

Religion, Law and Education: Tensions and Perspectives

*Edited by Jan de Groof, Georgia du Plessis
and Maria Smirnova*



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List of Contents

Preface	7
Jan de Groof, Georgia du Plessis and Maria Smirnova (editors)	
Chapter 1	
School Religious Distinctiveness: The Consequences for Parents, Pupils and Teachers	13
<i>Charles L. Glenn</i>	
I. Introduction	13
II. Why School Distinctiveness is Important	14
III. How School Distinctiveness is Threatened	21
IV. Conclusion	31
Chapter 2	
Religious Freedom and Free Choice of Schools	33
<i>Zdenko Kodolja</i>	
Chapter 3	
Religious Education versus Secularism? The Context of Private and Public Schools	41
<i>José Luis Martínez López-Muñiz</i>	
I. Religion in Education as a Touchstone of the Specific Framework of Constitutional States under the Rule of Law	41
II. Religion in Private Institutions — the Issue of Public Funding	43
III. Religious Teaching in Public or Governmental Educational Institutions: Possibilities, Requirements and Conditions	46
Chapter 4	
The United States National Agenda on Challenges/ Conflicts of Catholic Schools vis-à-vis the State	51
<i>Sean O. Sheridan</i>	
I. Introduction	51
II. Religious Liberty in the Context of the United States	52
III. Protecting the Mission of Catholic Schools while Acting as an Employer	54
IV. The Supreme Court’s decision on ‘Same Sex Marriage’	59
V. The Affordable Care Act	60
A. The Act, in General	60
B. The HHS Mandate to Provide Contraceptives and Potential Abortifacients	61
C. Current Status of Legal Challenges	63
VI. Conclusion	64

Chapter 5	
The Place of Faith in Catholic Higher Education in the United States of America	67
<i>John Garvey</i>	
I. Introduction	67
II. Faith and Free Inquiry	68
A. The Theological Case	68
B. The Epistemological Case	68
III. Challenges to Catholic Education	72
A. External Challenges	73
B. Internal Challenges	74
IV. Conclusion	76
Chapter 6	
Parental Rights in Education from the American and European Case Law Perspective	77
<i>Melissa Moschella and Marta Ponikowska</i>	
I. Introduction	77
II. International Setting	77
III. The Role of the State in Education	78
IV. American Case Law: Wisconsin v. Yoder	79
V. European Case Law: Konrad and Others v. Germany	82
VI. Conclusion	85
Chapter 7	
Education, Religion and Politics: The Case of Greece	87
<i>John Panaretos</i>	
I. Introduction	87
II. The Situation in Greece	87
A. The Education of Minorities in Greece, Especially the Muslim Minority in Western Thrace	88
B. The Teaching of Religion in Schools	92
Chapter 8	
State and Church – Education in Hungary (The Content of a Human Right and the Role of External Instruments)	95
<i>Balázs Szabolcs Gerencsér</i>	
I. Introduction	95
II. International and Domestic Background	95
III. Constitutional Regulations and their Interpretation by the Constitutional Court	99
IV. International Legal Framework: Agreement between Hungary and the Holy See	100

LIST OF CONTENTS

V. Legal Regulation of the Right to Education in Church-Run Institutes	102
A. Guaranteeing Individual Rights as an Essential Element of Human Rights	102
B. Obligations of the State: from Theory to Practice	104
VI. Conclusion: External Instruments are to complete the Content of the Human Right	106
Chapter 9	
Islamic Primary Schools in the Netherlands	109
<i>Jaap Dronkers</i>	
I. Introduction	109
II. The Dutch system of religious schools	111
III. The history of Dutch Islamic schools	113
IV. Do Islamic schools meet minimum school quality?	115
V. Attitudes and values of Islamic schools	117
VI. Administration problems	119
VII. Islamic religion	121
VIII. Conclusion	123
Chapter 10	
Recommendations for Maintaining the Christian Identity of Christian Schools in the European Union	127
<i>William Jeynes</i>	
Chapter 11	
Religious Rights as an Element of School Choice in Russia: Contemporary Contours of Law, Policy and Court Practice	133
<i>Maria Smirnova</i>	
I. Introduction	133
II. Constitutional Framework for the Right to School Choice	134
III. School Choice in the Newest Russian Educational Legislation	136
IV. Accommodating Religious Rights in a Secular Education System	137
A. School Uniforms: An Argument for or Against Discrimination on Religious Grounds?	138
B. Ideologically Neutral Content of Public Secular Education	142
C. The Right to Establish Private Religious Schools	145
D. Distinction between Educational Activities and Religious Upbringing	146
V. Conclusion	148

Chapter 12**The Relationship Between Different Religious Confessions and Public Schools in Russia: Equality or Inequality?** 151*Vitaly Matveev and Artemy Rozhkov*

- I. Introduction 151
- II. Constitutional and Legal Foundations of Religious Rights in Education 151
- III. The Teaching of Religious Culture in Secular Schools 152
- IV. Wearing Religious Clothing and Symbols in Schools 156
- V. Arrangements for the Teaching of Religion on Public School Premises 160
- VI. Conclusion 162

Chapter 13**Freedom of Religion or Belief in Education in Estonia** 163*Merilin Kiviorg, Jüri Ginter and Ene-Silvia Sarv*

- I. Introduction 163
- II. Religions in Estonia 164
 - A. Overview of Religious and Cultural Background 164
 - B. Religion and the State 168
- III. Religion and Education 172
 - A. Historical Overview 172
 - B. Contemporary Situation 175
- IV. Conclusion 183

Chapter 14**Religious Education and the Secular State: An Overview of Latin America** 187*Nina Ranieri, Angela Limongi, Danilo Rossi, Elisa Lucena, Meire Cristina Souza and Michel K. Lutaif*

- I. Introduction 187
- II. Comparative Study 188
 - A. Brazil 188
 - B. Uruguay 194
 - C. Venezuela 195
 - D. Argentina 197
 - E. Chile 199
 - F. Mexico 201
- III. Conclusion 203

LIST OF CONTENTS

Chapter 15	
Home Schooling in Brazil: a New Judicial Outlook and Tradition	205
<i>Rubens Beçak and Luis Felipe Cirino</i>	
I. Introduction	205
II. Home Schooling as an educational method	206
A. The Home-Schooling Technique	206
B. Home Schooling around the World	208
C. Home Schooling in Brazil	209
III. The Legal Framework for Home Schooling in Brazil	211
IV. Home Schooling and the New Judicial Outlook	215
V. Conclusion	218
Chapter 16	
Religion and Education in South Africa: An Introduction	
<i>Johan Beckmann</i>	221
I. Introduction	221
II. The South African approach to religious diversity	221
III. South African laws and case law – establishing a co-operative model	222
A. Constitutional Provisions	223
B. The National Policy on Religion and Education	224
C. Case Law	224
IV. Conclusion	227
Chapter 17	
The dissemination of religious knowledge in South African Public Schools	229
<i>Georgia Alida du Plessis</i>	
I. Introduction	229
II. The Relationship Between State and Religion in South Africa	230
A. The South African Context, the Constitution, Law and Policy	230
B. South African Law Regarding Religious Instruction and Religious Education in a Co-operative Model	234
III. An Alternative Approach towards Co-operation beyond Religious Observances	246
IV. Conclusion	248
Chapter 18	
The Role of Catholic Schools in Australia in Educating for Human Rights and Social Justice: An Overview	251
<i>Sally Varnham</i>	
I. Introduction	251
II. The Right to and Rights in Education	252
III. Catholic Schools within the Australian system of compulsory	

education	255
IV. Human Rights within the Australian National School Curriculum	257
V. Practising Human Rights and Social Justice	259
VI. Education for Human Rights within the Context of Social Justice in the Catholic Education System	260
VII. Restorative Practices in Catholic School Communities	266
VIII. Conclusion	267
Chapter 19	
The School: A most Challenging Domain in the Complex Partnership between Religion, Education and the Law – A Few Reflections	269
<i>Jan De Groof</i>	
I. Introduction	269
II. Church-State Relationships in Education and School Choice	269
III. Religious Institutions and their Role in the Realisation of the Right to School Choice	275
A. Forms of Secularism and Parental Rights	275
B. The Active Promotion of the Right to School Choice	278
IV. Conclusion	280

Preface

From 18 to 21 November 2015 the Congregation for Catholic Education celebrated the fiftieth anniversary of the Second Vatican Council's Declaration *Gravissimum Educationis* and the twenty-fifth anniversary of the Apostolic Constitution *Ex Corde Ecclesiae*. As part of these celebrations, the Congregation aimed to re-energise the Catholic Church's commitment to education by means of a World Congress entitled 'Educating Today and Tomorrow: A Renewing Passion'. The main aim of the Congress was to rethink the role of Catholic schools and universities that act in the name of the Universal Church. The Congress urged more than 5,000 participants (in Vatican City) to step up efforts to *promote dialogue* in times of spiritual poverty, self-referential exclusiveness, harmful spread of ideological viewpoints, and the lowering of the general level of culture.¹

In line with the aims of the Congress, and under its hospitable auspices, the *European Association for Education Law and Policy (ELA)* held a special conference. The *ELA* sessions within the larger Congress focussed mainly on the re-consideration of the role that religion plays in education in general. The main concern of this legal panel was the way in which the rights of the religious² and non-religious³ are accommodated in both secular (non-religious) and religious schools and universities around the world. Thus, the *ELA* sessions encompassed both the study of religion in education in general (not only Catholic education), and the transformation of approaches to religious rights in education across various sectors of society. The focus of this book, although originating from the Congregation of Catholic Education, is not limited to the protection of Catholic education or religious freedom, but provides an all-encompassing analysis of the position of religion in education across the globe. This volume deals, first, with the wider issues and complexities surrounding the position of freedom of religion or belief in education systems and the need to respect, protect and promote the religious and (non-religious) beliefs of all those involved and participating in education. Various specific themes are constantly at the foreground, namely: the religious distinctiveness of private schools, the protection of religious and belief diversity in education, the protection of parental rights and religious freedoms,

¹ World Congress 'Educating Today and Tomorrow: A renewing passion'. <http://www.educatio.va/content/cec/it/eventi/congresso-educare-oggi-e-domani/educating-congress.html> (accessed 17 October 2016).

² For purposes of this book, the 'religious' means all persons adhering to a formally recognised faith or religion.

³ For purposes of this book, the 'non-religious' means all persons adhering to or having faith in any other ideology or belief not necessarily accounted for in any formally recognised religion. These can include, for example, atheism and humanism (amongst many others).

the protection of children's rights and religious freedoms and managing the dissemination of religious knowledge in public schools. Second, this volume provides important case studies explaining the various approaches pertaining to the reconciliation of law and state, religion and education and secularism and diversity that exist in the world. A more encyclopedic approach is followed and provides insights, through the country case studies, into the contemporary issues surrounding religious and non-religious schools in these selected jurisdictions.

The first three chapters of this volume elaborate on general aspects concerning the right to religious freedom or belief in education. In his opening essay, *Charles Glenn* addresses the importance of religious distinctiveness in schools and the importance of faith-based schools in general. He attempts to provide a balanced answer to very controversial questions: Are those who hold strongly to religious convictions and practices unfit for full and free participation in a pluralistic society? How can a particular school culture help young people to resist the great downward suck of a consumer society? And do faith-based schools actually live up to that promise? Blossoming religious distinctiveness can be regarded as a product of the positive appreciation of freedom of school choice in domestic law and practice. On the other hand, *Zdenko Kodolja* argues that, even if religious distinctiveness is important, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) cannot be interpreted as placing an obligation on states to fund private schools. She regards the important correlation between religious freedom and the free choice of schools through a philosophical lense. Methodologically, this correlation is presented as a comparison between definitions of the right to choose private schools in the *Dignitatis Humanae* and the *International Covenant on Economic, Social and Cultural Rights*. *José Luis Martínez López-Muñiz* gives a rather contrary view when he offers a general reflection on his many years of experience concerning religious education and secularism within the context of private and public schools. He concludes that the 'generalisation of knowledge on religion in a manner that respects the convictions of everyone would be a good contribution to a pluralistic peaceful life in society'. According to him, free choice of religious and non-religious schools is a principal way to ensure 'the religious and moral education of children in conformity with the convictions of parents'.

After an analysis of the different viewpoints regarding religion and school choice, a comparative country study commences. These studies, within their respective countries, elaborate further on the tensions mentioned in the first three chapters. The first country to be discussed is the United States of America. *Fr. Sean Sheridan* addresses several legal challenges that Catholic schools in the United States have faced, and are continuing to face, as they strive to fulfil their mission or desire to remain true to their mission (and religious distinctiveness) while existing within a civil society. The chapter addresses the legal challenges that arise

PREFACE

from the Catholic school as an employer — including challenges pertaining to employee benefits which could be contrary to the teachings of the Catholic church, ‘same sex marriage’ and the *Affordable Care Act*. Moving on from school education to higher education, *John Garvey* challenges a widespread conviction in the United States of America that education at a religious educational institution is ‘less free’ than education at a public (or non-religious private) one. On the contrary – he claims – faith and free inquiry are not mutually exclusive concepts. In fact, ‘faith has an indispensable role in search for truth.’

This volume slowly turns to Europe when *Melissa Moschella* and *Marta Ponikowska* start with an insightful analysis of parental rights in education from a European and US comparative perspective. The rights of parents to educate their children in accordance with their own religious or ideological perspectives and the supporting (or conflicting) interests of the state represent some of the biggest challenges and issues pertaining to the role of religion in education. Drawing from two court cases, the authors evaluate parental rights in education from the perspective of natural law, defending the thesis that the rights of parents to educate their children are primary and original, whereas the role of the state in education is secondary and subsidiary to that of parents.

Fully focusing on Europe, *John Panaretos*, former Deputy Minister of Education (Higher Education, Research and Innovation) in Greece, provides an interesting glimpse into the work done during his period as Deputy Minister. He shows how Greece used education to narrow social inequalities that exist regarding Muslim minority groups, improving the status of the Muslim minority in Greece and its relations with the Christian majority. In Hungary the relations between the state and the church in relation to education are also challenging. *Balázs Gerencsér* takes on a very practical approach to explore the meaning and content of the two fundamental rights (freedom of religion and freedom of education). He studies the content of a decentralised, contractual-based regulation of these human rights and their relation with two external means: a bilateral agreement between Hungary and the Holy See and the decisions of the Hungarian Constitutional Court. Going more West in Europe, the contribution by *Jaap Dronkers* is published posthumously. *Islamic Primary Schools in the Netherlands* was first published in the *Journal of School Choice* and reprinted, with permission, in this volume. *Dronkers* discusses the fact that Islamic primary schools were founded in the Netherlands in the last twenty years of the 20th century under the ‘right to freedom of education’. *Dronkers* provides some background information about the Dutch system of religious schools and the history of Dutch Islamic schools. He addresses contradictions pertaining to the quality of education in Islamic schools, attitudes and values of pupils and parents in Islamic schools, administrative problems in establishing and running Islamic schools and negative relations between Islam and educational performance in modern societies.

In order to provide a constructive end to the comparative analysis on the USA and EU, *William Jeynes* provides six recommendations to the European Union on maintaining the religious distinctiveness of Christian schools in Europe. He draws from his experiences in the USA and provides vital expertise on this issue.

Maria Smirnova investigates religious rights as an element of school choice in Russia. Religious rights are regarded as a manifestation of accessibility, acceptability and adaptability in school education. An explanation of the constitutional and legislative framework of school choice is followed by several cases related to various aspects of religious freedom in education: appearance of pupils, ideological neutrality of secular education and the right to set up private religious schools. Continuing the Russian case, *Vitaly Matveev* and *Artemy Rozhkov* analyse the relationship between different religions and public schools. Their chapter examines current Russian legislation and the implementation mechanisms of religious rights in Russian schools. They primarily focus on the teaching of basic religious culture in public schools, the wearing of religious symbols and clothing and how the teaching of religion is arranged on public school premises.

Turning west, *Merilin Kiviorg*, *Jüri Ginter* and *Ene-Silvia Sarv* explore freedom of religion and belief in education in Estonia. They highlight the fact that Estonia does not yet have substantial problems regarding freedom of religion or belief in education but that the European refugee and migration crisis has contributed to the public debate over religious freedom. Most prominently, the chapter concerns the wearing of religious or cultural symbols, such as headscarves or burkas, and accommodating specific religious needs. The authors argue that Estonia may not be ready for new challenges regarding freedom of religion in education, and explore some of these difficulties in much detail.

A geographical shift is made across the ocean towards the South American continent. *Nina Ranieri*, *Angela Limongi*, *Danilo Rossi*, *Elisa Lucena*, *Meire Cristina Souza*, and *Michel K. Lutaif* have produced an impressive comparative study of religion in education across Latin America. They argue that the establishment of nation states in Latin America cannot be dissociated from the influence of the Catholic Church, especially when it comes to education. The secularisation of states in Latin America was not a linear process. In fact, it was marked with ‘contradictions, retrocessions and breakthroughs’. This chapter presents an overview of the legal provisions related to religious education in Brazil, Argentina, Chile, Mexico, Venezuela and Uruguay. Next, *Rubens Beçak* and *Luis Felipe Cirino* continue the analysis of Latin America by focussing specifically on home schooling in Brazil. They stress the idea that the Brazilian legal system sets forth no provisions with respect to home schooling and that this legal vacuum

PREFACE

gives rise to serious controversy.

Turning the focus to Africa, *Johan Beckmann* provides for an introduction to religion and education within South Africa. He argues that, because South Africa comes from a past of racial and religious discrimination, it can provide for a fresh and unique perspective on how to deal with religious diversity in education. This perspective provides for a conceptual framework, other than secularism and separationist approaches, from which debate can flow. In light of the unique perspectives offered by South African law and case law, *Georgia du Plessis* investigates the current position of the dissemination of religious knowledge in South African public schools and consequently argues for an even more inclusive approach. She argues that such an inclusive approach is more in line with the notions of equality, human dignity and freedom.

The role of Catholic schools in Australia concludes this global overview. *Sally Varnham* rounds off this volume with a comprehensive analysis of the philosophy which drives education for human rights and social justice in independent Catholic schools in Australia.

Finally, *Jan de Groof* provides a few concluding remarks emphasising the general importance of the right to religious freedom in education and how this can be translated into public schools by way of (1) parental rights and (2) the right to school choice. He warns against the usurpation of education by the state and advocates for an approach in line with 'active pluralism', requiring that the state takes an active approach in realising the right to school choice pertaining to ideological and religious preferences.

Jan de Groof, Georgia du Plessis and Maria Smirnova (editors)

