

*Religionsunterricht an öffentlichen Schulen in Spanien und Deutschland [Religious Education at Public Schools in Spain and Germany]*. By Sarah Messinger. Tübingen: Mohr Siebeck, 2016. Pp. 192. €69.00 (cloth). ISBN: 978-3161549748.

With this fine German-language monograph, Sarah Messinger, an articulated clerk at the Higher Regional Court of Berlin, compares Spanish and German laws governing religious education in public schools. On the basis of her careful comparison, Messinger makes several reasonable suggestions as to what German jurists can learn from their Spanish confrères and vice versa. Messinger's main law texts are the current Spanish and German constitutions: the Constitución Española (CE) from 1978 and the Grundgesetz für die Bundesrepublik Deutschland (GG) from 1949. For religious education, Article 7 GG and Article 27 CE are particularly important.

Messinger organizes her book into five chapters, the first of which (1–25) provides an introduction to the relationships between the state and religion in Germany and Spain. Neither country opts for an official state church (as in the Church of England) or a secular state (as in French *laïcité*), but rather for a model of cooperation (*Kooperationsmodell*) that consists in legal agreements (*Staatskirchenverträge*) between, on the one hand, the State of Spain or one of the sixteen federal states of Germany, and, on the other hand, a national or regional religious community.

In both countries, this cooperation rests on mutually dependent constitutional principles. Firstly, with regard to religion, the state is to be neutral (*Neutralitätsgebot*). A state church or state religion is expressly forbidden; on the organizational or institutional level, state and religion are to remain separate entities. Secondly, on both the legal and the practical levels, the state is obliged to treat different religious communities and their individual adherents equally (*Paritätsgebot*).

However, neither of these principles is to be understood in the absolute sense because (1) the constitutions of both countries *do* prescribe cooperation between the (federal) state and the different religious communities; and (2) governmental cooperation with various religious communities is not meant to be schematic and, thus, may differ in scope. Spain's constitution slightly favors Catholicism, while Germany's slightly favors general Christianity. Article 16 of CE, for example, states, "No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions" (15; text from the official English translation provided by the Spanish government, available by selecting "English" at <http://www.congreso.es/consti/constitucion/indice/index.htm>). While the general reference to "Gott" (God) in sentence 1 of the Preamble of GG is vague and, thus, open to various (Christian, Jewish, or Islamic) interpretations, the protection of Sunday as a day of rest and spiritual edification (Section 140 GG) illustrates the German constitution's mild favoritism toward Christianity. The growing influences of secularization and Islam in either country may lead to the removal of such favoritism in the future.

In the second chapter (27–84) Messinger investigates how these principles apply to religious education. Firstly, in both countries, the state must ensure that confessional religious education is offered in public schools. With a few exceptions, religious education in German public schools is to be taught as a regular subject (*ordentliches Lehrfach*), and in accordance with the tenets (*Grundsätze*) of students' respective religious communities (Section 7, subsection 3 GG). The Spanish constitution contains a somewhat weaker, but similar statement in Section 27, subsection 3. Secondly, whereas in Germany the confessional religious education of *all* religious communities

must not be disadvantaged relative to other regular school subjects, such rules apply only to the Catholic Church in Spain based on Section II of the respective Concordat from 1979 (55). Thirdly, in accordance with (but not necessarily following from) Section 7, subsection 3 GG, German students' grades in religious education are relevant (*versetzungsrelevant*) to their academic advancement (57). This, however, is not the case in Spain. According to Messinger, such practices (particularly in relation to Catholicism) are contrary to the Concordat (*konkordatswidrig*) under which students' grades in religious education courses should be relevant to their advancement (58–59). Fourthly, the widespread German regional practice of organizing religious education as a *compulsory* subject does not necessarily follow from the constitutional text in Section 7, subsection 3 GG; consequently, it is not applied in the federal states of Saxony-Anhalt and Hamburg, where religious education is considered an *elective* subject (*Wahlpflichtfach*). Catholic religious education has comparable status in Spain. Messinger suggests that German legislators should employ this elective model generally, and she urges that they could do so in total conformity with the German constitution. Fifthly, in Germany, the religious communities, the pupils' parents or guardians, and the religiously mature pupils themselves (that is, from the age of fourteen) have a legal *right* to religious education and can therefore demand its provision from the state. In Spain, this right belongs primarily to children's parents or guardians, and to a lesser degree to the religious communities. Unfortunately, Messinger does not discuss to what extent religiously mature pupils (that is, from the age of eighteen) have the right to claim religious education in Spain.

In the third chapter (85–119) Messinger investigates the legal conditions that need to be met by the religious communities (and by parents and pupils) in order for religious education to take place in Spanish and German public schools. Religious communities need to have (1) a formal structure (according to Messinger, the factual requirements in Germany are too high at the moment); (2) a representative organ for negotiations with the state; and (3) a consensus regarding the religious contents and the teachers of their religious education classes. In terms of content-related requirements, religious communities in both Spain and Germany are responsible to provide confessional religious education in accordance with their own religious tenets. In Germany, there is a concern to safeguard the confessional character of religious education. In Spain, the tendency is to make sure that religious education does not become *too* confessional. In her discussion of this topic, Messinger takes an overly negative view of catechesis. While it is certainly reasonable to prevent religious education in public schools from becoming coercive, her description of catechesis as indoctrination (*Indoktrinierung*) surely is too extreme (99, 103). Messinger also discusses the power of the state to supervise and intervene in religious education classes. In both Spain and Germany, the state can enforce pedagogical and didactical standards in religious education classes, and measure whether teachers actually follow the curricula developed by their respective religious communities. Further, in both countries, the state has the right to make sure that the content of the religious education classes does not contradict the essential principles of the constitution (*Verfassungsesenz*). In this regard, Messinger's differentiation between the internal design (*Binnenkonzeption*) and external design (*Außenkonzeption*) of a given religious community's tenets is helpful. The former seldom affects the essence of the constitution. For instance, teaching about Catholic priesthood or Islamic imamhood in religious education classes usually does not promote a *general* unequal treatment of men and women in society. The external design of a religious community, however, might contravene constitutional principles. For example, religious education teachers who promote an overt theocracy would violate the religiously neutral nature of the democratic state, according to the constitutions of both Spain and Germany.

In spite of its relative brevity, Messinger's fourth chapter (121–46) is the most pioneering one. She examines the difficulties religious minorities experience in putting into practice religious

education in public schools despite the legal, infrastructural, and financial framework provided by the state. In Spain, this concerns both Protestant and Islamic courses, which have been offered only since 1994 and 2005, respectively. The approximately two thousand Protestant churches organized under the Spanish umbrella organization *Federación de Entidades Religiosas Evangélicas de España* are not held in high esteem by the Spanish general public and are widely viewed as sects. Due to this status and their overall fragmentation, Protestants in Spain have great difficulty in establishing academic training centers, recruiting teachers, and, thus, organizing religious education classes in public schools. The Islamic religious education courses similarly fail because of fragmentation and dissension within the umbrella organization *Comisión Islámica de España*.

In Germany, the organization of Islamic religious education classes is equally difficult. Only three federal states (North Rhine-Westphalia, Hesse, and Lower Saxony) offer Islamic religious education as a regular subject in public schools. According to several jurists, the difficulties of Islamic religious education are due to the “foreign” and “dark” character of Islam itself. Messinger, however, points out that Protestant and Islamic communities in Spain *both* struggle to meet the requirements for religious education courses in Spain. This suggests that their difficulties result not just from their cultural characteristics, but from their minority position (*Minderheitensituation*) in society. According to Messinger, this point also applies to Islamic communities in Germany. There, too, Muslims’ minority status affects their ability to organize religious education classes. Messinger reasonably concludes that the Spanish and German states must come to terms with these religious communities and keep the existing barriers as low as possible in order to allow their followers to exercise their right to religious education (140).

According to Messinger, the Spanish manner of governing religious education by means of *different* agreements—that is, the Concordat with the Catholic Church and the agreements with the Protestant and Islamic communities—contains the risk of discrimination to a greater extent than does a *general* legislation. In order to prevent such discrimination, Messinger suggests, Spanish jurists should follow the example of Section 7, subsection 3 of the German constitution and thus govern religious education both generally and centrally.

In the fifth chapter (147–67), Messinger broadens the view by discussing content-related courses that are offered as alternatives or additions to confessional religious education: morals, philosophy, and nonconfessional science of religion.

The book also includes a detailed bibliography (169–87) and an index of subjects (189–92).

In sum, this book offers a detailed and in-depth comparison of Spanish and German law on religious education, which until now has been a desideratum. Because of its numerous improvement proposals for Spanish and German legislation, the study makes a groundbreaking contribution to the discipline of comparative law. Messinger is to be commended for her concern that all religious communities should be treated equally by the Spanish and German governments. However, even her own terminology shows how difficult this can be. For example, Messinger often uses the Christian term *Kirche* (church) in reference to non-Christian religious communities. Following Alexander Hollerbach, she employs the jurisprudential term *Staatskirchenverträge* (literally, agreements between state and church) to describe agreements between the state and Islamic or Jewish communities (see, for example, 143).

In addition, Messinger fails to include several recent and relevant studies. Her analysis and argument would benefit, for example, from closer engagement with texts, including Myrian Dietrich, *Islamischer Religionsunterricht: Rechtliche Perspektiven* [Islamic religious education: Legal perspectives] (2006); Thomas Meckel, *Religionsunterricht im Recht: Perspektiven des katholischen Kirchenrechts und des deutschen Staatskirchenrechts* [Religious education in the law: Perspectives of Catholic canon law and German state-church law] (2011); Susana Mosquera

Monelos, “Some Recent Problems Concerning Religious Education in Spain,” *European Journal for Church and State Research*, no. 8 (2001): 125–31; Matthias Pulte, “Die aktuelle Lage des Verhältnisses von Staat und Kirche in Deutschland: unter besonderer Berücksichtigung des konfessionellen Religionsunterrichts” [The current situation of the relationship between state and church in Germany: With special attention to confessional religious education], *Trierer Theologische Zeitschrift* 124, no. 2 (2015): 155–71; Almudena Rodríguez Moya, “Libertad religiosa y enseñanza de la religión: especial atención al caso islámico” [Religious freedom and the teaching of religion: With special attention to the case of Islam], *Estudios Eclesiásticos* 85, no. 335 (2010): 787–815.

Nonetheless, Messinger has furnished us with a clear, careful, and instructive Comparative Law study on religious education in public schools in Spain and Germany. In view of the changes European societies face in terms of (religious) worldviews—in particular, secularization and the growing influence of Islamic ideas—Messinger’s impressive, pertinent, and thought-provoking book is a jurisprudential help for all those who—in Spain, Germany, or elsewhere—are responsible for religious education in public schools.

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