

appeal to lawyers, sociologists and historians. His clear, factual yet sensitive approach makes this book an easy read. The principal reform proposed in this work is the new thinking Witte seeks to bring to bear on the area, aptly expressed in his phrase: 'Before the judgement seat of God, there will be no class actions, and no joint or vicarious liability for which the individual soul must answer'.

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doi:10.1017/S0956618X10000153

### **In Defense of Religious Liberty**

DAVID NOVAK

Eurospan, 2009, 207 pp (hardback £23.95) ISBN 978-1-933859-76-7 (paperback £15.50) ISBN 978-1-933859-76-7

Most of the chapters that make up Novak's book have their origins in lectures he has delivered at various universities. Three began life as the Test lectures delivered at the University of Princeton. To these Novak adds a revised version of a previously published chapter. That may seem to promise a volume with a disjointed content but, in fact, a clear consistency of argument and unity of concern runs throughout the book. It is also a book with much broader ambitions than its title suggests. Novak's concern is not just with 'religious liberty' but with the entire relationship between religion, the modern state and civic life. His wide-ranging argument can be broken down into three related concerns: the way in which the basic constitution and laws of the state, including those of a secular, multicultural state such as the US, Canada or Britain, need to be grounded in the law of God; the similar need to ground human rights in the law of God; and the place religion should occupy in the public square.

What is the role of religion in the life of the modern democratic state? Novak's answer is 'fundamental'. He sees religion as essential both to the legitimation of political power and to the basic framework of laws that a state should recognise and maintain. That is not an easy case to make given the diversity of religious beliefs present in western societies and the predominantly secular character of western states, which is itself in part a response to the problems created by religious diversity.

Novak accepts that it would be inappropriate to make his case on the basis of his own Jewish religious tradition, or any other tradition that speaks only to a particular community, although he does take pains to show that what he argues is endorsed by the theology of Judaism. The case needs to be universal; it must speak to all. Hence, he relies on the resources of reason rather than

revelation and the tradition of natural law thinking. He rejects the view, sometimes associated with Grotius, that natural law can be both intelligible and morally compelling without God. On the contrary, he argues, natural law makes sense only as a command of God. One way in which he defends that claim is by arguing that we must postulate the existence of a God if we are to make sense of the moral notions that characterise our social and political life. By way of example, he gives a reading of the American Declaration of Independence that aims to show that its concepts of self-evidence, equality, universality and natural rights all imply the existence of God. Postulating a God makes better sense of our moral experience than postulating Kantian autonomy.

The idea of natural or human rights is sometimes regarded as a departure from natural law thinking, but Novak thinks otherwise. Here again he argues that the 'affirmation of human rights needs a prior affirmation of God' and that affirmation does not require adherence to any particular religious tradition. He does, however, devote considerable effort to showing that human rights enjoy biblical-talmudic endorsement. He also devotes a chapter to considering how human rights have been understood within the Jewish tradition and how that bears on the way the Jewish majority should treat non-Jews within Israel. His more general claim is that political authority can be expected to recognise and honour human rights only if it does not regard itself as the source of its own authority. Politics in Britain, the US and Canada are not tyrannies only, he argues, because a majority of their citizens still believe they are obligated by a prior, divine morality, even though they have to leave it to philosophers and theologians to articulate the full theory of that morality.

The case for grounding politics and law in religion holds, Novak argues, even if we understand contemporary societies on the model of contract. He points out that the social contract tradition drew heavily on the biblical idea of covenant. But, more significantly, he argues that contracts require mutual trust, rather than mere self-interest or threat of punishment, and that trust can exist only amongst those who, through belief in God, are bound by a law that is not of their own making. But what then of unbelievers who are also parties to contracts, including the social contract? Novak softens his position to argue that trustful relations can obtain with unbelievers to the extent that they recognise moral standards not of their own making, but not with those who are motivated only by self-interest and fear.

If both state and law are to find their foundations in religion, does that not push us towards theocracy? Novak claims not, partly because the religious will look beyond the state for realisation of their ultimate ends. However, that does not imply that, in politics, religion should supply only remote principles and abjure the hurly burly of policy debate. Novak stoutly opposes any attempt to keep religion out of the public square and is fiercely critical of assigning religion to a private sphere. That does not prevent him protesting

vehemently against the use of political power by secularists to impose norms and practices upon religious communities that conflict with their faiths. He cites the case a Catholic school that was compelled by the Canadian courts to allow a homosexual student to take his gay lover to the schools' prom as an example of the kind of external intrusion that is the principal contemporary threat to religious liberty. The right to religious liberty violated by that intrusion is not only anterior to the authority of the state but also he claims, rather implausibly, the only right that enjoys that ontologically prior status. In another chapter he argues that state provision for same-sex marriage is an assault upon religious liberty, since it obliges churches and other religious communities either to participate in a contaminated matrimonial system or to withdraw from the institution of civil marriage altogether.

Even from this brief summary of Novak's argument, it will be evident that, from its premises to its conclusions, it contains little that is not open to dispute and also that he is unlikely to persuade any who do not already share his cast of mind. He is also sometimes given to sweeping assertions that will make the analytical philosopher wince; eg 'the concept of human rights is endemic to democracy'. But his philosophical incaution is a price worth paying for the robustness with which he presents his case. There is no temporising or embarrassed obfuscation here; Novak delivers straight from the shoulder. Even those who stand opposed to his position have reason to welcome such a clear, forceful and uncompromising statement of the case for grounding politics, including secular democratic politics, in religion.

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doi:10.1017/S0956618X10000219

## **Manual on the Wearing of Religious Symbols in Public Areas**

MALCOLM D EVANS

Martin Nijhoff and Council of Europe, Netherlands, 2009, vii and 126 pp (paperback £25) ISBN 978-90-04-17276-0

## **Manuel Sur le Discours de la Haine**

ANNE WEBER

Martin Nijhoff and Council of Europe, Netherlands, 2009, vi and 97 pp (paperback £19) ISBN 978-90-04-17275-3

The re-emergence of religion in the public sphere, expressed through the wearing of religious symbols such as the veil, the turban or the cross, has elicited