Journal of Law and Religion 30, no. 3 (2015): 538–540 © Center for the Study of Law and Religion at Emory University
doi:10.1017/jlr.2015.39

Traditional African Religions in South African Law. Edited by T. W. Bennett. Cape Town: University of Cape Town Press, 2011. Pp. 304. $43.00 (paper). ISBN: 9781919895383.

In a continent where scholarship on the intersection of law and religion is of recent vintage, it is of significance that Tom Bennett has edited a book of essays that examines the relationship between the South African state and African traditional religions. Eleven essays, in addition to Bennett's introduction, examine this relationship from many perspectives in the context of the 1996 Constitution of the Republic of South Africa, which is acknowledged as one of the most modern and progressive constitutions in the world. It is important to point out that jurisprudence emanating from the Bill of Rights in the South African Constitution has shed new light and focus on how Africans and the state should interact in a multi-faith environment. The importance of this book for the rest of Africa, and indeed the world, lies in the lessons it holds for treating what are arguably "minority religions" in their considerable complexity.

Given the nature of African traditional religions and the extent to which the colonial enterprise promoted Islam and Christianity at their expense, it is not surprising that the legitimacy, meaning, and practice of African traditional religions are the focus of this book. This collection is a challenge to assumptions and understandings of African traditional religions by dominant religions and cultures in African states in general and in South Africa in particular. Ordinarily, a constitutional democracy should avoid the justification or singling out of African traditional religions, or indeed any religion, in order to protect religious freedom and avoid religious establishment. However, to argue along this line would be ahistorical and assume too broad a consensus on the definition of religion. The long-standing colonial and postcolonial denigration of African traditional religions intuitively requires an intellectual response for African traditional religions to be taken seriously. The first six essays in this book track two narratives on the understanding of what a religion is. One narrative, which appears to be the dominant one, develops the notion of the "subjective" by exploring the aggregate of sincerely held beliefs and internal legitimation as a means of justifying African traditional religions. This narrative argues that a religion should be recognized exclusively and entirely on the assertion of her believers. The other narrative resorts to an "objective" set of facts to determine and define religions organized around the requirements of creed, cult, community, and clergy.

In the first essay of the book, "African Traditional Religion in a Pluralistic Africa: A Case of Relevance, Resilience and Pragmatism," Nehemiah Nyaundi explores the legitimacy of traditional African religion as a religion worthy of constitutional recognition based on sincerely held beliefs, practices, and self-assertion. This is evident in his call for a constitutional recognition of these religions. Sibusiso Masondo's essay, "The Practice of African Traditional Religion in Contemporary South Africa," continues the focus on subjective and internal legitimation of African traditional religions by extensively describing their embedded practices. In her essay, "Religion vs Culture: Striking the Right Balance in the Context of African Traditional Religions in the New South Africa," Jewel Amoah also seeks to justify the existence and explain the nature of African traditional religions. She argues that the conflation of African traditional religions with African culture diminishes the significance of African belief systems, which is troubling in an international human rights system where the right to freedom of religion appears more important than the right to culture. Evaluating a number of examples from South Africa, such as the wearing of a nose stud in the case of *MEC for Education: KwaZulu-Natal and Others v. Pillay and Others* 2008 (1) SA 474 (CC) and the ritual killing of a bull by the Zulu nation in the case of *Smit NO and Others*

v. King Goodwill Zwelithni Kabhekuzulu and Others [2009] ZAKZ 75 (PHC) (December 4, 2009) (unpublished case), among other examples, Amoah confronts the difficulty of identifying what is "religious" and what is "cultural," as well as the realization that appropriate criteria are crucial so that what is truly religious is recognized and protected. Christa Rautenbach's essay, "Umkhosi Ukweshwama: Revival of a Zulu Festival in Celebration of the Universe's Rites of Passage" is concerned with the recognition of African traditional religions and dwells extensively on the Zulu ritual bull slaughter. Rautenbach explores the meaning of religion in the South African Constitution through an objective characterization of the bull-killing ritual and an evaluation of how different aspects of the ritual conform to popular definitions of religion.

A number of essays address the conceptual framework for the protection of freedom of religion in South Africa. With this in mind, Lourens du Plessis undertakes to explain how the right to religious freedom functions within the Bill of Rights that also contains a limitation clause. His essay, "The Constitutional Framework for the Protection of Religious and Related Rights in South Africa," articulates a "jurisprudence of difference" (99) and reasonable accommodation as reflecting a proper context and commitment to the recognition of the beliefs and practices of African traditional religions. A "jurisprudence of difference" treats all religions and practices as equal. As Du Plessis recounts, "historically—and especially prior to the advent of constitutional democracy in South Africa in 1994—the law in general, and especially legislation (including South Africa's pre-1994 constitutions), favoured a certain version of Christian monotheism *vis-à-vis* especially 'non-mainstream religions', which could have included 'traditional African religions'" (90). One is left with the inescapable conclusion that Du Plessis believes that the jurisprudence of South Africa's post-apartheid constitution is a sufficient answer to the woes of African traditional religions. It is important to note, however, that the discussion in this essay of the Constitutional Court decision in *Prince v. President of the Law Society, Cape of Good Hope* 2001 (2) SA 388 (CC), which involved the practices of the Rastafarian movement, sounds a note of caution that "non-mainstream religions" still face certain challenges. Whether a concept of "reasonable accommodation" is sufficient to explain the interaction of law and religion in South Africa is a question that is also raised in Kelly Phelps's essay, "Superstition and Religious Belief: A 'Cultural' Defence in South African Criminal Law?," in which Phelps examines how the South African judiciary has evaluated the cultural defense in criminal cases in such a manner that beliefs and practices of African traditional religions do not constitute complete defenses in criminal cases. This chapter would have been significantly enriched if Phelps had addressed whether the beliefs and practices of other religions constitute defenses in South African criminal law.

A number of essays in this book examine how different organs of the state deal with the individual and communal aspects of traditional African religions. Williemien du Plessis, in her essay "Recognition of African Initiated Churches for State Purposes: Doctrinal Opposition or Procedurally Correct?," points to the fact that African initiated churches—churches founded in Africa by Africans rather than missionaries, with "many elements of traditional African beliefs" (112)—appear to suffer no prejudice in the process of state recognition and attendant benefits. The author recognizes the difference between African initiated churches whose features enable them to interact with the South African state and many others who suffer governmental discrimination with respect to their beliefs and practices because they are structurally dissimilar from more formal and organized African initiated churches. Two essays explore legislative engagements with traditional African religions. Nelson Tebbe traces the legislative development of witchcraft-related norms in his essay, "Witchcraft and the Constitution." Tebbe examines how the contested understanding of the benevolence and malevolence of witchcraft influence advocacy, norm making, and norm revision in South Africa. In "Rainbow Healing: Traditional Healers and Healing in South

Africa," Michael Eastman examines how the Traditional Health Practitioners Act 2007 in South Africa overturned the ban on traditional healing that had been promulgated in the Witchcraft Suppression Act of 1957. Both essays weave insightful narratives of the stakes and the challenges of recognizing diverse norms in the spiritual realm.

A fitting thematic finale to this book is contained in two closing essays addressing the state's potential for an ongoing engagement with the ethical values of traditional African traditional religions. Loretta Feris and Charles Moitui, in their essay "Towards Harmony between African Traditional Religion and Environmental Law," urge the integration of certain values of African traditional religion with modern environmental law as a means of averting a national environmental crisis. James Patrick and Tom Bennett conclude the book with an essay exploring how South African courts have recognized, maintained, and developed the concept of *ubuntu*, which is widely regarded as the heart of most African ethical systems. In their essay "Ubuntu: The Ethics of Traditional Religion," they explore how the "fundamental character of ubuntu," namely, "caring, compassion, unity, tolerance ... empathy ... [and] compromise" (226, quoting Nomonde Masina, "Xhosa Practices of *Ubuntu* for South Africa" in *Traditional Cures for Modern Conflicts: African Conflict "Medicine,"* ed. William Zartman (London: Lynne Rienner, 2000), 170), has been incorporated into South African law through its mention in the preamble of the Interim Constitution of 1993 and its use by South African courts as a foundational value in articulating principles of restorative justice, individual responsibility, and communal harmony. For example *ubuntu* significantly featured as a guiding principle of the Truth and Reconciliation Commission, which was crucial in South Africa's peaceful transition to democracy. The concepts of *ubuntu* and restorative justice significantly influenced the Constitutional Court in holding the death penalty unconstitutional in *S v. Makwanyane* 1995 (3) SA 391 (CC).

The sheer breadth of this book, arguably a significant addition to works on African customary law and religion, begins as an intellectual legitimization of traditional African religion as worthy of recognition by the South African legal system. It also examines how the South African legal system has embraced African traditional religions as a celebration of the "jurisprudence of difference." In summation, it appears that African traditional religions are meaningfully engaged with the South African state, in the sense that its values have become a basis of the articulation of norms and resolution of disputes. The broad spectrum of this engagement should be a model of how a constitutional democracy ought to treat minority religions by treating all religions and practices equally through a recognition of their differences and serious efforts to accommodate them.

There are some significant issues that are not covered in this book. These include the manner in which African traditional religions have contributed to gender discrimination and patriarchy; the influence of African traditional religions on marriages; the evolution and resilience of African traditional religions in the face of urbanization and migration; and the influence of African traditional religions on dispute settlement, as well as the recognition of the outcomes of these settlements in state courts. Attention to some of these issues would have further enriched this book. But even with these omissions, *Traditional African Religions in South African Law* is a worthwhile intervention in the search for understanding African states where religion is intricately bound to the state.

Enyinna Nwauche
Professor of Law, Rhodes University

https://doi.org/10.1017/jlr.2015.39 Published online by Cambridge University Press