

Constitutions and Religion.

**Edited by Susanna Mancini. Cheltenham: Edward Elgar, 2020.
Pp. 464. \$285.00 (cloth); \$65.00 (digital). ISBN:
9781786439284.**

Nazia Khan 

Research Officer, Centre of Excellence in Public Policy and Government, Indian Institute of Management, Kashipur, India
Email: khn.nazia@gmail.com

doi:[10.1017/jlr.2023.10](https://doi.org/10.1017/jlr.2023.10)

Although secularization was postulated to drive religion into the private sphere, on the contrary, the re-politicization of religion is posing a challenge across the world. In this context, Susanna Mancini's *Constitutions and Religion*, a collection of thematic and thorough analyses of religion, is a timely contribution to scholarship on the relationship between religion and the state. In developing this project, which is part of Elgar's Research Handbooks in Comparative Constitutional Law series, Mancini takes a broad view of resurgent political religion. Unlike Jose Casanova, the eminent sociologist who claimed the Iranian revolution led to a resurgence of strong religions in the public sphere, Mancini aims to place the "resurgence of strong religion ... in the broader context of the historical processes of secularization, globalization, mass migration and democratization" (5). According to Mancini, the privatization of religion has resulted in its secularization, universalization, and incorporation into a liberal political ideology. Therefore, the separation between the public and private spheres has changed how the state approaches religion, but it has not divorced religion from politics. Throughout the volume, this relationship is illustrated in diverse contexts using examples from different nations worldwide.

Mancini organized this comprehensive collection of work on comparative constitutional law and religion into five parts comprising chapters by twenty-four leading scholars on the subject. In her introduction, Mancini explains that the European Enlightenment influenced the formation of secular society through "privatization [that] resulted in secularization and universalization of religion, and thus in its penetration and amalgamation into liberal political theory" (3). Mancini argues further that when Western modernization was transplanted into non-Western societies through colonialism, it ignored those countries' different cultures and traditions. In the postcolonial context, however, she says, "modernizing societies have rejected the homogenizing path of the Western model of secular modernity, and have relied on religious tradition to distance themselves from the colonial past and pursue autonomous projects of social transformations" (5), which have given rise to different modernities.



The contributions in the first part of the book focus on history, concepts, and theories, beginning with a chapter by Michael Rosenfeld, who argues that “Western constitutional secularism is the product of an Enlightenment adaptation and transformation of a conception of secularism deeply steeped in the history and traditions of Christianity” (39). The concept of secularism holds a different meaning in different constitutional settings, from the separation of state and religion to the adoption of an official state religion while recognizing and respecting other religions concurrently. The re-politicization of religion has posed challenges to Western constitutional democracy, which, Rosenfeld argues, must replace institutional secularism with ideological realism. Ideological realism will require “freedom from religion and freedom of religion” (38) and thus will successfully incorporate theists, atheists, and agnostics.

Ratna Kapur carries out a comparative study between France and India. While the French and Indian models of constitutional secularism contrast, both employ religious majoritarianism under the pretext of secularism to target religious minorities. Indian secularism is focused on the equal treatment of all religions; French secularism is based on the complete separation of state and religion, termed *laïcité*. Kapur attempts to demonstrate how religious minorities, particularly Muslims, despite being citizens, nonetheless have to uphold the claims of the majority faith in France and India through a comparison of these two nations. Using cases from the Indian Supreme Court, Kapur shows how religion determines belonging and citizenship. The French government’s decision to outlaw head coverings in schools and the public demonstrates how French courts determine what constitutes religious freedom and how religious expression and belief will be practiced. The comparison shows that although both countries follow distinct methods of secularism, they have defined their citizenship through a narrow conception of the majoritarian community.

Andrew March explores constitution making in modern majority-Muslim countries, which, he states, has been an “elite-driven and top-down affair” (59). As March explains, “All Islamic constitutional theorists make some kind of application of sharia central to the understanding of political legitimacy” (71), but there is a debate over how the sharia should be applied over the course of time: What is timeless and what is flexible in sharia? Is sharia identical to the classical *fiqh* tradition, or does the meaning of the revelation need to be rediscovered based on current circumstances (*ijtihad*)? Thus, the way sharia is interpreted and applied differs from constitution to constitution in modern Islamic states.

Peter G. Danchin postulates that a certain dichotomy exists in the way the normative structure of religious freedom is understood in modern constitutional terms. The state, in spite of maintaining religious neutrality, tends to formulate a majoritarian value system with respect to religion.

The contributions in the book’s second part, “Constitutional Coexistence: Models of Managing Religion and the State,” provide an extensive analysis of the relationship between state and religion worldwide. Opening this section, Silvio Ferrari examines European uniform religious freedom law. Religious freedom emerged in three stages in Europe. In the first stage, the institutional dimension distinguished between two authorities, one religious and the other political, which guided the whole of humanity: the religious directs the spiritual and holy aspects of individual and social life, while the political directs the temporal and mundane aspects. This idea has served as the foundation for the separation of church and state. The second stage focused on the rights of individuals, and the third stage was influenced by the Enlightenment idea that rights are vested in the human being simply by being human. In the near future, according to Ferrari, religious freedom will occupy a central position in the debates in Europe, which sees it from the perspective of individual right rather than the religion one follows. However, as seen by limitations placed on the building of mosques or the display of religious symbols in public spaces, some religions, or at least some religious practices, are incompatible with Europe’s Christian and

secular roots. These restrictions will eventually find some support in the constitutions of European states, as they already have in the Swiss state, which banned the construction of new minarets in 2009.

Dia Dabby and Jean-François Gaudreault-DesBiens compare the constitution and its relation with religion in the United States and Canada. As a result of different historical traditions, the constitutions of the two countries are both similar and different in matters pertaining to law and religion, such as prayers in political institutions, public schools, marriages, and matters of life and death. Julieta Lemaitre Ripoll reviews Latin American constitutional texts in a historical context, analyzing the relationship between church and state. Initially, Catholicism was the state religion of Latin American states, which infringed upon religious freedom. However, adopting the disestablishment model of friendly cooperation led to the separation of church and state (150).

Also in this section, Charles Manga Fombad looks at democratization and constitutionalism in Africa in the 1990s, which paved the way for religious freedom amid the rising culture of human rights and religious tolerance. The third wave of democratization in Africa has significantly influenced the right to religious freedom. Abdullahi An-Naim analyzes Islam, sharia law, and constitutionalism. He points out that Islam and sharia are not synonymous: sharia is a “historical and contextual understanding of Islam” (173) and became authoritative through acceptance over a long period. He argues that implementing some components of sharia, whether a state is Islamic or not, is incompatible with constitutionalism because it results in discrimination based on religion and sex.

Roshan de Silva-Wijeyeratne summarizes the relationship between Buddhism and the state in countries in South and Southeast Asia. He distinguishes between the ancient and modern ways Buddhist constitutionalism was practiced. Ancient Buddhist constitutionalism operationalized a certain sense of being in common in contrast to the modern, which by its nature is “always negating difference ... [and] has the potential to be violent and propagate a dominant Buddhist identity” (207).

Gila Stopler examines state-religion relations in Israel as a Jewish and democratic state. Israel is defined in its Basic Law as a Jewish and democratic state along with respecting other faiths and religions. It is thus a kind of state in which religion and liberal democracy both play a prominent role; however, extensive power attributed to the Jewish religious establishment overrides the rights of Jewish citizens, especially women.

Ronojoy Sen looks at the constitutional assembly debates in the Indian constitution, which defines the state and religion relationship. He continues by defining the essential practices doctrine, which Indian courts frequently apply to matters involving religion. According to this doctrine, the state is frequently asked to decide what aspects of a religion are essential—in which the state cannot interfere—and what aspects are not essential—in which the state is permitted to meddle. As a result, the court now has the authority to determine what is religious and what is secular, giving it control over temple management, the group’s right to exit Hinduism, and the practice of restricting menstruating women from temples.

Kristina Stoeckl provides “three models of religion-state relations in Russia: state-church; selective cooperation; disestablishment” (238). The state church model is one in which the state recognizes one religion as the state religion; the selective cooperation model is one in which the state recognizes more than one religion as its cooperative partner and treats all as equal political players; and the disestablishment model is one in which all religious groups are equally distant from the state, and there is no channel of cooperation with the state. The Russian Orthodox Church is the biggest religious organization recognized by the Russian state. Stoeckl uses the example of Russian abortion law to highlight how the relationship between the state and the Russian Orthodox Church is built on all three models,

which makes it full of contradictions and does not concentrate power in the hands of one player, be it the state or the church.

The two contributions that make up part three analyze the constitution and politics of religion. Francesco Biagi explores the role of religion in post-Second World War constitution-making processes from a comparative perspective. Biagi gives a multifaceted analysis by not only reflecting on actors such as political parties, religious institutions, religious minorities, and civil society, but also factors such as top-down and bottom-up processes, supranational processes, constitutional history and traditions, and external influences in the process of constitutionalism. Noting how the majority of constitutions around the world included freedom of religion in some form, Biagi makes three observations. First, the issue of religion in the constitutional design is often emotionally charged and sometimes even infused with irrationality. Second, in cases where the framers of the constitution have been unable to reach a clear agreement on sensitive issues pertaining to religion, they have opted for incremental strategies by obfuscating the principle with ambiguous wording. Third, religion deeply affects the constitution-making process, and so it should be taken as a fundamental element when analyzing such processes (270–71). Luca Ozzano categorizes political parties with a religious orientation into fundamentalist, conservative, progressive, nationalist, and camp parties, observing how religion affects each religious party differently and to what extent they are influenced by it also differs considerably.

The three chapters that make up part four examine religion and supranational constitutionalism. András Sajó and Renáta Uitz argue that “freedom of religion is individual liberty to be protected in its own right” (286) within the European Convention on Human Rights and Freedoms. They look at major developments over the years in the European Court of Human Rights pertaining to case law addressing individual religious liberty related to Article 9. Because of historical differences among the member states, the European Court of Human Rights faces difficulty in the application of Article 9.

Ronan McCrea examines religion in European Union constitutionalism, which is based on two principles: “the predominantly Christian religious heritage of its members; and the strong secular and humanist tradition that limits the political and legal influence of religion” (307). The European Union’s individualistic approach to freedom of religion often conflicts with the idea that religion is a form of collective identity.

Christopher McCrudden examines the relationship and tension between religion and human rights. Human rights have become prominent as the world is modernizing, but these rights are now in conflict with religion. Religion has also evolved with growing fundamentalist doctrines, and “religious issues have renewed geopolitical significance replacing other ideological tensions” (345). With migration between countries of one religion and countries of another religion, the chances of conflict and tensions have increased between religion and human rights. The debate over the veil of Muslim women in Western countries is one example that raises the question of gender equality and rights.

Lastly, the contributions in part five reflect on challenges and controversies. Mancini and Elena L. Cohen examine gender and religion in the postsecular age. They postulate that secularization has not led to women’s emancipation but to their exclusion from the political arena and their subordination by men in the family. Since the 1990s, the discourse between scholars of feminism and multiculturalism has argued that group rights go against women’s rights. The two areas of particular interest globally are the family law of Muslim and Jewish communities and Muslim women’s head or face coverings. Mancini and Cohen also discuss the impact of majority religions on the right of women.

Isabella Rorive and Ana Maria Corrêa look at “conscientious objection, which in human rights is associated with the refusal to serve in the military forces and a legitimate exercise of the right to freedom of thought, conscience, and religion” (378). Christian Joppke

discusses the integration of Islam into the constitutional law of Europe. The data suggests that despite how “successful Islam’s legal integration may have been, its cultural integration has still not taken place” (383), resulting in fractured relations between Muslims and non-Muslims.

The Irish people’s fury over the Irish Defamation Act of 2009 is the focus of Neville Cox’s chapter. Irish citizens declared the laws against blasphemy to be unlawful, and rightfully so. Irish culture in 2009 was secular, and these values served as the foundation for public morality. Individual rights are prioritized in a secular society over religious rights, which is why Irish society is outraged by the blasphemy laws. Because their public morals are governed by religion, Islamic nations approach blasphemy legislation akin to hate speech. This contrasts with secular societies that do not. However, morality is a relative concept, and while creating such regulations, it is necessary not to undermine freedom of expression.

Farrah Ahmed looks at personal law in the context of India, though the implications extend beyond India. India has largely guaranteed religious freedom but has certain constraints and limitations. Particularly with respect to personal law, the “Sikhs, Jains and Buddhists, who do not generally think of themselves as Hindu, are identified as ‘Hindu’ by the personal law system” (427). So, India fails to address the internal diversity of the religious categories of personal law and provides limited scope to exit or move between personal laws.

In assembling this collection, Mancini has included the main global faiths and discussions of how they relate to constitutions, and she has ensured that it effectively depicts the disparity between the West and the former colonial powers and how differently they engage with religion. A notable illustration of this is Kapur’s comparison of France and India, which, while having quite different constitutions, both adopted majoritarianism. Cox’s perspective on blasphemy and public morality is an insightful analysis of the subject. He offers a novel perspective on the subject by using outrage against the blasphemy law in Ireland as an example, highlighting how globally countries are struggling to control the spread of hate speech and balance such controls with freedom of expression.

What I found lacking in the book is space for thought on citizenship and statelessness, in addition to how migration and globalization are re-politicizing religion. Because of citizenship rejection, religious minorities are becoming stateless in nations like Myanmar, the Middle East, India, and Bhutan. The absence of civil society in these discussions of religion and the constitution is the other thing I noticed. Understanding the function of civil society in establishing the relationship between the state and its citizens is essential, given the diversity of faiths in many nations, and especially with the globalization of religion. The civil society is essential for an inclusive society as well as for preventing conflicts emerging from re-politicizing

These are, however, minor critiques, for none of these issues affect the volume’s scholarly contribution. Mancini’s compilation and encapsulation of different religions and their relation to a nation’s constitution, including supranational constitutionalism, should capture the wide attention of students, human rights activists, judges, practitioners, and researchers as it contributes to the contemporary debate on the role of religion in politics.