

#### STATE NEUTRALITY

The state is legally required to be neutral towards religion, but in many countries it is increasingly anything but. This book conducts a comparative legal analysis of the church–state relationship within and between western countries – including the USA, France and Israel – that are key players in international and domestic dynamics in which religion and religious conflict take centre stage. It analyses how government accommodates diversity, how policies of multiculturalism and pluralism translate into legislation, the extent to which they address matters of religion and belief and what pattern of related issues then come before the courts. Finally, it considers how civil society and democracy in general can maintain a balance between the interests of those of different religions and beliefs and those of none. In this illuminating study, Kerry O'Halloran shows how the relationship between religion and government affects civil society and the functioning of democracy in North America and Europe.

Dr Kerry O'Halloran is a qualified lawyer, social worker and academic who often reports to government and sits on government boards. Now retired, he was previously Adjunct Professor at the Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, Brisbane. His recent publications include *Religious Discrimination and Cultural Context* (2017).



# State Neutrality

THE SACRED, THE SECULAR AND EQUALITY LAW

KERRY O'HALLORAN





## **CAMBRIDGE**UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India
103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781108722995 DOI: 10.1017/9781108674430

© Kerry O'Halloran 2021

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2021 First paperback edition 2022

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data
NAMES: O'Halloran, Kerry, author
TITLE: State neutrality: the sacred, the secular, and equality law / Kerry

O'Halloran, independent consultant.

DESCRIPTION: Cambridge, United Kingdom; New York, NY: Cambridge University Press, 2020. | Includes bibliographical references and index.

IDENTIFIERS: LCCN 2020020933 (print) | LCCN 2020020934 (ebook) | ISBN 9781108481595 (hardback) | ISBN 9781108722995 (paperback) | ISBN 9781108674430 (epub) SUBJECTS: LCSH: Church and state. | Ecclesiastical law. | Religion and state. | Freedom of religion. | Secularism. | Laicism. | Equality before the law.

CLASSIFICATION: LCC K3280 .037 2020 (print) | LCC K3280 (ebook) | DDC 342.08/52-dc23 LC record available at https://lccn.loc.gov/2020020933 LC ebook record available at https://lccn.loc.gov/2020020934

ISBN 978-1-108-48159-5 Hardback ISBN 978-1-108-72299-5 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



To Elizabeth



### Contents

Acknowledgements		page ix
	Introduction	1
	PART I BACKGROUND	
1	State Neutrality: Background History, Concepts, Definitions and Principle	9
2	Civil Society: Pluralism, Multiculturalism and the Church–State Interface	45
3	International Treaties, Conventions, Protocols, Courts and the European Court of Human Rights Rulings	74
	PART II THE BENCHMARK OF STATE NEUTRALITY: CONTRASTING APPLICATIONS	
4	The United States of America: The Church-State Wall	143
5	Canada: Bijuralism	201
6	England: The Established Church	250
7	France: Laïcité	308
8	Germany: The Vaterland	357
9	Israel: Halakha and Zionism	398



viii	Table of Contents	
	PART III TOWARDS A MORE STABLE CIVIL SOCIETY	
10	Themes of Commonality and Difference	449
11	State Neutrality: A Work in Progress	480
	Conclusion	500
Index		503



### Acknowledgements

This book was built on foundations laid by earlier publications, including The Church of England: Charity Law and Human Rights (Springer, 2014); Religion, Charity and Human Rights (Cambridge University Press, 2014); Religious Discrimination and Cultural Context (Cambridge University Press, 2018) and Human Rights, Religion and International Law (Routledge, 2019). Given the not dissimilar subject matter and related case law, focused on some of the same jurisdictions, there is inevitably a degree of overlap and I thank the publishers concerned for their understanding. I am mindful of the very many friends and colleagues whose advice, contributions and support along the way have been invaluable.

Particular thanks are due to those who offered comment on draft chapters: Frank Cranmer (Research Fellow at the Centre for Law and Religion, Cardiff, and Director, Central Lobby Consultants, London); Gerhard Robbers (Emeritus Professor at University of Trier, Germany); Gwénaële Calvès (Professor of Public Law, University of Cergy-Pontoise, France); Michael Berenbaum (Director of the Sigi Ziering Institute, American Jewish University of Judaism, Los Angeles); Frank Ravitch (Professor of Law and Walter H. Stowers Chair in Law and Religion, Michigan State University); Richard Moon (Professor of Law, University of Windsor, Ontario) and Matthew Harrington (Professeur, Faculté de droit, Université de Montréal). It was a privilege to work with you; your thoughtful contributions and encouragement have meant a lot and this book and its author would have suffered without them.

I am very thankful to Cambridge University Press for commissioning the book and for the editorial diligence that has seen it through to completion. Responsibility for any mistakes, inconsistencies or other faults, and for all views expressed, must rest exclusively with me.

As always, Elizabeth, I am hugely grateful to you for everything, including the sacrifices you made that allowed me to get this done.