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# CHAPTER 1: INTRODUCTION

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**Kathryn O’Sullivan, ‘Introduction’ in K O’Sullivan (ed) *Minority Religions under Irish Law: Islam in National and International Context* (Brill: Leiden, Netherlands; 2019) 1-4**

The legal protections that are afforded - or, in many cases, are not afforded - to religious minorities right across the world are attracting increased attention. Although concern for the plight of religious minorities is certainly not confined to Western democracies, nor is it invariably related to the rapidly growing Muslim communities in such countries, migration patterns across, in particular, the Twentieth Century, from Muslim majority countries to Western, usually Christian majority, countries has in no small way contributed to placing the spotlight on these protections.

Human migration is by no means a new phenomenon. It is one with which Ireland has long been intimately associated. However, while Irish history tells the often sad tale of the millions of our emigrants who left our shores in search of a better life abroad, it is only in the past quarter of a century that we have seen relatively large scale inward migration. This migration of peoples into Ireland has brought our approach to the protection of minority religions into much clearer focus.

Ireland has long been a bastion of Roman Catholicism. Since the early-Fifth Century (and certainly since the arrival of St Patrick in 432AD), Catholicism has been the primary religion of the majority of the people. Although adherence to the Roman Catholic faith has dwindled in recent times, 78.3% of the population continue to identify as Roman Catholic according to Census 2016.<sup>1</sup> In this context, and as will be explored in this volume, Irish law and society was, until very recent times, strongly influenced by Christian (specifically Catholic) ideals and mores. How new minority, especially non-Christian, religions fit into this social and legal context is a question well worthy of study and reflection. In particular, how the fast growing Muslim community in Ireland are accommodated under Irish law is of specific importance. Islam now represents the third largest religion in the country. According to the Central Statistics Office, the community has grown by almost 30% since 2011 alone, with

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<sup>1</sup> Central Statistics Office, *Census 2016 Summary Results - Part I* (April 2017) 72. This was down from 84.2% in 2011.

approximately 63,400 respondent identifying as Muslim in 2016.<sup>2</sup> This figure is up from just 3,873 in 1991 census, and 19,147 in 2002.<sup>3</sup>

With this in mind, this author sought and secured funding to hold a one-day international symposium at the School of Law, University of Limerick, Ireland. Supported by the School of Law and the University’s International Activity Challenge Fund, the research event brought together, for the first time, key Irish legal researchers conducting research on issues of special relevance to minority religions and, in particular, to the Muslim community in Ireland. Influential international scholars were also invited to present and provided valuable insights. This volume represents the contributions of a number of the speakers at the symposium and is an important addition to the literature in the field.<sup>4</sup>

The volume is divided into three main parts. Part I is entitled ‘Accommodating Minority Religions: The International and Irish Context’ and comprises two chapters both of which serve to provide the broader framework for the protection of minority religions in Ireland. The first chapter in this section is contributed by Professor M. Christian Green of Emory University, USA. Professor Green provides a global and international overview of what she suggests is an ‘emerging consensus’ on the importance of minorities, especially religious minorities. Having considered the emergence and development of rights to freedom of religion or belief (FoRB) and the rights of other minority groups as group rights, she goes on to highlight political, legal and governmental initiatives in a number of countries which have been directly or indirectly aimed at managing minority religions. Building on this platform, she considers what she describes as ‘overarching and transnational’ themes in law and religion which may be influencing these developments. The second chapter in this Part is delivered by Dr Eoin Daly, Lecturer of Law at the National University of Ireland, Galway. It focuses the discussion in on the protections afforded to religion generally – and religious minorities in particular – under the Irish constitution, *Bunreacht na hÉireann*. In his contribution, Dr Daly argues that the Irish constitutional framework concerning religion is characterised, in large part, by indeterminacy rather than coherence. He highlights how the Irish Constitution can be seen to simultaneously appeal to opposing principles or worldviews concerning the relation of State and religion with case law effectively oscillating between those two views resulting in somewhat unpredictable results for religious minorities.

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<sup>2</sup> Central Statistics Office (n 1) 72.

<sup>3</sup> Central Statistics Office, *Census 2011 Profile 7: Religion Ethnicity and Irish Travellers* (Dublin: Stationary Office, 2012) 16. For a discussion of Irish converts to Islam, in particular, women converts, see Yafa Shanneik, ‘Muslim Women in Ireland’ in Oliver Scharbrodt et al (eds) *Muslims in Ireland: Past and Present* (Edinburgh University Press, 2015) 193-215.

<sup>4</sup> For earlier compilations of research in this area, see, in particular, Oliver Scharbrodt et al (eds) *Muslims in Ireland: Past and Present* (Edinburgh University Press, 2015) and the 2011 special edition 31(4) of the *Journal of Muslim Minority Affairs* focusing on Islam and Muslims in the Republic of Ireland.

Part II turns to issues of specific concern to the largest non-Christian minority religion in Ireland – the Muslim community. Entitled ‘Islam and Irish Law: Implications for the Muslim Community in Ireland’, this Part of the volume opens with a contribution from Dr James Carr of the Department of Sociology at the University of Limerick, Ireland. Providing the social context for the discussion which follows, Dr Carr provides some background on the development of the diverse Muslim communities residing in Ireland today before drawing on the 2016 Census to provide insights on the make-up of these communities in 21<sup>st</sup> Century Ireland. He wraps up this contribution with a brief consideration of contemporary issues and debates relating to Islam and Muslim communities in Ireland.

Next, Dr Claire Hogan BL, interrogates the accommodation of Islam under Irish employment, education and healthcare law. She concludes that although litigation is not as extensive as it is in other jurisdictions, issues are beginning to crystallise. The following two chapters address issues of Islamic family law. First, Dr Susan Leahy and Dr Kathryn O’Sullivan, both of the School of Law, University of Limerick, Ireland investigate the recognition of Muslim marriage ceremonies under Irish law. Highlighting the intense discussion on the topic of Muslim marriage recognition in various jurisdictions, the chapter finds that issues regarding the status of Muslim marriages conducted within Ireland have attracted minimal attention. Taking readers through the key legislation, namely the Civil Registration Act 2004 (as amended), the chapter highlights concerns for the relatively small number of Muslim marriages registered over the past five years in Ireland and, having regard to the implications of non-recognition, asks where to next. Continuing the theme of marriage recognition, Dr Máire Ní Shuilleabháin, Assistant Professor at the Sutherland School of Law, University College Dublin, Ireland examines the treatment of Islamic marriage and divorce under Irish private international law – a key issue given, as she explain, that it ‘seems probable that there are many Muslims now living in Ireland who have previously married or divorced in a legal system based on Islamic law’. She highlights, in particular, the failure at both a domestic and European level to develop an appropriate regime for recognition of Islamic divorces. Leaving behind issues of family law, this Part closes with a comparative review of the accommodation of Islamic Finance in Irish law delivered by Dr Edana Richardson of the Department of Law, Maynooth University, Ireland. Highlighting the fact that ‘Islamic finance is one of the only aspects of Islam within Irish life that the Irish government has actively sought to address through guidelines and legislative amendments’, Dr Richardson compares the Irish approach to that adopted in the United Kingdom.

The final part of this collection, Part III, turns the focus towards Sharia Councils. Although there are no reports of such councils existing in Ireland at present, it would seem probable that as the Muslim community expands the likelihood of their emergence will increase. Entitled ‘International Perspectives on Sharia Councils: Regulation and Governance’, this Part comprises of two chapters

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contributed by UK-based academics. First, Dr Amin Al Astewani of the Law School, Lancaster University, England considers the broad approach on both sides of the Irish Sea towards the accommodation of religious tribunals generally before zoning in specifically on the regulatory model currently applied in England for governing Sharia Councils and questions whether such a model could be adopted by the Irish legal system. Dr Samia Bano, Senior Lecturer at SOAS, University of London, England, concludes the collection with her prospective analysis of the potential for institutional reform of Sharia Councils, and, in particular, the possible value and/or potential limitations of the ‘parity governance’ model.

What emerges quite forcefully from this collection is the sheer scale of the task which will be before the Irish courts, the Irish legislature and the Irish State in the years to come as it seeks to strike a balance in the recognition and/or accommodation of minority religions in the jurisdiction. While pressure has already come to bear on discrete aspects of Irish law which have a particular importance for minority religions such as the Muslim community,<sup>5</sup> this pressure is only likely to increase as Irish society becomes ever more diverse from a religious, cultural and ethnic standpoint. Deciding how we react to these changes will require hard questions to be asked and it is important that in answering, we reflect carefully and, where appropriate, learn from the experience of other jurisdictions. It is hoped that this collection will better inform these discussions in the years ahead.

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<sup>5</sup> For a broad overview of Irish law of particular relevance to the Muslim community in Ireland, see Kathryn O’Sullivan, *Annotated Legal Documents on Islam in Europe: Ireland* (Brill, 2018).