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Review:

Peter W. Edge's *Religion and law: an introduction* follows David Herbert's *Religion and civil society* as the second volume of the Ashgate Religion, Culture & Society Series. Edge, himself co-editor of this series, is Reader in Law and Religion at Oxford Brookes University, UK, and his new publication offers an introduction to legal responses to religion and religious practice in international and national (Anglophone) jurisdictions. As a legal scholar with long expertise in the field of law and religion, Edge aims at a broad, non-jurisdictional and student-friendly overview for a non-legal readership.

The core objective of *Religion and law* is to illustrate how a full range of religious aspects become legally relevant and religious plurality raises new challenges to legal systems. In order to give a comprehensive account, Edge completes four main steps along the four main chapters of his book.

1. Thinking about law thinking about religion

Chapter One offers a well-balanced and careful approach to law and religion as social phenomena, emphasising the importance of religion and law to each other. Edge outlines six main legal functions, defining law as a mechanism to maintain social order, resolve disputes, regulate relationships between individuals, respond to social problems, secure individual rights and freedoms against state power, and to empower organisations and individuals. The corresponding question, "Why is religion important for law?", certainly requires a closer look, and here the author retreats to the rather pragmatic perspective of a legal scholar, taking account of religion's relevance to law in a very roughly presented understanding of religion's "role as providing part of the context to a legal discussion". The two other main points of religious importance, according to Edge, lie in "the distinct place to be given to religious interests in legal analysis" and in "the special problems posed to any liberal legal discourse which seeks to develop a legal pluralism in response to a growth in religious plurality" (pp. 5-11).

Similarly, Edge approaches the questions "What is Law?" and "What is Religion?" in a rather asymmetrical effort, which becomes plausible only in view of his expectations of the intended readership. Indeed, Edge does guide the non-legal expert step by step through the hierarchy of legal sources. He starts by introducing specific characteristics of national written constitutions, goes on to explain sources of primary and secondary legislation, pointing out the potential of national

legislation to change the existing law and the significant power of judges within legislation. Further on in this hierarchy, Edge presents decisions of the superior courts and explains the binding power among the hierarchy of courts, the historical background of common law and, finally, makes a short reference to the phenomena of soft law and academic commentary on the difference between legal documents and law in practice.

As indicated above, the sub-section “What is Religion?” refrains from the attempt to define religion; it rather reduces the question as to how religion is defined in legal discourse and how it should be used throughout the presented text. Despite all difficulties and national differences in defining religion, the author suggests a reference to a metaphysical reality as a minimal criterion to shape a working definition of religion. Thus, any metaphysical claim, be it one about the existence or *non*-existence of a metaphysical reality, is taken as a religious claim. In consequence of this broad assumption, the author concedes that, although legal discourse operates on the grounds of the term “religion”, the definition thereof is more often than not closer to the concept of spirituality.

Again, of more interest to the non-legal scholar are the brief guidelines to the study of the different types of secondary literature on the interaction of law and religion. Edge is very committed to explaining categories of legal literature with respect to their different methodology, territorial scope, topics, and targeted readership.

2. Religious interest in international and domestic laws.

The idea of religious interest

Edge makes clear that an emphasis on religious interests, rather than on religion, is more helpful as regards comparability with non-religious contexts and practicability, since legal discourse refers more to interests than to religion itself. Furthermore, he stresses the distinction between interests as religious beliefs, interests in religious identity, and interests raised by membership of a specific religious community, whereby each of these interest categories can be related to the dimension of either the status or – more often a source of legal conflict – the manifestation of the belief, identity or community interest (cf. table p. 44).

Religious interests in international law

Chapter Two is then a presentation of the key sources of international guarantees of religious interests, including the historical background and characteristics of the most significant international conventions, or treaties, such as the International Covenant on Civil and Political Rights (ICCPR), and regional human rights documents, with special attention to the European Convention on Human Rights (ECHR).

Religious interests in generally applicable domestic guarantees

Noting the influence of international law on national decision-making, Edge builds a bridge to a comprehensive presentation of religious interests in selected national legal systems, namely of the UK, New Zealand, the US, Canada, Australia, and South Africa, maintaining that generally applicable religious guarantees are useful as “a constant level of background consideration for religious interests” and especially as a point of reference for minority groups to get themselves secured the same guarantees within the state.

3. The state and the individual

As to the interaction of the state and the individual, the author illustrates two categories of cases: one being a conflict between individuals and generally applicable duties to act contrary to their convictions (e.g. tax payment or military service), the other being the problem of generally applicable prohibitions (animal sacrifice, child abuse, drug use) and conflicting individual religious interests. A small section elaborates the issue of proselytism and decisions of the European Court of Human Rights. It becomes clear that most cases are not at all easily decided and that, on the contrary, each interest needs to be balanced against others and, effectively, against the state's own interests.

4. The state and the religious organisation

Chapter Four tackles problems arising from the interaction of the state and religious organisations. Edge introduces five aspects. One is to be found in various grades of direct involvement of churches, or religious organisations, in national constitutions or international organisations, ranging from established national churches, as originally intended in the Irish Constitution, to the limit on such an establishment by the US Constitution.

Another aspect of "entanglement" is the state's competence to identify, register, and officially recognize religious organisations, whereby the organisations who fail to register face enormous restrictions. Here, the author makes an exception in choosing Russian, Bulgarian and Moldavian registration schemes, which admittedly serve as evident examples, but may give rise to the misleading conclusion that this is an especially Orthodox issue. The phenomenon in question could have as well been illustrated in the UK or some other legislation previously introduced in the book. The UK again serves as an example for the third aspect, namely that of organisational involvement – here by charity organisations - in state initiatives.

The fourth aspect consists of clergy issues growing out of private claims against religious organisations – either claims of employment rights by clerical employees, or claims by others for misconduct and malfeasance of clerics.

The remaining aspect is the phenomenon of sacred buildings and sacred places, exemplified through sacred buildings in the UK and sacred sites of indigenous American communities within the US landscape.

5. Conclusions

Edge again explains that "the challenges posed by the interaction of law and religion in our jurisdictions, and in international law, are essential challenges raised by an increased respect for the increasing fact of religious difference within each jurisdiction" (p. 133).

It seems debatable whether this is a genuine thesis or a tautology, especially as Edge's text would not supply sufficient and precise definitions of concepts he employed, such as "broader society", the state, religious plurality, social and cultural changes, etc.

However, this inaccuracy, resulting from the temptation of making causal claims, becomes less relevant if one keeps in mind that the author distanced himself from any intention "to develop a particular thesis on the relationships between law and religion" (p.1) at the very beginning of his work. Not without qualifying his own prognosis by an emphasis on remaining differences, Edge concludes that "combined with the influence of international law, we may be able to look forward to a period of relative homogenisation of religious rights, at least within our jurisdictions" (p.134).

It is fair to state that Edge successfully provided his readership with widespread empirical data on the interaction of law and religion and thus fulfilled the main task of his book, which was to introduce a non-legal readership to this area of law. Accordingly, the bibliography, index of names, cases and keywords, as well as the very thoroughly structured content table and **Further Reading** section are very helpful in their effort to systematize and to offer some first reading suggestions for each of the central issues mentioned. Edge bases his work on the state of the law as of September 2004. While some typing errors are unavoidable and therefore excusable, a latent inattention of the lecturer towards French names (Hervieu-Léger, Bourdeaux) makes for drops of bitterness in the otherwise very attractively designed publication. Also, questions may arise as to why, in support of the whole enquiry, Edge does not make any use of, or at least mention, those helpful models created by Maurice Barbierⁱ, Mark Chaves/David E. Cannⁱⁱ, Francis Messnerⁱⁱⁱ, or Gerhard Robbers^{iv} to describe the relationship of religion and the state systematically.

Especially for readers with an existing interest in religion, Edge's work is unlikely to articulate any new ideas on the phenomenon of religion and on religions in their organised form. For those, it will be a pity that points like the international human rights regime having cultural values, or being an entire worldview in itself (p.64), remain an infrequently encountered outlook which is left undeveloped on the way. There seems to be a clear dominance of legal science within the broader landscape of scientific literature on the relation of law and religion in Europe, leaving still more approaches to this subject by sociologists of religion, scholars of political science, studies of religion, cultural science, and others, to be desired. However, the author is not the one to blame for this imbalance, and his work is the more valuable to scholars of those disciplines as a starting point for their own investigations. It is very accessibly written (a precious and rare quality which cannot be overestimated among legal scholars) and – probably its strongest point – loaded with a wide and representative selection of legal cases and pivotal decisions which take account of religious plurality.

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Notes:

ⁱ Barbier, Maurice (1995): *La laïcité*. Paris.

ⁱⁱ Chaves, Mark; Cann, David E (1992): Regulation, Pluralism, and Religious Market Structure. Explaining Religion's Vitality. In *Rationality and Society*, 4, 272-290.

ⁱⁱⁱ Messner, Francis (1999): La législation culturelle des pays de l'Union européenne face aux groupes sectaires. In Champion, Françoise; Cohen, Martine (Eds.): *Sectes et démocratie*. Paris. 331-358.

^{iv} Robbers, Gerhard (1995): Staat und Kirche in der Europäischen Union. In Robbers, G. (Ed.) *Staat und Kirche in der Europäischen Union*. Baden-Baden. 351-361.