

Comment

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I'll start with some important points about this wonderful book as a whole, before I get to specific substantive issues.

- Firstly, it is exceptional to read a lawyer's perspective (and moreover a methodologically-informed comparative one!) on a debate that is usually the province of political theory or moral philosophy and which actually takes the literature in these other fields on board. And while the contributions of the latter on religious freedom are obviously rich and significant, they often lack the legal expertise needed to properly understand the meaning and context of the cases (specifically, the veil in the workplace) that come before the courts in different jurisdictions. Yet the practice of such transdisciplinarity is essential when we try to think through such conundra as the moral limits of accomodation of the intolerable, or the very definition of religious (as opposed to other ethical) convictions, or (going somewhat outside the boundaries of the book, how to respond to the flat-earth movement... is it so different indeed from the new post-Latour-ian trend towards the "flat ontologies" of the earth... and is it religious?).
- Secondly, the axis of the book is a highly important reflection on the role of the courts (national and supranational) in upholding value pluralism, at a time when such action is more necessary than ever before. The contemporary need for this particular form of judicial democracy is linked to the mutations of the two Western societies studied here. No doubt particularly relevant for France in particular, the paradigms of law under which we continue to labour were as it were centrifugal, designed for (or secreted by) societies that perceived cultural homogeneity as a good. The crucial point made by the book is that the vivre-ensemble of multiethnic and multicultural populations within the same polity obviously requires a revision of the classical legal canons in this respect.
- Thirdly, in terms of legal methodology, we are given a remarkably clear and useful guide to the use of proportionality, properly understood as the tool specifically adjusted to the deployment of judicial democracy. Much decried (at least over this side of the Atlantic) as subverting traditional modes of legal reasoning, it appears here as the sole means by which the courts can properly engage in an open consideration of all the interests at stake, in an exercise that belongs quite clearly far more to judicial review than conventional adjudication).
- Fourthly, the book provides us with a grid with which to read the countless, complex contemporary cases in which religious freedom is involved. As I write, on the anniversary of the slaughter of the journalists of *Charlie Hebdo*, the debate in France rages over the limits of the freedom of expression in respect of religious belief (here in a form of double paradigm: was the publication of the caricatures of Mahomet blasphemy? what sort of reaction is justified in the name of freedom of religion?). The deep reflections contained in this book are a starting point to define the limits of the intolerable, in both directions.
- Finally, emphasis is put on a point that I found particularly compelling in my own largely anthropological readings on the modes of existence of religious communities. Often, overly simplistic approaches to cultural pluralism underestimate the risk of essentializing social practices within minority religious communities. In the same way that contemporary liberal societies should abandon value monism, minority communities must not be deprived in that context of the opportunity to evolve. Tensions and contestations are present in any living community and must also be aired and considered in any assessment of that community's "outward-facing constitution".

Now for a particular area in which the book arouses my curiosity.

Myriam Hunter is (also) a highly sophisticated private international lawyer. I wonder whether the richness of her intellectual framework is due partly (indissociably from her comparatist perspective) to the specific association of that discipline with pluralism. In a remarkable piece on the political and epistemological complexity of the worldwide disputes in the context of the “Korean comfort women” saga, Annelise Riles and Karen Knop have suggested that the conflict of laws provides an “intellectual style” with which to deal with complex legal problems arising in other fields. My own work in this respect has focused on the use of its methodologies to better integrate a respect for alterity in legal reasoning.

From this angle the first question that comes to mind is about the meaning of pluralism itself. To take up a distinction proposed by Ralf Michaels, does the acceptance of value pluralism extend to legal pluralism, specifically? My question is also linked to a case judged by the ECtHR (*Refah Partisi v. Turkey*, 13 February 2003, Application Nos 41340/98) in which the Court, underlining the importance of value pluralism, stops short of allowing legal pluralism (in the sense of allowing a community to abide by its own laws). Here we also touch on the “Sharia law Row” that followed the speech of the Archbishop of Canterbury, Rowan Williams, in 2008, in which he said that within limits provided by public law (and human rights) and criminal law, religious communities should be able to live by their own family law rules, with a right of individual exit by those of its members who feel oppressed by them. The wearing of a veil for religious reasons can be seen as part of a minority “sartorial code” and serves therefore as an excellent bridge between value and legal pluralism (while showing up the difficulty of drawing the line between them, as Gunter Frankenberg’s study (in his book on the technologies of legal transfers) of the various (Western) social attitudes towards the veil - from orientalisating to crusading - nicely shows).

Allowing or not for such a move to be made - does religious freedom require to give legal status to religious norms? - is the crucial difference between legal pluralism and liberalism. Are the various practices linked to the exercise of religious freedom contained within a liberal exception to the general (secular) rule, or are they accepted on their own terms (subject, in any particular case to the operation of the various principles embodied in the proportionality test)? Private international methodologies are helpful in conceptualizing the problem, which appears in analogous terms in that context, in the choice between “statutism” or “conflictualism”. And supposing the answer to the dilemma to be fully legally-pluralist, the same methodologies would also serve to bolster the approach advocated by the book on the basis of proportionality. In this respect, creative, cooperative modes of solving complex disputes may well require borrowing, hybridisation, and mosaic-making between multiple normative sources; having recourse to as-if reasoning; and de-centering and opening up to other epistemologies. Spatial expressions of proportionality, in other words, in articulating the thrust of multiple contradictory norms. But I am wandering off somewhat from democracy and religious freedom ... it just goes to show how exciting this book really is!