THE EMERGENCE AND STRUCTURE OF RELIGIOUS FREEDOM IN INTERNATIONAL LAW RECONSIDERED

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This Article presents a critique of the historical evolution of the right to freedom of religion in international law. In identifying certain conceptual tensions between liberal and value pluralist accounts in the literature, a general theoretical argument is advanced. Beyond standard Enlightenment narratives of individual freedom of conscience, this argument notices a second, more complex narrative of genuine pluralism in the evolving conception of religious freedom in international legal thought. This suggests that there is no simple, but rather a complex mapping of individual toleration in international law and no single path to modernity or to the formation of the secular, but rather many paths and forms of accommodation and consensus. The implications of this understanding of religious freedom are considered in three areas: first, in contemporary anxieties regarding liberal accounts of “the state” as the subject of international law; second, in the recognition that the notion of sovereignty itself relies on a theory of value pluralism which restrains liberal “anti-pluralism”; and third, in the doubts increasingly voiced both within and beyond Anglo-American jurisprudence concerning the dangers and contingency of a project which uncritically advances a single account of individual autonomy as a universal moral norm in the vastly more diverse religious and cultural nomos of international law.

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