
But There Is No Conceptual Level Playing Field! Challenges to Nelson Tebbe's Social Cohesion Approach to Religious Diversity

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Nelson Tebbe's *Religious Freedom in an Egalitarian Age* addresses an important political ethical issue: namely, the question how conflicts between religious freedom and equality should be resolved, as a matter of law. Such conflicts include, for instance, the refusal of religious business owners to provide services to same-sex couples, public officials objecting to same-sex marriages for religious reasons, and matters of state (de)funding of religious organizations (e.g., adoption agencies) that discriminate on the basis of LGBT status. Tebbe identifies two more specific questions that he aims to answer in his book. First, we need to know how we can attain warranted positions on questions of religious freedom—that is, what we can or must do, how we should reason and argue about these matters. This is the methodological component of the book. Second, Tebbe asks how particular legal issues should be resolved. This is the substantive component of the book (8). I focus on the methodological component here, and my thoughts and comments are situated in the context of current debates about religious diversity and the role of religions in the public domain in many European societies. The fact that my considerations are informed by

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a specific social and political context where matters of religious freedom and equality are often related to debates about immigration is important, and it can help to appreciate strengths, but also to recognize limitations of Tebbe's approach.

Tebbe proposes a social coherence approach for the analysis of issues concerning religious freedom, equality, and civil rights. Roughly, and along general lines, the social coherence approach suggests that people should look for a solution for a specific problem "that fits together with their existing judgments (about concrete cases) and principles (that abstract from them)" (9). Tebbe identifies and elaborates on four such principles: avoiding harm to others; fairness to others; freedom of association; and government nonendorsement. Together with judgments and other insights from previous cases, these principles function like nodes (with different grades of normativity) in a multidimensional web within which the process of reflecting on a problem takes place. This process tests various solutions and searches for harmony between existing judgments and familiar principles, but it also submits given intuitions and convictions to critique and possibly revises them in light of new insights. Finally, it produces conclusions that are warranted in the sense that they do not rely "on raw power contests" (11), but are backed by reasons (26). A strength of such an approach is indeed, as Tebbe claims, that it does not depend on a specific (ethical or legal) school of thought; it is "thin and ecumenical" (9) and promises to be able to appreciate arguments from different sides, a demand that Tebbe formulates as a requirement for any approach that aims at providing "a stable, defensible foundation for the future of both free exercise and antidiscrimination law" (5). My critical observations tie in with Tebbe's claim that the social coherence approach can deal with views and arguments from different parties evenhandedly, and that it can disable existing power contests and regimes where laws affecting religious freedom and equality are concerned.

From a European perspective, it is very remarkable that almost all cases in Tebbe's analysis—that is, those that serve as "nodes" of the web within which the process of reflecting upon tensions between religious freedom and equality takes place—concern one or another branch of Christianity. Only one non-Christian case is mentioned several times, *Holt v. Hobbs*, a case that concerns a Muslim prison inmate who was allowed to grow a beard for religious reasons. Compared to many cases involving Christian litigants, the systematic function of *Holt v. Hobbs* is insignificant for Tebbe's analysis. This near absence of cases involving the religious freedom of non-Christian believers is noteworthy, since it allows Tebbe not to include into the analysis an element that dominates European debates

about religious diversity, freedom of religion, and equality: namely, the construction of certain religions (especially Islam) as foreign, as entities that do not really belong to “our culture,” while Christianity is understood as part and parcel of the “identity” of countries like Italy, Germany, or the Netherlands, and of European culture in general. Evidence of differences between the relations of different religions to the history and culture of a particular society, and of the political use of such differences, can be seen, for instance, in controversies about the construction of mosques with minarets or the amplification of the Islamic call for prayer via loudspeakers (Miller 2016; Tamimi Arab 2017). The permeation of the constitutional state by conceptions of the good, which in the European context include culturalized forms of Christianity, can put members of minorities in disadvantaged positions, since some ways of life are normalized while others are marginalized or even stigmatized. Consequently, historically oppressed groups such as women, people of color, or LGBT persons have had to struggle *against* existing legal and institutional orders to be recognized as full and equal members of society (Habermas 1998, 215–20).

Tebbe’s project starts where one such struggle has achieved its goal, at least partially: equal rights for LGBT people. Traditional Christians and other religious people may see such changes as evidence of the decreasing influence of religion on the legal and institutional order of their society, and some believers claim that their religious freedom is unduly restricted: for example, when they are no longer allowed to discriminate against people on the basis of their LGBT status when they rent out wedding venues to the public. Tebbe’s social coherence approach does indeed provide warranted answers to many complex questions in this field, as the impressively thorough analyses of numerous cases in the third part of his book demonstrate. However, seen from a European perspective, where questions regarding religion and equality are often tied to issues of immigration, a shortcoming of the book is that Tebbe’s approach seems to be based on an understanding of religious diversity that means a number of people and groups with different beliefs, practices, traditions, and values coexist and operate at least in principle on a level playing field when it comes to morally and politically controversial issues. This may possibly be the case in the examples Tebbe includes in his analysis. However, it is important to notice that particular conceptions of the good not only permeate formal institutions of a society (including the legal order), but also and more fundamentally affect basic concepts and principles, such as “religion” and “religious freedom,” respectively. Scholars of religion and secularity have convincingly argued that these terms and principles are informed by specific understandings of “good” and “proper” religion that

are heirs to specific historical circumstances, namely the fragmentation of Christianity in Europe and the emergence of nation states in the post-Reformation era, and colonialism and the missionary encounter over the subsequent centuries (Keane 2007; Nongbri 2013). Consequently, ethical and legal modes of reasoning that rely on specific concepts of religion or religious freedom have difficulty adequately understanding and dealing with forms of religion and religious subjectivity that differ from culturally dominant understandings of religion—as is the case, for instance, for some elements of Islamic traditions that understand religion primarily as embodied practice (see, e.g., Asad 2003; Mahmood 2006, 2009). These insights should be used to examine to what extent Tebbe’s social coherence approach can achieve his goal to offer a method that is able to include and appreciate arguments from all sides that are involved in a conflict between religious freedom and equality, and to exclude “raw power contests” (11). Are we indeed able to adequately understand and include into an evenhanded analysis the views and arguments of people whose religion is not familiar to and possibly considered “foreign” and “different” or even morally suspect? Similar questions can be asked in many contexts for people who do not identify with socially dominant categories regarding gender and sexuality.

I do not want to argue that Tebbe’s social cohesion approach is bound to fail in this regard. Rather, I want to point out there is a danger that the power relations Tebbe wants to disable are invisibly incorporated into seemingly neutral categories rather than being absent from the social cohesion approaches he advocates that rely on existing, familiar, and widely shared judgments and principles. Tebbe is very clear that he treats the tensions between religious freedom and equality as a matter of law, and my criticism primarily addresses fundamental issues that are more related to the study of religion and to philosophical questions. But still, a fair and evenhanded analysis requires a rigid and thorough analysis of religious diversity and cultural and religious minorities including (conceptual) power relations and other traces of the colonial, religious, and hetero- and cis-normative history and heritage of contemporary liberal-democratic societies. The conceptual tools people use in their normative reasoning form an important part of this. At least in Europe there is a threat that equality is selectively positioned against religious freedom, not to strengthen the rights of LGBT people but to foster an anti-liberal cultural homogeneity and nativist forms of nationalism. This can be seen in controversies about, for instance, Muslim men and women refusing to shake hands with the opposite sex and exemptions from compulsory swimming lessons inclusive of boys and girls (Plessis 2017), and by tendencies

to politically instrumentalize LGBT rights especially against immigrants (Mepschen, Duyvendak, and Tonkens 2010). Tebbe's approach can help us to even identify and understand such problems if it is amended by sharper and more social-critical methodological tools than those that are included in the social cohesion approach that he proposes in *Religious Freedom in an Egalitarian Age*.

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