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*Review of Can God and Caesar Coexist? Balancing
Religious Freedom and International Law*

Steven R. Goldzwig

Marquette University, steven.goldzwig@marquette.edu

Can God and Caesar Coexist? Balancing Religious Freedom and International Law. By Robert F. Drinan, S. J. New Haven: Yale University Press, 2004; pp 266. \$30.00.

Religion has been responsible for some of humanity's most civilizing influences. Great periods of art, culture, intellectual revival, and social welfare have

come and gone and come again in splendid wakes of periodic religion-inspired-and-sponsored beneficence. Institutions of higher learning, such as the one where I presently teach, have become prominent and productive byproducts of religious impulses. Yet religion can also justly be associated with some of the most inhuman periods in world history. Religious intolerance has been responsible for both national and international conflict. Religious impulses have spawned wars and purges, precipitating countless deaths and inordinate periods of extended human suffering. In the post-9/11 environment of today's world, we have become particularly wary of extremist religious impulses that have seemingly led to a series of unrelenting worldwide terrorist acts. Not surprisingly, the states that have been the recipients of these violent actions have taken multiple actions and passed reactionary laws to help prevent and repress such activities. There is an almost preternatural bipolarity in religion that seems inevitably lodged in its propensity to be used by human beings for both good and evil. It is this dimension that engages physical, emotional, and spiritual energies with an often high degree of volatility.

Given this particular set of circumstances, Robert F. Drinan, S.J., has struck upon a rather compellingly useful and vexingly complex topic—the underdeveloped question of how to balance religious freedom within the context of international law. As a Jesuit priest and professor of law at Georgetown University, a past dean of the law school at Boston University, and a five-term member of Congress from Massachusetts, Drinan seems uniquely equipped to tackle the thorny legal, political, and religious dimensions central to his thesis. Drinan argues that we must become more intentional about guaranteeing religious freedom throughout the world. While there is no signed covenant on religious freedom under the auspices of the United Nations, Drinan looks to the day when this can be accomplished and argues persuasively that this would be a good idea. In order to support his thesis, he tactfully and evenhandedly examines a host of presumed and actual impediments.

The book is laid out in 13 chapters. In chapter 1, Drinan points out that in the post-World War II world, international covenants have consistently mentioned religious freedom as a constitutive human right, but notes that the “uncertainty around the world concerning the extent to which governments should guarantee religious freedom is one of the major reasons why the United Nations has not pursued a covenant or a legally binding instrument on freedom of religion” (3). The same “uncertainty” has precluded an international monitoring system for compliance. Thus, at present, political and economic rights enjoy a more privileged place in the pantheon of international rights. But the world's governments remain skittish about the establishment of a world tribunal to adjudicate religious rights. As Drinan notes, “The feeling is somehow pervasive that government organizations—or even a transnational

legal body—should not get involved in the religious practices of 84 percent of the human race” (6).

In chapter 2, Drinan notes key contemporary sources and dimensions of freedom of religion and conscience. He deftly describes problems associated with nation-states who have established one religion as the official religion of the country. Chief among them is the question of the rights of the participants in minority religions and all the complexities that set of questions entails. For example, states where religion is established will be hard pressed to listen to, much less obey, dictates from an external transnational body or tribunal trying to ensure minority religious rights. A growing body of international agreements, however, has supported deeper inroads in protecting religious freedom and freedom of conscience. As Drinan indicates, the UN Charter mentions human rights five times, but it never offers a right to religious freedom based on the dictates of conscience. Article 18 of The Universal Declaration of Human Rights (UDHR) signed in 1948, however, does mention that “Everyone has the right to freedom of thought, conscience, and religion” (16). These sentiments have been reinforced in the International Covenant of Cultural and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (AmCHR), the African Charter on Human and People’s Rights (AfrCHPR), the Covenant on the Rights of the Child (CRC), and the United Nations World Conference on Human Rights (UNWCHR). These charters, covenants, conventions, and conference statements, then, have solidified the rights to freedom of religion and conscience as equally sanctioned principles of great currency in the evolving world community. Drinan employs the legal account to accentuate the fact that “the presence of the idea of conscience in all the basic documents of the human rights revolution may well mean that a whole new source of law and morality is on the horizon” (28).

Chapter 3 discusses the role of religion in the structure of the United Nations and highlights the fact that the origins of the UN stem directly from an attempt to guarantee religious freedom as a direct response to the Holocaust and the international resolve to prevent a recurrence. The general premise was to preclude the decimation of any religious group while controlling the negative dimensions of its moral or philosophical power, and thus ultimately its potential inimical political influence. Most important to Drinan’s argument, however, is that “All of the elaborate framework created by the United Nations to enforce human rights assumes that the right to religious freedom is equal in importance to the right of freedom of speech and assembly and the right to be free from discrimination based on race and gender.” However, at present, “there is no worldwide mechanism by which persons who feel discriminated against on the basis of religion can even seek a remedy or protest a violation” (41).

Throughout the rest of the book Drinan accounts usefully for why this is the case as he simultaneously presses the argument that some new “mechanism” is necessary. In brief, chapter 4 discusses religious freedom in the United States, touching upon thorny domestic issues such as school choice, prayer in public schools, and endorsement of political candidates by tax-exempt religious organizations, as well as international dilemmas such as proselytizing by U.S. religious bodies in foreign nations, and the role of the United States in preserving and protecting religious freedom, among other important topics. Chapter 5 addresses religious freedom and the conduct of the European Court of Human Rights. Chapter 6 provides an interesting account of the Vatican’s role in defending religious freedom. Chapter 7 emphasizes the complexities involved in protecting the rights of nonbelievers. Chapter 8 tracks key issues regarding religious freedom and sex and gender. Here a key question includes “whether a set of rights for women clarified and enriched by international law can or should trump the rights of religious groups to practice their beliefs” (135). Whether discussing El Salvador or religious sects in Europe, chapter 9 tracks various human rights abuses by those nations that repress or persecute religion. In chapter 10, China receives independent treatment. Chapter 11 treats the complexity of religious freedom in the Muslim world, and chapter 12 treats problems, dilemmas, and advances in the Jewish community.

Chapter 13, the final chapter, returns to the question posed by the book’s title: “Can God and Caesar Coexist?” Drinan’s answer is yes, but it is a delicate and complex balance. While problems abound, the goal of religious freedom and the free exercise of conscience is too important to be left unattended by binding law at the international level. Principles must be firmly established and they must be judiciously enforced. As Drinan notes, “if there is to be an international right to faith, there will have to be some way of evaluating compliance” (241). As indicated earlier, while there is a UN Declaration on Religious Freedom, there is as yet no binding covenant. Drinan believes the best way to ensure the next step is for religious bodies, government actors and agencies, nongovernment organizations, and peoples of all faiths to work together toward extending and codifying religious rights. Ultimately, the success of this project transcends merely legal matters. Indeed, Drinan acknowledges that “law is a feeble instrument” to bring about peaceful coexistence. But when law can “be joined with love,” which is after all at the core of every religious tradition, the world has cause for hope indeed (245–46).

Scholars interested in domestic and international human rights, those who study the First Amendment, and all people of goodwill who take an interest in the world community should put this book high on their list of required reading. Drinan offers a clear, intelligent, baseline discussion that provides not only food for thought, but insight into the promise of religious freedom

and freedom of conscience as guaranteed by international law. Drinan is not immune to the problems, and he wisely foregrounds and discusses major obstacles to his goal, but the care and the wisdom with which he offers his thesis are sure to help bridge the gap between promise and performance. While Drinan's realism underscores the difficulty of the task, his optimism helps the reader overcome many of the reservations he has introduced. Father Drinan's ultimate goal is to extend human rights by breaking new ground. His intelligent, well-researched discussion has opened a necessary dialogue that nations, governments, and peoples of all ranks, religions, and persuasions should welcome.

Steven R. Goldzwig

Marquette University