

BOOK NOTE

Freedom of Religion or Belief: An International Law Commentary, by Heiner Bielefeldt, Nazila Ghanea & Michael Wiener. Oxford Univ. Press, 2017. Pp. 704. \$49.95 (paperback).

BOOK NOTE BY BRYAN LAFONTE

Jesus was condemned by the Sanhedrin for claiming to be the son of God;¹ Socrates was condemned by the citizens of Athens for denying the gods.² How might history have come out differently if freedom of religion had been recognized during their times? Freedom of religion can clearly change the course of history, and *Freedom of Religion or Belief* can help ensure it is more fully recognized in our time. This scholarly commentary takes a comprehensive look at the international provisions for protecting freedom of religion or belief and at how those provisions have been interpreted by U.N. Special Procedures and Treaty Bodies. The authors have helpfully divided the work into categories along the lines of the framework for communication used by the U.N. Special Rapporteur on Freedom of Religion or Belief.

The commentary begins, naturally enough, by defining the scope of the freedom of religion or belief. This freedom is defined quite broadly—it “protects theistic, non-theistic and theistic beliefs, as well as the right not to profess any religion or belief.” Many state constitutions and laws only offer much narrower protection for religion. China, for example, protects only five particular traditional religions, namely, Taoism, Buddhism, Islam, Catholicism, and Protestantism. Even the United States, which provides much more general protection for religious freedom, does not extend equivalent protection to atheistic beliefs. However, expanding protection to atheistic beliefs seems to be a necessary consequence of conceptualizing freedom of religion as a universal right.

International law emphasizes the difference between *forum internum* and *forum externum*. Milton’s Satan explained the *forum internum* like this: “The mind is its own place, and in itself / Can

1. See Matthew 26:65; Mark 14:64; Luke 22:71.

2. See Plato, *Apology*.

make a Heav'n of Hell, a Hell of Heav'n."³ The *forum internum* is afforded unconditional protection which includes the freedom to adopt, alter or abolish one's religious beliefs and the freedom from coercion. The right to manifest one's religion or belief falls within the *forum externum* and is still protected, although not unconditionally. The commentary provides great detail on the various ways people manifest their beliefs and the subsections on places of worship, religious symbols, and conscientious objection are particularly insightful.

After establishing the scope of the freedom of religion or belief, the commentary addresses issues of discrimination and state establishment. Freedom of religion or belief also protects individuals against discrimination based on their religion or lack thereof. Since discrimination cannot be avoided altogether, the principle of reasonable accommodations is important in this sphere. The commentary provides a nice analysis of the arguments both for and against reasonable accommodations. State establishment is an important part of some religious traditions, most notably in Islam. However, having an established religion often interferes with a state's duty to ensure equal treatment of all individuals regardless of religious status. The commentary provides a detailed look at a number of different states with various kinds of religious establishments and considers whether the secular state presents a viable alternative.

Next, the commentary considers the freedom of religion or belief for vulnerable groups. The relevant issues pertaining to women, prisoners, displaced persons, children, minorities, and migrant workers are each covered in detail. The portion on female genital mutilation is disingenuous. The authors condemn this brutal practice in no uncertain terms but claim it is done "in the name of religion" and assert that it is "controversial and ultimately doubtful" that female genital mutilation has "religious root causes." This statement is absurd on its face. Female genital mutilation is not done in the name of a religion; it is done because of a person's religious belief. To deny this is to deny such individuals—detestable though they are—the right to decide their own religious beliefs.

The following section of the commentary addresses conflicts between the freedom of religion or belief and freedom of speech, including so-called "hate speech." This conflict was perfectly illus-

3. John Milton, *Paradise Lost* (1667), 1:254–55.

trated by the Danish cartoon controversy. The commentary authors warn against developing a hierarchy of human rights which is the general rule in international law. However, a hierarchy is necessary to have a strong democratic society. One person's speech, even so-called "hate speech," simply cannot be limited by another person's religious beliefs. The dangers of so-called "hate speech" are greatly over-stated. As the iconic civil rights lawyer Aryeh Neier pointed out: "The Nazis did not defeat their political opponents of the 1920s through the free and open encounter of ideas. They won by terrorizing and murdering those who opposed them."⁴

The commentary concludes by discussing derogations and limitations on freedom of religion or belief. Vague limitations on the freedom of religion or belief are prone to exploitation for post hoc justifications. The authors lay out important guidelines to prevent this from happening. Limitations must, in all cases, be prescribed by law in the least restrictive means necessary to achieve a legitimate state interest. The authors provide great clarity with regard to specific limitations and, indeed, this may be the most practically useful section of the commentary.

Heiner Bielefeldt is a Professor of Human Rights and Human Rights Politics at the University of Erlangen-Nürnberg and recently served as the U.N. Special Rapporteur on Freedom of Religion or Belief. He has a background in philosophy, Catholic theology, and history. Nazila Ghanea is an Associate Professor in International Human Rights Law at the University of Oxford, a Fellow of Kellogg College, and a member of the OSCE Panel of Experts on Freedom of Religion or Belief. She has extensive experience as a human rights expert consulting with several governments and international organizations. Michael Wiener is a Visiting Fellow of Kellogg College and works in the Office of the U.N. High Commissioner. He was among the experts who helped draft the Camden Principles on Freedom of Expression and Equality.

4. Aryeh Neier, *Defending My Enemy: American Nazis, the Skokie Case, and the Risks of Freedom* (New York, Dutton, 1979), 179.