

Bizos commenced practice at the Johannesburg Bar in 1954, a time when advocates of the rule of law and fundamental human rights were persistently harassed by the apartheid regime, accused of being 'fellow travellers' with 'communists' and 'terrorists'. Bizos received some of his earliest briefs from Mandela and Tambo, many of which involved defending Black Africans against violations of the oppressive pass-laws. When Mandela himself, together with nine other leaders of the African National Congress (ANC), was charged with offences including sabotage and terrorism in 1963 — offences punishable by death — Bizos was briefed together with Bram Fischer SC to appear for the defence. Infamously, the trial resulted in Mandela's conviction and sentence to life imprisonment on Robben Island, although the accused were all spared the death penalty. During the apartheid years, Bizos was also briefed to appear at the inquest into the death in custody of Steve Biko, the defence of leaders of the United Democratic Front against capital charges of treason, and the defence of leaders of the ANC's armed resistance movement, Umkhonto we Sizwe, against charges of sabotage, among many others.

As personal legal advisor to Mandela, Bizos played a critical role in South Africa's transformation to a constitutional democracy. In addition to acting as a 'conduit' between the ANC leaders imprisoned on Robben Island and those, such as Oliver Tambo and Joe Slovo, in exile, Bizos was appointed a member of the ANC's Legal and Constitutional Committee, playing what Mandela describes as an 'important role in our country's Bill of Rights as well as the shaping of its new constitution'. Critically, Bizos led the team which appeared before the newly formed Constitutional Court to argue, successfully, for the certification of what is regarded as one of the most progressive and transformative constitutions in the world.

Bizos has continued to contribute significantly to human rights and social justice in post-apartheid South and southern Africa, appearing for the families of many murdered ANC and

South African Communist Party activists before the Truth and Reconciliation Commission and also leading the team which successfully challenged the death penalty as incompatible with the rights to life and human dignity and the prohibition on cruel, inhuman or degrading treatment or punishment. Bizos describes the latter case as the 'most significant case I have ever argued'. It has been described by legal academics as 'the most substantial cornerstone of the Constitutional Court's jurisprudence', marking 'a powerful indication of the court's intention to part ways from the old order' and affirming the supremacy of 'the rights to dignity, equality and life'. In 2004, Bizos also led the team that successfully defended Morgan Tsvangiri, leader of the Zimbabwean opposition Movement for Democratic Change, against conspiring to assassinate President Robert Mugabe.

Bizos' life has, indeed, been an odyssey to freedom. This book is an extraordinary and compelling account of an extraordinary life. It is a book that speaks to the past, present and future. It is a warning against strict legal positivism and conservatism, an affirmation of the importance of agitation and dissent to progress, and, perhaps most critically to our times, affirms the importance of human rights as a bulwark against discrimination, oppression and executive excess.

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### **ACTING ON CONSCIENCE: how can we responsibly mix law, religion and politics**

Frank Brennan, University of  
Queensland Press, 2007, 280 pp,  
\$23.95

Frank Brennan is a Jesuit priest, professor of law at two Catholic universities in Australia, and both a political activist and theorist. He has written several books on legal and political issues in Australia, served as adviser to the Australian Catholic bishops on matters relating to Aboriginal land rights and has been actively involved on numerous other political fronts (such as the rights of asylum seekers). Clearly, he is well-positioned and qualified to write on

the proper role of religion in the politics of a liberal democratic society like Australia. *Acting on Conscience* contains his reflections on the legitimate place of religious belief in the constitutional structure and political life of a pluralist democratic society. His discussion is far from being purely abstract and theoretical; it is practically anchored in the analysis of concrete issues from Australian and US politics (including, amongst others, abortion, stem cell research, same-sex marriage, the Iraq war, and Indigenous land rights).

Of course Brennan, being a Catholic, is mainly concerned with those issues that matter to the mainstream Christian churches, and with the actions and ideas of church leaders and members on these issues. Although he briefly mentions Muslim communities in Australia, he does not say much about their specific situation and concerns. Even his discussion of the Iraq war is mostly about criticisms and interventions by Christians on the basis of Christian just war theory. You will not find in this work any sustained and focused inquiry into how traditionally Christian polities like Australia should deal with Islamic and other non-Christian religious communities in their midst. It only superficially glances at what is, after all, a matter of major current concern to those western democracies, including Australia, still mired in the US-led 'global war on terror' in Iraq and elsewhere.

Brennan's main message, however, is of general application. It is that, in democracies, both church and state must recognise and respect the primacy of the individual conscience. He denies that the public forum of democratic debate and policymaking must be purged of religious beliefs and motivations. We have, he says, moved beyond the view that the public sphere must be free of religious interventions and influence. The religiously motivated are just as entitled as anyone else to argue their case on particular matters in the public sphere, and attempt to persuade their fellow citizens to agree with their views. What they are not entitled to do is to try to impose their conception of truth and goodness on their fellow citizens against their will, or in violation of their equal rights, human

dignity and freedom of conscience. The place of religion in the public sphere is properly circumscribed by the rule of law, an independent judiciary and other checks and balances characteristic of liberal societies, and the recognition of the universal human rights entrenched in international law and national Bills of Rights. (In this book, contrary to his previously-expressed opinion, Brennan says that Australia needs a Bill of Rights.) His basic point is that the role of religion in the public sphere is constrained by the equal liberty of conscience of all democratic citizens, religious and non-religious alike. From the perspective of liberal democracy as well as religion itself, the individual conscience has primacy.

But aside from the public sphere, within churches and religious communities themselves, the primacy of the individual conscience means that the members of each religion are entitled to pursue their visions of truth and goodness free from interference by the state, so long as they don't violate the equal right of everyone else. Indeed, every citizen enjoys this entitlement. Brennan himself says, 'Not all outlooks on life are equal. But in a democracy where the dignity of each citizen is respected, the different outlooks on life are equally deserving of guaranteed

non-interference and non-discriminatory agnosticism by the state, provided those enacting their outlooks on life do not interfere with the basic rights and dignity of others'. Sounds good; but there are problems. What should happen when a religious community curtails the rights and acts against the best interests of (some of) its own members, with their consent?

To illustrate, we can consider one of the outlooks on life that Islamic communities in western democracies might wish to enact. Some might wish to set in place structures of community and family life that involve a degree of subordination of women to men that most westerners would find intolerably unjust. They might believe that their religion obliges them to educate their daughters, in their own schools, to accept lesser rights and status than men. Is Brennan saying that a democratic state must allow and even facilitate this? Or should the state at least insist on a curriculum that teaches the 'equal dignity' of men and women? Perhaps Brennan would argue that anything less would violate the 'universal right' of female Muslim citizens to equal dignity. But within these Islamic communities both women and men, mothers and fathers, daughters and sons, might overwhelmingly agree that a separate, narrow and secondary role for

women is divinely ordained and must be followed. If Brennan's real position on this is to cleave to the western human rights line, wouldn't this contradict his express commitment to freedom of religion?

A similar sort of problem can arise with regard to Christians in the traditionally Christian western democracies. Should fundamentalist Christian schools be allowed to teach their students that creationism (or so-called intelligent design) is the correct account of human origins, rejecting scientific evolutionary theory entirely? If Brennan answers, 'No, this would violate the rights of those Christian students to a properly scientific education', wouldn't this response compromise his apparent commitment to the freedom of religions to enact their own outlooks on life within their own communities?

Despite these and other problems, Brennan has given us a thoughtful and valuable contribution to Australia's ongoing conversation about religion and politics, church and state.

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## MENTIONS

### Recidivism lower for drug court 'graduates'

New research by the Australian Institute of Criminology (AIC) has shown positive outcomes for drug-dependent offenders who have taken up the opportunity for rehabilitation through the Queensland drug court program. For more information, visit [www.aic.gov.au](http://www.aic.gov.au)

### Reach out for Law Week

Victoria's Law Week will be held from 12 to 18 May 2008. With a theme of "Reaching Out", events and activities will focus on people with special needs, and those who may find it difficult to access legal information and services such as rural Victorians, seniors, youth, Indigenous Australians and multicultural communities. For more information, go to [www.victorialaw.org.au](http://www.victorialaw.org.au)