

SHARIA TRIBUNALS, RABBINICAL COURTS, AND CHRISTIAN PANELS: RELIGIOUS ARBITRATION IN AMERICA AND THE WEST by Michael J. Broyde, *Oxford University Press, New York, 2017, pp. xxvi + 282, hbk*

In recent years there has been a dramatic increase in secondary literature on religious courts, tribunals and other judicial fora. Much of this has centred on issues relating to the extent to which the civil law should accommodate religious courts and their use of religious law in decision-making. The book under review here falls broadly into this debate and it contributes greatly to it, with particular reference to religious arbitration.

Michael J. Broyde is a law professor at Emory University School of Law, Atlanta, a senior fellow at the Center for the Study of Law and Religion, and an Orthodox rabbi who has served as a judge in the Beth Din of America. In this book, Broyde explores the rise of private arbitration in faith communities, stimulated in part by the feeling of some that they are on the margins of civil law and thus seeking where possible to opt out of substantial areas of it. He argues that secular societies should use secular legal frameworks to facilitate, enforce, and regulate religious arbitrations. The book is not primarily about how or why religious tribunals resolve questions about faith - matters US constitutional law leaves outside the purview of the civil courts - but, rather, it is about what happens when religiously observant individuals seek to resolve their ordinary secular disputes, for instance over property, contract, employment, finance or family matters in religious courts and in accordance with religious norms and values.

The book has four parts. Part one consists of two chapters. The first addresses the rise of religious arbitration and reasons for this; variants used in practice, that is, Jewish, Muslim, and Christian models - and for these 'Protestant' and 'Catholic' approaches (as to the latter, he concludes that the Catholic Church has 'not embraced' alternative dispute resolution); and the future of religious arbitration, which he argues rests on its ability to maintain the respect of the secular courts and the users it attracts. Topics studied in the second chapter include: the shift away from secular values in religious communities; the US secular movement away from religion and its values; and how faith communities have become the 'centrepiece' of life for believers. Part two has two chapters: one on the history of religious arbitration in the US; and the other on the key principles of modern US civil arbitration law (with occasional reference to UK law). The trend is that civil law endorses private dispute resolution and directs secular courts to enforce arbitral decisions on the basis of a 'neutral legal framework' enabling 'faith-based arbitration to resolve all manner of co-religionist disputes'. Part three has three chapters: one on civil regulation of arbitral agreements (e.g. if they are 'unconscionable'); another on the Jewish experience (with its publication and use of formal rules and procedures, internal appeal processes, respect for both secular and religious legal norms, and the use of experts); and one on (the less

well-developed) Muslim and Christian experiences. The civil law is welcomed as ‘empowering individuals and communities in the [US] to conduct their internal affairs in accordance with their religious commitments’ (and enforce them) but at the same time ‘religious arbitration tribunals must take steps to ensure that their decisions comply with the standards set by [the civil] framework and earn the respect of secular courts’.

Part four has three chapters. One deals with: the case against religious arbitration – e.g. that it is at odds with the principle ‘one law for one people’, that it may produce substantive and/or procedural injustice; that it may be used to entrench unjust power relations within faith communities; that it cannot be adequately policed; that its secular enforcement violates disputants’ rights to religious freedom; and that secular recognition of it promotes isolation and non-integration among faith communities. The next chapter presents the counter-arguments e.g. that religious arbitration is a secular religious freedom imperative; that it often resolves disputes better than secular adjudication by civil courts; that it is needed to resolve religious problems; that its secular recognition helps moderate and integrate religion; and that it promotes value-sharing which enriches both public policy and discourse. The final chapter contains concluding thoughts. The author is ‘supportive of the idea of religious arbitration’ - ‘secular society benefits in many ways from allowing religious communities and their members to contractually resolve their commercial and family law disputes’ in respecting individual autonomy and in being sympathetic to multicultural values. However, there are limits - secular society must ensure that: people voluntarily agree to religious arbitration; religious arbitrations are limited to commercial matters and do not ‘tread on the unique police powers’ of wider society; and due process is followed.

Three minor criticisms may be made. First, as to the breadth of the data studied: for the Jewish experience, the book focusses on the Orthodox Beth Din of America. It would have been good to see how the other Jewish traditions address the same issues - Conservative, Reform, Liberal and Progressive Judaism have their own particular halakhic traditions and dispute-resolution structures. Secondly, there is no systematic treatment of use of informal dispute-resolution norms and processes within Christian churches under their formal regulatory instruments, including arbitration (particularly in light of the Statement of *Principles of Christian Law* issued by an ecumenical panel in Rome in 2016 with its section on dispute resolution). Thirdly, it might have been useful to offer direct evidence of the experiences of the users of religious arbitration.

In sum, this is an important book and an invaluable contribution to our understanding of religious arbitration in particular and the wider issues which this raises for the administration of religious law, the exercise of religious freedom under civil law, and the value of social cohesion within the pluralistic societies which it treats. It is also a beautifully

written book, highly stimulating, very accessible, amply footnoted, and carries an impressive array of pertinent civil court decisions. It is hoped that the book will be used in debate in the United Kingdom around, for instance, the Independent Review into the Application of Sharia Law in England and Wales, presented to the UK Parliament by the Secretary of State for the Home Department, in February 2018.

NORMAN DOE