

FREEDOM OF RELIGION: UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE. By Paul M. Taylor. Cambridge University Press 2005. Pp. 436. Paper. \$95.00. ISBN: 0-521-67246-5.

Paul M. Taylor's *Freedom of Religion: UN and European Human Rights Law and Practice* is a deeply researched, conscientious, and insightful analysis of the international law of freedom of religion or belief. The book contrasts the interpretations of Article 18 of the International Covenant on Civil and Political Rights that are made by UN institutions (particularly the Human Rights Committee and the Special Rapporteurs on Freedom of Religion or Belief) against the interpretations of Article 9 of the European Convention of Human Rights made by the institutions of the Council of Europe, particularly the European Court of Human Rights (and the former European Commission of Human Rights). The principal message of the text is that the UN Human Rights Committee and the UN Special Rapporteurs have provided better reasoned, more justifiable, and more expansive interpretations of the rights of religion or belief than have the organs of the Council of Europe.

The book provides comprehensive reviews and detailed analyses of judgments, opinions, and comments by the principal interpretative bodies of the United Nations and the Council of Europe. It also carefully evaluates the major English-language texts on freedom of religion or belief, including those by Malcolm Evans, Carolyn Evans, Bahiyyih Tahzib, and Natan Lerner, as well as other leading scholars of the European and United Nations human rights regimes. The author is broadly familiar with the jurisprudence of the human rights bodies as well as the respective *travaux préparatoires* of the relevant international instruments. Although he subjects all to a careful analysis, the work remains scholarly throughout and is not polemical. There is a comprehensive table of cases, an excellent bibliography, and an adequate index.

The book is organized around three central themes: first, the freedom of religious choice; second, the scope of the rights of conscience (the so-called "*forum internum*"); and third, the right to manifest religious beliefs (the so-called "*forum externum*") along with an analysis of the permissible limitations on such manifestations. This particular organizational arrangement immediately signals one of the

more interesting and innovative aspects of Taylor's effort. A more conventional analysis would have covered first the *forum internum*, second, the forms of manifestations in the *forum externum*, and third, the permissible state limitations on manifestations. Taylor is thus asking us, as well as the international bodies, to rethink the analysis in an important and fundamental way.

The standard statement of international law, which has virtually become a platitude, is to state that with regard to holding conscientious beliefs (the *forum internum*), the right is absolute and fundamental and the state must never interfere with this right in any way. This internal right of conscience is then contrasted with the right to "manifest" one's religion, with the classic examples including expression of beliefs to others (such as proselytism through writing and speaking); displaying religious objects and symbols (such as religious attire); or participating in religious activities (such as public worship or religious parades or pilgrimages). If the right pertains to manifestation, the state is permitted to limit such manifestations if the state can demonstrate that the limitation is "necessary" (the European Convention provides that it be "necessary in a democratic society") in order to promote specified public interests such as safety, health, and morals.

While no major scholar has ever suggested that there is a simple bright line between the *forum internum* and the *forum externum*, the analysis typically passes rapidly from the one to the other. Not so with Taylor. He argues, persuasively, that the scope of the *forum internum* has been unduly limited and that many matters of conscience have been improperly analyzed as if they were "manifestations" of religion when they are in fact matters of conscience. Everyone agrees that among the unlimited rights within the *forum internum* is the right to have or to hold religious beliefs or none at all. Almost all scholars and international tribunals include as well the right to change beliefs without interference by the state (though some states simply do not recognize or support this right). Most also assume that the *forum internum* includes the right not to be forced to reveal one's beliefs, and most would find that there is a right not to be compelled to listen to alternative beliefs (though this area can be fact-specific).

Taylor asks, appropriately enough, whether there are other matters of conscience that are treated generally as "manifestations" but that should more appropriately be considered matters of the *forum internum*. The most obvious cluster of such examples falls under the very general label of "conscientious objection," with the most salient being conscientious objection to military service. Conscientious objectors are

not (necessarily) seeking to *manifest* their religion; indeed, it may be said that they simply wish to be left alone. They simply are seeking not to be compelled to take actions that pressure them to violate their conscience, whether paying taxes to support war (or to pay for state-funded abortions) or to work on the Sabbath. Taylor suspects, of course, that the reason for the mislabeling has less to do with intellectual sloppiness than it does with the fear of the obvious consequence that would follow if such matters were labeled matters of conscientious objection: that they would be exempt from state control.

Putting aside Taylor's argument that more attention should be paid to the intersection between matters of conscience and manifestations of belief, the book is also insightful with regard to his systematic analysis of the comparative interpretations of the UN organs and the Council of Europe institutions. The European Court of Human Rights (and formerly the European Commission on Human Rights) repeatedly undervalues the importance of matters of religious conscience and manifestation and overly defers to the interests of the states in limiting manifestations. Under Taylor's analysis, the European Court simply is failing to grasp the fullness of the language of the European Convention and is inappropriately deferential to the states. While Taylor does not attempt to provide a detailed explanation as to why that might be, he presumably would recognize that the European Court's *relatively* greater power over member states makes it more reluctant to exercise its power in the very delicate and controversial area of religion where states do have a wide variety of practices. Simply put, the UN institutions are freer to adhere to human rights norms because the states feel *relatively* less bound to comply with their judgments. Unfortunately, it is the comparative lack of real-world influence of the Special Rapporteurs and the Human Rights Committee that enables them to be *relatively* more respectful of the ideal international norms and less wary of political pressure.

Freedom of Religion provides a rigorous analysis of the issues in a comparative approach that draws appropriate attention to the weaknesses of many decisions of the European Court. Since the book was published, additional decided cases have underscored Taylor's assertion about the European Court; perhaps the best example of a bad decision is the Grand Chamber's judgment in *Sahin v. Turkey*, App. No. 44774/98 (Eur. Ct. H.R. Nov. 10, 2005) (Grand Chamber) (upholding Turkish law prohibiting female university students from wearing the headscarf on university property). One might only hope that members of the Court would pay close attention to Taylor's insightful analysis and thereby

honor the text of the European Convention rather than deferring to the practices of the states that violate international standards.

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