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Book Review: Freedom of Religion Under the European Convention on Human Rights

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disability, illness or dependency) and therefore that those without dignity no longer require our respect.

Overall, Biggs' book perhaps falls short of its aim to demonstrate persuasively "how and why" legalising voluntary euthanasia is the answer. It nonetheless succeeds in presenting complex issues in an approachable way and will undoubtedly stimulate further exploration of this troublesome area.

WENDY E. HISCOX

Freedom of Religion Under the European Convention on Human Rights. By CAROLYN EVANS. [Oxford: Oxford University Press. 2001. xxiv and 222 pp. Hardback £40.00. ISBN 0-19-924364-6.]

OXFORD University Press has initiated a new series on the European Convention on Human Rights and, in light of recent world events, could not have found a more timely first instalment than Evans's book on freedom of religion. However, the choice of topics is sound even when one sets aside the current interest in the interplay between law and religion. First, as noted in the general editor's preface, there is a "considerable body of literature" on the Convention, "including many works providing an overview of the Strasbourg system and its jurisprudence. Less common are studies like Dr. Evans's book concerned with the interpretation and application of individual provisions" (p. vii). Second, "[i]t is particularly apt that the present volume should appear at a time when, as a result of the Human Rights Act 1998, courts in the United Kingdom are for the first time being called upon to take account of the European Convention. In a multicultural society religious freedom is plainly fundamental and lawyers, judges and others with responsibilities in this area will find Dr. Evans's book extremely useful" (pp. viii-viii).

Indeed, the relative underdevelopment of religious liberties in the UK makes this work of critical importance. Until the coming into force of the Human Rights Act 1998, no general freedom of religious belief and practice existed in this country. Religious discrimination was prohibited only in Northern Ireland. Courts faced with the difficult task of blending existing laws, which for the most part grew up piecemeal out of historical necessity, into a cohesive whole will have great need for recourse to the European jurisprudence that Dr. Evans has so ably presented in her book.

The book begins with the theoretical justifications for protecting religious belief, a discussion which may be somewhat too brief for those who are unconvinced of the propriety of religious liberties. While the existence of religious discontent and conflict cannot be denied, critics in this country and abroad have argued that granting "special protections" to religious minorities does more harm than good. Instead, opponents of religious rights invoke the spirit of toleration that ought to be present in contemporary societies as a means of protecting the relevant interests. Unfortunately, "ought" does not imply "is," and the toleration that should exist is often absent in religious matters, either consciously or unconsciously. If one advocates a system of religious rights, rather than religious toleration, one needs a stronger theoretical justification for religious liberty than exists in Dr. Evans's book. However, since her

primary goal is to set forth the boundaries of the European system rather than defend the need for a formal rights regime *per se*, these shortcomings are relatively minor.

More successful is Dr. Evans's discussion of one of the central dilemmas in religious rights jurisprudence, namely the definition of religion itself. After discussing the problems associated with both wide and narrow definitions, she notes that the breadth of the European Commission's definition of the term is cut down—in some cases quite restrictively—by the European Court and Commission's interpretation of what freedom of religion or belief entails.

Proponents of liberal legal theory often suppose that freedom of religious belief is absolute, and, indeed, many national and international systems claim to support that position. Dr. Evans challenges that presumption and demonstrates that the right is circumscribed in many European cases by “[t]he Court and Commission [having] tended to assume that the issue of interference in the *forum internum* is not in question” (p. 102). In addition, “the Court and Commission have been highly deferential to the needs of the State and the historical role of established Churches in Europe” (*ibid.*). While one can argue that deference may be appropriate for pan-European institutions dealing with the highly controversial and culturally sensitive issue of religion, deference that approaches an abdication of any oversight capacity makes a mockery of the enunciated right.

The right to manifest a religion or belief is an even more difficult issue, since here the religious actor operates in the *forum externum* and there is an obvious need for state intervention to protect the rights of others and/or society. Dr. Evans devotes two chapters to this subject and provides a useful and comprehensive discussion of the relevant case law.

Dr. Evans believes the key question involves the identification of what constitutes religious worship, teaching or practice. She points to *Arrowsmith v. United Kingdom* as initiating what she calls “the necessity test” in Article 9 jurisprudence, namely that applicants must “show that they were required to act in a certain way because of their religion or belief” (p. 115). She then goes on to discuss how limitations on religious practices fare under the usual European Convention requirements that limitations on individual rights be prescribed by law, be necessary in a democratic society and have a legitimate aim.

In all, this is a very well written and researched book. While Dr. Evans includes some comparisons to the law of other jurisdictions, primarily the US, she does not make the mistake of straying too far from her discussion of freedom of religion under the European Convention. Article 9 has generated more than enough material to justify a book of its own, and it is remarkable that such a work has not come out before, given the importance of the subject. Indeed, most works on civil liberties give a scant paragraph or page to religious liberty, despite its being one of the longest standing individual freedoms. Admittedly, the issues associated with religious freedoms are thorny, but such difficulties suggest an increased, rather than decreased, need to address this area of law. Dr. Evans has done a fine job in showing how such analyses can and should be done.