The Law of Organized Religions: Between Establishment and Secularism
JULIAN RIVERS

This is a highly remarkable book. While, traditionally, the institutional side of religion in the secular sphere has perhaps been overstressed, it has been underestimated in more recent times. This underestimation is at least in part due, most importantly, to the rise of human rights approaches and, more deeply here, to ‘a laudable emphasis on the importance of the individual’. In recent years, it has been the European Court of Human Rights that has pointed at and underlined the obvious fact that religion is usually lived in community with others and that a full account of freedom of religion as guaranteed in human rights instruments must therefore inevitably take appropriate note of the institutional needs of religion. Julian Rivers’ book takes what this reviewer considers the correct perspective on these developments, emphasising the relevance and the status of religions as organised institutions. In doing so, its focus is on the law as it applies to non-established religions. However, Rivers also makes comparative reference to the position of both the Church of England and the Church of Scotland.

The whole book is highly informative, well balanced, comprehensive and strong in its arguments. It is easy to access; and each chapter has a conclusion, with chapter 11, outlining principles, forming a conclusion in itself. The formal appearance of the book is impeccable, and in view of this further masterly achievement the only editorial mistake that I have spotted falls into irrelevance: on page 46 the author obviously wanted to say that the OSCE (Office for Democratic Institutions and Human Rights) has as a major strand of its programme the combating of intolerance – and not, as is stated, combating tolerance (the former being the only correct reading).

The volume provides an account of the English law relating to organised religions. It does so by first giving a strong and catchy overview of the historical development of institutionalised religion in the West from the times of Celtic beliefs onwards, centred on the British development but reaching out into the broader European experience.

This wider European approach is mirrored and intensified in a very clear and reliable account of the relevant practice of the European Court of Human Rights; the book also refers to a variety of further international human rights guarantees for religious associations. In this respect, the exact implications of the 1648 Peace of Westphalia would have deserved some more differentiation, especially the meaning, content and relevance of the principle of *cuius regio eius religio*, which had been given a prominent place in the Holy Roman Empire of the
German Nation by the 1555 Religious Peace of Augsburg and which was brought to an end by the Peace of Westphalia, in fact if not explicitly.

With chapter 3 the book turns to the constitution of religious bodies. In a few short sentences the author rejects the practice of non-justiciability of internal matters of religions. Instead, he favours the idea that the law has to respect internal autonomy and a commitment to protecting legal interests. Rivers also refers to the various parliamentary acts concerning individual religions, such as the United Reformed Church Acts 1972, 1982 and 2000, the Salvation Army Acts 1931 and 1980, and the Presbyterian Church of England Act 1960. Court practice is given substantial attention. Rivers agrees that secular courts should have a substantial say in internal religious conflicts. He reports somewhat critically that recent cases have shown a tendency towards proportional distribution in the name of a deliberate agnosticism by the court as to the respective religious credentials of the competing parties. He argues:

But proportional distribution is only fair if the parties are indistinguishable. It is unfair on the majority if they were acting in accordance with the decision-taking powers of a properly constituted organization. And it is fraud on the minority if the majority are seeking to turn that organization into something fundamentally different... Neutrality cannot mean total blindness to religious and organizational standards which the participants consider fundamental. (p 100)

There is a lot of truth in that. However, one may go on to ask whether a secular court can in fact decide about such (religious) questions without becoming a religious court itself and thus compromising its own very secularity. Moreover, is the secular court the better decision-maker in religious questions than the majority or the constitutional organs within the religious organisation? The big question of how secular and religious institutions relate to each other will continue to seek answers. Nevertheless, overall the author presents a highly impressive picture of court practice in religious matters.

A further chapter highlights the legal position of ministers of religion. It outlines development, complexity and singularity of ministerial office (or employment) in a very convincing way. Special attention is paid to equality and religious ethos in relation to employment, and some scepticism is expressed against the proportionality test. Here, the European Union law relating to non-discrimination might have deserved more explicit mention. Rivers notes a growing loss of autonomy on the part of religious bodies and a growing religious partiality on the part of the state in favour of those religions that share the predominant secular values and against those that are non-traditional, or just indifferent.

When Rivers turns to regulated rites he immediately states that the ritual nature of some acts is legally irrelevant: it makes no difference in his opinion
if a speech inciting to religious hatred is contained in a sermon. The examples that he brings forward may well be persuasive. However, the reader might have second thoughts, especially from a foreign perspective. Religious conviction may in fact have legal relevance in the question of the amount of guilt on the part of the perpetrator, or even whether an act can be qualified as a crime – using drugs for religious reasons may be an example. And freedom of religion may require different limitations from general freedom of speech in respect of inciting religious hatred.

Rivers also describes the gradual development from tolerant establishment to pluralism in chaplaincy. The chapter on faith schools presents a highly informative description of the historic development of schooling in the United Kingdom. It also delves quite deeply into European Convention law and into the practice of the ECHR on education, and further takes a look into OSCE principles. Yet, as the author mentions expressly, the overall effect of the European human rights case law remains unclear. As to the national development, Rivers notes that, although government policy since 1997 has shifted noticeably in the direction of greater openness to religious minorities, the law has also been used to narrow down the significance that religion is allowed to have: perhaps both developments support each other.

Faith-based welfare and access of organised religion to public discourse, including representation in state organs, conclude the sector-oriented part of the book. These chapters give an account of the relevance of religions in the public, democratic process of the country.

The very final chapter is dedicated to the search for principles in all of these complex and manifold fields of religious life in the secular world. Rivers finds two principles of value – as set out in the Church of Scotland Act 1921 – autonomy and neutrality. Yet he also sees, as a recent legal development, that a different concept of secularism is at work that is undermining the autonomy of organised religions and the neutrality of the state. Both concepts, autonomy and neutrality, are outlined scrupulously and convincingly. Rivers criticises ‘a continued drift in the law towards secularism-as-indifference’, a secularism marked by ‘studied thoughtlessness’ (p 346).

This is a remarkable book. It not only provides much valuable information but also shows the legal significance of non-established religion in the United Kingdom. In doing so, it mirrors the great level of tolerance and inclusion in a highly pluralistic country. One hopes that this book will be widely read in the United Kingdom and abroad.

GERHARD ROBBERS
University of Trier, Germany