

## RELIGION AND THE WORKPLACE: A SOCIAL SCIENCE PERSPECTIVE

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The *philosophes* of the Enlightenment as well as the founders of modern, positivist social science would have been astonished to learn that a distinguished group of legal scholars met early in the twenty-first century—in France of all places—to discuss religion and labor law. These pioneers of social theory, along with later thinkers such as Marx and Freud, had confidently proclaimed secularization as the master frame of the twentieth century.<sup>1</sup> As a consequence of modernization, a shorthand term encompassing industrialization, urbanization, the spread of science and technology, democratization, mass education, and market economies, few of these seminal thinkers expected religion, a vestige of the *ancien regime*, to persist as a meaningful social force. If religious sentiment did manage somehow to withstand these corrosive social changes, most theorists were confident it would endure only as a private matter in the minds of a small remnant of believers, mostly people who were insulated from the processes that constitute modernization. Despite the differences among them, these social theorists could barely have imagined that technologically advanced twenty-first century societies would face claims from workers aggrieved that their religious rights had been abridged by employers or that these claims would frequently be sustained by the legal system.

If the *philosophes*, positivists, and their heirs would have been astonished by the persistence of religious sentiment, they would have been even more surprised by its continuing relevance to law. Among its many meanings, secularization implied that religion would gradually lose authority in various institutional domains, becoming a specialized phenomenon operating in sharply circumscribed spheres.<sup>2</sup> The law was one such institutional sphere that secularization was expected to empty of religious content. Driven by commitment to a “science of law” in place of legal formalism, legal scholars in late nineteenth century America

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1. DANIEL L. PALS, *EIGHT THEORIES OF RELIGION* (2006); STEVEN SEIDMAN, *LIBERALISM AND THE ORIGINS OF EUROPEAN SOCIAL THEORY* (1983).

2. Mark Chaves, *Secularization as Declining Religious Authority*, 72 *SOC. FORCES* 749 (1994).

abandoned the concept of law as a constitutive element of Christian civilization and a buttress for the social order. They accorded religion (specifically Protestant Christianity) less and less legitimacy as a basis of legal reasoning.<sup>3</sup> Taking their cue from the same social thinkers, post-World War II political scientists similarly understood modernization to entail the “separation of the polity from religious structures, substitution of secular modes of legitimation and extension of the polity’s jurisdiction into areas formerly regulated by religion.”<sup>4</sup> Political philosophers similarly expected that religion would in time have less and less to say about the political realm and vice versa.<sup>5</sup> This view, which dominated my discipline, left very little room for religious consciousness in modern politics. Thus political scientists were no better prepared than lawyers to witness twenty-first century states struggling over claims by employees to exercise legally-protected religious rights in their places of work.

As the papers delivered in Nantes and collected in this volume demonstrate, religion has not retreated to the private recesses of a few minds but rather remains quite capable of asserting strong claims on the public square well into the twenty-first century. Does this mean that secularization theory was wrong and should be cast aside, as some scholars have recently argued,<sup>6</sup> or best understood as an essentially self-limiting process?<sup>7</sup> Those conclusions seem premature. Indeed, some sociologists have found persuasive evidence consistent with the classic formulation of the secularization thesis. They have documented a massive decline in religious attachment (most prominently in Western Europe) and provided evidence that religious consciousness has in fact receded from many sectors of human endeavor in advanced industrial societies.<sup>8</sup> Just as secularization theory predicted, religious sentiment today tends to be strongest among people with minimal exposure to the key agents of modernity and to register weaker effects among those with higher levels of education and

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3. David Sikkink, *From Christian Civilization to Individual Civil Liberties: Framing Religion in the Legal Field, 1880–1949*, in *THE SECULAR REVOLUTION* 310 (Christian Smith ed., 2003).

4. Donald E. Smith, *Religion and Political Modernization: Comparative Perspectives*, in *RELIGION AND POLITICAL MODERNIZATION* 3, 4 (Donald E. Smith ed., 1974).

5. MARK LILLA, *THE STILLBORN GOD: RELIGION, POLITICS AND THE MODERN WEST* (2007); MARCEL GAUCHET, *THE DISENCHANTMENT OF THE WORLD: A POLITICAL HISTORY OF RELIGION* (Oscar Burge trans., 1997).

6. Jeffrey K. Hadden, *Toward Desacralizing Secularization Theory*, 65 *SOC. FORCES* 587 (1987).

7. RODNEY STARK & ROGER FINKE, *ACTS OF FAITH: EXPLAINING THE HUMAN SIDE OF RELIGION* (2000).

8. BRYAN WILSON, *RELIGION IN SECULAR SOCIETY* (1966); *RELIGION AND MODERNIZATION* (Steve Bruce ed., 1992).

greater economic security.<sup>9</sup> This evidence qualifies some of the stronger claims about a supposed religious revival in Western societies.<sup>10</sup>

Rather than reject secularization theory out of hand, most scholars have reformulated it to note the continuing capacity of religious commitment to engage the public square even as religious attachment diminishes among sizable segments of the population. As Jose Casanova has argued, religion has re-engaged with politics across a broad swath of the world, including advanced industrial states that often define what we mean by “modern.”<sup>11</sup> This became strikingly apparent in the 1980s and 1990s in such diverse locales as Iran, Poland, South Africa, East Germany, Bosnia, the Philippines, and the United States. The Islamic Revolution in Iran was among the first and most astonishing cases where religious forces became the basis of widespread opposition to the state regime in the person of the Shah. This popular religious revolt stunned many observers precisely because the professional literature had presented the Shah of Iran as the prototypical case of the successful modernizer, his generation’s Attaturk. The Polish uprising against communism was spearheaded by the Solidarity movement, usually defined as a trade union, but at its core a Catholic social movement steeped in religious imagery, folklore, and leadership. In the United States, the movement that eventually became known as the Christian Right represented a public reassertion of the values of evangelical Protestant Christianity. For all its ups and downs, this crusade fundamentally altered the structure of American public life and the content of public policy. Nor must we overlook the former Yugoslavia where exemplars of three world religions—(Serbian) Orthodoxy, (Croat) Catholicism, and (Bosnian) Islam—defined the combatants and provided the idiom for a bloody civil war.<sup>12</sup> Without much digging, we could further enlarge the pool of case studies of politicized religion to include Hinduism, Buddhism, and Judaism.<sup>13</sup>

The focus of contemporary research in political science has increasingly moved to understand *how* these religious loyalties and differences are mobilized toward political ends.<sup>14</sup> Religious commitment is *available* in many societies but acquires public relevance only when

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9. PIPPA NORRIS & RONALD INGLEHART, SACRED AND SECULAR: RELIGION AND POLITICS WORLDWIDE (2004).

10. See ROBERT WILLIAM FOGEL, THE FOURTH GREAT AWAKENING AND THE FUTURE OF EGALITARIANISM (1999).

11. JOSE CASANOVA, PUBLIC RELIGIONS IN THE MODERN WORLD (1994).

12. MICHAEL A. SELLS, THE BRIDGE BETRAYED: RELIGION AND GENOCIDE IN BOSNIA (1996).

13. RELIGION AND POLITICS IN COMPARATIVE PERSPECTIVE: THE ONE, THE FEW, AND THE MANY (Ted Gerard Jelen & Clyde Wilcox eds., 2002).

14. Kenneth D. Wald & David C. Leege, *Culture, Religion and Politics*, in OXFORD HANDBOOK OF RELIGION AND AMERICAN POLITICS (Corwin Smidt, Lyman A. Kellstedt & James A. Guth eds., forthcoming, Oxford University Press).

movements draw on a politicized world view steeped in religion, exploit the patronage of supportive allies in a relatively open political environment, and make use of the politically-relevant resources available in religious communities, things such as leadership, organization, and pre-existing ties among potential movement adherents.<sup>15</sup> In the realm of law, too, similar processes of group mobilization often accompany and make possible change on behalf of outsider groups.<sup>16</sup>

This essay offers some social scientific perspectives about the intellectual problem examined in Nantes, religion in the workplace. As one of the few non-lawyers among the authors—or as I prefer to think of myself, one whose mind has not been corrupted by a legal education—my perspective on these papers is drawn primarily from the disciplines of political science and religious studies. From that viewpoint, I was struck by three things as I heard and later read the papers. First, the treatment of religion in labor law reflects the general status of religion in each nation's law and culture. Though hardly surprising, this observation is important because it offers a way to integrate these papers with emerging research on the public face of religion in late modernity. Second, the understanding of religion in public law, including employment law, often conflicts with the “lived religion” of new and minority religious communities. Some of the tensions and conflicts revealed in the country studies may well reflect a certain degree of misalignment between “religion” as understood by different groups, notably legal elites on the one hand and practitioners of various faiths on the other. Finally, the assertion of religious claims under labor law appears so challenging to many polities precisely because it reflects a style of religious commitment that contradicts the norms of secularization. What I call the integralist style of religious commitment presents real challenges to a legal ethic that considers religious affiliation, if not purely nominal, at least as secondary to national allegiance. As this style of religious commitment appears to be growing in Europe and elsewhere, there is likely to be no end of religiously-based conflicts in the realm of employment.

#### I. REGIMES OF RELIGION AND STATE

Given the diversity among the states that were the primary focus of the Nantes conference, we should not be surprised to discover substantial national differences in legal and public policy toward religious expression

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15. Kenneth D. Wald, Adam L. Silverman & Kevin S. Fridy, *Making Sense of Religion in Political Life*, 8 ANN. REV. POL. SCI. 121 (2005).

16. See, e.g., PATRICIA J. WOODS, JUDICIAL POWER AND NATIONAL POLITICS: COURTS AND GENDER IN THE RELIGIOUS-SECULAR CONFLICT IN ISRAEL (2008).

in the workplace. The extreme cases, France and the United States, illustrate the outer limits of this diversity. French law more or less asserts that workers have no religious rights *qua* workers and employers have virtually no obligations to accommodate religious practice. In the United States, there is by contrast considerable room for religious expression in the workplace and even private employers are expected to go some (albeit limited) distance to accommodate workers' religious needs. Of the remaining countries discussed in this issue, Turkey comes closer to the French model while the British, Canadian, and German cases much more closely resemble the American.

Amidst this diversity, however, there is an important commonality. As Freedland and Vickers suggest, national policies toward religion in the workplace fundamentally reflect "the role of religious expression and religion as a whole within the state's own conception of itself."<sup>17</sup> That is, the "regime" of religion and state that operates in each country is reflected more or less faithfully in the specific legal arrangements that govern the domain of employee rights in the workplace. This suggests that religion in the workplace is simply a specific "case" of a more general problem that presents itself to all polities—how to treat religion in public law.

This argument has been expressed persuasively in Fetzer and Soper's *Muslims and the State in Britain, France, and Germany*.<sup>18</sup> The authors characterized each state in terms of how it addressed the religious needs of the Muslim population within its borders. Specifically, they inquired about the degree to which state policies enabled Muslims to practice their faith, examining both policies that might empower Muslims to observe the traditions of Islam and those that impeded religious activity. To what extent did the state provide Muslim communities with funding for education and other ends? Did Muslim communities face exceptional hurdles in constructing mosques or other religious facilities? Were Muslim children treated with cultural sensitivity or not by state school systems? Observing wide differences among the three states, Fetzer and Soper tested three plausible explanations: the resources of the Muslim population (size, organizational density, financial capacity, etc.), the political opportunity structure (openness to new political groups), and public attitudes toward Islam and minority religions. Expecting to find state attentiveness to Muslim concerns responding directly to the resources of Muslim communities, state structure, and public opinion about Islam, they

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17. Mark Freedland & Lucy Vickers, *Religious Expression in the Workplace in the United Kingdom*, 30 COMP. LAB. L. & POL'Y J. 597, 599 (2009).

18. JOEL S. FETZER & J. CHRISTOPHER SOPER, *MUSLIMS AND THE STATE IN BRITAIN, FRANCE, AND GERMANY* (2005).

discovered that none of these factors adequately explained the observed patterns.

Rather, state treatment of Muslims reflected primarily each nation's unique history of regulating religion. In Britain, with its long tradition of a state church that enjoyed public funding and a high degree of tolerance toward other faiths, it was relatively easy to bring Islam into the political fold and, indeed, the claims of Muslims were often embraced and advanced by the informal patronage of the dominant Church of England.<sup>19</sup> By contrast, the French tradition of *laïcité* was deployed against the public claims of Islam just as it had traditionally been used against Roman Catholicism "intrusions" on the public square. Germany fell between these poles, offering some positive options to Muslim communities but conditioning such support and recognition upon organizational benchmarks that Islam could not, for the most part, satisfy.

As a consequence of their historical trajectories, specifically the manner in which church and state have developed (or not) systems of mutual accommodation, each nation has a unique culture of religion and state that manifests itself in a system of laws and policies governing the domains where state and religion intersect.<sup>20</sup> Characterizing these arrangements as regimes draws on Stephen Krassner's use of the term not to denote formal structures but rather to refer to explicit or implicit "principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area."<sup>21</sup> Such regimes, which have little to do with religious expression in the workplace per se, largely drive state policies on religion in employment law.

It is striking testimony to the influence of these regimes that they easily overwhelm what would appear to be commonly shared legal philosophies of church-state doctrine. Consider the avowedly secular states of Turkey, France, and the United States. Each state treats religious identification as largely irrelevant to citizenship, conceptualizing it as a private matter meant to confer neither legal benefits nor disabilities. In none of the three do religious institutions have a formal legal or governmental role. Yet as the yawning differences among them in accommodating individual religious expression indicate, such common

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19. As Beckford notes, this commitment to multiculturalism does not extend to all domains. The prison system chaplaincy in the United Kingdom still gives preference to the Established Church and freezes out Muslims and other minority faiths. James A. Beckford, *Social Justice and Religion in Prison: The Case of England and Wales*, 12 SOC. JUST. RES. 315 (1999).

20. Cf. Seymour M. Lipset & Stein Rokkan, *Cleavage Structure, Party Systems, and Voter Alignments: An Introduction*, in PARTY SYSTEMS AND VOTER ALIGNMENTS 1 (Seymour Martin Lipset & Stein Rokkan eds., 1967).

21. Steven D. Krasner, *Structural Causes and Regime Consequences: Regimes As Intervening Variables*, in INTERNATIONAL REGIMES 1 (Steven D. Krasner ed., 1983).

“secularism” is a very poor predictor of policies toward religion and state and is unlikely to help us understand how each state treats religious claims in employment.<sup>22</sup> To reiterate, the specific legal particularities in each nation’s approach to religion in the workplace should not blind observers to the ways in which laws regarding such matters are merely glosses on a more fundamental understanding of religion’s place in the state, i.e., the underlying regime. This insight, explicit in Freedland and Vickers, helps elucidate the patterns described by the other country studies in this volume.

## II. RELIGION AS A LEGAL CONSTRUCT

What do states understand by “religion”? At first consideration, the question may seem unnecessary because we all know what religion means. It’s about churches and dogma and worship within organized faith communities. Yet in practice, there is astonishing diversity to what people connote by the concept of “religion.” Scholars who examine religion as a political factor often distinguish between the three “faces” of religion as creed, community/culture, and organization, noting that beliefs, congregations, and religious denominations may independently entangle religion with the state.<sup>23</sup> In the sociology of religion, there is an important distinction between what has been called official and folk religiosity. The former is the realm of church creeds developed by religious professionals, encased in elaborate doctrine, and propagated and reinforced by the central institutions of the church. Popular religiosity is said to represent the religion of the people, what ordinary folk mean and do in their daily encounter with the sacred. Rather than constitute a seamless whole, the two forms of religious expression, official and folk, may provide divergent messages about core items of faith.<sup>24</sup> Of late, folk religiosity has been approached as “lived religion,” a term that emphasizes the meanings that ordinary believers bring with them when they engage in religious activities or ponder the sacred.<sup>25</sup> As with folk religiosity, this manifestation of the sacred may ignore, undermine, or contradict what the religious organization deems normative.

No state has the capacity to treat religion in a way that does justice to the variegated meaning of the concept in popular parlance yet the state has

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22. Ahmet T. Kuru, *Passive and Assertive Secularism: Historical Conditions, Ideological Struggles, and State Policies toward Religion*, 59 *WORLD POL.* 568 (2007).

23. KENNETH D. WALD & ALLISON CALHOUN-BROWN, *RELIGION AND POLITICS IN THE UNITED STATES* (5th ed. 2006).

24. DAWNE MOON, *GOD, SEX, AND POLITICS: HOMOSEXUALITY AND EVERYDAY THEOLOGIES* (2004).

25. ROBERT A. ORSI, *BETWEEN HEAVEN AND EARTH: THE RELIGIOUS WORLDS PEOPLE MAKE AND THE SCHOLARS WHO STUDY THEM* (2004).

the unenviable task of somehow making sense of this conceptual stew. In developing laws and policies that regulate religion within any domain, the state may thus offer a definition of "religion" that is far removed from what believers/adherents think is covered by the term. The result may complicate life considerably for adherents of non-traditional faiths.

The contrast between Germany and the United States is instructive. To a degree that is probably unmatched elsewhere, American common law has embraced a remarkably diffuse understanding of religion. In a series of cases since the 1920s, but especially since the Second World War, the U.S. Supreme Court massively broadened the definition of religion beyond its traditional boundaries. The primarily institutional or corporate understanding of religion was replaced by a vision of religion as a species of conscience or conviction, sharing the table with belief systems that had little divine content.<sup>26</sup> In deciding grounds for conscientious objection to military service, for example, the Court moved from a position that limited such status to members of historic "peace" churches to a stance that required that such claims be certified as sincere and consistent with any religious tradition, using clergy from the dominant denominations as means of authentication. In *Seeger*, decided in 1965, the grounds for conscientious objection were expanded further to incorporate claims based on any sincerely held opposition to the use of force, even those based in secular moral codes and altogether lacking religious warrant. In one case, a justice even quoted with approval Paul Tillich's famous definition of the essence of religion as "ultimate concern." Rituals and practices that are far outside the religious mainstream, such as the animal sacrifice found in Santeria, have also received judicial recognition and support.<sup>27</sup> In all, an extraordinarily broad range of religiously-based claims against the state have been sustained under this expansive definition of religion.<sup>28</sup>

Such an approach makes sense from the liberal individualist world view that dominates American political and legal culture. Consider the elaborate code of accepted religious practices in the governmental workplace developed during the Clinton administration.<sup>29</sup> This dense set of advisories makes no pretense to define religion with specificity, equating it

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26. PHILLIP E. HAMMOND, *WITH LIBERTY FOR ALL: FREEDOM OF RELIGION IN THE UNITED STATES* (1998).

27. DAVID M. O'BRIEN, *ANIMAL SACRIFICE AND RELIGIOUS FREEDOM: CHURCH OF THE LUKUMI BABALU AYE V. CITY OF HIALEAH* (2004).

28. This regime has its limits. Native Americans have had enormous difficulty persuading the courts to accept their nature religion as wholly deserving of legal protection. BRIAN EDWARD BROWN, *RELIGION, LAW, AND THE LAND: NATIVE AMERICANS AND THE JUDICIAL INTERPRETATION OF SACRED LAND* (1999).

29. Stephen P. Brown, *Leaving the Spiritual Sphere: Religious Expression in the Public Workplace*, 49 J. CHURCH & ST. 665 (2007).



instead with virtually any body of sincerely-held and inviolable beliefs. From the perspective of classical liberalism, the lack of a definition hardly matters because religious institutions have no rights per se.<sup>30</sup> Drawing on the Lockean tradition, American law assumes that religious rights inherent in individuals and the state has no competence to define what is or isn't authentically religious. This too stems from the secularization of law in the late nineteenth and early twentieth centuries.<sup>31</sup>

As Seifert reports, German law approaches religion from a corporatist perspective.<sup>32</sup> Article 137 of the Weimar Constitution extended certain legal rights to "religious societies." The article did not offer a comprehensive definition of the term but rather mandated only that qualifying entities maintain a constitution and provide information on the number of affiliates. The historical Christian churches and Judaism had little difficulty satisfying these conditions, thus earning benefits from the state, particularly in the realm of education. These requirements, intended only to establish that a group had sufficient staying power to warrant legal protection, nevertheless constitute a serious barrier to the incorporation of Islam within the legal protections enjoyed by other religious traditions.

The Sunni tradition, the dominant form of Islam among Germany's Muslim population, does not follow the organizational principles envisioned by German law, lacking a central structure that can purport to speak for all Moslems. As Warner and Wenner explain:

Islam is a decentralized, non-hierarchical religion with multiple and often competing schools of law and social requirements . . . in contrast to Catholicism, Islamic religious leaders have no enforcement mechanisms to obtain obedience from their adherents; there are no sacraments in Islam which can be withheld from Muslims in order to obtain compliance with the wishes of imams or other 'clerics' regarding policy decisions which they may support or condone. . . . In Sunni Islam there is no established or universally recognized procedure or mechanism for the removal of specific imams in a local mosque. Islam's decentralized structure prevents Islamic organizations from making credible commitments about their actions to others.<sup>33</sup>

The inability of Islam to provide a structure that meshes with the law of religious societies thus denies Muslims access to important state benefits.

The source of this misalignment is the German understanding of "religion" based on Western norms regarding churches and confessions.

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30. For most purposes, religious organizations are treated as nonprofit organizations or corporations under American law.

31. Sikkink, *supra* note 3.

32. Achim Seifert, *Religious Expression in the Workplace: The Case of the Federal Republic of Germany*, 30 COMP. LAB. L. & POL'Y J. 529, 534-35 (2009).

33. Carolyn M. Warner & Manfred W. Wenner, *Religion and the Political Organization of Muslims in Europe*, 4 PERSP. ON POL. 457, 461 (2006).

For most of German history, religious diversity was contained within a Christian framework and conflicts arose between different confessions with a great deal of organizational similarity. Because German Muslims have no such unifying structure, they are deemed ineligible for the religious rights accorded to other religious traditions. The same kind of problem arises in other European states that conceptualize religion based on Western experience and norms.

When religion is conceptualized in ways that fail to fit the religious experience and understanding of non-Western faiths, there is bound to be tension when adherents of non-Western faiths assert claims based on national law. No doubt many of the cases in which religion provides the basis for claims of religious discrimination grow out of a different understanding of what God or the gods require of men.

### III. THE CHALLENGE OF RELIGIOUS INTEGRALISM

The final point has to do with perennial debate about how religion and religious claims can be accommodated by political systems in advanced industrial societies. Not surprisingly, most accounts of religion and law approach the problem from the perspective of the legal system, asking whether and how legal regimes can accommodate the growth of religious diversity. Yet it is important to ask the question from a different point of view. Can certain religious traditions or, more precisely, certain forms of those traditions, accommodate to the culture and values of the law? Here we must go beyond the organizational realm explored in the previous section and inquire about the logics that underlie the behavior of individuals in religious communities.

Most of the papers delivered at Nantes acknowledged that the topic of religion in the workplace arose to prominence only because of the growth of new religions or the importation of world religions into hitherto Christian societies. This should not be surprising. States with a calendar organized on the basis of Christian holidays do not receive many requests from religious workers seeking time off on religious holidays because such religious events are, perforce, legal holidays. Claims about wearing religious dress in the workplace seldom arise in societies where dress codes reflect the values of the dominant religious community. States that segregate the work day and prayer time do not routinely encounter claims for space and time in order that religious workers may meet their religious obligations during the workday. All in all, then, it is the presence of significant religious communities outside the dominant religious tradition that is most likely to trigger demands for religious accommodation in the workplace.

The challenge is all the greater when the minority faith is a type that rejects the compartmentalization of religion, seeing religion not as one isolated aspect of human existence but rather as a comprehensive system more or less present in all domains of the individual's life. The most popular term for such "total" and encompassing religiosity—fundamentalism—is unsatisfactory because it draws too closely on the specific American tradition that gave birth to the term. The French concept of *integralisme* may be more suitable because of its breadth. Integralist religion insists that faith permeate all aspects of one's life, that there is no domain or decision in which religion is not, in one way or another, deeply implicated. The believer is first and foremost a religious person; all else is embellishment and detail.

Organizationally, integralist religion is often manifest in very tightly-bound communal frameworks with markedly high levels of social cohesion. Two traditions closely associated with this style of religion, Islam and Judaism, describe the laws of the faith (Sharia and Halacha, respectively) with terms that denote "the way" or "the path." This discourse portrays religion not merely or only as a faith, a body of doctrine or theology, but as a total way of life that encapsulates the individual to the maximum extent possible. The authority of the tradition outranks the authority of the state.

In an age when many predictions regarding secularization have been confirmed, the growth in integralist religiosity has come as a surprise. In their famous post-presidential correspondence, Thomas Jefferson and John Adams spoke confidently of the rationalist turn that would supplant the crude superstition and priestly sophistry that had grown up around Christianity.<sup>34</sup> To put it simply, they believed Americans would in time become Unitarians. That expectation had long been falsified when Dean Kelley, a researcher with the National Council of Churches, published his famous *Why Conservative Churches are Growing*.<sup>35</sup> Kelley found the fastest growing religion was not Unitarianism or other progressive reformed traditions but the very kinds of "primitive" faith that Jefferson and Adams had mocked. Whether looking at the American religious economy as a whole or by religious families, Kelley found that more sectarian faiths had outpaced the ecumenical and mainstream religious traditions. The growth in American Judaism was concentrated among the Orthodox. In like manner, fundamentalist Protestantism, Pentecostal Christianity, charismatic and traditionalist Catholicism, and Mormonism accounted for the dynamism of the American religious economy. It comes as no surprise to

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34. NORMAN COUSINS, *IN GOD WE TRUST: THE RELIGIOUS BELIEFS AND IDEAS OF THE AMERICAN FOUNDING FATHERS* (1958).

35. DEAN M. KELLEY, *WHY CONSERVATIVE CHURCHES ARE GROWING: A STUDY IN SOCIOLOGY OF RELIGION* (1977).

learn that such faiths account for the vast majority of religious claims of employment discrimination filed with the Equal Employment Opportunity Commission, the federal agency charged with investigating such violations.<sup>36</sup>

In Europe, long considered a post-religious environment, the major growth in religion has been concentrated among Muslim immigrants and sectarian Christian faiths, many with African and Caribbean roots. Given Islam's presence on the continent in earlier periods and its persistence in Eastern Europe over the millenia, it is more accurate to refer to the return of Islam rather than its debut. Compared to the dominant faiths in most European societies, Islam and sectarian Christianity are much more disposed to take assertive and integralist forms, perhaps motivated in response to challenges posted by the dominant European culture of secularism.

This kind of integralism presents a challenge to Western norms that regard religion as one trait among many and recognize that people are not always free to "be religious" in the way they would like. If members of these minority communities could manage to live alone in hermetically-sealed environments, protected from all contact with the state, they might not trouble the polity by generating religious claims in the workplace. But the reality is that few such groups can exist altogether independently of the state and some of the most contentious issues about religion and the law thus arise from their involvement with the larger society.<sup>37</sup>

The papers in this volume identify cases that arise in this manner. In the United Kingdom, a sectarian Christian who attained the rank of registrar asserted a right *not* to certify domestic partnerships, a legal status that she considered to violate Christian doctrine. This behavior generated claims and counterclaims of religious discrimination by the registrar and her colleagues. In Canada, Christian sabbatarians have frequently claimed religious sanction for absences on normal workdays. Muslims in Germany have cited the obligation for daily prayer in Islam as a basis for work breaks not normally available to other employees. In most of the countries, the headscarf issue represents another case where the command of the religion as understood by the pious challenged state norms of religious neutrality in the public sphere. As integralist religion grows even in the midst of secularization of culture and polity, more claims of this nature are likely to arise.

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36. Gloria T. Beckley & Paul Burstein, *Religious Pluralism, Equal Opportunity, and the State*, 44 W. POL. Q. 185, 189 (1991).

37. Lucas A. Swaine, *How Ought Liberal Democracies to Treat Theocratic Communities?*, 111 ETHICS 302 (2001).

As Sossin notes for Canada, but with relevance to virtually all polities, such claims by minority religions raise in stark form questions and controversies about the meaning of national identity. Many European states have insisted that they are not “immigration nations,” meaning that they understand national identity in terms of a common ethnic, religious, and cultural tradition.<sup>38</sup> The stronger such an identity, the more likely it is religious outsiders will turn to the courts to insure fair treatment in the workplace for what they understand as religious obligations.

#### IV. CONCLUSION

In an interview conducted some years ago, the top adviser to a high-ranking public official in Florida described the evangelical Christian activists who now pervaded the state Republican party as “a necessary annoyance.” He meant that their sheer numbers required placating them in the interests of party unity but that concessions were often unpopular among party regulars. In general, his boss simply tried to give the religious activists as little as possible while still maintaining their political support.

It is tempting similarly to trivialize the claims of workplace discrimination based on religious affiliation that have become such a prominent feature of legal life in most advanced societies. If only these people could be reasonable, it is suggested, there wouldn’t have to be such complexity over balancing fidelity to religion and the demands of the workplace. The problem with this sanguine view is that it typically defines “religion” in terms of the dominant culture, often as a force meant to be kept in its place. For members of minority faiths, particularly those who consider religion the essence of personal identity, such a constricted view amounts to denying who they are and subordinating their claims to the tyranny of the majority. As nations contend with the growing assertiveness of such claims on the polity, each state must struggle to apply its underlying church-state regime to the domain of labor law, find a way to define “religion” that corresponds to the lived reality of religious communities, and cope with religious traditions that make much stronger demands on individual believers than dominant faith communities. For societies that have considered themselves as culturally and religiously unitary, states for whom immigration is considered a problem rather than a resource, this will be no small challenge.

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38. HANS VAN AMERSFOORT, *IMMIGRATION AND THE FORMATION OF MINORITY GROUPS: THE DUTCH EXPERIENCE, 1945-1975* (1982).

