

Why Religious Freedom matters for Democracy. Comparative Reflections from Britain and France for a Democratic 'Vivre Ensemble', Myriam Hunter-Henin, *Hart Studies in Comparative Public Law*
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Throughout the last few years, religion has become an increasingly pressing issue in Europe and elsewhere, and there can be no doubt that freedom of conscience and belief is a treasured facet of democratic society. As the work of a range of authors including: Doe, Rivers, Leigh, Edge, Vickers, Lewis and Cumper illustrates, 'Law and Religion', is now a flourishing discipline, and Dr Hunter-Henin's contribution is a valuable contribution to a young and dynamic field.

This book belongs to the series *Hart Studies in Comparative Public Law*, which is a natural fit for the comparative and Public Law analysis contained in this piece of work. Dr Hunter-Henin's shows a thorough understanding and knowledge of both the French and the English legal framework concerning religion, and conducts a compelling comparison between both models. Being aware of the need to go beyond purely national dimensions, many commentators feel pressurised to embark on comparative research which defaults to focusing on other jurisdictions. Anyone who has supervised doctoral thesis will be well aware of this trend, and the almost *de rigueur* 'comparative law' chapter. Without a doubt, there is an essential place for comparative and international studies at the academic table, given that they are vital for the development of any living branch, but to succeed in its aims comparative research must have a sound methodological basis and make use of appropriate tools. Dr Hunter-Henin's stands out in her ability to do this, given her command of the Comparative Law techniques, and produces a thought-provoking and engaging analysis of both the French and the English frameworks. The Public Law dimension of the research is enhanced by the author's in-depth engagement with the democratic paradigm. The work explores how judges decide on issues concerning religious freedom and defends an approach, which is conducive to a more democratic understanding of our '*vivre ensemble*'.

It is striking that the normative democratic approach proposed in the book is grounded on a sociological and historical analysis of the two national models, and this interdisciplinary stance is to be commanded. Whilst there is without doubt a requirement for black letter law literature, the interchange with other subjects within the Social Sciences is now more crucial than ever, and Dr Hunter-Henin's contribution has excelled in this regard. For instance, the author argues, on pages 72 and 73: "[...] In England, controversies over religious freedom and autonomy often hide social questions. Those who argue for the abolition of faith schools (or at least of faith state schools) often suggest that segregated-religious schooling increases social division. Despite the socially more advantaged intake of faith state schools, it is probably unfair to blame faith schools for the social divides of English society and unrealistic to expect religious policy to solve social problems. Non-faith state schools are no less socially divisive [...]" This is an original and interesting perspective to bring to the debate, and enhanced by the fusion of law and sociological considerations.

Chapter 3, **Conceptual Analyses: the English experience of *Vivre Ensemble***, offers a particularly fresh contribution. After having conducted a robust analysis of the French model in chapter 2, Dr Hunter-Henin engages with the English system, and explains, convincingly, why despite being counterintuitive, the English Church Establishment model may in reality be an inclusive form of secularism. The author is at pains to stress that neither the French or the English system is in principle incompatible with inclusivity, and whilst I would concur, in the main, with her analysis and her conclusion, several considerations should have been taken into account:

- The use of 'Britain' in the title does not do justice to the thorough research which has been carried out on the English model. It would have been clearer, in my view, to

specify that the scope of this study was the English nation. Alternatively, the term 'United Kingdom' should have been used instead, as 'Britain' or 'Great Britain' is not a member State, but the union between England, Scotland and Wales.

- The author's thesis would have been strengthened by some reflections, however brief, on the Scottish model of establishment, and also the very different cultural issues around the distinct religious heritage of that nation, and the legacy of sectarian conflict between Protestantism and Roman Catholicism.
- Her suggestions about the decline of religious autonomy in English Law in the last few years are thought-provoking, but would have required a more detailed study of the reasons why the promotion of Fundamental British Values and the new Prevent Duty can, potentially, give rise to stigmatization of religious minorities, particularly Muslims. It goes without saying, Islamophobia is deplorable and public authorities must do their utmost to reject any discrimination against a particular group, but more evidence of the shortcomings of these two initiatives and their negative impact on the position of religious minorities would have been desirable.
- I am humbled by Dr Hunter-Henin's mention of *Religion, Law and the Constitution: Balancing Beliefs in Britain*, the book which I co-authored with Dr Helen Hall in 2017. In referring to our work, alongside other commentators, the author states as follows: '[...] Some have argued that church establishment is inherently more protective of religious freedom than constitutional arrangements based on separation [...]' I would not object to this statement as far as the English (and Scottish) models of establishment are concerned, but I would not endorse a general protection of establishment as more conducive towards religious freedom. In any event, establishment is not more than the tip of the iceberg, and the whole legal framework concerning religion as a benign force for society is a much more relevant feature. The author has rightly identified this, but it might have been advisable to devote more research to this general framework concerning religion, as establishment in England, although meaningful, has become mainly symbolic in the course of the last few years. In my proposed model with Dr Hall, the legal protection concerning religion is the biggest Russian doll, which comprises two other dolls, being establishment the smallest, or in other words, establishment only remains in England because, generally speaking, the law of England regards religion as a positive reality.

Throughout this excellent book, which I strongly recommend to anyone with an interest in Law, Society, Religion, History and Democracy, the author does not shy away from engaging with a wide range of literature, whilst highlighting its strengths and shortcomings. This is refreshing, as it is always done in an impeccably polite manner, but brings us back to what academic debates must necessarily be about: a robust, thought-provoking and respectful exchange of ideas. Dr Hunter-Henin's thesis argues for a democratic conception of religious freedom, which embraces both its negative and positive dimensions, and she relies on three different methods to build up her model: 1. The method of avoidance, as the State must refrain from interfering with religious beliefs; 2. The method of inclusion, which will enable public authorities to ensure that religious minorities are not discriminated against and have equal opportunities to be heard; and 3. The principle of revision, according to which both state institutions and citizens are expected to revise their commitments with a view to preserve the horizon of a *vivre ensemble*.

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