

Equality and Non-discrimination: Catholic Roots, Current Challenges. Edited by Jane F. Adolphe, Robert L. Fastiggi, and Michael A. Vacca. Eugene: Pickwick Publications, 2019. Pp 214. \$50.00 (cloth); \$30.00 (digital); \$28.00 (paper). ISBN: 9781532646416.

The eleven essays that make up *Equality and Non-discrimination: Catholic Roots, Current Challenges* address an array of topics directly or indirectly involving equality and nondiscrimination and stem from a broad range of expertise, including philosophers, theologians, and jurists. The contemporary relevance and accompanying concerns of equality and nondiscrimination relate especially to what is stated by co-editor Robert Fastiggi in the opening chapter: “The principles of equality and non-discrimination have become more complex in recent years because they are being extended to behaviors and lifestyles and not merely to persons” (8). This naturally introduces various interpretations arising from foundational beliefs (whether religious or nonreligious), which also overlap with matters of moral importance. Bearing this in mind, differing views on the meaning of equality and nondiscrimination are inescapable, and included here are views stemming from the religious also. Editors Jane Adolphe, Fastiggi, and Michael Vacca have gathered views implicating equality and nondiscrimination that are aligned more specifically (although not exclusively so) with Catholic teachings and thought.

The past couple of decades have witnessed an assiduous increase in criticism that reflects deep concern about the substantive limitation placed on religious interests in societies that are labeled as democratic and, by implication, plural. The reason for this criticism is the dominance of nonreligious views on conduct regarding, for example, sexual orientation and gender identity, the status of unborn life, the interests of the child, and the parameters of freedom of religion itself—topics that recur frequently throughout *Equality and Non-discrimination*. The dominance of such nonreligious views has implications for the degree of plurality that a true democracy should reflect. Taken as a whole, the book serves as an informed and reasoned voice that challenges dominant views of substantive moral matters (see examples above), which in turn have bearing on the parameters of freedom related to, for example, religious associations and agencies, businesses, and the rights of health care practitioners and civic officials (such as marriage officers). Included in this book is the unveiling of disparities as well as partisanship in contemporary human rights jurisprudence against the background of equality and non-discrimination.

The first three chapters (1–41) mainly focus on theological and philosophical insights on equality emanating from Catholicism. In this regard, their authors—Fastiggi, Ernest Caparros, and Daniel B. Gallagher—provide insights worthy of note. Included here are views that assert the common origin and dignity of human beings as having been created in the image of God and qualify the affirmation of foundational rights. The idea that the image of God is anchored in the rational nature common to all is also tightly intertwined with natural law theory: natural law requires the alignment of the nature of something with the purpose of that same thing (which implies the need to differentiate between our mere feelings and the nature of the thing we are involved with). This idea related to natural law in turn provides significant insights into views on conduct related to sexual orientation, gender identity, euthanasia, and abortion. In the next chapter (42–62), Ryan Anderson critically focuses on protection of LGBT rights in the United States. Concerns rising from activities in the business sector pertaining to sexual orientation also enjoy some focus. In this regard, valuable insights are presented on a topic that is of contemporary

relevance and urgency in a number of liberal democracies. Anderson concludes with convincing proposals as to how public policy proposals for new LGBT protections can be improved upon to lessen the violation of those who hold other convictions.

Taking due cognizance of forms of unjust discrimination that necessitate across-the-board consensus based on race, for example, equality should not be comprehended as a uniform measure to which everyone should subscribe, and this is elaborated on by Iain Benson in chapter 5 (63–75). Benson reminds readers of the inclusion of respect for difference and context as part of the essence of the law—equality does not imply sameness; rather, it serves as a derivative of other rights and that differences in moral views precede the application of abstract concepts such as equality. Equality understood as a derivative of other rights implies that equality should allow for people to hold and practice their own views on, for example, marriage, and that parents should decide for themselves what their child is to be taught at school regarding sexual morality. Inferred from this is that the law is preceded by belief (whether religious or nonreligious) and that consequently it is not only for the nonreligious to lay claim to what the law should be. Laws that violate religious interests should therefore also be open to limitations. A word of caution is also directed against employing equality in a manipulative manner to further a specific view, to the exclusion of others, on matters of moral significance. By referring to specific scholarship in support of the decontextualization of equality (under the banner of “deep equality” [67–73]), Benson proves such scholarship to be littered with vagueness and confusion, which in turn runs counter to respectful coexistence. Benson rightfully warns, “The new language of ‘inclusion’ or inappropriate decontextualized applications of ‘equality’ and non-discrimination that suggest the ‘binding into’ without a respect for the ‘difference from’ poses a threat to the variety of differences that undergirds ‘deep diversity’” (74). This chapter therefore provides convincing arguments in support of the furtherance of diversity in societies that pride themselves on being democratic and plural. This is especially of relevance for the protection of the right to freedom of religion in liberal democracies that substantively relegate meanings that religion attaches to equality and discrimination concerning matters of moral weight. The importance of this chapter is also confirmed against the background of John Gray’s warning in *Two Faces of Liberalism*, directed at a type of liberalism that understands toleration as an “instrument of rational consensus, and a diversity of ways of life is endured in the faith that it is destined to disappear.”¹ An ideal of ultimate convergence on values is typified by this liberalism. In contrast to this, says Gray, there is a liberalism that views toleration as a condition of peace.² Different views of living are welcomed as features of diversity in the good life, and the coexistence of conflicting views is supported.³ Different views on equality and nondiscrimination should therefore be welcomed in democracies that label themselves as diverse, tolerant, and democratic.

In certain of the chapters that follow, selected regional policies, human rights instruments, and court judgments are described, explained, and in some instances appositely critiqued in respect of the protection of matters related to sexual orientation as a category of nondiscrimination and freedom of religion. More specifically, the chapter (76–103) by Monsignor Piotr Mazurkiewicz elaborates on the observation that the European Union’s nondiscrimination policy, although having contributed toward the equal treatment of men and women, has undergone changes that rely on a departure from natural law and the consequent basing of EU legislation on a “*weak anthropological foundation*” (100). The Inter-American system also enjoys focus (133–48) as contrasts in LGBTQ issues regarding states in the Inter-American region are brought to the fore by Carmen

1 John Gray, *Two Faces of Liberalism* (New York: New Press, 2000), 105.

2 Gray, *Two Faces of Liberalism*, 105.

3 Gray, 105.

Domínguez Hidalgo. Hidalgo emphasizes the Inter-American Court of Human Rights' recent recognition of sexual orientation as a ground for protection and briefly elaborates on the first judgment in this regard, *Atala vs. State of Chile*,⁴ as are the various legislative approaches taken by states in the Inter-American region toward sexual orientation as a category meriting protection (in a broad sense). Hostile forms of secularism toward Christian beliefs in the modern application of human rights law in the United Kingdom also receive attention in a chapter by Paul Diamond (104–32) and explanations are directed at selected court decisions on how and why the doctrine of equality and nondiscrimination has had an adverse effect on the right to freedom of religion. Diamond proffers that the discrimination paradigm has become problematic regarding antidiscrimination and equality policies, which pit sexual orientation against religion, giving preference to a specified take on sexual orientation as part of the political choices the courts make. The pitting of sexual orientation against religion, in turn, constitutes a blanket enforcement by the civil authorities of meanings related to major moral matters that are not always in agreement with religious interests and that consequently lead to dire outcomes for the inclusion of certain views on equality and discrimination.

A closer look at the American Convention on Human Rights is the focus of the chapter by Ursula Basset (149–62). Basset highlights the uniqueness of this human rights instrument in its protection of the unborn and the importance it attaches to family life (also with the focus on the interests of the child in the context of the dissolution of marriage). Basset concludes by briefly referring to instances where the application of equality and nondiscrimination against the background of the American Convention on Human Rights has been controversial and contradictory in the case law related to it—for example, on the protection of the unborn. In his chapter on the Association of Southeast Asian Nations' Declaration of Human Rights (163–89), D. Brian Scarneccia states that regional values in that declaration may be understood as a countering response to Northern/Western cultural and regional values (which have been influenced substantively by post-modernism) related to, for example, certain types of sexual orientation and abortion. Recommendations for the state members and peoples of the Southeast Asian nations to disregard these Northern/Western cultural and regional values more effectively are also presented. In the final chapter (190–204), Geoffrey Strickland briefly investigates Christianophobia in the Middle Eastern and North African regions and Islamophobia in the West, also bringing to the fore the view that the irrational fear of Islam in the West is more accurately described as fear of the violence associated with Islam as witnessed in certain countries in the Middle East. Strickland aptly argues that, focusing on our shared humanity, the goodness of life, and the ugliness of violence result in a qualitative leap that distances us from speaking of tolerance and takes us towards true equality and nondiscrimination “that sees not Christian, Jew, or Muslim, but rather the human person” (200).

As alluded to earlier, there is mounting criticism that reflects intense concern due to the substantive limitations placed on religious interests in societies labeled as democratic and plural. Such limitations seriously violate the fundamental right to freedom of religion and negate the furtherance of diversity, hereby questioning the proper functionality of democracy itself. Not only is religion substantively relegated to the private sphere in liberal democracies around the world; it is also (as alluded to earlier) dominated by a type of liberalism that propagates a subjective measure (or single morality) related to various and important types of behavior in society. *Equality and Non-discrimination: Catholic Roots, Current Challenges* acts as a counterweight to such a

4 See *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 254, ¶ 30 (Feb. 24, 2012); *Atala Riffo and Daughters v. Chile*, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) ¶ 1 (Nov. 26, 2013).

liberalism that propagates a one-size-fits-all approach to right and wrong, moral and immoral. As alluded to earlier, this volume acutely and informatively addresses and challenges views and practices related to matters of deep moral concern that are propagated and enforced by the governing authorities in liberal democracies around the world. Disparities and other concerns related to human rights jurisprudence are also brought to the fore, hereby questioning the application of the law in a number of instances within democratic societies and in regional human rights mechanisms (also regarding the application of equality and nondiscrimination). The scholarly contributions that make up the volume blend to form a credible source for vindicating and promoting views aligned not only with Catholic thought but also with Christian thought in a broader context.

Also, *Equality and Non-discrimination: Catholic Roots, Current Challenges* sends a clear message that views aligned with the religious on matters of moral importance and inextricably connected to views on equality and nondiscrimination deserve to be taken seriously and to be given their rightful place in any society that carries the label of being democratic and free. This message also aligns with Paul Horwitz's call for a more emphatic engagement by, for example, judges, public officials, and citizens with their fellow citizens' views on questions of religious truth.⁵ Horwitz is of the view that what is demanded is a "recogni[tion] [of] the importance of attempting to understand and empathize with the worldviews and truth-claims of others, and to give full weight to those views when we shape the legal rules that apply to all of us. It does not require us to pit our own religious beliefs, or those of others, against the 'public good.' Instead, it requires us to form our view of the public good with an appreciation of others' diverse perspectives in mind."⁶

The understanding that Horwitz describes has direct bearing on *Equality and Non-discrimination: Catholic Roots, Current Challenges*, as this volume contributes toward the offering of meaning—an informed and persuasive meaning, at that—to societies that reflect a plethora of diverse interests, which in turn need to be taken heed of by "the other" in such societies.

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⁵ Paul Horwitz, *An Agnostic Age: Law, Religion, and the Constitution* (Oxford: Oxford University Press, 2011), xxii.

⁶ Horwitz, *An Agnostic Age*, 283.