

in the introduction the author clearly demarcates the area of his concern and candidly recognises the important issues that had to be left out due to space considerations.

There certainly are advantages in adopting more modest goals for transitional justice. In this way, the criticism of the field's institutions never achieving their objectives could be avoided. Also, this approach could produce some tangible results in procedural justice which could be measured against clearly defined goals. At the same time, aligning transitional justice measures with broader rule of law reconstruction programmes is also attractive because it could prevent the problems of duplicating efforts and having one project undoing another. Additionally, it would be positive if transitional justice policies were directed at longer term goals and were more responsive to the demands of procedural justice. Nevertheless, reducing transitional justice to a tool of rule of law reconstruction in peacebuilding initiatives may appear as a demotion to many of its advocates among whom clearly McAuliffe numbers himself. This restrictive approach risks divesting transitional justice from any truly transformative potential. From this perspective, transitional justice initiatives could contribute to strengthening the rule of law but would not attempt to redress deep-seated inequalities in the societies to which they are applied; inequalities which require a fundamental social transformation. Therefore, by trying to steer away from the whirlpool of being too ambitious, this approach to transitional justice might sail dangerously close to the rocks of being too conservative.

Moreover, even though the book professes to offer guidance to policy-makers, it stops short from giving detailed suggestions on how transitional justice mechanisms could be attuned to rule of law reconstruction programmes. It would have been interesting to see concrete examples of how this harmonization might look in practice. In terms of structure, it is not altogether clear what the role of the last three chapters is in the overall plan of the book. Although they explore issues which are very important for transitional justice and rule of law reconstruction, they appear somewhat fragmented and narrow compared with the general scope of the first three chapters. However, this does not detract from the flow of the book's narrative.

In *Transitional Justice and Rule of Law Reconstruction* Pádraig McAuliffe has produced a well-researched and lucid book which makes a strong case for bringing these two fields closer together.

MARCOS ZUNINO  
QUEENS' COLLEGE, CAMBRIDGE

*Religion, Rights and Secular Society.* by PETER CUMPER and TOM LEWIS (eds.)  
[Cheltenham: Edward Elgar. 2012. xi + 336 pp. Hardback £90. ISBN 978-84980-367-0.]

THE TENSION BETWEEN claims to freedom and diversity of religious practice and the requirements of the secular state is longstanding. It comes to a head in relation to the use of the public space and the allocation of public resources and advantages. Since religious practice involves the whole of a person's life, believers consider that it cannot be treated as an obsession which, like train-spotting, can be confined to the private sphere. "Secularism" clashes most with

religious practice where it is a state dogma of non-religion that is imposed on all conduct in the public sphere. Interpreted differently, “secularism” is a requirement of toleration and accommodation both on the part of the state and of the participants in the public sphere (see Martha C. Nussbaum, *The New Religious Intolerance* (Belknap Press, 2012), a matter of individual liberty. In this second version, the clash is less sharp, but it does require religious believers to adapt their behaviour when they participate in the public sphere. *Religion, Rights and Secular Society* is a collection of national reports on how the legal systems within Europe manage this tension. Two perspectives give particular importance to this question. First, the adherence of countries in Central and Eastern Europe to the European Convention in the last 20 years. Secondly, the growth in numbers and the change in religious practices among the Islamic communities within Europe over the same period. This book starts with a recognition of the longstanding importance of religion to the identity and national affiliation in some states, and seeks to document (sic) the relationship between secular and religious values in relation to public life. This ambition of documenting the legal phenomena provides information, but limited stimulus to critical thinking. It is a missed opportunity to make a significant contribution to an already crowded area of scholarship.

The collection does not set out a particular template of questions which each system has to address. One of the core principles of the comparative exercise in this book is that the relationship between religion and the state is very different from one society to the next and that it is not useful to have a single framework. Inevitably, this produces very different styles in the treatment of the subject. Essentially, the reader is presented with different local voices which illustrate “the lack of a pan-European consensus” (p. 15), which justifies the wide margin of appreciation afforded to states by the European Court of Human Rights. The criteria for judging the work are therefore whether the voices are presented in a way that the reader appreciates the diversity of issues and can identify the range of considerations that are relevant to the establishment of a legal *modus vivendi* between the competing claims of religious practice and the secular state.

National chapters inevitably have a strong historical element, which often limits the space devoted to the presentation of the current situation. Some national reports are too descriptive and do not give enough space to the analytical questions which make such a collection of information the basis of reflection. (This is particularly the case of the rather compressed reports on Slovakia, the Czech Republic and Poland and another on the Balkans.) Those chapters and others, such as the German chapter, provide statistics which are helpful in understanding the context within which the law operates. The French and German chapters also provide useful discussions of the nature of secularism as it is understood in constitutional law, and the Italian chapter ends with a more political theory analysis of the nature of secularism. By contrast, the Dutch and British chapters (pp. 31–6, 51–7) present limitations on the free practice of religion which include specifically secular elements. Although a definition of “secularism” might well be a work of interpretative construction, it would help the reader to evaluate the different pictures which are being presented. The existence of *constitutional* provisions on the topic leads to a diversity of presentation. For the Dutch and for the British, legislation on equality is perhaps more significant than constitutional provisions, whereas that is not the case in other countries. The value of the book is that some authors have been willing to recognise the diversity of sources of fundamental

rights in a functional way. Some authors also take a functional view of what is “law” and include rulings of public enquiries equality commissions and the charity commission as evidence of how particular problems are resolved (see pp. 33, 53 and 153). Where this is done, the relationship between the competing interests in legal terms is helpfully presented. Such a functional approach is more common among the Dutch and British and is less reflected among other authors, because that reflects their academic culture. It would have been more helpful for the editors to encourage some best practice in functional approaches to engaging in comparative law, even if they did rightly decide to let the choice of content reflect the local (religious and secular) social culture.

A final area of divergence among the authors is how they treat collective rights to religious practice, as opposed to individual rights. This is a very central question, because religions are necessarily social activities. The existence of Concordats or state registration provide a framework for the exercise of individual rights (e.g. Spain, Italy and Hungary). Issues such as denominational schools and charitable status are covered and these too are predominantly viewed as collective rights. But other issues are seen as predominantly individual (the rights of parents, shopkeepers, hotel owners or individuals choosing their own dress). The book in general does not encourage authors to reflect on the place of collective and individual rights to religion, though some do cover this explicitly (e.g. Germany, p. 64). Some authors do reflect on the importance of the state in ensuring that social conditions are promoted in which religious practice and belief can flourish (see Ireland, p. 99) and it might have been useful if other authors had been directed to consider whether they also had something specific to say about the importance of “background conditions” as well as specific “liberties to exercise specific rights”. The Spanish report concludes with an allusion to a “‘third way’, one that takes a multi-cultural and multi-religious society as a starting point, and the effective protection of religious freedoms as a goal’ (p. 124), but this is not really developed.

The concluding chapters of the book are more thematic. The well-known religious sociologist, Grace Davie, offers a sophisticated overview of the development of religious practice within Europe. She identifies a number of common features of societies in Europe – especially the character of popular religious practices (experiential and vicarious religion), the limited nature of churchgoing, the importance of religion among new arrivals, and the problems these create for the secular élites. This particular social mix makes the situation in Europe rather exceptional (pp. 260–1). It is a pity that this chapter comes at the end. It provides a more complex and richer picture than the confrontation of religion and the secular state which dominates the legal presentations in the national chapters. Davie’s picture reveals forces within the state competing to set the tone for the social environment within which people live their lives – a picture which is inadequately represented by a conflict between individual rights and the secular state. It is only in her chapter that a serious discussion of political theory takes place.

Nielsen provides an interesting chapter on the particular relationship between Islam and secular states in Europe in the twenty-first century. His stress on the diversity of Muslim traditions and their divergences in practices and beliefs provides an important context, not least because it reveals tensions between long-established and recent migrant Muslim communities. It is unfortunate that this chapter does not unpick what is meant by “secularism” in this context and how secularism in different states engages with the divergent

claims of Muslim traditions and practices. This chapter is disconnected with the discussions in the earlier (legal) reports and so does not contribute very effectively to developing the analysis of the role of the law.

The final chapter on new religious movements in the “new Europe” is also an appendage. Despite offering a multi-national survey of the problems of such religious groups, it is not integrated into the earlier discussions of specific countries.

This work provides the reader with information. But it really does not develop lines of analysis which might encourage clearer reflection on complex issues. The book reveals that the dialogue between legal academics and sociologists is weak in many countries and the editors of works of comparative law need to do more to foster greater reflection on sociological analysis as a way of defining the functional problems with which normative systems (legal and non-legal) are engaging.

JOHN BELL

FACULTY OF LAW, UNIVERSITY OF CAMBRIDGE

*Islamic Finance: Law and Practice*. Edited by CRAIG R. NETHERCOTT and DAVID M. EISENBERG. [Oxford: Oxford University Press. 2013. 376 pp. Hardback £175. ISBN 978-0-19-956694-5.]

THE EDITORS' stated intention is to “describe practice without passing judgment on the *Shari'a* compliance of such practice or suggesting how such practice can be improved” (p. vii). In the main this volume succeeds in furnishing no more and no less than this: description unadulterated by opinion. As a result this book successfully navigates a course that dodges the twin perils to which the literature on Islamic finance is prey: the Scylla of blind promotion and the Charybdis of suspicion and bias.

For practitioners the most immediately pertinent chapters are those six that explain the contractual core of Islamic banking and finance: *musharaka/mudaraba* (by Julian Johansen and Atif Hanif); Craig R. Nethercott's chapters on *murabahaltawarruq* and *istisna'lijara*; David M. Eisenberg's chapter on *bay 'salam* and *bay 'urbun, khiyarat* and *wa'd* (derivatives); *sukuk* (Johansen and Hanif); and *takaful* (Peter Hodgins and Caroline Jaffer). (Throughout the volume, as in this review, the diacritics of Arabic transliteration are omitted; no doubt these will not be missed by an Anglophone readership and the omission does not introduce any troublesome ambiguity for purposes of legal practice.) In the spirit of an exposition that eschews critical analysis and any assessment of the extent to which these contract types represent modern-day, serviceable instantiations of religious principles, doctrine, and sources, the joint efforts of these authors set out the essential legal and ethical principles underpinning Islamic finance. To a greater or lesser degree they support this exposition with reference to the Arabic etymology and linguistic or socio-historical origins of the associated lexicon and the world view to which it continues to give expression.

These chapters convey a consensus, without purporting to plumb the depths of disagreements or variations across jurisdictions or Islamic legal schools (*madhahib*.) This, as any consensus, is necessarily a somewhat false one – or at least a partial view only of reality, given the differences between