Ferrari and Durham's (eds.) "Law and Religion in Post-Communist Europe" - Book Review

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The radical political transition of Eastern European countries from communism to a more or less democratic dispensation has had an influence on almost every aspect of social structures within the newly emancipated states, and on the personal lives of peoples belonging to those communities. Modalities of human existence associated with religious institutions, confessional commitments, and a religiously-based moral life style, are no exceptions in this regard. Describing the relationships between law and religion within altogether sixteen Eastern European states, written in each instance by a distinguished expert on religious freedom from the state concerned, is the focus of the volume under review.

Putting together an anthology on the laws and practices relating to the symbiosis of law and religion in different countries written by a distinct expert from each country being surveyed has its advantages. It is hardly possible for a single author to have the in-depth knowledge of the laws and practices of all the countries being included in the survey. Here, the reader is given the benefit of analyses by persons who not only derive their knowledge from academic study and discourse, but who are also on the spot, and who through their empirical exposure to the system and its manifestations are best equipped to provide a reliable contemporaneo exposito.

But following this method may also have its shortcomings. Each person has a certain slant to his or her interests and understanding and could therefore contribute to an admittedly colorful quilt, but one that lacks a coherent pattern or central consistency. Too many cooks could also make a truly comparative perception of the central theme quite impossible.

The editors of Law and Religion in Post-Communist Europe avoided a patchwork conglomeration by selecting their authors from among the best; and perhaps more importantly, by instructing the authors to deal with the same set of pertinent questions: describe the social dimensions and historical setting of law and religion in your country, the legal sources relevant to the subject-matter of the anthology, the legal status of religious institutions/communities, labor law affecting the churches, the financing of religious institutions, assistance afforded to religion in public institutions, the legal status of priests and members of religious orders, the impact of religion in matrimonial affairs and in family law, religion in education, and the rules of criminal law relating to religion. These are recurring themes in almost all the chapters of the book. Some authors did not afford a distinct place to all of these themes in a main paragraph, combining several of them under a more general heading, or not dealing with one or more of them at all. The legal status of the clergy and religious orders (erroneously referred to in the piece on Albania as the “religious” status of priests and members of religious orders), for example, is neglected in the chapters on Estonia, Latvia, Lithuania, Macedonia, and Poland, criminal sanctions pertinent to freedom of religion or belief is not specifically dealt with in the case of Estonia, Latvia, and Poland. This could perhaps be explained on the basis that these subject-matters are not particularly significant in the countries concerned, or have not attracted special regulation in those countries.

Religion and the media might also have been among the topics authors were asked to deal with, but the media only received special mention in the chapters on Albania, Bulgaria, Croatia, the Czech Republic, and Latvia. Some authors have added somewhat isolated subject-matters to the ones dealt with by most, for example a paragraph on churches and culture (Albania, the Czech Republic and Macedonia), the problem of conscientious objections (Bulgaria), church-state relations (Estonia, Hungary, Macedonia, Romania, Serbia, and Ukraine), and (most usefully) a section on “key issues”, “main features”, or “basic
characteristics” of the system (Croatia, the Czech Republic, Hungary, Macedonia, Romania, Slovakia, and Slovenia).

It is in a sense unfortunate that some authors did not follow the sequence and exact sub-titles of the subject-matters which they were instructed to cover. This makes comparative research from the volume somewhat more complicated. It even in some instances entail inaccuracies. For example, Evis Karandea, writing on *Church and State in Albania*, has included in the survey a paragraph on “The Right to Self-Determination of Churches and Religious Communities in Internal Affairs”. The right to self-determination as defined in international human rights law does belong to religious communities (people united by a common confession) but not to religious institutions (a church as a structural social entity). The right to self-determination demands of the state to permit religious communities to profess and to practice their faith. The competence of a church institution to conduct its own internal affairs and organize its domestic governmental design without state interference is a matter of church autonomy and not of self-determination.

There are two country-specific chapters that do not follow the methodological design that is more or less current in all the others. The one analyzes “Church and State in the East German Länder of the Former German Democratic Republic.” The problems facing regions of the former German Democratic Republic are indeed quite different from those experienced by the other Eastern European states—if for no other reason, then simply because upon unification of East and West Germany in 1990, the German Basic Law was made applicable to the entire country. It was therefore more a question of the East German Länder having to come to terms with existing constitutional decrees and legal arrangements of church-state and freedom of religion matters. An overview by Axel Frhr von Campenhausen of the trials and tribulations that attended the unification process represents a most insightful addendum to the chapters on Eastern European countries properly so-called.

The other country-specific chapter that seems to be at odds, is one by Vsevolod Chaplin dealing essentially with the Russian Law of 1997 *On the Freedom of Conscience and on Religious Associations* from the perspective of the Russian Orthodox Church (a preceding chapter by Lev Simkin deals with “Church and State in Russia” in accordance with the general methodological design of the volume). The chapter by Chaplin may be defined as an apology for the 1997 Law. It is informative, but also designed to show that the Law “has not resulted in mass discrimination against religious minorities, as some critics of the Law predicted to try to frighten us” (at 283). Chaplin reduces the disputes that erupted in religious circles when the 1997 Law replaced the Law of 1990 *On the Freedom of Faiths* to a prevailing dichotomy between the “Westernizers” and “Slavophiles”. The “Westernizers” can perhaps more accurately be defined as those who attempted to impose upon, or import into, Eastern European countries the typical American perception of religious freedom (the separation of church and state is not a typical Western or European institution), while the “Slavonites”, according to Chaplin, are those who “in religious and social thinking ... perceive the church body, society, and the state as a single whole” (at 286). The problems experienced in Russia with the Law of 1990 derived precisely from the fact that its drafters sought to impose the American model on a community with a totally different political and cultural mind-set. In reaction—in this reviewer’s opinion—the 1997 Law went somewhat overboard by unduly restricting the religious rights of denominations that lacked the 15 years tenure in Russia, which has been stipulated in the Law as the divide between the (privileged) “religious organizations” and the (disadvantaged) “religious groups”—and in response to Chaplin, it might be noted that the disadvantages of the latter group stipulated in Article 27.3 of the 1997 Law go well beyond concerns of affording tax exemptions to those institutions
that have not yet “proved their viability by fifteen years of existence” (at 283). It must be conceded, though, that the Russian authorities have applied the law with circumspection and without “mass discrimination against religious minorities” (at 283).

I have singled out the chapter by Vsevolod Chaplin for special scrutiny in order to make a point that could perhaps best be highlighted through a personal anecdote. A few years ago, I was invited to participate in a dialogue with a group of Chinese Christians who were seeking assistance and advice on the drafting of a law on religious freedom for China. Shortly before that time, China had signed (not ratified) the International Covenant on Civil and Political Rights, and our Chinese friends thought this was an opportune moment to come forward with a law on religious freedom. My advice, in a nut shell, was not to carbon copy the American model of religious freedom; that would be too much freedom too soon. If you are looking for a precedent to follow, go to Eastern European countries in transition that have avoided a leap from the one extreme to the other. I specially commended the Polish Law of 17 May 1989 On Guarantees of Freedom of Conscience and Belief—and just for the record, the (American) sponsors of our discussions presumably did not care for my advice, because I was not invited to participate in subsequent meetings with the Chinese group.

The point is—and this is borne out by the Russian experience—that the transition from a totalitarian regime, to be practical, must for at least an interim period retain some state control of religious activities and institutions. Attempts in Bulgaria to replace the Religious Denominations Act of 1949 with one that would guarantee freedom of religion in accordance with the Constitution of 1991 (which according to Jenia Peteva upholds the fundamentals of religious pluralism, separation between religion and state, autonomy of religious denominations and non-discrimination (at 39)), has been unsuccessful thus far, due probably to the ongoing rivalries between the Bulgarian brand of “Westernizers” and “Slavonites”.

The Polish Law held out here as a model for countries in transition from totalitarian state control of, and interference in, matters of religion is from a radical religious freedom perspective quite censurable. It contains a long list of competencies afforded by the state to citizens as components of the freedom of conscience and belief (art. 2): the right to create churches and other religious unions and to belong or not to belong to them; to participate in religious functions and services, fulfill religious duties, and observe religious holidays; to profess one’s religion or convictions; to bring up one’s children according to one’s religious convictions; not to profess one’s religion or belief; to maintain contact with other persons of one’s faith and to participate in international religious organizations; to utilize information sources in matters of religion; to produce, to purchase, and to make use of objects required for religious cult purposes and religious practices; to produce, purchase and possess articles required for observing religious rites; to choose a clerical or monastic order; to establish lay organizations with a view to realizing objectives of a professed religion or conviction. Poland established, as part of the state administration, the Office of Denominational Affairs as a link, on the political front, between church and state (art. 15(1)). The creation of a church or other religious union in Poland is effected through registration of the institution with the Office of Denominational Affairs (art. 30), supported by at least fifteen Polish citizens (art. 31), and including in the application all kinds of information, such as details of the “basic doctrinal assumptions” of the concerned faith (art. 32(1)(a)) and the applicant’s statute (containing details—insisted upon by the state—of, inter alia, its aims and proposed activities, sources of financing and the like) (art. 32(2)). Church officials are required by law to notify the appropriate organ of state about the creation, change of name, seat, borders, or merger, division and annulment of a diocese or parish (art. 14(1)). The state wants to know about the appointment or removal from office of the executive organ of a church or other
religious institution (art. 14(2)). The Head of the Office of Denominational Affairs may “express reservations” in regard to the appointment of a foreigner as a responsible church official entrusted with the duty of notifying the state of the above information and eventualities (art. 14(4)). Even in countries experiencing radical change from state control over religion and religious institutions, some form of control seems necessary during the period of transition and even thereafter.

The book contains two further chapters, right at the beginning one by Giovanni Barberini and at the end one by Silvio Ferrari. Both of these chapters give an overview of law and religion issues experienced by Eastern European states in transition and provide excellent synopses of the overall theme of the book, and the problems facing those states in coming to terms with the new dispensation. They also contain summaries of states upholding doctrines such as the separation of church and state, preferential treatment of a particular religion, registration of religious institutions, agreements concluded with the Holy See, and the like.

Reading through the pages of Law and Religion in Post-Communist Europe, one is again struck by the many problems confronting those striving toward a better future under the norms of good governance. Silvio Ferrari speaks of “A Lost Opportunity?”, noting that “the legal systems of the post-Communist countries … merely offer a replica – and sometimes, in terms of the freedom and equality of religious groups, it is a deficient one – of the solutions (which are already in need of reform) adopted in the Western countries” (at 422-23).

In a preface, the editors promised a follow-up volume in which the laws governing the relationship between church and state in the same Eastern European countries covered in the current volume is to be recorded and analyzed. I have been informed that Laws on Religion and the State in Post-Communist Europe (eds. W. Cole Durham & Silvio Ferrari) has recently been published by Peeters Publishers.

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