Having to 'prove' fault in divorce results in increased costs, both emotionally and financially: all organisations, whether governmental or religious, should be moving away from fault in divorce. Retaining fault in divorce, particularly the standard demanded by covenant marriage, is likely to keep women in abusive relationships. This is especially so when one considers that, in covenant marriage, mental abuse is not recognised as abuse and therefore as capable of constituting a ground for divorce. It will also prolong children's exposure to parental conflict. Although covenant marriages are clearly important to some of those who are religious, there is evidence to suggest that they do not appear to be important to the rest of the population. For example, according to a report published by the National Center for Policy Analysis in December 2001, fewer than 3 per cent of couples who married in Louisiana and Arizona had taken on the extra restrictions of covenant marriage. From the perspective of this reviewer, those who argue for covenant marriage are therefore trying to impose unwelcome and unwanted views on the rest of us. Instead of trying to impose a religious canonical law upon divorce, policy makers should look for ways of helping people to divorce better. This would include measures to minimise child poverty after relationship breakdown. If religious individuals wish to undergo a religious marriage, covenanted or not, then that should be a private matter for them, but the state and the law should not endorse in any way the imposition of those religious ideas on the rest of society.

Dr Sarah Beresford
Senior Lecturer, The Law School, University of Lancaster
doi:10.1017/S0956618X0900177X

God vs. the Gavel: Religion and the Rule of Law

Marci A Hamilton

Cambridge University Press, New York and Cambridge, 2005, xix + 414 pp (hardback £19.00) ISBN: 978-0-521-85304-4; (paperback £14.99) ISBN 978-0-521-70338-3

Academic studies dealing with the nature and limits of religious accommodation in a democratic society are urgently needed. From Christian rings to Sikh bracelets to Hindu bulls, the question of when exemptions from generally applicable laws should be provided for religious groups and individuals presents challenges to academics, lawmakers and judges alike. Discussion tends to focus on two concerns: how to distinguish a legitimate exemption from an illegitimate one; and who should be responsible for making any such determination – the legislature or the courts? In *God vs. the Gavel*, Marci Hamilton, Professor of Law at Benjamin N Cardozo School of Law in New York, attempts to tackle these

questions within the context of the American experience of legitimate religious accommodation. That context is structured by the Free Exercise Clause of the First Amendment of the US Constitution. It leads to religious accommodation being contemplated in the following terms: when may the government enforce a law that burdens an individual's ability to exercise her or his religious beliefs?

Hamilton's argument in *God vs. the Gavel* is that 'most law should govern religious conduct, with the only exception being when the legislature has determined that immunizing religious conduct is consistent with public welfare, health and safety' (p 8). For those unfamiliar with debates and developments surrounding the Free Exercise Clause, a claim that law should generally be applicable to religious entities seems modest and uncontroversial. However, when placed in the context of recent conflicting legislative and judicial efforts to delineate the proper scope of religious freedom under the US Constitution, one gains a sense of why Hamilton needs to make her case.

For decades prior to 1990, the Supreme Court operated a generous policy of religious accommodation, holding that the state may burden religion only for 'compelling' reasons. So, for example, laws penalising Sabbatarians for refusing to work on Saturdays were held to be unconstitutional, and the Amish were allowed to remove their children early from school in accordance with their religious principles. In 1990, the Supreme Court abandoned this approach, in *Employment Division v Smith*, and held that the Free Exercise Clause did not excuse individuals from compliance with generally applicable, neutral laws that were not specifically intended to burden religious exercise. As a result of the intense criticism that the *Smith* decision provoked, Congress passed the Religious Freedom Restoration Act (RFRA) 1993, which was designed to undo the effects of *Smith* and prevent generally applicable laws applying to religious entities. In 1996, this act was invalidated by the Court's decision in *Boerne v Flores*. In 2000, Congress passed the Religious Land Use and Institutionalized Person Act (RLUIPA), a slimmed-down version of the RFRA that applies to prisoners and persons using land for religious purposes.

For Hamilton, the pre-*Smith* constitutional interpretation of the Free Exercise Clause and what she terms the 'blind' legislative exemptions (p 9) found in the RFRA and RLUIPA are indicative of the misplaced trust that she claims her fellow citizens have in religious entities. Her purpose in writing this book is 'to persuade Americans to take off their rose-colored glasses and to come to terms with the necessity of making religious individuals and institutions accountable to the law so that they do not harm others' (p 3). Part One of the book, 'Why the law must govern religious entities', is dedicated to this aim. A detailed account is given of six areas where religious individuals and organisations have caused harm to others and have not been held to account: children (child abuse, medical neglect); marriage (same-sex marriage, polygamy); schools

https://doi.org/10.1017/S0956618X09001781 Published online by Cambridge University Press

(anti-violence regulations, dress codes and curriculum); land use in neighbourhoods; prisons and the military; and discrimination in church employment and by religious landlords. Unsurprisingly, by the end of Part One – which occupies two-thirds of the book – the reader is surely convinced, if conviction is needed, that religious entities can cause harm and must in general be governed by the same laws as everyone else. However, the hard question remains essentially untackled: when should religious liberty be accommodated when religious freedom and public policy clash?

Part Two, 'The history and doctrine behind the rule that subjects religious entities to duly enacted laws', does what the title suggests. It offers a historical and constitutional account of the Free Exercise Clause and explains the background to the current intriguing altercation taking place between Congress and the Supreme Court. It is perhaps unfortunate that the book does not open with this comprehensive review, in order to help the unapprised reader place Part One in its appropriate legal context.

In the final chapter, Hamilton at last presents a three-part test to determine when religious groups should gain exemptions from neutrally applicable laws: the exemption must be enacted by a legislature, not decreed by a court; it must be consistent with the public good; and it must be 'debated under the harsh glare of public scrutiny' (p 275). In selecting 'public good' as the guiding standard, Hamilton explicitly rejects equality as an overriding value. She argues that deciding when accommodation is appropriate is not a question of equality and weighing of rights: 'Equality simply is not enough. There must be a further principle and I believe that principle is the republican government, which entails maximal liberty in light of the public good and the no-harm rule' (p 294). However, disappointingly, she fails to expand on her understanding of 'public good' and 'harm'. While she agrees that religious entities may be permitted to cause harm if the harm can be tolerated and if prohibiting the harmful religious activity would inflict a greater harm to religious liberty, there is scant discussion as to how to draw the line between tolerable and intolerable harm.

Hamilton's argument for the claim that only a legislature should decide when exemptions are permissible from neutrally applicable laws is also unconvincingly made. She suggests that this institution is the most appropriate branch of government for the job because here issues can be openly debated and everyone can work towards an outcome consistent with the public good. However, throughout the book she describes the weaknesses of legislatures in playing just such a role, giving numerous examples of where legislators have granted inappropriate exemptions to religious organisations. It seems most strange, therefore, that she would place the same institutions in a monopolistic position and reject any role for the courts in, for example, interpreting general religious exemptions clauses from otherwise applicable law.

For those unfamiliar with Free Exercise Clause debates in the US, *God vs. the Gavel* makes for a lively and informative read. Hamilton writes with the passion and outrage of a lawyer who has experienced first-hand how religious entities can abuse their freedom from the law. However, for the reader anticipating a work to advance our theoretical understanding of the complexities involved in religious accommodation, the lack of depth and detail in the treatment of these issues may disappoint.

DR ALISON MAWHINNEY
Queen's University, Belfast
doi:10.1017/S0956618X09001781

The Teachings of Modern Christianity on Law, Politics and Human Nature

EDITED BY JOHN WITTE JR AND FRANK S ALEXANDER
Columbia University Press, New York, 2006, 2 vols, 806 and 582 pp ($80.50 per volume) ISBN: 978-0-231-13718-8 (set)

These two volumes are the product of an ambitious three-year project of the Law and Religion Program at Emory University. The first volume offers a collection of essays on twenty major political thinkers in the roman catholic, protestant and orthodox traditions, drawn mostly from the twentieth century. The second volume offers an anthology of extracts from these thinkers' writings to allow them to speak for themselves.

This is a most impressive collection of essays, written by some of the most eminent scholars in their fields. It offers a very useful introduction for students and a helpful set of references for more accomplished scholars. It includes three particularly helpful introductions to each of the three major Christian traditions. Paul Valliere's essay on orthodoxy shows how the Russian revolution impoverished orthodox political thought and how the only orthodox thinker who deals in a systematic way with questions concerning the relationship between politics and religion is also the farthest removed in time, Vladimir Soloviev. Russell Hittinger's introduction to modern catholicism stands out for its masterful range, originality and ambition. Mark Noll offers an impressively comprehensive account of the breadth of protestant political thought. In the essays devoted to particular political thinkers, along with the best-known figures (Karl Barth, Reinhold Niebuhr, Jacques Maritain, Vladimir Soloviev), some less well-known figures make a welcome appearance: Susan B Anthony, a Quaker who counselled legal disobedience; William Stringfellow, who spent much of his career representing the interests of the poor and needy in