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The legal conception of "religion"

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Propositions Relating to the Dissertation

THE LEGAL CONCEPTION OF "RELIGION"

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1. Although legal terms may be built on common concepts, it does not follow that they are neutral.
2. Judges and courts generally understand religion to be primarily a matter of belief.
3. The U.K. Supreme Court's decision in *JFS* was flawed insofar as it assumed that subscription to a set of beliefs is sufficient to establish membership in a religion.
4. The Supreme Court of Israel's assumption in *Rufeisen* that determining religion by reference to beliefs is a "secular" inquiry ignores substantial evidence that the idea of religion itself, and religion-as-belief in particular, derives from early Christian apologetics.
5. Over the centuries, the political hegemony of the West has resulted in the theological basis for understanding religion as primarily a set of beliefs being largely forgotten.
6. "Religion" as a legal term of art is not neutral between religions. The difficulty with guarantees of religious freedom, is that just by employing "religion" as a category, the protection offered is biased.
7. Because use of religion as a legal term calls for line-drawing, it is best to avoid classifying conduct based on religious factors if possible.
8. The religion clauses of the First Amendment to the U.S. Constitution are hopelessly in tension with each other.
9. By equating religion with belief and conscience, the European Convention on Human Rights creates a system that privileges universalizing religions over others.
10. The Westphalian system of nation-states is based in part on the idea that religion properly occupies only the private sphere in order to preserve public temporal authority for the state.