Journal of Law and Religion 34, no. 3 (2019): 496–503 © Center for the Study of Law and Religion at Emory University
doi:10.1017/jlr.2019.48

BOOK REVIEW SYMPOSIUM: JOHN WITTE, JR., *CHURCH, STATE, AND FAMILY: RECONCILING TRADITIONAL TEACHINGS AND MODERN LIBERTIES*

RELIGIOUS EDICTS, SECULAR LAW, AND THE FAMILY

MICHAEL J. BROYDE
Professor of Law, Emory University School of Law

Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties. By John Witte, Jr. Cambridge: Cambridge University Press, 2019. Pp. 454. $130.00 (cloth). ISBN: 9781316882542.

KEYWORDS: family law, religious law, Jewish law, John Witte Jr., arbitration law

INTRODUCTION

The discussion of religious marriage law by my colleague John Witte, Jr., in *Church, State, and Family*, specifically, the book's tenth chapter, attempts the impossible task of providing a valuable and nuanced perspective on the relationship between religious and secular law governing family in the United States and other common law counties. Arguing that the best practices are not the most ideologically pure, Witte proposes that moderated and reasonable interaction between private religious communities and the secular legal system ought to be encouraged and make both systems more responsive to the communities they are designed to serve. Witte's balance—while not completely ideologically persuasive, since moderate positions never are—is a satisfying compromise and a worthy read.[1] It works, I suspect, exactly because American law both recognizes the cultural diversity that is present in family matters is worthwhile and crafts a legal culture that supports this.

In chapter 10 of the book, Witte changes tone and focuses on American law, particularly on American arbitration law. He argues—as I have argued elsewhere—that there is the distinct possibility to create a "modern millet system" (301) that allows diverse models of family—secular,

1 Many among us are—at first emotional read—more attracted to the extremes. Consider the Hasidic story of Rabbi Menachem Mendel of Kotzk from two centuries ago. When he was asked why his views are so extreme and harsh, he took the questioner to the window of his apartment and told him that when one looks out the window, "you see, the two sides of the road are for human beings; only horses walk in the middle." But, upon reflection, we see that the Maimonidean model of the golden mean as the best ethical place to be is a better view. Maimonides, *Introduction*, COMMENTARY ON THE ETHICS OF THE FATHERS, chapter 4. For more on this tension, see Rabbi Adin Steinsaltz, *The Golden Mean and the Horses' Path*, ALEPH SOCIETY, https://steinsaltz.org/essay/goldenmean/ (last visited December 15, 2019).

traditional, religious, and much more—to each function in their own legal framework, in which secular law is merely the default rule, but other options exist. Witte notes,

> [t]his is not so radical a demand as it might first appear. After all, the American states today, viewed together already offer several legal models of state-sanctioned domestic life for their citizens: straight and same-sex marriage, contract and covenant marriage, civil union and domestic partnership. Comparable plural options exist in Canada, Europe and Australia. Each of these off-the-rack models of domestic life established built-in rights and duties for the parties and their children and other dependents. The parties can further tailor these built in rights and duties through private prenuptial contracts. Or they can simply live together with full freedom and autonomy, albeit without state entitlements that depend on their valid marital status. With so much family pluralism and private ordering already available, why not add a further option for parties to choose—a privatized, father-based family law that yields the same legal status and legal consequences as all other other off-the-rack models offered by the state? (304)

Witte then explores three important models. The first entails privatizing family law, but he concludes (correctly, in this writer's view) that attempts to remove public law completely from the field of family law is unwise. The second expands on the model of "covenant marriage" and explores specific statutory ways the various states have and can accommodate specific faith groups, from the long tradition of ministerial solemnization to many other modern variations of shared jurisdiction. But the most interesting is the idea of religious arbitration, the process by which couples who wish to subject their marriage to religious law agree to do both a choice of law and a choice of forum prenuptial agreement that directs their end of marriage dispute to an ecclesiastical tribunal under religious law: both a choice of law and a choice of forum selection with important legal consequences.

CHANGING VALUES, CHANGING LAWS

Over the last sixty years, the substance of American law has come to reflect secular principles, rather than the religious values upon which it was historically based. The law has focused more sharply on the religiously neutral principles of equality and fairness, rather than the historical commitment to traditional values.[2] This development coincides with significant demographic changes: there is no longer a majority religion in the United States. While most Americans still identify as Christians, no denomination or sect predominates, and most Christians or Jews no longer look to their faith for their basic values.[3] Moreover, since the mid-twentieth century, the United States has become more of a multicultural society. It is increasingly comfortable with multiple

2 *See* Michael J. Broyde, Ira Bedzow & Shlomo Pill, *The Pillars of Successful Religious Arbitration: Models for American Islamic Arbitration Based on the Beth Din of America and Muslim Arbitration Tribunal Experience*, 30 HARVARD JOURNAL ON RACIAL & ETHNIC JUSTICE 33–76 (2014); *see also* David Aikman, *America's Religious Past Fades in a Secular Age*, WALL STREET JOURNAL (Oct. 25, 2012), http://online.wsj.com/news/articles/SB10001424052970203630604578073171838000416.

3 *Id.* Pew Research Center data from 2007 indicated that "the United States is on the verge of becoming a minority Protestant country; the number of Americans who report that they are members of Protestant denominations now stands at barely 51%." *U.S. Religious Affiliation: Religious Landscape Survey*, PEW RESEARCH CENTER (Feb. 1, 2008), https://www.pewforum.org/2008/02/01/u-s-religious-landscape-survey-religious-affiliation/. By 2012, the prediction had come true. *"Nones" on the Rise: One-in-Five Adults Have No Religious Affiliation*, PEW RESEARCH CENTER (Oct. 9, 2012), http://www.pewforum.org/2012/10/09/nones-on-the-rise/ ("In surveys conducted in the first half of 2012, fewer than half of American adults say they are Protestant (48%). This marks the first time in Pew Research Center surveys that the Protestant share of the population has dipped significantly below 50%.").

https://doi.org/10.1017/jlr.2019.48 Published online by Cambridge University Press

expressions of individual and sub-group identity coexisting in the public sphere. In sociological terms, the metaphor of the "melting pot" has been replaced by a salad bowl.[4]

Of course, the culture wars still sometimes flare, but I suspect that religious communities have begun to realize that they are all minority groups now. Secular law is no longer broadly reflective of traditional values, nor will this change in the foreseeable future; for this reason—and no other—religious groups have come to focus not on the law, but on exempting themselves from the law.[5] Whether this has become apparent to everyone or not, it is motivating religious communities to step outside the framework of secular law into the realm of private dispute resolution in order to preserve their communities.[6] Even more importantly, the common social fabric has shifted to a secular model—gay marriage is just the most public crier of this change—which predominates in every value-driven public discussion, leaving traditional religious communities feeling less and less comfortable with general social mores and, at the same time, increasingly disconnected from common public discourse or law.[7] Although religious groups may not be able to influence secular law as much as they once did, they have changed their approach, focusing on developing their own internal legal bodies. There are fewer and fewer attempts to meld and integrate and more attempts to separate and insulate.

ARBITRATION AS THE SOLUTION: THE BEST IDEA YET

The movement by religious groups to create their own internal arbitral bodies for settling disputes within their churches proves and has proved extremely controversial.[8] Perhaps the skepticism of religious arbitral bodies and religious arbitration stems from the secretive nature of certain churches, our own general lack of understanding of different religions, or even the deeply engrained American principle that church and state should remain separate, and that allowing "religious

4 CARL N. DEGLER, OUT OF OUR PAST: THE FORCES THAT SHAPED MODERN AMERICA 296 (1970) ("[T]he metaphor of the melting pot is unfortunate and misleading. A more accurate analogy would be a salad bowl, for, though the salad is an entity, the lettuce can still be distinguished from the chicory, the tomatoes from the cabbage.").

5 *See, for example*, Margot Sanger-Katz, *Trump Administration Strengthens "Conscience Rule" for Health Care Workers*, NEW YORK TIMES (May 2, 2019) https://www.nytimes.com/2019/05/02/upshot/conscience-rule-trump-religious-exemption-health-care.html. With little difficulty, one can show countless examples of religious communities that at one time sought to remake the law in their image and are now content to simply exempt their followers from the laws they do not agree with.

6 Some religious communities even welcome this, as they see greater threat from alternative religious values than secular ones. *See* Michael J. Broyde, *Jewish Law and American Public Policy: A Principled Jewish Law View and Some Practical Jewish Observations*, *in* RELIGION AS A PUBLIC GOOD: JEWS AND OTHER AMERICANS ON RELIGION IN THE PUBLIC SQUARE 161–84 (Alan Mittleman ed., 2003).

7 For just one example of this, see Michael Paulson, *Colleges and Evangelicals Collide on Bias Policy*, NEW YORK TIMES (June 9, 2014), http://www.nytimes.com/2014/06/10/us/colleges-and-evangelicals-collide-on-bias-policy.html (discussing how many institutions are forcing religious student organizations whose values discriminate against homosexual conduct off campus).

8 The most recent attack on religious arbitration can be found at Sophia Chua-Rubenfeld & Frank J. Costa, Jr., *The Reverse-Entanglement Principle: Why Religious Arbitration of Federal Rights Is Unconstitutional*, 128 YALE LAW JOURNAL 2087–121 (2019), which essentially advances three arguments against religious arbitration. The first is that "religion" is particularly perfidious in America since it professes values that are deeply problematic to values of American law. The second, the "reverse entanglement" argument, which is distinctly contrary to Witte's moderation, argues that all religious law questions that could be addressed by secular law create establishment clause problems. The third is that all choice of law selections that allow one to ignore federal law ought to not be enforced, even with an explicit choice of law provision. Each of these arguments undermines the history of alternative dispute resolution in America and diminishes religious freedom, none of which is deemed problematic by its authors.

https://doi.org/10.1017/jlr.2019.48 Published online by Cambridge University Press

courts" to exist pushes parties into an inherently unconstitutional forum. Regardless of why religious arbitration is such a controversial topic, religious groups have become arbitration specialists. In turn, the arbitral bodies developed by religious groups are intricately built and are likely here to stay, at least for the foreseeable future.

The advent of religious arbitration comes at an extremely interesting time in the United States. The United States, as a whole, has gotten less religious, especially over the past two and a half decades. As Americans have moved away from religion, so have their values. In turn, the values reflected in the nation's laws and policies reflect secular—not religious—principles. In the meantime, despite being fewer in number, the religious in the United States still exist. Such individuals view the secularization of American laws and policies as repugnant to their own beliefs and principles, and they have thus become further entrenched in their traditionalist beliefs. They also favor having their religious beliefs govern their everyday lives in all respects, including the way in which they settle their disputes. Religious arbitration presents a perfect outlet for this, allowing religious individuals to agree in contracts with others in their religious community to arbitrate any disputes that arise out of that contract in an arbitral body established by their religion and governed by the law of their religion.[9]

Religious arbitration is a "process in which arbitrators apply religious principles to resolve disputes."[10] While generally true, this simplistic definition does not do justice to what has become a widely implemented system of dispute resolution in the United States. In fact, even the definition of arbitration fails to fully summarize religious arbitration. In a sense, religious arbitration can run the gamut of dispute resolution practices. Some religious arbitral bodies utilize relaxed methods of alternative dispute resolution, such as negotiation, conciliation, and mediation, while others have implemented very strict, litigation-like courts and procedures.

Religious arbitration's viability rests on its ability to maintain the respect of secular courts and on the number of participants it can attract—meaning those who want to settle disputes through the lens of their religious beliefs, as opposed to doing so in a secular venue through secular legal principles. Religious groups have maintained success in the field of arbitration law particularly by following in the footsteps and procedural methods of their predecessors, building on a foundation of secular contract law and solid procedural foundations commensurate with secular procedural rules. With these foundations in place, religious arbitral bodies take secular courts to the end of those parts of a case that they are constitutionally permitted to review and leave them with no choice but to uphold their awards. Courts allowing such awards to stand, in turn, give parties faith in the religious arbitral process and make them more likely to view religious arbitration as a viable alternative to secular methods of dispute resolution.

So long as potential participants in religious arbitration view religious dispute resolution as a method that will be respected and upheld by courts, there is not likely to be a shortage of individuals who wish to settle their disputes through the lens of their religious beliefs. This is especially true in light of recent developments in American religious culture, namely in the movement of secular law away from traditional, conservative values. While a strong system of arbitration may allow a religion to implement its ecclesiastical law in settling family disputes, there are certain steps each

9 Indeed, in recent years there has been a considerable increase in articles addressing religious arbitration. These are all discussed in MICHAEL J. BROYDE, SHARIA TRIBUNALS, RABBINICAL COURTS, AND CHRISTIAN PANELS: RELIGIOUS ARBITRATION IN AMERICA AND THE WEST 3–28 (2017).

10 Caryn Litt Wolfe, *Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts*, 75 FORDHAM LAW REVIEW 427–69, at 427 (2006).

https://doi.org/10.1017/jlr.2019.48 Published online by Cambridge University Press

successful religious arbitral body has taken in developing viable alternatives to the secular court system, and in ensuring that their decisions will be enforceable in, and respected by, secular courts.

Of course, the legal system in America will not honor religious arbitration of family matters or any other matters absent a confidence that religious arbitration is just and proper as understood by secular law and society. However, the Federal Arbitration Act[11] is deeply rooted in the contractual approach: courts defer to binding arbitration agreements and subject them only to procedural review for matters like voluntariness and procedural fairness.

Arbitration clauses that include both choice-of-law and choice-of-forum provisions are an especially powerful means of adopting alternative legal models, even when the chosen forum is an arbitration court and the chosen law is religious. Indeed, courts will even defer to decisions of panels that operate under principles that are dramatically different from the existing laws of any state, such as Jewish law, Islamic law, or even a non-law structure such as Christian conciliation, provided parties' selection of the forum and decisional norms is voluntary and the arbitration procedures used are clear and reasonably fair. When boiled down, there are six basic principles of procedural regularity that religious arbitration panels must incorporate to ensure that secular courts honor their decisions.[12]

First, the arbitration panel must develop and promulgate standardized, detailed rules of procedure. Uniform rules and procedures set clear expectations for the proceedings and protect vulnerable parties. More importantly, procedural safeguards are crucial to the viability of private arbitration, as courts generally review arbitration decisions for procedural, rather than substantive fairness. Second, any organization providing arbitration services should also develop an internal appellate process. This reduces the likelihood of errors, increases trust, and helps prevent decisions from being routinely overturned by courts. Third, the governing rules should spell out choice-of-law provisions to facilitate the accommodation of religious traditions and principles as well as secular law, where possible. Fourth, in addition to religious authorities, the arbitration panel should employ skilled lawyers and professionals who are also members of the panel's constituent religious community who can provide expertise in secular law and contemporary commercial practices. Fifth, to ensure the effective resolution of commercial arbitrations, the organization should recognize and, to the greatest extent possible, incorporate into its rulings, the realities of conduct in the public arena—even in family law. This is crucial to understanding the actions and intent of the parties in common transactions, but perhaps more importantly, it will instill confidence in potential disputants. After all, a dispute resolution system that reflects grand abstract ideals but has little notion of business realities is unlikely to attract participants voluntarily. Finally, the tribunal should recognize that an aggregate of individual arbitrations will likely give rise to an active role in communal leadership. This is particularly true among adherents, but it is to be more broadly expected as well.[13]

These six rules are based on a fundamental reality of religious arbitration: other than in child custody disputes,[14] American arbitration law pays little attention to notions of substantive due process. Neither the government nor the courts has a preconceived notion of the "right" substantive resolution of most any dispute, if the parties contractually choose to opt for a different resolution or a process that produces

11 Federal Arbitration Act, 9 U.S.C. §§ 1–16 (1947). Before Congress enacted the FAA, courts were often hostile to alternative dispute resolution, including arbitration. *See* Meacham v. Jamestown, F & C. R. Co., 105 N.E. 653, 655 (N.Y. 1914).

12 For more on this, *see* BROYDE, *supra* note 9, at 115–36.

13 *Id.*

14 *Id.*

https://doi.org/10.1017/jlr.2019.48 Published online by Cambridge University Press

a different resolution from what state or federal law might offer. Rather, the Federal Arbitration Act and the myriad state laws that derive from it have a strong notion of procedural due process.[15]

ENFORCING RELIGIOUS LAW IN AMERICA: A GOOD IDEA?

Religious tribunals recognize that in order for secular courts to honor their decisions, they must follow only procedural (rather than substantive) due process. The Beth Din of America has promulgated legally sophisticated rules and procedures that are published on the organization's website.[16] The Institute for Christian Conciliation[17] and the Muslim Arbitration Tribunal have done likewise.[18] These rules set out requirements, such as the number of days between filing and response. They describe matters like discovery, motion practice, transcription, and the appropriate place to file items. They also establish the proper language for hearings, the procedure for compiling a record, waiver doctrines, notice provisions, and other rules of procedure.

Religious groups and their parishioners have slowly realized that, so long as these foundations are in place, religious arbitration can be used to settle almost any dispute between any group of disputants—whether they be an individual, a business entity, or a family in difficulty. Commercial entities are the most recent adopters of religious arbitration, and they have implemented the practice to settle disputes arising out of what has been dubbed "co-religionist commerce."

Secular versions of these groups developed robust systems of private arbitration because they found that courts had a difficult time providing proper context in settling disputes between them. Coreligionists are no different than are these secular groups, and there should be no barrier holding them back from creating an equally robust system of highly specific coreligionist arbitration panels to govern disputes arising between them. In creating such a system, coreligionists will be able to combine common law and common culture to reach a common, foreseeable, and mutually agreeable resolution. Indeed, to a great extent, dividing the assets of a family in divorce remains the best example of "co-religionist commerce": religious marriage might really have distinctly different ground rules and norms and even financial understandings than secular marriages. While marriages are a partnership—of sorts—the hard truth is that the norms of "marriage law" are very different in terms of what is fault, who owns assets, the relationship between income and child-care duties, and so much more, both between religious groups and secular groups and between diverse religious groups.[19] There is a

15 These statutes provide that there are certain things arbitration panels may and may not do in the course of making decisions that represent procedural violations: they may not call a hearing at 4:00 a.m. on a federal holiday; they must provide litigants with a reasonable amount of notice; they must conduct hearings in a language that the parties understand; arbitrators may not have a financial interest in the resolution of the case or financial involvement with the parties, as well as other basic ideas of procedural fair play. *See, e.g.*, *JAMS Policy on Employment Arbitration: Minimum Standards of Procedural Fairness*, JAMS (July 15, 2009), http://www.jamsadr.com/employment-minimum-standards/. Of course, the JAMS policy is only binding when it is incorporated by contract and the minimal obligations of the arbitrator under state law are considerably lower.

16 *Rules and Procedures*, BETH DIN OF AMERICA, https://bethdin.org/wp-content/uploads/2018/04/BDA1118-RulesProcedures_Bro_BW_02.pdf (last visited May 19, 2019).

17 *The Christian Court*, PEACEMAKER MINISTRIES, http://www.peacemakers.net/christiancourt/ (last visited May 19, 2019).

18 *Procedural Rules of Muslim Arbitration Tribunal*, MUSLIM ARBITRATION TRIBUNAL, http://www.matribunal.com/rules.php (last visited May 19, 2019).

19 This is a recurring theme of two of my books close to twenty years apart. *See* MICHAEL J. BROYDE, MARRIAGE, DIVORCE AND THE ABANDONED WIFE IN THE JEWISH TRADITION (2001), which discusses this from the uniquely diverse

https://doi.org/10.1017/jlr.2019.48 Published online by Cambridge University Press

good reason why cultural wars play out in the United States over family law and not over tort law or civil procedure: Cultural values really do matter in family law.

Submitting a matter to private arbitration—when there are robust arbitral rules and courts in place—places two sophisticated parties in a position to agree to submit disputes that arise between them to an equally sophisticated arbitral body for resolution. The groups noted above that have already developed robust systems of private arbitration are special in that they have developed—through the course of business—their own language that only members of the groups thoroughly understand. When they reach an agreement on how they will conduct business with one another, they utilize highly specialized language, often understandable only to members of the group. Agreeing to privately arbitrate disputes allows these highly specialized individuals to submit their highly specialized disputes to a highly specialized court that speaks their language. This specialization is not something secular courts can offer.[20]

When confronted with a dispute, both secular and religious courts apply their own general understanding of the law to settle them with little reference to the unique cultural and legal norms underlying the dispute. Unfortunately, this often leaves parties in highly specialized groups feeling as if their dispute has not been fully settled, or has been settled in an unsatisfactory or incorrect manner. This is quite common when highly specialized disputes are submitted to secular or general courts. Fortunately, arbitration provides a better venue for more satisfactorily settling disputes between these highly specialized parties.

Individuals recognize that secular courts have a difficult time interpreting religious doctrine. In fact, one proposed measure for the 2015 ballot in Texas "would have required judiciaries to refrain from involvement in religious doctrinal interpretation or application."[21] This type of measure has arisen from the claim of churches to what has been deemed church autonomy, or "a claim to autonomous management of a religious organization's internal affairs."[22] Because churches and their parishioners are often governed by church doctrine that would be complicated for outsiders to interpret, and that such interpretation by courts may have First Amendment repercussions, proponents of church autonomy believe that courts should stop short of interpreting religious doctrine. While First Amendment issues certainly present a problem for some courts, another issue is that sometimes they interpret religious doctrine incorrectly. When courts get this wrong, parties to the dispute are left feeling as if their dispute has not been satisfactorily settled. On the other hand, as we have sometimes seen in the past, allowing churches to have carte blanche control over settling disputes between their parishioners can take away the right of individuals to settle disputes between themselves. The median between these two extremes is to allow individuals to contract to have their matters arbitrated by someone familiar with church doctrine.

Jewish view; and BROYDE, SHARIA TRIBUNALS, RABBINICAL COURTS, AND CHRISTIAN PANELS, *supra* note 9, at 115–36. The first book argues this idea from an insular Jewish view and the second from a secular view.

20 Consider for example, the case of a *heter iska*, which is a contract used in the Jewish tradition to avoid the occasional prohibition against charging interest by changing the form of loan from a debt to a business deal (*iska* is the Hebrew word for *business*). Secular court have occasionally looked at these documents and—due to their unfamiliarity with the Jewish tradition—thought that they were partnership agreements, when in fact they were ritual documents intended to be of no financial relevance at all. *See* Steven Rensicoff, *A Commercial Conundrum: Does Prudence Permit the Jewish "Permissible Venture"*? 20 SETON HALL LAW REVIEW, 77–129 (1989).

21 *Texas Judicial Restraint in Religious Doctrine Interpretation Amendment (2015)*, BALLOTPEDIA, http://ballotpedia.org/Texas_Judicial_Restraint_in_Religious_Doctrine_Interpretation_Amendment_(2015) (last visited May 19, 2019).

22 Douglas Laycock, *Church Autonomy Revisited*, 7 GEORGETOWN JOURNAL OF LAW & PUBLIC POLICY 253–78, at 254 (2009).

CONCLUSIONS: LOOKING BACKWARD AND LOOKING FORWARD

When it comes to the discussion of religious marriage and family law, John Witte has it right, and the ideas that he proposes can be highlighted by noting six changes in American law and culture over the last decades that are worth pondering. First, a secular vision of culture has finally taken firm control of law. From same-sex marriage to capital punishment the prism though which our legal institutions view the hard problems of life is much more firmly secular than at any prior time in the American republic. Although this process is incremental and there is no single moment of triumph, the secular "shining city on the hill" is increasingly the dominant cultural norm.

Second, religious communities are beginning to recognize this and are slowly abandoning the ship of secular law. In particular, the evangelical communities in America are recognizing that institutions that previously reflected their values—like marriage, divorce, and even perhaps bankruptcy—no longer do. Furthermore, religious communities see little chance of reclaiming them in the foreseeable future.

Third, these same religious communities, which have lost control of secular law and culture, are not abandoning faith generally. Instead, they are redirecting their energies toward building a more insular religious legal culture in which people choose to be members of communities of the faithful as sub-communities of secular society, with norms of conduct and culture that are not part of secular society. These arbitration tribunals ought to be more efficient and more just places to resolve disputes than secular courts, since these religious tribunals understand the contractual norms of the parties more readily than the courts will.

Fourth, as these communities of the faithful become more insular and more self-regulating, arbitration law becomes a basic tool they use to function as part of secular society, albeit with their own norms, rules, and law. Religious arbitration allows like-minded people to submit to a religious and legal judicial body in a way that actually binds, and which calls for secular society to respect and validate (though enforcement under the Federal Arbitration Act) their norms.

Fifth, this change in culture and norms calls for secular law and society to consider the limits of religious arbitration as a binding secular process. Should religious arbitration panels be limited to financial remedies exclusively? Should religious arbitration be excluded from certain subject matters in which the state feels private law should have no say since legal uniformity is needed? Should religious arbitration be more tightly regulated to ensure that only those who voluntarily agree are actually subject to such arbitration? Finally, and most importantly, the most basic question is still unanswered: Is having a vibrant network of religious arbitration systems good for *both* civil society and faith groups? Will it allow minority religious groups to flourish in a way that enhances both the religious and the civil side of a society?

John Witte (and I) suspect that the answer to these many, very hard, questions is that vibrant religious arbitration encourages domestic tranquility in religious communities, allows people to organize their consensual affairs as they deem proper, and encourages civil society to see value in minority religious communities governing their own affairs in a fair and efficient way that reduces tension with the rest of society. This arbitration also advances many goals of civil society by allowing religious communities to be moderately self-governing in those areas of law where adjudication of religious values and expectations is hard for secular courts. Such arbitration furthers the interest of justice by encouraging dispute resolution. This contractual approach allows a better resolution of the exit problems that plague all religious communities—and their civil counterparts—by insisting that exit disputes be treated no differently than any other contract dispute.

https://doi.org/10.1017/jlr.2019.48 Published online by Cambridge University Press