

***Constitutions and Religious Freedom.* By Frank B. Cross. New York, NY: Cambridge University Press, 2015. x + 259 pp. \$99 Cloth**

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Freedom of religion is commonly singled out for protection in national constitutions and as a matter of international law, but should it receive this privileged status? This is the question that Frank Cross begins with in his study of *Constitutions and Religious Freedom*, and he finds a promising justification in the benefits that religious freedom affords both believers and nonbelievers. Religion is of great importance to many people, and it has been associated with higher levels of life satisfaction, greater mental and physical health, and other measures of human welfare. Freedom of religion protects the choice of religious belief, and it also protects the choices of nonbelievers who find meaning and purpose in other pursuits. Cross's project is to investigate whether constitutions offer genuine protection for religious liberty and to test the effect of religious freedom on personal well-being and other social measures.

Some of Cross's findings are unsurprising. Constitutional guarantees of religious freedom are not universally protective, and they do not operate perfectly. The measure of religious freedom in a nation will depend on the content of its constitutional provisions, its legal infrastructure, and other social variables that also affect religious freedom. However, all of the provisions that Cross tested — free exercise guarantees, clauses providing for the separation of church and state, and constitutions that prohibit or do not specify a state religion — have a positive effect on a country's measure of religious freedom. Less intuitive are Cross's findings about the relationship between constitutional guarantees and democracy. Where a constitutional guarantee is present, democracy adds little if anything to a nation's level of religious freedom. However, in the absence of a constitutional provision, a high level of democracy yields robust protection for religious freedom.

Cross's findings about the effect of religious freedom on society confirm his expectations about the value of constitutionally singling out religious freedom for protection. Higher levels of religious freedom in a

nation are associated with higher measures of personal happiness. Greater religious freedom has a positive association with religious diversity and atheism, and these are in turn positively associated with greater happiness. Religious freedom also appears to be associated with increased church attendance though this effect is less certain. While religion is commonly thought to have a negative impact on women, Cross found a positive, though not statistically significant, association between religious freedom and greater empowerment of women. Thus, Cross concludes that religious freedom enhances human well-being by expanding and facilitating choice with respect to religion, and it does not negatively impact gender equality as is often feared.

Cross's book makes important contributions to the study of religious freedom and constitutions. His discussions and analyses are careful and nuanced, and his sophisticated quantitative study of the effect of constitutions on religious freedom fills an important gap where there has been much theorizing but little empirical research. His conclusions that constitutions matter for religious freedom and that religious freedom matters for believers and nonbelievers alike are especially valuable at a time when religious liberty remains compromised globally and is also increasingly portrayed domestically as a shield that protects religious believers at the expense of nonbelievers.

There are limitations to Cross's analyses. Cross's measures of religious freedom focus on actions that involve intentional interference with religious choice and practice. His primary measure of religious freedom combines government restrictions on minority religious practices, religious regulation, and religious legislation. Cross's measures do not take into account burdens on religious practice that are the incidental effect of legislation serving secular public ends. These burdens are not the result of deliberate oppression but may reflect a lack of understanding, concern, or regard for minority religious interests. In the United States and other Western countries where religious freedom is generally well-protected, scholarly debate has focused on this type of burden.

Prior to its 1990 decision in *Employment Division v. Smith*, the United States Supreme Court interpreted the Free Exercise Clause of the First Amendment to exempt religious believers from the requirements of neutral, generally applicable laws that substantially burden religious practice unless enforcement is necessary to achieve a compelling government interest. (494 U.S. 872 (1990)) The *Smith* Court rejected this right of exemption for all but a few categories of cases. *Smith* remains a controversial decision. While legislatures and administrators often address potential

conflicts by adjusting the structure of laws or exempting believers from requirements that burden religious practice, we worry that the political branches will favor powerful or populous faiths, and we also worry about bureaucratic intransigence and statist impulses. On the other hand, some scholars doubt whether the Court's shift has made any difference for religious believers. The Court's pre-*Smith* rule was strong in theory but notoriously weak in practice, and the vast majority of exemptions have always been legislative.

Cross's categorization of religious freedom guarantees and his measures of religious freedom are not nuanced enough to provide insight about the effect of constitutions where burdens on religious practice are the result of neutral, generally applicable laws. Indeed, it is possible that taking these burdens into account would change Cross's conclusions about the interaction of religious freedom guarantees and democracy. My hunch is that a constitutional right of exemption marginally improves the situation of religious believers even in a robust democracy and that greater democracy also strengthens protections where a right is present, and margins matter for religious believers.

Another limitation of Cross's analysis is that it does not address the reason that singling out religious freedom for special constitutional protection has become so problematic in recent years. The concern has not been with the basic protections that Cross has in mind but with religious exemptions. As the number of nonbelievers in a society grows, it increasingly seems unfair to require exemptions where legal rules burden religious conscience but not where laws burden secular moral conscience. Indeed, if religious freedom is valuable because it enhances human well-being, expanding the scope of exemptions to include secular conscience would seem to increase overall happiness. While exemptions under the United States Constitution have been limited to religious believers, other national constitutions and provisions of international human rights law envision a broader freedom of conscience that includes both religion and belief more generally. One worries, however, that broadening the scope of protected practices in this way means weaker protections overall, and this might be worth trying to test.

Cross is also too quick to dismiss justifications for religious freedom that refer to religion as a uniquely important human good. Cross worries that viewing religion in this way can easily lead to intolerance and oppression. However, in American history, it has generated a strong commitment to religious freedom; founding-era Americans argued that religion is supremely important in a way that requires religious voluntarism.

In countries with large religious populations but relatively little religious freedom, a justification like this is likely to be an important supplement to defenses based on human happiness.

Cross's project is a valuable one, and his conclusions in *Constitutions and Religious Freedom* about the significance and determinants of basic protections for religious freedom are important. The limitations of his analysis are most relevant in contexts where religious freedom is already well-protected in these fundamental ways, and they are less weaknesses than areas for future attention.

***God Wills It: Presidents and the Political Use of Religion.* By David O'Connell. New Brunswick, NJ: Transaction Publishers, 2014. ix + 319 pp. \$54.95 Cloth**

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David O'Connell's *God Wills It* is a detailed study that makes important contributions, but it does not consistently live up to the author's bold claims.

O'Connell's ambition is to write a study similar to that of George C. Edwards, whose work continues to stir debate, especially with scholars of rhetorical criticism. Edwards' significant study examined the broad effects of presidential rhetoric, concluding that it has little cumulative influence on the public (*On Deaf Ears: The Limits of the Bully Pulpit*).

O'Connell follows on Edwards' work but focuses specifically at religious rhetoric. In particular, he examines the extent and effect of modern presidents using religious rhetoric to promote "major presidential objectives." Although he occasionally makes bolder claims about all presidential religious rhetoric, his central argument is that religious rhetoric does not help presidents build support for their policy priorities.

Content analysis and case study selection are both somewhat subjective enterprises. O'Connell helpfully explains his methodological choices in