

# Book Review

Van Coller, H. 2020. *Regulating religion: State governance of religious institutions in South Africa*. Routledge: London. 246 pages. ISBN: 978-1-138-29871-2 (hardback).

**Idowu A Akinloye**  
**idakinloye@gmail.com**

Prof Helena van Coller's book is topical and timely relevant, given that South Africa is a multi-religious state, and more importantly because the intersection between law and religion has increasingly been a subject of controversy for some years in South Africa. The aptness of the title of the book and its detailed three page preface help a reader to easily comprehend the goal of the book, which is to provide some insights into how the relationship between the state and religious institutions in South Africa is or should be regulated in the different spheres of society. To achieve the stated objective, the book attempts to answer four questions: 1) What does the government regulation of religion exactly mean for religious communities in South Africa? 2) What is the role that the government needs to play in protecting and promoting the religious rights and freedoms of communities in South Africa? 3) What does freedom of religion mean to religious communities? 4) What are the daily rights, responsibilities, and freedoms that are associated with this right?

To answer these questions, the 12-chapter book is divided into two parts. The first part comprises four chapters. It provides the introduction and background to the book and provides an overview of the development of the relationship between church and state in South Africa. The author traces the state regulation of religions in South Africa from the mid-17<sup>th</sup> century to date and reveals that the state has historically adopted a Constantinian approach towards the church and state relationship whereby the state had dominant control and influence over religion. In this approach, religious organizations knew no real freedom of religion. The Constitution of the Republic of South

Africa (1996), however, brought a paradigm shift in the character of the church state relationship in the country, whereby the freedom of religious organizations became constitutionally protected. This part further analyzes the meaning of a government regulation of religion for religious institutions; the church and state relationship with specific focus on the right to freedom of religion; and the legal status of religious organizations within the context of South Africa. The author emphasizes that the freedom of religion that the state guarantees, has two dimensions: An individual and an institutional right. Van Coller submits that freedom of religion is not merely an aggregate of individual freedom, but the rights and freedom asserted by the religious organizations as a group. The institutional religious freedom vests the right to autonomy and self-determination in the religious group. With an analysis of relevant case examples, she concludes this part of her book by engaging with how some other constitutionally guaranteed rights, such as the rights to human dignity, equality, and unfair discrimination conflict with the right to freedom of religion.

The second part of the book comprises eight chapters. It evaluates the rights, responsibilities, and freedoms associated with religious institutions within some specific spheres of society, where the state currently regulates or should extend its regulation. This part specifically investigates how state regulations relate and interfere with some thematic aspects of religious freedom, including the right to worship with other believers in a public domain, the intersection of religious freedom and freedom of expression, religious observances and manifestation in educational institutions, religious marriage celebrations, financial regulations of and within religious organizations, and issues involving the employment status of religious leaders, among others. Two issues, among several others, which Van Coller engages with in this part of her book are worthy of special mention. The first involves the very much alive debate involving the 2018 proposal of the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities that recommended that the state should further regulate religious institutions, following the evidence of the commercialization of religions in South Africa. On this issue, although Van Coller is of the firm view that when it comes to financial regulation and good financial practices within religious institutions, no organization should be exempt from accountability standards in the name of religion, she argues that enacting new legislation will not necessarily solve the problem of the commercialization of

religion. She reasons that the existing legislation should be better enforced. The second issue relates to the conflict arising from the right to equality and non-discrimination on the one hand, and the right of religious organizations to appoint or ordain homosexual office holders on their religious tenets, on the other. The author recognizes this as a complex and overarching issue, unsettling many religious organizations. The recommendation made by the author that there is a need for a process of engagement among religious organizations and religious leaders to reflect on issues of sexual orientation in religious organizations in light of religious, moral, and constitutional values, is sensible and laudable.

In general, Van Coller describes the model of freedom of religion, adopted in the South African Constitution, as cooperative. This approach is unique because, unlike other climes, it tries to find a compromise between a secularism that offers a too strict separation between church and state and an approach of endorsing or favoring a religion. She asserts that currently, South Africa is a society with a secular character that is not strict. She thinks that the drafters of the country's Constitution have perhaps recognized the risks associated with a too strict separation between church and state, but similarly one that is too close to the church, as was the case during the apartheid regime. She acknowledges that various provisions of the Constitution, like sections 15 and 31, make it easy to conclude that the country has adopted the approach of 'profound toleration and accommodation', where there is equal recognition of all religions by the state and not a complete withdrawal of religion from the public sphere. The Constitution further protects other rights to make the enjoyment of the right to freedom of religion meaningful. This includes the freedom of assembly, freedom of association, freedom of expression, freedom of movement, the right to equality of all religions, and the self-determination of cultural, religious, and linguistic communities. The right to the religious freedom of religious organizations is, however, not absolute; it may be limited in accordance with the provision of section 36 of the Constitution. Implicit in this is that, although religious practices are conducted within the sphere of a religious autonomy, they are not beyond the remit of the supervisory jurisdiction of the civil courts of the state.

Van Coller observes that there is an increasing effort on the part of the state to regulate religions beyond the constitutional stipulations. She cautions that if this persists, the religious autonomy, which underlies one of the principles of a democratic state, may become meaningless in South

Africa. She also identifies poor communication, a lack of consultation with communities and stakeholders in the development of state regulations of religions, and the ignorance of the indigenous religious institutions regarding their legal rights and obligations, among others, as some of the factors that are fueling the complexity of the church and state relation in South Africa. She argues that these factors often lead to the poor implementation of various regulations. Her call on the state institutions to collaborate with the religious institutions by educating and sensitizing the religious sectors to bridge these gaps, is also remarkable.

A major vacuum observed in the book is that, whilst giving the account of the development of the church and state relationship, the author omits the approach that was adopted in the precolonial South Africa. This vacuum leaves a reader with the conclusion that the church and state relationship began during colonial South Africa, and this is a conclusion that may be too costly to make. It is further important because it resonates with the author's discussion in other sections of the book, particularly her discussion in chapter 5 on African traditional religious practices and the protection of historical, cultural, and religious sites that dates back to a precolonial South Africa.

In the preface to the book, and in a rather modest manner, the author expresses the limited scope of the book as 'not a complete and systematic study of all aspects relating to religious institutions in South Africa or the regulation thereof, nor was it intended to be'. However, reading through the contents of the book, the scope that it covers, and the scholarly efforts which the author – a distinguished scholar of law and religion – has put in the book, obviously show that what the book offers, surpasses the humble understatement of the author. Achieving clarity on the often-vexed questions relating to the inevitable interface between law and religion is no simple task, but the author successfully surmounts it.

The book is well written and the rich wealth of experience of the author is greatly reflected in every chapter of the book. Her discussion in this document is lucid, clear, understandable, authoritative, and highly engaging. The book is therefore highly recommended.

*Book Review*

Idowu A Akinloye  
Faculty of Law  
Ajayi Crowther University  
Oyo, Nigeria  
idakinloye@gmail.com