

## **Why does the *Matter of Religion* Make Religious Freedom *Matter* for Democracy?**

Introducing an Ideal Dialogue with Myriam Hunter-Henin about her book 'Why Religious Freedom Matters?'

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Myriam Hunter-Henin's recent book is a well-structured work. The principal of its strengths, in my view, is interdisciplinarity. Secularization / laïcité, freedom and pluralism are the three pivotal topics around which the overall critical path developed by the Hunter-Henin revolves and which she refers to in order to systematically fathom the contents of European and national (English and French) case law about religious freedom.

That said, I would like to try to provide some hints by following the same theoretical trajectory traced by the author. My twofold purpose, which I declare openly, is: a) to prompt a more radical critical assessment of the court decisions in the area of religious freedom; and b), to proffer some methodological clues about how to reach creative adjustments (rather than mere instrumental 'accommodations') between religious-cultural claims and secular ones. I would like to proceed by formulating my considerations and proposals by means of a series of questions virtually submitted to Myriam Hunter-Henin. Before moving on to questions, just a note: I'm proffering an excerpt of a longer text, available at on Academia.edu:

[https://www.academia.edu/44281690/Why\\_does\\_the\\_Matter\\_of\\_Religion\\_Make\\_Religious\\_Freedom\\_Matter\\_for\\_Democracy\\_Introducing\\_an\\_Ideal\\_Dialogue\\_with\\_Myriam\\_Hunter\\_Henin\\_about\\_her\\_book\\_Why\\_Religious\\_Freedom\\_Matters\\_](https://www.academia.edu/44281690/Why_does_the_Matter_of_Religion_Make_Religious_Freedom_Matter_for_Democracy_Introducing_an_Ideal_Dialogue_with_Myriam_Hunter_Henin_about_her_book_Why_Religious_Freedom_Matters_) ;

or ResearchGate:

[https://www.researchgate.net/publication/344617221\\_Why\\_does\\_the\\_Matter\\_of\\_Religion\\_Make\\_Religious\\_Freedom\\_Matter\\_for\\_Democracy\\_Introducing\\_an\\_Ideal\\_Dialogue\\_with\\_Myriam\\_Hunter-Henin\\_about\\_her\\_book\\_'Why\\_Religious\\_Freedom\\_Matters'](https://www.researchgate.net/publication/344617221_Why_does_the_Matter_of_Religion_Make_Religious_Freedom_Matter_for_Democracy_Introducing_an_Ideal_Dialogue_with_Myriam_Hunter-Henin_about_her_book_'Why_Religious_Freedom_Matters')

1. Couldn't (and shouldn't) the question 'why religious freedom matters?', which is also the title to Hunter-Henin's book, be preceded by a previous answer to the question 'What is the matter of religion'?

2. Moreover, have we to assume as taken for granted that the current significance of religion—at least as it is declined in the most commonplace political and legal sense—is not a reductive one? And isn't such reductive significance the specific outcome of a dialectical polarization between reason and religion played out on the political level rather than on the cognitive/anthropological one?

3. Is there coextensivity between religion and denomination? Or, instead, does religious experience have a far wider scope than that of denominational (in French culture: confessional) phenomena as they have been molded, at a particular stage of Western modern history, in the midst of their opposition to the (alleged *completely*) rational/secular sphere?

4. Isn't religion also an agency for the production of meaning beyond its being a category of experiences consisting of peculiar psychic manifestations and ritual activities? And besides, aren't the consequences of religious thought nestled in all aspects of everyday life, penetrating into the most intimate and minute folds of individual activities and habits? And isn't this conflation due to the influence that Christian moral theology has exerted throughout history?

5. If the question posed in point 4. were to have a positive answer, then wouldn't it be more consistent if we assume that religion and consequently also religious freedom have a far-reaching anthropological significance and interpenetrate with the worldly aspects of life? And that many of the anthropological projections of religion merge with the same aspects of social and individual life that the secular sphere considers of its 'pertinence'?

6. In the wake of the last remarks, therefore, I do not think there is a need to endorse the courts' decisions that, for one reason or another, end up qualifying religion as an extraneous, collateral element, as such to be respected but simultaneously to keep isolated from the (allegedly secular) socio-political circuits. I believe that Dr. Hunter-Henin is quite right when she points the finger at the tendency to qualify religion as a 'secondary' element when compared with other secular interests and values; or, alternatively, as something relevant only to the extent that it can be 'poured,' rather than translated, into secular semantics (as such presumptively, but erroneously, presumed to be completely a-religious). In some cases, following her endeavor to give an appropriate space and axiological significance to the role of religion in legal experience, Dr. Hunter-Henin seems to partially legitimize claims that aim to make room for religious views even if at the expense of equality. These are cases concerning, for example, the refusal to register same-sex marriages, or to make cakes for celebrations held by LGBT+ people. With reference to these situations, Dr. Hunter-Henin seems to be concerned that a discourse based on equality, however much related to 'sensitive issues' involving other vulnerable subjects, would end up aprioristically obliterating the relevance of the religious factor. In the two cases cited above, she leans to criticize, albeit moderately, the rulings aimed at delegitimizing the religiously argued refusal to register same-sex marriages as well as, although with several distinctions, those oriented to not entirely withdrawing legitimacy from the baker's refusal to make cakes for celebrations held by homosexual couples. Despite outward appearances, I think that Dr. Hunter-Henin's arguments should be assessed by focusing primarily on their methodological scope. In this sense, I think that her purpose to critically bring into question an *a priori* deprivation of relevance to religious motivations is to be shared; the judgments on the material outcomes of the sentences—as, to be fair, transpires from her own dubitative words—a little less. It must also be stressed, however, that Dr. Hunter-Henin has developed an original methodology in analyzing case-law decisions—which can also be found in her other writings. Almost like a hermeneutical hound with an exceptional flair, she is uniquely able to find in the folds of the motivations elements of openness towards solutions that, almost paradoxically, sound to be opposite to those proposed in the dispositive part of the decisions under examination. In this way, she is able, in many cases, to bring out a sort of internal dynamics within the judicial argumentative plots so as to sow the seeds (and the related theoretical constraints) for prospective changes in national and supra-national case-law. The outcomes of her hermeneutical approach have not infrequently a promoting effect and allow the reader to glimpse the possibilities of development inherent in the infra-normative dialectic itself, as well as, consequently, in the possible relationships between law and the social sphere.

As regards the cases mentioned above, however, I think it is not necessary to support the positions taken by the courts in order to emphasize religious freedom over equality standards. Following the path of equal freedom, as such argued by the author herself, and declining it in a relational and transformative fashion, one would soon realize that in those cases it was not so much religious freedom and equality that were opposed, as rather religious freedom and sexual freedom. In other words, one freedom was facing the other. In my view, any adjustment between the opposite instantiations of freedom requires the performance of a translational task involving all process steps listed above, namely: crossed-narrations, crossed contextualizations and translation/transactions gauged on a weighted and open-minded assessment of the relational/reticular threads of signification stemming from the implications of each claim at stake. But in their rulings, the judges called upon to decide seem not to have followed any of these methodological steps. In this way, however, the generation of a horizon of impartiality with respect to the issues at stake has been unavoidably precluded.