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Review, Law and Religion in Post-Communist Europe & Laws on Religion and the State in Post-Communist Europe

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LAW AND RELIGION IN POST-COMMUNIST EUROPE. Edited by Silvio Ferrari, W. Cole Durham, Jr. and Elizabeth A. Sewell. Law and Religion Studies 1. Peeters 2003. Pp. iv + 428. Paper. \$50.00. 45 Euros. ISBN: 9-042-91262-6.

LAWS ON RELIGION AND THE STATE IN POST-COMMUNIST EUROPE. Edited by W. Cole Durham, Jr. and Silvio Ferrari. Law and Religion Studies 2. Peeters 2004. Pp. xliii + 330. Paper. \$72.00. 65 Euros. ISBN: 9-042-91362-2.

What is the new relationship between church and state in Central and Eastern Europe? *Law and Religion in Post-Communist Europe* gives an intelligent and measured answer in seventeen carefully-wrought country studies. (Russia receives two chapters; there are also introductory and concluding chapters). *Laws on Religion and the State in Post-Communist Europe* supplements the first volume, reproducing and analyzing many of the key national laws. The two volumes are the initial members in a series, Law and Religion Studies, published under the auspices of the European Consortium for Church and State Research.¹

As the editors, Silvio Ferrari of the University of Milan and W. Cole Durham, Jr. of Brigham Young University, point out in their Preface (5-6):

after decades of official atheism suddenly religion has become a factor to be seriously taken into account in any field of the public domain. Every country in the former Communist bloc has experienced major changes in the laws governing religion and the state.

The introductory chapter, by Giovanni Barberini of the University of Perugia, sets the stage by putting the new developments in church/state relations in the general context of the process of democratization of Central and Eastern Europe. (7-21) Barberini submits that moving Central and Eastern Europe to a “standard of broad religious freedoms” is “a transition that is all but complete.” (7) Dating the beginning of the transition to 1975 and the Helsinki Act, he gives principal credit to the

1. Except for one mention of the second volume below, all page references, quotations, and remarks relate to the first volume.

Vatican for insisting during the negotiations that the Act's embrace of human rights include the freedom of conscience, religion, and belief. Barberini calls the Vatican's insistence "an extremely important moment because it helped to set in motion the evolution that progressively affected all of Europe that lived under a Marxist-Leninist ideology." (8) After reminding us that neither history nor Marxism-Leninism treated the region's different countries uniformly, Barberini provides a useful summary comparison of constitutional norms, registration and regulatory norms and agreements relating to church/state relations.

It is unlikely that many readers will approach the two books as a single "read." More likely, the two volumes will be useful as a storehouse, valuable either as a source for individual country studies or for researching a specific aspect of church/state relations. The country studies are, with one exception, ordered alphabetically: Albania, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Ukraine, and the former German Democratic Republic.

Let me look in detail at just one of the country studies, Latvia, to give the reader an idea of what will be found here. The Latvian chapter, (141-175) entitled "Church and State in Latvia," by Ringolds Balodis of the University of Latvia, is structured in categories similar to those used in the other country studies. The Latvian chapter, along with the others, provides a very valuable compendium:

1. *Historical Background.* (141-149) Latvia became a state only in 1918. The region it now encompasses was conquered and inhabited by many peoples and for a long time has been multi-confessional. The Latvian Baltic folk religion, Dievturība, was a form of Indo-European paganism, comparable to the mythology of ancient Greece and Rome. German crusaders introduced first Catholicism and then Lutheranism to the territory. Neighboring Russia brought the Orthodox faith. After centuries of German domination, Sweden conquered Riga and the surrounding area in 1621, banning Catholicism and enforcing Protestantism. The southern region of Latgale, however, fell to Poland which converted their subject population to Catholicism. When Russia conquered Latvian territory in the 18th century, it tried, mostly unsuccessfully, to impose Russian Orthodoxy. In 1918, the Tsarist Empire fell and Latvia became a state, conglomerating the Lutheran provinces, Vidzeme, Kurzeme, and Zemgale, and Catholic Latgale. In its first independent period, 1918-39, Latvia was committed to religious tolerance. Communist Russian occupation (1945-90), though hostile to religion, did not extinguish Latvia's multi-confessional tradition. In

2001, in a population of less than three million, Latvia counted three large denominations: Roman Catholics (500,000), Lutherans (350,000), and Orthodox (250,000), and twenty-nine smaller denominations of which the three largest were: Old Believers (70,000), Jews (15,000), and Pentecostals (10,000).

2. *Legal Sources.* (149-153) Since 1998, the Latvian Constitution in Article 99 protects religious freedom and provides for the separation of church and state: "Everyone has the right to freedom of thought, conscience, and religion. The Church shall be separate from the State." Much of the relevant Latvian law about religious activities is set out in the Law on Religious Activities (the "Law"), first adopted by the Latvian Parliament in 1995, and amended since then in 1996, 1997, 1998, and 2000. The Law is the only Latvian law set out in volume 2 of the series. (163-176) Much of the Law is summarized and analyzed in volume 1.

In 2000, as provided by the amended law, the Latvian Cabinet of Ministers created what to the reader seems to be a rather powerful Board of Religious Affairs (the "Board") which, in the words of Professor Balodis, "implements state policy, coordinates religious affairs, manages issues relating to the church-state relationship and evaluates the effectiveness of regulations affecting religious practices." (149) The Board may make proposals for protecting religious human rights guaranteed under the Latvian Constitution and pursuant to Latvia's international treaty obligations. The Board is subject to the supervision of the Ministry of Justice. Religious institutions are not required to register with the Board, but they may only take advantage of legal rights and protections if they do so. The Board has the authority to reject a registration application and has the power to ask the courts to restrain religious organizations if they fail to coordinate their activities with municipalities or to follow proper procedures in organizing public events. Latvian law prohibits public broadcasting of political or religious advertisements, except to give notice of the place and time of religious events. There are also legal prohibitions on infringing religious feelings, inciting religious hatred, and disturbing religious rituals.

3. *Freedom of Religion and Separation of Church and State.* (153-155) At the founding of the Latvian state in 1918, the national inclination was to protect religious freedom, making it one of "the most advanced in Europe" at the time. (153) Nowadays, reports Professor Balodis, "religious freedom in Latvia is largely a reality—not just an empty expression in the law." (153) However, in his view, "one of the

major abuses of religious freedom stems from the principle, ‘one church for one confession.’” (153) The Board rejects the registration of alternative religious associations within what it deems a single faith e.g. of Lutheran, Orthodox, Old Believer and Whitsunday congregations.

4. *Legal Status of Religious Organizations.* (156-158) The Board is required to process registration applications within one month. If they are approved, churches become not-for-profit organizations. “[E]veryone in Latvia has the right to join a congregation.” (157) All registered churches must adopt statutes providing, for example, a distinctive name, a commitment to follow Latvian law, and regular procedures for membership and finance. Although outsiders sometimes criticize the regulatory system imposed by the Board, Professor Balodis supports the system: “Registration helps the state fulfill its basic responsibilities in safeguarding religious freedoms.” (158)

5. *Financing of Churches.* (158-161) Pursuant to the principles of the Latvian Constitution, church funds are to be kept separate from state financing. Churches may raise money and own property. Real property owned by a church and used for religious purposes is free of property tax. Companies and individuals contributing to a church are eligible for tax relief. Tax relief may be denied by the Board if a church violates the law. Churches must submit an annual financial report to the Board.

6. *Religion and the Mass Media.* (161-163) Religious literature may be distributed only by religious organizations. In Riga, Latvia’s capital and largest city, there are two Lutheran bookstores, a Baptist bookstore, and an inter-confessional bookstore. There are some thirty-nine registered religious periodicals. There is no restriction on the right of persons or organizations to propagate their religious views. However, publication of views of religious superiority or intolerance are prohibited.

7. *Activities of Religious Organizations at Public Institutions.* (163-165) An Advisory Council of the Traditional Confessions (the “Advisory Council”) was established by the Latvian Ministry of Justice in 1996. “The Advisory Council’s purpose is to facilitate consensus and understanding among representatives of different churches and followers of different religious convictions.” (163) Although the Advisory Council has no formal authority, it may make non-binding recommendations.

The Board, not the Advisory Council, is responsible for appointing public chaplains. These include chaplains in the armed forces and at public facilities such as airports and ports. Prison chaplains, however, are appointed by the Prison Administration, which is part of the Ministry

of the Interior rather than the Ministry of Justice, which is responsible for the Board and the Advisory Council.

8. *Labor Law*. (165-167) Churches are subject to the same labor law as any Latvian company. Accordingly, it is difficult to dismiss religious employees. Refusing to recognize the distinctiveness of religious employment, Latvian courts have held, respecting the dismissal of church employees on grounds of “un-belief,” that “reference to religious conviction was false and could not justify non-compliance with the labor law” and that “the Latvian Labor Law provided for no exceptions with respect to religious organizations.” (166) Professor Balodis remarks that such decisions would not have been countenanced in the earlier period of Latvian independence and have “adversely affect[ed] the morale of the religious community.” (166)

9. *Religious Education in Schools*. (167-169) Religious or ethical instruction was compulsory in schools in Latvia’s first independent period, but all religious instruction in schools was prohibited during Communist Russian occupation (1945-90). In 1990, immediately following independence, Latvia again permitted religious instruction in schools. Nowadays, it is available in state schools so long as at least ten students wish it, but only for five faiths: Catholic, Lutheran, Orthodox, Old Believer, and Baptist. Other religious groups, however, are demanding that the government provide religious instruction. These include the Muslims, Jews, Latvian pagans, and Methodists. Professor Balodis believes that religious instruction in the state schools is actually a violation of the principle of the separation of Church and State in the Latvian Constitution; it is “a poorly considered state policy . . .” (169)

10. *The Faculty of Theology at the State University*. (170-171) The Faculty of Theology, was effectively muted during the Soviet occupation. It has been reborn and is now “a multi-confessional institution providing the highest level of theological education.” (171)

11. *Matrimonial and Family Law*. (171-172) During the Tsarist Empire before 1918, there was no centralized marriage system, but the Orthodox, Lutheran, and Catholic churches could all register marriages. In Latvia’s first independent period, ten churches were authorized to register marriages; all marriages had to be reported to the state. Since 1993, Latvian law has permitted marriages to be registered either at the Marriage Registry Office or with one of eight denominations: Lutheran, Catholic, Orthodox, Old Believer, Methodist, Baptist, Seventh Day Adventist, or Jewish. Nowadays, however, only one-third of registered marriages are recorded in churches. Moreover, most marriages, as in Scandinavia, are not registered at all in either a state office or a church

but are simply consensual.

12. *Conclusion: Future Perspective.* (173-175) Many issues remain. Should persons be permitted not to fulfill military duties because of religious convictions? Should religious holidays be granted to members of the Orthodox and Old Believer churches? Do Latvia's laws about religious instruction violate the European Convention on Human Rights? Does religious education in state schools violate the Latvian Constitution? Should the Latvian labor law be reformed to take special account of church employment? Similar useful detail and helpful commentary are to be found throughout these two volumes, which are a wonderful and thoughtful collection of seventeen country studies. I could readily see using this book as a text in a course on religion and the state/civil society.

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