Constitutions and Religious Freedom

Many of us take for granted the idea that the right to religious freedom should be protected in a free, democratic polity. However, this book challenges whether the protection and privilege of religious belief and identity should be prioritized over other rights. By studying the effects of constitutional promises of religious freedom and establishment clauses, Frank B. Cross sets the stage for empirical questions that examine the consequences of such protections. Although the case for broader protection is often made as a theoretical matter, constitutions generally protect freedom of religion. Allowing people full choice in holding religious beliefs or freedom of conscience is central to their autonomy. Thus, freedom of religion is potentially a very valuable aspect of society, at least so long as it respects the freedom of individuals to be irreligious. This book tests these associations and finds that constitutions provide national religious protection, especially when the legal system is more sophisticated.

Frank B. Cross holds a joint appointment as the Herbert D. Kelleher Centennial Professor of Business Law and Professor of Law at the University of Texas. His scholarship traverses several fields, including descriptive and normative studies of judicial decision making, the economics of law and litigation, and traditional policy and doctrinal issues in administrative and environmental law. Since 1998, he has published more than twenty articles in various publications, including the *Yale Law Journal*, *Cornell Law Review*, *New York University Law Review*, and *Columbia Law Review*. 
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Constitutions and Religious Freedom

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Frank B. Cross is known for his straightforward and direct approach to big questions, and this book is no exception. Indeed, this book launches a frontal attack on not one, but a series of weighty questions that have likely intimidated less ambitious scholars. In so doing, he unsettles conventional wisdom and opens productive avenues into the study of constitutions and religion that we will be traversing for years to come.

Many of us take for granted the idea that the right to religious freedom should be protected in a free, democratic polity. Not Cross, who wonders why we would protect and privilege a religious basis for beliefs and identity over any other. Cross’s questions startle: Of how much social or material value is religious freedom, really? This is a provocative and arresting beginning, and it sets the stage for a set of empirical questions that he answers clearly and succinctly in subsequent chapters.

The empirical chapters unfold in a highly methodical and organized fashion as he builds the scaffolding for his core question: Does religious freedom, once it is promised in higher law, yield real de facto freedom? This question has been at the heart of constitutional analysis at least since James Madison’s concern about mere parchment barriers. Cross is highly adept and resourceful in his analysis of relevant data on the question. He leads us through the meaning of religious freedom – which we may have thought we knew – and picks
apart its various manifestations and observable attributes. In the end, the question is whether constitutional guarantees enhance religious freedom over and above a set of other predictors such as the country’s prevailing religion, its relative level of democracy, its rule of law, and its per capita GDP. I know Cross’s answer here, but there is no reason to spoil the ending.

For those new to the intersection of religion and constitutionalism, Cross’s book is a comprehensive and discerning guide. The sad reality of scholarship is that many authors, because of either impatience or arrogance, read the existing scholarship with just enough attention to launch an idea. Cross, by contrast, seems to have devoured the last thirty years of empirical and theoretical work on the topic with gusto, and has left behind a beautifully curated tour that is anything but narrow and superficial. This is a book that requires a pencil for marginalia and, perhaps, a credit card or a library card handy: Cross leaves no question about where to go for further reading and provides ample inspiration for such.

Zachary Elkins, co-editor

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