing role played by religion in politics in Western pluralist societies further enhance the theoretical side to this volume by elaborating upon these key issues.

The following section, the historical section of the volume, considers a variety of issues that have led to friction and through that to the development of the concept of freedom of religion in different states. In Chapter 6, McConnell discusses “the influence of cultural conflict on the jurisprudence of the religion clauses in the First Amendment”. It describes the differing stances taken by the Supreme Court of the United States to freedom of religion and explains the political motivation behind the court’s position. What becomes apparent is that the Supreme Court currently avoids answering controversial questions which may lead to hostility or claims of discrimination. As the purpose of the chapter is
clearly to illustrate the development of the Supreme Court’s jurisprudence in this area, the chapter would benefit from more analysis of how the Supreme Court could and should address contemporary issues. Such further elaboration of state neutrality, religious exemptions, the notion of secularity being an ideology in itself and the funding of religious organisations by the State would have enhanced the analysis of the topic. The following chapter ‘From Dayton to Dover: the legacy of the Scopes Trial’ is a description of the history of the Scopes Trial in which a teacher was originally convicted for the teaching of evolution in an American public school; Radan puts the story within the context of the Culture Wars. The author goes on to discuss freedom of religion in the light of the conflict between ‘democratic majoritarianism’ and judicial review, and, thus, allows for a balanced discussion of the issues raised by the trial. In Chapter 8, Smith elaborates on the relationship between the Church and State in England, the significance of establishment in society and the clash between this and human rights. Smith also considers the issues faced by both reformers and the judiciary in relation to these issues. The conclusion brings out the more practical side of the discussion and focuses on the major contradictions and issues identified in the text.

The final group of papers explore the issues raised by freedom of religion in contemporary societies. Chapter 9, in which Gavison and Perez consider the ‘days of rest in multicultural societies’, addresses the issues facing Western societies when balancing the needs of minorities with the need for integration. After a substantial discussion of the theory and the realities of the situation, they argue that while shared days of rest limit “the freedom of individuals and may burden the communities whose religion or culture is different from that reflected in the arrangements” (p. 209), they do not necessarily violate the rights of non-believers. The paper concludes that it is not possible to achieve both full accommodation and full integration in plural societies with such a divergence in religion and culture.

The inclusion of “Australian legal procedures and the protection of secret Aboriginal spiritual belief: a fundamental conflict” provides a valuable insight into the difficulties that the State may entail when trying to accommodate a vastly different set of spiritual beliefs. Wilhelm provides an interesting and thought-provoking account of how the Australian legal system has struggled to protect the “secret” spiritual sites in Aboriginal belief. One of the major flaws in the past, according to the author, was that the the Australian Court itself would decide on the legitimacy of the belief without any consultation with the indigenous community in question. Wilhelm’s three-fold recommendations in the conclusion, including the establishment of an Aboriginal-based process in order to establish the legitimacy of the belief, provide a solid foundation for the protection of Aboriginal ‘secret’ spiritual sites.

In Chapter 11, Nehushtan provides a considered analysis of “secular and religious conscientious exemptions: between tolerance and equality”. The author argues that conscientious exemptions provided by legitimate laws are a result of