Anat Scolnicov


The inner nature of religion, as a personal rather than a collective experience, is an open question in the philosophical and legal debate on the right to freedom of conscience and religion. With its dual character, as a component of individual identity as well as a matter of liberty, religious freedom implies concepts of equality and dignity equally. From a liberal point of view, liberty and dignity are the roots upon which the state can rely in order to provide legal protection to the individual right to religious freedom. On the other hand, the communitarian critique of liberalism points out the close link between religion and culture, so that religious freedom must also be protected on collective grounds.

Moving from a liberal background, Anat Scolnicov’s book aims to prove that religious freedom is basically an individual right, and that it can only be conceived as a collective right in derivative terms. As stated in the Introduction, this reflection is restricted to religion and religious beliefs and does not extend to matters of conscience or other kind of beliefs.

The arguments focus on the theoretical and practical implications of conceiving religious freedom as an individual or a group right and, although there are constant references to national laws and jurisprudence, the international normative system forms the framework for the book, with a view to exploring conflicts and solutions that have yet to be addressed in the existing international human rights instruments.

The first chapter provides an introductory survey of the major international legal texts on religious freedom. The author shows how the historical development of international legal protection of religious freedom ‘reflects a move from protection of groups to recognition of the rights of the individual’ (p. 9). Nevertheless, some recent developments seem to have channelled this protection towards the rights of religious groups, with this trend being, as the author notes, a matter for concern as regards the practical implications for individual rights.

Two main problems are addressed during the course of the book, both of them arising from the institutional character of organised religion and its potential to be ‘an all-encompassing normative system, providing a complete value system for all aspects of life’ (p. 1). This peculiar facet of the nature of organised religion can constitute a source of conflict between individual autonomy and group rights, to the extent that the religious normative system is sometimes claimed to supersede individual autonomy. However, as the author
puts it, an individualistic approach leads to the idea that religious freedom is in the first place an individual right, and that as such, group rights should not override it.

Another problem can arise from the fact that a religion is a comprehensive system of social prescriptions which are binding for its members; as such, a religion can appear to be an alternative to the secular, normative system of a state. Through careful consideration of many cases of conflict between state authority and religious groups’ autonomy, the author affirms that group autonomy cannot allow any exceptions when respect for basic human rights is at stake.

Chapter two explores the theoretical justifications of religious freedom. In the course of a brief survey of liberal theories (Locke, Hobbes, Rawls, Dworkin and Nozick), and with reference to Taylor’s critique, which is based on a communitarian approach, the author critically analyses the implications of the critical-individualistic aspect of religious freedom vis-à-vis religion as constitutive of individual identity.

Scolnicov makes some critical remarks about how a group right would possibly be conceived, arguing that, in the first place, it is difficult to define a religious group or to identify its decision-making processes, while all the criteria that should be applied (self-identification, identification by the group through its membership, identification by objective criteria) can turn out to be discriminatory in practice. Furthermore, the concept of a group right is claimed to be antithetical to the general idea of a right functioning as a limit to collective power. The author contests the group-rights-utilitarian argument, which claims that individual rights in the modern world can sometimes only be protected by giving power to the group, which is better suited to challenge state power than isolated individuals could be. In the author’s view, if religious rights are group rights, and can override the rights of individuals, this merely substitutes the group which would otherwise hold power over individual rights for another: ‘By transferring authority from the state to religions, authority which may be paramount to individual rights, we are merely transferring the power to infringe individual rights, not protecting them’ (p. 49).

Chapter 3 gives an overview of the legal status accorded by states to religious groups. Constitutional provisions and jurisprudence show a broad range of relations and commitment between churches and states, from states where there is an established religion (and a continuum of legal arrangements between establishment and non-establishment) to secularity, which appears to have different meanings in different states (hostility, exclusion, neutrality). Nonetheless, whatever the existing legal arrangements for religions, states cannot avoid dealing with matters of religious freedom and equality, and thus it