



### WHY TOLERATE RELIGION?

BY BRIAN LEITER

Princeton University Press, Princeton, N.J., 2013.  
187 pages, \$24.95 (cloth), \$17.95 (paper).

Reviewed by Bentley J. Anderson

Brian Leiter, a professor of law and philosophy at the University of Chicago, opens *Why Tolerate Religion?* by contrasting a litigated case with a hypothetical case, each involving a claim of conscientious objection to a law banning knives and other weapons from schools. In the actual case, the plaintiff, a teenage Sikh boy, sought an exemption from the law on the grounds that his religion obliged him to carry a traditional knife, or “kirpan,” at all times. In Leiter’s hypothetical case, a teenage boy living in a rural area of the United States receives at a certain age, as part of a multigenerational family tradition, a knife from his father marking his passage to adulthood. The boy seeks to carry the knife to school, consistent with his duty to maintain “the family knife.” In the former case, the Canadian Supreme Court ruled that the boy had a right to carry the knife to school, finding that “his personal and subjective belief in the significance of the kirpan [was] sincere,” and citing the relatively low risk of harm to other students from his carrying the knife at school and the “special value multiculturalism is assigned” in the Canadian Charter of Rights and Freedoms. In contrast, Leiter concludes, no Western democracy would rule for the boy in the hypothetical case based on his sincerely held nonreligious objection to the application of the law banning knives at school. Yet, Leiter states, in the United States, as in Canada, the boy would stand a good chance of winning if he were a Sikh.

*Why Tolerate Religion?* concerns the question of whether a community should permit religious-based exemptions to laws of general applicability. Leiter juxtaposes the profiles of these two teens to highlight the longstanding deference to religious-based exemptions in the jurisprudence of Western societies, including the United States. He argues that religious-based

exemptions are not morally defensible. This conclusion has generated extensive and, in some cases, hostile responses to the book from religious groups as well as from prominent American scholars of law and religion.

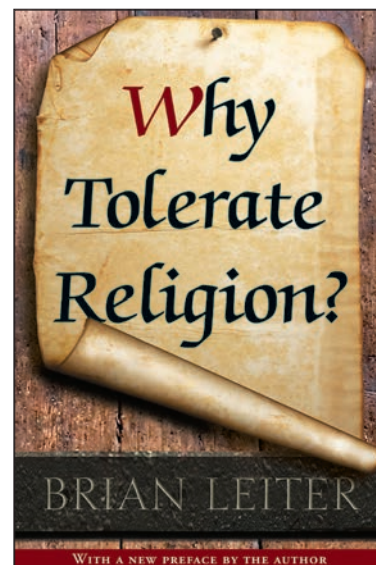
Leiter begins by summarizing several legal and philosophical positions for supporting tolerance of religious-based claims of conscience. He considers, for example, the constitutions of several Western nations, as well as the Universal Declaration of Human Rights, each of which refers not just to protecting the practice of religion, but to a broader “freedom of faith *and conscience*” (as stated in the German constitution; emphasis added). Leiter also cites the U.S. Constitution, which, though not referring to freedom of conscience, precludes the government from prohibiting the free exercise of religion.

Leiter also briefly surveys the views of Hobbes, Kant, Locke, Mill, and Nietzsche, as well as those of more contemporary philosophers, such as John Rawls, all of whom argued in favor of toleration, although on different bases. Mill’s philosophy, utilitarianism, for example, holds that toleration is a good because it maximizes human well-being by allowing people to choose what to believe and how to live, thereby making for a better life. Locke’s views, Leiter writes, can be interpreted to mean that states should tolerate conscientious objections for a practical reason: Governments do not have coercive mechanisms to change people’s beliefs, which “can’t be inculcated at gunpoint.” Leiter concludes on the basis of such philosophical arguments that a state would be justified in “suspend[ing] its pursuit of the general welfare in order to tolerate (i.e., ‘put up with’) a conscientious practice of a minority of its citizens that is incompatible with it.”

Importantly, however, Leiter explains that the net gain to a community from allowing religious exemptions from generally applicable laws derives from the legal protection it provides *on the basis of conscientiously held beliefs generally*, not on the basis of religious beliefs in

particular. He argues that religious-based claims of exemption are a subset of the broader claim of freedom of conscience, which, in the Western tradition, deserves toleration whether or not it is based on religious beliefs.

At this point, Leiter considers whether a community should “accord special legal and moral treatment to religious practices”—whether there is “any special reason” for tolerating religion. He concludes that there is no “principled reason” for doing so. Leiter points out that the benefits of religion, including making “intelligible and tolerable the basic existential facts about human life, such as suffering and death,” are outweighed by the “special potential for harm” created by other attributes common to religions. These include the imposition of “categorical demands” on believers, demands that compel certain attitudes and conduct, where the nature of those demands and their historical foundations are not subject to “the standards of evidence and reasoning we everywhere else expect to constitute constraints on judgment and action. ...” Thus, enshrining religious toleration as a basis for exemptions from laws of general applicability “is tantamount to thinking we ought to encourage ... categorical fervor.” It is on these bases that Leiter concludes that, although the Rawlsian and Millian arguments for toleration support claims of liberty of conscience, they do not neces-



sarily imply special solicitude for religious beliefs specifically; on the contrary, the latter are subsumed into the former.

After setting out his arguments for tolerating views based on sincerely held matters of conscience generally, Leiter explores the precise question posed at the beginning of the book: whether those who assert sincerely held religious beliefs as the basis for objecting to obligations imposed by a law of general applicability should be excused from compliance with that law. He starts by observing that claims of conscience “present hard evidential issues for courts,” which must distinguish between claims based on sincerely held principles and claims based on “crass self-interest.” Leiter states that, for a court, “the great practical advantage of a regime that privileges liberty of religious conscience” is that it provides a strong evidential basis—made up of “texts, doctrines, and commands, either written or passed down orally among many adherents”—on which the judge may assess the claimant’s petition. Indeed, these sources obviate the need for the court “to peer into the depth of a man’s soul” to determine the sincerity of his claim.

According to Leiter, however, to base exemptions on the degree to which the claimant adheres to the beliefs of a particular religious group poses several problems. For one, if a court is to decide the legitimacy of a claim by reference to the “communal or group traditions and practices,” then on what basis can the court distinguish between the claim of a religious group and the claim of a non-religious group, such as an animal rights group whose beliefs are also rooted in communal or group traditions and practices? Should the size of a group that subscribes to a view, or the length of time that the group has held its views, or the absence or nature of dissenting views within the group, be taken into account? In Leiter’s view, to attempt to distinguish between a religious group’s claim and that of a group that others might characterize as a movement or a fad, because its views are not mainstream, would raise practical difficulties for a court and would not provide a principled reason for a distinction.

And what about genuine claims of conscience that are individualistic? If vegan prisoners, for example, claim an exemption from a dietary regimen, should only

“[o]rganized vegans ... have legal standing, but not Henry David Thoreau or his twenty-first century analogue”?

Another difficulty that Leiter cites is what he refers to as the “Rousseauian worry about exemptions.” Some exemptions from laws of general applicability, “such as the right to wear certain religious garb, or to use certain otherwise illegal narcotics in religious rituals,” do not burden others. Some exemptions, however, shift the burden to others. For example, “if those with claims of conscience against military duty are exempted from service, then the burden (and all the very serious risks) will fall upon those who either have no conscientious objection or cannot successfully establish their conscientious claim.” Other examples that Leiter considers include exemptions from mandatory vaccinations and from zoning regulations that have the effect of restricting the location of religious institutions. Assuming, as Leiter does, that laws of general applicability advance the general welfare or the common good, then an exemption from the application of those laws results in a “morally objectionable injury to the general welfare.”

Consequently, Leiter advocates a no-exemption principle to laws of general applicability. “[I]t is not obvious,” he writes, “why the state should subordinate its other morally important objectives—safety, health, well-being, equal treatment before the law—to claims of religious conscience.” This is particularly true, according to Leiter, because “religious claims of conscience have no greater entitlement to exemptions than nonreligious claims of conscience.” But beyond the logic of that point (if not the historical or cultural support for it), the no-exemption approach would be a practical solution both to the difficulty that courts have in selecting which groups’ beliefs qualify as the basis for exemptions and to the unfairness of shifting burdens to those whose beliefs do not qualify. As Leiter concludes, it would be appropriate for a government “to say, the law is the law, and there will be no exemptions for claims of conscience, religious or otherwise.”

At the same time, Leiter acknowledges that a no-exemption policy has risks. Consider a facially neutral law whose enactment was motivated by anti-religious animus. Leiter examines France’s law

prohibiting students and teachers from wearing sectarian head-coverings, such as hijabs and yarmulkes, in public schools. The French justified this prohibition on the basis of their longstanding tradition of “laïcité,” or encouraging people meeting in a public space to interact as persons and not on the basis of religious identities. Yet, he observes, the French have “an obvious antipathy toward Muslims” and a history of anti-Semitism. For these reasons, Leiter believes that it is legitimate to question whether the prohibition on head-coverings was adopted to advance the laïcité policy or as a “subterfuge” for “not tolerating a particular religion, namely Islam.” Therefore, Leiter’s no-exemption policy would prohibit exemptions only from laws of general applicability that were enacted “with neutral objectives” and not from those whose enactment was motivated by religious intolerance.

The last major point that Leiter makes is somewhat surprising from a First Amendment standpoint. He considers whether a state’s establishment of a religion (for example, as the official religion of the nation) necessarily results in the coercion of nonbelievers into adhering to the precepts of that religion. Leiter observes that, just as a government may place its imprimatur on particular values, such as by committing financial resources to support scientific research rather than research into “intelligent design” theories, a government could also establish a religion. Furthermore, Leiter asserts that there is “nothing in the principle of toleration [that] is incompatible with state establishment of religion”; that is, establishment of a religion need not result in the coercion of nonbelievers, so long as the state ensures that nonreligious claims of conscience are not burdened. Leiter considers the legal regimes of several Western democracies that have established religions but that also have “robust regimes of liberty of conscience in which a range of moral and political views find expression in the public sphere that are unknown in countries like the United States, which do not establish any religion.” In the United Kingdom, for example, the Anglican Church is the official religion of the nation, yet “there are no religious tests for the holding of public office; sectarian religious schools in non-Anglican traditions actually receive public funding; other religious traditions are guaranteed

the right to practice their religions; and no non-Anglican practices are criminalized or otherwise suppressed.” In principle, therefore, there should be “no incompatibility between state endorsement of a Vision of the Good—religious or irreligious—and the demands of principled toleration.”

Apart from its discussion of the Canadian kirpan case, *Why Tolerate Religion?* does not offer any substantive analyses of the statutes, regulations, or cases of the United States or foreign nations. Moreover, Leiter’s approach is broadly ahistorical, as it does not consider the religious experiences or traditions of those who drafted, debated, and voted to adopt the U.S. Constitution or the First Amendment. Nor does Leiter consider the cultural context in which specific religious beliefs have developed or how adherents of those beliefs have interpreted their obligations. Instead, he presents an original and compelling argument from logic, with copious references to political and moral philosophers, questioning several important and longstanding assumptions regarding religious liberty. These assumptions include that religious beliefs deserve special legal or judicial solicitude, beyond the solicitude that claims based on freedom of conscience generally merit. In other words, the substance of his argument—what he asks readers to think about—does not generally rely on legal, historical, or cultural premises, which means that those premises do not distract from his argument. Perhaps Leiter’s approach, based on logic, could undermine the constitutional and statutory arguments that have been successfully asserted in the United States and elsewhere to favor religious-based beliefs over other sincerely held claims of conscience. This might help explain why *Why Tolerate Religion?* has generated such an extensive critical response. ©

*Bentley Anderson, the principal of Anderson PLC (www.anderson-plc.com), represents companies and investors in connection with domestic and international corporate, transactional, regulatory, and commercial matters, with a particular focus on the operation, governance, and regulation of investment advisers, broker-dealers, and private and registered funds. You may contact him at ben@anderson-plc.com.*

## NOT FOR TURNING: THE LIFE OF MARGARET THATCHER

BY ROBIN HARRIS

St. Martin’s Press, New York, NY, 2013.

454 pages, \$35.00.

Reviewed by John C. Holmes

Margaret Thatcher (née Roberts) was born and raised in a flat above her father’s modest grocery store in Grantham, a small town in England that she seldom visited in later life. But her father, Alf, who had been raised poor, was successful enough to buy a second shop and then expand his first, and he also dabbled in local politics. Her mother, Beatie, established a successful seamstress business that did not interfere with her cooking meals and keeping house. Unlike her four-year-older and plainer sister, Muriel, Margaret was close to her father and admired his hard work, integrity, thriftiness, and interest in politics. Along with a Methodist upbringing, these values would mold Margaret’s life in politics.

### Upbringing

Born in 1925, the future prime minister engaged in her first political activity at age 10, folding leaflets for the local Conservative Party’s candidate for Parliament. Margaret was an avid reader, including of polemical attacks on the appeasement of Hitler. During World War II, she was intensely patriotic and detested Hitler and other dictators. Her admiration for Churchill was unwavering, yet, Robin Harris writes in *Not For Turning: The Life of Margaret Thatcher*, “during the Falklands War, she never tried to adopt a Churchillian manner,” and “[i]n her speeches as prime minister, she refrained from quoting him, for fear that she might be thought to be bracketing herself with her hero.” She enrolled in Oxford University in 1943, majoring in chemistry, which, Harris writes, was an unusual choice for a girl, “[b]ut Margaret already knew that she wanted to pursue a career and chemistry offered the prospect of a future job in industry.” Soon she became much more interested in law, “[b]ut even law was only a means to an end and that end was a parliamentary seat.”

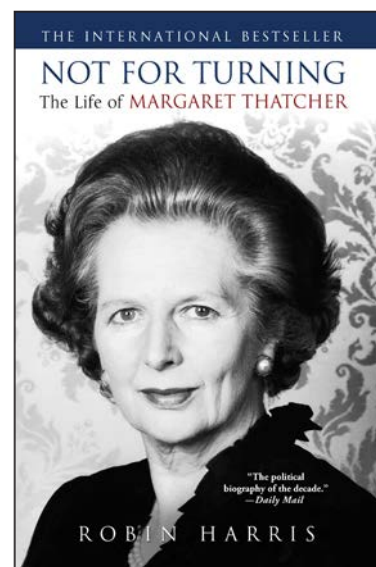
At age 24, Margaret sought to run for Parliament, and the press focused on her sex, youth, and good looks. The

Conservative Party did not easily embrace her candidacy, but many were soon impressed by her forceful, outspoken, and persuasive arguments, and she was selected to run. Meanwhile, however, Churchill and the Conservatives, having triumphed over Hitler, were thrown out of office by the socialist Labour Party government, and Dartford, in which Thatcher ran, was heavily Labour. The Conservative Party knew that Thatcher’s loss was a foregone conclusion but believed that she might be a future asset. She proceeded to demonstrate her energy, coolness, pluck, and ingenuity in a relentless though losing campaign.

Shortly afterward she met Denis Thatcher, who would become her husband, having suffered a painful divorce almost four years earlier. The match was a good one, because Denis, 10 years older and a millionaire, was a good provider, protector, and supporter, easily permitting Margaret to take center stage in their comfortably loving relationship. There was never any question that she was the tough, forceful, sometimes bullying, and always resilient person, while he was more withdrawn and sometimes fragile. She demonstrated her driving force, when, in addition to raising twins, she mastered law school while keeping her hand in politics.

### Parliament

In 1959, the Conservative Party won the election, and Thatcher became a member of Parliament. The party’s success was short-lived, however, as Prime Minister Harold Macmillan not only suf-



ferred from ill health but advanced some ill-conceived proposals that eventually lost him his seat in Parliament. Thatcher, however, prospered in obtaining significant positions in the Conservative Party, and she flourished by giving hard-hitting speeches that, while not Churchillian in eloquence, were persuasive and attention-getting. They made her many friends and supporters but also enemies.

Great Britain, meanwhile, was increasingly being subjected to the socialist policies of the Labour Party and supported by strong union efforts that brought about the nationalization of many industries, disruption in the economy through strikes, and increased government spending on welfare programs. Members of the Conservative Party sought to limit Labour programs and to argue against England's participation in the European Union. By 1974, through her diligent attention to and grasp of details, as well as her strong work ethic, Thatcher might have become the leader of her party but for the not-so-subtle opposition of Edward Heath, who, during most of the previous 20 years, had been either the prime minister or opposition leader.

Although Harris does little to hide his own disdain for Heath's brand of politics, Heath was a formidable figure. Harris praises Thatcher's skill in taking command of the party after the 1974 elections. Moreover, despite Thatcher's clear statements as to her intentions, few at the time saw how far-reaching the changes she proposed after her election as leader would be. "But a revolution, in all but the bloodiest sense, it certainly was. It represented a complete up-ending of prevailing assumptions. It marked a total defeat for the existing party hierarchy. It was the work of a very few bold men—and one bold woman—who risked all, and won."

### Prime Minister

Upon becoming prime minister, Thatcher made it perfectly clear that her policies would be intended to promote individual responsibility, free enterprise, fiscal integrity, and economic reform. Concerning her resolve, she "announced with cold defiance: 'To those waiting with bated breath for that favourite media catchphrase, the "U-turn", I have only one thing to say: You turn if you want to. The lady's not for turning. I say that not only

to you, but to our friends overseas and also to those who are not our friends.'"

Thatcher had done only limited foreign travel and had little intimate knowledge of other countries and international politics. Her admiration for Churchill as well as her distaste for appeasement led her increasingly to collaborate with the English-speaking world, particularly with the United States. This partnership was enhanced by her admiration for Ronald Reagan, with whose views on the Soviet Union she increasingly agreed.

Her first venture into foreign affairs was her reluctant approval, after much negotiation and pressure from outside forces, of independence for Rhodesia. Despite Thatcher's strong desire that England's former influence be restored to the extent possible, she initially considered the matter a success, given that independence seemed unavoidable. Later events would prove her wrong, as the newly named Zimbabwe would descend into a cruel dictatorship.

Her next foreign policy crisis ended more successfully. In 1982, Argentina invaded the close-by Falkland Islands, long a British colony. Having gained confidence in her own abilities, she refused to agree to Argentinian demands but instead sent an armed naval fleet along with combat troops that, in well-planned maneuvers, recaptured the islands. Although of little strategic importance, the area allowed for deep-sea oil extraction. More important to Thatcher, British pride, power, and competence had been restored with little loss of life. She was, however, disappointed in President Reagan's lukewarm and late support. Thatcher probably underestimated the importance of the longstanding American policy of support and protection of South American countries. Her obtaining even limited support from Reagan was to her credit.

Thatcher is best known, particularly in the United States, for her strong opposition to communism and closeness to Reagan in her views on foreign as well as on economic policy. Harris indicates that, not only were their views similar, but they admired each other's strong personalities and character. Thatcher was crucial in persuading Reagan and his advisers that Soviet leader Mikhail Gorbachev was a man with whom the West "could do business," as she put it. With this and other

actions, she played an important role in the eventual demise of the Soviet empire. Though she found both President Carter and President George H.W. Bush less easy to deal with than Reagan, she did her best to cement the special relationship between Britain and the United States with them.

In domestic policy, despite numerous often-bitter labor strikes and political opposition, causing frequent defeat and disappointment, Thatcher prevailed in eventually steering Britain toward less government ownership of businesses, fewer strikes, and a stronger economy with lower taxes and less inflation. Her success in these endeavors was far from guaranteed and was striking given the fact that she was the sole woman among strong-willed men, many of whom opposed her views. Harris concludes that Thatcher's policies have been subsequently fully adopted into the British system, and, in his view, for the better.

### Retirement

"Anyone who can yield great power easily and painlessly," Harris writes, "is probably ill-suited to exercise it." Thatcher did not go gentle into that good night. After a disappointing, unsuccessful, final campaign to remain as prime minister, she was ridiculed by her opposition and abandoned by many of her own party who said good riddance after her 11 years in office and during a minor recession. She sought, nevertheless, to continue to express her views and counteract what she considered backsliding. She took pleasure in foreign travel and in giving speeches, particularly in the United States where she felt welcomed; she took special pleasure being appointed trustee of the College of William & Mary. However, her years in office as well as raising two children and still doing much of the cooking had taken its toll. With a tendency to put on weight, she frequently dieted, causing her to become tipsy from small amounts of liquor, often to her embarrassment. Dementia crept in, and she had trouble remembering names of even old acquaintances. She would too frequently quarrel with Denis; fortunately, they reacquired their fondness for each other before he passed away.

### Conclusion

Harris was a speechwriter and confi-

dant of Thatcher when she was in office. Because he wrote this book after her death, he had no need to pull punches, and he doesn't. He is comprehensive and honest in describing the life of Thatcher who, in the opinion of many, stands in importance only behind Winston Churchill and Ronald Reagan in the fight against totalitarianism and for democracy and freedom in the 20th century. Harris' writing is appealing: in turn dry, witty, precise, and frank. Although American readers may not be acquainted with many members of Parliament and other British notables that Harris mentions, *Not For Turning* is a must-read for anyone interested in recent world affairs. ☺

*John C. Holmes was an administrative law judge (ALJ) with the U.S. Department of Labor for more than 25 years, and he retired as chief ALJ at the Department of Interior in 2004. He currently works part-time as an arbitrator and consultant; enjoys golf, travel, and bridge; and can be reached at jholmesalj@aol.com.*

## **THE KILLING COMPARTMENTS: THE MENTALITY OF MASS MURDER**

BY ABRAM DE SWAAN

Yale University Press, New Haven, CT, 2015.  
344 pages, \$35.00.

### **Reviewed by Christopher Faille**

Dr. Abram de Swaan, emeritus university professor of social science at the University of Amsterdam, identifies four different types of genocide. Sometimes, aware that some of his examples might fail to meet narrow understandings of the term "genocide," he uses instead the phrase "modes of mass annihilation." By any name, the activity in question has four modes, and all of them involve the targeting of a civilian group defined as alien by the dominant group, and an asymmetric, close-range murder of large numbers of people within that target group.

Note two adjectives in the last sentence of the previous paragraph. Crimes of this sort are *asymmetric* in that the targeted group is unorganized and unarmed, so

this isn't combat of any sort recognized by common language use or international law. Also, the crimes de Swaan has in mind are *close-range*. He excludes the act of dropping an atomic bomb on Hiroshima, for example. Asymmetric though it was, that action doesn't come within the scope of this study because de Swaan is interested in the psychology of someone who kills another helpless human being *whose face he can see at the time*.

Those preliminaries out of the way, it's time for a list. The four modes of mass annihilation are as follows: conquerors' frenzy, rule by terror, losers' triumph, and megapogroms.

### **Conquerors and Settlers**

For the most part, the terms explain themselves. A conquerors' frenzy, for example, is an annihilation set off or carried out by victorious troops at the expense of their defeated enemies and their now-defenseless population. De Swaan tells us, in this context, that "[t]he extermination of the aboriginal inhabitants of South America by the Spanish conquistadores even now, more than five centuries later, remains a prime example of wanton and wholesale destruction of human lives by a conquering army that encountered beings whom it considered wholly alien."

As a variant of this conquerors' frenzy, de Swaan considers "settlers' massacres." This was the more typical *North* American pattern—a situation in which settlers in a place far from the imperial center, who identify with that center, clash over land with the native inhabitants of the settled region, a clash that turns, under the right circumstances, into mass slaughter.

The contrast between a true conquerors' frenzy and the settlers' massacre variant is historically significant for a reason indicated by the very title of de Swaan's book: the "compartment" of the killing. Massacres committed by conquering troops who have come from, and who expect to return to, a foreign country are often largely ignored back home in their country, and the killers may tell themselves that they will be able to put all this behind them when they return there. These are easily compartmentalized killings.

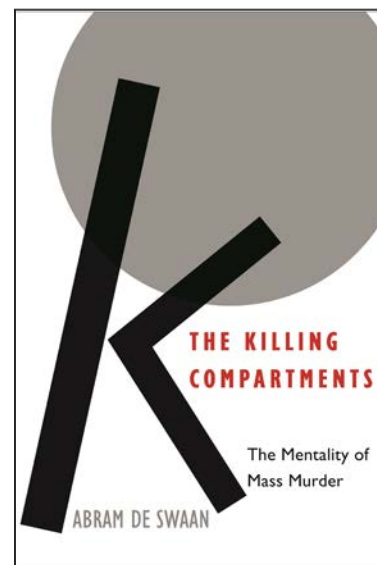
But the killers acting on behalf of a settler society against the natives cannot

compartmentalize so easily. The settlers in North America, or in Australia or other analogous places, didn't necessarily see their victims as utter aliens. In such cases, settlers quite often trade and live side by side with natives during peaceful periods, and this results both in friendships and intermarriage. The psychology by which compartmentalization occurs despite this requires explanation, and de Swaan attempts to provide it, though inconclusively.

### **Policy, Politics, and Pogroms**

Rule by terror, the second major mode of mass annihilation, is an instrument of policy. The Stalinist campaigns against "class enemies," where the enemies were characterized in a way that often had an ethnic component, is an example. The famine engineered by the Stalinist regime in the Ukraine in 1932–34, for example, killed three million people. It was a matter of policy *and* one of nationalist supremacy. "Apart from pure malice," de Swaan writes, "Stalin's intention was most likely to eliminate the peasants who still worked their own land instead of joining the collective farms, as well as to fatally weaken any nationalist strivings among Ukrainians, who, he feared, might make common cause with Poland on the other side of the border."

Three out of four of de Swaan's modes typically involve violence ordered and organized by government. The governments involved differ: the hereditary monarchy of Imperial Spain, the colonial governments (with varying degrees of effective autonomy from London in such



affairs) of the western shore of the North Atlantic in the years between 1607 and 1775, and the military dictatorship of the Third Reich. These three examples are but part of the range of difference, but they are all examples of state structures used to single out and kill targets.

The megapogrom as a mode of annihilation is a bit different. One of de Swaan's examples consists of the communal massacres in India and Pakistan after independence and partition in 1947. These massacres were neither ordered nor organized by the governments of the two new nations. The governments are not blameless, though. De Swaan says that "implicitly, and more explicitly at the lower levels, there were signals that violence might at the very least be condoned."

This example seems to defy de Swaan's original definition, for this megapogrom was in a sense symmetric. What Muslims were doing to Hindus on one side of the artificial line of demarcation, Hindus were doing to Muslims on the other. But it was extremely asymmetric in a local sense. De Swaan points out that any particular riot consisted of the dominant group assaulting defenseless civilians in their midst, burning their homes, "beat[ing] up anyone they happened to lay hands on, and tortur[ing] whomever caught their eye."

### Nazis and Jews

Many readers of this book will be most interested in the annihilation of Jews at the hands of Nazi Germany, a catastrophe that has generated a vast and ongoing body of contentious scholarship. De Swaan shares what seems to be a very general sense that the Holocaust requires and rewards special study. It is remarkable in part because it involved elements of two of de Swaan's four modes—two that seem antithetical.

Though in its final months the Holocaust looked like what de Swaan calls a losers' triumph, he contends that it began as an example of conquerors' frenzy. By the middle of July 1941, after all, the Nazi leadership was in a state of victory-induced euphoria. It controlled the entire west of Europe out to the English Channel and down to the Pyrenees and Alps. On the opposite side of each of those mountain ranges it recognized a

kindred government.

These conquerors of the west had turned their eyes east in June 1941, and the early reports from the eastern campaign were good. The German High Command divided the Wehrmacht's advancing line into three parts, assigned to "Army Groups" North, Center, and South. An anti-Soviet uprising worked in Germany's favor, and Army Group North took advantage of it. In the center of the line, by July 3, German forces had encircled and destroyed three Soviet armies near Minsk, in the middle of Belarus. Meanwhile, Army Group South became enmeshed in a ferocious tank battle: the Battle of Brody. The outcome of this battle was long in doubt, but German air support and superior co-ordination of forces brought them through it successfully. Though with hindsight we see the creation of this broad eastern front as a disastrous move for the Third Reich, it is important to remember that, when these developments were occurring, many of those wearing the uniforms of that Reich thought that the campaign was proving itself a masterpiece.

It was in that euphoric moment of the early victories of this campaign that the SS and execution squads, as de Swaan says, "with much help from the regular Wehrmacht, rounded up all the Jews they could lay their hands on, marched them to a nearby clearing in the woods, made them dig their own graves, forced them to line up at the edge of the trench, and shot them at close range." Roughly 1.5 million eastern European Jews died in this manner between June 1941 and the end of 1942.

The killings continued after the feeling of euphoria had died away, and intensified as the eastern front collapsed and then again as Germany's enemies on all fronts closed in. But de Swaan's typology helps us understand how the mechanics of the killings changed. Jews were no longer shot in the open air in a convenient clearing. The extermination in its later phases "took place in secluded camps, surrounded by fences, located in inaccessible areas." De Swaan ties this shift in with his notion of killing "compartments." Compartmentalization comes easy to conquerors, but it requires a good deal of

effort from the rank and file, and from the policymakers, within an army facing defeat.

De Swaan hopes to make a contribution to the old debate over "situation" versus "disposition." Are the front-line murderers in genocidal campaigns acting as anyone might do in an analogous situation? Or are some people more disposed to commit such crimes than others, and selected or self-selected for their front-line status on the basis of that disposition? He leaves us with no pat answers, but then his theme is that no pat answer is warranted. ☺

*Christopher C. Faille graduated from Western New England College School of Law in 1982 and became a member of the Connecticut Bar soon thereafter. He is at work on a book that will make the quants of Wall Street intelligible to sociology majors.*

## ADDITIONAL BOOK REVIEW

In addition to the book reviews in the paper copy of this issue of *The Federal Lawyer*, a bonus review is included in the online version of the magazine. The following review is available at [www.fedbar.org/magazine](http://www.fedbar.org/magazine). ☺

### THE MAUTHAUSEN TRIAL: AMERICAN MILITARY JUSTICE IN GERMANY

BY TOMAZ JARDIM

Reviewed by Jon Sands

