

policing of sexuality. She points out that this ‘basket of issues’ (p 175) did not feature in traditional legal discourse or pre-modern legal practices, and the attendant issues were marginal to mainstream Islamic jurisprudence. I find this rather an odd point for a historian to make. In general, gender issues (including social constraints upon the religious and cultural freedom of women) remained, until relatively recently, a minority issue in legal theory, emerging only with real force in the framing of human rights. This *lacuna* applied across the spectrum of world cultures for a multiplicity of reasons which need not be rehearsed here, since the relevant literature on the topic is now vast, and draws from the analyses of feminist and other political theorists. Tucker goes to some length to explain the nexus between the gendering of space and a fear of the power of sexual desire. This, of course, is a well-covered aspect of Jewish, Christian and Muslim studies and Tucker is right to remind her readers that, as a rationale for ordering space, fear of sexuality invariably results in a diminution of women’s freedom of movement and, at times, the enforcement of rules of comportment to separate ‘proper’ women from any other kind.

Overall, Tucker offers the historian rich pickings in her treatment of Islamic jurisprudence in relation to women. The breadth and depth of her scholarly research is evident in a genealogical unfolding of many layers of legal tradition as they have contributed to the regulated control of women’s property, including their bodies. I recommend her book to readers who wish to deepen their understanding of present debates concerning women and gender under Islamic law.

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Religion, Education and the State: An Unprincipled Doctrine in Search of Moorings

MARK STRASSER

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Religion, Education and the State offers a window into the complex and varied interpretations of the Establishment Clause in United States jurisprudence. It explores the tension between the likely intention of the Framers of the First Amendment to protect established state churches from the federal government, and the seminal *Everson* case, which extended the protections of the Establishment Clause to actions by state as well as federal government,

thereby restricting the kinds of religious activities that could occur in public schools.

In the maelstrom of change which characterises our current educational landscape in England, the book makes fascinating reading. The challenge that Professor Strasser sets us is to consider the value of the intentions of the Framers as opposed to the iterative case-law process, which results in jurisprudence developing along lines neither intended nor foreseen by its originators. Jefferson is famous for describing the need for ‘a wall of separation between church and state’ but there have been many and varied interpretations of the meaning of the phrase.

The early chapters discuss in easily digestible chunks the diversity in US practice, explaining that sectarian education of elementary school pupils, which is publically funded in places, is simply at odds with the spirit of *Everson*. Much case law is taken up with challenges to programmes of religious education in schools and an exploration of the conditions under which prayers can be said in school; Chapter 2 hypothesises that the Supreme Court was inconsistent in its application of the Establishment Clause and its reasoning frequently flawed. Chapter 3 takes time to explore the lack of consistency in the Court’s decisions over public funding of higher education institutions. We learn that government funding of bus transport is as hot a topic in the US as it is in England (and Wales) and that the decisions of the Supreme Court, even when the same justices are involved, leads to case law which is at best inconsistent and at worst confused. The book lays bare the differing, dissenting and changing positions of the justices in different cases, notably *Zorach*, *McCullum* and *Everson*, and wrestles clearly and thoroughly with those differences before concluding that they are fundamentally not reconcilable.

While some aspects of the book will be of specialist interest to those concerned with US jurisprudence – such as Chapter 5’s detailed discussion of the Pledge of Allegiance case law – the more general reader is likely to enjoy the exploration in Chapter 6 of the tension caused by displaying the Ten Commandments in schools and to have the chance to compare the different approaches to issues of religion and education on both sides of the Atlantic.

Strasser challenges us to reconsider the intentions of the Framers of the First Amendment, rather than focusing on the intentions of the Framers of the Fourteenth Amendment, which, he does acknowledge, are not plausibly interpreted as intending to protect state religious establishments. The book provides a serious analysis of the Establishment Clause jurisprudence before concluding that the guarantees it attempts to offer ‘are by no means easy to discern in the best of circumstances’ (p 185). Compound this with what Strasser describes as the Supreme Court’s consistent rejection of previous analyses while claiming to follow them, and the result is an undermining of the authority of the Court

and an increase in religious divisiveness. We are asked to consider how far this is removed from Jefferson's original intentions.

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Religion in Public Spaces: A European Perspective

Edited by SILVIO FERRARI and SABRINA PASTORELLI

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This volume comprises the proceedings of a colloquium held in October 2010 in Como, Italy, within the framework of the research project RELIGARE (standing for Religious Diversity and Secular Models in Europe: Innovative Approaches to Law and Policy), which in turn is funded under the Seventh Research Framework Programme (Socio-Economic Sciences & Humanities) of the European Commission. It is a rich mixture of theory and empirical work. The first part consists of seven chapters on the theory of religion and public space; contributions by the authors explore the history of the distinction between public and private space and its derivation from different legal traditions, social customs and gender roles. The second and third parts analyse developments in the concrete context of individual states (Turkey, Italy, Bulgaria and France, among many others) on two specific policy issues: religious dress (particularly burqas) and places of worship (such as mosques with minarets). Each of these parts concludes with an explicitly comparative chapter.

One of the two editors (Silvio Ferrari), a professor of canon law at the University of Milan, writes a nuanced appraisal of the issues surrounding the debates on the role of religion in society. He distinguishes between kinds of public space: the common space, where people carry on their day-to-day business; political space, where debate takes place on important issues of public policy; and institutional space, where authoritative decisions are made and enforced (pp 149–152). Ferrari argues convincingly that, in common space, religious dress should not be restricted for the same reason that non-religious dress (such as haircuts, earrings and tattoos) should not; moreover, bans on wearing the burqa in public, for example, restrict the orderly enjoyment of public space and force women to retreat entirely into the potentially repressive environment of the home. Ferrari goes on to argue that political space *must* be free and plural. Restricting religious clothing restricts the pluralism that contributes to debate and discourse here. Finally, it is only in institutional space, where decisions are actually made binding and enforced, that demonstrations of religious