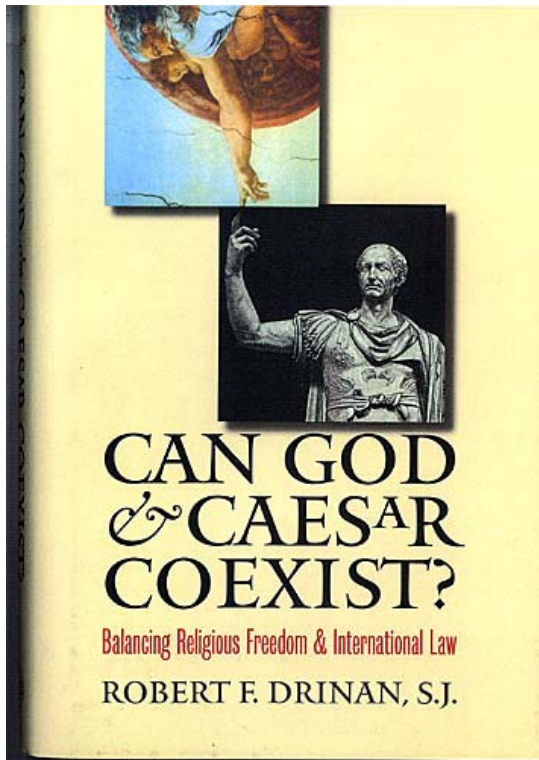


Book of The Century



Robert F. Drinan, S.J. (2004). CAN GOD & CAESAR COEXIST?: Balancing Religious Freedom & International Law. Yale University Press. 266 pp

Robert F. Drinan, a Jesuit priest, former Dean of the Boston College Law School and Member of the U.S. House of Representatives has devoted his life to the defense of human rights, religious freedom and social justice. He is noted for his counsel that the best position of government on the abortion issue is no position, as any government position (pro or con) would favor some religions over others, which is prohibited by the First Amendment. A New York Times review of his book can be found [HERE](#). (you may need to create a free account with the NY Times).

Additional Commentary

"Scores of constitutions drawn up since the end of World War II have proclaimed religious freedom as one of the most fundamental rights known to humanity." (p.1).

"But as we have seen, the Second Vatican Council made it clear that the Church does not condone any pronouncement or action that allows any shade of 'coercion' ". (p.5).

"The 1981 United Nations Declaration on Religious Freedom is very clear in its assertion that disregard of the right to freedom of religion has 'brought, directly or indirectly, wars and great sufferings to humankind'." (p.15).

"...the Universal Declaration of Human Rights (UDHR), which in Article 18 states: "Everyone has the right to freedom of thought, conscience, and religion;" (p.16).

"Whether the United Nations will eventually raise the protection of religious rights to the level enjoyed by political and economic rights is not clear." (p.43).

"But no one can be certain of the origin of the current state of U.S. public morality. Governments cannot continue to abide by moral values ultimately derived from a consensus that is no longer controlling..." (p.68).

"...but the possibility of forming definitive, enforceable guidelines on religious freedom deriving from customary international law is remote." (p.80).

"The Crusades, the Inquisition, and the Holocaust are part of the collective memory of Europe. Also among Europeans' recollections is the syllabus of errors of 1864, when Pope Pius IX condemned the idea that the church should be separated from the state." (p.89).

"Some of the rules articulated by the world's major religions, however, continue to subordinate women"...Of course, some practices have been utterly discredited; one could point to the new awareness of and protection against female genital mutilation." (p.135)

"In at least one case, the United States granted asylum to a woman who was threatened with genital mutilation in her country of origin. The court held that female genital mutilation is a form of torture--a practice absolutely prohibited by international law." p.143).

"Are there other beliefs, traditions, and practices injurious to women that would also merit condemnation?" (p.143).

The CEDAW (Convention on the Elimination of Discrimination against Women) condemns all of the handicaps and disabilities that women have inherited from the centuries during which they were treated by custom and by law as inferior, or at least subordinate, to men" (p.140).

"The relationship of church and state was a thorny problem both before and after Christ told his listeners to render to God what is God's and to Caesar what is Caesar's." (p.145).

"Women who are denied an abortion in some nations can claim that their convictions that derive from "religion or belief" have not been respected"...This issue obviously highlights a clash of fundamental views about the value of life, the rights of pregnant women, and the message sent to society by the availability of abortion" (p.147)--and I would add the denial of abortion--jwp.

"It is probably going too far to assert that religious freedom trumps all other human rights. Human rights are indivisible and all are equally precious." (p.232).

"The UN declaration makes it clear that no exclusion or preference based on religion or belief can be allowed. (p.240).

Will there ever be an age when God and Caesar can co-exist in peace? Law is a feeble instrument to bring about that laudable objective. (p.245).

"The final statement in the parliament's declaration (Parliament of World Religions, August 1993) is not expressly theistic, but rather embraces concepts of human dignity that are applicable to a wide range of beliefs. Its statement on the Golden Rule is as follows: "There is a principle which is found and has persisted in many religious and ethical traditions of human kind for thousands of years: What you do not wish done to yourself, do not do to others! This should be the irrevocable, unconditional norm for all areas of life, for families and communities, for races, nations and religions." (p.245).

(Stated alternately, the great limitation on religious freedom and "conscience" is that the exercise of religious belief cannot inflict harm or injury upon any person-jwp).

BOOK REVIEW DESK
That Old-Time Conundrum
By JOHN T. NOONAN JR.
Published: March 13, 2005, Sunday *New York Times*

CAN GOD AND CAESAR COEXIST?
Balancing Religious Freedom and International Law.
By Robert F. Drinan.
266 pp. Yale University Press. \$30.

THIS is a book of questions, not answers. Written by Robert F. Drinan, a former congressman from Massachusetts, a former dean of Boston College Law School and a Jesuit, it reflects the insights and doubts of experience, the

convictions of a person conversant with practical politics and the candor of a man capable of speaking his mind.

He is committed to religious liberty -- a cause, he acknowledges, belatedly embraced by the Roman Catholic Church in 1965 at the Second Vatican Council and championed by Pope John Paul II in resistance to governmental oppression of religion. Its implications for the interior life of the church have not been worked out or even well articulated. In "'Can God and Caesar Coexist?'" Drinan follows the pope in looking at external pressures against religious freedom.

Free exercise of religion is not universally accepted. Several Islamic states do not acknowledge it as a good. Neither does the regime in China, which, Drinan says, has "'the worst record on religious freedom in the world.'" So the rejection of it for religious or ideological reasons has powerful support in the international community. Other nations do not persecute religion, but do extend favor to one or several religions. Among these is the United States, whose tax laws are honeycombed with exceptions for organized religion. No country permits the exercise of religion without restraint or favor.

In the face of such diversity, Drinan observes, the United Nations has done little to defend religious freedom. Is it possible, he asks, to design an international standard of free exercise that all nations might agree on and enforce? This is not a matter of simple logic. If you have the power to enforce your beliefs, you should do it, foes of free exercise have repeatedly asserted in contexts from Calvin's Geneva to Mao's China, while devotees of wholly free exercise believe a country's culture does not count -- the logic of liberty should wipe out all restrictions, preferences and differentiations.

These friends and foes are equally mistaken. The universe they dispute is one of values, not logic. No single value -- not the sovereignty of a country, not even the sacred liberty of conscience -- can be allowed to eat up all other values; balance is everything, and it evolves. The ideal of free exercise must be approached within historically conditioned contexts.

James Madison, deservedly seen as the father of the American invention of free exercise, offered three lines of argument about why what he saw as an experiment should be tried. One reflected on the nature of government: nothing equips the state to decide theological disputes or guide citizens to salvation. The second appealed to history: religious persecution created hypocrites and bigots, and religious establishments created a corrupt clergy. The third was theological: an individual's obligation to the Creator transcends any duty to the state; for Christians, force is repudiated by every page of the Gospels.

Madison's arguments are attractive, but compelling only in our cultural context. Rulers of an atheistic state would deride the notion that the state has any theological concerns; it simply gets rid of potential troublemakers whose radical allegiance to something beyond the state is subversive. The safety of the state is supreme. As Drinan points out, a repressive state need not be atheistic but only hostile to religiously motivated criticism; so El Salvador permitted the murder of Archbishop Oscar Romero, six Jesuits and other Catholic critics of an anti-Communist regime. And one can think of governments run by religious fanatics denying the relevance of the Gospel and

holding that their teachings set everyone on the true road to divine fulfillment.

A skeptic about what the American experiment proves might add that it wouldn't have worked but for the breadth of our continent; it wouldn't have worked except that traditional orthodoxies were softened by biblical criticism; and it hasn't worked very well because we have in fact a civil religion that is American orthodoxy. Today in the United States, to win space for the exercise of one's religion it's easier to invoke the ideal of freedom of speech, a secular shibboleth, than to rely on constitutional protection of free exercise of religion.

The skeptic's observations may, however, augur well for the expansion of religious freedom. The same process of criticism that dissolved many traditional certainties among educated people in the West will eventually affect Islam and other faiths. Atheistic Communism is generally regarded as a failed experiment. The globe itself has taken on the role of the American continent; everywhere, as Drinan points out, commercial contacts are blurring national rigidities. In a global community drenched in information that cannot be easily controlled, the freedom to speak may well work to enlarge expression of faith.

Speech may be understood to include thought, belief, prayer, ritual and symbolic gestures. It cannot be stretched to include acts with substantial physical effects. There the freedom to follow one's conscience meets the limitation built into every constitutional recognition of free exercise: requirements of public order. As British and Indian governments concluded, suttee does not fall within free exercise. Polyandry and polygamy, religiously authorized or mandatory, have not survived as legal institutions in the West. Refusing military service because of religious objection to a particular war as unjust has been a punishable offense in the United States. The logic of religious freedom has never served as a solvent of all legal restrictions on conduct.

No universal formula exists to cover all conflicts between faith-driven behavior and what a particular society will demand. If the American experience is taken as example, evolution of a global consensus will be slow. In the meantime, believers will suffer the cost of discipleship (the Christian shorthand for the cost is the cross) without support in international law. Drinan's unsparing analysis permits no more optimistic conclusion.

<http://query.nytimes.com/gst/fullpage.html?res=9C02EEDE103DF930A25750C0A9639C8B63>

John T. Noonan Jr.'s most recent book is "'A Church That Can and Cannot Change.'"

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