

*Religion, Charity and Human Rights*. By Kerry O'Halloran [Cambridge: Cambridge University Press, 2014. ix + 541 pp. Hardback £75. ISBN 978-1-107-02048-1.]

The twentieth century has seen serious changes in the significance of religion for the general public, a shift towards a more individual-centred approach, and thus a different role for charities. The implications of these changes continue to gradually unfold in the twenty-first century, provoking a response from national legal systems.

O'Halloran makes it clear from the outset that his intention with this book is to show that the growing importance of human rights makes it necessary to reform charity law. Highlighting the main points of philosophical debate, O'Halloran explains that human rights may well be regarded as irreconcilable with religion and charity, as the former is based on equality and the latter's crucial feature is inequality. He illustrates these points of conflict with examples (e.g. abortion or gay marriage), and foresees a fundamental change in the relationship between religion and charity. However, he also notes that, despite the fact that there are a number of problems that may arise from the attempt to reconcile human rights with religion and charity, it is still important to find a solution. His purpose with this book is to show how certain common law jurisdictions are trying to or have already overcome most of these problems.

The book is divided into three parts: the first part provides a general overview of and background to the relationship of religion and charity, and the issues it raises; the second part deals with selected common law jurisdictions individually; and, finally, the third part evaluates all findings and looks at possible future developments.

In a manner very useful for those who are new to this area of law, O'Halloran dedicates the first chapter to explaining key phrases, and to making a comparison between them (e.g. canon law versus religious doctrine); he uses well-known examples to illustrate the meaning of these phrases. In the next chapter, O'Halloran introduces the Statute of Charitable Uses 1601, which still provides the basis for charity law in most common law jurisdictions, and provides an overview of the historically most important charity law cases. In the remaining two chapters of Part I, O'Halloran attempts to introduce the reader to some philosophical debates, and to the approach of the European Court of Human Rights and Human Rights Committee towards religion as well as its impact on charities. While the latter is very clearly written and captures the reader, the chapter dealing with philosophical questions appears a little blurred and contains a number of repetitions from previous chapters.

O'Halloran truly excels in each chapter of Part II. Here, most chapters follow the same pattern: they start with a general overview with the help of statistical data, explain the regulatory framework operating in the given jurisdictions, highlight debated points, and finally they deal with the relationship of charity law and human rights.

The first jurisdiction-specific chapter unsurprisingly studies England and Wales. O'Halloran guides the reader through, inter alia, the landmark cases *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 and *Morice v Bishop of Durham* (1804) 9 Ves 405, which have long provided the basis for deciding what a charitable purpose is. Then, the significant changes brought about by the Charities Acts 2006 and 2011 are explained in detail, such as the extension of the list of charitable purposes, the introduction of a mandatory public benefit requirement even for religious charities, etc. O'Halloran argues that these changes have further distanced England and Wales from other common law jurisdictions. He also notes that, interestingly, England and Wales seems to be the jurisdiction most prepared to accept

non-theistic and philosophical beliefs as religious, thereby facilitating the establishment of “religious” charities with distinct purposes.

The examination of the next jurisdiction, Ireland, provides an interesting contrast – the Irish constitution remains very much theocentric and thus religious charities continue to get special treatment. Unlike in England and Wales, charitable purposes are still classified according to *Pemsel*, while common law definitions and concepts also remain unchanged. O’Halloran occasionally compares the approaches in the two jurisdictions, thereby giving the reader a better understanding of differences.

Chapters 7 and 8 deal with two unique types of jurisdiction: the US and Canada, respectively. It is well known that, in the US, religion and state are kept completely separate, which has interesting implications for charity law as well (e.g. this is the reason why the US has a much bigger body of charity case law than other jurisdictions studied in this book). O’Halloran focuses on these unique aspects in this chapter, and therefore deviates a little from the pattern followed in other jurisdiction-specific chapters, such as the historical background of issues raised being generally explained at the end of each section. In the chapter on Canada, O’Halloran returns to the general pattern, but still gives an impressive overview of the special circumstances prevailing in this dual jurisdiction. He also points out that, in contrast with other jurisdictions studied, Canada is unable to create a coherent and comprehensive body of charity law, and that it has so far also failed to create a specific regulatory body for charities.

The next chapter, which examines Australia, is very informative and provides a good insight through the use of case law. However, by trying to keep the general structural pattern, O’Halloran seems to have missed the opportunity to build more on the unique features of Australia. For instance, a concise but comprehensive historical background in the beginning could have helped the reader to understand the special circumstances prevailing in Australia. The final jurisdiction described is New Zealand. Although the chapter might have benefited from a more organised structure, it successfully captures the specificities of this jurisdiction.

In Part III of the book, O’Halloran offers the reader a very good summary of the book, along with some comparative examples on key issues and a note on possible future developments. He notes that, while religion is undoubtedly beneficial to its followers as it gives them a sense of belonging, the prospect of eternal salvation, and so on, religion can also cause polarisation and mutual antipathy between religious groups. Therefore, the proliferation of new belief systems and the fact that they need to be treated equally to traditional religions requires a nuanced approach from the States. His view is that the above-mentioned polarised, “islands of exclusivity” (p. 508) approach is unlikely to help in creating a more balanced, healthy society. O’Halloran sees the equality principle as the biggest challenge for the moral imperative of religion and charity, especially the pressure to bring canon law into concert with human rights law. Religion has a potential to cause serious problems (just think about the Crusade wars or the current increase in extremism) and therefore the eventual deconstruction of traditional religion probably cannot be avoided.

This is a well-researched, highly informative work. It is a perfect starting point for those new to charity law and, at the same time, it is a very useful reference book for those who want to undertake more in-depth research in this area of law.

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