

successful in offering novel and surprising insights into well-known cases. The book should thus be of utmost interest to any legal scholar working on the multiple socio-legal interpretations of legal norms, not only by judges and legal professionals but also by diverse stakeholders.

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Takao Suami, Anne Peters, Dimitri Vanoverbeke, and Mattias Kumm, eds. *Global Constitutionalism from European and East Asian Perspectives*. Cambridge University Press, 2018. Pp 622. \$49.99. ISBN: 9781108810371.

## 1. The “end of the West”: Deep anxiety in the field of global constitutionalism

The anxiety the field of global constitutionalism is experiencing in the early twenty-first century is existential. The abandonment of the project altogether is at stake. The European Union integration is stalled; the United Nations is increasingly challenged and often bypassed; and power is shifting to Asia, notorious for its attachment to non-intervention in the domestic affairs of states and absolute protection of state sovereignty, values that clash directly with the global constitutionalism project. Today, many political forces choose to “opt out” of global constitutionalism,<sup>1</sup> including in its heartland, the European Union. The 2005 rejection of the Treaty establishing a Constitution for Europe by several European countries was a first sign that the global constitutionalism agenda might be receding instead of moving forward.<sup>2</sup> In 2020, this trend seems to have accelerated at impressive speed, with Brexit and the possibility that other EU countries will soon follow suit. Meanwhile, the benevolent idealization of the constitutional and international law performance of European states can no longer be entertained, as it becomes increasingly difficult to turn a blind eye to the fact that respective constitutions, European law and international law are routinely violated in Hungary and Poland, in France and the UK, among others.<sup>3</sup> In 2020, to

<sup>1</sup> Ran Hirschl, *Opting Out of “Global Constitutionalism.”* 12 *LAW & ETHICS HUM. RTS.* 1 (2018).

<sup>2</sup> Michel Rosenfeld, *Is Global Constitutionalism Meaningful or Desirable?*, 25 *EUR. J. INT’L L.* 177 (2014).

<sup>3</sup> In 2020 alone, France has been condemned by the European Court of Human Rights for breaching its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms. Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR] as follows: *Hirtu and others v. France*, App. No. 24720/13, 324 *Eur. Ct. H.R.* (May 14, 2020), <http://hudoc.echr.coe.int/eng?i=001-202442> (prohibition of torture);

present the EU, whose model is faltering, as a template for the world, is quite a challenge. To conjure the anxiety, Takao Suami, Anne Peters, Dimitri Vanoverbeke, and Mattias Kumm had decided back in 2012 to convene scholars to a series of international workshops, held in 2014 and 2015 at the University of Leuven in Belgium, to reflect on global constitutionalism “going East.” The resulting edited volume, *Global Constitutionalism from European and East Asian Perspectives*, is a long overdue book.

Since Bruce Ackerman’s seminal piece on world constitutionalism in 1997,<sup>4</sup> global constitutionalism has flourished as a distinctive field, cutting across international law, constitutional law, political theory, and global politics.<sup>5</sup> It has structured itself around the image of the European Union, seen as an innovative experiment in “multilevel constitutionalism”<sup>6</sup> and “constitutional pluralism.”<sup>7</sup> The EU became the paradigmatic model of supranational constitutionalization, and this image was reinforced by the 2008 *Kadi* judgment of the Court of Justice of the European (CJEU), identified as the most prominent proof that something akin to constitutionalization of the global order was irresistibly unfolding.<sup>8</sup>

Nevertheless, the Western outlook and European origin of the global constitutionalist project have long been the focus of sustained criticism. In its likely acceptance of norms such as the “Responsibility to Protect,” the global constitutionalist project appeared suspicious to non-Western countries as yet another tool of imperialism. Wary of this criticism, editorial after editorial in the dedicated journal *Global Constitutionalism* called for the “decolonization” of the field and urged that the global constitutionalist project embrace regionally diverse views.<sup>9</sup> The “end of the West” looms large with the rise of the “non-West,” as the locus of economic and geopolitical

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Association Innocence en Danger and Association Enfance et Partage v. France, App. No. 15343/15, 383 Eur. Ct. H.R. (June 4, 2020), <http://hudoc.echr.coe.int/eng?i=001-202716> (prohibition of torture); N.H. and others v. France, App. No. 28820/13, 514 Eur. Ct. H.R. XXX (July 2, 2020), <http://hudoc.echr.coe.int/eng?i=001-203295> (prohibition of torture); Baldassi v. France, App. No. 15271/16 (Sept. 11, 2020), <http://hudoc.echr.coe.int/eng?i=001-202756> (freedom of expression); Barbotin v. France, App. No. 25338/16, 822 Eur. Ct. H.R. (Nov. 19, 2020), <http://hudoc.echr.coe.int/eng?i=001-206163> (prohibition of torture). The United Kingdom is currently under an EU legal procedure under the Consolidated Version of the Treaty on the Functioning of the European Union, art. 258, 2012 O.J. (C 326) 47 [hereinafter TFEU] for breach of EU law in the context of the Brexit deal while Hungary and Poland have been condemned by the European Court of Justice for breaching EU law. See, e.g., Case C-619/18 Commission v. Poland, ECLI:EU:C:2019:531 (June 24, 2019) (independence of the Supreme Court); Case C-66/18 Commission v. Hungary, ECLI:EU:C:2020:792 (Oct. 6, 2020) (higher education).

<sup>4</sup> Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771 (1997).

<sup>5</sup> A first *Handbook of Global Constitutionalism* was published in 2017: HANDBOOK ON GLOBAL CONSTITUTIONALISM (Antje Wiener & Anthony F. Lang eds., 2017). See also RULING THE WORLD?: CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009).

<sup>6</sup> Ingolf Pernice, *Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitution-Making Revisited?*, 36 COMMON MKT. L. REV. 703 (1999).

<sup>7</sup> Neil Walker, *The Idea of Constitutional Pluralism*, 65 MOD. L. REV. 317 (2002).

<sup>8</sup> Antje Wiener et al., *Global Constitutionalism: Human Rights, Democracy and the Rule of Law*, 1 GLOBAL CONST. 1 (2012).

<sup>9</sup> Jonathan Havercroft et al., *Editorial: Decolonising Global Constitutionalism*, 9 GLOBAL CONST. 1 (2020).

power has shifted to East Asia,<sup>10</sup> demanding that the question of the relevance of the global constitutionalist project, and the lack of interest in it in the East, be addressed.

This edited volume fills the gap. It aims to promote a more inclusive and diverse conversation around global constitutionalism. As the editors assert in their introduction, “[w]ithout the engagement of scholars from other parts of the world, the universalist claims underlying global constitutionalism ring hollow” (at 9). Therefore, they promise, “[their] book confronts global constitutionalism, which is considered to be Eurocentric, with East Asian critiques” (*id.*). Yet, fundamentally, for the editors, it is the normative project (to identify ways to promote global constitutionalism in East Asia) that informs the empirical project (to examine the purchase of global constitutionalism in East Asia and the critiques leveraged against it), rather than the other way round. The editors start from a shared assumption that the global constitutionalism project is desirable as a solution to current threats against the liberal order (i.e. the rise of populism), but that in order to truly gain momentum, it must be adopted by East Asian states.

In so doing, this volume unravels the deep anxieties experienced across the field as the world is shifting towards Asia: Will global constitutionalism survive in a post-Western world? Editor Takao Suami argues that “the future of global constitutionalism really depends upon how it will succeed in incorporating non-Western perspectives with Western ones” (at 167). Mattias Kumm argues further that “constitutionalism may well remain relevant even if Western hegemony is receding and the balance of power is shifting in favour of Asia” due to the universalist character of the idea of constitutionalism (at 199). Yet with the exception of South Korea, authors from East Asia offer their reservations as to the willingness of their own jurisdictions to embrace global constitutionalism; therefore, they cast a shadow over the survival of the project at large.

The book comprises nineteen chapters, cutting across the major themes of global constitutionalism from the vantage point of a European–East Asia comparison. The introduction by the editors lays down a set of shared values, intended as a common framework for the book: a positive assessment of the European integration process and the European project as a whole, the belief that Europe can serve as a model for the world, and overarching liberal normative aspirations. In proposing global constitutionalism modelled on the European Union as a toolbox of solutions for current crises, the book’s common assumption is the belief that globalization will bring about political and legal convergence, replicating the liberal cosmopolitan, progress metanarrative of liberal democracy as the end of history. To put it simply, the book as envisioned by the editors rests on a liberal view of international relations, law, and politics. Yet not all of the chapters fit that “liberal consensus” framework; they are very heterogeneous, representative of the wider field of global constitutionalism.

The eighteen contributors to this volume differ in their disciplinary backgrounds, geographical outlook, and, more importantly, in the meanings they attach to global

<sup>10</sup> Mattias Kumm et al., *Editorial: The End of “the West” and the Future of Global Constitutionalism*, 6 GLOBAL CONST. 1 (2017).

constitutionalism. Some authors discuss the empirical reality of global constitutionalism, some the normative project of global constitutionalism and its desirability, and some the analytical value of global constitutionalism as a concept to understand and interpret the global order. Moreover, as global constitutionalism is the dual process of internationalization of constitutional law and constitutionalization of international law, there are two angles from which to look at global constitutionalism, the “constitutional law” and the “public international” law angles, akin to two “ways of thinking” that might or might not share the same vocabulary and grammar. International lawyers tend to identify multiple layers of constitutionalization processes at the global level, while constitutional lawyers replicate their own understanding of constitutionalism at the global level—and might be tempted to search for the contours of a “global constitution.”<sup>11</sup> In the introduction, the editors offer their own definition of global constitutionalism. Rather than as processes or institutions, their definition puts the emphasis on a set of values, the so-called “trinity” of “Democracy, the Rule of Law, and Human Rights,” echoing the founding values of the European Union in Article 2 of the Treaty on European Union.

## 2. Will global constitutionalism “go East”?

The book is structured in three parts. In Part I, “Groundwork: Interplay between European Ideas and East Asian Perspectives,” Tokishi Mogami, Bin Li, Christine Schwöbel-Patel, Takao Suami, and Mattias Kumm reflect on whether the European model can be applied in East Asia, in particular in places like China which both resist liberal constitutionalism and are suspicious of international law; in Part II “Pursuit of Common Values: Human Rights and the Rule of Law from East Asian Perspectives,” Dimitri Vanoverbeke, Matthieu Burnay, and Yoon Jin Shin focus on South Korea, Japan, and China’s perspectives on the Rule of Law; in Part III, “Horizontal Interactions: Trade, Environment and Development,” Anne Peters, Hyuck-Soo Yoo, Xigen Wang, Kazuyori Ito, and Louis J. Kotzé, explore the global economic constitution, in particular the issue of the right to development which sets Europe and Asia apart; in Part IV, “Implementation and Enforcement,” Kaoru Obata, Guimei Bai, Axel Marx, Jan Wouters, and Geir Ulfstein examine the judicial mechanisms of such global constitution; in Part V, “Conclusion: East Asia and Global Constitutionalism,” Takao Suami identifies global constitutionalism as a potential solution for East Asia’s reluctant attitude toward constitutionalism.

On the issue of East Asian attitudes to global constitutionalism, Bin Li offers his reservations on the compatibility of global constitutionalism and China. His reservations are based not so much on the “Asian values” argument as on the Marxist values argument, constitutionalism being considered by the Chinese Communist Party to be founded on the capitalist ideology and the dictatorship of the bourgeoisie (at 71). Bin Li concludes that China will not adopt global constitutionalism (at 99). Matthieu Burnay concurs, stating that even if China has instrumentally embraced

<sup>11</sup> A major exception being international lawyer Bardo Fassbender, *The United Nations Charter as Constitution of the International Community*, 36 COLUM. J. TRANS. L. 529 (1998).

the discourse of the rule of law, this does not imply the acceptance of democracy or human rights (at 243). In conclusion, according to Burnay, China is likely to resist the project of global constitutionalism altogether (at 244). By contrast, in his chapter on “Human Rights NGOs and Global Constitutionalism from a Chinese Academic Perspective,” Guimei Bei is optimistic regarding the spread and application of global constitutionalism among civil-society organizations in China. Yoon Jin Shin takes a different stance to those of Matthieu Burnay and Bin Li, arguing that the “examples of South Korea and Taiwan provide evidence to counter the charges of European parochialism or imperialism levelled against [global constitutionalism]” (at 272). On the whole, Dimitri Vanoverbeke is quite reserved about the “viability of the global constitutionalism debate for East Asia” (at 223), concluding that “if global constitutionalism is more a debate on global legitimacy than a debate on ideology, it should offer possibilities for East Asia” (at 224).

On the possible ways to reconcile European and East Asian perspectives, the contributors to this volume recommend acknowledging the excesses of liberal constitutionalism and mitigate them through the inclusion of social-democratic elements. In her critical chapter, Christine Schwöbel-Patel argues that:

[G]lobal constitutionalism, with its central parameters of political liberalism emphasising the division of the public and the private, plays into the hands of a neo-liberal political project by depoliticising the economic sphere. Global constitutionalism, if enforced or institutionalised beyond its European birthplace, would be unlikely to democratise or decolonise international affairs. Rather, it would more likely be a further vehicle for the naturalisation of neo-liberalism and at the very least maintain the status quo (at 122).

In her chapter on the social dimensions of global constitutionalism, Anne Peters likewise sees (neo)liberalism as the main obstacle to reconciling European and East Asian perspectives, and proposes to enrich the project of global constitutionalism with social-democratic ideas in order to connect the two regional outlooks:

Notably a basic “social market model” as developed in Europe is similarly (even if within a different configuration of values and institutions) applied by East Asian capitalism. [It] is thus apt to form a bridge between European and East Asian understandings of what must form part of international constitutional law (at 338).

In related arguments, Both Hyuck-soo Yoo and Xigen Wang insist the global constitutionalist project must incorporate the right to development if it is to appeal to East Asia.

In that regard, a set of two initial critiques can be addressed to the editors. The first issue is whether the book contents fulfill the ambition laid out in the introduction, namely to “produc[e] a simultaneous critique of ‘western’ ideas and concepts, and their enrichment through non-western practices in order to help produce transcultural universal categories of international law” (at 12). The editors add: “The dialogue between European and East Asian scholars, as attempted in this volume, aims at de-Europeanising global constitutionalism by including suggestions and insights by scholars from China, Korea and Japan, focussing on developments of the role of law in East Asia” (at 12). The editors then identify the formulation of “human security” as the paradigmatic East Asian contribution to global constitutionalism.

Global constitutionalism could play a role in giving [human security] more solidity and significance. Understanding human security in the light of constitutionalist principles would arguably lead to its qualification as a principle of international constitutional law which places the individual human being in the centre without overblowing human rights. Importantly for the context of our book, the concept of ‘human security can claim a significant Asian pedigree’ (at 12).

Yet, instead of confronting Eurocentric global constitutionalism with East Asian critique and using East Asian perspectives to enrich the global constitutionalism project, the various chapters in the volume engage in reflections on how compatible Eurocentric global constitutionalism is with East Asian jurisdictions. “Can the European model be replicated in East Asia?” is an interesting question in itself, but it tends to displace the critique of global constitutionalism, while missing the opportunity to enrich the categories of global constitutionalism with East Asian contributions.

The second issue is to what extent East Asian and European contributors to this volume do in fact represent European and East Asian perspectives. If denouncing the book’s cultural essentializing tendencies is an easy criticism (and the authors continuously question that essentializing throughout the book), in this particular instance, however, one could argue that a “European versus East Asian” frame obscures, rather than illuminates, the various themes under discussion. Rather than confronting European and East Asian perspectives, the contributors tend to focus on the question of the German jurisprudential legacy in East Asia. It is well known that South Korea has a Germanophile legal culture, owing to the origins of its legal system and the training of the legal profession; that Japan shares this outlook to some extent, its legal system being extensively derived from German law; and that the Chinese legal system was also historically influenced by German legal categories. Against this backdrop of shared legal influences, China represents the main “deviation,” as a country still straightforwardly resisting global constitutionalism, in contrast to South Korea fully embracing it and Japan sitting somewhere in between. Meanwhile, Europe is presented in a rather monolithic fashion as a proponent of global constitutionalism.

It would have been useful to include a greater diversity of European and East Asian voices to display a more nuanced portrait of attitudes toward global constitutionalism. For instance, in France or Eastern Europe, the project of global constitutionalism might be seen as a parochially German endeavor—rooted in the German-speaking tradition of cosmopolitanism from Immanuel Kant to Hans Kelsen and Jürgen Habermas—rather than a European one, and it still raises a wide array of objections.<sup>12</sup> Additionally, it would have been interesting to give more voice to the Association of Southeast Asian Nations (ASEAN) by examining its distinctive contribution to the notion of supranational constitutionalization. The 2008 ASEAN Charter, rich in constitutionalist rhetoric (it opens with the symbolic words “We, the peoples”), lays out precisely a different type of understanding of regional integration, focused on Westphalian sovereignty as well as the “ASEAN way”—a much less legalistic and interventionist model of regional

<sup>12</sup> See, e.g., Marie-Claire Ponthoreau, “Global Constitutionalism,” *un discours doctrinal homogénéisant: L’apport du comparatisme critique*, 19 *JUS POLITICUM* 105 (2018). For some analysis of the German origin of the GC project, see Christine Schwöbel, *The Appeal of the Project of Global Constitutionalism to Public International Lawyers*, 13 *GERMAN L.J.* 1 (2012).

constitutionalization that could serve as an alternative model for other conceptions of global constitutionalism.<sup>13</sup>

### 3. Global constitutionalism as part of the problem it seeks to solve?

The third and perhaps most important issue is the editors' overlooking of the highly contested nature of the EU integration project, in particular its moves toward constitutionalization, sometimes described as "coups"<sup>14</sup> or labeled "authoritarian."<sup>15</sup> The European origin of global constitutionalism is the project's main weakness, not only because the world is shifting toward Asia, but also because the European project itself has lost steam—and the book tends to fall short of fully acknowledging this important fact. The lack of a critical approach to the EU is discernible from the editors' diagnosis of the problems which global constitutionalism is meant to address. They identify the worldwide rise of populism as one of the major global "crises" crippling the world today. They concede that "at first sight, these developments are unfavourable to global constitutionalism" (at 4), but then, in an act of inversion, they further argue that "global constitutionalism might be the solution to these ills" (at 5). This resonates with Anne Peters's earlier claim that "global constitutionalization is likely to compensate for globalization induced constitutionalist deficits on the national level."<sup>16</sup> However, the European constitutionalization process, which might indeed offer some constitutionalist compensation to some EU member states, is nonetheless routinely accused of fostering democratic deficits at the national level and of creating ideal conditions for populism to take root and flourish. Some scholars even see in populism a mechanical response to the EU's perceived democratic deficit—a deficit engineered to protect constitutionally locked-in neoliberal constitutionalism from political contestation.<sup>17</sup> Cas Mudde reputedly defined populism as "an illiberal democratic response to undemocratic liberalism."<sup>18</sup> Arguably, the crises posing a threat to the EU might be endogenous, rather than exogenous, to the EU integration process.

<sup>13</sup> Diane A. Desierto, *ASEAN's Constitutionalization of International Law: Challenges to Evolution under the New ASEAN Charter*, 49 *COLUM. J. TRANSNAT'L L.* 268 (2011). Jose Duke Bagulaya, *ASEAN as Wayang Kulit: A Critique of the Constitutional, Extra-Constitutional, and Practical Fetters of ASEAN*, 9 *ASIAN J. INT'L L.* 275 (2019).

<sup>14</sup> Alec Stone Sweet, *The Juridical Coup d'État and the Problem of Authority*, 8 *GERMAN L.J.* 915 (2019).

<sup>15</sup> Michael A. Wilkinson, *Authoritarian Liberalism as Authoritarian Constitutionalism*, in *AUTHORITARIAN CONSTITUTIONALISM: COMPARATIVE ANALYSIS AND CRITIQUE* 317 (Günter Frankenberg & Helena Alviar Garcia eds., 2019).

<sup>16</sup> Anne Peters, *The Merits of Global Constitutionalism*, 16 *IND. J. GLOBAL LEGAL STUD.* 397 (2009).

<sup>17</sup> Stephen Gill, *European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe*, 3 *NEW POL. ECON.* 5 (1998).

<sup>18</sup> Cas Mudde, *Populism in the Twenty-First Century: An Illiberal Democratic Response to Undemocratic Liberalism*, ANDREA MITCHELL CTR FOR THE STUDY OF DEMOCRACY, <https://amc.sas.upenn.edu/cas-mudde-populism-twenty-first-century> (last visited Nov. 12, 2020). See also Cas Mudde, *The Problem with Populism*, *GUARDIAN* (Feb. 17, 2015), <https://bit.ly/35JA4kK>.

Related to this issue, the book could perhaps have devoted more space to reflections on the place of “the people” in the global constitutionalism project, especially since global constitutionalism is heavily criticized for its top-down, elite-centered, legalistic view of constitutionalism. For instance, it would have been helpful to think about constituent power and images of constitutional moments, global constitutional consciousness, resistances to neoliberalism through constitutionalism, etc., as ways to give people agency and ownership over global constitutionalization processes.

The editors conclude their introduction with the following statement: “We are pleased if readers will find that this book succeeded in challenging dominant Western narratives and in paving the way to a richer, more inclusive understanding of international law and of what global constitutionalism is or might be” (at 26). The book promises to “elaborate a more nuanced concept [of global constitutionalism] that fits our times” (at 15). Yet at the same time, non-liberal versions of constitutionalism still tend to be treated as non-constitutionalist, and as such tend to be excluded from the conversation. One might wonder how inclusive the conversation can be if the only possible global constitutionalism is (neo)liberal. If a rise in EU constitutionalization provokes greater resistance against EU constitutionalization, will more liberal global constitutionalism counteract resistance against liberal global constitutionalism? The editors’ affirmation that global democracy remains unattainable (at 14) implies that global constitutionalism potentially constructs an undemocratic, (neo)liberal global constitutionalist order, which will be a part of the problem rather than the solution.

In fact, the underlying question in this book is the question of the relationship between Europe, Asia, and the future of global governance. It is, in the end, a question of trajectory—of either convergence or divergence; and if convergence, is it toward Asia or toward Europe. Further, it is a question of a universalist versus culturalist, legalistic versus consensual, supranational versus Westphalian paradigm. This is the question Tom Ginsburg pondered in his decade-old piece on “Eastphalia,”<sup>19</sup> quoted in the book: “In the current—maybe transitory—phase, two mutually incompatible trajectories of the international scene are conceivable: either we will see deeper integration triggered by further globalisation, accompanied by global constitutionalism, or we will move towards an Asia-dominated world in which the values of sovereignty and non-interference prevail” (at 26). But there is also a third possibility, as Tom Ginsburg points out:

Both claims, that of global constitutionalization and that of Asian dominance, may be compatible. This possibility would require an acceleration of integration in Asia itself and the adoption of a set of norms and preferences among peoples of the region that is compatible with the constitutionalist vision. It is a vision of convergence, in which Asian values become European values and vice versa.<sup>20</sup>

What convergence needs is, without a doubt, a compromise. Yet if global constitutionalism remains defined based on the EU’s founding values, as the editors suggest in this book, it might be difficult for global constitutionalism to “go East.” At the same time, it is doubtful that the trinity of democracy, human rights, and the rule of law can be

<sup>19</sup> Tom Ginsburg, *Eastphalia as the Perfection of Westphalia*, 17 *IND. J. GLOBAL LEGAL STUD.* 27 (2010).

<sup>20</sup> *Id.* at 45.

relinquished without fundamentally altering the global constitutionalism project altogether. Perhaps one solution would be to focus on the rule of law, the least divisive value in the trinity. In any case, on top of expertly mapping various views on global constitutionalism within, or peripheral to, the liberal paradigm, in Europe and in East Asia, this book takes a first step to address key questions related to the decentering of global constitutionalism, making it an essential read for anyone interested in the future of global constitutionalism.

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Myriam Hunter-Henin. *Why Religious Freedom Matters for Democracy: Comparative Reflections from Britain and France for a Democratic “Vivre Ensemble.”* Hart Publishing, 2020. Pp. 202. £45. ISBN: 978-1-5099-0474-7.

In the book entitled *Why Religious Freedom Matters for Democracy*, Myriam Hunter-Henin embarks on an ambitious and insightful project which seeks to show that religious freedom is a value which enriches democracy. The book is a response to a body of scholarship that claims that religious freedom and democracy are in conflict,<sup>1</sup> in particular to the approach which Hunter-Henin calls “analogous-to-secular.”<sup>2</sup> Analogous-to-secular scholars argue that in order to prevent religion and democracy from clashing, religion cannot be considered as conceptually unique for the purpose of legal protection in liberal constitutions. According to these scholars, religion must either be protected as a broader subset of conscience or be disaggregated completely so that only what is valuable about religion for the liberal state is protected.<sup>3</sup> There are two dominant strands of this scholarship: first, the view adopted by Christopher Eisgruber and Lawrence Sager, which advocates for “the equal treatment of people with diverse spiritual views, whether these be religious or secular” (at 5).<sup>4</sup> Second, the “disaggregation approach,” which proposes that religion, as a concept, can be disaggregated into various secular interests which underpin a particular religious claim.<sup>5</sup> In doing so, disaggregationist scholars contend that human rights charters and bill of rights provisions only protect the features of religion which are compatible with

<sup>1</sup> Stanley Fish, *Mission Impossible: Settling the Just Bounds between Church and State*, 97 COLUM. L. REV. 2255 (1997).

<sup>2</sup> See generally CRISTOPHER EISGRUBER & LAWRENCE SAGER, *RELIGIOUS FREEDOM AND THE CONSTITUTION* (2007).

<sup>3</sup> See generally RONALD DWORKIN, *RELIGION WITHOUT GOD* (2013); BRIAN LETTER, *WHY TOLERATE RELIGION* (2013).

<sup>4</sup> EISGRUBER & SAGER, *supra* note 2.

<sup>5</sup> CÉCILE LABORDE, *LIBERALISMS RELIGION* (2017).