

BOOK REVIEWS

Law and the Wearing of Religious Symbols in Europe

ERICA HOWARD

Second edition, Routledge, Abingdon and New York, 2020, xiv + 231 pp (hardback £115) ISBN: 978-0-367-17890-1

Erica Howard's new book is the latest addition to the growing body of literature on equality and human rights law relating to religion or belief, which includes other important textbooks by Andrew Hambler, Megan Pearson, Russell Sandberg and Lucy Vickers.¹ The first edition of this book, published in 2012, focused on the wearing of religious symbols in education in Europe. For this edition, while not neglecting education, Howard has broadened the scope to cover employment and bans on the wearing of religious symbols in public spaces, reflecting 'the recent case law at both national and international level' (p 5). She has also drawn extensively on new material, including new legal cases up to 2017, and online references up to May 2019. The book is therefore as up to date as could reasonably be expected, which is important given the constantly evolving case law in this area.

The second edition follows the same structure as the first very closely, thus making it easier to compare the two editions. The chapter titles are identical, as are almost all the chapter subheadings, although there are significant differences in the content in some sections. After setting out the reasons for extending the book's scope and summarising each chapter in the introduction, Howard begins by examining the key concepts of religion and belief, freedom of religion as a human right, religious discrimination and religious symbols. She then explores arguments for and against bans on the wearing of religious symbols. This is followed by detailed analyses of bans as a breach of the human right to freedom of religion and bans as a breach of anti-discrimination law. She then discusses the concept of justification through assessing the different justification tests required in human rights and anti-discrimination law to demonstrate that a ban on the wearing of religious symbols is justified. Howard next examines the duty of reasonable accommodation, showing how this has been used in relation to religion in the USA and Canada to challenge bans on the wearing of religious symbols. She explores whether the duty could usefully be

1 A Hambler, *Religious Expression in the Workplace and the Contested Rule of Law* (London, 2015); M Pearson, *Proportionality, Equality Laws, and Religion* (London, 2017); R Sandberg, *Law and Religion* (Cambridge, 2011) and *Religion, Law and Society* (Cambridge, 2014); L Vickers, *Religious Freedom, Religious Discrimination and the Workplace* (London, 2016).

extended to Europe, where hitherto it has only been used in relation to disability discrimination. She also considers whether the public sector equality duty could be another means of challenging bans on religious symbols. The concluding chapter consists of detailed summaries of the main arguments presented in each chapter, followed by an assessment of the best ways for someone wishing to wear a religious symbol to pursue their case in different contexts.

As noted, Howard draws on a range of new cases, including in particular the two French European Court of Human Rights (ECtHR) cases of *SAS v France* and *Ebrahimian v France*, as well as the first two religion or belief cases to be brought before the Court of Justice of the European Union (CJEU), *Achbita v G4S* and *Bouguinaoui v Micropole Univers*. Howard has published elsewhere on the two CJEU cases and her expert analysis of their broader implications and the problematic nature of the *Achbita* judgment (pp 111–117) is particularly useful, including for UK employers assessing how the judgments might potentially affect them. She also draws on a less well-known ECtHR case, *Ahmet Arslan and Others v Turkey*, to show that religion or belief law is not static. She suggests, for example, that since this case the court ‘now appears to give more attention to what it means for the individual applicant to manifest their religion through the wearing of [religious] symbols’ (p 144). Howard also considers the role of the United Nations’ Human Rights Committee in assessing certain cases, notably *SAS*, something largely absent from the first edition. To accommodate this new discussion, she wisely reduces the length of some sections compared with 2012; for example, the discussion of some British domestic education cases is much less detailed than hitherto. This means that the second edition is only slightly longer than the first one.

The book contains a detailed bibliography, a useful index (which is less detailed than in the first edition) and, very helpfully, a full table of cases cited. This is essential given that many cases are discussed in different chapters. Some readers may find the extensive citation of some cases, such as *Azmi v Kirklees Metropolitan Borough Council*, repetitive but generally Howard draws on the cases to present her conclusions in a judicious manner. Arguably, such a detailed reiteration of the main arguments in each chapter in the conclusion is not necessary and a much shorter discussion would have sufficed. Compared with the first edition, the bibliography has also been extensively revised and extended.

Some readers may find the discussion of the major international human rights conventions and treaties and European Union Directives (pp 103–108) somewhat heavy going, although these sections will be useful for specialists. However, generally speaking, the book is clearly written and Howard’s style is accessible for both legal specialists and others interested in religion or belief, including policy-makers and religion or belief stakeholders. As such, it is to be strongly recommended both for those individuals and libraries who already

have the first edition of the book and those who are coming to Howard's work on religion or belief law for the first time.

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Church Law in Modernity: Toward a Theory of Canon Law Between Nature and Culture

JUDITH HAHN

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The reputation of canon law has never been lower. As the abuse crisis deepens, canon law is perceived as the instrument of a hierarchy blindly promoting its own interests and protecting its members, impervious to the suffering of individuals. The Roman Catholic Church's law is viewed as a tool and symptom of its determination to preserve power and ignore modern life. Judith Hahn's book does not deal specifically with the abuse crisis, but concerns itself with underlying problems laid bare by that crisis: how is the Church to legislate and apply universal canonical norms in a way that is sensitive to modern cultural realities? Canon law faces its own crisis, as the universal norms it upholds appear irrelevant or harmful to local communities. Natural law, the grounding of the Catholic Church's teaching in divinely revealed truths embedded in creation, has little traction outside ecclesiastical circles, and fails to convince those whose personal experience resists the impersonal and hierarchical character of the Church's law.

This book, wisely, does not engage in a head-on battle with canon law and its legislators, but provides a thoughtful and helpful analysis of the current dire situation, and a comprehensive series of suggestions for its remedy. Hahn begins by affirming the existence and value of natural law – but with important qualifications. While there may be no argument about the existence of normative realities, the consequences of these fundamental goods – or how, or by whom, they can be perceived – are far from clear. The result is a rupture between universal law and the lived reality of members of the Roman Catholic Church: a real 'culture war' in which universal norms are opposed to local realities.

The second part of the book suggests solutions to this crisis. While many would simply reject natural law as a useful category, or would seek to remodel