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Rising Restrictions
Worldwide

International Consultation on Religious Freedom Research

Istanbul, Turkey // 16 – 18 March 2013

Participants

Intended for all who do scholarly research on any topic related to religious freedom, persecution, suffering for faith, martyrdom, etc. Number of participants: Probably 10-20, but open to as many as want to come.

All participants are expected to come up for their own costs or to find the necessary sponsors themselves.

Consultation style

The intention of the consultation is to strengthen the network of religious freedom and persecution scholars/researchers and to thereby create synergy.

Everybody may propose to present on relevant research. Organizers will select from these proposals and will frame the programme according to the number of proposals.

The intention is not for everybody to listen to a handful of famous researchers but rather for meaningful interaction and mutual interaction on a peer level.

Submission of proposals of papers: 15 November 2012

Selection of papers and preliminary programme: 15 December 2012

Interested parties are encouraged to contact the organizing office: IIRF, Prof. Dr. Christof Sauer, christof@iirf.eu, PO Box 535, Edgemoor 7407, South Africa, Tel. +27.21.558.7744

International Journal for Religious Freedom (IJRF)

Journal of the International Institute for Religious Freedom

The **IJRF** is published twice a year and aims to provide a platform for scholarly discourse on religious freedom in general and the persecution of Christians in particular. It is an interdisciplinary, international, peer reviewed journal, serving the dissemination of new research on religious freedom and contains research articles, documentation, book reviews, academic news and other relevant items.

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It is appropriate to our theme of a rising tide of religious restrictions and religious suffering worldwide. Doubtless many believers feel overwhelmed and despairing at the increase in both government repression and religiously targeted violence. A storm is an especially suggestive metaphor for many current conflicts between believers of different faiths. Jesus does not deny that we should respond to danger, especially on behalf of others, which in due course he himself does. But he also chastened his disciples for their lack of faith and teaches us that, regardless of how inundated with evil and persecution, we should never despair, knowing God ultimately controls both the elements and other people, and that no danger can harm us so long as we have faith in his power and goodness.

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(f.l.t.r.) Christof Sauer, IJRF author Tehmina Arora, and the other IIRF directors Roshini Wikremeshine and Thomas Schirrmacher at the Religious Liberty Partnership Consultation in Colombo, Sri Lanka 2012



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Editorial

Rising restrictions worldwide

Religious freedom has been thrust to the top of the political agenda in recent months. The violence in places like Nigeria has been on the front pages for some time, where sadly it continues (as Yakubu Joseph and Rainer Rothfuss describe in this issue in some detail). But in the industrial democracies – and now the United States in particular – religious freedom is becoming newsworthy as seldom before. President Obama's healthcare mandates have highlighted conflicts between religious freedom and personal behavior elsewhere in the developed world. We hope to explore this in a future issue, but it brings to a head trends that have been explored in this issue and other recent issues of *IJRF*.

Can these two dimensions of the problem be unrelated? On the surface, threats to religious freedom posed by armed militias and violent clashes between Christians and Muslims in Nigeria appear completely different from those that emanate from bureaucratic directives in relatively stable Western democracies. But in the larger scheme of things it is difficult to believe this is accidental. In our opinion piece, Thomas Johnson comments on one attempt at a comprehensive approach to the problem in all its dimensions: the new Global Charter of Conscience, which he sees as being of tremendous importance, and about which we are likely to hear more in the near future (also see the *Documentation* section).

In the eponymous essay for this issue, Brian Grim, researcher for the Pew Research Center's Forum on Religion and Public Life, provides a detached and balanced overview of the rising threats to religious freedom worldwide, showing that, while the trend varies by country and region, no societies are immune. Grim asks about the role of government policy in encouraging religious discord and violence and finds that blasphemy and apostasy laws and other repressive measures foment, rather than discourage, religious conflict.

Robert George provides some insights as to why. From a more philosophical perspective, he defends the presumption of freedom of belief and insists that the burden of proof rests on the state to justify official sanctions against belief. The state's law is not the highest law, and it must justify any insistence that its man-made law trumps the higher laws to which believers appeal.

Summarizing the findings of his recent book, *Equality, Freedom and Religion* (2012), Roger Trigg confirms that secular Western societies contain significant threats to religious freedom, in societies in which this right had been thought to have been secured by centuries of religious contention and accommodation and usually constitutional guarantees. Increasingly it seems, secularism has come to mean not government neutrality toward religion but hostility.

Tehmina Arora shows how laws purporting to protect religious freedom may in fact have the opposite effect. When the state guards religious freedom with laws

regulating conversions, as some Indian states do, we need to ask some serious questions about the effect – and the intent. Likewise, allowing a religious group to be defined by others is a prescription for trouble, as Wolfgang Haede shows in the case of Christians in Turkey. Haede argues that 1 Peter speaks directly to this challenge. Aaron Graser and Christoph Stenschke also take inspiration from 1 Peter's teaching on suffering and persecution and, in a stimulating discussion, compare its principles favorably with those of modern social psychology. Roger Kiska and Paul Coleman analyze two trends in recent social policy and criminal law to show how legal innovations that reflect a hyper-sensitivity over issues like "discrimination," "harassment," and "hate" are leading to the loss of not only religious freedom but other freedoms as well. Finally, Stephan Pretorius offers a somewhat different emphasis, exploring challenges to the religious freedom of the adherents of New Religious Movements. His argument is certain to provoke discussion at a time when some are trying to redefine religious freedom itself to justify limiting some religious practices (as in India). We invite our readers to weigh in on this proposition and others set forth by our authors.

In our Research in Progress offerings, Jonathan Andrews proposes to demonstrate that religious registration – the practice of the state officially certifying the religious affiliation of citizens at birth – is more complicated than many realize, especially as practiced in the Middle East. Timotheus Chang-Whae Kim offers a stimulating look at Communist-era Romanian pastor and dissident Richard Wurmbrand in the stressful context of interdenominational relations during the Cold War.

Thanks and notices

We thank all contributors to this issue, including language editor Nan Muir and proofreader Barbara Felgendreher. We are grateful for the help of interns Joseph Cheatwood and Adam W. Smith, both from Patrick Henry College. We say farewell with warmest thanks to George Bransby-Windholz for editing the "Noteworthy" section for three issues. We would like to draw your attention to the advertisement of the two positions of Managing Editor and editor of "Noteworthy" on the next pages. Please note the announcement of an International Consultation on Religious Freedom Research. We also hope that the advertisement of books pertinent to the subject will enhance this journal.

We invite all readers to subscribe to IJRF (the price for 2012 has been adjusted at the rate caused by inflation in South Africa) and to submit material for the various categories.

*Yours for religious freedom, Prof. Stephen K. Baskerville, PhD (managing editor),
on behalf of Prof. Dr Christof Sauer and Prof. Dr Dr Thomas Schirrmacher*

That which is noteworthy and that which is astonishing in The Global Charter of Conscience

Thomas K Johnson¹

The manner in which the new *Global Charter of Conscience* was presented portrayed the power of a renewed paradigm for the ethics of public life.² Viewed globally, it was remarkable that representatives of the United Nations, the European Union, and the European Evangelical Alliance not only sat together peacefully at one table, but also spoke with a completely unified voice on matters of religion and conscience (June 21, 2012, at the European Parliament in Brussels). They describe the Charter, with the subtitle “A Global Covenant Concerning Faiths and Freedom of Conscience,” as a supplement and support for Article 18 of the UN *Universal Declaration of Human Rights* (1948). The new text is no doubt one of the most profound short explanations of freedom of religion and belief in human history; it also clarifies the way in which freedom of conscience is indivisible from all fundamental human rights. This is truly *noteworthy*. What is *astonishing* is that this document was presented by a distinctly Christian organization which is much concerned with missions and church planting, along with representatives of two of the world’s most prominent secular organizations, namely the United Nations and the European Union. What is the renewed paradigm behind this event?

The primary author of the new Charter is Dr. Os Guinness, who developed the text in cooperation with “a group of followers of many faiths and of none, politicians of many persuasions, academics, and NGOs who are committed to a partnership on behalf of ‘freedom of thought, conscience, and religion’ for people of all faiths and of none.” At the launch of the document in Brussels, Guinness said that 50 or 60 people consulted with him. Of course, Guinness is well known as a gifted Christian apologist, and there are probably many people who are practicing Christians today because of his lectures and books. Perhaps some of those who consulted on the text who were “followers of many faiths and of none” are now considering the claims of Christianity. But in this text Guinness was primarily working in his role as social theorist, not in his role of apologist, and the fact that we can make this distinction in roles points to the crucial matter of the paradigm used in this document.

¹ Thomas K. Johnson, PhD (*1954) is Doctoral Professor of Theology and Interdisciplinary Studies (Olivet University) and a member of the editorial board of URF. He lives in Prague and is the author of *Human Rights: A Christian Primer* (2008), available as a free download at www.bucer.eu/international. Email: Johnson.thomas.k@gmail.com.

² www.charterofconscience.org.

In his short speech at the European Parliament, Guinness noted that around the world (and probably throughout history) there have been two predominant models of the relation of religion to the “Public Square.” In the model of the “Sacred Public Square,” a particular religion is used to provide legitimacy and meaning for government and other public institutions; different religions have played this role in different societies. In the model of the “Naked Public Square,” often a reaction to the previous model, no traditional religion is allowed to play such a role in society; but some variety of secularism is usually smuggled in, in a manner that seems to make secularism a substitute religion. (Think of Communism, National Socialism, and many varieties of nationalism.) In this text and in his speech, Guinness appealed for the global recognition of a third alternative, a “Civil Public Square,” which recognizes the role of religions and systems of belief in human life, but does not seek legitimacy for government or the broader public square under the umbrella of a particular religion or secular religion substitute. Society must be marked by true freedom of thought, conscience, and religion and honestly recognize that “the decisive differences between the world’s ultimate beliefs are ultimate and irreducible – and these differences are crucial for both individuals and for societies and civilizations.” But in contrast to either a Sacred Public Square or a Naked Public Square, in societies with a Civil Public Square, unity is based on “articles of peace rather than articles of faith . . . through a framework of common rights, responsibilities, and respect” (Article 18). The basis for such a Civil Public Square is “the inviolable dignity of each human individual, in particular in the character of reason and conscience” (Article 2).

In advocating this new social paradigm, Guinness is not only pragmatically using his role as a prominent western intellectual to try to reduce the pressure on millions of Christians who are persecuted or face discrimination because of their faith, though that would be worthwhile in itself. Guinness embodies and has articulated a much older paradigm of Christian social ethics, found in both classical Protestant (Martin Luther and John Calvin) and Roman Catholic (Thomas Aquinas and Albertus Magnus) sources, and which I believe is rooted in the Bible. Though they were not able to apply their insights because they lived in an era when Europe predominantly used a model of a “Sacred Public Square,” which has also been called the “Constantinian Era,” both classical Protestant and Catholic thought distinguished between the realm of relating to God by faith in Christ and the realm of relating to each other in society on the basis of the moral law. And they thought that a significant knowledge of the moral law was given by God to all people, regardless of their faith, through God-given general revelation or “the light of nature;” and this moral knowledge (not our relationship to God by faith in Christ) was to provide the basis for life together in society.³

³ For more on this topic within classical Protestant sources see Thomas K. Johnson, “Law and Gospel:

What is truly astonishing is the way this old and very classical paradigm, articulated in the Christian “Middle Ages,” has been renewed and applied for solving one of the dominant problems facing the twenty-first century. The new *Charter* recognizes the massive role that ultimate religious or secular beliefs play in human life, but at the same time it recognizes that we are aware of very significant social/moral norms (such as rights, duties, and responsibilities) regardless of our ultimate beliefs. These secondary or penultimate social/moral norms, related to recognizing the human dignity of our neighbors, should provide a basis for civility and peace in society.

Many of the readers of *IJRF*, like me, probably openly identify themselves as Christians, meaning we relate to God on the basis of faith in Christ. But we must distinguish this ultimate faith from the penultimate level of morally ordered and peaceful life in society. And while we invite our neighbors to faith in Christ, we must also encourage the adherents of other religions and belief systems to make this distinction between ultimate faith and penultimate social ethics which we Christians have been making for many centuries. This would be a proper use of the astonishing element in the new *Charter*. The alternative is really the continuation of the problem which the editors of the *Charter* described, citing a report of the Pew Forum: “three quarters of the world’s population live in countries [with] . . . a high degree of menace to their faith – sometimes through government repression, sometimes through sectarian violence, and sometimes through the mounting culture wars that we are now seeing in Western countries.”⁴

The hermeneutical/homiletical key to Reformation theology and ethics,” *Evangelical Review of Theology*, vol. 36, no 2, April 2012.

⁴ Both this quotation and a previous quotation are from the cover of the printed version of the *Charter*, which may be read and downloaded online.



**Send your opinion piece to
editor@iirf.eu**

Advertisement of editorial positions International Journal for Religious Freedom

Managing Editor (2013-2014)

The International Institute for Religious Freedom is routinely advertising the position of managing editor of IJRF for the next two-year period 2013-2014. The Managing Editor is responsible for the day to day work involved in the publication twice a year. This is a honorary, part-time position.

Requirements: The IIRF is looking for a good networker and team worker, self-driven, hard working, and an implementer.

Fluency in English, people skills, organisational and administrative skills, good computer skills and editorial skills are expected. Prior editorial experience is beneficial. The minimum level of academic qualification is enrolment on Masters level.

Time needed: Candidates should be available from late 2012 for training and for a minimum period of 24 months ideally until February 2015 for the production of at least 4 issues. The projected average work load is 10-20 hours per week. More attention is required during the peak production period before deadline.

Funding: Candidates should ideally be independently funded and operate from their own home or office with their own equipment. But potentially the project lends itself to sponsorship and/or institutional funding.

Deadline: Interested candidates may inquire for a detailed jobdescription and send their informal applications focused on the requirements, including a CV, until **15 October 2012**.

Contact: *Christof@iirf.eu, IJRF, Prof. Dr. Christof Sauer, P.O. Box 535, Edgemead 7407, Rep. of South Africa, Tel. + 27 21 5587744*

Editor of “Noteworthy” section

The IJRF is looking for a volunteer with immediate effect to edit its Noteworthy section. This task includes proactively sourcing, writing and editing short pieces of information mainly about non-book publications regarding religious freedom and persecution. These are to be continuously and promptly published on the IIRF website and Facebook site at a rate of at least one item per week. The best of these need to be selected twice a year for printing in IJRF.

Requirements: We need someone who will do the final editing independently, self-driven and in time. Good competency in English and thoroughness are necessary. Outsourcing of tasks to interns and other volunteers is possible. This position is not remunerated.

Time needed: An hour every week and one day every half year.

The Richard Wurmbrand case

Examined on the background of the relations between the Protestant Churches in Germany and the Orthodox Church in Romania during the Cold War (1945–1980)

Timotheus Chang-Whae Kim¹

This research in contemporary church history at Tübingen University focuses on the specific “case” of Rev. Richard Wurmbrand, which took place in the turbulent phase of upheaval between the late 1960s and early 1970s in Germany. Being known for his books “Tortured for Christ” (1967) and “In God’s underground” (1968), etc., Wurmbrand supported the Christians in suffering and persecution “behind the iron curtain”. All this happened after Wurmbrand had been freed in 1964 with the help of the “Norwegian Israel Mission” and Christian Jews from England. He then came to the West in 1965 and raised his voice for the “voiceless”. But his efforts to “enlighten” people on this “real existing” socialism were not only met with open interest, but also provoked harsh criticism from a number of Protestants in West Germany accusing Wurmbrand of “anticommunism” and considering him a “troublemaker” for the East-West détente.

This “Wurmbrand case” was first initiated by a circular church letter sent to the mainline Evangelical Churches in Germany on 1 April 1969. The “Kirchliches Außenamt”, the German Evangelical Church’s Foreign Office back then, was chaired by Adolf Wischmann; another circular letter issued by the “Evangelische Zentralstelle für Weltanschauung” (Central Office for Worldviews) followed on 1 June 1969; yet another came forth from the “Kirchenkanzlei” (Central Church Administration) on 12 November 1969.

1. Research gap

There is a need in contemporary church history for a study on the ecumenical relationship between the churches of Romania and Germany. This relationship was shaped by the religious attitudes of the churches of the East and West towards Romania, a Communist governed country at the time. While there has been a series of

¹ Timotheus Chang-Whae Kim studied Protestant Theology at the University of Tübingen where he also served as an academic assistant between 2008 and 2010. He has been an academic librarian in training since 2011. He was born in 1981 in Seoul, Korea and studied in Bucharest, Romania in 1993–2000. He is currently residing in Tübingen, Germany, with his wife and three sons. Contact: Ludwig-Krapf-Str. 5, 72072 Tübingen, Germany, Email: socheres@daum.net.

unofficial or official, private or institutional, contacts, visits, and ecumenical seminars and conferences on theology during this period, no detailed studies have yet been undertaken about it.² Only a few sporadic references and individual papers on specific events are to be found in scholarly literature, but they are limited to certain denominations during this period.

This need is partly due to the fact that the research on contemporary church history has developed generally as a new sub-discipline of church history relatively recently and gradually in German universities. Secondly, it can be attributed to the fact that the churches in Eastern Europe – particularly with regard to Romania and the West – after the fall of the Berlin Wall in 1989 did not perceive the self-critical analysis of their past, the so-called “coming to terms with the past”, as their main task. In addition, it is also difficult for researchers to access the documents in different archives for legal, logistical, or financial reasons.

2. Initial research focus

The research will focus on the following issues in particular:

- The life and thought of Rev. Richard Wurmbrand, especially his reaction to the persecution of the church.
- Official ecumenical relations taking place between the Evangelical Church in Germany and the Romanian Orthodox Church (RomOC), respectively the World Council of Churches (WCC) and RomOC, between 1945 and 1990.
- The political environment and the policy of West German Protestantism concerning the relationship between church and state between 1965 and 1979. I will limit myself here to those persons and church leaders who have dealt with the “Wurmbrand case” explicitly.
- The reception of events by eyewitnesses through “oral history” interviews.³

3. Archival sources

To obtain a sophisticated overall picture of the complex historical events, a thorough research and deep analysis of archival materials is undoubtedly necessary, which will include the following:

² For the relationship between RomOC and WCC see Kaisamari Hintikka, *The Romanian Orthodox Church and the World Council of Churches, 1961-1977*, Helsinki 2000; see also book review http://findarticles.com/p/articles/mi_m2065/is_1-2_54/ai_87425987/?tag=content;col1 [Access: 24.03.2012]

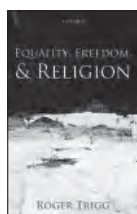
³ For example, with Dr. H.C. Hans Bergel, a German journalist and author, who was imprisoned in the same cell with Richard Wurmbrand in the jail of Jilava. He personally told me parts of his story during a conference held in Munich on 7-9 December 2009; Richard Wurmbrand left a very strong impression on him.

- Church archives in Germany: Evangelisches Zentralarchiv in Berlin (EZA) “Central Archive of the Protestant Church”; several archives of the EKD in Germany.
- Archive of WCC in Geneva.
- National archives: the National Council for the Study of Securitate Archives in Romania (CNSAS); Federal Commissioner for the Records of the Ministry of State Security in the former German Democratic Republic (BStU).
- Archives of mission boards: Hilfsaktion Märtyrerkirche, Germany; Voice of the Martyrs, USA.

4. Conclusion

In view of the forthcoming 10th General Assembly of the WCC in Korea in 2013 under the theme “God of life, show us the way to justice and peace” and the General Assembly of the World Evangelical Alliance in Korea in 2014, it is my concern to establish scholarly “bridges” for a reconciliation in the future through a differentiated picture of the earlier path of the churches in the Communist era analysing and describing the lessons, that Korea can learn from former developments in Europe.

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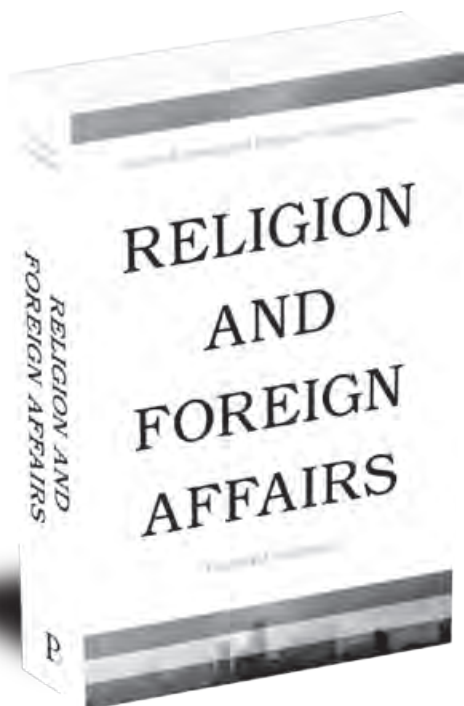
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Religious registration

Blessing or curse for the Church in the Middle East?

Jonathan Andrews¹

Religious registration is the concept that each citizen is assigned a religion at birth which is recorded on official legal documents, notably birth certificates and identity cards, and also within government computer systems. In many countries, the registration cannot be changed to reflect an individual's decision to follow another faith.

Having worked for Middle East Concern (MEC) for nine years, I have seen many individuals adversely affected by the religious registration system. MEC regards this as an important structural issue underlying numerous cases of religious persecution in Middle Eastern countries.

The issues are different for those whose religious registration is “Christian”. For some, problems arise because their religious registration is changed, including by administrative error, and reverting can be problematic. We must note that there are benefits, notably an affirmation of identity and belonging to a defined community, as well as problems.

I am exploring a PhD thesis that would examine the impact of religious registration on the Christian communities of the Middle East. What are the benefits and challenges for legally recognised churches? What impacts are there on converts to Christianity? How is the Christian faith spread? How is the Church of Jesus maintained?

1. Initial research focus

In addition to looking into the historical origins, I propose to look at the situation within four countries in particular:

- In Egypt, there have been court cases in progress challenging the refusal of the authorities to change a person's religious registration from Muslim to Christian.
- In Jordan, where several converts from Islam to Christianity have had all their legal documents annulled.
- In Lebanon, where there is freedom to change religious registration, but some church leaders reportedly use the system as a control mechanism.
- In Turkey, where there is freedom to change one's religious registration but its retention on identity cards continues to be a source of discrimination, for example, in job applications.

2. Outputs

First, I propose to write a history of religious registration, its origins and the reasons why it was established. My starting assumption is that it is a legacy of the

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Ottoman Empire's millet system as a means of ensuring social harmony amongst diverse ethnic groups.

Second, I propose to write a summary of the use of religious registration by governments and religious leaders. My expectation is that this will illustrate the role religious registration plays in identity and its continued use as a control mechanism.

Third, I propose to write a description of the possible consequences of the system's removal or radical reform. This requires much more than the removal of religious registration from identity cards, notably the removal of registration from government computer systems and the establishment of civil family law for those wishing to opt out of religious systems for family law. Implementing this is likely to prove very difficult.

Therefore, I propose exploring an alternative that respects religious freedom within the Middle Eastern cultural context. Converts from Muslim backgrounds are the primary focus here. Of note is that legally recognised churches should be able to provide services to converts from Islam in the same way that churches do for those registered as Christian. One motivation is to facilitate the integration of converts from Islam into churches. At present, in most places, this can at best be done discreetly and in some places not at all. One consequence is the emergence of churches that are not legally recognised. If present trends continue then, in some places, the established churches will decline and the convert church will become predominant, as is the case in northern areas of Iraq.

3. Who is this research intended to influence?

MEC's ethos is to facilitate Christians facing religious persecution in making informed choices about how to address their challenges and to support them in implementing the decisions they make.

This research is primarily intended to inform Christians in the Middle East, together with those supporting them, about religious registration. It will endeavour to exemplify its strengths, benefits, and positive effects, and to describe its weaknesses, costs, and hindrances. Within this audience there are several sub-groups, notably leaders of legally recognised churches, leaders of emerging convert churches and outside agencies seeking to support indigenous Christians. Particular audiences include those interested in human rights and justice issues in general and religious freedom in particular. Secondary audiences are those with influence on Middle Eastern leaders such as Western governments, business leaders and international institutions such as the EU.

Conclusion

Religious registration is a complex dynamic, with elements of identity, inter- and intra-communal harmony and religious freedom. This study aims to ensure that its implications and effects on the church in the Middle East are better understood.

Rising restrictions on religion

Context, statistics and implications

Brian J Grim¹

Abstract

This article discusses statistics from recent studies by the Pew Research Center's Forum on Religion & Public Life. It begins with general findings and a discussion of the general global context. It then examines three questions directly related to religious freedom. First, do constitutional protections for religious freedom matter? Second, do blasphemy, apostasy and anti-defamation of religion laws matter? And third, is there a relationship between government restrictions on religion and social hostilities involving religion? The article then looks at the implications by describing how high levels of government restrictions on religion and social hostilities involving religion in the Middle East and North Africa relate to these three issues. The article concludes with a review of the theoretical and statistical model of Grim and Finke (2007 and 2011)² that finds religious persecution and violence to be the result of higher restrictions by governments and groups in society on the freedom to practice religion.

Keywords Government restrictions on religion, social hostilities, statistics, transnational comparison, constitutional protection, blasphemy, apostasy laws, anti-defamation laws, persecution, violence.

For more than half a century, the United Nations and numerous international organizations have affirmed the principle of religious freedom.³ For just as many decades, journalists and human rights groups have reported on persecution of minority faiths, outbreaks of sectarian violence and other pressures on individuals and communities that impinge upon their freedom of religion or belief. But until

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² More information on the studies and their methodology can be found at PewForum.org.

³ According to Article 18 of the 1948 Universal Declaration of Human Rights, one of the foundational documents of the U.N., „Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practise, worship and observance.“

the Pew Research Center's Forum on Religion and Public Life published *Global Restrictions on Religion* in 2009 and the second report, *Rising Restrictions on Religion* in 2011,⁴ there had been no quantitative study that reviewed an extensive number of sources to measure how governments and private actors infringe on religious beliefs and practices around the world. This article summarizes some key findings from the studies and then uses data from the studies to look at the context of rising restrictions on religion, with a particular focus on the Middle East and North Africa, a region that has recently undergone a series of popular uprisings. The article concludes by reviewing a more advanced statistical test of the relationship between restrictions on religion and violent religious persecution from Grim and Finke (2011).

The studies by the Pew Forum find that approximately 70% of the world's population lives in countries with high restrictions on religious beliefs and practices, the brunt of which often falls on religious minorities – including, in some cases, people who are secular or non-religious. Additionally, more than 2.2 billion people, nearly a third (32%) of the world's total population, live in countries where either government restrictions on religion or social hostilities involving religion rose substantially between mid-2006 and mid-2009. Only about 1% of the world's population lives in countries where government restrictions or social hostilities declined.

This overall finding is based on a series of 33 core measures – all available online – phrased as questions, such as, “Is public preaching limited by any level of government?” And on the social side, “Is there mob violence related to religion?” Pew Forum staff answered the questions for each country by combing through three separate years of 18 widely cited and publicly available sources of information, including reports by the United Nations, International Crisis Group, the U.S. State Department, Human Rights Watch, Amnesty International, Freedom House and the Council of the European Union. The study covers 198 countries and territories, representing more than 99% of the world's population for the three-year period of July 2006 through June 2009.

Before discussing the study's findings and their implications, a few general comments about the study are helpful. First, this study is part of a larger, ongoing effort – the Global Religious Futures Project, jointly funded by two non-governmental

⁴ This builds on work I started ten years ago at the Pennsylvania State University. See: Grim, B.J. (2004). „The Cities of God versus the Countries of Earth: The Regulation of Religious Freedom (RRF).“ University Park, PA: Pennsylvania State University. Grim, B.J. and R. Finke (2006). „International Religion Indexes: Government Regulation, Government Favoritism, and Social Regulation of Religion.“ *Interdisciplinary Journal of Research on Religion* 2: Article 1. Grim, B.J., R. Finke, J. Harris, C. Meyers and J. VanEerden (2006). „Measuring International Socio-Religious Values and Conflict by Coding U.S. State Department Reports.“ In *JSM Proceedings, AAPOR-Section on Survey Research Methods [CD-ROM]*. Alexandria, VA: American Statistical Association. (pp. 4120-4127).

charitable foundations in the U.S., the Pew Charitable Trusts and the John Templeton Foundation. The Global Religious Futures Project aims to increase knowledge and understanding of religious change and its impact on societies around the world.

Second, the study recognizes that religious beliefs and practices may be infringed upon not only by government actions but also by social groups, organizations and individuals. And, indeed, our study shows that in some places social hostilities may have an even greater impact than do government actions.

Third, government restrictions include not only national laws and policies, but also actions by local governments and officials, which the study finds account for a sizeable portion of government restrictions worldwide.

Fourth, the Pew Forum takes a strictly non-advocacy role in this research, recognizing that every country studied has some restrictions on religion, and that there may be strong public support in particular countries for certain restrictions. The Pew Research Center leaves it to others, to consider how these findings might or might not affect advocacy and policy.

And finally, when people think of religious freedom, they may have in mind the degree of religious dynamism and diversity in a country, which the Pew Forum measures in other demographic and public opinion studies. This study, however, focuses on the other side of the coin, that is, impediments to religious beliefs and practices.

However, being in Europe and given that demographic and public opinion studies indicate that European populations, on average, have lower religiosity than many other parts of the world, the global context regarding religion is worthwhile reviewing briefly.

1. How pervasive is religion globally?

Surveys show that large portions of the global population hold strong religious beliefs and consider religion important to their lives.⁵ Large shares of the global population also indicate that religious freedom is very important. For instance, a Pew Global Attitude Project's survey carried out in 34 countries found that, on average, 93% of people reported that "living in a country where I can freely practice my

⁵ For instance, the Pew Forum found that roughly three-in-four or more people in Sub-Saharan Africa express *absolutely certain belief* in the existence of God. And such views are also common in the United States, where 71% of adults say they are absolutely convinced of God's existence. <http://www.pewforum.org/commitment-to-christianity-and-islam-islam-and-christianity-in-sub-saharan-africa.aspx>, 19 country survey in Sub-Saharan Africa, last accessed February 14, 2012. Also: This is not to say that religion is only important to people with monotheistic faiths. In India, for instance, 81% said that religion was rather or very important. (Brian J. Grim and Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the 21st Century*, Cambridge University Press, 2011, 204.)

Global Religious Affiliation: 1970 and 2010

Religion	1970		2010	
	Population (million)	Percent	Population (million)	Percent
Unaffiliated *	708.1	19.2%	813.6	11.8%
Affiliated **	2,988.1	80.8%	6,082.3	88.2%
Christians	1,229.0	33.2%	2,260.4	32.8%
Muslims	577.2	15.6%	1,553.8	22.5%
Hindus	463.2	12.5%	948.6	13.8%
Buddhists	235.1	6.4%	494.9	7.2%
Chinese folk-religionists	228.8	6.2%	436.3	6.3%
Ethnoreligionists	168.9	4.6%	242.5	3.5%
New religionists	39.4	1.1%	63.0	0.9%
Sikhs	10.7	0.3%	23.9	0.3%
Jews	15.0	0.4%	14.8	0.2%
Spiritists	4.7	0.1%	13.7	0.2%
Daoists	1.7	0.0%	8.4	0.1%
Baha 'is	2.7	0.1%	7.3	0.1%
Confucianists	4.8	0.1%	6.4	0.1%
Jains	2.6	0.1%	5.3	0.1%
Shintoists	4.2	0.1%	2.8	<.1%
Zoroastrians	0.1	<.1%	0.2	<.1%
Sum	3,696.2	100.0%	6,895.9	100.0%

* *Unaffiliated* include agnostics and atheists as well as some who may believe without specifying a particular faith tradition.

** *Affiliated* include those who expressed that they belong to a religious tradition on a census, survey or other enumeration, sometimes including membership statistics
Source: *World Religion Database*, <http://www.worldreligiondatabase.org/>
Eds. Todd M. Johnson & Brian J. Grim, Brill online, 2012.

religion” is somewhat or very important, while less than 2% indicated that it wasn’t important at all.⁶

These empirical findings seem to suggest that there is a global trend toward greater religious affiliation, but is this the case? By one attempt to measure these dynamics, it is. Data from the World Religion Database⁷ at Boston University indicates that more people are affiliated with religion today than 40 or 50 years ago. At the height of Communism in 1970, about one-in-five people (19%) were *unaffiliated* with any religion. Since then, the share of the world’s population *affiliated with religion* has substantially increased to the point that today, nearly nine-in-ten people (88%) worldwide are *affiliated* with one religion or another.⁸ In numeric terms, however, the difference is even more remarkable. Between 1970 and 2010, the world’s religiously *unaffiliated* population increased by 15%, from 708 to 814 million, but the world’s religiously *affiliated* population increased by 104%, from 3 to 6 billion. Of course, in some parts of the world, such as Western Europe, the unaffiliated have grown, but these data suggest that such increases in the unaffiliated are offset by the demographic growth of religious populations in places such as Sub-Saharan Africa and patterns of re-affiliation in former communist lands, such as Russia, China and Vietnam.

So, given these global religious trends – as general as they are, it is fair to say that the rise in restrictions on religion around the world affects many people, with implications that extend into the areas of security, cooperation and social wellbeing.

2. Main findings from the study

First, the extent of violence and abuse related to religion, certainly one of the harshest measures of restrictions on religion, increased in more places than it decreased.

⁶ Of the world’s major regions, Europe, and China in particular, have relatively lower levels of religious participation. So, is religion a non-factor in these places? The Pew Forum’s recent demographic study on Christianity found that despite strong secularizing trends, more than half a billion people in Europe, or more than three-in-four (76.2%) Europeans today, identify at least nominally as Christian. This is in addition to growing and active minority European faiths, such as Islam, which we estimated to number 43 million and account for about 6% of Europe’s total population. Religious affiliation is lower in China, but recent surveys by the Chinese polling firm Horizon have found a fourfold (400%) increase among those who considered religion either rather or very important in their lives (increasing from 4 in 1990 to 16 percent in 2007), with a corresponding sharp decrease among those indicating that religion was not at all important in their lives during the same time period, dropping from 76 percent in 1990 to 35 percent in 2007. See: <http://www.pewforum.org/Christian/Global-Christianity-worlds-christian-population.aspx>, last accessed February 14, 2012. <http://www.pewforum.org/The-Future-of-the-Global-Muslim-Population.aspx>, last accessed February 14, 2012. Brian J. Grim and Roger Finke, *The Price of Freedom Denied*, 2011, 204.

⁷ World Religion Database: *International Religious Demographics and Sources*, Eds. Todd M. Johnson and Brian J. Grim. Brill online. 2008-2012.

⁸ These changes are in varying parts due to the collapse of European Communism, the opening of China in the 1980s and 1990s, and the demographic growth of countries in the developing world.

The number of countries in which governments used at least some measure of force against religious groups or individuals rose from 91 (46%) in the period ending in mid-2008 to 101 (51%) in the period ending in mid-2009. This violence was wide-ranging, including individuals being killed, physically abused, imprisoned, detained or displaced from their homes, as well as damage to or destruction of personal or religious properties.

In nearly three-quarters of all countries, private citizens or groups committed crimes, malicious acts or violence motivated by religious hatred or bias. Such acts occurred in 142 countries (72%) in the period ending in mid-2009, about the same as in the previous reporting period (141 countries or 71%). However, the number of countries that experienced mob violence related to religion rose from 38 (19%) as of mid-2008 to 52 (26%) as of mid-2009.

Religion-related terrorist groups were active in 74 countries around the world in the period ending in mid-2009, a slight increase from the period ending in mid-2008.⁹ The groups carried out acts of violence in half of the 74 countries. This includes people who were killed, wounded, displaced from their homes, kidnapped or had their property destroyed in religion-related terrorist attacks.

Adherents of the world's two largest religious groups, Christians and Muslims, who together comprise more than half of the global population, were harassed in the largest number of countries. Over the three-year period studied, incidents of either government or social harassment were reported against Christians in 130 countries (66%) and against Muslims in 117 countries (59%). Buddhists and Hindus, who together account for roughly one-fifth of the world's population and who are more geographically concentrated than Christians or Muslims, faced harassment in fewer places; harassment was reported against Buddhists in 16 countries (8%) and against Hindus in 27 countries (14%).

In proportion to their numbers, some smaller religious groups faced especially widespread harassment. Although Jews comprise less than 1% of the world's population, government or social harassment of Jews was reported in 75 countries (38%). Incidents of harassment involving members of other world religions – including Sikhs, followers of ancient faiths such as Zoroastrianism, newer faith groups such as Baha'is and Rastafarians, and localized groups that practice tribal or folk religions – were reported in 84 countries (42%).

Europe had the largest proportion of countries in which social hostilities related to religion were on the rise from mid-2006 to mid-2009. Indeed, five of the 10

⁹ Religion-related terrorism is defined as politically motivated violence against noncombatants by sub-national groups or clandestine agents with a religious justification or intent. In all cases, the study was careful to identify a clear religious element. Religious people may be the target, as is the case sometimes with FARC in Columbia, or religion may be the motivation, as is the case with al-Qaeda.

countries in the world that had a substantial increase in social hostilities were in Europe. The kinds of social hostilities that recently erupted in shootings in Norway reflect a growing trend among certain European countries with growing Muslim immigrant communities. As indicated by the Pew Forum's January 2011 study, *The Future of the Global Muslim Population*, the number of immigrant Muslims has and will continue to increase in Europe, though the study estimates that Muslims will likely make up only 8% of Europe by 2030 – still a relatively small proportion.

However, restrictions and hostilities in general were the highest in the Middle East and North Africa – with nearly a third of the region's countries (30%) imposing greater government restrictions. Egypt, in particular, ranked very high (in the top 5% of all countries, as of mid-2009) on both government restrictions and social hostilities involving religion. Only two countries are very high on both – Indonesia is the other.

Three main findings from the study are worth looking at in some more detail, particularly because they help explain why, on average, the Middle East and North Africa region has both the highest government restrictions on religion and the highest social hostilities involving religion of the five main regions analyzed. The three findings – phrased as questions – are: First, do constitutional protections for religious freedom matter? Second, do blasphemy, apostasy and anti-defamation of religion laws matter? And third, is there a relationship between government restrictions on religion and social hostilities involving religion?

3. Do constitutions matter?

Nearly all of the 198 countries included in the Pew Forum study either call for freedom of religion in their constitutions or basic laws (143 countries) or protect at least some religious practices (an additional 48 countries). But not all constitutional promises are clear and unqualified. In fact, more than half of the countries (111, or 56%) include stipulations in their constitution that substantially contradict the concept of religious freedom. Afghanistan's Constitution, for instance, appears to protect its citizens' right to choose and practice a religion other than Islam. However, the constitution also stipulates that “no law can be contrary to the sacred religion of Islam” and instructs judges to rule according to Shariah law if no specific Afghan law applies to a case, which in Afghanistan prescribes the death penalty for Muslims who convert to another religion.

Seven countries – Algeria, Eritrea, Libya, Maldives, Mauritania, Saudi Arabia and Yemen – do not include any provisions for religious freedom in their constitutions or basic laws.¹⁰ The Algerian Constitution, for example, establishes Islam as the state religion and forbids practices that are contrary to Islamic ethics.

¹⁰ The Eritrean Constitution that was ratified by the National Assembly in 1997 provides for religious

The study finds a relationship between constitutional protections for religious freedom and overall changes in government restrictions on religion. Among the countries with the *least* robust constitutional protections for religious freedom – that is, countries whose constitutions contain one or more substantial contradictions concerning religious freedom or provide no protection for it at all – index scores increased in 11 and decreased in only two (more than a five-fold difference). In contrast, among the countries whose constitutions provide for religious freedom *without* substantial contradictions (including those with limited qualifications), index scores increased in three countries and decreased in six (a two-fold difference *in the opposite direction*).¹¹

4. Blasphemy, apostasy and anti-defamation of religion laws

As of mid-2009, 59 countries (30%) had a law, rule or policy at some level of government forbidding blasphemy (remarks or writings considered to be contemptuous of God), apostasy (abandoning one's faith) or defamation (disparagement or criticism) of particular religions or religion in general. Penalties for violating these laws (which collectively I refer to as "anti-blasphemy laws"), ranging from fines to imprisonment to death, were enforced in 44 of the 59 countries.

The Pew Forum's study finds that while such anti-blasphemy laws are sometimes promoted as a way to protect religion and reduce social hostilities involving religion, in practise they often serve to punish religious minorities whose beliefs are deemed unorthodox or heretical, and who therefore are seen as threatening religious harmony in the country. Indeed, the study finds that overall high restric-

freedom, but the government has not yet implemented the constitution. Therefore, there is no effective constitutional protection for religious freedom in Eritrea.

¹¹ More specifically, among the countries whose constitutions or basic laws do not provide for religious freedom, government restrictions on religion substantially increased in three (Algeria, Libya and Yemen) and did not decrease in any. In the 111 countries that provide for religious freedom but have substantial contradictions in their constitutions or basic laws (such as limiting religious freedom in order to protect "public morals" or making the nation's laws conform to one particular religion), government restrictions substantially increased in eight countries (Somalia, Syria, France, Malaysia, Egypt, Qatar, Hong Kong and Serbia) and substantially decreased in two countries (Greece and Nauru) – a four-fold difference. However, the pattern is reversed among the 41 countries whose constitutions or basic laws provide for religious freedom without qualification or contradiction, with a three-fold difference in the opposite direction. Among these countries, government restrictions decreased in three countries (Timor-Leste, Equatorial Guinea and the Republic of Macedonia) and increased in one (Kyrgyzstan). This pattern is also seen, though more faintly, among the 39 countries whose constitutions or basic laws provide for religious freedom but include limited qualifications, such as the right to limit religious freedom to protect "public order." Restrictions decreased in three of these countries (Togo, Guinea Bissau and Nicaragua) and increased in two of them (Uganda and Tajikistan). (The level of government restrictions stayed roughly the same in the vast majority of cases during the three years covered by the study.)

tions on religious beliefs and practises are particularly common in countries that prohibit blasphemy, apostasy or defamation of religion.¹² For instance, the following examples illustrate the connection:

75% of governments (33 of the 44 countries) that enforce anti-blasphemy laws also used force against religious groups. However, only 43% (60 of 139 countries) of governments that do not enforce anti-blasphemy laws used force against religious groups.

Similarly, national governments in countries that enforce laws against blasphemy, apostasy or defamation of religion were more than five times as likely to attempt to eliminate an entire religious group's presence as those that do not have such laws (32% vs. 6%).

This pattern also holds true for social hostilities involving religion. Mob violence related to religion occurred in more than twice the share of countries that enforce penalties for blasphemy, apostasy or defamation of religion than in countries where there are no such laws (45% vs. 19%).

Also, the share of countries in which women were harassed for violating religious dress codes was 8 times higher among those that enforce such laws (48%) than among those without such laws (6%).

Not only were government restrictions and social hostilities involving religion generally higher in countries with anti-blasphemy laws, but restrictions also rose in many of these countries. From mid-2006 to mid-2009, restrictions or hostilities increased substantially in 10 (23%) of the 44 countries where governments actively enforce anti-blasphemy laws; restrictions or hostilities decreased substantially in just one country in that category (2%). In the 15 countries where such laws are on the books but are not actively enforced, restrictions or hostilities increased substantially in four (27%) and decreased substantially in just one (7%) – the same pattern as in countries where the laws were actively enforced. By contrast, among the 139 countries that do not have anti-blasphemy laws, restrictions or hostilities rose in nine (6%) and fell in 10 (7%).

These findings do not mean that anti-blasphemy laws necessarily cause higher restrictions on religion. But they do suggest that the two phenomena often go hand-in-hand: governments that impose anti-blasphemy laws also tend to have rising restrictions on religion. If the rationale for such laws is to reduce social conflict, it

¹² Globally, countries that have laws against blasphemy, apostasy or defamation of religion were more likely to have *high government restrictions or social hostilities* than countries that do not have such laws. A solid majority (59%) of countries that enforce such laws had high or very high restrictions on religion (government or social) as of mid-2009. Among countries that do not have such laws, by contrast, the majority (58%) had low restrictions or hostilities.

appears, however, that anti-blasphemy laws tend to contribute to the conflict rather than reduce it.

Anti-blasphemy laws are one of many types of restrictions where there are major differences among the five regions of the world – Asia-Pacific, Middle East-North Africa, sub-Saharan Africa, Europe and the Americas. When it comes to penalizing blasphemy, apostasy or defamation of religion, eight-in-ten countries in the Middle East-North Africa region have such laws, the highest share of any region. In comparison, four-in-ten countries in Europe (38%), three-in-ten countries in the Asia-Pacific region have anti-blasphemy laws. By contrast, relatively few countries in sub-Saharan Africa (15%) or the Americas (11%) have such laws or policies.¹³

One limitation of these findings is that they lump together three related but different factors: blasphemy, apostasy and defamation of religion. In future studies, the Pew Forum will have separate data on these because it is likely that each has a different relationship with other restrictions on religion.

5. Understanding the Middle East and North Africa

One of the results of this research is that it provides a way to understand the context for one of the most dramatic developments of the 21st century – the so-called Arab Spring uprisings that have swept the Middle East and North Africa. While restrictions on religion may not have directly caused the unrest, it's unarguable that changes in religious restrictions are a part of the larger social and political forces shaping the Middle East and North Africa today.

Indeed, according to Pew Forum's study, government restrictions on religion and belief as well as social hostilities involving religion are highest in the Middle East and North Africa of the regions of the world. Moreover, the study finds that government restrictions were not only high, but they were rising in the Middle East and North Africa prior to the recent unrest that continues in the region. For instance, prior to the recent uprising in Egypt, government restrictions on religion were already very high there. By mid-2009, Egypt also had joined the 5% of countries with the most intense social hostilities involving religion. Five other countries in the region (Algeria, Libya, Syria, Yemen and Qatar) also had substantial increases in government restrictions from mid-2006 to mid-2009, while no country in the Middle East and North Africa region had a substantial decrease.

What are some of the characteristics of the region that help explain its high and rising restrictions? First, in only one country of the region (or 5%) does the constitution, or law that functions in the place of a constitution (basic law), specifi-

¹³ In the United States, a few state legal codes still contain anti-blasphemy laws, but they generally are not enforced.

cally provide for “freedom of religion” or include language used in Article 18 of the United Nations Universal Declaration of Human Rights. Overall in the world, however, 72% of countries have such provisions. And as already discussed, the lack of such provisions is associated not only with high government restrictions, but also rising restrictions on religion.

Beyond this basic protection for freedom of religion or belief, the study found that restrictions in the Middle East and North Africa were especially high in a number of other ways. First, more than nine-in-ten governments in the region limit religious literature, broadcasting, preaching, proselytizing and conversion. In comparison, these normal religious activities do not face such limits the majority of the rest of the world’s countries. Restrictions on religious literature, broadcasting, preaching, proselytizing and conversion not only limit the possibility for free speech and a diversity of ideas in the public forum, restrictions on conversion – in particular – limit the fundamental freedom of belief. And limits on conversion are very common in the Middle East and North Africa, where 90% of countries in the region limit the ability of people to freely choose their religious affiliation – including the freedom to have no religion at all. However, only 19% of countries worldwide place such limits on their citizens.

Overall, governments in the Middle East and North Africa region were twice as likely as governments worldwide to resort to physical force when dealing with religious groups. Instances of force toward religious groups included individuals being killed, physically abused, imprisoned, detained or displaced from their homes, or having their personal or religious properties damaged or destroyed.

Of course, the use of government force is not necessarily felt evenly by all religious groups in society, because religious minorities often bear the brunt of the force. In particular, government hostility to religious minorities in the Middle East and North Africa region is far above the world average. Two-thirds of national governments in the region displayed hostility involving physical violence toward minority or non-approved religious groups, compared with just one-third of countries worldwide. This abuse was not only by direct action, but also by inaction. In 70% of countries in the region there were instances when the national government did not intervene in cases of discrimination or abuses against religious groups. Worldwide, however, just 27% of governments stood by as such discrimination and abuse occurred.

One contributing factor to the imbalanced protection of religious minorities is that governments of nine-in-ten countries in the Middle East and North Africa region give privileges or government access to one particular religious group that is unavailable to other religious groups. Worldwide, however, only about a quarter of countries (27%) have such an imbalance. Indeed, religious favoritism is so com-

mon that national governments in every country of the region defer in some way to religious authorities, texts or doctrines on legal issues – the most common being deference to Shariah law.

When it comes to social hostilities involving religion, there are also major differences among the five regions of the world. Again, on average, social hostilities are highest in the Middle East-North Africa. For instance, nearly every country of the region was beset with crimes, malicious acts or violence motivated by religious hatred or bias during the three-year period of the study. And in half the countries of the region, these resulted in deaths. By way of comparison, deaths resulted from religious hate crimes in just 18% of countries worldwide.

Other serious types of religion-related violence were also much higher in the Middle East and North Africa region. For instance, acts of religion-related mob-violence and sectarian or communal violence between religious groups were more than twice as likely in the region than in the world as a whole. Also, nearly every country had religion-related terrorist groups active in the country. Moreover, half the countries in the region were affected in some way by religion-related war, compared with just 13% of countries worldwide.

Social hostilities in the region were not just present at these macro levels; they were often very personal. For instance, in two-thirds of countries, individuals or groups used violence or the threat of violence, including so-called honor killings, to try to enforce religious norms. In three-quarters of the region's countries, individuals were assaulted or displaced from their homes in retaliation for religious activities, including preaching and other forms of religious expression, considered offensive or threatening to the majority faith.

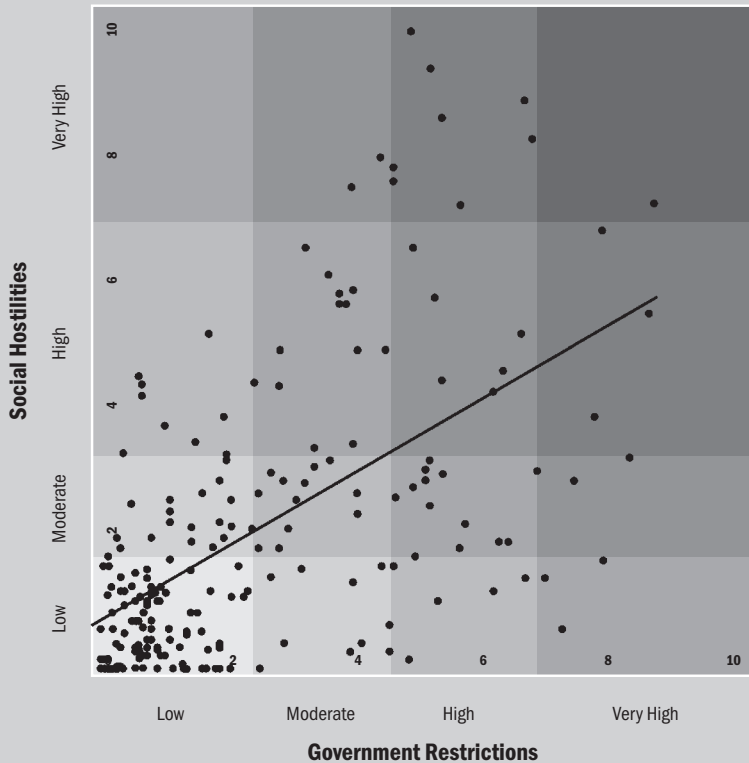
Also, women were harassed for violating religious dress codes in twice the share of countries the Middle East and North Africa region as they were worldwide.

Of particular note, Muslims were harassed in a slightly larger share of countries in the Middle East and North Africa than were Christians or Jews. Much of the harassment fell upon Muslim minorities, such as Sunnis in Iraq or Shias in Saudi Arabia, or groups with political agendas contrary to the interests of the government in power, such as the Muslim Brotherhood in Egypt.

Finally, in eight-in-ten countries, there were tensions in society over conversion from one religion to another. Of particular note is that tensions over conversion become particularly high when governments get into the business of regulating it. For instance, among the 41 countries worldwide where governments limited religious conversion, incidents of social hostilities over conversions occurred in 83% of the 41 countries (34). By contrast, among the 158 countries where governments do not limit conversions, incidents of social hostilities over conversions occurred in 19% (30 countries) – a smaller share by four times. This correlation between

Religious Restrictions in 198 Countries

This chart shows how the world's 198 countries and self-administering territories score in terms of both government restrictions and social hostilities involving religion. Correlation = $-.586$ ($p < .001$, two-tailed); r -square = $.34$



Note: The Pew Forum categorized the levels of government restrictions and social hostilities involving religion by percentiles. Countries with scores in the top 5% on each index were categorized as "very high". The next highest 15% of scores were categorized as "high", and the following 20% were categorized as "moderate". The bottom 60% of scores were categorized as "low".

Pew Forum on Religion & Public Life · Global Restrictions on Religion, December 2009

government restrictions and social hostilities is a common pattern in the data, and one which is useful to understand for those looking to possible ways to defuse tensions and reduce conflict.

5.1 Correlation between restrictions and hostilities

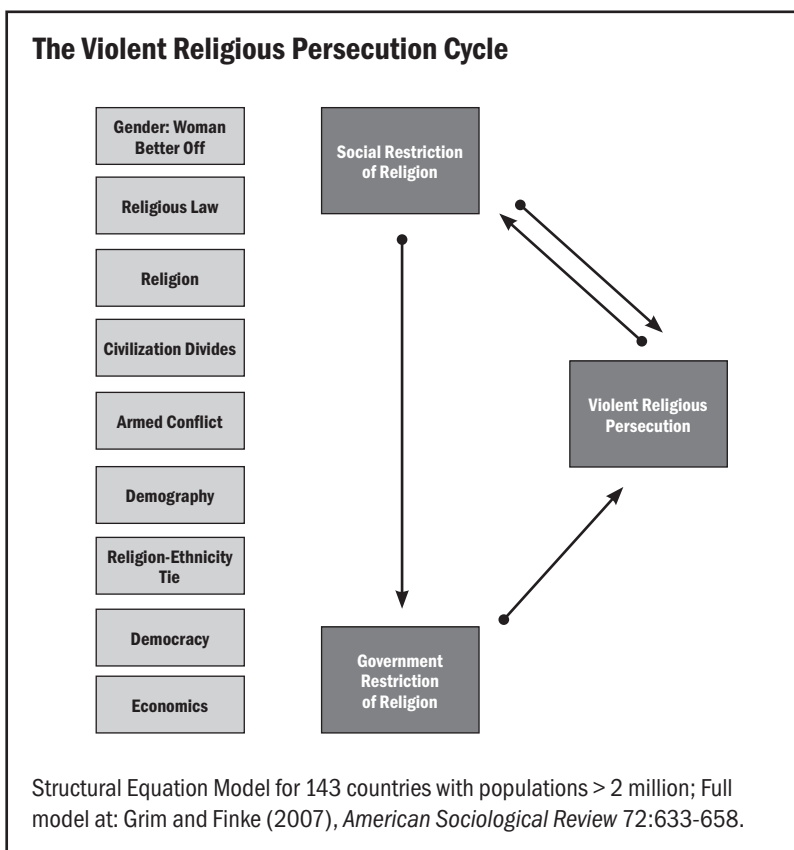
When all 198 countries and self-administering territories are plotted on a chart comparing their scores on the Government Restrictions Index and the Social Hostilities Index (see chart on page 29), it is apparent that the two measures tend to move together. Running through the graph is the so-called regression line, which plots how scores on one index are related, on average, to scores on the other index. The upward slope of the line indicates that higher scores on one index generally are associated with higher scores on the other. Many countries are clustered in the lower left corner, showing that they are low on both types of restrictions. Though the remaining countries are fairly dispersed, most still follow the direction taken by the regression line, and very few are located in the upper left or lower right corners of the graph. This means that, in general, it is rare for countries that are high in social hostilities to be low on government restrictions, or for those that are high on government restrictions to be low in social hostilities.

5.2 An analysis of the correlation

My 2011 Cambridge University Press book, co-authored with Professor Roger Finke of Penn State University, *The Price of Freedom Denied: Religious Persecution and Conflict in the 21st Century*,¹⁴ provides some additional theoretical and advanced statistical analysis that helps to further understand this correlation. In our analysis originally published in the *American Sociological Review*, we found that higher levels of regulations on religion result in more violence and conflict, not less. Specifically, we observed that social restrictions on religious freedom lead to government restrictions on religious freedom and the two act in tandem to increase the level of violence related to religion – which in turn cycles back and leads to even higher social and government restrictions on religion. This creates what we call a *violent religious persecution cycle* (see chart on page 31).

Our research, which looked at 143 countries with populations of two million or more, found that when governments and religious groups in society do not erect barriers to religious competition but respect and protect such activities as conversion and proselytism, religious violence is less. These results offer a different perspective than the Clash of Civilizations theory, in that, rather than religious competition automatically leading to violence, the protection of fair religious competition

¹⁴ Brian J. Grim and Roger Finke, 2011, *The Price of Freedom Denied*. New York.



is suggested to lead to *less* religious violence. Indeed, in the model we statistically controlled for alternative explanations and found that

The specific mechanism that leads most directly and powerfully to religious persecution is not clashes *between* civilizations but the concrete regulatory actions of societies and governments. ... The important point is that the regulation mechanism we describe *accounts for* differences between religious traditions and offers empirically-supported conceptual clarity to one of the fundamental challenges of the twenty-first century.¹⁵

This means that restrictions on religion may just as often be directed toward Muslims in a Muslim-majority country as toward other faiths; likewise, restrictions

¹⁵ Page 654 in Brian J. Grim and Roger Finke, 2007, „Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Economies?“ *American Sociological Review* 72:633-658.

in a Christian-majority country may sometimes affect Christians including minority denomination, as much or even more than other faiths. Of course, clashes occur across religious lines, as has been happening in Nigeria with the actions of Boko Haram, but the data indicate that such clashes are not the primary mechanism explaining restrictions and violence.

An additional contribution from *The Price of Freedom Denied* is that the analysis demonstrated that *social* restrictions of religious freedom (or social religious intolerance) often drive government restrictions.¹⁶ Examples include the social pressures in India for anti-conversion laws, calls for Shari'a law in northern Nigeria and parts of Indonesia, expulsions of evangelicals in Chiapas, Mexico, and numerous religious rebellions from China's long history.¹⁷ One of the clearest historical examples of the way social restrictions of religious freedom can feed into the religious violence cycle is the Holocaust. Research has shown that the Nazi government's violence toward Jewish people reinforced pre-existing social prejudices, creating a cycle of violence that was carried out with the support of many in society.¹⁸

Another tragic example of the religious violence cycle can be seen in Iraq since 2003, which I have written about elsewhere.¹⁹

6. Concluding observations

The data reviewed show that religion appears to be on the rise around the globe, and with it a new sense of urgency for understanding the relationships between rising levels of government restrictions and social hostilities involving religion. Several patterns are clear. First, social hostilities involving religion have risen in Europe, and in a number of cases the rise was due to the difficulties of integrating new immigrant populations. Though I have not emphasized this point, it is clear that religious freedom faces new challenges in a variety of situations.

¹⁶ The social restriction of religious freedom can be thought of as the gap between the value people place on living in a country with religious freedom for their own religion versus freedom for other religions. A recent survey by the Pew Forum on Religion & Public Life of populations in 10 countries from Asia, the Americas, and Africa found an average gap of 14 percentage points across the countries. For details see <http://pewforum.org/publications/surveys/pentecostals-06.pdf>. Also see Grim, B.J. and R. Wike. (2010). "Cross-Validating Measures of Global Religious Intolerance: Comparing Coded State Department Reports with Survey Data and Expert Opinion." *Politics and Religion* (journal of the American Political Science Association).

¹⁷ See Vincent Y.C. Shih, *The Taiping Ideology: Its Sources, Interpretations, and Influences* (Seattle: University of Washington Press, 1967).

¹⁸ See William I. Brustein, *Roots of Hate: Anti-Semitism in Europe Before the Holocaust* (Cambridge, England: Cambridge University Press, 2003) Also see Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking, 1963).

¹⁹ Grim, B.J. (2012). "Religion, Law and Social Conflict in the 21st Century: Findings from Sociological Research," *Oxford Journal of Law and Religion*, pp. 1–23, doi:10.1093/ojlr/rwr020.

Second, certain laws, such as anti-blasphemy laws or contradictory constitutional protections for religious freedom, are associated with high and rising overall restrictions. Recognizing the effects of different types of restrictions is one of the new and potentially useful applications of statistical analysis when applied to religious freedom. For instance, some types of restrictions, such as government restriction on people's freedom to convert from one religion to another, are indicative of higher overall restrictions, and may be part of a select number of indicators that could serve as an early warning system of mass violence. Restrictions falling into this category were very high in the Middle East and North Africa before Arab Spring. But, at a minimum, rising restrictions on religion were undeniably a part of the context in which the uprisings occurred.

And finally, advanced statistical analysis of these data from the book, *The Price of Freedom Denied*, indicates religion-related violence increases as restrictions on religion increase. Indeed, religion-related terrorism is mostly bred in countries where restrictions on religion are high. However, the prospects of seeing lower restrictions on religion in countries such as Pakistan, Afghanistan and Saudi Arabia are indeed daunting. In such places, added restrictions appear to be a logical way to contain conflict. However, according to the data, higher restrictions often have the unintended consequence of fueling additional grievances that feed a cycle of violent religious persecution and conflict.



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Religious liberty and the human good

Robert P George¹

Abstract

“Religious liberty and the human good” is a defense of a robust conception of the obligations of governments to respect and protect religious freedom for the sake of the basic human right of religion itself, considered as an irreducible dimension of integral human well-being and fulfillment. This methodologically Aristotelian and perfectionist approach to the defense of religious liberty provides a principled way of defending a central freedom rationally and identifying its limits.

Keywords Religious liberty, basic human goods, integral human fulfillment, Martin Luther King, *Nostra Aetate*, *Dignitatis Humanae*, natural law.

The starting points of all ethical reflection are those fundamental and irreducible aspects of the well-being and fulfillment of human persons that some philosophers refer to as “basic human goods.” These goods – as more than merely instrumental ends or purposes – are the subjects of the very first principles of practical reason that control all rational thinking with a view to acting, whether the acts performed are, in the end, properly judged to be morally good or bad.² The first principles of practical reason direct our choosing towards what is rationally desirable because humanly fulfilling (and therefore intelligibly available to choice), and away from their privations.³ It is, in the end, the integral directiveness of these principles that provides the criterion (or, when specified, the set of criteria – the moral norms) by which it is possible rationally to distinguish right from wrong – what is morally good from what is morally bad – including what is just and unjust.⁴ Morally good choices are choices that are in line

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² Germain Grisez, “The First Principle of Practical Reason: A Commentary on the *Summa Theologiae*, 1–2, Question 94, Article 2,” *Natural Law Forum*, Vol. 10 (1965), pp. 168–196.

³ *Ibid.*

⁴ John Finnis, *Natural Law and Natural Rights*, pp. 450–452.

with the various fundamental aspects of human well-being and fulfillment integrally conceived; morally bad choices are choices that are not.

1. The difference between just and unjust laws

To say the very abstract things I've just said is simply to spell out philosophically the point made by Martin Luther King in his *Letter from Birmingham Jail* about just and unjust laws – laws that honor people's rights and those that violate them. You will, perhaps, recall that the great civil rights champion anticipated a challenge to the moral goodness of the acts of civil disobedience that landed him behind bars in Birmingham. He anticipated his critics asking: How can you, Dr. King, engage in willful law breaking, when you yourself had stressed the importance of obedience to law in demanding that officials of the southern states conform to the Supreme Court's de-segregation ruling in the case of *Brown v. Board of Education*? Let's listen to King's response to the challenge:

The answer [he says] lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that “an unjust law is no law at all.”

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law.

Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority.⁵

1.1 Just laws

So: just laws elevate and ennoble the human personality, or what King in other contexts referred to as the human spirit; unjust laws debase and degrade it. Now his point about the morality or immorality of laws is a good reminder that what is true of what is sometimes called “personal morality” is also true of “political morality.” The choices and actions of political institutions at every level, like the choices and

⁵ Martin Luther King, *Letter from Birmingham Jail* (New York: Harper Collins, 1994). The Letter was written and originally published in 1963.

actions of individuals, can be right or wrong, morally good or morally bad. They can be in line with human well-being and fulfillment in all of its manifold dimensions; or they can fail, in any of a range of ways, to respect the integral flourishing of human persons. In many cases of the failure of laws, policies and institutions to fulfill the requirements of morality, we speak intelligibly and rightly of a violation of human rights. This is particularly true where the failure is properly characterized as an injustice – failing to honor people's equal worth and dignity, failing to give them, or even actively denying them, what they are due.

1.2 Unjust laws

But, contrary to the teaching of the late John Rawls and the extraordinarily influential stream of contemporary liberal thought of which he was the leading exponent,⁶ I wish to suggest that good is prior to right and, indeed, to rights. Here is what I mean: To be sure, human rights, including the right to religious liberty, are among the moral principles that demand respect from all of us, including governments and international institutions (which are morally bound not only to respect human rights but also to protect them). To respect people, to respect their dignity, is to, among other things, honor their rights, including, to be sure, the right that we are gathered today to lift up to our fellow citizens and defend the right to religious freedom. Like all moral principles, however, human rights (including the right to religious liberty), are shaped, and given content, by the human goods they protect. Rights, like other moral principles, are intelligible as rational, action-guiding principles because they are entailments and, at some level, specifications of the integral directiveness or prescriptivity of principles of practical reason that directs our choosing towards what is humanly fulfilling and enriching (or, as Dr. King would say, uplifting) and away from what is contrary to our well-being as the kind of creatures we are – namely, human persons.

And so, for example, it matters to the identification and defense of the right to life – a right violated by abortion, the infanticide of handicapped newborns and other physically or mentally disabled persons, the euthanizing of persons suffering from Alzheimer's disease and other dementias common among the elderly, and all acts of whatever type of the direct killing of innocent human beings, including the killing of captured enemy soldiers and the targeting of civilians in terror attacks, even in justified wars – that human life is no mere instrumental good, but is an intrinsic aspect of the good of human persons – an integral dimension of our overall flourishing.⁷ And it matters to the identification and defense of the right to religious

⁶ John Rawls, "On the Priority of Right and Ideas of the Good," *Philosophy and Public Affairs*, Vol. 17, No. 4 (1988), pp. 251-276.

⁷ Germain Grisez, John Finnis, and Joseph M. Boyle, Jr., *Nuclear Deterrence, Morality and Realism* (Ox-

liberty that religion is yet another irreducible aspect of human well-being and fulfillment – a basic human good.⁸

2. Reason and Religion

In its fullest sense, religion is the human person's being in right relation to the divine – the more than merely human source or sources, if there be such, of meaning and value. Of course, even the greatest among us in the things of the spirit fall short of perfection in various ways; but in the ideal of perfect religion, the person would understand as comprehensively and deeply as possible the body of truths about spiritual things, and would fully order his or her life, and share in the life of a community of faith that is ordered, in line with those truths. In the perfect realization of the good of religion, one would achieve the relationship that the divine – say, God himself, assuming for a moment the truth of monotheism – wishes us to have with Him.

Of course, different traditions of faith have different views of what constitutes religion in its fullest and most robust sense. There are different doctrines, different scriptures, different structures of authority, different ideas of what is true about spiritual things and what it means to be in proper relationship to the more than merely human sources of meaning and value that different traditions understand as divinity.⁹

2.1 The correlation between Reason and Religion

For my part, I believe that reason has a very large role to play for each of us in deciding where spiritual truth most robustly is to be found. And by reason here, I mean not only our capacity for practical reasoning and moral judgment, but also our capacities for understanding and evaluating claims of all sorts: logical, historical, scientific, and so forth. But one need not agree with me about this in order to affirm with me that there is a distinct basic human good of religion – a good that is uniquely architectonic in shaping one's pursuit of and participation in all the basic human goods – and that one begins to realize and participate in this good from the moment one begins the quest to understand the more-than-merely-human sources of meaning and value and to live authentically by ordering one's life in line with one's best judgments of the truth in religious matters.

ford: Clarendon Press, 1987) pp. 304-309.

⁸ On religion as a basic human good, see John Finnis, *Natural Law and Natural Rights*, pp. 89-90.

⁹ For a deeply informed and sensitive treatment of similarities and differences in the world historical religions, see Augustine DiNoia, *The Diversity of Religions: A Christian Perspective* (Washington, DC: Catholic University Press, 1992).

If I am right, then the existential raising of religious questions, the honest identification of answers, and the fulfilling of what one sincerely believes to be one's duties in the light of those answers are all parts of the human good of religion – a good whose pursuit is an indispensable feature of the comprehensive flourishing of a human being. If I am right, in other words, then man is, as Becket Fund founder Seamus Hasson says, intrinsically and by nature a religious being – *homo religiosus*, to borrow a concept, or at least a couple of words of Latin, from Eliade – and the flourishing of man's spiritual life is integral to his all-round well-being and fulfillment.

But if that is true, then respect for a person's well-being, or more simply respect for the person, demands respect for his or her flourishing as a seeker of religious truth and as a man or woman who lives in line with his best judgments of what is true in spiritual matters. And that, in turn, requires respect for his or her liberty in the religious quest – the quest to understand religious truth and order one's life in line with it. Because faith of any type, including religious faith, cannot be authentic – it cannot be *faith* – unless it is free, respect for the person – that is to say, respect for his or her dignity as a free and rational creature – requires respect for his or her religious liberty. That is why it makes sense, from the point of view of reason, and not merely from the point of view of the revealed teaching of a particular faith – though many faiths proclaim the right to religious freedom on theological and not merely philosophical grounds, to understand religious freedom as a fundamental human right.

3. Rights independent of religious beliefs

Interestingly and tragically, in times past, and even in some places today, regard for persons' spiritual well-being has been the premise, and motivating factor, for *denying* religious liberty or conceiving of it in a cramped and restricted way. Before the Catholic Church, in the document *Dignitatis Humanae* of the Second Vatican Council, embraced the robust conception of religious freedom that honors the civil right to give public witness and expression to sincere religious views (even when erroneous), some Catholics rejected the idea of a right to religious freedom on the theory that “only the truth has rights.” The idea was that the state, under favoring conditions, should not only publicly identify itself with Catholicism as the true faith, but forbid religious advocacy or proselytizing that could lead people into religious error and apostasy.

The mistake here was not in the premise: religion is a great human good and the truer the religion the better for the fulfillment of the believer. That is true. The mistake, rather, was in the supposition made by some that the good of religion was not being advanced or participated in outside the context of the one true faith, and that

it could be reliably protected and advanced by placing civil restrictions enforceable by agencies of the state on the advocacy of religious ideas. In rejecting this supposition, the Fathers of the Second Vatican Council did not embrace the idea that error has rights; they recognized, rather, that *people* have rights, and they have rights even when they are in error.¹⁰ And among those rights, integral to authentic religion as a fundamental and irreducible aspect of the human good, is the right to express and even advocate in line with one's sense of one's conscientious obligations what one believes to be true about spiritual matters, even if one's beliefs are, in one way or another, less than fully sound, and, indeed, even if they are false.¹¹

3.1 Merit in non-Christian religions

When I have assigned the document *Dignitatis Humanae* in courses addressing questions of religious liberty, I have always stressed to my students the importance of reading another document of the Second Vatican Council, *Nostra Aetate*, together with it. Whether one is Catholic or not, I don't think it is possible to achieve a rich understanding of the Declaration on Religious Liberty, and the developed teaching of the Catholic Church on religious freedom, without considering what the Council Fathers proclaim in the Declaration on Non-Christian Religions. In *Nostra Aetate*, the Fathers pay tribute to all that is true and holy, implying and then explicitly saying, that there is much that is good and worthy in non-Christian faiths, including Hinduism and Buddhism, and especially Judaism and Islam. In so doing, they give recognition to the ways in which religion, even where it does not include the defining content of what the Fathers, as Catholics, believe to be religion in its fullest and most robust sense – namely, the Incarnation of Jesus Christ – enriches, ennobles, and fulfills the human person in the spiritual dimension of his being. This is to be honored and respected, in the view of the Council Fathers, because the dignity of the human being requires it. Naturally, the non-recognition of Christ as the Son of God must count for the Fathers as a falling short in the non-Christian faiths, even the Jewish faith in which Christianity is itself rooted and which stands according to Catholic teaching in an unbroken and unbreakable covenant with God – just as the proclamation of Christ as the Son of God must count as an error in Christianity from a Jewish or Muslim point of view. But, the Fathers teach, this does not mean that Judaism and Islam are simply false and without merit (just as neither Judaism nor Islam teaches that Christianity is simply false and without merit); on the contrary, these traditions enrich the lives of their faithful in their spiritual dimensions, thus contributing vitally to their fulfillment.

¹⁰ See Kevin J. Hasson, *The Right to Be Wrong: Ending the Culture War Over Religion in America* (New York: Encounter Books, 2005)

¹¹ *Dignitatis Humanae*, 2-3.

3.2 The Catholic heritage of reasoning and religious liberty

Now, the Catholic Church does not have a monopoly on the natural-law reasoning by which I am today explicating and defending the human right to religious liberty.¹² But the Church does have a deep commitment to such reasoning and a long experience with it. And in *Dignitatis Humanae*, the Fathers of the Second Vatican Council present a natural law argument for religious freedom – indeed they begin by presenting a natural-law argument before supplementing it with arguments appealing to the authority of God’s revelation in sacred scripture. So let me ask you to linger with me a bit longer over the key Catholic texts so that I can illustrate by the teachings of an actual faith how religious leaders and believers, and not just statesmen concerned to craft national or international policy in circumstances of religious pluralism, can incorporate into their understanding of the basic human right to religious liberty, principles and arguments available to all men and women of sincerity and goodwill by virtue of what Professor Rawls once referred to as “our common human reason.”¹³

Let me quote at some length from *Nostra Aetate* to give you an appreciation of the rational basis of the Catholic Church’s affirmation of the good of religion as manifested in various different faiths. I do this in order to show how one faith, in this case Catholicism, can root its defense of a robust conception of freedom of religion not in a mere *modus vivendi*, or mutual non-aggression pact, with other faiths, or in what the late Judith Shklar labeled a “liberalism of fear,” or, much less, in religious relativism or indifferentism, but rather in a rational affirmation of the value of religion as embodied and made available to people in and through many traditions of faith. So here is what *Nostra Aetate* says:

Throughout history even to the present day, there is found among different peoples a certain awareness of a hidden power, which lies behind the course of nature and the events of human life. At times there is present even a recognition of a supreme being or still more of a Father. This awareness and recognition results in a way of life that is imbued with a deep religious sense. The religions which are found in more advanced civilizations endeavor by way of well-defined concepts and exact language to answer these questions. Thus in Hinduism men explore the divine mystery and express it both in the limitless riches of myth and the accurately defined

¹² On natural law and religious freedom in the Jewish tradition, see David Novak, *In Defence of Religious Liberty* (Wilmington: ISI Books, 2009). (Rabbi Novak kindly dedicated this fine work to me. Inasmuch as this is the first time I’ve had occasion to cite it in a publication, I am happy to have the opportunity publicly to thank him for what I consider to be a high honour.)

¹³ John Rawls, *Political Liberalism* (New York: Columbia University Press, expanded edition, 1993), p. 137.

insights of philosophy. They seek release from the trials of the present life by ascetical practices, profound meditation and recourse to God in confidence and love. Buddhism in its various forms testifies to the essential inadequacy of this changing world. It proposes a way of life by which men can with confidence and trust, attain a state of perfect liberation and reach supreme illumination either through their own efforts or by the aid of divine help. So, too, other religions which are found throughout the world attempt in their own ways to calm the hearts of men by outlining a program of life covering doctrine, moral precepts and sacred rites.

The Catholic Church rejects nothing of what is true and holy in these religions. She has a high regard for the manner of life and conduct, the precepts and doctrines which, although differing in many ways from her own teaching, nevertheless often reflect truths which enlighten all men. Yet she proclaims and is in duty bound to proclaim without fail, Christ who is the way, the truth and the life (John 1:6). In him, in whom God reconciled all things to himself (2 Cor 5:18-19), men find the fullness of their religious life.

The Church therefore, urges her sons to enter with prudence and charity into discussion and collaboration with members of other religions. Let Christians, while witnessing to their own faith and way of life, acknowledge, preserve and encourage the spiritual and moral truths found among non-Christians.

The Church has also a high regard for the Muslims. They worship God, who is one, living and subsistent, merciful and almighty, the Creator of heaven and earth, who has also spoken to men. They strive to submit themselves without reserve to the decrees of God, just as Abraham submitted himself to God's plan, to whose faith Muslims link their own. Although not acknowledging Jesus as God, they revere him as a prophet; his virgin Mother they also honor, and even at times devoutly invoke. Further, they await the Day of Judgment and the reward of God following the resurrection of the dead. For this reason they highly esteem an upright life and worship God, especially by way of prayer, almsgiving, and fasting.

Over the centuries many quarrels and dissensions have arisen between Christians and Muslims. The sacred Council now pleads with all to forget the past, and urges that a sincere effort be made to achieve mutual understanding; for the benefit of all men, let them together preserve and promote peace, liberty, social justice and moral values.

Sounding the depths of the mystery which is the Church, this sacred Council remembers the spiritual ties which link the people of the New Covenant to the stock of Abraham.

The Church of Christ acknowledges that in God's plan of salvation the beginning of her faith and election is to be found in the patriarchs and in Moses and the prophets. She professes that all Christ's faithful, who as men of faith are sons of Abraham (cf. Gal 3:7), are included in the same patriarch's call and that the salvation of the Church is mystically prefigured in the exodus of God's chosen people from

the land of bondage. On this account the Church cannot forget that she received the revelation of the Old Testament by way of that people with whom God in his inexpressible mercy established the ancient covenant. Nor can she forget that she draws nourishment from that good olive tree onto which the wild olive branches of the Gentiles have been grafted (cf. Rom 11:17-24). The Church believes that Christ who is our peace has through his cross reconciled Jews and Gentiles and made them one in himself (cf. Eph 2:14-16).¹⁴

3.3 Religious liberty for all – atheists included

Of course, from the point of view of any believer, the further away one gets from the truth of faith in all its dimensions – what the Council Fathers refer to in the passages I just quoted as “the fullness of religious life” – the less fulfillment is available. But that does not mean that even a primitive and superstition-laden faith, much less the faiths of those advanced civilizations to which the Fathers refer, is utterly devoid of value, or that there is no right to religious liberty for people who practice such a faith. Nor does it mean that atheists have no right to religious freedom. The fundamentals of respect for the good of religion require that civil authority respect (and, in appropriate ways, even nurture) conditions or circumstances in which people can engage in the sincere religious quest and live lives of authenticity reflecting their best judgments as to the truth of spiritual matters. To compel an atheist to perform acts that are premised on theistic beliefs that he cannot, in good conscience, share, is to deny him the fundamental bit of the good of religion that is his, namely, living with honesty and integrity in line with his best judgments about ultimate reality. Coercing him to perform religious acts does him no good, since faith really must be free, and dishonors his dignity as a free and rational person. The violation of liberty is worse than futile.

4. Conclusion

Of course, there are limits to the freedom that must be respected for the sake of the good of religion and the dignity of the human person as a being whose integral fulfillment includes the spiritual quest and the ordering of one's life in line with one's best judgment as to what spiritual truth requires. Gross evil – even grave injustice – can be committed by sincere people for the sake of religion. Unspeakable wrongs can be done by people seeking sincerely to get right with God or the gods or their conception of ultimate reality, whatever it is. The presumption in favor of respecting liberty must, for the sake of the human good and the dignity of human

¹⁴ *Nostra Aetate*, 2-4.

persons as free and rational creatures – creatures who, according to Judaism and Christianity, are made in the very image and likeness of God – be powerful and broad. But it is not unlimited. Even the great end of getting right with God cannot justify a morally bad means, even for the sincere believer. I don't doubt the sincerity of the Aztecs in practicing human sacrifice, or the sincerity of those in the history of various traditions of faith who used coercion and even torture in the cause of what they believed was religiously required. But these things are deeply wrong, and need not (and should not) be tolerated in the name of religious freedom. To suppose otherwise is to back oneself into the awkward position of supposing that violations of religious freedom (and other injustices of equal gravity) must be respected for the sake of religious freedom.

Still, to overcome the powerful and broad presumption in favor of religious liberty, to be justified in requiring the believer to do something contrary to his faith or forbidding the believer to do something his faith requires, political authority must meet a heavy burden. The legal test in the United States under the Religious Freedom Restoration Act is one way of capturing the presumption and burden: to justify a law that bears negatively on religious freedom, even a neutral law of general applicability must be supported by a compelling state interest and represent the least restrictive or intrusive means of protecting or serving that interest. We can debate, as a matter of American constitutional law or as a matter of policy, whether it is, or should be, up to courts or legislators to decide when exemptions to general, neutral laws should be granted for the sake of religious freedom, or to determine when the presumption in favor of religious freedom has been overcome; but the substantive matter of what religious freedom demands from those who exercise the levers of state power should be something on which reasonable people of goodwill across the religious and political spectrums should agree on – precisely because it is a matter capable of being settled by our common human reason.



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Religious freedom in a secular society

Roger Trigg¹

Abstract

Secularism in Europe tends to look for a society free from religion rather than free for it. The result is that as examples from recent jurisprudence in Europe, and the United Kingdom in particular, indicate, “equality”, and the right not be discriminated against, too often simply trump claims to a right to freedom of religion. In addition, freedom of religion is too often truncated to mean freedom of worship. What is needed is a reasonable accommodation between the demands of competing rights, so that the needs of all can, if possible, be properly met.

Keywords European Court of Human Rights, religious freedom, discrimination, equality, human rights, reasonable accommodation, conscience, secularism.

1. The impact of secularism

The chill winds of secularism are blowing in many countries, despite the fact that religion, as a force, is in the ascendancy across the world. Nevertheless in Europe, in particular, a form of secularism is becoming more pronounced that is understood as being in opposition to public religious influence. There are many kinds of secularism, some merely indicating the separation of “church and state.” Others, particularly those with roots in the later Enlightenment as evidenced in Revolutionary France, see religion as a threat to public order, and regard it as a personal choice only fit for the private sphere.

In my new book (Trigg 2012), with the title of *Equality, Freedom and Religion*, I am especially concerned with the way in which in many Western jurisdictions, secular ideas of equality are judged so important that they can eclipse claims to religious freedom. One can see this dynamic at work in pronouncements of the Council of Europe in 2007. The Council represents the parliaments of the whole range of European countries, including Russia and Turkey, and is the body underwriting the European

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Court of Human Rights. In a Recommendation concerning State, *Religion, Secularity and Human Rights* the Council asserts: "States must require religious leaders to take an unambiguous stand in favour of the precedence of human rights, set forth in the European Convention of Human Rights, over any religious principle" (Council of Europe 2007, para. 17). The Assembly even wanted to "require human rights training for all religious leaders" (para. 24.1). This is all highly controversial throughout Europe, and it is an attitude that has not found favour in more recent debates in the Parliamentary Assembly of the Council. Even so, this Recommendation comes from a clear train of Enlightenment thinking that sees human rights as essentially secular, and opposed to the obscurantism of religion. The flaw in such arguments is that religious freedom must itself be a basic human right and is recognised as such in all human rights charters. The European Convention on Human Rights itself, in Article 9, gives an absolute right to "freedom of thought, conscience and religion." It does, however, qualify the manifestation of such beliefs by such limitations as "are necessary in a democratic society" and, in particular, "for the protection of the rights and freedoms of others." That gives an opportunity for those who wish to champion other rights and freedoms to insist not just that they are equally taken account of, but that they trump any right of religious expression.

That is what has been happening, and I argue in my book that all too often a right to equality, and freedom from discrimination trumps the right to show one's conscientiously held religious beliefs in action. Instead of a balance being sought between different human rights, so that everyone's interests are catered for if that is possible, some insist that one right overrules another. The idea of reasonable accommodation, so that a religious conscience can be respected, seems anathema to some. It involves recognising in public what some feel has no right to a place in public life at all. There must be one law for all, and that must, it seems, be avowedly secular. This both circumscribes the freedom of individuals to live as they would wish, and also hampers religious institutions in their attempt to operate according to their ethical beliefs stemming from their religious outlook.

It may be argued that ethics must be firmly rooted in one's views of what is conducive to human flourishing, and not, say, in arbitrary edicts from religious texts or religious authorities. Reason, not blind obedience to authority, should prevail. That is a typical Enlightenment response to religious claims, but it forgets that the idea of what constitutes human flourishing, and what is good and bad for us, is itself heavily influenced by one's view of human nature, and that is partly formed by one's religious views concerning the place of humans in the wider scheme of things. Even the idea that *humans* matter particularly and that *human* rights are of particular importance could be said to stem from the Judaeo-Christian belief that humans are made in the image of God. The ideas of equality and freedom could themselves be argued to depend on theological ideas

that we are all equal in the sight of God, and that we should be free because we have all been given free-will by God. That certainly was the assumption that undergirded the thought of American Enlightenment thinkers, and explains the assertion in the United States Declaration of Independence that “all men are created equal”, and that “they are endowed by their Creator with certain inalienable rights.” It was not the view of a more materialist and atheist culture in late eighteenth century France, and the latter is influencing Europe at the present time. Even mentioning the Christian heritage of Europe in the recent Lisbon Treaty of the European Union became controversial. There is now merely a bland reference to the “cultural, religious and humanist inheritance of Europe” in the Preamble. Even the word “Christian” is proscribed.

This leaves a problem about the basis of human rights, and their philosophical justification. Human rights cannot just be what “we” (whoever “we” are) may happen to believe in at the present moment. Their whole moral force comes from their presumed objectivity and universality. Yet a more pressing problem is that without some basis for rights we have nothing to help us balance one against the other. If our beliefs in effect create the rights, strong beliefs about the importance of one may be allowed simply to eclipse another. That is now happening in many Western societies. As campaigns gather force for the removal of discrimination against this or that group, and for equal treatment for all, “equality” comes to overwhelm claims to religious freedom, when these seem to involve actions that may be accused of “discrimination.”

2. Freedom from religion?

All religions run the risk of their freedom being constrained. For instance, in one of the first cases heard by the new United Kingdom Supreme Court in 2009, Jews were themselves convicted of racial discrimination, because the Court could not accept the traditional Orthodox definition of who counts as Jew. As Lord Rodger, one of the Justices, said in his opinion, (*R. v. JFS* para. 225) “the decision of the majority means that there can be in future no Jewish faith schools which give preference to children because they are Jewish according to Jewish religious law and belief.” The alleged fact of racial discrimination had to trump any consideration of respecting the internal rules of a religion.

The oddity in all this is that discrimination on grounds of religion always seems explicitly to be outlawed. Yet other forms of discrimination, on grounds of race, gender or sexual orientation, seem to be guarded against at the expense of discrimination on grounds of religious belief. The anti-religious strain in this is obvious. In many Western societies, the aim is to achieve freedom *from* religion, rather than freedom *for* religion. It could be argued that despite culture wars in the United States, there is still a greater desire to protect religion there than in some European countries.

Two contrasting legal cases illustrate this. Within weeks of each other, courts in the United Kingdom and the United States came to radically different conclusions about the status of ministers of religion. In a much trumpeted case, the United States Supreme Court unanimously upheld what is termed the “ministerial exception.” Although the case concerned only ordained ministers and not everyone employed by churches and religious institutions, an important line was drawn. The Chief Justice said (*Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Opportunities Commission*, 565-U.S 2012 [slip. op. at 13]): “Requesting a church to accept or retain a minister . . . intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control of those who will personify its beliefs.”

Government interference with the appointment of ministers, and their conditions of employment would be an unwarranted intrusion into the free exercise of religion, as proclaimed in the First Amendment to the Constitution of the United States. Justice Alito commented in his opinion (slip. op. at 3), this is no small matter in the protection of freedom as “the autonomy of religious groups . . . has often served as a shield against repressive civil laws.” They were, in his words, “critical buffers” between the individual and the power of the state. Throughout the history of the United States he insists (slip. op. at 2) religious associations have been the pre-eminent example of private associations fulfilling that function.

The situation is seen very differently by the courts of the United Kingdom. It has long been the custom to view ministers of religion as not employees but “office-holders.” For example, the relation between a minister and the British Methodist Church was regarded as non-contractual, and a matter of “spiritual discipline.” Clearly once ordinary employment law comes into the picture, and contracts are enforceable by secular criteria, ministers may have gained some protection, but at the cost of the State in effect being able to control the appointment and employment of ministers in a way the United States Supreme Court saw as dangerous.

A significant feature of the British case (*President of Methodist Conference v. Preston* 2011) is that the three judges of the Court of Appeal in London explicitly accepted that they were changing traditional understandings. Lord Justice Kay (para. 25), quoting another judge about a former case, claimed that this is an example of the courts “fulfilling their time-honoured role of updating the common law and making it more suitable for modern circumstances.” Contemporary courts are thus at liberty to change deep-rooted understandings even about the relations between the State and religious institutions to suit contemporary fashion, or even the prejudices of modern judges. The Court insisted that the relation between minister and church was contractual and therefore enforceable by the courts.

Appeals to freedom of religion, as set out in the European Convention of Human Rights, were summarily dismissed as having nothing to do with “the domestic law of unfair dismissal.” Yet it is apparent that with the courts having the power to decide what constitutes unfair dismissal, the power of discipline over recalcitrant ministers has been removed from all churches. Secular standards of appropriate behaviour may differ from religiously inspired ones. The role of institutions such as churches to act as buffers between State and individual, alluded to by Justice Alito, is summarily removed.

The subtle secular stance of English courts in recent years is underlined by the recent insistence by Lord Justice Laws in the England and Wales Court of Appeal that “in the eyes of everyone save the religious believer religious faith is necessarily subjective, being incommunicable by any kind of proof and evidence.”² It follows that it must be a private and personal matter, with no role in public life, and certainly no role in the law. In a few sentences the foundation of the English common law on Christian principles for more than a thousand years is summarily dismissed. More serious than that perhaps is the way in which he merely asserts, without argument, an understanding of religion that is philosophically controversial, namely that religion in general, and Christianity in particular, cannot be rationally discussed. The whole idea that religious assertions are “subjective”, without recourse to proof or evidence, would be denied by many (e.g. Trigg 1973, 1998). Even atheists may want to argue rationally that religion is making claims to objective truth, but they are false. It should not be the role of the courts to become involved in matters of dispute within the philosophy of religion, particularly when there is a suspicion that they are based on outmoded understandings of what “proof” and “evidence” consists, themselves the subject of much debate within the philosophy of science (see Trigg 1993).

These remarks of a judge, straying way beyond his remit, are being quoted as a part of case law in subsequent cases, and go to set the scene for the way in which religious claims are now treated in English courts. For example, in a case about public prayer at the start of a Town Council meeting in Bideford, an ancient port in the South-West of England, the High Court judge quotes further remarks by Lord Justice Laws to the effect that “the precepts of any one religion, and belief system, cannot by force of their religious origins, sound any louder in the general law than the precepts of another” (*National Secular Society v. Bideford Town Council* 2012, para. 31). In other words the public space is to be neutral and devoid of any religious influence. It is to be free from religion, rather than free for it.

The idea that somehow secularity and neutrality are equivalent can be assumed without question. Yet the result is that people without religious views can speak and

² *McFarlane v. Relate* para 23.

behave as normal in the public square, whereas those with religious convictions have to put what they think most important in life on one side. Indeed if it consists of private, subjective prejudice that cannot be rationally justified, it would be right for them to do so. If, though, what they believe can lay claim to truths about the human condition, they ought to be able to express those views and be listened to, particularly if they are involved in debates about what constitutes the common good.

3. The public square

The issue concerns what is the default position in public life. Is the public square “naked” and neutral concerning religion? (see Trigg 1997). The arguments of the later Enlightenment are seldom far from the surface here. Is religion a constant threat or an aid to the conduct of public affairs? Is it intrinsically divisive and a source of conflict, or can it be part of the shared assumptions that bind a society together? This kind of argument can perhaps never be decisively settled, and the watchword must be freedom. Yet what does that mean in practice? Should people, as in this case, be free to manifest their belief in public, or should genuine freedom proscribe such activity?

The Judge in the Town Council case (*National Secular Society v. Bideford Town Council* 2012) chose to decide the case on the narrow grounds of the rights of the Council under a 1972 Act. It said amongst other things (para. 20) that “a local authority shall have the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of these functions.” The issue was whether that could include public prayer. The Judge, perhaps not surprisingly, said (para. 29) that “it is not for a Court to rule upon the likelihood of divine, and presumptively beneficial, guidance being available or the effectiveness of Christian public prayer in obtaining it.” That was a proper observation, but the conclusion he drew from that was that the Council was not entitled to offer public prayer. In other words, the secularist view was the norm. If you cannot prove the beneficial effects of prayer, you cannot have public prayer.

Yet it could be easily argued that the presumption was the opposite. Prayers had been said in Bideford Town Council since at least the reign of Elizabeth I in the sixteenth century. Why if a Court did not feel qualified to rule in the matter did the judge automatically assume the practice should cease rather than continue? The settled custom was that prayers be said, and the reiterated, democratic will of the Council was that this should continue. Yet secularism won the day, though only for a moment, because the British Government then stepped in with Parliamentary action to clarify the powers of local councils, so that they could if they wished, continue to have prayers. The Secretary of State for Communities and Local Government said in a public statement that “the right to worship is a fundamental and hard-fought Bri-

tish liberty, and the right for religious freedom in British history is deeply entwined with political freedom.”

The secularist would, of course, maintain that the right to religious freedom supports their case. Yet this brings us back to the idea of a neutral state, which all citizens enter on an equal footing. The claim is that public acts of worship cause discrimination between believers and unbelievers, so that the latter feel that in some way they are second-class citizens. As the Judge claimed, praying “turns the Council meeting from one in which all Councillors are entitled to participate equally on all matters, qualified equally through being elected, into a partial gathering of those councillors who share a particular religious outlook.” Yet turning the issue round, so that there are no prayers and everyone is treated apparently equally, we find that in fact the right of religious believers to manifest their beliefs in acts of public worship is curtailed. Religion is made a private matter of no relevance in the public sphere.

What is most important in the face of competing claims to religious freedom is that there is no coercion. The demand that equality of citizenship entails that the public square is stripped of any religious symbol or manifestation may reduce everything to the lowest common denominator, but it is clearly creating a substantial burden on those who consider their religious beliefs have a public relevance and resonance. In the case of public prayer, stopping it in the face of a majority wish seems coercive and an assault on long established freedoms. Yet the consciences of those who do not wish to participate must be respected. In practice, there is not a problem in pausing after such prayers so that latecomers, and others, may enter. There need be no feeling of embarrassment. In the Westminster Parliament prayers are said daily at the start of the session in both Houses. Attendance is voluntary. The prayers are private, and the public galleries are not opened until their conclusion. Members may have many reasons for not arriving in time, and there is no feeling of anyone being “second-class.” It is a matter of personal choice, and that is surely how it should be. No-one is coerced, although if the practice were to be stopped by the Courts against the wishes of the majority of Members of Parliament that would surely be an assault on freedom and democracy itself.

The Judge was wise in the case of Bideford Town Council not to get involved in theology, but that does not prevent other courts making rulings about what are and are not core beliefs. A favourite ploy of English courts at the moment (and it can be seen in other jurisdictions too) is to pare down the idea of what it is to manifest a religious belief. Freedom of religion can often be seen as mere freedom of worship. This was demonstrated in an important case, where having been to the Court of Appeal in London, it was then taken to the European Court of Human Rights, along with three other cases concerning religious freedom.

This particular case concerned a civil registrar who did not wish to register civil partnerships, when they were introduced. She lost her job, and her claim to freedom of religion was overruled by the right not to be discriminated against on grounds of sexual orientation. One right simply eclipsed the right to manifest one's religious beliefs, and a salient feature of the case was that the London Borough of Islington made no attempt to accommodate her. Colleagues could have taken the ceremonies, while she remained with more traditional ones. Her employers though wanted to make the point that discrimination on grounds on sexual orientation was totally unacceptable. "Reasonable accommodation" was not part of the Council's vocabulary.

The issue is not whether one agrees with her stance. Freedom of religion is all the more precious in a democratic society if one disagrees with a religious outlook. Not everything can be allowed, but there ought to be a presumption that one can live by what one considers most important in life. Democracy itself cannot flourish if people are not free to express their most deeply held beliefs and also to live by them.

In this instance, however, the Court (*Ladele v. London Borough of Islington*, para. 52) states: "Ms. Ladele's objection was based on her view of marriage, which was not a core part of her religion; and Islington's requirement in no way prevented her from worshipping as she wished." Thus her freedom of religion was in no way circumscribed, because the beliefs she was manifesting were not part of her religion, and anyway freedom of religion in the Court's eyes, seems to consist only in being able to worship as one wishes. This, though, shows a misunderstanding of the nature of Christianity, which certainly sees marriage as being a crucial element in its beliefs, indeed in the eyes of some a "sacrament." It also sweeps aside the way in which Christians and adherents of other religions, such as Islam, would see their religion as encompassing much more in their life than mere public rituals.

It is ironic that despite the admission that "public worship" is a central part of freedom of religion, there is little attempt in the European Court of Human Rights to safeguard that by allowing workers to choose not to work on Sundays so they can worship. The doctrine of the Court is that freedom of religion is upheld by the idea of freedom of contract. In other words, if one does not like some of the conditions of a job, one is free to give it up, or not take it on in the first place. Yet the freedom to be unemployed is a dubious freedom, and, particularly in some countries at the present time of financial stringency, giving up a job on grounds of conscience can be a heroic, not to say foolhardy, act.

It is true that, for example, a Muslim unwilling to serve alcohol should not take on a job as a bartender. That though does not meet the case of a Muslim worker in a large supermarket required to sell alcohol, when it would be easy to give him or her other duties. Once again, the idea of reasonable accommodation, and of the

balancing of rights, should come to the fore. Sunday working (or for that matter Friday and Saturday working for Muslims and Jews) certainly provides an example where even freedom of worship is rated as secondary to the rights of employers.

4. Is religion special?

A common thread running through many European cases, which sometimes distinguishes them from the United States, is a reluctance to see religion as special, or religious freedom as such in need of particular protection. From a secularist perspective, this is intelligible. Even if human freedom is celebrated, and freedom of conscience upheld, there will be a reluctance to see “religion” itself as worthy of any attention. Indeed, if religion is regarded as a threat to social cohesion, it will only be tolerated if freedom of religion is viewed as a species of something that is regarded as important, such as freedom of conscience. The same implicit reasoning can be seen in the move to appeal to freedom of contract, as that might be seen as desirable from a secularist point of view. Indeed the European Convention of Human Rights (Article 9) concerns the importance of freedom of religion, and the right to manifest it, but even in that Article it is only part of a wider context. One has freedom to manifest “one’s religion or beliefs.” This follows the statement of the absolute right to “freedom of thought, conscience and religion.” “Religion” is put within a wider grouping, and is not given special attention.

This is in clear contrast to the First Amendment to the Constitution of the United States, which, as is well known, states clearly that, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” It goes on to refer to other freedoms, including the freedom of speech and assembly, but they are listed separately. Religion is seen as of special importance, and, given the history of eighteenth century Virginia, the home of the main drafters, one can see why. In that Colony, an increasingly diverse population with several denominational allegiances came up against a hide-bound Established Church (the Church of England), dominated in Virginia by the local gentry, and without adequate episcopal oversight. The responsible bishop was far away in London. There was a lack even of the toleration supposedly guaranteed even in the Colonies by the English Act of Toleration of 1689.

The result was an understanding in the infant United States that religious freedom was a fundamental part of proper democracy. If one cannot live publicly according to what one thinks is most important in life, one cannot be truly a free citizen, but hampered by orthodoxy of belief and practice imposed from outside, that one may not accept. In the Virginia of the eighteenth century, that had involved an Anglican ascendancy, with its roots in the class structure of the colony. Baptists, Presbyteri-

ans and others found this increasingly irksome. Today, the imposed orthodoxy is more likely to be of a secular origin, but can be at least as oppressive.

In the United States many see religious freedom as “the first freedom”, and do not consider it a coincidence that reference to it is placed first in the Bill of Rights. There is good reason for this order. Religion has always been particularly vulnerable, since, by definition, it poses an alternative source of authority to that of the State (significantly often given that capital letter), or even to the “will of the people” and hence the fashions and prejudices of the day. Totalitarian governments invariably find it a threat, and it is no coincidence that the presence or absence of freedom of religion has often been seen as a reliable indication of the presence or absence of other freedoms.

The tendency, though, has been for secularists of various descriptions to deal with freedom of religion by subsuming it under some other freedom or freedoms. We have already mentioned the invocation of freedom of contract, but it can also be held that freedom of religion is covered by freedom of conscience. Then religion need not be given any special status, or thought worthy of particular protection. It is covered by something else. Yet is it? An obvious lacuna is that religion is not just a personal and individual pursuit. The conceit that it is a subjective phenomenon, perhaps valid only for the individual believer, does not do justice to the undoubted fact that it is also a communal affair, even something one may be born into.

The Protestant stress on the importance of individual commitment, which is often taken for granted in discussions about freedom of religion, sometimes fails to give due weight to the corporate nature of religion. Religious institutions are themselves important as buffers between the individual and state, as we have already seen. As a consequence, true freedom demands not just freedom for individuals but also freedom for institutions. Otherwise, with nothing between the individual and the state, the tendency will be for the state to gather ever more power to itself in an attempt to act as referee between the competing interests of individuals. The danger of this explains the importance of the American “ministerial exception”, guaranteeing some independence to religious institutions.

Freedom of assembly is sometimes invoked as an adequate protection for public worship, and hence for the existence of churches, but, as with individuals, churches and similar institutions need a wider canvas on which to work than that presented by the mere right to gather for worship. Attacks on the rights of Catholic institutions to operate within their own ethical standards are a case in point. Catholic adoption agencies in Britain have had to close down because they were unwilling to go against their Church’s teaching by offering children for adoption by same-sex couples. They have had to conform to the fashionable secular standards of the day, no matter that they clashed with basic religious principles as they saw them.

The response, however, will still be made that there is nothing about religion that is worthy of special protection. Other beliefs can also form part of worldviews, and moral judgments, that are of immense importance to the people making them. Pacifism, environmentalism, and vegetarianism offer examples of causes that can demand great commitment on the part of those who support them. Should not they also be respected? That is presumably the thinking behind the coupling of religion and belief in European documents about freedom of religion, and indeed there is now a long tradition of respecting the rights of conscientious objectors in time of war, irrespective of whether their prime motivation is religious, as it often may be.

Nothing that is said here implies that respect for the individual conscience is not important, but that does not mean that religion does not warrant particular protection. Unfortunately, the more the category of protected beliefs is widened, the more qualifications will be written into that protection. Everyone's sincere beliefs cannot be accommodated all the time. Even if, as one must, one includes the right to criticize any religion, and to deny the truth of all religions, as an integral part of religious freedom, there is still a vast hinterland of beliefs individuals may rate highly, but which, by any definition, are far from a religious or specifically anti-religious outlook. In a free society they deserve protection, all things being equal. The question still remains whether we can discard the category of religion, and simply talk of rights to other freedoms, such as freedom of conscience.

5. Human nature

A new discipline, the cognitive science of religion, casts some light on human nature. In *Equality, Freedom and Religion* (Trigg 2012:18ff), examples are given from contemporary research in psychology and anthropology, which suggests that characteristically religious ideas are intimately linked with what may be called our "cognitive architecture." In other words the way people think, and have always tended to do so, is already biased in certain directions. We find, as humans, that it is easier to think in some ways than others. A simple example might be things that go bump in the night, or sudden rustlings in the forest. We all know how easy it is to jump to the conclusion that this is the result of some agent. There must be someone or some animal making that noise, it seems. There are good reasons why we should think so, as in the past we needed to be alert for predators. Nevertheless it is surprisingly simple to visualise an unseen agent when there is no obvious one, and we are then well on the way to believing in the power of supernatural agency. Similarly, we are natural dualists, it seems, finding it easy to separate minds from bodies and to think of minds existing in a bodiless state. We may find stories of looking down from above on our own body at a time of medical crisis hard to accept on a rational basis, but it is remarkably easy to understand them, and seem to

visualize the scene. Similarly, as humans, we seem inclined to look for purpose in what may be sheer accidents. The question “why?” keeps recurring. So one could go on, but the point is that all of these facets of human understanding, apparent from early childhood, help to build up a picture of the world that is highly religious (see Barrett 2004, 2011).

This scratches the surface of a major line of contemporary research in cognitive science, and does nothing to show the truth (or falsity) of any religion. What it does show is that the characteristic signs of religion, belief in the supernatural, in purpose in events, in life after death, and so on, are intimately linked with our ordinary ways of thinking. We are, it has been said “natural theists”, in that the basic impulses that help to form religion are at work everywhere, and have always been present in human life. Belief in God (or gods) has always been the default option, and a truly secular attitude might be said to go against the basic grain of human nature.

Two researchers ask us to imagine a generation that grows up without any religious teaching. They predict that even so, the people in it “would believe in supernatural agents, that natural events had meaning and purpose ... and that they would successfully curb their ancient primeval selfishness for fear of greater forces observing and judging their actions” (Johnson and Bering 2009). Religion, it seems, has both always been with us and is likely to emerge again even if repressed. The resurgence of religion in many countries after the demise of Communism might seem to support this idea. It is “natural” to think in a way conducive to a religious vision of the world.

This is not to give a rational justification for all religion, or any particular one. Rational argument about religion comes in at a higher level than our initial responses to the world around us. We may find it important to control them, and not follow them, but they are typically part of what we are as human beings. They are there, an intrinsic part of our shared human nature. Secularists are wrong if they imagine that we all start off devoid of all religion, and that it is merely the product of social influence. Religion cannot be dismissed as just the idiosyncratic response of individuals, and is more deeply entrenched than that. It is perhaps not surprising that it is identified with what we think important in life. If, indeed, our deepest impulses are thwarted or ignored in society, it is unlikely that we, or our society, can properly flourish.

Given our basic nature, we should be free to follow our impulses and exercise our religion in whatever society we belong to, in whatever ways we see fit. There must, of course, be proper limits. Human sacrifice cannot be tolerated just because some religion practises it. Indeed it is because there are pathologies of religion, and religious impulses can be twisted to perverse ends, that it is important they be out in the open in any given society, and can be subjected to free, rational examina-

tion and criticism. Private religion is all the more dangerous because it cannot be publicly challenged.

The presumption, however, should be in favour of freedom of religious belief and its proper expression, in a wide sense. Practices which can be seen as part of religion, go far beyond the mere forms of public worship, and must include significant moral stances, which are often bound up with a religious vision of the world. Morality and religion cannot easily be separated. As a result, there should be greater willingness than shown at present, particularly in Europe, to accommodate sincerely held religious beliefs and practices. The right to religious liberty should not be simply trumped by other rights, such as a right not to be discriminated against on whatever ground. The European Convention of Human Rights itself explicitly forbids discrimination on grounds of religion (Article 14). All rights should be balanced against each other, so that they can all be taken equally seriously. A reasonable accommodation should be reached, which so far as is possible meets the needs of everyone. The right to religious freedom is too important to be overshadowed by other rights.

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India's defiance of religious freedom

A briefing on "anti-conversion" laws

Tehmina Arora¹

Abstract

While the Constitution of India provides for full religious freedom, six states have "Freedom of Religion" Acts which regulate religious conversions. These laws give the district administration wide and sweeping powers to inquire into religious conversions. They also require a person converting to another religion to give details of the conversion to the local district magistrate. Vague and wide definitions of terms such as "force," "fraud" and "inducement" or "allurement," potentially include even legitimate pursuits or actions of propagating one's faith. The laws are premised on claims that minority Christians and Muslims use duress, deception or coercion to convert poor and illiterate Hindus and threaten public order. These Acts have been harshly criticized from national and international agencies.

Keywords Anti-conversion, freedom, religion, constitution, India, Hindu.

"I fear this bill... will not help very much in suppressing the evil methods [of gaining converts], but might very well be the cause of great harassment to a large number of people. Also, we have to take into consideration that, however carefully you define these matters, you cannot find really proper phraseology for them... The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper.

It would lead in its wake to the police having too large a power of interference."

Jawaharlal Nehru, *India's First Prime Minister*

1. Introduction

In spite of a diverse and rich cultural heritage², India has also had an equally turbulent history of communal tensions, especially between the rightwing Hindus, who

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² According to the 2001 Census of India, 80.5 percent of the total population is Hindu while Muslims account for 13.4 percent and Christians 2.3 percent.

see India as a Hindu nation and the minority Christian and Muslim communities. The primary grouse against the minority Christian community is on the issue of religious conversions, and many states in India have sought to enact Freedom of Religion Acts or anti conversions laws.³

The first state to enact the Freedom of Religion Act was Orissa in 1967 during the rule of the then Swatantra Party, which was known for its Right leanings.

The Madhya Pradesh Freedom of Religion Act was enacted in 1968 and when Chhattisgarh was carved out of Madhya Pradesh in November 2000 it inherited the anti-conversion law from the latter.

The Congress Party enacted the Freedom of Indigenous Faiths Act in Arunachal Pradesh in 1978 to preserve indigenous faiths. However, until today the law has not been implemented as the Rules governing the Act are yet to be framed.

In 2002, the Tamil Nadu state assembly ruled by a regional party passed the Prohibition of Forcible Conversion of Religion Bill to please the Bhartiya Janta Party (BJP), its ally. But, after the defeat of the BJP-led coalition in the 2004 general elections, the state government repealed the law. However, a year later, the BJP government in Gujarat passed the Freedom of Religion Act in March 2003.

In April 2006, the BJP-led government in Rajasthan passed a similar freedom of religion bill. However, assent of the President of India is still awaited after the Bill was forwarded to the President by the then Governor of Rajasthan, Pratibha Patil. The BJP in Madhya Pradesh and Chhattisgarh also unsuccessfully sought to tighten the existing laws the same year, even as the Congress Party government in Himachal Pradesh passed the Freedom of Religion Act for political consideration months before state assembly elections.

1.1 Effect of the legislation

In several states, prosecutions have been launched under the Freedom of Religion Acts against members of the minority Christian community. There have also been frequent attacks against the community by members of Rightwing Hindu groups on the pretext of “forcible” conversions. However, in spite of the existence of these acts

³ The Freedom of Religion Acts were first brought into force in the princely states, where the British Crown had suzerainty and not a direct rule, in the 1930s. The Raigarh State Conversion Act 1936, the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act 1945 and the Udaipur State Anti-Conversion Act 1946 are some examples of these laws. Post-independence, the Indian parliament took up for consideration a legislative enactment regulating religious conversion known as Indian Conversion (Regulation and Registration) Bill of 1954, and later the Backward Communities (Religious Protection) Bill of 1960, and then the Freedom of Religion Bill of 1978 introduced by Member of Parliament OP Tyagi, who was a member of a Hindu nationalist party. However, all these measures were dropped for lack of majority support. (See Anant, A. [2002] *Anti-Conversion Laws, The Hindu* [17 Dec.], National section, Delhi edn).

in some states for over forty-five years, there have been very few convictions, though cases are registered under the Acts almost every month. For example, in the year 2010, at least eighteen arrests were reported under the anti-conversion and other restrictive laws in Chhattisgarh and Madhya Pradesh alone.⁴

Taking note of this trend, in its 2011 report, the United States Commission on International Religious Freedom (USCIRF) noted⁵ that:

“The harassment and violence against religious minorities appears to be more pronounced in states that have adopted ‘Freedom of Religion’ Acts or are considering such laws...”

The report further stated that:

These laws have led to few arrests and reportedly no convictions. According to the U.S. State Department between June 2009 and December 2010 approximately twenty-seven arrests were made in Madhya Pradesh and Chhattisgarh, but resulted in no convictions. Compass Direct reported that in March 2011, police arrested twelve Tribals in Orissa's Mayurbhanj district for violating the Orissa ‘Freedom of Religion Act’ by converting to Christianity without a permit issued by the authorities.

Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief, also noted in her report after a visit to India that:

Even in the Indian states which have adopted laws on religious conversion there seem to be only few – if any – convictions for conversion by the use of force, inducement or fraudulent means. In Orissa, for example, not a single infringement over the past ten years of the Orissa Freedom of Religion Act 1967 could be cited or adduced by district officials and senior officials in the State Secretariat...

However, such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them.⁶

The report goes on to state that:

There is a risk that Freedom of Religion Acts may become a tool in the hands of those who wish to use religion for vested interests or to persecute individuals on

⁴ International Religious Freedom Report, 2010, US State Department (<http://www.state.gov/g/drl/rls/irf/2010/148792.htm>).

⁵ USCIRF Annual Report 2011 – The Commission's Watch List: India (last accessed at <http://www.unhcr.org/refworld/country,,,IND,,4dbe90bac,0.html> on November 11, 2011).

⁶ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum, MISSI-ON TO INDIA (A/HRC/10/8/Add.3, 26 January 2009) accessed at <http://www.wghr.org/pdf/3.%20Special%20Rapporteurs.pdf> on November 11, 2011).

the grounds of their religion or belief. While persecution, violence or discrimination based on religion or belief need to be sanctioned by law, the Special Rapporteur would like to caution against excessive or vague legislation on religious issues which could create tensions and problems instead of solving them.

A fact finding team of the National Commission for Minorities in India in a report after a visit to the states of Madhya Pradesh and Chhattisgarh between June 13 and 18, 2007 noted that Hindu extremists frequently invoked the anti-conversion law in Madhya Pradesh as a means of inciting mobs against Christians or having them arrested without evidence.⁷ They noted in their report:

Obviously, the life of Christians has become miserable at the hands of miscreants in connivance with the police. There are allegations that when atrocities were committed on Christians by the miscreants, police remained mere spectators and in certain cases they did not even register FIRs [First Information Reports].

2. Basic features of the acts

2.1 Preamble

The Freedom of Religion Acts claim to prohibit conversions by force, fraud and inducement or allurement. The Acts state that no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

2.2 Definitions

The Acts in Orissa, Madhya Pradesh and Himachal Pradesh define conversion as “renouncing one religion and adopting another.” The Arunachal Pradesh law differs slightly, as it defines it as “renouncing an indigenous faith and adopting another faith or religion.”⁸ The Gujarat law states that conversion means “to make one person to renounce one religion and adopt another religion.”⁹

All the Acts define “force” as “a threat of injury of any kind including the threat of divine displeasure or social ex-communication,” and “fraud” or “fraudulent means” as “misrepresentation or any other fraudulent contrivance.” The term “inducement” has been defined in some of the Acts¹⁰ as “the offer of any gift or gratifi-

⁷ State in India tightens controls on conversions (*Compass News Direct*, July 25, 2006).

⁸ Section 2 (b), Arunachal Pradesh Freedom of Religion Act, 1978 Section 2 (b).

⁹ Section 2 (b), Gujarat Freedom of Religion Act, 2003.

¹⁰ Section 2 (d) the Orissa Pradesh Freedom of Religion Act, 1967 and the Himachal Pradesh Freedom

cation either in cash or in kind, including the grant of any benefit, either pecuniary or otherwise,” while the other Acts¹¹ use the term “allurement” and define it as offer of any temptation in the form of any gift or gratification either in cash or kind, and grant of any material benefit, either momentary or otherwise.

2.3 Contravention

The Acts carry penal provisions and punishments generally ranging from up to one year of imprisonment and a fine of up to 5,000 Indian rupees, to up to three years of imprisonment and a fine of up to 25,000 Indian rupees.

The punishment is more stringent if there is evidence of conversion by force, fraud or inducement among women, minors and Dalits (formerly “untouchables” as per India’s caste system) or Tribals (aborigines). Apart from penal action, the Himachal Pradesh law states that if any person has been converted by force, fraud or coercion, she or he shall be deemed as not converted.¹²

Failure to send notice to or seek permission from the district magistrate before converting or participating in a conversion ceremony is liable for a fine under the Acts.

3. Critique of the Acts

3.1 Vague and overly broad definitions

The primary critique of the Acts due to their vague and overtly broad definitions has come from several jurists. The United Nations Special Rapporteur on Freedom for Religion or Belief has stated in her report:¹³

While these laws appear to protect religious adherents only from attempts to induce conversion by improper means, they have been criticized on the ground that the failure to clearly define what makes a conversion improper bestows on the authorities unfettered discretion to accept or reject the legitimacy of religious conversions. All of these laws include in the definition of use of force any ‘threat of divine displeasure or social excommunication.’

Moreover, the terms inducement or allurement are defined to include the offer of any gift or gratification, either in cash or in kind, as well as the grant of any benefit, either pecuniary or otherwise. These broad and vague terms might be interpreted to cover the expression of many religious beliefs. In addition, some

of Religion Act, 2006 and section 2 (f) of the Arunachal Pradesh Freedom of Religion Act, 1978.

¹¹ Section 2 (a) the Madhya Pradesh Freedom of Religion Act, 1968 and the Gujarat Freedom of Religion Act, 2003.

¹² Section 3, proviso of the Himachal Pradesh Freedom of Religion Act, 2006.

¹³ A/HRC/10/8/Add.3 (page 17).

provisions are discriminatory in giving preferential treatment to re-conversions, for example by stipulating that returning to the forefathers' original religion or to one's own original religion shall not be construed as conversion."

In March 2007, the National Commission for Minorities noted with concern the enactment of the Himachal Pradesh Freedom of Religion Act and observed that "the terminology used in the [Himachal Pradesh Freedom of Religion] Act and the methodology prescribed for implementing it". The Commission also expressed its "profound concern over the "attempt of the Act, and reportedly by similar pieces of legislation contemplated in some other States, to interfere with the basic right of freedom of religion that is the birth right of every Indian.""¹⁴

3.2 Conversion

The definition of conversion in these Acts overlooks the fact that conversion is primarily a thought process which may span several days, weeks or even years. And the definition in the Gujarat Act in particular suggests that conversion requires an external agency almost without the will of the prospective convert.¹⁵

On the contrary, the Supreme Court of India has held on several occasions that mere declaration of conversion cannot be taken as evidence of conversion; "but a bonafide intention to be converted in the Hindu faith, accompanied by conduct unequivocally expressing the intention may be sufficient evidence for conversion. No formal ceremony for purification or expiation is necessary to effectuate conversion..."¹⁶

3.3 Force

The definition of the term "force" as "threat of divine displeasure" unjustifiably impinges on possible interactions between potential converts and those seeking to propagate their faith. It restricts the latter from informing the former about non-adherence, for example, as that may involve teachings on hell or God's wrath. And without being informed, a potential convert cannot meaningfully exercise his or her freedom to change religion.

Proponents of these laws often quote the Orissa High Court ruling in *Yulitha Hyde vs. State of Orissa*¹⁷, which held, "Threat of divine displeasure numbs the mental faculty; more so of an undeveloped mind and the actions of such a person thereafter, are not free and according to conscience."

¹⁴ The full press release is available at the National Commission for Minorities website at <http://ncm.nic.in/The-Himachal-Pradesh-Freedom-of-Religion-Act.html> (last accessed on November 11, 2011).

¹⁵ Sec. 2 (b) of the Gujarat Freedom of Religion Act, 2003.

¹⁶ *Perumal Nadar vs. Ponnuswami* (1971 AIR 2352).

¹⁷ All India Reporter 1973 Ori 116.

The courts in India have also reasoned that threatening anyone with divine displeasure puts great pressure on the threatened person and deprives them of the capacity of exercising their rational judgment. Repeatedly the courts have held that a suggestion of divine displeasure deprives a person of their abilities to make a choice.

However, this argument overlooks the fact that inherent in the propagation of a faith or religious belief is the articulation of the effects of failure to comply with the said beliefs. Commenting on this, noted social commentator, Pratap Bhanu Mehta¹⁸ says:

In some ways this argument is bizarre. The intent of the statute seems to be to exclude certain kinds of religious appeals. There might be good reasons for excluding such appeals. The principal one might be the Hobbesian [of political theorist Hobbes] insight that in order to discharge our obligations to the state faithfully, we have to be relieved of all those sources of authority that induce even more fear in us than the state might. Or one might argue, on Rawlsian [of theorist John Rawls] grounds, that as a mark of reciprocity, one ought not to appeal to one's own comprehensive conception of the good in making public arguments...

...In *Yuliitha Hyde vs. State of Orissa*, the court wrote: 'Threat of divine displeasure numbs the mental faculty; more so of an undeveloped mind and the actions of such a person thereafter, are not free and according to conscience.' In cases involving the Representation of People's Act (RPA) the same assumption is made throughout.

If this analysis is correct, we can see a fairly stable set of assumptions about citizens that underlie two different domains that require abridging religious speech, whether it is attempts at conversion and the exclusion of religious appeal from elections. The court assumes throughout that citizens are, when it comes to receiving religious speech, or speech about religion, incapable of managing the impressions they receive – to use an old stoic concept.

If the insult is to one's religion, or an exhortation is made in the name of religion, we are incapable of receiving the expression on our own terms; incapable of managing our own responses, condemned to receiving these expressions unfreely and helplessly, incapable as it were of self-discipline. We can manage our impressions, exercise our religious choices and practice judgment, only when left alone. Hence the court's emphasis that the right to freedom of religion just means the right to freedom from other people's religion. Our choices are impaired, or faculties numbed, more so because we have undeveloped minds. This is the 'secret' rationale behind both anti-conversion legislation and the RPA.

¹⁸ Passion and constraint, Mehta, Pratap Bhanu (In Rajeev Bhargava [ed.] *The moral and political philosophy of the Indian Constitution*, Oxford University Press, 2008).

Members of the constitution drafting committee noted that freedom of speech covers the right to propagate one's faith:

"... Under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of conscience has to be recognized. The word 'propagate' in this clause is nothing very much out of the way as some people think, nor is it fraught with dangerous consequences."

Article 19 (1) (a) of the Indian Constitution states that all citizens shall have the right to freedom of speech and expression, when this right is curtailed by limiting what aspects of one's faith can be shared.

3.4 Fraud

The definition of the word "fraudulent" as "misrepresentation or any other fraudulent contrivance" may seem innocuous on the face of it, but it is not. In spiritual matters, what would constitute misrepresentation? Could a statement like, "Prayers will heal you," or "God will grant you material blessings," be construed as employing fraudulent means? There is no answer.¹⁹

3.5 Inducement/allurement

A problem in defining the term "inducement" or "allurement" as "offer of any temptation in the form of any gift or gratification either in cash or kind or grant of any material benefit either monetary or otherwise" was noted by the Orissa High Court in *Yulitha Hyde vs. State of Orissa*. The court held that the vague nature and wide scope of the term would impinge on various legitimate methods of proselytizing. While the Supreme Court subsequently overruled the Orissa High court's decision in *Rev. Stanislaus vs. Madhya Pradesh*²⁰, the court chose not to comment on the definitions provided under the Acts.

Supreme Court senior advocate Prashant Bhushan commenting on the provision is quoted as saying, "Anything can be called allurement. In many Christian institutions, education for Christians is free, so if somebody changes his or her religion, even education can be defined as allurement."²¹

¹⁹ See All India Federation of Organizations for Democratic Rights Report on Anti Christian violence and the myth of conversion, as quoted in The politics behind Anti Christian violence (Media House, 2006) (pg. 410).

²⁰ 1977 (1) Supreme Court Cases 677.

²¹ *Raipur's one-way conversion street*, Dutt, Avinash (Tehelka, Sep 02, 2006).http://www.tehelka.com/story_main19.asp?filename=Ne090206Raipurs_one.asp.

3.6 Arbitrary, wide powers

The Acts give district authorities wide and sweeping powers to inquire into both the reasons behind a religious conversion and the procedure adopted for the same. This is a gross violation of the right to freedom of association, the right to privacy and the freedom of conscience. The Acts cast an onerous burden on the part of the converttee and the persons seeking to propagate their faith without providing the required checks and balances to ensure protection against misuse of authority.

For example, Section 4 of the Himachal Pradesh Act makes it obligatory for a person to give a thirty-day prior notice to the District Magistrate about his or her intention to convert. As per the Rules, the District Magistrate then “shall get the matter enquired into by such agency as he may deem fit”. No time limit is prescribed for the conduct of such an enquiry nor have its modalities been defined.

A similar law calling for the regulation and registration of converts was sought to be introduced in the Indian Parliament in 1955. But the then Prime Minister, Jawaharlal Nehru, said:

I fear this bill... will not help very much in suppressing the evil methods [of gaining converts], but might very well be the cause of great harassment to a large number of people. Also, we have to take into consideration that, however carefully you define these matters, you cannot find really proper phraseology for them. Some members of this House may remember that this very question, in its various aspects, was considered in the Constituent Assembly, [and] before the Constituent Assembly formally met, by various sub-committees... Ultimately, Sardar Patel got up and said, ‘Let there be no heat about this matter – because there was heat – it is obvious that three committees have considered this matter and have not arrived at any conclusion which is generally accepted. After that, they came to the conclusion that it is better not to have any such thing because they could not find a really adequate formula which could not be abused later on.’

The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper. It would lead in its wake to the police having too large a power of interference.”²²

The parliament, accepting his advice, rejected the bill. It had the support of only one member, the rest of the House being opposed to its adoption.

²² As quoted by Arcot Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in Study of discrimination in the matter of religious rights and practices (1960).

3.7 Requirement of notice/prior permission

The Acts require the person converting to give details of his or her conversion to the district magistrate, either prior to the conversion ceremony or subsequent to it. The Gujarat law states that the person seeking to be converted must obtain prior permission from the concerned district magistrate before any conversion ceremony is performed.

The Acts therefore greatly impinge on the freedom of conscience of a prospective convert and also on their right to privacy. The person is rendered incapable of taking the final decision with regards to his or her faith and instead requires the seal of approval of the local district authority.

Article 18 of the Universal Declaration of Human Rights distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.²³

The United Nations Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, noted in her report²⁴ that:

The requirement of advance notice or prior permission seems to be unduly onerous for the individual who intends to convert. Any state inquiry into the substantive beliefs and motivation for conversion is highly problematic since it may lead to interference with the internal and private realm of the individual's belief (*forum internum*). This approach is aggravated if such a Freedom of Religion Act awards specific protection to the state government and its officers against prosecution or legal proceedings with regard to 'anything done in good faith or intended to be done under the Act or any rule made thereunder.' Moreover, it seems unclear who may bring an action for, or lodge an appeal against, decisions with regard to the permissibility of a religious conversion.

She also said that: "Any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim."

²³ Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of general comments and general recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

²⁴ United Nations. A General Assembly A/HRC/10/8/Add.3 26 January 2009 (Para 49).

The provisions of the Acts fail to provide any safety mechanisms for those on whom they are casting a burden to disclose sensitive information. Besides, the mandatory declaration sought by the Acts violates Article 19 (1) (b) and (c) which give every citizen the right to assemble peaceably without the interference of the State.

Besides, the provision for public enquiry into conversions and mandatory intimation violate the right to privacy, which the Supreme Court of India has repeatedly held to be implicit in the right to life in Article 21.

3.8 Exemption of reconversion

The exclusion of “reconversions” in some of these laws violates the right to equality before law as promised under Article 14, which states: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The proviso to Section 4 of the Himachal Pradesh Act, states that “no notice will be required if a person reverts back to his original religion.” This is an unreasonable classification and the legislature has failed to distinguish why a special provision is required for non-notification in the event of reconversion to “original religion.”

Similarly, the law in Arunachal Pradesh defines the term “conversion” as “renouncing an indigenous faith and adopting another faith or religion,” and further defines the term “indigenous” to mean “such religions, beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, customs as have been found sanctioned, approved, performed by the indigenous communities of Arunachal Pradesh...”

The Acts seek to differentiate between “indigenous faiths” and other religions and yet they fail to provide a reasonable nexus as to why “indigenous” faiths require special protection under the law.

3.9 Sufficiency of existing laws

The anti-conversion laws have been enacted on the basis that conversions by force, fraud or inducement disrupt public order. However, the Indian Penal Code carries enough provisions to deal with it, such as Section 153A, which prohibits: promoting by words or symbols “feelings of enmity, hatred or ill-will” against religious groups, committing acts prejudicial to the harmony of religious groups, or organizing activities with the intent that participants train to use force or actually use force against religious groups. The punishment for these offenses is increased if they occur in a place of worship or at a religious ceremony.

Hamid Ansari, the Vice President of India and the former chairperson of the National Minorities was quoted as saying, “If somebody has carried out a conversion by use of force or cheating, then there are enough provisions in the Indian Penal

Code to bring him or her to book.” He added, “Also, there is no data to establish that cases of conversion derived through coercion or cheating were sufficient to deserve special laws. It is sheer absurdity.”²⁵

4. Conclusion

4.1 Conflicts between the ‘religious freedom’ acts and Indian law

A detailed analysis of the Acts reveals that far from promoting or protecting religious freedom, they have served to undermine the religious freedom guarantees under Article 14, 19, 21, 25 and 26 of the Indian Constitution and international law and covenants to which India is signatory.

These laws currently limit religious freedom of as many as 175 million people who live in the states of Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh. Moreover, this legislation has also been emulated by India’s neighbors Nepal and Bhutan and considered by Sri Lanka.

Primarily motivated by a religious ideology, the anti-conversions laws fail to achieve the very purpose for which they have been enacted. On the contrary, they provide an opportunity to divisive forces within the country to target the constitutionally protected rights of minority groups and pose a serious threat to the free practice and propagation of religious beliefs.

India’s civil society, judiciary, legislature and executive, as well as the international community, need to work towards the repealing or striking down of these laws as they threaten not only the Indian ethos of tolerance and communal harmony but also set a dangerous precedence for other nations in the area of religious freedom.

4.2 Recommendations

4.2.1 To the government of India

- Although maintenance of public order is a state responsibility, the central or federal government should issue an advisory to the state governments to repeal the anti-conversion laws;
- The Ministry of Home Affairs should provide training on human rights and religious freedom standards and practices to the state and central police and judiciary;
- Ensure that every state has an active commission for human rights and commission for minorities, and that members of these commissions are appointed by transparent and non-partisan procedures;

²⁵ *Raipur’s one-way conversion street*, Dutt, Avinash (Tehelka, Sep 02 , 2006) http://www.tehelka.com/story_main19.asp?filename=Ne090206Raipurs_one.asp.

- The Law Commission of India should be assigned to conduct a research on the premise, impact and misuse of the Acts in each state;
- Increase opportunities for dialog between leaders of religious communities, legal experts and civil society representatives to address any allegations of improper conversions in the states with anti-conversion laws.

4.2.2 To international organizations and India's foreign partners

- Raise religious freedom concerns the anti-conversion laws raise at the United Nations Human Rights Council Universal Periodic Review of India in 2012 and other forums.
- Urge the Indian government to reconsider the laws and bills on religious conversion as they violate human rights.

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Threats to religious freedom in Nigeria

Analysis of a complex scenario

Yakubu Joseph and Rainer Rothfuss¹

Abstract

Nigeria currently grapples with an unprecedented spate of sectarian violence, which continues to take a debilitating toll on the people. Although the country is no stranger to communal violence related to religion, which in the last twelve years has claimed thousands of lives, the present situation is unique in terms of the nature, geographical scope and terrorist dimension of the violent insurrection led by, but not limited to, the militant Islamist sect Boko Haram. The mass exodus of people from the troubled northern areas to the southern region and the mounting clamour by mostly southerners for a Sovereign National Conference, in which the different ethnic and religious groups would come together to reassess the basis of their living together, are indications that the ongoing sectarian violence is a sign of a national tragedy with far-reaching ramifications. The purpose of this article is to show that the present sectarian crisis in Nigeria is a part of an enduring and evolving wave of religious rights violations that continue to thrive unabated. We argue that both structural and direct violence against Christians in northern Nigeria are linked. The article also highlights the responses of the Nigerian Christian community to persecution. In the final analysis, it is important to acknowledge that there are many among Christians and Muslims who share the vision of living in peace with one another. This can be encouraged if the two religions work to discard stereotypes against each other. By doing so, the clamour for greater religious freedom is likely to become a joint project for adherents of both religions and other citizens who embrace the possibility of peaceful coexistence.

Keywords Ethno-religious conflicts, sectarian violence, insurgency, religious freedom, persecution and Nigeria.

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Among the plethora of problems that undermine human development in Nigeria, ethno-religious conflicts rank high. Corruption and bad governance which are widespread thrive while rent-seeking politicians exploit ethnic and religious sentiments (Amundsen 2010). The ambivalent role of religion in the Nigerian social and political crisis is complex. As Obianyo (2010) observes, religion serves as both a unifying and a divisive factor in Nigeria. It unifies Nigerians who share the same beliefs across ethnic divides, and simultaneously creates a contending relationship between the religious groups.

The instrumentalisation of religion for the purpose of achieving political and economic gains by the elites can cause severe havoc to a country. However, the rigid pursuit of the religious vision of creating a religiously homogenous society in a certain territory is capable of causing even greater harm to a diverse society. The second role of religion is common in countries with high degrees of religious nationalism, and where most people consider religion as the most important identity.² With a population of over 160 million,³ 250 ethnic groups, about 400 languages, 36 states and a Federal Capital Territory, divided into six geopolitical zones, and with Christianity and Islam and a variety of African traditional religions, Nigeria is inherently a mosaic of diversities. Since its independence from Britain in 1960, the country has been plagued by ethnic and religious tensions that have undermined its quest for the evolution of a model of multiculturalism that would nurture and sustain unity and peaceful coexistence among its diverse populace (Ukiwo 2009).

In this article we would explore threats to religious freedom in Nigeria, and in particular the situation of Christians in the country. Our main proposition is that endemic religious intolerance, which has been the order of the day in northern Nigeria, and the struggle to reintroduce historic Islamic dominance in the region through the vehicle of religious extremism, are the twin drivers of Christian persecution in Nigeria. The daily experiences of Christians, who are marginalised and deprived of their citizens' rights in many parts of northern Nigeria, especially in the Sharia states,⁴ have been largely overshadowed by the frequent reports on sectarian

² A Pew Forum on Religion and Public Life survey in 2006 indicates that 91% of Muslims and 76% of Christians in Nigeria consider religion as the most important identity, and only 3% of Muslims and 9% of Christians consider nationality as most important identity. <http://pewforum.org/Politics-and-Elections/Nigerias-Presidential-Election-The-Christian-Muslim-Divide.aspx> - Retrieved 25 March 2012.

³ UNFPA state of the world population 2011: People and possibilities in a world of 7 billion, <http://foweb.unfpa.org/SWP2011/reports/EN-SWOP2011-FINAL.pdf> - Retrieved 25 March 2012.

⁴ Twelve states in northern Nigeria have adopted the Islamic Sharia law. The non-criminal aspects of Sharia have been allowed in the Nigerian legal system right from the colonial period. The inclusion of the criminal aspects and the adoption and enforcing of a code of behaviour according to Sharia began in 1999 and triggered increased sectarian violence.

violence by Boko Haram and “clashes”⁵ between Muslims and Christians. While these occurrences of direct violence represent gross violations of human rights, it is equally important to pay attention to all the stages, processes and trends of persecution because they are interrelated. Structural injustices meted out to religious minorities are also appalling, and if unchecked may metamorphose into more lethal forms.

1. Legal framework for religious freedom

Despite the protection of religious liberty rights under international law, “...the violations of religious freedom worldwide are massive, widespread, and in many parts of the world intensifying” (Marshall 2008:11). The situation in Nigeria today mirrors this worldwide disjuncture, common to countries where religious minority rights are violated between legal provisions and realities. The country has acceded to various international legal instruments for the protection of religious freedom at the United Nations and regional levels. Section 38 of the Constitution of Nigeria, which echoes Article 18 of the Universal Declaration of Human Rights and Article 8 of the African Charter on Human and People’s Rights, states that:

(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian. (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination. [...] (Constitution of the Federal Republic of Nigeria 1999, section 38).

This provision clearly guarantees the rights to freedom of religion of both the individual and his or her religious community. Section 10 of the Constitution was intended to provide a safeguard against turning the country into a theocracy. It states that, “The Government of the Federation or of a State shall not adopt any religion as State Religion.” Notwithstanding the unambiguity of the text, it became a source of conflict in 1999 when the then Governor of Zamfara State was to introduce Sharia

⁵ Sometimes the term “clash” has been inappropriately employed by the international news media to describe one-sided violence against Christians.

in his state, and in the following year Muslims in other northern states demanded the implementation of the Islamic legal code. Christians opposed the move by complaining that it would infringe on their rights. Muslims who were pro-Sharia insisted that the adoption of Sharia does not amount to adopting a state religion. This led to confrontation and bloodshed. Twelve states adopted the Sharia in flagrant disregard of the appeal by the then President, Olusegun Obasanjo, to revert to status quo ante. This development shows that constitutional provisions might camouflage the actual reality of the state of religious freedom, or its weakness could be exploited by religious bigots and mischiefmakers in the country. In a recent ranking of countries' Religious Freedom Indexes, Nigeria has witnessed a jump in several dimensions of the violation of religious liberty rights. Government Regulation Index: 4.5 (West African average: 1.4), Social Regulation Index: 5.4 (West African average: 2.4), Government Favouritism Index: 7.2 (West African average: 3.5), and Religious Persecution Index: 6 (ARDA).⁶ These data only give the overall picture without reflecting the strong local and regional variations.

2. Subnational diversity

Before we highlight the discrepancy in the above data it would be worthwhile to correct a myth about the demographic composition of the north and south. Often, Nigeria is described as comprising a Muslim north and a Christian south; this oversimplification buries the demographic characteristics of the Nigerian population and limits one's understanding of the nature of inter-ethnic and inter-religious relations in the country. It is helpful to note that there are millions of Christians and Muslims in northern and southern Nigeria. Indigenous Christians abound in large numbers in all the northern states. In at least seven out of the 19 northern states Christians are the majority. North-western and north-eastern regions have the largest concentration of Muslims. The north-central, which is also referred to as the Middle Belt, is considerably mixed with a Christian majority. Indigenous Muslims are in large numbers in south-western states and are a small minority in the south-south. Adherents of African traditional religions can be found all over the country. Some people are syncretistic. They blend Christianity or Islam with African traditional religion or sorcery. Another important demographic characteristic of the Nigerian population is that most ethnic groups as a whole belong predominantly to particular religions. For

⁶ Association of Religion Data Archives combines data from various official and independent sources, including those of the US State Department's International Religious Freedom reports (0-10, low is less persecution). www.thearda.com/internationalData/countries/Country_166_3.asp - Retrieved 25 March 2012.

example the Hausa and the Fulani, considered together as the largest ethnic group⁷, are predominantly Muslims.

Judging by incidents of religious violence, southern Nigeria shows more religious accommodation. For example, in the south-west, Christians, Muslims and traditional worshippers live together in relative harmony. They continue to inter-marry and allow children to decide to follow the faith of either parent. People are not killed because someone has made a blasphemous statement or drew a defaming cartoon, whether the culprit lives in Nigeria or in a different hemisphere. No one has been killed or maimed for America's war against the Taliban in Afghanistan. A Muslim can be elected as a governor in a state where Christians are the overwhelming majority. The people of the south-west are both very religious and open-minded. The more charismatic and Pentecostal churches as well as African independent churches have their stronghold there. There are also devout Muslims and Islamic scholars in this region. The southern parts of the country which are not as mixed as the south-west also exhibit higher levels of religious tolerance than the north. Muslims from the northern parts of the country who live in the south-east and south-south do complain of marginalisation, but violent hostilities are rare.

The northern regions of Nigeria have become the hotbeds of religious extremism. Religious sensitivity is very high in these parts of the country. As mentioned in the introduction, thousands of lives have been lost since the country's return to democratic rule in 1999. What accounts for the differences in orientation to religious freedom between the southern and northern regions? This is a question that has engaged many scholars. For example, Turaki (2010) argues that what accounts for the distinctive and less tolerant nature of Islam in northern Nigeria are: the grim legacy of Islamic colonialism and slavery in northern Nigeria advanced through the Usman dan Fodio Jihad of 1804-1808, the British amalgamation of the country and, putting the large northern areas under a system of so-called Indirect Rule administered by mainly the Caliphate or Muslim emirates, whereas in southern Nigeria, the British adopted a system of Direct Rule. These phenomena engendered a domination-subordination relationship between Muslims and non-Muslim groups in northern Nigeria in pre-colonial and colonial times. Christianity spread in the south while Islam, which had come to northern Nigeria before the advent of Christian missionaries in the south, was allowed to flourish during the colonial period. Christian missionaries were even restricted by the British colonial administration from taking the gospel to Muslims in the north. As a result, Christian missionary activities were more concentrated in the south.

⁷ The Hausa and Fulani are separate ethnic groups but are often considered as one group referred to as Hausa-Fulani.

3. Typologies persecution of Christian in Nigeria

As mentioned earlier, the news of periodic clashes between Christians and Muslims in central Nigeria has tended to shroud the endemic persecutions that many Christians, especially in northern Nigeria, have grown up with and live with from the rest of the world. This is because the systemic and structural injustices that many Christians face and the direct violence meted out to some individual Christians in different parts of the north have failed to appeal to the news media. Therefore, in the following section the gamut of violations of the rights of freedom of religion of Christians in Nigeria are discussed.

3.1 Structural injustice

Even before the adoption of Sharia by some Muslim dominated states in the north, Christian minorities in those states had been living under extremely difficult situations. Political marginalisation and discrimination of Christians are the order of the day in these states. Christians who venture into politics in such Muslim dominated states are harassed and intimidated. Muslims who appear to be unbiased and accommodating of non-Muslims are blackmailed or depicted as “Christians” during electioneering campaigns. For example, there were Muslim politicians that were called names such as “pastor”, “bishop”, “John”, etcetera for their ability to reach out to the Christian electorates.⁸ The challenge facing Christians in the political arena is not only confined to northern states but even to politics at the centre.

As noted by Sanusi (2004: 80), some Muslims in northern Nigeria were inspired by the Iranian Revolution: “With the Iranian Revolution came a radicalisation of Muslim politics in northern Nigeria. The first group that could be labelled ‘fundamentalist’ was the ‘Muslim Brothers’, led by Ibrahim El-Zakzaky, an economics student at Ahmadu Bello University and a former secretary-general of the Muslim Students Society (MSS) of that university. Fired by the success of the Iranian people, many undergraduates joined Zakzaky in his struggle for an Islamic State in Nigeria, to be constructed on the ashes of the existing state, which was built on ‘ignorance’ or *jabiliyya* (a term used in reference to pre-Islamic Arab society).” A foremost Nigerian Muslim cleric, late Sheikh Abubakar Gumi, a recipient of the prestigious King Faisal International Award from Saudi Arabia, publicly called on Muslims not

⁸ For example, the governor of Kaduna State between 1999-2007, Alhaji Ahmed Makarfi, a Muslim, was nicknamed “Pastor Makarfi” and “John Makarfi” for his hesitation to cave in to the demand of the Muslim population to implement a full Sharia, and for his ability to reach out to Christians in the state as well as his support for Olusegun Obasanjo’s presidential bid. See the report: Human Rights Watch, *The Miss World riots: Continued impunity for killing in Kaduna*, 23 July 2003, A1513, available at: <http://www.unhcr.org/refworld/docid/3f4f594b0.html> – Retrieved 29 March 2012.

to ever allow non-Muslims to ascend to political positions in Nigeria (Alao 2009 and International Crisis Group 2010).

The religious bigotry and intrigues that have always ensued in Nigerian politics manifested themselves in the last general elections in April 2011 resulting in wanton loss of lives and property.⁹ As the early results of the presidential election showed that Goodluck Jonathan was leading, Islamists went on the rampage attacking churches, Christians and Muslims they perceived to have supported him. In Kaduna State, tension grew when the Muslim Governor was elevated to the Vice-Presidency of the country after the death of President Umaru Musa Yar'adua in 2010, and the then Christian Deputy Governor constitutionally became the Governor. Even though the Muslim Governor was appointed as the Vice-President of Nigeria, Islamists didn't want a Christian to become the governor in Kaduna State. Against their wish he became the Governor and went ahead later to win a term through a highly polarised election in 2011. There are people who share the belief that the reigns of violence in the country now are a protest by those who are opposed to Jonathan's rise to power.¹⁰

The adoption of Sharia by 12 northern states has increased the challenges faced by Christian minorities in those states. Christians' access to state-owned media decreased considerably, in some instances to just 30 minutes in a week. Ascendancy of Christians to key positions in public services is greatly impaired by the discriminatory practices. Recruitments into the public services are influenced by religious and ethnic considerations. Christian youths seeking admission into higher institutions of learning often have a hard time getting a place, and when offered admission, they might be enrolled into programmes other than those of their choice. Getting land to build a church is another perennial problem confronting Christians in Muslim dominated states. When Christians are able to acquire land it is difficult to get the necessary building approval or the so-called Certificate of Occupancy. In most of the Sharia states, a majority of Christians prefer to live close to the military and police barracks where their lifestyles are less threatened, and in the event of any attack by Muslim extremists they can easily take refuge in the barracks.

3.2 Spontaneous mob violence in reaction to perceived "provocation"

Christians in northern Nigeria are occasionally subjected to mob attacks by Islamists due to perceived "provocation". Many incidents of, such as the cartoon of

⁹ Human Rights Watch estimated the death toll to be over 800 concerning the election related violence alone: www.hrw.org/news/2011/05/16/nigeria-post-election-violence-killed-800 – Retrieved 25 March 2012.

¹⁰ The News, "Wole Soyinka: Next phase of Boko Haram terrorism", 6 February 2012. <http://thenews-africa.com/2012/02/06/next-phase-of-boko-haram-terrorism> – Retrieved 25 March 2012.

Prophet Mohammed published in Denmark, the American invasion of Afghanistan after 9/11, and numerous local episodes like a newspaper commentary during the 2002 Miss World beauty pageant by Isioma Daniel who suggested that if the Prophet Mohammed were alive he would have admired the contestants, and may even wish to have one of the beauty queens as a wife, triggered mob violence against Christians. Events that are not even remotely associated with Christians have led to vicarious attacks on Christians in Nigeria. Since this has been a recurring experience one expects the government to take early warning seriously, but that is not always the case. The reaction of government after such attacks is to dismiss them as carried out by hoodlums, and promising to bring the perpetrators to justice, which has almost never happened.

3.3 Covert night raids

This 'guerrilla' strategy emerged in 2010. Christian villages in Plateau, Kaduna and Bauchi States around Jos, Zangon Kataf and Tafawa Balewa respectively have come under covert night attacks by yet to be identified assailants. The attackers invade villages, kill, maim and set houses ablaze when the victims are asleep; women and children are not spared. These are well-coordinated attacks that exploit the spatial vulnerability of the targeted Christian farming communities in the aforementioned states (Rothfuss and Joseph 2010). The government has not been able to apprehend and halt these dastardly acts; the communities are setting up neighbourhood watch groups to guard their homes. When such attacks were frequent around Jos the villagers were sending women and children to sleep in open fields to avoid being caught in their homes in the covert night raids. Around September last year, many children from such villages were developing illnesses related to exposure to harsh weather during the rainy season.

3.4 Boko Haram Islamic insurgency

The Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad, known by its sobriquet as Boko Haram, has been launching a shadowy campaign of terror against the Nigerian State and people. Boko Haram means "Western education is a sin" in Hausa language. The group is opposed to Western values and democracy. In recent times, the group has targeted the military, police, Christians and fellow Muslims, including an attack on the United Nations building in Abuja. The group issued an ultimatum to southerners and even native Christians to leave northern Nigeria, and have stepped up their attacks against churches. Boko Haram is seeking wider and strict application of Sharia in northern Nigeria, and recently declared war on Christians in what the

sect spokesperson described as their bid to islamise Nigeria.¹¹ The group began as a radical Islamic movement about 15 years ago, and became increasingly militant. In 2009, they clashed with government security forces, leading to the extra-judicial killing of their founder Mallam Mohammed Yusuf and many of their members.

Many innocent civilians were killed during the bloody clash between the group and the security forces. Scores of Christians were killed and several churches were burnt. The group demanded that their Christian victims denounce Christ and convert to Islam or be killed. In recent times, the group has resorted to bombing and shooting people in churches. Just to give an example, on Christmas day, the St. Theresa Catholic Church in Madalla was bombed, 44 people were killed, 127 injured, and 7 went blind.¹² On the same day, some churches in Jos and Potiskum were also targeted.

Another tragedy of the Boko Haram Islamist insurgency is the internal displacement of many indigenous Christians of Yobe State in north-eastern Nigeria. On 4 November Boko Haram stormed the Yobe State capital, Damaturu and attacked security posts and then went to the predominantly Christian settlement of the city, bombed churches, shot people, and destroyed Christian shops. Any person that could not recite the Muslim creed was killed. A majority of the over 150 people killed that day were Christians.¹³ In the following weeks the attacks against churches and Christians intensified and spread to other towns like Potiskum and Geidam, forcing many Christians, including those that are indigenous to flee to other states, and those who were not able to leave took refuge in two Christian enclaves, Gadaka and Kukar Gadu.¹⁴ Gadaka was later not spared from attack. Several of the people that fled relocated to Umuasha in Toto Local Government Area of Nassarawa State, New Karu in Abuja, Jos in Plateau State, and several other states. Many of the internally displaced persons have complained that their homes have been looted, those who are civil servants are afraid to go back to their homes, and the State Government instead of being mindful of their plight went ahead to conduct verification of workers, presumably to take action against those who are not in office. As many churches have been burnt or closed down as a result of the persecution, the clergy are the most severely affected. It is common church architecture in Nigeria to have

¹¹ "We're planning a 'war' on Christians - Boko Haram Spokesman", 4 March 2012; <http://tinyurl.com/LSNG2012>; Source: www.leadership.ng - Retrieved 25 March 2012.

¹² Madalla is a town in Niger State near Abuja, the Federal Capital Territory; Nigerian Tribune newspaper, "Madalla bomb blast: 7 parishioners go blind", 22 February 2012. <http://tinyurl.com/NGTN2012>; Source: <http://tribune.com.ng> - Retrieved 25 March 2012.

¹³ See Vanguard, 12 November 2011, "Yobe bombings: 'My friends were killed before my eyes'".

¹⁴ See account of the Chairman of the Yobe State Chapter of the Christian Association of Nigeria, Rev. Garba Idi in an interview with the *Nigerian Tribune* newspaper on 7 February 2012. <http://tinyurl.com/NG-Idi>; Source: <http://tribune.com.ng> - Retrieved 25 March 2012.

the pastor's house in the same compound with the church, making the pastors and their families the first targets during attacks. Hence, many pastors and their families have been affected, and some church headquarters have failed to provide support to such pastors and their families.¹⁵

4. Responses to Nigerian persecution of Christians

As Christians and their places of worship have become increasingly vulnerable to attacks, a number of security measures have been adopted by the churches. Security around church buildings has been intensified: Churches are acquiring hand-held metal detectors to screen people; in some churches women are barred from entering with handbags; cars are parked in designated areas, and roadblocks are mounted around some churches to restrict access. Even with such tight security, a suicide bomber forced himself into the gates of the Church of Christ in Nigeria (COCIN) headquarters' church on Sunday, 26 February 2012.

Apart from these physical security measures, the church has embarked on spiritual activities as prayer and fasting. At the level of the Christian Association of Nigeria (CAN), the main umbrella organisation of churches including Catholics, Protestants and Pentecostals, days of fasting and prayers have been organised. CAN has also been providing relief materials to the victims of attacks in several places, and continues to speak in the media on behalf of Christians. The leaders of virtually all kinds of churches continue to preach peace and appeal for calm.

Many Christians interpret what is happening as signs of the end times, and therefore accept it as a price to pay for being followers of Christ. Others believe that Christians must rise up physically against the relentless assault on their religious freedom. Disappointed with the peaceful disposition of the church in general, in the face of apparent state failure to prevent these attacks, some people are reverting to traditional religious practices to seek security and have the inspiration to fight back. Unfortunately, the actions of this last category of individuals taint the image of the church, especially when the church fails to come out and dissociate itself from them. The issue of cannibalism, a reversion to barbaric practices, during the 29 September 2011 violence in Jos, was an appalling development. We found in the course of our fieldwork that religious leaders of the different denominations did not feel obliged to issue a statement condemning it; instead they expected the Christian Association of Nigeria to do so. Clearly, the church stands to gain by condemning such actions that misrepresent its theological position.

Recently, the suicide bomb attack on the COCIN Headquarters' Church in Jos also became a double tragedy. A church member was reported to have been lynched by

¹⁵ Interview with some displaced indigenous Christians of Yobe State in late 2011 and early 2012.

an angry mob of youths of the church as he was mistaken for one of the suicide bombers.¹⁶ Two weeks later, St. Finbas Catholic Church Rayfield, Jos was attacked by a suicide bomber. Christian youths in the area attacked some Muslims in the nearby Mai Adiko. Worried by this development, some leading Pentecostal pastors issued a statement, under the auspices of the Pentecostal Fellowship of Nigeria (PFN), saying they do not support any form of revenge against Muslims, more so that the reprisals always end up targeting innocent people.¹⁷

While the present situation has made the tense relations between Christians and Muslims even worse, initiatives aimed at promoting inter-faith dialogue have been sustained by the efforts of the leadership of both religions. The Nigeria Inter-Religious Council (NIREC)¹⁸ and its state and local government equivalents, and numerous inter-faith initiatives have continued to serve as important platforms for Christians and Muslims to work together to seek ways to improve mutual understanding and tolerance. However, the inability of these efforts to make significant positive impacts at this crucial time underscores the need to evaluate the approaches to inter-faith dialogue with a view to making it more meaningful and productive.

5. Conclusion and recommendations

It appears that this time around Nigerian brinkmanship is being stretched to its limits by the latest upsurge in sectarian violence in the country. As events of recent months have shown, it will only take a combination of efforts and strategies to address the underlying causes of sectarian violence in the country. While security efforts can help to deal with civil disorder, long-term solution would have to hinge on social justice. It is important to acknowledge that government cannot do it alone. Nigerians, state and non-state actors, must come together and engage in a frank dialogue to find a society-wide solution to recurring religious conflicts. The goal of such national dialogue is to chart a future where citizens from different ethnic, religious and geographical backgrounds can live in peace with one another.

The call for a Sovereign National Conference seems to be gaining momentum. A group which called itself National Coalition of Progressive Forces (also known as The Patriots) has issued a statement that it would send a bill for the convocation of a national conference to the National Assembly. Most of the latest calls acknowledge that the country is on the brink and that there is a need to make sure that it does

¹⁶ "The Jos blast: Church member mistaken for suicide bomber, lynched" 3 March 2012; <http://tinyurl.com/FGRD2012>; Source: www.vanguardngr.com – Retrieved 25 March 2012.

¹⁷ "Boko Haram: Pastors Adeboye, Oritsejafor, Oyedepo, Adeyemi, Adefarasin, others go for prayers", 18 March 2012; <http://tinyurl.com/NGPR2012>; Source: www.vanguardngr.com – Retrieved 25 March 2012.

¹⁸ www.nirecng.org – Retrieved 25 March 2012.

not fall off.¹⁹ Various groups calling for the conference are reaffirming their commitment to the unity of the country, and are only asking for a political restructuring and discussion about issues, such as ethno-religious conflicts, threatening the existence of the country. This perhaps would convince some of those who have been opposed to the conference, by pointing to other countries that have split and which are plagued with crises, to sign on to the idea for a national dialogue. There appears to be no viable alternative to convening such a conference.

The failure of inter-religious dialogue, led by Christian and Muslim leaders, to tame the persistent tension between the two main religions in the country needs to be investigated. Since such a dialogue remains a viable option an interrogation of those factors that render it ineffective is required. One obvious factor that has affected the ability of leaders of the two religions to come together in the face of the renewed attacks by the Islamist sect Boko Haram is mutual distrust. This attitude has contributed more to finger-pointing, blaming and attribution instead of reflexive reframing of the conflicts in terms of common concerns and aspirations (cf. Rothman 1997). On both sides, there are many who share the vision of living in peace with one another. This can be encouraged if the two religions work to discard stereotypes against each other. By doing so, the clamour for greater religious freedom is likely to become a joint project for adherents of both religions and other citizens who embrace the possibility of peaceful coexistence.

The international community should be concerned about the precarious situation because it can be unsettling to the region and potentially even beyond. The persistent inter-religious violence in northern Nigeria has to be seen as an early warning, not only for the national government, but also for the international community. It is a matter of fact that the national security forces are not capable of solving the problem of growing inter-religious and inter-ethnic violence in Nigeria alone. This leads to a situation where impunity fosters violence on both sides of the main conflict parties, an ideal breeding ground for a civil war in the most populous and still swiftly growing country of Africa. Taking into consideration the geographical complexity and vastness of the country, only intensive and long-term development cooperation, including the training of police and military forces, can help to strengthen the state's capability to prevent a further increase of violence. In addition, the international community needs to support Nigeria to build the capacity to deal with intransigent forces and address underlying factors driving the conflict.

¹⁹ Peoples Daily, "The Patriots plan to storm NASS over SNC", 25 March 2012. <http://tinyurl.com/PD-NASS>; Source: www.peoplesdaily-online.com – Retrieved 26 March 2012.

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Persecution as a battle for defining identity

Reflections from Turkey

Wolfgang Haede¹

Abstract

In Turkey, there is a remarkable degree of prejudice against Christians. Opinion formers of the nationalistic and the Islamist ideologies use and deepen the existing prejudice to define Christian identity in a way that may lead to more violent forms of persecution and to a wrong self-image of the Christians themselves. Therefore, an important element of persecution in today's Turkey is a battle for defining Christian identity. As a response to wrong definitions, Christians have to focus on the real Christian identity. The First Letter of Peter speaks into a similar situation of suffering through prejudice and ostracism. The letter focuses on the assurance of real Christian identity and on a warning of Christians to provoke wrong definitions by inconvenient behavior.

Keywords Persecution, identity, prejudice, Turkey, 1 Peter.

When 1 Peter 4:16 states that a follower of Jesus may suffer *ὡς Χριστιανός* (“as a Christian”) and feels a need to admonish: “... let him not be ashamed” (NAS, *μὴ αἰσχυνέσθω*), it is likely that here “Christian” as in Acts (11:26; 26:28) is “applied to Jesus’ followers in contexts of hostility”, as “no term of endearment but of slander” (Green 2007:159).²

In the Christianity of the second century the name Christian even more “has been negatively stereotyped to denote atheism, incest, and cannibalism” (Holloway 2009:55 about Justin’s *Apologia II*).

So one important facet marking persecution of Christians is the attempt to wrongly define the “name of Christians”, i.e. not only this title, but also the Christians’ identity. Using the example of today’s Turkey I will write about the sources (“who”), the target groups (“whom”) and the contents of such false definitions (“how”).

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² Bible quotes are taken from the New International Bible, 1973, 1978, 1984 by International Bible Society, unless otherwise indicated.

In today's Turkey, the most common attitudes towards Christians are prejudice and stereotypes. On the one hand, false definitions of Christian identity are nourished by existing prejudice. On the other hand, these definitions create and solidify these prejudices.

Recent research confirms that authors of the New Testament writings deal with the relation between persecution and Christian identity.³ Especially in the First Letter of Peter, the author shows strong efforts to define Christian identity as a response to the false definitions by the adversaries. That response shows that some attacks were perceived as false definitions of Christian identity.

The First Letter of Peter is very relevant to our topic because "prejudice with all of its disturbing outcomes forms the immediate occasion of 1 Peter" (Holloway 2009:73). What the apostle Peter⁴ has to deal with is not yet "formal persecution" (Green 2007:225). Peter's readers mainly have to cope with prejudice, slander and ostracism.

I will try to show that in Turkey as much as in the context of First Peter there is a battle about interpretive authority, i.e. for the right to define who and what Christians are.

1. Persecution and Christian identity in today's Turkey

1.1 The special problem of identity with Turkey's Christians⁵

Identity is a problematic issue in Turkey and especially amongst Turkey's Christians. When Western European ideas of national identity started to influence the Muslim dominated but multinational and multi-religious Ottoman Empire, attempts to create a multi-religious "Ottoman nation" failed (Lewis 1968:333). Muslim thinkers began to see nation and Islam together. Christians in the Empire who tended to be influenced by European thoughts even stronger began to look for an identity as "Christian nations". That led to rebellion and the fight for independence. Some of the Christian peoples gained their own national states (for instance Greece 1829, Serbia 1878, and Bulgaria 1908). While Christian nations left the Empire, Muslims forcefully displaced from these new countries streamed into the heartland of Anatolia changing its demographical and religious landscape (cf. Kreiser/Neumann 2009:315).

When Mustafa Kemal, later named Atatürk, founded the Republic of Turkey in 1923, he tried to build Turkey not on an Islamic but on a national Turkish identity. The legal status of those Christians remaining in the new state "on paper was higher than ever before" (Lewis 1986: 351), their real importance in the Republic was minor however. Many Muslims were blaming the Christians for the decline and final fall of the Ottoman Empire.

³ Cf. about this topic for instance Campbell 2006, Hart 2008, Mbuvi 2004.

⁴ I accept the apostle Peter as author of the First Letter of Peter. Not being able to go into detail of this much discussed question I refer to the scholarly display of all the arguments against a Petrine authorship and their refutation in Tran's dissertation (Tran 2006:10-28).

⁵ See for this chapter especially Lewis 1986:317-355.

1.2 The low esteem of Christians in Turkey

The PEW 2008 Global Attitudes Survey amongst people from 24 countries including 6 countries with a Muslim majority and two others with a strong proportion of Muslim population revealed that the number of people having a “somewhat unfavorable” or a “very unfavorable” opinion about Christians was higher in Turkey than in any other of the countries included in the survey (The Pew Global Attitudes Project 2008:51-52).⁶ A variety of reasons may be found for this striking result just in the very country that was supposed to be closest to the West among the countries with Muslim majority.

One of these reasons Turkey has in common with other countries with Muslim majority, i.e. the negative view of the Christians by Islamic theology. Though there certainly have been times of relative harmony between Christians and Muslims in the Ottoman Empire and other Muslim ruled countries, the Qur'an and the early Islamic traditions about Christians contain a way of looking at Christians and their faith that defines Christian identity very differently from how Christians defined themselves. According to this view, Christians cling to a faith that might be protected, but is outdated and certainly inferior to the “last revelation” in Islam. However, more than this: Because Christians resisted the message of Muhammad and his authority Islam sees them as liars and deceivers (Schirmacher 2009:41)⁷.

The special position of the Ottoman Empire as “born on the frontier between Islam and Christendom” (Lewis 1986:42), the historical developments (outlined in 2.1) and a historically petrified negative image of Western “Christian nations” trying to rule and finally split the Ottoman Empire contribute to the remarkably bad opinion about Christians in Turkey.

A rather new development is the conversion of Muslims to Christianity in any substantial numbers and their forming of small Turkish Christian churches. To accept the reality of ethnic Turks with Muslim background becoming Christians is a great challenge for families⁸ and for society.

1.3 Can we regard prejudice and ostracism as persecution?

When in April 2007 three Christians were brutally slaughtered in Malatya in East Turkey (cf. Haede 2012), the loud outcry of the Western public was also due to the fact that being killed for one's faith is not the daily experience of Christians in contemporary Turkey. Persecution in Turkey consists primarily of prejudice, slander and ostracism. Can we

⁶ “Very unfavorable” 62%, “somewhat unfavorable” 12%, “very favorable” 2%, “somewhat favorable” 8%. We have to add here that there was a remarkable worsening of opinion between similar surveys from 2004 to 2008 – maybe one reason of which was the war in Iraq that was perceived by many people in Turkey as “Christian” nations invading a Muslim country.

⁷ Cf. for the view of early Islam about Christians also Khoury 1998:219-225; Tamcke 2008:20-61.

⁸ As one example of a Turkish Muslim becoming Christian cf. the life of Necati Aydin in Haede 2012.

count these “less serious types” (so Schirmmacher 2008:87) of Christian sufferings as persecution in the full sense? Certainly, these verbal forms of causing sufferings belong to the continuum of persecution (cf. Cochran 2010:87 pointing rightly to Mat 5:11).

Especially in the cultural context of Turkey with its focus on shame and honor, being defined as liars, traitors or low class citizens should better not be called “less serious”⁹. Though being beaten, arrested or killed is a different quality of persecution, the attacks on an individual Christian’s or a Christian community’s identity is a very serious form of persecution.¹⁰

2. A battle for defining Christian identity in Turkey

The verbal assaults on Christians in Turkey are an attempt to define Christian identity, i.e. to tell the public who Christians are and what people have to expect from them. As mentioned in my introduction we have to ask who is trying to define, to whom he tries to address this definition and what the contents of it is.

2.1 Who is trying to define?

When we speak about trying to define Christian identity in Turkey, we must admit that in some way everybody who is talking about another person is defining the other’s identity. Talking about a battle for defining identity I am speaking about people influencing the public opinion in Turkey relevantly, for instance journalists, politicians, theologians, intellectuals, i.e. the opinion formers of Turkish society.

Defining the Christian’s identity may be but is not always a conscious act of “psychological warfare”. We will see in 3.2 that the intended addressees often are not the Christians themselves. Opinion formers however generally are aware of how effective their words can be, especially when it comes to defining a minority.

2.2 Whom is the definition directed to?

I am presently working on a research project about the perception of Christians in five Turkish daily newspapers from different ideological backgrounds¹¹. Columnists of daily newspapers are very effective opinion formers in Turkey. However, mainly

⁹ What Campbell 1998:333 remarks about First Peter, has relevance for today’s Turkey too: „Peter’s concern is predominantly with honor, the primary cultural value of the ancient Mediterranean world.”

¹⁰ I want to render here a longer quote by Johnson 2002:483-484, about 1 Peter, because he aptly describes the pain that social ostracism can cause: “*Suffering is no less real, however, just because it does not lead to death. Since scorn and contempt are slow-working acids that corrode individual and community identity, social alienation should not be viewed as a trivial form of suffering. Persecution may bring death, but the martyr has the advantage of dying with meaning. Societal scorn, however, threatens meaning and identity*”

¹¹ These newspapers are *Yeniçağ* (extreme nationalist), *Millî Gazete* (Islamic fundamentalist), *Yeni Şafak* (moderate islamist), *Milliyet* (liberal democratic), *Cumhuriyet* (Atatürk type of secularism).

they are writing for people with a similar worldview. The preference for certain newspapers in Turkey is generally connected closely to one's worldview. Politicians or theologians might want to win people with different ideologies for their ideas. Still they too are mostly addressing their own clientele.

Therefore, when opinion formers try to define, what and how Christians are, they first try to teach or to warn people with their own worldview. They feel the need to tell them their "truth" about Christians, because they fear that their clientele might be affected or even attracted by Christians if they are exposed to the Christians' self-definition.

As my research covers a time period that was characterized by a vivid debate about Christian missionary activities¹², I found that each of the newspapers, even though in very different grades of intensity, used the debate about Christian missionaries for its own political agenda. The extreme nationalists tried to prove that the Islamic government is not defending the sovereignty of the country, the moderate Islamists used the confusion about missionaries to claim that it was a mistake by the secularists to hinder Qur'an courses etc.

Having said this, still the publicly pronounced opinion about Christians deeply affects the Christians themselves. They may be confronted daily with the opinion of the majority that is influenced by the propaganda of the opinion formers. Even if Christians are not directly addressed, they get messages like "You have to be ashamed", "You have wrong motives", "You do not really belong to this country. You are even dangerous for this country."

2.3 How is the Christian identity defined?

I want to make it very clear that there are opinion makers, especially in the liberal-democratic segment of society, who condemn agitation against Christians or other minorities. There are others (though getting less in number) who admire Western success and credit it partly to the influence of Christianity. Because I write about defining identity as part of persecution, I will however focus here on negatively defining of Christian identity without denying that these other voices exist too.

2.3.1 Against Christians or against missionaries?

The focus of the debate about Christianity in Turkey from about 2002 to 2007 was on missionaries and missionary activities. Extreme criticism against missionaries was sometimes (not always) softened by the remark that the criticism is not di-

¹² November 2004 to January 2005.

rected against all the Christians, and even not all missionaries, but only those using unethical methods.

The accusation of unethical methods has to be answered by serious Christians. I maintain however that the attempt to define the missionaries' identity negatively is an assault against all Christians. On the one hand, in today's Turkey it is not politically correct to speak very negatively about Christians in general. A Turkish proverb says, "My daughter, I tell it to you. My daughter-in-law, understand it!"¹³ Therefore, criticism directed to the missionaries seems very often intended to be criticism and warning to every Christian.

On the other hand, Christians who cease to be active in evangelizing take away an indispensable element of their faith. The special role of Christians as *dhimmi* in early Islam (cf. Bosworth 1982) and then in the Ottoman system of religiously separated *millet* (religiously defined communities) forced the Christians to abstain from mission amongst Muslims. That created a "minority psyche" ("Minderheitenpsyche", cf. Tamcke 2008:41-48) that pushed active mission out of the horizon of most Christians under Muslim rule.

Harsh criticism against missionary activities sometimes seems to be an attempt to incite Christians who are less involved in evangelizing against those who are active in mission. Behind this stands the old principle of *divide et impera*.

2.3.2 Religious definitions

Defining Christians religiously in Turkey means to define them according an Islamic understanding. Of course, Islam in Turkey is not a homogeneous entity. Therefore, definitions of Christian identity differ. But even in 2007 a book that is published by the official publishing house of the governmental *Diyanet İşleri Başkanlığı* (Presidency of Religious Affairs) can write about the Christians with a very traditional Islamic view: "The people of the book [Christians in Qur'an terminology] have, beside a lot of other bad characteristics, made things like 'unbelief, denial and lie' so to say their profession" (Kessler 2007:118).¹⁴ "Unbelief, denial and lie" refer to the Christian's response to the Islamic prophet's claims.¹⁵

To perceive Christians as liars obviously stems from the presupposition that only untruthful people can reject the prophet and his religion (cf. 2.2). Moreover, they are blamed to have distorted their own holy book. To assume that Christians are not honest, that missionaries hide their true intentions, that cheating is a method of

¹³ 'Kızım sana söylüyorum, gelinim sen anla!'

¹⁴ Ehl-i kitap pekçok kötü özelliklerinin yanı sıra 'İmansızlık, inkâr ve yalan' gibi şeyleri âdetâ bir meslek haline getirmişlerdi.

¹⁵ Cf. Khoury 1998:219-224 about the questions, which Christians are perceived as "good" in Qur'an and which as "bad".

mission is widespread in Turkey – not only amongst Islamist but also (though with different connotations) amongst extreme nationalists.

Historical experiences with Western “Christian” countries (cf. 2.1) have contributed to this perception and definition of Christian identity in Turkey. However, fundamentalist Muslims openly use the Qur’an and the early Islamic tradition for their definition of Christians, and many other people in Turkey seem to be affected by this perception¹⁶.

2.3.3 Nationalistic definitions

In nationalistic circles the theory of the Turkish-Islamic Synthesis was discussed a lot especially in the 1970s and 1980s (cf. Kurt 2010). According to this ideology, Turks once found and now have their identity in Islam. Therefore extreme nationalists can define a Turkish Muslim converting to Christianity only as traitor, as someone giving up his or her Turkish identity. This mindset is so common even among people being not very intimate with their own Muslim religion that many Turkish converts are confronted with being accused as traitors by their own families (cf. Haede 2012).

According to this mindset, any attempt of foreign or local “missionaries” to win Turks for their faith must be seen as an assault on the country’s unity and security.¹⁷

Very close to the nationalistic definitions of Christians’ identity are political definitions:

2.3.4 Political definitions

Missionaries are defined as spies for other countries¹⁸; they are dangerous for the unity of the Republic of Turkey. They are suspected to have a political and not a religious agenda.¹⁹

This way of thinking at times can lead to statements like “Every missionary activity is an act of terror”.²⁰

¹⁶ When Mehmet Şevket Eygi, ultraislamistic columnist of the *Millî Gazete*, characterizes the “bad Christians” as “Misyonerler, Haçlılar, Teslisçiler” (missionaries, crusaders, Trinitarians. *Millî Gazete*, January 6, 2005, p. 2) that demonstrates how fundamental theological differences and historical experiences are working together.

¹⁷ Cf. the whole-page series of articles on 12 consecutive days against missionaries in the Turkish daily newspaper *Yeniçağ*: Yüksel Mutlu. ‘Dünden günümüze belgeleriyle ... Misyonerler’ (“From yesterday until today documented: missionaries”) from January 4-15, 2005.

¹⁸ *Yeniçağ*, January 6, 2005, p. 2: “It draws attention that each missionary engaging in Christian propaganda is at the same time a spy.” “Hristiyanlık propagandası yapan misyonerlerin aynı zamanda bir casus olduklarına dikkat çekiyor.”

¹⁹ Cf. for instance *Yeniçağ*, January 6, 2005, p. 8: ‘Burada amaç Türkiye’yi parçalayarak bölgeye hakim olmaktır.’ (“The intention here is to fragment Turkey in order to rule the region.”)

²⁰ Hasan Demir in *Yeniçağ*, January 11, 2005, p. 9: ‘Her misyoner faaliyet bir terör eylemidir.’

2.3.5 Historical definitions

Historically Christians, and especially Christians from the West, are perceived as an extension of the crusades and of colonialism. Whereas the fundamentalist Islamists of *Millî Gazete* rather focus on “the danger of Christians’ assaults”, the moderate Islamists of *Yeni Şafak* see the West’s attempts to influence Muslims as a defense against the real superiority of Islam.²¹

Whereas Christians cannot and should not deny mistakes and guilt of the past, the attempt to define them and their missionary activities with these historical paradigms alone is slander and therefore a form of persecution.

2.3.6 Definitions of inferiority

Because for many Turkish opinion formers it is so unthinkable religiously and nationalistically that ethnic Muslim Turks turn to Christianity, another type of definition is constructed by showing the inferiority of those who took this step.

Turks who become Christians either have no idea about real Islam, they are bribed with Dollars, bought by promises of marriage and studying abroad, they are people who were not reliable anyway²² or they might have had Christian ancestors.²³

It goes without saying that claims like this are hard to bear for Turkish converts to Christianity.

2.3.7 The need for Christians to react to these definitions

Why should Christians in Turkey react to attempts of others to define their identity wrongly? I see mainly two reasons for a balanced and well-founded response to this facet of persecution.

On the one hand, Christians need to protect their own perception of Christian identity. The new Christians might develop a “minority psyche” with all their negative aspects as well (cf. 3.3.1). They might lose their courage to contribute posi-

²¹ Cf. Yusuf Kaplan in *Yeni Şafak*, November 24, 2004, p. 10: ‘Bugün Batılıların yapmak istediği iki şey var: Türkiye’nin İslâm medeniyeti iddialarına sahip çıkmasını önlemek ve dünyanın, özellikle Batı dünyasının kitleler halinde Müslümanlaşma ihtimalini ortadan kaldırmaktır.’ “There are two things which the Westerners want to do today: to prevent Turkey from insisting on claiming the Islamic civilization, and to remove the possibility that in the world and especially in the Western world people in masses become Muslims.”

²² Cf. Aydın 1996: 15: “...those are types who don’t know Islam, became distant to national and spiritual values, who are scared, without self-confidence and anxious.” - ‘...İslâmı’ı bilmeyen, millî ve manevî değerlerinden uzaklaşan, korkak, güven duygusundan yoksun, endişeli tiplerdir.’

²³ How hard even this “accusation” in Turkey can be, is proved by an almost funny story. In 2008, a member of parliament of the opposition party CHP spoke about his information that the Turkish president Abdullah Gül had Armenian ancestors. The result was that the President opened a symbolic court case against this claim. Cf. The article “Gül’den Antman’a 1 YTL’lik tazminat davası” in *Yeni Şafak*, December 22, 2008. Accessed on March 15, 2012 at: <http://yenisafak.com.tr/Politika/?t=22.12.2008&i=157772>.

tively to society and perceive themselves as inferiors. Alternatively, Christians might develop a sectarian attitude, trying to live in their own social ghetto and secretly feeling superior to “the others”.

The second reason for an active battle against wrong definitions is the fact that in Christian history²⁴ and in the Turkish reality prejudice and ostracism is very likely eventually to turn into such acts of persecution that attack not only the spirit²⁵ but also the body of Christians²⁶.

As a response to wrongly defining their identity as a part of persecution, Christians have to define and make aware how they see their identity.

3. A Christian answer according to First Peter: Assurance of Christian identity

Not only is the First Letter of Peter addressed to Christians living in Roman provinces that are all within the geography of today's Turkey. What is more important: The letter seems to be a good blueprint for Christians in Turkey to define their own identity. First Peter is characterized by a “in the NT unusual concentration of statements about suffering” (Feldmeier 1992:110). In fact, the reason for Peter's writing this letter is to equip the Christians with good theology that will help them to cope with their suffering as Christians (cf. Feldmeier 1992:105 and footnote 2). This suffering however does not yet consist in a systematic persecution by the state. Christians are rather slandered, blamed and ostracized by society.

3.1 Creating identity or assurance of identity?

The fact that Peter, but also other authors of the New Testament, in a context of Christian suffering react by defining Christian identity is accepted widely in contemporary research²⁷. Even authors making identity not their main topic but looking for the “controlling metaphor” (Mbuvi 2004:42) in First Peter, are indirectly dealing with Christian identity too, when they assign a certain metaphor to Peter's describing the Christians, be it “Christians as strangers” (Feldmeier 1992), the identifica-

²⁴ Cf. the quote of G.E.M. de Ste Croix in Holloway 2009:72-73 speaking about “the atmosphere of hostility, liable to turn at any moment into active persecution.”

²⁵ I must mention here that prejudice and ostracism never can stay a mere verbal type of persecution. For converts being not accepted anymore in the own family may be pushed into serious economical problems. Small businessmen might lose customers. In certain situations it can be more difficult to find a job for a confessing Christian.

²⁶ Cf. the role of the media campaign in preparing the ground for the murderers of Andrea Santoro and the martyrs of Malatya (Haede 2012:92-96, chapter “Sowing and reaping of evil”).

²⁷ Cf. for instance Campbell 2006; Dunning 2005; Graser 2012:155-162; Hart 2008; Holloway 2009; Mbuvi 2004.

tion with the Old Testament Exile narrative (Mbuvi 2004) or with the eschatological people of the Messiah (Dubis 2002).

More controversial is the question whether the authors of the New Testament in the face of suffering *assure* the Christians of the identity, which they already have in Christ, or if they contribute to *creating* a new identity. Hart tries to show in his research of First Thessalonians that Paul and other early Christians instrumentalized a narrative of persecution to form a Christian identity (Hart 2008). Dunning (Dunning 2005:iv) wants to show that the same reality of persecution was used by First Peter and other early Christian writings to help in forming various identities.

Without being able to go into detail, I would agree that the experience of suffering of Christians in Asia Minor might have urged Peter to have a fresh look at what the identity of the Christians was. The new situation needed interpretation. However, Peter's theology is deeply interwoven with other writings of the NT (cf. Green 2007:226-238), and Peter makes ample use of the OT in interpreting who the Christians are. Therefore, I conclude that Peter, led by God's Spirit, applied the truth of God's word and the message of Jesus to the situation of persecuted believers. At least Peter's intention was not to create or even formulate a new identity, but by interpreting the Old Testament and the Gospel to assure the Christians of the identity that they already had in Christ and according to the testimony of Scripture.

3.2 Correcting wrong definitions of identity

So how does Peter correct wrong definitions of the Christians' identity?

The adversaries "think it strange" (ξενίζονται, 4:4), what the Christians are doing, "they accuse" them "of doing wrong" (ὡς κακοποιῶν, 2:12; KJV "speak against you as evildoers"), they talk with insult (λοιδορία, 3:9) and slander (3:16). Christians are reproached (εἰ ὀνειδίζεσθε, 4:14).

Peter reminds them instead of their identity as chosen by God (1:2 ἐκλεκτὸν; 2:4; 2:9). They are not a "strange" and unimportant part of society, but they play such an important role in God's plan that even the prophets of old had to serve them (1:12). The apostle reminds them that they are "obedient children" (1:14), "living stones" (2:4) built into the new temple, "a royal priesthood" (2:9)²⁸.

Not only does Peter put the right facts against the wrong allegations, but while suffering in the Christians' context is supposed to be a valid reason to feel shame, Peter "turns this interpretation on its head" (Green 2007:226). Sufferings "because of the name of Christ" (4:14) are not a reason to be ashamed, but to be proud of

²⁸ Cf. Graser 2012:155-163, chapter "Rekonstruktion des Selbstkonzepts" (reconstruction of the self-concept).

(4:16). To be insulted is rather a proof that “the Spirit of glory and of God rests on you” (4:14).²⁹

Not only do the believers seem to be strange for their neighbors (ξενίζονται, 4:4), they have in fact to be “strangers in the world” (1:1, here παρεπιδήμιοι), because God called them for this (1:1).

3.3 Identity through putting Christian existence into the narrative of the Scriptures

Peter’s main “instrument” in defining Christian identity is to put the believer’s existence into the Old Testament narrative (cf. 4.1 about the “controlling metaphor”). 1 Peter 2:9, in applying Leviticus 19:6 and Isaiah 43:21 to the New Testament church (cf. 2:10), includes the Christians into the history of Israel.³⁰

Motives of the Old Testament Exodus narrative (cp. 1:13 with Ex 12:11; 1:19 with Ex 12:5; 1:16 with Lev 19:2) and the narrative of exile (cf. especially the mentioning of the Christians being strangers or living amongst pagans: 1:1; 2:11-12) define the Christian identity as part of the old and great plans of God.

I wouldn’t go as far as Lai to see “the Isaianic New Exodus” as “the underlying theme of the whole epistle” (Lai 2009:152). For the Christian believers’ identity however it is meaningful that they are seen as “an exilic community undergoing restoration” (Lai 2009:152) and so as the continuation of the people of God living in the exile among adversaries.

Peter’s use of the Old Testament narrative in interpreting the situation of the followers of Jesus proves again that for the apostle the Christian identity is given and has not to be creatively formed anew. At the same time, it shows that probably the apostles and the Christian community by the need to respond to persecution proceeded to a deeper understanding of the position of the believers in the Old Testament context.

3.4 Identity through identity with Christ

The strongest point that Peter makes in explaining Christians who they are in suffering is his argument that suffering is an indispensable element of the calling to follow Christ, because Christ Himself suffered (2:20-25). Ripken confirms how important this identification is for suffering Christians: “One of the greatest gifts that can be given to believers in the midst of persecution is for the believing community

²⁹ Cf. also Green 2007:226: “...suffering is a sign of the genuineness of one’s faith, an affirmation of one’s identity before God”.

³⁰ Cf. Green 2007:269: “Peter is in identity-formation mode as he inscribes the community of Christians, mostly Gentiles, into the history of Israel, giving them strong roots in antiquity.”

to assure them that what they are experiencing is for Christ's sake and for no other reason" (Ripken 2004:34).

Dubis (Dubis 2002:150-157) rightfully interprets τοῦ Χριστοῦ παθήματα ("the sufferings of Christ") in 4:13 as the messianic sufferings in which the Messiah himself and his followers have to take part.

3.5 Avoiding false interpretations of Christian identity

Peter never excludes the possibility that the Christians might be accused rightly of being "evildoers" (4:15)³¹. So definitions of the Christians by outsiders maybe a challenge to even more refrain from anything that might provide reasons to others to blame them rightfully (cf. 2:1; 2:12). There is suffering for doing wrong, and Christians should avoid this (cf. 2:14.20; 3:17; 4:15).

Not to give outsiders any valid reason to wrongly define Christian identity is probably the special reason for Peter to mention in this context submission to rulers (2:13-17), to masters (2:18-20) and to husbands (3:1-6). The apostle's referring to the rulers being sent by God (2:14) or to Sara in her submission to Abraham (3:6) renders it very unlikely that Peter teaches submission only as a tactical means to impress people. His main intention to mention it here however really seems to be "to silence the ignorant talk of foolish men" (2:15).

4. Conclusion

The type of persecution Christians are presently experiencing in Turkey consists mainly of being confronted with prejudice, slander and ostracism. My goal has been to expose the graveness of these facets of persecution which are to be taken very seriously because they attempt to define the identity of the Christians. Though the motivation of the definers may be very diverse, as a result the wrong definitions not only influence the non-Christian majority in Turkey but also the self-image that Christians have.

The thesis that part of persecution is a battle for defining identity is confirmed by the fact that New Testament authors in response to persecution show great efforts to correctly define this identity. While First Peter puts Christian identity into the framework of Old Testament narratives and by doing so shows the high and important position Christians have in God's plan, he warns them at the same time to restrain from doing evil in order not to provide reasons for wrong definitions of what a Christian is.

It seems that seeing persecution and especially verbal persecution as an assault on Christian identity and working on convenient strategies to teach Christians about their real identity will be a great help for Christians in Turkey and in similar situa-

³¹ KJV translates κακοποιῶς like this; NIV probably renders exacter with "criminal".

tions. Further research is necessary to examine this aspect of persecution and apply an appropriate response.

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Coping with discrimination in the First Epistle of Peter and in modern social psychology

Aaron Graser¹ and Christoph Stenschke²

Abstract

This article begins by describing the origin and forms of the suffering which the readers of 1 Peter experienced in the first century AD. It then surveys the strategies offered in the letter for coping with prejudice and discrimination. A further section discusses the problem and emotion focused coping strategies described and used in modern social psychology. Finally, it compares the coping strategies of 1 Peter to those of social psychology. The authors point out similarities and differences and suggest where and how both sets of strategies can help suffering Christians.

Keywords Suffering, discrimination, persecution, coping, 1 Peter, modern social psychology.

From the beginning, followers of Jesus Christ were presented with the challenge of facing and enduring suffering. Shortly after the crucifixion of Christ, suffering came in different forms and levels of intensity. The first believers were predominantly afraid of the Jews (John 7:13; 9:22; 12:42; 19:38; 20:19). However, one of the oldest books in the New Testament also refers to suffering caused by pagan neighbors (1 Thes 2:14). In the midst of these circumstances, the authors of the New Testament not only describe the origin and forms of suffering, but also provide strategies for coping with such suffering.

The First Epistle of Peter is the letter which focuses the most on discrimination against and oppression of the early Christians.³ Its author uses the terms “to suffer” (*paschó*) and “suffering” (*pathéma*) more than any other New Testament author.⁴ He describes in detail the origin and forms of suffering that the predominantly gen-

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3 Webb (1997:1135) emphasizes: “Certain New Testament books are more focused on the subject of suffering than are others. The authors of 1 Peter and Revelation are intensely interested in understanding and interacting with the problem of suffering in their communities.”

4 1 Peter 2:19,20,21,23; 3:14,17,18; 4:1,15,19; 5:10 and 1:11; 4:13; 5:1,9.

tile Christian addressees⁵ endured amidst their neighbors, and he provides strategies for coping with suffering.

Beyond any doubt, these strategies in the New Testament are invaluable for Christians today who face adversity because of their commitment to Christ. Nevertheless, due to their significance in the letter and the widespread suffering of Christians in today's world – as well as their need to cope with it constructively – it is interesting to examine these strategies in the light of modern social psychology. Two questions present themselves: “Are these same coping strategies used in modern psychology?” and “How can Christians who currently suffer from discrimination benefit from them?”

We begin with a brief description of the origin and forms of suffering and strategies for coping with discrimination, as reflected in 1 Peter. We then provide a more detailed overview of coping strategies in modern social psychology and, in light of these, assess one representing the coping strategies of 1 Peter. A final section briefly indicates how such strategies can support suffering Christians today.

1. The situation of the addressees of 1 Peter

Regarding the central theme of suffering in 1 Peter it is clear that the focus is not on the general suffering which the readers share with all humans. The question is not why Christians suffer under sicknesses, war or natural disasters. 1 Peter focuses on the question of why Christians suffer *because of* and *based on* their belonging to Christ and how they can deal with it.

1.1 Origin of suffering

1 Peter mentions different reasons for suffering (cf. 2:12, 14-15, 19-20; 3:14-17; 4:14-15, 19) that cannot be described here in detail.⁶ As a summary, it can be said that people in the area of first-century Asia Minor (1:1) had turned away from their former lifestyle with all its implications and had become followers of Christ. This transformation, through *new birth* (1:3, 23), provided Christians with a new identity and a new citizenship in heaven. This new identity led to a change in behavior. No longer did they “conform to the evil desires they had when they lived in ignorance” (1:14) nor did they live any longer “in the empty ways of life handed down to them from their forefathers” (1:18). They no longer spent time as “in the past doing what pagans choose to do – living in debauchery, lust, drunkenness, orgies, carousing and detestable idolatry” (4:3). Therefore, their neighbors “think it strange that you do not plunge with them into the same flood of dissipation, and they heap abuse on you” (4:4). Their new identity and behavior alienated them from the society in which they

5 Achtemeier 1996:50f; Carson and Moo 2010:779; Feldmeier 2005:29, Stenschke 2008b:222-223.

6 For a more detailed description cf. Graser 2012:46-76.

continued to live. Now these believers found themselves in a *diaspora* situation – still living amongst their own families and pagan neighbors, but now perceived as *aliens* and *foreigners* (1:1; 2:11).⁷ By drawing on Old Testament terms and traditions, the author draws a parallel between the status and fate of the readers and the experiences of the patriarchs and the people of God in the Old Testament. He reminds the readers of the root cause of their alienation. As Old Testament Israel was rejected because they were chosen by God, belonged to him and lived differently, so the followers of Christ are rejected in the same way because they are chosen by God and live according to his will (4:2). Being “alien” because of a new identity and lifestyle based on godly standards becomes the label affixed to Christians. Here lies the origin and the reason for the hostility and discrimination by pagan society: slaves now suffered under their masters because of their awareness of God (2:19), women suffered under their husbands who were not (yet) believers (3:1). All believers were challenged to follow Christ in his suffering (2:21; 3:18). His followers also have to suffer as he suffered: “Therefore, since Christ suffered in his body, arm yourselves also with the same attitude” (4:1). In this way “First Peter challenges Christians [today] to reexamine our acceptance of society’s norms and to be willing to suffer the alienation of being a visiting foreigner in our own culture wherever its values conflict with those of Christ” (Jobs 2009:5).

1.2 The forms of suffering

1 Peter uses the terms “suffer/suffering” (*paschó/pathéma*) mainly as *pars pro toto* for different forms of suffering without specifying them in detail. Elsewhere the letter describes the forms of suffering in some detail. For example, 1 Peter 1:4 and 4:12 speak about suffering grief in various trials. The majority of passages that indicate the nature of suffering speak about psychological suffering (rather than physical) in particular under verbal discrimination: Christians suffer from being accused (2:12), insulted, and slandered (3:9, 14). The pagan neighbors “speak maliciously against your good behavior in Christ” (3:16) and “heap abuse on you” or “malign you” (4:4). Christians are insulted for the name of Christ (4:14).

This verbal animosity, the discrimination through devaluation, slander, calumny, defamation and insult exacerbates the suffering and makes it tougher for Christians to live a Christian life in a non-Christian environment. In 1 Peter, “suffering” becomes a synonym for experiencing suspicion, prejudices, hate and aggression that are brought on Christians simply because of their identity of “being Christian” and corresponding behavior.

⁷ Horrell (2007:127) explains: “The recipients of 1 Peter were probably not literally geographically displaced aliens, even if a certain number among them might have been” (for a metaphorical understanding of this word see also Achtemeier 1996:56; Feldmeier 1992:203-210; against Elliott 1981:37-49; 67-84).

1.3 Strategies for coping with discrimination

1 Peter takes these demanding circumstances seriously and suggests a variety of strategies for coping with various situations. The first charge is to focus on the “inheritance that can never perish, spoil or fade – kept in heaven for you” (1:4). Beyond the present sufferings, which are just for now and which last only for a little while (1:6; 5:10), the readers should keep their eyes fixed upon the goal of their faith and the salvation of their souls (1:5; 1:9). Just as Jesus has received glory after his sufferings (cf. 1:11, 21), they will receive praise, honor and glory (1:7; 5:4; 5:10) after sharing in the sufferings of Christ when his glory will surely be revealed (4:13). They can be confident that they will reach that goal because God himself – in whom they have faith and hope (1:21) – has given them, in his great mercy, a new birth into a living hope through the resurrection of Jesus Christ (1:3). Hope, as a central element of Christian existence, is in line with other writings of the New Testament (Feldmeier 2004:300).

Another strategy of coping concentrates on the manner in which Christians live in the midst of suffering. How should believers live their Christian lives among their unbelieving neighbors? Such instructions in the letter address three groups: 2:1-2, 11-12 and 4:2-3 describe the behavior of individuals and their willingness to give an answer (3:8-17); 2:13-3:7 focus on the readiness to submit and 1:22; 2:17; 3:8-17; 4:8-11 address the quality and promise of Christian fellowship (cf. Graser 2012:136). The last aspect is particularly important for people who undergo discrimination. Showing proper respect to one another (2:17) and living in harmony, being sympathetic, compassionate and humble (3:8) create a “brotherhood of believers” and provide a strong community in which individuals find the support to bear and overcome the discrimination and hostility imposed on them by the pagan society in which they find themselves.

A further instruction for coping with suffering appears in 1 Peter 4:12: “Do not be surprised at the painful trial you are suffering, as though something strange were happening to you.” Stenschke (2008a:244) explains:

Although it is a new experience for them, what is happening to the Gentile Christians is *not* strange! They now share what the people of God of old had to face in the midst of Gentile nations. The position of a distinct religious minority with all its implications, which was common and therefore not surprising to the Jewish communities of the Diaspora (and the homeland), has now become the calling of these Gentile Christians.

This experience is not unique to the believers in Asia Minor. They share it with the “brothers throughout the world [who] are undergoing the same kind of sufferings”. Through the reference to the worldwide Christian community, the author

indicates that the readers are not alone in their suffering as Christians. It is “common” and “normal” for the pagan world to discriminate against Christians because of their belonging to Christ and their new behavior. “With all other Christians, the readers share the necessity of resisting the devil, thus sharing the suffering of Christ (4:13), knowing that they do not stand alone with suffering arbitrarily visited only on them, but that what they must undergo is being undergone by all other Christians [and Christ] as well” (Achtemeier 1996:343f).

A final strategy for coping with discrimination consists of rebuilding and strengthening the self-esteem of the readers by pointing out their new identity in Christ and their group affiliation (1:14-2:10).⁸ This strategy will be examined in more detail below.

2. Overview of the coping strategies of modern social psychology

Modern social psychology distinguishes between two major strategies of coping with prejudice: the problem-focused and the emotion-focused strategies (Miller & Major 2000:250f). Problem-focused strategies address the source of stress and attempt to actively change stressful situations in order to reduce the extent of discrimination, while emotion-focused strategies are used “to regulate emotions associated with stressors” (Miller & Major 2000:257). Both strategies can be subdivided into three types of coping strategies:

Problem-focused strategies		
(1) concentration on the self as the target of prejudice	(2) concentration on the situation	(3) concentration on others as the perpetrators of prejudice
reduce or remove conceal compensate	avoid interaction with similarly stigmatized others	change others or limit another's potential to act out his or her prejudice

The first strategy (1), concentrating on the self, shows at least three ways of coping with prejudice. A first option is to *reduce or remove* “the applicability of stigma to the self”, a second option seeks “to *compensate* for the problems stigma creates in social interaction” (Miller & Major 2000:252f). The third option of coping tries to *conceal* the stigma. Tröster (2008:144) explains that the attempt to conceal or

8 Horrell (2007:132) calls this segment therefore “identity-defining narrative”.

disguise a stigma, is the most common strategy, but also the one that entails great physical efforts.

The second strategy (2) focuses on the situation and the reasons for a stigma. Victims of prejudice try, on the one hand, to avoid places, persons, and activities that expose them to discrimination by others (:144). On the other hand, they interact increasingly with people of the same stigmatized group (Miller & Major 2000:255). “By affiliating with similarly stigmatized others, stigmatized people gain a respite from prejudice, in addition to all of the benefits that may ordinarily occur as a consequence of affiliation with similar others” (:256).

The third strategy (3), concentrating on others as the perpetrators of prejudice, seeks “to change others, or at least to limit another’s potential to act out his or her prejudice”. The most obvious strategy here is education and/or persuasion” (Hollway 2009:119). Another possibility to gain acceptance is to point out biological or medical factors for the diversity and the resulting discrimination.

People are held less responsible for stigmas caused by genetic endowment or illness, and others generally have more sympathy for people whose stigmatizing condition is perceived as outside their control than for people who are perceived as being responsible for their stigmatizing condition (Miller & Major 2000:256).

In general, it can be said: “problem-focused coping is seen as an effective strategy because it is task-oriented and addresses the source of the stress” (Ashkanasy, Ashton-James & Jordan 2004:12).

The second type of coping with discrimination is emotion-focused strategies. It is important to mention that, as a rule of thumb, “emotion-focused strategies are more appropriate when the problem cannot be changed” (Ashkanasy, Ashton-James & Jordan 2004:12).

Emotion-focused strategies

(1) strategies involving social comparisons with another individual or with another group

comparison with people in the same, or a similar situation
upward comparison
downward comparison

(2) strategies that involve the attribution of negative outcomes

attributing negative outcomes to prejudice and discrimination rather than to the own personal deservingness

(3) strategies that involve a restructuring of one’s self-esteem

change others or limit another’s potential to act out his or her prejudice

Strategies (1) involving social comparisons are used on two different levels: either individuals compare themselves with other individuals or an entire group is compared with another group. The comparison of one individual or group with another individual or group can be accomplished in three ways. Comparison with:

(a) another person or group that is in the same or a similar situation. Thereby, “stigmatized persons can protect themselves from exposure to, and the potential painful emotional consequences of, upward comparisons with nonstigmatized others” (Miller & Major 2000:258).

(b) a person or group that is in a worse situation (downward social comparison). In that case, a person or group can also regulate negative emotion following threat. The emotional benefits of comparisons with others who share a stigmatizing attribute account, in part, for the prevalence of support groups for individuals with various disabilities, and for the popularity of ethnically and religiously oriented clubs on campuses (:258).

(c) a person or group that is not stigmatized (upward social comparison). Upward comparisons with others who are dissimilar to the self in some way, even a minor way, “may be dismissed as not self-relevant, thereby protecting affect and self-esteem. Furthermore, upward comparisons with advantaged others may be inspiring rather than demoralizing, if they are accompanied by the belief that one’s own situation may improve” (:258).

Miller and Major (2000:258) conclude: “In short, various comparison strategies may help the stigmatized to regulate emotion and protect personal and collective self-esteem in the face of stigma-related stressors.”

Holloway (2009:124) explains the second type (2) of the emotion-focused strategies (attribution): “When confronted with negative outcomes in their daily experience stigmatized persons face what researchers call ‘attributional ambiguity’”. Since negative outcomes can either be explained by the personal inability and/or the negative performance of a person or by the prejudices of others – an affected person tries to devalue these negative results as mere prejudices (:124). Such attributions help stigmatized people “to protect self-esteem and regulate emotional reactions in the face of stigma-related stressors” (Miller & Major 2000:258).

In dealing with prejudice and discrimination, this attribution does not always guarantee protection of self-esteem, particularly in situations where prejudices cannot be denied. “Furthermore, a tendency to attribute negative outcomes to prejudice in the absence of clear situational clues that prejudice is a plausible cause of outcomes is not self-protective” (:259). Therefore denial or minimizing of prejudice is an indication of stigmatized persons’ emotional inability to handle stress factors. “... denial of discrimination can sometimes be an adaptive strategy, at least in the short run, compared to acknowledging oneself as a victim and relinquishing

a sense of control over one's own outcomes" (:260; cf. Major & Vick 2005:146). However, it has to be kept in mind "that using denial as a coping strategy is associated with poorer physical and mental health outcomes over time" (Miller & Major 2000:259f).

Whether denying or acknowledging prejudice as a potential cause of one's outcomes is adaptive or not is likely to depend on a variety of factors, such as the extent to which prejudice is flagrant, the extent to which others agree with one's own interpretation of events, and the degree of control one perceives oneself to have over the situation (:260).

The last emotion-focused strategy (3) focuses on the reestablishing of self-esteem so that stress-factors caused by a stigma become less damaging to the self-esteem. One option for reestablishing self-esteem is by depreciating the domains in which someone performs poorly and by distinguishing and emphasizing domains of good performance.⁹

Holloway (2009:126) describes another way of restructuring self-concept:

The empirical literature distinguishes between psychological "disengagement" and psychological "disidentification". Both intentionally devalue domains in which one's performance, or the performance of one's group, is negatively evaluated. However, in the first case (disengagement) the devaluing is temporary, responding to a specific threat, whereas in the second (disidentification) the devaluing has become more permanent and alters one's enduring set of values.

Beside these strategies, coping can also be achieved through building self-esteem by understanding self-concept and self-worth. Vye, Scholljegerdes and Welch (2007:57) explain:

Self-concept relates to the idea of identity and knowing who we are. In order to build self-esteem, we need to have a good understanding of our self-concept – those characteristics that make us who we are ... Once we have established some ideas about who we are (self-concept), we can attach values to this identity or, in other words, increase our self-worth.

Ashkanasy, Ashton-James and Jordan (2004:12) indicate that "emotional-focused coping ... is perceived as less effective, because it merely ameliorates the appraisal of stress so that the stress trigger still remains."

⁹ Holloway (2009:126) provides two examples: "A person failing in academics may therefore choose to restructure her or his self-concept to value, say, success in sports ('I am an athlete not a scholar') or, vice versa, a person failing in sports may choose to shift her or his emphasis to academics ('I am a scholar not an athlete')."

3. Coping strategies of 1 Peter in the light of modern social psychology

Our description of coping strategies in 1 Peter and in modern social psychology suggest that many of the strategies in 1 Peter are also used in modern social psychology even though they are labeled with the technical terms of a different academic discipline (cf. Holloway 2009; Graser 2012:175-186). We will now compare one of the strategies of 1 Peter with the emotion-focused strategy of (re)building and strengthening self-esteem, as used in social psychology. While other strategies could also be examined with benefit, we focus on this strategy because it is dominant in 1 Peter and also appears in other New Testament writings.

From a social psychological view, “both the awareness of being perceived in a stereotype manner and the actual experience of refusal and exclusion shape the self-esteem and the self-concept of a stigmatized person” (Tröster 2008:141; trans. AG). In order to rebuild and/or strengthen the self-esteem and self-concept of a person, some of the emotion-focused strategies come into action.

Precisely this happens in 1 Peter. Because the reasons for being discriminated against cannot be changed¹⁰, predominantly emotion-focused strategies are proposed. The experience of discrimination and exclusion can threaten and shatter the self-esteem of the readers. To strengthen their self-esteem, the author emphasizes the new group affiliation and gives an extended understanding of their self-concept and self-worth.

1 Peter 1:14 assures the readers that they are children of God (referring back to 1:3 where God is shown as a father who has given new birth [1:3; 1:23]). As newborn children they now belong to the family of God. As members of this family they have an exceptionally high status, along with all the corresponding privileges associated with this position. As God’s children they can call upon him as their father (1:17) and may cast all their anxiety on him because he cares for them (5:7).

The believers are also called to become “living stones”, built into a spiritual house to be a holy priesthood (2:5). The author speaks explicitly of a new “community” to which they belong. “Only as a building, as a collective, the living stones, can they fulfill their purpose of being a spiritual house” (Feldmeier 2005:90; trans. AG).

1 Peter 2:7-8 describes the contrast between the believers and the non-believers. Christ as the cornerstone of the whole building is precious to those who believe in

¹⁰The main reason for discrimination and suffering is the simple fact that Christians are followers of Christ. This “problem” and reason for suffering cannot be changed or removed but was and will always be a reason for suffering for Christ’s sake. It is not an option, it is a calling (cf. Matt 10:25; Mark 8:34; John 15:20; Acts 14:22; 1 Pet 2:20-21; 4:1,12; 5:9; 2 Tim 3:12; Heb 13:12-14).

him. “But to those who do not believe, the stone the builders rejected has become the capstone” (2:7). Non-believers “stumble because they disobey the word” (2:8). Then the author not only stresses once more the contrast between the non-believers and the believers by the words “but you are” in verse 9, but he also highlights the outstanding status of the believers:

But you are a chosen people, a royal priesthood, a holy nation, a people belonging to God, that you may declare the praises of him who called you out of darkness into his wonderful light. Once you were not a people, but now you are the people of God; once you had not received mercy, but now you have received mercy (2:10).

The terms used to describe the new status of the believers are taken from Exodus 19:6 and Isaiah 43:20-21 (LXX). By using the Old Testament honorific titles of Israel, the author again draws a parallel between the believers and their situation and the situation of Old Testament Israel. The believers not only partake in the destiny and the sufferings of Israel, but also share the unique privileges of Israel (cf. Stenschke 2009:108), regardless of how others may perceive and treat them.

Holloway has rightly noted, “that 1 Peter marks one of the earliest attempts, perhaps the earliest attempt...to craft a more or less comprehensive response to anti-Christian prejudice and its outcomes” (cf. Graser 2012:175-186). These examples and many others indicate that the strategies of coping with discrimination used in 1 Peter are very much up-to-date. Some of them have been described and are used in similar fashion in modern social psychology. Therefore, not only from a Christian perspective, but also from a psychological point of view, 1 Peter has all the potential and promise to guide and help Christians to cope with discrimination and prejudice in our day and age. The above described strategies¹¹, such as focusing on the goal, not being surprised, knowing that brothers throughout the world suffer in the same way and the knowledge of belonging to a divinely chosen group, can help Christians to endure suffering. The awareness that suffering is temporary and that “our present sufferings are not worth comparing with the glory that will be revealed in us” (Rom 8:18) will also help Christians to endure suffering for Christ’s sake.

4. Conclusion

After comparing the strategies of 1 Peter and modern social psychology, it is obvious that the letter provides coping strategies that coincide with the strategies of social psychology. In fact, 1 Peter indicates that people in situations that cannot be changed or controlled mostly use emotion-focused strategies. However, 1 Peter

¹¹ Cf. 2.3 Strategies of coping with discrimination, see also Graser 2012:134-163; 175-189.

does not use all of the strategies of modern social psychology: it lists strategies to cope as effectively as possible with suffering, but does not offer strategies that might lead to denial of faith or to a refusal of Christ in order to avoid suffering. The aim of 1 Peter is faithful discipleship of Christ even, and particularly in, suffering for and with him.

While social psychology can (and should) be used to aid Christians who suffer and those called to support them, it is not the cure-all for Christians.

With the grace of the Lord Jesus Christ, the love of God and the fellowship of both the Holy Spirit and of fellow Christians, as well as the many promises of God's Word, Christians can and should draw on resources that surpass anything that human science has to offer, however valuable some of its insights prove to be.

The New Testament not only indicates that followers of Christ will have to suffer because of their belonging to Christ; it also provides them with good and helpful guidelines as to how to cope with suffering.

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The proposed EU “equal treatment” directive

How the UK gives other EU member states a glimpse of the future

Paul Coleman and Roger Kiska¹

Abstract

This article examines the key provisions of a proposed radical European Union “non-discrimination” directive and compares the draft law with similar laws that have already been passed in the United Kingdom. By outlining the significant limitations on freedom of religion that have resulted from the passing of similar laws in the UK, the article seeks to accurately predict the path that other EU countries will follow if the proposed directive is adopted.

Keywords Religious freedom, European Union, non-discrimination, sexual orientation, provision of goods and services.

Lying dormant, somewhere within the inner machinery of the European Union, a draft piece of community law awaits its resurrection. If adopted, the proposed Council Directive 2008/0140 “on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation”, will expand EU discrimination law from employment into the provision of goods and services.² Given its potentially far-reaching scope and a number of

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² It thus builds on Directive 2000/43/EC of 29 June 2000 and Directive 2000/78/EC of 27 November 2000. Directives require the 27 Member States of the EU to achieve a particular result without dictating the exact means of achieving that result.

controversial articles, the draft law has been stayed for nearly three years. Some Member States have had a “cool” reaction to the possible introduction of yet more EU non-discrimination law,³ business leaders have pointed to the large costs involved in its implementation⁴ and one commentator even claimed the Directive is “an instrument with potential for cultural genocide.”⁵

As with all draft laws that are considered for implementation, discussions invariably revolved around the likely consequences of enactment. When, over a decade ago, the employment equality Directive was debated,⁶ some warned that “the harm caused by this Directive far outweighs any benefit that may accrue for religious people”⁷ and that it “placed the modern concept of ‘equality’ over and above religious liberty.”⁸ Such concerns were ignored. The fears were entirely unfounded, we were told.

However, in regard to the present Directive, it is not necessary to rely merely on legal predictions – however accurate they may have been – for successive governments in the United Kingdom have pre-empted the Proposed Directive and already legislated for much of what it seeks to achieve. Non-discrimination legislation has expanded into the provision of goods and services, a compliance body tasked with monitoring and enforcing the new legislation has been created and a “duty” on the public sector to promote equality has been imposed.

It is therefore possible, with a reasonable degree of clarity, to predict what will unfold in other EU Member States should the Proposed Directive be adopted, based on an assessment of the law in the UK. This article will analyze some of the most problematic provisions of the Proposed Directive, comparing the provisions with legislation already passed in the UK. Specifically, this article will address: (1) the concepts of “sexual orientation” and “religion or belief”; (2) the threat posed to religious freedom; (3) the so-called “promotion of equal treatment”, and (4) the outlawing of “harassment” in the provision of goods and services – a significant way in which the Proposed Directive develops non-discrimination law even further than the UK law.

³ L. Waddington, “Future prospects for EU equality law: lessons to be learnt from the proposed Equal Treatment Directive”, *E.L. Rev.* 2011, 36(2), 163-184 at 182.

⁴ 3 On 27 May 2009, the EU employers’ group BusinessEurope called on the EU to withdraw the Proposed Directive, citing the “extra burden” the Directive would place on already strained businesses.

⁵ See Professor William Wagner, “Information and Action Pack on the European Union ‘Equal Treatment’ Directive”, *CCFON*, September 2009, p.1.

⁶ Directive 2000/78/EC of 27 November 2000.

⁷ “European threat to religious freedom, a response to the EU’s proposed Employment Directive”, *The Christian Institute*, June 2000, p.20.

⁸ *Id.* Per Ian Leigh, p.4.

1. “Sexual orientation” and “religion or belief”

The Proposed Directive lays down a framework for combating discrimination on the grounds of, *inter alia*, religion or belief and sexual orientation in fields other than employment and occupation. However, a major difficulty with elevating “sexual orientation” to a highly protected status is that it is not at all clear what is meant by the phrase “sexual orientation” or what is being protected. Indeed it is questionable whether the phrase “sexual orientation” is anything more than “a jargon that has surfaced in the Lesbian, Gay, Bisexual and Transgender (LGBT) movement a decade and a half ago at the earliest, and the meaning of which is uncertain.”⁹

Unsurprisingly, attempts to define sexual orientation and the subsequent protections afforded to it inevitably run into difficulties. In particular, it is not clear whether “sexual orientation” refers to a person’s sexual *attractions* or the *practice* of such attractions. While the European Court of Human Rights has suggested that “sexual orientation” is comparable to protections based on sex or race¹⁰ – presumably on the basis of the so-called “immutability” of “sexual orientation”¹¹ – such comparisons must surely break down once the definition of “sexual *orientation*” automatically includes sexual *practice*. Indeed, it does not make sense to talk of the practice of being male, or the practice of being white, whereas one’s sexual attractions (immutable or not) and acting upon those sexual attractions in sexual practice are clearly distinguishable.

When the predecessor to the Proposed Directive was being drafted, it originally stated that: “With regard to sexual orientation, a clear dividing line should be drawn between sexual orientation, which is covered by this proposal, and sexual behaviour, which is not.”¹² Regrettably, this provision was later removed and the extent to which “sexual orientation” is protected, or the manifestation of “sexual orientation” in the form of sexual practice, remains unclear.

In the UK at least, the courts appear to have taken the view that sexual *practice* is as equally protected as sexual *orientation*. In 2004 the High Court held that: “The

⁹ Jakob Cornides, “A Brief Commentary On The Yogyakarta Principles”, 2009 at p.2.

¹⁰ For example, see *Karner v. Austria* (2004) 38 E.H.R.R. 24 at § 37 and *EB v. France* [2008] 47 E.H.R.R. 21 at §§ 71, 90.

¹¹ The “immutability” of sexual orientation is highly questionable. To date, the claim has not been supported by scientific evidence and many supporters of homosexual behaviour state quite the opposite. In the UK, prominent advocate of homosexual behaviour, Peter Tatchell, has stated: “It [homosexuality] is a choice, and we should be glad it’s that way and celebrate it for ourselves” *The Guardian*, 25 April 1999. For one piece of scientific study, see Robert L. Spitzer, “Can some gay men and lesbians change their sexual orientation? 200 participants reporting a change from homosexual to heterosexual orientation”, 32 *Archives of Sexual Behavior*, 403 (2003).

¹² See Commission of the European Communities, Brussels, 25.11.1999, COM(1999) 565 final, 1999/0225 (CNS), p.8.

protection against discrimination on grounds of sexual orientation relates as much to the manifestation of that orientation in the form of sexual behaviour as it does to sexuality as such. Sexual orientation and its manifestation in sexual behaviour are both inextricably connected with a person's private life and identity."¹³ Furthermore, a Justice of the Supreme Court stated in 2010 that the protection afforded to sexual orientation includes the "right to live freely and openly as a gay man."¹⁴ What, one may ask, does living openly as a gay man mean in practice? Fortunately the Justice continued: "Male homosexuals are to be free to enjoy themselves going to Kylie concerts, drinking exotically coloured cocktails and talking about boys with their straight female mates."¹⁵ Such is the confusion over the term "sexual orientation".

Another of the Supreme Court Justices stated that: "The group is defined by the immutable characteristic of its members' sexual orientation or sexuality. This is a characteristic that may be revealed...by the way the members of this group behave ... To pretend that ... the behaviour by which it manifests itself can be suppressed, is to deny the members of this group their fundamental right to be what they are."¹⁶ Hence, it is clear that the phrase "sexual orientation" is being interpreted far more widely than mere orientation.¹⁷

On the contrary, with regard to religion or belief, the UK courts have consistently drawn a distinction between religious *belief* and the manifestation of that belief in religious *practice*.¹⁸ Thus, when religious believers wished to manifest their deeply held convictions on marriage, they have been denied. Given that the source of protection from religious discrimination and protection from "sexual orientation" discrimination is identical and the wording used to describe the protection is identical, it is hard to see how different tests could be applied.¹⁹

¹³ *R (on the application of Amicus - MSF section and others) v. Secretary of State for Trade and Industry* [2004] IRLR 430 at § 432.

¹⁴ *HJ (Iran) (FC) (Appellant) v. Secretary of State for the Home Department*, [2010] UKSC 31, per Lord Roger, at §78. The case involved immigration and not discrimination. Nevertheless, the comments are illuminating.

¹⁵ *Id.*

¹⁶ *Id.*, per Lord Hope at §11.

¹⁷ Other jurisdictions have adopted a similar view. For Canada, see: *Hugh Owens v. Saskatchewan Human Rights Commission*, 2006 SKCA 41 § 82 and for Australia, see: *Cobaw Community Health Service v. Christian Youth Camps Ltd & Anor (Anti-Discrimination)* [2010] VCAT 1613 (8 October 2010) at § 193.

¹⁸ For example, citing *Sahin v. Turkey* (2007) 44 EHRR 5 at §105, it was held in *Ladele v. London Borough of Islington* [2009] EWCA Civ 1357 that: "Art 9 does not protect every act motivated or inspired by a religion or belief. Moreover, in exercising his freedom to manifest his religion, an individual may need to take his specific situation into account."

¹⁹ See "Analysis of *Johns v Derby City Council* (2011)", *The Lawyers' Christian Fellowship*, March 2011, p.4.

The differing interpretations are even more difficult to justify given that “sexual orientation” is without mention in almost all human rights documents and by contrast, freedom of religion has been recognized as a fundamental human right in all of the post-Second World War international human rights instruments.²⁰ Indeed, the European Court of Human Rights has declared that freedom of religion “is one of the foundations of a ‘democratic society’” and without the freedom to manifest one’s beliefs, it “would be likely to remain a dead letter.”²¹

Therefore, where sexual orientation is conflated with sexual practice and lifestyle, there will inevitably be “a conflict of rights” between religious believers who wish to uphold the traditional view of sex and marriage with their actions, and those who claim that such actions are discriminatory on the basis of sexual orientation. This “clash” consistently results in the restriction of religious freedom as one “right” invariably trumps the other: freedom to *practice* sexual orientation trumps freedom to *believe* that homosexual practice is wrong. If the Proposed Directive is adopted, such tensions will move from the realm of the workplace and into the marketplace, and, as has been demonstrated in the UK, new areas of religious freedom will be threatened.

2. The threat to religious freedom

The UK passed similar laws to the Proposed Directive in the Equality Act 2006 and the Equality Act (“Sexual Orientation”) Regulations 2007 – now incorporated into the Equality Act 2010. While there is a vital exemption to the general prohibition against discrimination for religious organizations when providing goods or services – as accounted for in Article 3(4) of the Proposed Directive²² – this can only be relied upon in limited circumstances and is not wide enough to cover many situations.²³ Where the exemption does not apply, religious freedom has been severely restricted.

2.1 Individuals, non-religious organizations and commercial organizations are not exempt

First, there are no exemptions for individuals, organizations that are not considered “religious” or commercial organizations. This has led to religious people who pro-

²⁰ For example, Universal Declaration of Human Rights (1948), article 18; European Convention on Human Rights (1950), article 9; International Covenant on Civil and Political Rights (1966), article 18; American Convention on Human rights (1969), article 12; African Charter on Human and Peoples’ Rights (1981) article 8.

²¹ ECHR, *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, at § 31.

²² “This Directive is without prejudice to ... the status and activities of churches and other organisations based on religion or belief.”

²³ See Schedule 23(2) Equality Act 2010.

vide goods and services to be sued for acting upon their deeply held religious convictions. For example, guesthouse owners, Peter and Hazelmary Bull, have recently been successfully sued by a same-sex couple for refusing to offer them double bedded accommodation.²⁴ Mr. and Mrs. Bulls had a policy in place since 1986 which stated "... as Christians we have a deep regard for marriage (being the union of one man to one woman for life to the exclusion of all others). Therefore, although we extend to all a warm welcome to our home, our double bedded accommodation is not available to unmarried couples – Thank you."²⁵ In 2009, a same-sex couple was refused a double room and subsequently issued a civil claim for allegedly being discriminated against on the ground of "sexual orientation". The Bulls were forced to pay £3,600²⁶ in damages and, having recently lost their appeal,²⁷ their guesthouse now faces closure.²⁸ Other Christian guesthouses are facing a similar fate.²⁹

Moreover, the religious exemption does not apply "where the sole or main purpose of the organisation is commercial."³⁰ The meaning of this phrase has not yet been considered in case law, although it has been predicted that determining whether or not an organisation is solely or mainly commercial "may lead to a great deal of litigation".³¹ Indeed, when this issue was first debated the UK government admitted that, "there will be a number of areas where the court ends up having to determine whether [the commercial purpose] is the main or subsidiary purpose."³²

As a result of the provision, a printing business that does not wish to print materials contrary to the core beliefs of its owners could be sued under the legislation³³ as well as organisations that offer preferential rates to certain individuals such as Christian missionaries.³⁴ It is likely that in the future, as the laws begin to take effect, many other examples will become apparent.³⁵ Hence, the law has a greater reach than is desirable and by not providing an exemption to organisations which

²⁴ *Hall and Preddy v. Bull and Bull*, Case No 9BS02095, 18 January 2011.

²⁵ *Id.*, at § 11.

²⁶ *Id.*, at § 60.

²⁷ *Bull and Bull v. Hall and Preddy and Hall* [2012] EWCA Civ 83.

²⁸ See *The Daily Mail*, 21 January 2011.

²⁹ See the case of Mr. and Mrs. Wilkinson. *The Daily Telegraph*, 15 May 2010.

³⁰ Schedule 23(2)(2) Equality Act 2010.

³¹ Addison N, *Religious Hatred and Discrimination Law*, (Routledge Cavendish: 2007), p.53.

³² Baroness Scotland of Asthal, House of Lords, *Hansard*, Col. 1164, 13 July 2005.

³³ For example, see the case of *Ontario Human Rights Commission v. Brockie* [2002] 22 DLR (4th) 174 involving printed promotional material, or *Baker v. Hands on Originals, Inc.* HRC #03-12-3135, currently before the Lexington-Fayette Urban County Human Rights Commission in the U.S., involving the refusal to print t-shirts related to a local "gay pride" parade.

³⁴ See Baroness O'Cathain, House of Lords, *Hansard*, Col. 1163, 13 July 2005.

³⁵ For example, Christian wedding photographers who refuse to photograph same-sex civil partnerships are vulnerable under the law and could well be sued in the future. See the U.S. case of *Wilcock v. Elane Photography* (2008) HRD No. 06-12-20-0685.

are solely or mainly commercial, the legislation effectively removes the ability to manifest freedom of conscience and freedom of religion in the market place.

Given that the Proposed Directive focuses on individuals “only insofar as they are performing a professional or commercial activity”,³⁶ it is unlikely that any exemptions will be permitted for commercial activities if the Proposed Directive is adopted.

2.2 Organizations contracting with a public authority may not be exempt

Secondly, under the UK legislation, an organisation cannot lawfully discriminate on the grounds of “sexual orientation” in the provision of services, where the services are provided on behalf of a public authority. This provision has led to the closure of faith-based (and in particular Catholic) adoption agencies.³⁷ Simply put, after a brief stay of execution while the measures were being introduced, any agency that refused to place children with homosexual parents would be in breach of the law, would lose funding and would be forced to close down or remove their religious ethos. This was despite Catholic adoption agencies being widely recognised as being among the best in the country.³⁸

In 2007 there were 14 faith-based adoption agencies working throughout the UK, accounting for a third of adoptions within the voluntary sector.³⁹ Most of these have now had to remove their religious ethos and become secularized,⁴⁰ or have had to withdraw their services completely. In April 2011 the Charity Tribunal found against the last remaining Catholic adoption agency following a High Court decision.⁴¹ The tribunal stated that “religious conviction in the sphere of personal belief is protected in both domestic and European equality law, so that acts of devotion, worship, and prayer (including ceremonies) are exempt from equality obligations.” However, the Tribunal went on to state that there is an “essential distinction between private acts of worship such as blessings and the provision of a public service such

³⁶ Article 3(1)(d).

³⁷ For a summary of the adoption agency situation, see “Adoption agencies shut under ‘equality’ laws”, *The Christian Institute*, April 2009.

³⁸ Many of the children helped were considered “hard-to-place” (see *BBC News*, 25 January 2007) and furthermore, the breakdown rate was just 3.6% - one of the lowest of all the agencies (see House of Commons, *Hansard*, 21 February 2007, col. 110WH).

³⁹ See House of Commons, *Hansard*, 21 February 2007, col. 110WH.

⁴⁰ For example, Catholic Caring Services in Lancaster has changed to Caritas Care and cut its ties to the church. See *The Observer*, 21 December 2008 and *Third Sector Online*, 11 March 2009.

⁴¹ *Catholic Care v. The Charity Commission for England and Wales* [2010] EWHC 520 (Ch). This decision has now been upheld by the First Tier Tribunal. See *Catholic Care v. The Charity Commission for England and Wales*, CA/2010/0007, 26 April 2011.

as an adoption agency”.⁴² Again the false distinction between belief and practice was re-enforced by the courts.

Other religious organisations have also been affected. In 2008 a Christian care home had funding removed for refusing to promote homosexuality to its residents.⁴³ After the non-discrimination laws were passed, the local council contacted the care home and said that in order to continue receiving a small grant, the home must: (1) provide statistics on the sexual orientation of each of their 17 residents (all aged in their 80s and 90s); (2) promote homosexuality by including photographs of same-sex couples in its publications and by giving an express statement affirming the acceptance of same-sex relationships; (3) publicise homosexual events taking place in the area; and (4) make it compulsory that staff attend training on homosexual issues.⁴⁴ The care home refused to meet these demands as they believed the promotion of an activity contrary to Christian teaching was in direct conflict with its Christian ethos and would distress the residents.

The council, citing the new laws, withdrew the £13,000 per year grant.⁴⁵ A council spokesman said: “The Government specifically states the home must be open to the gay and lesbian community and that it must demonstrate this to qualify for funding. In the absence of any willingness to do this, funding has been withdrawn.”⁴⁶ After more than a year of internal appeals – amounting to £21,000 in legal fees – and after the case was made public, the council eventually backed down. It did not offer to pay any of the charity’s legal fees.

While the adoption of the Proposed Directive will not automatically force other Member States to take the self-defeating decision to close faith-based public services, adopting the Directive will certainly increase the pressure on Member States to take a similar position.⁴⁷

3. The promotion of “equal treatment”

Aside from the dramatic expansion in *scope* of discrimination law, the Proposed Directive also seeks to create positive obligations on the Member States to not only

⁴² *Id.*, at § 60.

⁴³ “Care home suffers under ‘equality’ laws: How traditional Christian beliefs cost an elderly care home a £13,000 grant,” *The Christian Institute*, May 2009.

⁴⁴ *Id.*, at p.5.

⁴⁵ *Id.* at p.10-11.

⁴⁶ *The Daily Telegraph*, 28 December 2008.

⁴⁷ For example, where Member States have given a broader interpretation to religious freedom when it “clashes” with sexual orientation, the European Commission has initiated proceedings against that Member State, insisting that it takes a narrower view of religious freedom. See the European Commission’s proceedings against the Netherlands on 31 January 2008 and the “Reasoned Opinion” of the European Commission against the UK on 20 November 2009.

remove discrimination, but also promote equality. Such “promotion” has become increasingly prevalent in the UK and the effects are discussed below, once again by comparing the UK situation with the likely effects of the Proposed Directive.

3.1 Positive action

Article 5 of the Proposed Directive encourages Member States to take “positive action” to “compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.” While such “positive action” has been encouraged by EU institutions for many years,⁴⁸ the issue becomes far more complicated and controversial when it involves the often conflicting grounds of religion or belief and sexual orientation.

Such a duty has been introduced in the UK under the Equality Act 2010. The Public Sector Equality Duty places a positive duty on public authorities to “promote equality”. Under the Duty, public authorities and private persons exercising public functions must “have due regard” for the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people. Furthermore, public authorities will have to publish “sufficient” information to demonstrate that they are complying with the Duty and “equality objectives” to demonstrate how they are engaged with the protected groups. The Duty also “applies to the allocation (or withdrawal) of funding or grants to the voluntary sector” and it is therefore likely that religious organizations which refuse to promote homosexual behaviour could be denied funding or have existing funding removed. It is unclear whether the approach to be taken by public authorities will result in a breach of EU procurement law.⁴⁹

The so-called “promotion of equal treatment” has already led to some bizarre situations in the UK – before the Duty was even in force. For example, a government funded guidance document stated that it is “potentially unlawful” for schools to require pupils to wear gender-specific clothes (such as skirts for girls)⁵⁰ and a code of practice suggested that holding parents’ evenings or public consultation meetings in the evenings may be sexist because women are less able to attend because of household or childcare responsibilities.⁵¹ In one part of the UK, the local

⁴⁸ See Article 2(4) of the Equal Treatment Directive 76/207 and Case C-312/86 *Commission v. France* [1988] ECR 6315.

⁴⁹ See Directive 2004/17/EC and Directive 2004/18/EC, which state that procurement decisions can only be taken on one of two grounds – the lowest price or the most economically advantageous tender.

⁵⁰ “Provision of goods, facilities and services to trans people: Guidance for public authorities in meeting your equality duties and human rights obligations”, *The Equality and Human Rights Commission*, p.43.

⁵¹ See *The Daily Mail*, 18 October 2010.

council required persons wishing to rent an allotment to inform the council of their “sexual orientation” during the application process, for “monitoring” purposes⁵² and in another part of the UK, a local council was prompted to carry out an expensive two-month investigation to decide whether the historic city of Canterbury was “sufficiently gay”.⁵³

As the Duty has begun to take effect, the ludicrous implications are becoming increasingly apparent. For example, in the city of Norwich, one church has been handing out literature for several years – essentially arguing that Christianity is correct and Islam is incorrect. In April 2012, the church was banned from doing so: the literature was considered to be “hate motivated”, the police were called, and a spokesman for the local council explained: “Although the police advised that no criminal offence had been committed, we have a *duty under the Equality Act 2010 to foster good relations* between people of all backgrounds and religions.”⁵⁴

Moreover, at a time of economic difficulties, the UK government estimates that the recurring costs of “gathering and publishing data, publishing the results of any engagement activity and publishing assessments on the impact of policies on equality” will cost between £23 to £30 million per year, on top of the once-off familiarisation costs.⁵⁵

3.2 Bodies for the promotion of equal treatment

Article 12(1) of the Proposed Directive also requires Member States to establish bodies whose task it is to “promote equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation.” The Directive’s guidance on Article 12 states that: “It is both difficult and expensive for individuals to mount a legal challenge if they think they have been discriminated against. A key role of the Equality Bodies is to give independent help to victims of discrimination.”⁵⁶ While Member States have been obligated to create such “Equality Bodies” in relation to “racial or ethnic origin” since 2000,⁵⁷ the Proposed Directive would drastically extend the scope of these bodies by requiring them to promote several additional and often conflicting characteristics.

Given the tensions that have already arisen between people who hold traditional religious beliefs about sex and marriage and those who claim that such beliefs are

⁵² See *The Daily Mail*, 21 October 2010.

⁵³ See *The Daily Telegraph*, 25 June 2009.

⁵⁴ See *BBC News*, 16 April 2012. Emphasis added.

⁵⁵ “Equality Act 2010: The public sector Equality Duty promoting equality through transparency, a consultation” Government Equalities Office, August 2010, p.45.

⁵⁶ As with Article 7 of the Directive, the presumption of guilt is again made by use of the term “victim” rather than a more neutral term such as plaintiff or claimant.

⁵⁷ Under Article 13 of the Racial Equality Directive (Directive 2000/43/EC).

discriminatory on the basis of “sexual orientation”, it seems clear that a public body set up to promote equal treatment and charged with the mandate of litigating perceived wrongs will find it difficult to protect both groups and will inevitably end up “taking sides.”⁵⁸

In the UK it is the role of the Equality and Human Rights Commission⁵⁹ to bring such litigation and it is quite clear that it has, in fact, taken sides. For example, the Commission attempted to intervene at every stage of the case of *Catholic Care (Leeds) v. Charity Commission*,⁶⁰ and even made *unsolicited* legal submissions,⁶¹ in order to argue that Catholic Care was not allowed to continue its century old practice of placing children for adoption with married couples only. The Commission also intervened in *Johns v. Derby City Council*⁶² and argued that Christians who object to homosexual behaviour or same-sex relationships should not be allowed to foster children. The Commission warned the court that children placed with Christian parents could become “infected” with Christian beliefs – a remark it was later forced to apologize for.⁶³

As well as legal interventions against Christians, the Commission has also provided much funding. For example, it fully funded the civil action against Mr. and Mrs. Bulls discussed above. Although the same-sex couple won the case, the Commission was not satisfied with the level of damages awarded and filed a cross appeal at the Court of Appeal with the intention of getting more money out of the retired Christian couple – a decision that again warranted a public apology.⁶⁴ The Commission has also funded guidance on religion, as provided for by a leading “homosexual rights” organization⁶⁵ and by the British Humanist Association,⁶⁶ while turning down funding to other mainstream Christian organizations such as the Evangelical Alliance.

⁵⁸ See Aughton-Ainsworth Solicitors, “Clearing the ground inquiry, Preliminary report into the freedom of Christians in the UK”, *Christians in Parliament*, February 2012, at p.32.

⁵⁹ The Commission was formed in 2007 by amalgamating the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.

⁶⁰ [2010] EWHC 520 (Ch).

⁶¹ Charity Commission for England and Wales, *Catholic Care (Diocese of Leeds)*, decision of 21 July 2010 at § 48.

⁶² [2011] EWHC 375 (Admin). The Commission’s legal fees, as paid for by the public, were £29,812.

⁶³ See “*Johns v. Derby City Council*”, Press Release, 3 March 2011.

⁶⁴ The Commission stated that its legal team had committed “an error of judgment”. See “Commission statement on Preddy and Hall legal case”, Press Release, 11 March 2011.

⁶⁵ Ruth Hunt, “Religion and sexual orientation: How to manage relations in the workplace.” *Stonewall* 2009.

⁶⁶ “Guidance on equality of ‘religion or belief’”, British Humanist Association, 2009. Amongst other things, the guidance suggested that employee evangelism in the workplace is “highly likely to amount to harassment of their colleagues” and prayer rooms should not be designated as “prayer” rooms at all.

Furthermore, the Commission provides millions of pounds of funding to organizations each year and has large discretion about where this tax-payer money goes.⁶⁷

Thus, it is not at all surprising that a recent Parliamentary Inquiry concluded that: "... the commission has failed to sufficiently represent and advocate for the role of religion in public life and sufficiently balance the outworking of religious belief when there is a tension between it and the other equality strands."⁶⁸

3.3 Increased litigation

Thirdly, Article 7(2) of the Proposed Directive encourages "associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with" to engage in litigation in support of supposed victims of discrimination. Given the scope of the Proposed Directive and vagueness of some of its provisions, the invitation to "organisations or other legal entities" to engage in litigation could well lead to an increase in potentially costly, baseless and often politically driven litigation.

The Directive's explanatory note encourages organizations which have "a legitimate interest in the fight against discrimination, to help victims of discrimination ..." No doubt there are some organizations which do indeed wish to "fight against discrimination". However, clearly there are others that seek to use the pretext of equality simply to "fight" for a particular agenda – often the removal of religion from public life.⁶⁹ Unfortunately, Article 7 of the Proposed Directive encourages this. Europe is already familiar with organizations using the courts as a context for pursuing a political agenda, as challenges are frequently made to the European Court of Human Rights which are really a matter for the legislature. A further invitation for special interest groups to engage in litigation is not required and will surely lead to further division within society.

Again, one needs only to look to the UK to see that the involvement of politically driven groups in litigation does not necessarily promote equality, but on the contrary can heighten tensions. For example, in 2009 Christian hoteliers, Ben and Sharon

⁶⁷ For example, according to the Commission's website, last year the Lesbian and Gay Foundation received £264,789, the LGBT Centre for Health and Wellbeing received £85,000, the Lesbian, Gay, Bisexual and Transgender (Specialist Support and Advocacy Services) received £393,120 and the extremely wealthy homosexual rights campaign group, Stonewall, received £147,812. The description for many of these grants simply states that the money is being used for "good relations". It does not appear that any of the Commission's £10 million grants funding has gone to churches or religious organisations.

⁶⁸ "Clearing the ground inquiry" *supra* note 58.

⁶⁹ Michael Foster MP warned during the passing of the Equality Act 2010 that churches need to be "lining up (their lawyers)" in preparation for legal challenges by atheists. See *The Daily Telegraph*, 19 December 2009.

Vogelenzang, were arrested and charged by the police for a “religiously aggravated” “hate speech” offence following what turned out to be a polite conversation with a female Muslim guest. The woman was encouraged and supported in her court proceedings by the Islamic Human Rights Commission. Even though the Christian couple was ultimately acquitted, the Islamic Human Rights Commission nevertheless stated that the Christians had “acted out of hatred” and subjected Mrs Tazi to “intense abuse.”⁷⁰ What began as a slight disagreement between people of differing beliefs spiralled into a criminal investigation, a court action and the publishing of widespread abuse levied against the Christians involved.⁷¹ The guesthouse never regained the business that was lost during the proceedings and although the couple was found innocent, the guesthouse now faces closure. At least some of the blame must lie at the door of the group that funded and encouraged the case.

Regarding the case of Mr. and Mrs. Bulls, noted above, it was explained during the first instance court proceedings that in 1996 the guesthouse owners had refused to allow an unmarried *beterosexual* couple to share a double room in their guesthouse. The unmarried couple promptly found somewhere else to stay, a national newspaper reported the story and made light of the Christian couple’s stance on sex and marriage and that was the end of the matter.⁷² When the near-identical situation occurred at the very same guesthouse in 2010 following a “letter of intent” issued by a pro-homosexual lobby group,⁷³ the same-sex couple similarly were able to quickly find another guesthouse to stay in. However, the police were also called, the incident was registered as a “hate incident”, the government-funded Equality and Human Rights Commission financed the entire litigation and the Christian couple was successfully sued, while being defended by a Christian charity. It is very difficult to look at the two near-identical stories – separated by 14 years and several pieces of non-discrimination legislation – and say that the latter incident represents a triumph for equality. Again, the invitation for politically driven interest groups to engage in litigation must take a portion of the blame for the tensions that are generated.

Thus, given that there are widely differing views contained within the societies of the Member States, by inviting organizations to engage in litigation, the Proposed Directive will not help to achieve relative harmony within these societies. On the

⁷⁰ IHRC Press Release, 9 December 2009. Cited in Jon Gower Davies, “A new Inquisition: religious persecution in Britain today”, *Civitas*, 2010, p.15.

⁷¹ For example, the Christians were referred to by commentators in the national media as “pig-ignorant Christian bigots” and “two rude nutters”. See Rod Liddle, *The Sunday Times*, 13 December 2009.

⁷² See Anne Jolis, “Can Britain tolerate Christians?” *The Wall Street Journal*, 15 March 2012.

⁷³ During the court proceedings it was revealed that several days before the same-sex couple arrived at the guesthouse, a warning letter had been sent to the establishment from homosexual lobby group, Stonewall. See *The Daily Mail*, 14 December 2010 for a report of the story.

contrary, there is good evidence to suggest that encouraging such litigation has the exact opposite effect and increases tension rather than community cohesion, creating antagonism where common sense and reasonableness prevailed for so long.

4. Moving beyond the UK's non-discrimination laws

Finally, the Proposed Directive seeks to move even beyond the non-discrimination legislation of the UK, by outlawing "harassment" in the provision of goods and services in relation to "sexual orientation" and "religion or belief".

Article 2(3) of the Proposed Directive states that: "Harassment shall be deemed to be a form of discrimination ... when unwanted conduct ... takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment." This definition of harassment is based on the one adopted by the EU in Directive 2000/78/EC. However, the fact that this definition is used in the employment setting does not mean that it is suitable outside of a workplace context. Indeed, it is highly questionable whether it is even suitable within the confines of the workplace.⁷⁴

The concept of "violating the dignity of a person" and creating an "intimidating, hostile, degrading, humiliating or offensive environment" is exceptionally vague. Given this wide definition, it would be easy for individuals to claim that they have been harassed on the grounds of religion or belief or "sexual orientation" and it could be argued that an "offensive environment" has been created by any number of actions. It is therefore questionable as to whether the definition of harassment meets the requirements of accessibility and foreseeability as laid out by the European Court of Human Rights in *Sunday Times v. The United Kingdom*.⁷⁵ The Court held that "a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct."⁷⁶ While the Court recognized that "many laws are inevitably couched in terms which, to a greater or lesser extent, are vague", it does seem that the definition of harassment is certainly at the greater end of the spectrum.

When the UK government attempted to introduce an almost identical harassment provision (regarding religion or belief) in 2005-6, the provision was heavily criticized and ultimately rejected. The former Lord Chancellor stated that his "main difficulty [was] the extreme vagueness of the provision" and that he would find it "very

⁷⁴ For example, an employee was suspended from work for merely discussing his views on sexual conduct during a private conversation, initiated by a colleague, at work. See Christian Concern Press Release, "Homeless charity suspends Christian for answering questions about his faith to colleague at work", 12 April 2009.

⁷⁵ [1979] 2 EHRR 245.

⁷⁶ *Id.*, at § 49.

difficult to see precise boundaries”⁷⁷ for the limits of the provision. Additionally, the former Attorney General stated that the provision made “a deep-seated attack on freedom of speech and on freedom of religion.”⁷⁸

It was argued that a Muslim could complain that a Bible in the hospital bedside cabinet was offensive, that crosses at a cemetery or crematorium were offensive,⁷⁹ that Christian welfare charities would receive funding cuts if they said a prayer before meals,⁸⁰ that Christmas celebrations would be removed by local councils⁸¹ and that evangelism would be restricted within prisons.⁸² Accordingly, given the obvious concerns, the harassment provisions regarding religion or belief were ultimately rejected by the UK parliament. Furthermore, the government did not even attempt to include a harassment provision in the later Equality Act (“Sexual Orientation”) Regulations 2007⁸³ and when an attempt was made to introduce a similar provision in Northern Ireland, the harassment provision was quashed by the High Court.⁸⁴

Given that the UK parliament, which has been more than willing to go far beyond the requirements of the current EU non-discrimination laws, rejected the notion of “harassment” within the provision of goods and services in relation to the highly contentious areas of “sexual orientation” and “religion or belief”,⁸⁵ it would be surprising if other EU Member States adopted a provision that, in the context of the provisions of goods and services, has great potential to have a great chilling effect on freedom of speech and severely restrict freedom of religion and freedom of conscience.⁸⁶

5. Conclusion

Over a decade ago, when Directive 2000/78/EC was being drafted, there were fears about how it would affect religious freedom, particularly in relation to its apparent “clash of rights” between the protected grounds of religion or belief and “sexual

⁷⁷ Lord Mackay of Clashfern, *Hansard*, HL, 9 Nov 2005, Col. 660.

⁷⁸ Lord Lyell of Markyate, *Hansard*, HL, 9 Nov 2005, Col. 660.

⁷⁹ Lord Waddington, *Hansard*, HL, 9 Nov 2005, Col. 655.

⁸⁰ *Id.* This was a real-life example.

⁸¹ Baroness O’Cathain, *Hansard*, HL, 9 Nov 2005, Col. 654. This was a real-life example.

⁸² *Id.* This was a real-life example.

⁸³ See “Sexual Orientation Regulations” Consultation Paper, *Department for Communities and Local Government*, 2007, § 4.17 and “Legislative Scrutiny: Sexual Orientation Regulations”, Sixth Report of Session 2006-2007, 26 February 2007 at § 57.

⁸⁴ See *The Christian Institute and Ors, Re Application for Judicial Review* [2007] NIQB 66.

⁸⁵ See section 29(8) Equality Act 2010: “...as it relates to harassment, neither of the following is a relevant protected characteristic— (a) religion or belief; (b) sexual orientation.”

⁸⁶ See James Dingemans QC, “In the matter of the proposed EU Directive on Equal Treatment between persons irrespective of religion or belief, disability, age or sexual orientation (2008/0140)”, *The Christian Institute*, 5 December 2008 at § 28.

orientation.” It is now clear that the predictions made about how the Directive would affect religious liberty in the workplace have been entirely accurate and there have been numerous cases where religious freedom has lost out to “sexual orientation” in the employment setting.⁸⁷

However, with regard to the Proposed Directive 2008/0140, the predictions are not necessary, as the UK has already implemented much of what the Proposed Directive seeks to achieve. As the effects of such laws are becoming increasingly apparent – the large implementation costs, the increases in litigation, the constant legal clashes, the removal of religious freedom and the overriding of individual conscience in the marketplace – other EU Member States must decide, before the Proposed Directive is adopted, whether this is a future they wish to pursue. Although the Proposed Directive has lain dormant for several years and is “strongly opposed” by some Member States,⁸⁸ at any moment it could be resurrected, and if the hard lessons are not learned from the UK, the rest of the EU will surely follow its path.

⁸⁷ See, for example, *Ladele v London Borough of Islington* [2009] EWCA Civ 1357; *McClintock v. Department of Constitutional Affairs*, UKEAT/0223/07/CEA, 31 October 2007; *McFarlane v Relate Avon Limited* [2010] EWCA Civ 880; *Matthews v. Northamptonshire County Council* (Case No. 1901629/2009), 26 November 2010. Two of these cases are now before the European Court of Human Rights. See *Lillian Ladele and Gary McFarlane v. the United Kingdom*, Application nos. 51671/10 and 36516/10.

⁸⁸ Progress Report from the [Czech] Presidency to the Permanent Representatives Committee (Part I)/ Council (EPSCO) on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (Brussels, May 26, 2009), 10073/09, p.7. See *supra* note 3 at § 183.

Freedom of speech and “hate speech”

Unravelling the jurisprudence of the European Court of Human Rights

Roger Kiska and Paul Coleman¹

Abstract

Freedom of speech is a fundamental human right, and has been labelled as such since the beginnings of the “human rights” era. However, there is an increasing belief that some speech, loosely known as “hate speech”, is unworthy of protection. This article outlines the principles of free speech as enshrined in the European Convention on Human Rights and demonstrates how the new restriction on so-called “hate speech”, particularly in regard to issues of sexual morality, is having an erosive effect on freedom of speech.

Keywords Hate speech, freedom of speech, European Court of Human Rights.

On 20 July 2003, Pastor Åke Green, from his small church in rural Borgholm, Sweden, delivered a strongly worded sermon on the topic of sexual immorality, redemption and grace. The Prosecutor’s Office filed a criminal claim against Pastor Green under Sweden’s 2002 “hate speech” law which referenced “sexual orientation” and he was eventually sentenced to one month in prison. It was not until the case reached the Supreme Court on 29 November 2005 that Pastor Green was finally acquitted of the accused crime.² In another incident, this time in Croatia, an elderly Catholic school teacher was sued for “hate speech” by a Lesbian Association

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² Case No. B 1050-05, 29 November 2005.

for teaching the Catholic position on homosexual behaviour from a state sanctioned textbook. While the court eventually found in Ms. Mudrovic's favour, the stress of the case which lasted over a year led to the elderly school teacher having a stroke.³ In recent months a criminal investigation has been launched against a Roman Catholic bishop in Ireland under "hate speech" laws for delivering a homily on "the arrows of a secular and godless culture" which allegedly insulted a humanist,⁴ and in Spain efforts are currently underway to criminally prosecute a bishop for delivering a homily from the Bible during a Good Friday mass, in which he celebrated the virtues of the sinless life and warned against the particular sins of the age.⁵

None of these instances, at the time of writing, have resulted in a criminal conviction, yet they do beg the question – "whatever happened to freedom of speech?" Many look to the European Convention on Human Rights to provide the answer, and although most citizens do not know the details of the law, the majority will have a vague understanding that their speech is somehow "protected by human rights". Worryingly, however, it is becoming increasingly clear that rather than being the safeguard of free speech that many hope and claim it to be, the European Court's desire to ban so-called "hate speech" has led to an inconsistent and downright contradictory jurisprudence, leaving freedom of speech in great danger.

1. Protections afforded to freedom of speech

1.1 Article 10 of the European Convention

For those citizens living within one of the 47 Member States of the Council of Europe, Article 10 of the European Convention on Human Rights provides the clearest protections for the right to freedom of speech:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation

³ *Lesbian Assn. Kontra v. Jelena Coric Mudrovic* (2010).

⁴ See *Irish Central*, Irish Bishop may be prosecuted for hate speech after criminal referral, 30 January 2012.

⁵ See *LifeSiteNews*, Liberal outrage in Spain: Homosexual groups seek prosecution of bishop over sermon on homosexuality, 18 April 2012.

or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁶

The European Court of Human Rights has stated that freedom of expression has a “special importance”⁷ under the Convention. The Court has repeatedly held that freedom of expression applies to “everyone”⁸ and “constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for each individual’s self-fulfilment.”⁹ Likewise, domestic courts of the Member States have frequently made reference to the fundamental importance of the right, noting that it is “an essential condition of an intellectually healthy society” and has “a central role in the Convention regime.”¹⁰

1.2 The right to offend, shock or disturb

It is not just inoffensive speech which is protected by Article 10. Over the years the Court has reiterated that subject only to narrowly defined limitations in paragraph 2 of Article 10, freedom of expression is “applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no ‘democratic society.’”¹¹

This has been the long-standing view of the Court and has meant that over the course of several decades, many “offensive” forms of expression have been protected by Article 10. Thus, at its best, Article 10 of the Convention is able to act as a safeguard in Strasbourg when domestic authorities place undue restrictions on speech which is considered “offensive”.¹² For example, the Court held that a journalist convicted for insulting a prominent politician by labelling him an “idiot”

⁶ The rights and freedoms protected by Article 10 of the Convention are closely connected with the rights and freedoms contained within Article 9 (freedom of religion – see ECHR: *Okçuoğlu v. Turkey*, Application no. 24246/94, [G.C.] judgment of 8 July 1999) and Article 11 (Freedom of Association – see ECHR: *United Communist Party v. Turkey*, application no. 133/1996/752/951, judgment of 30 January 1998, § 42). While both of these articles are relevant, Article 10 is considered the *lex specialis* on issues of speech and will be the focus of this article.

⁷ See *Ezelin v. France* (1992) 14 E.H.R.R. 362 § 51.

⁸ Article 10 applies to “everyone, whether natural or legal persons.” *Autoronic AG v. Switzerland* (1990) 12 E.H.R.R. 485 § 47.

⁹ See, for example, *Handyside v. The United Kingdom* (1976) 1 E.H.R.R. 737 § 49.

¹⁰ Per Lord Bingham, *R (Animal Defenders International) v. Secretary of State for Culture, Media and Sport* [2008] 1 AC 1312 § 27.

¹¹ See *Handyside* at § 49.

¹² As well as a safeguard in Strasbourg, Article 10 has frequently been used in domestic proceedings in the defence of freedom of speech – either as an overarching warning on the domestic Courts (case of Ake Green, case No. B 1050-05, 29 November 2005), or through its direct incorporation into domestic legislation (*Re Sandown Free Presbyterian Church* [2011] NIQB 26, § 73).

was protected by Article 10,¹³ as was the leader of an “Islamic sect” who referred to children born in a civil marriage as “piçs”.¹⁴ The Court has also protected “offensive” speech against religion, and in particular the Catholic Church. Thus, it has held that a French journalist who was convicted of a “hate speech” offence for writing that a Church doctrine contained the seeds of the anti-Semitism which fostered the idea and implementation of the Holocaust violated the European Convention on Human Rights¹⁵, as did the conviction of a journalist in Slovakia who labelled the highest representative of the Roman Catholic Church in Slovakia an “ogre” and urged Catholic believers to leave the Church.¹⁶ Offensive, yes. Illegal, no. This has been the clear mantra of the Court. Citizens have had the freedom to use speech which offends, shocks or disturbs and the Court has refused to recognize that citizens have a right under the Convention not to be offended.¹⁷ However, limitations are increasingly being placed on this well-established freedom.

2. The limits to freedom of speech: Preventing so-called “hate speech”

2.1 Defining “hate speech”

Before turning to the limitations placed on certain speech by a desire to ban so-called “hate speech”, it is first worth considering what “hate speech” actually is. But the fact is, nobody knows. And that is a large part of the problem. To paraphrase the words of Humpty Dumpty in *Through the Looking Glass*, the phrase means just what people choose it to mean, neither more nor less.¹⁸ A recent factsheet produced by the European Court of Human Rights admits that there “is no universally accepted definition of ... ‘hate speech’”¹⁹ and a previous factsheet observed that: “The identification of expressions that could be qualified as ‘hate speech’ is sometimes difficult because this kind of speech does not necessarily manifest itself through the expression of hatred or of emotions. It can also be concealed in statements which at a first glance may seem to be rational or normal.”²⁰

¹³ ECHR: *Oberschlick v. Austria* (No. 2), judgment of 1 July 1997, R.J.D. 1997-IV.

¹⁴ ECHR: *Gündüz v. Turkey*, Application no. 35071/97, judgment of 4 December 2003. The Court explained at § 49 that a “piç” is a pejorative term referring to children born outside marriage and/or born of adultery and is used in everyday language as an insult designed to cause offence.”

¹⁵ *Giniewski v. France* (2007) 19 E.H.R.R. 34 § 52.

¹⁶ ECHR: *Klein v. Slovakia*, Application no. 72208/01, judgment of 31 October 2006.

¹⁷ Cf. the Concurring Opinion of Judge Pettiti, who has claimed that “profanation and serious attacks on the deeply held feelings of others” should not be protected by the Court. *Wingrove v. United Kingdom* (1996) 24 E.H.R.R. 1.

¹⁸ L. Carroll, *Through the Looking-Glass*. Raleigh, NC: Hayes Barton Press, 1872, p. 72.

¹⁹ *Id.*

²⁰ Council of Europe, “Factsheet - Hate Speech”, November 2008, p.2.

Similarly, the Fundamental Rights Agency of the European Union has attempted to identify the *particular* speech which *it* considers to be criminal. Depending which document one reads, a different definition can be found. For example, the FRA has stated that: “‘Hate speech’ refers to the incitement and encouragement of hatred, discrimination or hostility towards an individual that is motivated by prejudice against that person because of a particular characteristic. ...”²¹ However, in another document, the FRA states that: “The term ‘hate speech’, *as used in this section*, includes a broader spectrum of verbal acts ... [including] *disrespectful public discourse*.”²² It also laments in another paper that: “There is currently no adequate EU binding instrument aimed at effectively *countering expression of negative opinions* ...”²³

Such confusion over the term abounds, and despite “hate speech” being without definition and difficult to identify, the latest European Court factsheet places great hope in the Court’s ability to navigate the difficult, if not impossible, path between the offensive speech which is protected by the Convention, and the “hate speech” which is not. The factsheet states that: “the Court is ... careful to make a distinction in its findings between, on the one hand, genuine and serious incitement to extremism and, on the other hand, the right of individuals (including journalists and politicians) to express their views freely and to “offend, shock or disturb” others.”²⁴ It is not at all clear how the Court makes this “distinction”. However, what is becoming increasingly apparent is that by labelling some speech as “hate speech”, controversial and unpopular views can effectively be silenced. The Court principally does this in two ways: (1) by excluding certain speech from the scope of Article 10 altogether or (2) by justifying the restriction on speech under Article 10 § 2.

2.2 Excluding certain speech from protection

On certain occasions, the Strasbourg Court has held that certain speech does not even fall within the scope of Article 10 because of the very *nature or content* of the speech. Hence, the detailed and rigorous process of making a Member State justify why it restricted the speech under Article 10 § 2 is short-circuited and the Court effectively says, “Article 10 does not apply”. Although not always the case,²⁵ Article

²¹ Hate speech and hate crimes against LGBT persons, *FRA*, 2009, p.1.

²² Homophobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States Part II – The social situation, *FRA*, 2009, p.46. Emphasis added.

²³ Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity, *FRA*, 2010, p.36-37. Emphasis added.

²⁴ Council of Europe, ‘Factsheet - Hate speech’, February 2012, p.1.

²⁵ Some claims are considered “manifestly unfounded” without reference to Article 17. See ECHR: *Le Pen v. France* (application no. 18788/09), admissibility decision of 20 April 2010.

17 is often used to justify excluding certain forms of expression from the scope of Article 10. Article 17 of the Convention states:

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Thus, expressions deemed to destroy the rights and freedoms set forth in the Convention have been considered unworthy of detailed consideration by the Court. For example, in the early case of *Glimmerveen and Hagenbeek v. Netherlands*,²⁶ the European Commission cited Article 17 to exclude the applicants – who had been convicted of possessing leaflets which called for the deportation of non-whites from the Netherlands – from relying on Article 10. The Commission held:

The applicants are essentially seeking to use Article 10 to provide a basis under the Convention for a right to engage in these activities which are ... contrary to the text and spirit of the Convention and which right, if granted, would contribute to the destruction of the rights and freedoms referred to above. Consequently, the Commission finds that the applicants cannot, by reason of the provisions of Article 17 of the Convention rely on Article 10.

However, there is no clear basis on which the Court excludes some speech by virtue of Article 17 and not others. Some decisions state that Article 17 can be used to declare *ratione materiae* an applicant's complaint,²⁷ while in other decisions the Court delays Article 17 arguments to the justification test in Article 10 § 2.²⁸ Although the Court's use of Article 17 appears to relate only to the most serious of speech – such as the denial of the Holocaust²⁹ – such an approach is nevertheless highly problematic. Not only does Article 17 have the capability of removing from the applicant the protections of the Convention without even the merits of the claim being heard – and thus without the State having to prove that the interference on speech was justified – there is also a danger that as more and more rights are read into the Convention, freedom of expression could gradually be reduced. For example, a number of years ago the belief (and manifestation of that belief) that homosexual behaviour was morally wrong would never have been considered to be

²⁶ Application nos 8348/78 and 8406/78; 18 D.R. 187.

²⁷ See, for example, ECHR: *Garaudy v. France* Application no. 65831/01, judgment of 24 June 2003; ECHR: *Norwood v. United Kingdom*, Application no. 23131/03, judgment of 16 November 2004.

²⁸ See ECHR: *Féret v. Belgium*, Application no. 15615/07, judgment of 16 July 2009 § 52.

²⁹ See ECHR: *Chauvy v. France* Application no. 64915/01, judgment of 29 June 2004.

“aimed at the destruction of any of the rights and freedoms set forth” in the Convention. Today that position is becoming less clear.³⁰

Thus, if protections afforded to freedom of expression are to be considered robust, and the right itself considered fundamental, it is highly questionable whether certain speech – however objectionable – can be considered to fall out of the scope of Article 10, without even a consideration of the merits. Instead, it is far more helpful for the Court to consider that the speech falls within the scope of Article 10, and then consider whether any restriction on the speech was justifiable under Article 10 § 2 after considering the case as a whole.³¹

2.3 Justifying restrictions on speech

The right to freedom of expression is a qualified right, not absolute. Accordingly, if the speech is deemed to fall within the scope of Article 10, an interference with the right to freedom of speech can nevertheless be lawful if it is justified under Article 10 § 2. For the interference in question to be justified it must pass a strict and cumulative three stage test and any exceptions to the right to freedom of expression must be “construed strictly and the need for any restrictions must be established convincingly.”³² The Court is empowered to give the final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10³³ and any restriction imposed must be proportionate to the legitimate aim pursued.³⁴

First, therefore, the restriction on speech must be “prescribed by law”. It is now well understood that to be prescribed by law, the restriction must have a basis in the domestic law of the State in question,³⁵ the law must fulfil certain “quality”³⁶ requirements – often known as accessibility, precision, foreseeability and clarity – and the law must be applied in a non-arbitrary way.³⁷

³⁰ See the arguments of “Liberty” in the third party intervention in *Ladele and McFarlane v. The United Kingdom*, Application Nos: 51671/10 and 36516/10. In §§22-3 of the third party submissions, Liberty submitted that because homosexual relationships are now recognized under the Convention (citing ECHR: *Schalk and Anor v Austria*, App no 30141/04, 24 June 2010) the Christian applicants in question cannot rely on their Convention rights where to do so would lead to discrimination against same-sex couples – thus breaching Article 17.

³¹ See Harris et al, *Law of the European Convention on Human Rights*, 2nd ed. Oxford: Oxford University Press, 2009, p. 450.

³² *Şener v. Turkey*, no. 26680/95, § 39, ECHR 2000-III. See also *Thoma v. Luxembourg*, no. 38432/97, §§ 43, 48, ECHR 2001-II; see also *The Observer and The Guardian v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, p. 30, § 59.

³³ *Handyside* at § 49.

³⁴ *Id.*

³⁵ See, for example, ECHR: *Peev v. Bulgaria*, application no. 64209/01, judgment of 26 July 2007.

³⁶ See *Sunday Times v. The United Kingdom* (1979-80) 2 E.H.R.R. 245 § 49.

³⁷ See ECHR: *Olsson v. Sweden* (No. 1), application no. 10465/83, judgment of 24 March 1988, § 61; ECHR: *Hasan and Chaush v. Bulgaria*, application no. 30985/96, judgment of 26 October 2000, § 86.

Secondly, the interference must pursue one or more of the legitimate aims listed in Article 10 § 2, namely: national security; territorial integrity; public safety; prevention of disorder or crime; protection of health, morals, reputation or rights of others; preventing the disclosure of information received in confidence, and; maintaining the authority and impartiality of the judiciary. The exceptions must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive.³⁸ No criteria other than those mentioned in the exception clause itself may be at the basis of any restrictions, and these criteria, in turn, must be understood in such a way that the language is not extended beyond its ordinary meaning.³⁹ Hence, if the State fails to prove that it was pursuing one of the legitimate aims listed above, the restriction will be unlawful. However, even if the State can demonstrate the pursuit of a legitimate aim, it must still prove that the restriction was justifiable under the third limb of Article 10 § 2.

Thirdly, whether or not a restriction can be justified depends on whether the restriction was “necessary in a democratic society”.⁴⁰ The Court has noted that the adjective “necessary” implies the existence of a “pressing social need” and the word does not have the flexibility of expressions such as “useful”, “reasonable” or “desirable”.⁴¹ Although the Contracting States have a certain margin of appreciation in assessing whether such a “pressing social need” exists, this must go hand in hand with European supervision. The Court is therefore empowered to give the final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10.

When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 10 the decisions they took. However, this does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith. Instead, the Court will look at the interference complained of in the light of the case as a whole and determine, after having established that the State pursued a “legitimate aim”, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were “relevant and sufficient”.⁴² In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assess-

³⁸ *Mutatis mutandis*, ECHR, *Sidiropoulos v. Greece*, (57/1997/841/1047), 10 July 1998, § 38.

³⁹ See *Sunday Times v. The United Kingdom*, Decision of the European Commission, adopted on 18 May 1977, Series B no. 28, p. 64, § 194.

⁴⁰ *Vögt v. Germany* (1996) 21 EHRR 205 § 52.

⁴¹ *Handyside* at § 48.

⁴² *Sunday Times* at § 62.

ment of the relevant facts.⁴³ It is under the Court’s reasoning on whether or not a restriction is “necessary in a democratic society” that the inconsistent approach regarding free speech and “hate speech” is revealed.

3. Justifying restrictions: The court’s inconsistent approach

3.1 Potentially relevant factors

In deciding whether a restriction on freedom of expression is necessary, a non-exhaustive number of factors will be considered by the Court. For example, the *author of the expression* may be a relevant consideration in some cases, and members of society such as journalists are given strong protections due to their contribution to discussion of “matters of public interest”,⁴⁴ whereas judges⁴⁵ and civil servants⁴⁶ are expected to show more “discretion”. The *means of communication* may also be relevant in some cases, and expressions which are communicated through a medium with a large public impact, such as television or radio, may require more caution.⁴⁷ Similarly, the *recipient of the expression* may also be relevant. For example, in *Handyside v. United Kingdom*, the Court noted that the expression in question – a book containing a chapter on sex – was being sent to “young people at a critical stage of their development”.⁴⁸ This was a relevant consideration when holding that the domestic authorities did not violate Article 10 by preventing the distribution of the book. Lastly, the *nature and severity of the penalties imposed* will always need to be taken into account when assessing the proportionality of an interference.⁴⁹ Thus, the more severe the restriction, the more difficult it will be to justify. Where a restriction merely limits the manner or form of the expression, it will more easily be considered proportionate.⁵⁰ However, restrictions or penalties such as heavy fines⁵¹ or the termination of employment⁵² will always be difficult to justify and criminal sanctions require a particularly robust justification.⁵³

⁴³ *Jersild v. Denmark* (1994) 19 E.H.R.R. 1 § 31.

⁴⁴ See, for example, *id.* at § 35 and ECHR: *Scharsach and News Verlagsgesellschaft mbH v. Austria*, Application no. 39394/98, judgment of 13 November 2003.

⁴⁵ See *Wille v. Liechtenstein* (2000) 30 E.H.R.R. 558 § 64.

⁴⁶ See *De Diego Nafía v. Spain* (2003) 36 E.H.R.R. 36 § 37.

⁴⁷ See *Purcell v. Ireland*, Application no. 15404/89, European Commission decision of 16 April 1991.

⁴⁸ *Handyside* at § 52.

⁴⁹ ECHR: *Öztürk v. Turkey*, Application no. 22479/93, judgment of 28 September 1999 § 70; *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV.

⁵⁰ See, for example, *Rai v. United Kingdom* (1995) 19 E.H.R.R. CD93.

⁵¹ See, for example, *Jersild* at § 35 and ECHR: *Sokolowski v. Poland*, Application no. 75955/01, judgment of 29 March 2005.

⁵² *Vögt v. Germany* (1995) 21 E.H.R.R. 205.

⁵³ ECHR: *Cumpănă and Mazăre v. Romania*, Application No. 33348/96, judgment of 17 December 2004 [G.C.], §§ 116-7.

Thus, there are numerous factors that may be taken into account by the Court when deciding whether or not the interference was necessary and proportionate, and for the large part, these factors are common sense and intuitive. However, the Court is in far more dangerous territory when it conducts an analysis of the *nature or content* of the speech.

3.2 An increasingly relevant factor: The content of the speech

In line with a wave of non-binding recommendations and resolutions from varying international and supranational institutions,⁵⁴ the Court has increasingly undertaken an analysis of the *nature or content* of the speech in question when deciding whether or not the interference was “necessary”. Of course, analysing the content of the speech can be important, particularly in libel or defamation claims, where the truthfulness of the comment is at issue, but the Court has not concerned itself merely with assessing truthfulness of the speech in applicable cases. Instead it has increasingly made value judgments on the speech in question, effectively asserting its own opinion as to the moral validity of the speech.

In recent judgments regarding Article 10, the Court has noted that: “expressions that seek to spread, incite or justify hatred based on intolerance... do not enjoy the protection afforded by Article 10 of the Convention”⁵⁵ and “concrete expressions constituting a hate speech... which may be insulting to individuals or groups, do not benefit from the protection of article 10 of the Convention.”⁵⁶ Likewise, the Court has attempted to develop the notion that while offensive speech is protected, “gratuitously offensive” speech is not.⁵⁷ The vagueness of such phrases is clearly cause for concern and clearly provides “wide and vaguely defined powers to prescribe the manner in which ideas and opinions are expressed.”⁵⁸

Although the line of “hate speech” cases has previously been limited to racial issues⁵⁹ and accusations of “extremism” that may stir up violence,⁶⁰ the development into

⁵⁴ Of particular note are: “Recommendation No. R (97) 20 on ‘hate speech’”, adopted on 30 October 1997 by the Committee of Ministers of the Council of Europe and “General Policy Recommendation no. 7 of the European Commission against Racism and Intolerance on national legislation to combat racism and racial discrimination”, 13 December 2002, which states that: “The law should penalise the following acts when committed intentionally: a) public incitement to violence, hatred or discrimination, b) public insults and defamation or c) threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.” § 18.

⁵⁵ *Gündüz v. Turkey*, Application no. 35071/97, ECHR 2003-XI, § 37.

⁵⁶ *Erbakan v. Turkey*, Application no. 59405/00, judgment of 6 July 2006 § 57.

⁵⁷ See, for example, *Otto-Preminger Institut v. Austria* (1995) 19 E.H.R.R. 34.

⁵⁸ Ian Cram, The Danish cartoons, offensive expression and democratic legitimacy. In *Extreme speech and democracy*, ed. Ivan Hare and James Weinstein, 311-330, Oxford: Oxford University Press, 2009, p.327.

⁵⁹ See, for example, *Féret v. Belgium* Application no. 15615/07, judgment of 16 July 2009.

⁶⁰ See, for example, *Lindon Otchakovsky-Laurens and July v. France* (2008) 46 E.H.R.R. 35 § 57.

areas where there are significant and legitimate moral disagreements regarding sexual morality did not take long. As the Court has made clear, “discrimination based on sexual orientation is as serious as discrimination based on ‘race, origin or colour’”.⁶¹

In the recent case of *Vejdeland and Others v. Sweden*,⁶² the Fifth Section of the European Court of Human Rights held unanimously that there had been no violation of Article 10. In 2004 the applicants went to an upper secondary school and distributed approximately a hundred leaflets in or near the pupils’ lockers. The applicants were then stopped by the principal of the school and were told to leave the premises. The leaflets in question criticized homosexual behaviour – referring to it as “deviant sexual proclivity” which had “a morally destructive effect on the substance of society” – and warned the pupils of “homosexual propaganda” allegedly being promulgated by teachers in the school.⁶³

For distributing the leaflets, the applicants were charged with agitation against a “national or ethnic” group. The applicants disputed that the text in the leaflets expressed contempt for homosexuals and claimed that, in any event, they had not intended to express contempt for homosexuals as a group. They stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education dispensed in Swedish schools. Nevertheless, on 6 July 2006 the Supreme Court of Sweden convicted the applicants under Chapter 16, Article 8 of the Penal Code for agitation against a national or ethnic group.

It was contended by the applicants that their conviction constituted a violation of their freedom of expression under Article 10. The Court found that the applicants’ conviction amounted to an interference with their freedom of expression as guaranteed by Article 10 § 1 and quickly came to the conclusion that the impugned interference was “prescribed by law” and served a legitimate aim, namely “the protection of the reputation and rights of others”. The Court therefore had to decide whether the interference was “necessary in a democratic society”. It is here where some of the Court’s reasoning is clearly acceptable, while other parts of the reasoning are highly problematic.

The Court took into consideration the fact that the leaflets were left in the lockers of young people who were at an “impressionable and sensitive” age (as per *Handyside* § 52) and who had no possibility to decline to accept them (in other words, a “captive audience”⁶⁴).⁶⁵ Moreover, the Court noted that the distribution of the leaflets took

⁶¹ *Vejdeland and Others v. Sweden*, Application no. 1813/07, judgment of 9 February 2012. The Court pointed to, *inter alia*, *Smith and Grady v. the United Kingdom*, (Application nos. 33985/96 and 33986/96), ECHR 1999-VI, § 97.

⁶² Application no. 1813/07, judgment of 9 February 2012.

⁶³ *Id.*, at § 8.

⁶⁴ Cf. the jurisprudence of the United States, such as *Rowan v. Post Office Dept.*, 397 U. S. 728, 736–738 (1970).

⁶⁵ *Vejdeland* at § 56.

place at a school which none of the applicants attended and to which they did not have free access (commonly known as “trespass”). The Court also considered the penalty imposed on the applicants and noted that none of the applicants were imprisoned despite the maximum sentence for their offence carrying a prison sentence of two years. It therefore held that the penalties were not excessive.⁶⁶

As noted above, in deciding whether there has been a violation of Article 10, the Court is clearly justified in taking the circumstances of the expression into consideration as well as the severity of the penalty imposed. It is well understood that freedom of expression cannot be protected in all circumstances and it would not surprise many to learn that unsolicited leaflet dropping on private property may perhaps fall unprotected under the Convention – whatever the contents of the leaflets. However, in considering that the *content* of the expression was unworthy of protection, as the Court did in paragraphs 54-55 of the judgment, the Court is on a far more dangerous footing.

Many would agree that when it comes to direct incitements to violence, they should either remain unprotected under the Convention,⁶⁷ or provide the Member State in question with a wider margin of appreciation in deciding how to deal with such speech.⁶⁸ However, in *Vejdeland* the Court took a different approach and acknowledged that while the leaflets “did not directly recommend individuals to commit hateful acts”, the comments were nevertheless “serious and prejudicial allegations”.⁶⁹ Moreover, the Court stated that “inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts”.⁷⁰ Instead, the Court held that “[a]ttacks on persons” can be committed by “insulting, holding up to ridicule or slandering specific groups of the population”.⁷¹ Based on these assessments, the Court held that no violation of Article 10 had taken place.⁷²

3.3 The problem of the content-based approach

An inconsistent approach is clearly emerging. On the one hand the Court is quick to praise freedom of speech and places it at the foundations of democracy itself – not just any speech, but speech that is offensive, shocking and disturbing. On the other hand the Court is keen to eradicate “extremism” and has targeted so-called “hate speech” as a means of achieving this. The problem, of course, is that nobody,

⁶⁶ *Id.*, at § 58.

⁶⁷ See ECHR: *Surek v. Turkey* (No. 1), [G.C.] Application no. 26682/95, judgment of 8 July 1999, § 62.

⁶⁸ See ECHR: *Surek v. Turkey* (No. 3), [G.C.] Application no. 24735/94, judgment of 8 July 1999 § 37.

⁶⁹ *Vejdeland* at § 54.

⁷⁰ Relying on principles established in *Féret v. Belgium*, (Application no. 15615/07), judgment of 16 July 2009.

⁷¹ *Vejdeland* at § 55.

⁷² The decision is not yet final, as there is still an opportunity to appeal to the Grand Chamber.

and certainly not the Court, is able to distinguish between “offensive” but lawful language and the unlawful “hate speech”. The Court is therefore adopting a very problematic content-based approach.

As the dissenting opinion of Judge András Sajó, joined by Judges Vladimiro Zagrebelsky and Nona Tsotsoria, warned in *Féret v. Belgium*:

Content regulation and content-based restrictions on speech are based on the assumption that certain expressions go “against the spirit” of the Convention. But “spirits” do not offer clear standards and are open to abuse. Humans, including judges, are inclined to label positions with which they disagree as palpably unacceptable and therefore beyond the realm of protected expression. However, it is precisely where we face ideas that we abhor or despise that we have to be most careful in our judgment, as our personal convictions can influence our ideas about what is actually dangerous.

One domestic judge has made similar observations, noting that, “a freedom which is restricted to what Judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and Judges, however well motivated, think should not be published. It means the right to say things which ‘right-thinking people’ regard as dangerous or irresponsible.”⁷³

Regrettably, the Court in *Vedjeland* did not heed such warnings and in holding that there was no violation of Article 10, in large part because of the content of the applicants’ expression, the Court has done a disservice to freedom of expression as enshrined in the Convention. Such a decision does not enable citizens to characterize the speech that is deemed unworthy of protection and as such, there will very likely be a chilling effect on free speech through self-regulation and self-censorship. As long as citizens remain in the dark on whether their speech is protected or not, Article 10 can hardly be considered to have a “special importance” under the Convention or be a fundamental human right.

4. Conclusion

Although there is no definition of “hate speech”, the Court is certain that it will not protect the thing that it will not define. As one commentator has noted: “So far as the ECtHR can be said to have a free speech theory, it is a very narrow and impoverished one...the notions of a marketplace of competing ideas and beliefs or the value of expression as an outworking of personal autonomy barely feature in the jurisprudence.”⁷⁴ Hence, the mixed jurisprudence under Article 10 of the

⁷³ Per Hoffman LJ, *R v. Central Independent Television* [1994] Fam. 192 §§ 532-3.

⁷⁴ Ian Leigh, Damned if they do, damned if they don’t: the European Court of Human Rights and the

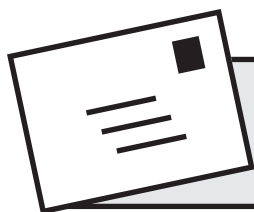
Convention clearly reveals uncertainty in the Court's approach, if not outright inconsistency.

The problem, it seems, is that the Court wants to "have its cake and eat it". In other words, the Court rightly extols the virtues of freedom of speech, but takes a very hesitant approach towards so-called "intolerant" or "hate" speech, without, of course, defining what constitutes such speech. However, the Court cannot have it both ways. If it is true that "freedom only to speak inoffensively is not worth having"⁷⁵ then the Court must protect speech even if it is offensive, shocking, disturbing, as well as "intolerant" and "hateful" and any other synonym one can imagine, including "homophobic". Rather than attempting to become the all-powerful moderator of public discourse, the Court must uphold true freedom of speech, perhaps in a similar vein to the United States Supreme Court, which recently held that: "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and ... inflict great pain. [But] we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate."⁷⁶ One can only hope that the European Court will also take a "different course" to the one it has recently started – steering away from its content-based regulation and returning to the values enshrined in the Convention.

protection of religion from attack, *Res Publica*, 2011, 17(1), 55-73 § 70.

⁷⁵ Per Sedley LJ, *Redmond-Bate v. Director of Public Prosecutions*, Judgment of 23 July 1999, [2000] H.R.L.R. 249 § 20.

⁷⁶ *Snyder v. Phelps* 562 U.S. 15 (2011).



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Coercion in new religious movements

Stephan P Pretorius¹

Abstract

The South African Constitution, in line with international standards, upholds the condition that participation in any religious practice must be free and voluntary. The belief in other countries that some religious groups (generally referred to as “new religious movements”) are in violation of this condition seems to have been accepted in South Africa. This view became evident through the number of media reports over the past few years indicating that some alternative religious groups utilise unethical coercion methods to proselytise and maintain members. A means to address this issue is through a legal approach relying on the condition of religious freedom that no coercion may be used in religion. Other means such as dialogue with and information about these groups are proposed in order to resolve this issue. An ideal platform has been created for this by the South African Charter for Religious Rights and Freedoms.

Keywords Freedom of religion, coercion, new religious movements, unethical influence, brainwashing.

1. Introduction

The right to religious freedom is necessary in the light of the cruelties that have been perpetrated over the centuries in the name of religion. As a result of globalisation and competition between religions, the persecution of those who hold different beliefs and the way in which individuals are still forced in many instances to join certain religions has more readily come to be acknowledged. One important condition of religious freedom is that membership and participation in religion must be a free and voluntary act. It is believed, however, that some new religious movements like The Unification Church, Shoko Asahara, Aum Supreme Truth and The Boston Church of Christ, to mention a few, use coercion to entice individuals, not only to join but also to remain as members. This article will investigate what is meant by subtle force or coercion and how it is utilised in some new religious movements. It will further point out what challenge it holds for the authorities who must ensure that religion is practiced without

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any force. This article will also propose measures that could ensure an understanding of the diversity of religion and new religious movements and address coercion that may take place in some new religious movements.

1.1 Case study of a New Religious Movement (NRM) in South Africa

Scholars when referring in general to religious groups that are not part of historically established mainstream religion, more generally use the term “New Religious Movements” (NRMs). Opponents of NRMs, also generally referred to as the anti-cult movement, refer to these groups as “cults” or “sects”. The incident that triggered reaction and a renewed debate in this field of unethical influencing by some religious groups was the mass suicide in 1979 in Jonestown, Guyana, led by Jim Jones where more than 900 people died. For the purpose of this article the term NRMs will be used to refer to religious groups that may also be known as “cults”.

In South Africa, according to the 2001 Census, the religious scene was mainly made up of “Christian churches” (this includes all the mainstream Christian religions), and “Other religions.” Other religions include African Traditional Belief, Judaism, Hinduism, Islam and Other Faiths. Although not listed in the Census as such, South Africa has religious groups that are referred to as “sects” or “cults”, mostly by the Christian church, some scholars and the media. These groups compare with what are generally referred to as New Religious Movements in other countries. It is clear from media reports about these groups in South Africa that families and so-called experts believe that coercion or brainwashing is used by these religious groups. Affected family members and friends turn to the Bill of Rights and the concept of religious freedom; particularly to the condition that participation in religion must be free and voluntary, in an attempt to address what they believe to be unethical coercion. But is this a viable option?

This case study about a NRM will focus on a religious group known as Church Team Ministries International (CTMI), but more specifically on the partner church, Grace Gospel Church in Durban, and the Concerned Parents’ Group (CPG), a pressure group that believe that their children have been coerced into joining the church. The aim of this case study is to point out the impact of coercion in a few cases.

A number of publications in local newspapers, magazines and on a television programme called “Carte Blanche” recently reported on the accusations of concerned parents that their children were alienated with a resulting change in behaviour since they had joined the CTMI group (MNet Carte Blanche: 2010). Information on these allegations has been gathered through letters received from CPG, interviews with the parents and their children, reports of a pastoral therapist and other publications. Attempts to meet with the CTMI leadership were either ignored or cancelled at the last minute.

The CPG attempted to address their concerns with the leadership of CTMI in a letter. The letter especially pointed out their concerns that members (their chil-

dren), since they had joined the group, abandoned their family and friends as well as their support systems. As a result they became dependant on the leaders of the church. This dependence and separation seem to be manifested in the following, as was indicated in the letter of the CPG (2009:2-3):

- An uneasiness and lack of liberty on the side of the children to visit parents out of fear that such contact may primarily jeopardize the member's relationship with God and secondarily with the leader and other members of the group. As a result they break ties with family and friends seeing that it is secondary to their first priority – wholehearted commitment to the group. Children of the Brown family have broken all ties with their parents as a result of their perception that they are “actively persecuted” by them (Brown 2009).
- Studies and careers planned and agreed between parents and children are rejected for the “given life” in Grace Gospel Church or Mauritian homes.
- Assistance and support to families are replaced by service and total commitment to the leader and church.
- Control of the church over the parental care for their own children. A young man with cancer left his own home and stayed with members of the church because he felt uncomfortable that members of the Grace Gospel Church visited him in the family home. The family appealed for discussion on this issue. The family was deeply grieved and made a humble and impassioned plea to again care for their son as his health deteriorated. This was denied. The son died in the care of the church (Brown 2009:1).
- Match making. Parents who were members of the church were totally opposed to the hasty legal union of their daughter and the pastor's son. Arrangements were made urgently without their involvement – apparently because the transaction would facilitate a visa for Mauritius. The parents were invited to the event via a cellular phone text message sent to all church members (CPG 2009:3). Other parents also learned that their daughter was getting married without their consent or blessing. The father flew to Mauritius to object to the marriage but was too late and was denied access to his daughter (Goddard 2009:1).
- The ostracizing, closing ranks against and eventual public denigration of those who question or stand up against leadership. A pattern of immediate defensiveness and aggression with demands of repentance. Silk (2010:1), an ex member, explains the action from the leadership and church when he started questioning the teachings of the church. “When I started asking questions about certain teachings, I was sidelined and called names. Members told me that I had a bad attitude and I was ostracized by the group. Members are taught that our group is unique and superior to other churches. It's scary as we are

almost like robots, following these leaders without even thinking about what we are doing.” According to him, members are forbidden to question elders about teachings.

- Change in the behaviour of the children. One parent explains the change in her son’s behaviour as follows: “He completely alienated himself from long-standing, beautiful Christian friends and we noticed a complete personality change. From being a gentle child, he became judgemental and arrogant” (John 2009a:1). Another recent example is that the Brown parents’ son was flown out from Mauritius to a meeting with residents in South Africa. He secretly visited people for two days without his parents’ knowledge about the visit with a one-week old child (Brown 2011).
- Control over information. One member pointed out that members were told to avoid all outside books, Bible teachers and pastors. Members had to turn in all books of which the leaders did not approve (Moscovitz 2011:1).

Outside influences are even met with more stringent measures. In a particular case where a family expressed deep concern about the influence of Grace Gospel Church and wanted to intervene, they were threatened with a restraining order (Brown 2009:1). When the parents became increasingly concerned and were asking questions about the church, they requested their daughter to meet with a pastoral therapist to tell her how they were feeling about her involvement with the group. For the parents this seemed to be a way to communicate with their daughter as the culture and dynamics of the church complicated communication between parents and children. The daughter had eventually agreed to see the therapist alone, but the parents were now asking her for a session with them included. This was when the leadership of the church not only advised her, but also offered to take her to the Hillcrest Police Station, to get a restraining order against her parents. Although she did not go through with the process of obtaining the restraining order, her parents not only became aware that their once strong and healthy relationship had drastically changed, but also that the communication between them weakened (Goddard 2010:2). One member also reported on the fact that the leader’s wife strongly encouraged some couples among the leaders to get sterilised so that they would be free to serve the church and receive people to live with them. The same member tells how he persuaded his wife, now estranged, to go through with the procedure. She has been unable to forgive him since then (Sukhdeo 2010:3).

The above case study indicates that a religious group can gain power or control over its members which can lead to prohibition of their right to associate with family and friends, to their right to freedom of expression to speak out when they do not agree with some practices or teachings. This control is kept in place by fear of

either offending the group or of losing their salvation. This particular case study is but one on a number of groups whose practices and dynamics raise concerns. It stands to reason that whatever religious group a person belongs to, he or she should still enjoy the right to freely associate and express him or herself.

2. Prohibition of coercion as a condition of religious freedom

The South African Constitution's provisions on religious freedom are founded on a number of International Human Rights instruments. These include the Universal Declaration on Human Rights (UDHR, 1948, art.18), and the International Covenant on Civil and Political Rights (ICCPR, art. 18) which proclaims that: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

According to article 18, section 2 of the ICCPR another fundamental condition is indicated, namely that, "No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice". The South African Constitution (chapter 2, section 15 (2), (c)) also emphasises that participation in religion must be free and voluntary and in no manner should anyone be forced to participate in or attend any religious practice. This condition has once again been emphasised in the elaborated South African Charter of Religious Rights and Freedoms article 2, endorsed on 21 October 2010, which states that "no person *may be forced* to believe, what to believe or what not to believe, *or to act against their convictions*".

The right to freedom of religion has two dimensions namely: *forum internum* – the internal aspect and *forum externum* – the external aspect. *Forum internum* refers to the freedom to believe, which embraces the freedom to choose one's religion – to be either religious or non-religious. The internal dimension of religious freedom is *absolute*. No limitations are linked to this dimension of religious freedom and it may not be restricted (Martinez-Torron 2003:3). The other dimension, *forum externum*, refers to the expression of personal religious thoughts and beliefs. The external dimension, by its very nature, is *relative* and can be subject to limitations by the public authorities, according to article 9(1.2), ECHR (Martinez-Torron 2003:3). Also section 31(2) of the South African Constitution indicates that this dimension of religious freedom can be limited if exercised in a manner inconsistent with any provision of the Bill of Rights (Government Gazette 1996).

It can be concluded that an important condition of freedom of religion is that no form of force or coercion may be used to make someone believe or participate in religious practices.

2.1 Force or coercion in religious freedom

A free and voluntary act is primarily understood in the sense that no physical force is applied in order to ensure that a particular activity is performed. The word *force* defined by dictionaries denotes power to influence, affect, or control, to compel, constrain, or oblige (oneself or someone) to do something, to bring about or effect by force (Dictionary.com n.d.).

Force in the most general sense usually implies the exertion of physical power or the operation of circumstances that permit no options. The pressure or necessity can be applied through physical means that can bring about bodily harm (e.g. when tear gas is used to force fugitives out of their hiding place [American Heritage Dictionary n.d.]). It means to overpower a person using measurable influence to incline a person to motion; make a person act or do something prematurely or unwillingly (Pocket Oxford Dictionary 1970:319).

Contrary to the above popular definition, physical force is not the only means to coerce someone into performing an activity. A person can also be forced through intellectual or emotional pressure. This kind of coercion is particularly successful in a conducive environment such as religious groups where people tend to be more vulnerable for coercion because of the authoritative nature of religion and since acting along with the rest of the group is subconsciously accepted as the norm. This does not mean that people in these groups cannot act for themselves, but that such a decision requires more willpower as a result of the pressure to conform in the group.

In this sense coercion means the applying of emotional or spiritual force in order to ensure that a particular activity is performed. The action is sanctioned by the threat that disobedience will result in some form of punishment, in the case of religion, eternal punishment. The difference between the two dimensions of coercion is that physical force precedes and stimulates action, whereas with intellectual or emotional force the threat of an anticipated consequence for disobedience or non-conformity motivates action.

In some NRMs the process of proselytising new members normally commences with an appealing emotional experience (or experiences) known as “love bombing” that gives the perception of real interest in the wellbeing of the person. The affectionate attention relaxes and makes the person more susceptible to the new ideas of the group (Singer & Lalich 1995:114). This opportunity is utilised by the religious group to point out the defects in the potential member’s value system, worldview, view of God, educational, religious and political structures, in order to create doubt in the person’s own mind. Progressively through doubt about the person’s current world, an emotional and spiritual need for change is established. But what is more important is the establishment of a subconscious emotional pressure to change the inadequate circumstances. The solution is presented in the lifestyle and doctrine of the NRM. Emotional pressure is ap-

plied mainly through making potential followers believe that their world is inadequate in ensuring salvation. They are left with two choices: either to join the group that claims to have the solution or reject the fact that their world is inadequate. If the followers accept it, the degree of commitment to the particular group is normally demonstrated by confessing to the insufficiencies of the person's own world followed by a radical break with this insufficient world and lifestyle. Such radical action, although it can be justified as the result of conviction, is obtained through emotional force. To facilitate the solution and therefore the new members' adaptation to the world or the NRM, their own worldview, frame of reference, belief system and identification structures are replaced by the particular group's culture, doctrines, prescriptions and belief system. A redefining of the "self" occurs. Adaption to the NRM further requires obedience to the commands of the group, which is equalled to pleasing God and systematically enforces behavioural change. This change is best achieved in a more isolated environment, which alienates and separates members from the outside world. Membership to the particular group signifies not only true salvation, but also to be specially "chosen". This belief motivates followers to be obedient to all the commands of the group at whatever cost; even if they at times may question some of the commands, the fear of missing the ultimate goal of salvation motivates them to obey. In this sense the belief portrayed by the NRM about salvation and the requirements for that salvation serve as a motivation for followers to obey and follow instructions. The intellectual or emotional pressure at work is fear of losing salvation. Salvation, according to the NRM, can only be obtained through membership of the particular group followed by meticulous obedience to all the commands of the group. To ensure that new members follow these commands a system of continuous reprimanding, even punishment, if rules are broken, is established. Punishment includes – being ignored, shunned or overlooked or by aggressive legalism, being questioned, openly censured or asked to leave the group (Johnson & Van Vonderen 1991:67-68).

Members, as a result of the culture they are subjected to, realise that the best way to overcome their own inability, to stay on track and to please God is to surrender totally to the instructions and guidance of the leader. The dynamics of the group succeeded in establishing intellectual and emotional pressure to conform without analysing. Systematically, the ambitions, critical thinking faculties and personal viewpoints of members become a lower priority. Instead the emotion of fear functions strongly in directing the followers in these groups. The main fear is imbedded in the belief that leaving the group will result in divine judgement, eventually losing salvation (Zukeran 2006:4). Followers have thus become physically, emotionally and spiritually dependent on the instructions and directions of the group since that will ensure salvation. Another form of fear is instilled by the measures taken by some NRMs to punish or correct straying cult members. The harshest form of punishment entails being ignored or rejected by the other members until the victim confesses. It can also include

doing the dirty work in the group and can even include placing curses on members and informing them that they or their family will become sick and die if they leave the group or disobey orders. Internal spying among cult members is another way of obtaining information about straying members (Singer & Lalich 1995:77).

In one new religious group in South Africa known as Emmanuel Fellowship a male member of the group was excommunicated when he asked to be excused from one Friday night youth meeting because he was very tired. The leader reacted furiously, accusing him of being lazy and not committed and stating that he would never be allowed in any meeting again. This particular member went back to the leader after a while, begging him for forgiveness and a second chance in an attempt to break the excommunication and to be accepted by the group again (Van Niekerk 2004).

It is clear from the above that emotional pressure can be used to get followers to proselytise members, but also to ensure conformity to the commands of NRMs. Without preceding physical punishment or force, followers are emotionally moved to adhere to the commands of the group, founded in the belief that total obedience is essential for obtaining the ultimate eternal goal. It can be argued that members of these groups, although they might have been forced through emotional pressure, still acted on their own conviction. Emotion is an integral part of religion, but emotional pressure used to create a dependency or control over members that in turn can lead to the violations of the follower's rights, raises a concern. These rights include the right to freedom of association, freedom of movement and freedom of expression, to mention a few. In another group in Limpopo followers are not allowed to come and go as they see fit. Although the gate at the farm is not guarded, guards are set up in the minds of the followers through the unspoken rules. Proper permission is needed to leave the farm. Followers of this particular group always go to town in a group to ensure better control over their doings. One member compared the underlying emotional and psychological control and pre-planned lifestyle to a prison (Brooke-Smith 2008:6).

2.2 Coercion in new religious movements evaluated

In practical terms coercion as defined above is applied in some new religious movements by what is known as "brainwashing", "mind control", "thought control" or "coercive persuasion". Barker (2001) indicates that there are a number of different approaches to the study of NRMs which can be categorized in two main approaches. The first group of scholars have arrived at the assertion that recruitment to certain religious groups has been essentially involuntary in the sense that powerful techniques such as brainwashing and coercion have rendered the process of conversion and commitment psychologically coercive and non-consensual notwithstanding its formally voluntary status (see Clark 1976; Ofshe 1986, Zablocki 1997; and McManus & Cooper 1984, Possemäi & Lee 2004 and Singer 1986).

Another analyst of these techniques, Enroth (1984:141), describes this kind of coercion as recruitment and indoctrination that effectively induce behavioural and attitudinal changes in new recruits. Their religious choices are irrational and based on emotion, instinct, debilitation and automatic conditioning rather than reason and conscious consideration, in other words, “unthinking participation” in group activities. This is brought about by a schedule designed to deprive followers of sleep and a conditioned reflex which is reinforced by group interaction (West 1975:2). The coercion theory also often tends to posit the emergence of a false self-identity which this kind of cultic conditioning and mind control is said to superimpose on the authentic, developmental self of the convert (Clark 1976:2-3).

A second viewpoint held by another school (see Introvinge 2001; Richardson 1985; and Baker 1995) is that the tragedies recorded with respect to some of these NRMs would not have occurred had the anti-cult movements not existed and carried out actions that created these results. The anti-cult movement’s approach can be considered as one-sided and lacks taking into account aspects such as the “NRM scene” – the aspects that surround the particular group, such as the members of the wider society, the quality of information about these groups, the involvement of governments and other role players such as family and other religions who, for personal or professional reasons, contribute to the complex of relationships between NRMs and the rest of society (Barker 2001:1).

They further believe that the concept of brainwashing or mind control used by cults, which scholars cite as a reason to introduce regulative measures, is based on “moral panic”, a concept developed by Jenkins (1998). Moral panics are defined as socially constructed social problems characterised by a reaction, in the media and political forums, out of proportion to the actual threat (Jenkins 1998:158). This viewpoint of these scholars does, however, not deny the presence of coercion in NRMs as a whole, but emphasises the fact that although there are some valid components of the mind control stereotype (authoritarian movement, manipulative leaders, zealous devotees and a group with violent proclivities), there may also be substantial distortions and exaggerations. One such distortion is that the brainwashing theory is based on the assumption that the subject is passive without a choice or freedom of will to escape his or her brain being laundered. In contrast, however, when a number of factors over a long period of time affect some people but not others, the impact is evaluated more in terms of disposition properties of targeted individuals (personal traits) than in the power of the techniques, even when the impact on particular people may be substantial (Zimbardo et al. 1977:190-191). Although members of the NRMs under discussion may not be passive without a choice or freedom and although disposition plays a role, the psychological techniques used by these groups must not be underestimated in terms of being success-

ful in obtaining an unhealthy control over many followers. It is more correct to say that not all potential members that are approached by these groups fall victim to their control.

However, both viewpoints accept that manipulative leaders of some religious groups may use improper psychological techniques, given the susceptible environment of religion. The particular culture and functioning of these groups not only lead to abuse, but also restrict their members' right to freedom of association, freedom of expression and freedom of movement.

2.3 Dynamics of religion

Addressing these abuses in NRMs from a political or legal perspective is problematic in the light of the dynamics of religion. What is viewed as coercion or unethical influence from a political, social or psychological point of view may be viewed by a religious person as a necessary sacrifice in order to obtain eternity. Methods utilized by religion to ensure compliance are not necessarily viewed as undue force or coercion, but as measures needed to ensure salvation.

Religion is universal and characterized by the belief that there exist forces that cannot be seen with the natural eyes, and that not even science can make visible. Religious people believe that these forces matter for their lives, now and even after their physical existence on this earth has come to an end. These people further believe that "these forces command goods or evils that have higher value than anything money can buy, political power can impose, or attachment can bestow" (Engel 2011:2). As a result of the transcendental nature of religion, the correctness of religious belief defies proof. It is the transcendental nature of religion that carries the most weight for the believer and, for the believer, eternity itself is at stake. For believers, the commands of their religion have infinite value and surpass earthly goods and may not be compromised (Engel 2011:10).

Religious people are willing to endure much for the sake of their religions (Leiter 2008:7).

For a believer not everything is known about their religion or belief and faith thus substitutes for knowledge. Believers from different religions believe that disobedience to the commands of their group will lead to illness and misfortune even to being lost for eternity (Engel 2011:6). In some religious groups tangible punishment can be inflicted on such members for disobeying commands (Acre and Sandler 2003:2373, 2376).

Faith increases people's vulnerability not only because of the belief that eternity is at stake and mistakes will be fatal (Leiter 2008:15), but more so because the believer has learned to navigate uncertainty through faith.

It is understandable that in the light of the above explanation of the dynamics of religion that the transpiring radical actions of members can create the perception that those members are unduly influenced. It is, however, also not improbable for religious leaders to exploit the internal susceptible environment created by the practices and beliefs of the group to obtain certain selfish results. This particular belief that some NRMs are guilty of exploiting their members through the use of excessive psychological techniques has resulted in court cases, reports and investigations² being undertaken in Europe without a constructive remedy. Thus to address alleged coercion within new religious movements poses a legal challenge.

3. Challenge posed by the prohibition of coercion

The upholding of the prohibition of coercion within NRMs poses a challenge to governments. The intention of this condition is to ensure that governments do not interfere in religious matters except in ensuring that every citizen enjoys this right. The coercion under discussion in this article refers to some NRMs (discussed above) that use freedom of religion to justify internal dynamics and processes that may be coercive and in violation of other basic rights of members. In this regard governments are thus faced with internal belief systems that are grounded in eternity with resulting internal rites, practices and a code of conduct that may involve unethical coercion methods. Furthermore, religion may also view constitutional protection as a threat to religious freedom.

3.1 The challenge of constitutionalised religion for the state

The constitutionalising of religion brings its own challenges. It is an attempt to regulate what many people believe is a spiritual, conceptual reality grounded in eternity with concrete political and legal measures. Religions based on realities outside the physical world are to be regulated by laws, measures and proof founded in the physical world. This situation poses a challenge to the state for the following reasons:

- How can the state prove that religious commands are inconsistent with legal requirements, given that religion defies scientific proof (Leiter 2008:15, 25)?
- Religion and its practices must be assessed against an abstract definition of religiosity. In the absence of a legal definition of religion no concrete criteria can be used in determining if a religion is a religion or if a religion's expressions are indeed religious.

² These reports include the French reports (*Assemblée Nationale* 1996 and 1999); the Belgian report (*Chambre des Représentants de Belgique* 1997); large parts of the Canton of Geneva report (*Audit sur les dérives sectaires* 1997) and of the same reports on brainwashing (*Commission pénale sur les dérives sectaires* 1999); the deliberations of the French Prime Minister's "Observatory of Sects" (*Observatoire Interministériel sur les Sectes* 1998); and of its successor, the Mission to Fight Against Sects (MILS 2000).

- The state lacks jurisdiction to interfere in the internal matters of religion and can therefore not modify religious doctrines. Nor can it alter the dynamics and nature of religion (Engel 2011) and lacks a basis on which to make religious judgements (Richards, Svendsen and Bless 2010:69).
- The authority of the state is limited to civil life whilst the authority of religion and its belief system is unlimited and encompasses not only earthly, but also eternal life.
- Any action from the state to prevent believers from a specific course of action will provoke religious resistance (Engel 2011).
- The right to freedom of religion grants a protected sphere to individuals and organizations that may not be inclined to reward the protection by being tolerant themselves with competing religions or with the state itself, particularly when it comes to cults and sects (Rosenfeld 2009:2475, Richardson 2004).
- The government's ability to craft regulations to balance competing human rights is handicapped by the fact that it is context driven and requires a flexible application to the particular facts.
- Top-down regulations seldom motivate compliance by regulated individuals and groups, especially those for whom religious persuasion is compelled by conscience (Richards, Svendsen and Bless 2010:69).

3.2 The threat to religions of constitutionalised religion

Two important results follow constitutionalised freedom of religion, believers are legally obliged to accept a plurality of eternities and government may not side openly with one religion (Engel 2011:8). Constitutionalised religion can be viewed as a threat to religion in general but even more so by NRMs that show a higher level of commitment to the belief system for the following reasons:

- Religious goods are transcendental and confirmation is taken from a higher power.
- The correctness of religion is not based on what can be scientifically proven, given that an essential principle of religion is the belief in the unseen.
- The crux of religion is salvation – in whatever form. For true believers, worldly goods and laws have no priority if they violate religious commands.
- Religious believers are ambivalent about constitutionalised guarantees of freedom of religion, because these imply a secular system that takes priority over religion.
- A religious individual is more interested in morality. In fact, adherence to legal measures that will jeopardise following commands implies disobedience to moral duties and will result in transcendental sanctions.

- Believers do not view liberties afforded by the constitution in the same light as supporters of democracies. Liberty, for the true believer, is the removal of all obstacles in order to live out his/her religion.
- For the true believer, however, human dignity is defined indirectly as the individual's relationship with the transcendent, and not directly by the achievement of self-selected human aims and goals.
- Religion emphasises duty rather than rights, duties towards God and one another (Phillips 2007:115-117).

The right to religious freedom can even be utilised negatively by some religions to serve as a conversation stopper when the practices and expression of religion are questioned (Rorty 1994), to cause divisiveness in politics (Breyer 2006:122, 124), and to involve the legislator in fighting their actual competitors in the free marketplace of religions.

3.3 Solution

It stands to reason that a legal approach to maintaining religious freedom is only applicable in the prosecution of criminal activities performed by religions; this approach is unable to protect individuals against undue coercion within religion. The manifestation of religion is an internal aspect based on a belief system founded in eternity and difficult to measure in concrete terms. The state does not have the authority to prescribe or to interfere since such interference is viewed as a violation of this right.

Important pointers can be taken from Europe, which has dealt with the issue intensively. The following guidelines in dealing with alternative religions were proposed to European countries by the Council of Europe (COE 1992):

1. The solution of the problem of sects and NRMs that are accused of alleged coercion does not lie in legislation but in research and dialogue with these groups in order to obtain an understanding of their functioning and dynamics.”
It is clear from the above discussion on the dynamics of religion and in particular NRMs that a dim view is taken of a secular and political system prescribing the conditions of freedom of religion. Not only does it portray a secular system less important than the religious commands, but it is also viewed as a system to limit or restrict freedom of religion. An absolute freedom is envisaged and in any society this view spells danger. Freedom must also not be limited by governmental interference and therefore a solution must first be obtained through sound information about these groups. This must occur in consultation with these groups. A religious platform rather than a political or legal platform should be used.

2. Information gained through research and dialogue must be made available to the public in order to create a greater awareness about NRMs and the differences they portray compared to other religions.
3. Greater vigilance through school education is necessary, especially for young people.
4. A Religious Freedom Centre – preferably by independent non-governmental organizations where alleged violations of religious freedom can be reported and investigated must be in place. The role of this centre is not only to investigate alleged harmful practices in the case of some religious groups, but also the careful investigation of these allegations by professionals in consultation with the particular group and other affected roleplayers with the aim of obtaining solutions.

Another possibility to address conflicts within religions that is better than government regulations is voluntary codes of conduct. Self-regulation in general is more prompt, flexible, and effective than government regulation, and can bring to bear the accumulated judgment and experience of all stakeholders on an issue that is particularly difficult for the government to define with bright line rules (Richards, Svendsen and Bless 2010:71).

Another important measure is that NRMs must be included in the religious scenery of South Africa. The South African Council for Religious Rights and Freedoms provides an ideal platform not only to include NRMs in South Africa, but also to facilitate critical debate.

4. Conclusion

In this article the focus has shifted to the confines of religious groups and has pointed out the fact that coercion within some NRMs also occurs. South Africa lacks an organisation that could create awareness of NRMs. Religious leaders as persons of authority, sometimes bestowed with godly sanctioning, should be reminded that their positions of authority should not be abused to prey on vulnerable followers and, in the process, inflict harm on them and their loved ones.

Governments can neither prescribe doctrine nor alter beliefs and cannot judge whether the practices of a religion are indeed religious, as this will violate religious freedom. They can also not interfere in the internal matters of religious groups. Thus the solution in addressing this issue is through another means, as was suggested above, with the main emphasis on the fact that religions must take responsibility and ensure that their practices do not bring harm to their followers or their loved ones.

The South African Charter for Religious Rights and Freedoms not only provides an ideal platform to engage in a fruitful interaction with other alternative/NRMs, but also plays a vital role in guarding the fundamentals of religious freedom. It can also assist

in educating and informing the public about the diversity of religion and serve as an instrument in addressing alleged abuse in and misunderstanding of NRMs.

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Global Charter of Conscience

Brief summary of principles

Editorial note

The Global Charter of Conscience is a declaration reaffirming and supporting Article 18 of the Universal Declaration of Human Rights. It sets out a vision of “freedom of thought, conscience and religion” for people of all faiths and none, and calls for the cultivation of civility and the construction of a civil public square that maximizes freedom for everyone. The Charter has been drafted and published by a group of followers of many faiths and none, politicians of many persuasions, academics and NGOs who are committed to a partnership on behalf of “freedom of thought, conscience and religion” for people of all faiths and none. The Charter was launched publicly at the European Parliament on 21 June 2012, at the Global Media Forum in Bonn on 27 June and at a prestigious lecture in London on 28 June. The text documented below is a brief summary. The full text of the Charter, additional responses to frequently asked questions, endorsements, and news can be found on a dedicated website: www.charterofconscience.org.

Reaffirming and supporting Article 18 of the Universal Declaration of Human Rights

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

Article 18, The Universal Declaration of Human Rights

Keenly aware of the titanic promise and peril of our time, as forms of global interconnectedness reach an unprecedented speed, scale, and scope across the earth, we issue this declaration to address a major world challenge whose resolution will be decisive for the cause of civilization and human flourishing. That is, we address the urgent problems raised by the challenge of “living with our deepest differences” when those differences involve core beliefs, worldviews, and ways of life, and when they are increasingly found within single communities, nations, and civilizations. Our purpose is to set out a vision of the rights, responsibilities, and respect that will be the foundation of a civil and cosmopolitan “global public square,” and the habits of the heart for those who would be “citizens of the world” as well as patriots in their own countries, and so to advance the cause of a “good world” and thus of global civilization over against the forces of global chaos.

1. Freedom of thought, conscience, and religion is a precious, fundamental, and inalienable human right – the right to adopt, hold, freely exercise, share, or change one's beliefs, subject solely to the dictates of conscience and independent of all outside, especially governmental control.
2. This right is inherent in humanity and rooted in the inviolable dignity of each human individual. As a birthright of belonging, it protects our freedom to be human and is the equal right of all human beings without exception.
3. The right to freedom of thought, conscience, and religion contains a duty as well as a right, because a right for one person is automatically a right for another and a responsibility for both.
4. The public place of freedom of thought, conscience, and religion is best fulfilled through cultivating civility between citizens and constructing a cosmopolitan and civil public square – a public square in which people of all faiths, religious and naturalistic, are free to enter and engage public life on the basis of their faith.
5. The rights of freedom of thought, conscience, and religion apply not only to individuals, but to individuals in community with others, associating on the basis of faith.
6. The rights of freedom of thought, conscience, and religion, as well as the realities of modern diversity, pose a particular challenge to the traditional standing of established, or monopoly worldviews. Both religious believers and secularists must acknowledge the excesses and at times evils of their respective positions, and commit themselves to an equal regard for the rights of all who differ from them in their ultimate beliefs.
7. We acknowledge that this Charter is neither perfect, nor final, nor agreed by all. It represents our best current judgment as to the place of the rights of freedom of thought, conscience, and religion in our world. But it is always open to future generations to improve and advance these affirmations, aiming always to build societies that are yet freer and more just.
8. Our goals for this Charter are three: First, that it will be a beacon expressing the highest human aspirations for freedom of thought, conscience, and religion. Second, that it will be a benchmark enabling the most rigorous assessments of freedom of thought, conscience, and religion, which communities, countries, and civilizations have achieved so far. Third, that it will be a blueprint empowering the most practical implementation of freedom of thought, conscience, and religion, in both law and civic education.

In sum, The Global Charter of Conscience is a response to the crucial and unavoidable challenge of living with our deepest differences. Only by the wise and courageous application of these affirmations can humanity turn the danger of the

differences between ultimate beliefs into a dignity of difference that will help make the world safer for diversity.

“The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among peoples of the member states themselves.” *The Universal Declaration of Human Rights, Paris, December 1948.*

“So, let us not be blind to our differences – but let us also direct our attention to our common interests and to means by which those differences can be resolved. And if we cannot end now our differences, at least we can help make the world safe for diversity. For, in the final analysis, our most basic common link is that we all inhabit this planet. We all breathe the same air. We all cherish our children’s future. And we are all mortal.” *President John F. Kennedy, Commencement Address at American University, June, 1963.*



The early history of the Evangelical Alliance and of its advocacy for religious freedom

Thomas Schirrmacher¹

Die Geschichte der Evangelischen Allianz im Zeitalter des Liberalismus (1846-1879)

Gerhard Lindemann

Theologie: Forschung und Wissenschaft 24, Lit: Münster, 2011, 1064 pp., € 129.90.

This monumental work on „The History of the Evangelical Alliance in the Age of Liberalism“ treats (1) the actual history, (2) the role played by key personalities, and (3) the main focus of the Alliance's work (especially freedom of religion and conscience, weeks of prayer, mission, publications). Lindemann regards the Alliance from its outset as the first organized form of ecumenism, as the sole true ecumenical organization which emerged from the revival in the 19th century (15). He criticizes the fact that historical depictions of modern ecumenism often begin very late and pass over the Alliance as well as a number of its earlier leading representatives as forerunners of the unity of Christians (21). On the whole, Lindemann writes from a friendly yet critical distance. As his work is unlikely to be translated into English due to its sheer volume, I would like to highlight the new insights it presents into the early engagement of the Alliance for religious freedom (in part. 141-151, 205-321, 592-645, 773-811, 858, 868-913). Never before has this been presented in such detail. Of special interest are the insights gained from the files of the 'British Foreign and Commonwealth Office.'

Lindemann points out that the anti-Catholic tendencies and activities in Great Britain in which the Alliance has some of its roots in Great Britain were not mainly based on dogmatic differences but on its advocacy of freedom of religion and freedom of conscience, which represented the complete opposite of the Ultramontanist Catholic Church that decidedly rejected religious freedom. Consistent with this position the Alliance also raised its voice for persecuted Catholics in Protestant countries from its founding and did not support anti-Catholic governments in their actions (205).

Lindemann demonstrates that fighting against religious persecution and advocacy for religious freedom was the one outstanding topic of the Evangelical Alliance.

¹ Prof. Dr. Thomas Schirrmacher, Professor for the Sociology of Religion, Timisoara, Romania, Director of IIRF, Bonn, Germany

Advocacy for the religiously persecuted were in the forefront from 1849 to 1858, as the Alliance took advantage of the fact that foreign policy became a topic of the press and of the emerging parliament in Britain (207).

An early example of advocacy was the case of the Italian Signor Giacinto Achilli (1803-1893), who converted from Catholicism to Protestantism, and who for that reason was incarcerated for life by the Roman Inquisition. In a diplomatic tug of war, which lasted almost one year and included the participation of British and French foreign ministers, the media, their newspapers, and numerous delegations, a trick by the French secured his freedom so that he could leave Rome and be handed over to England (208-223).

Matters such as these are repeatedly presented by Lindemann in minute detail. If these matters were known about at all, they had up to this point never been traced out in their individual steps. They document just how well organized, networked with governments and media, and ahead of its time this aspect of the Evangelical Alliance was.

Lindemann writes: "In their efforts for those disadvantaged due to reasons of belief, the Alliance clearly profited from increasing pluralism, above all the pluralism of British society and of the development of a broader media audience which allowed the exertion of influence by 'pressure groups' on the foreign policy decision process. It was soon noticed that in certain cases joint action beyond national borders appeared to promise more success, such as in the initial example of the Italian Giacinto Achilli where it was able to lead to joint governmental action. At the same time, reference to English public opinion was able to either deter states from the repression of people of other religions, end such repression, or, at least, to reduce it. It is not only through using new methods in this undertaking that the Evangelical Alliance had its part in the modernization process of Protestantism in the 19th century" (943).

For instance, the British Alliance used a position paper sent to the Prussian king opposing persecution of Baptists to achieve the return of the Baptist leader Johann Gerhard Oncken to Berlin, who had earlier been driven out (235-237). The extent of denominational generosity is also shown by the fact that there was a campaign brought to the Sultan not only for converts of Islam to Protestantism but also for the Greek Orthodox Church (300). The cause of the Nestorians was supported in Iran (610-613).

After the execution of a convert in 1853, the Alliance, in cooperation with the Turkish Alliance, activated its contacts in a considerable number of European governments until finally in 1856 Sultan Abdülmecid I – surely in connection with the complicated politics between the Ottoman Empire and western powers – issued an edict granting greater freedoms to Protestants and abolishing the death penalty for

conversion (300-319). In 1874-1875 a further large campaign was led by a delegation of the Alliance to the Turkish foreign minister, and by diplomats even all the way up to the Sultan. However, their impact has been disputed (879-902). Lindemann also reports that the czar's suspension of cases against pastors in the Baltic states was "the responsibility of the push forward by the Alliance in London" (800).

The audiences which the Alliance had before the Prussian king, for instance in 1855 in Cologne or in 1857 within the framework of the Alliance's Berlin Conference before Friedrich Wilhelm IV (286f), always revolved around freedom of religion in Germany. The same applies for conversations the secretary of the Alliance held with the German Emperor Kaiser Wilhelm I and the Chancellor Otto von Bismarck in 1875 (919).

A deputation of the Alliance before Emperor Franz Joseph I at the Hofburg and subsequent conversations with the prime minister and the minister for education and the arts in 1879 led to noticeable relief for Protestants, and in 1880 even to their legal recognition as churches as well as almost incidentally to relief for free churches in Vienna (913).

One has to consider that all this happened at a time when traditional churches were still very far from giving up their status as state churches, not to mention allowing religious freedom for all and still less demanding it. When religious freedom was demanded at that time, it was mainly by Jews, religious minorities, and atheists, not, however, from very religious representatives of the prevailing religion. The contribution the Evangelical Alliance made to religious freedom in Germany has up to this time not been acknowledged anywhere. The 1853 Homburg Conference for Religious Freedom was a landmark in the history of the Alliance and for tolerance in Germany and Europe (263-267). The central result was the rejection of any use of ecclesiastical force against separatists and the rejection of utilizing any state power by churches against others (266) as a milestone in the development of the rights of religious freedom. Furthermore, this deliberately counted not only for Christians but rather for all religions.

In 1861 a French pastor advanced a new thesis which gained more and more acceptance in the Alliance, namely that "religious freedom guarantees state order and its inherent peace" (592). Oppression of individual religious freedom, on the other hand, feeds revolution and strife and divests the state of its God-given foundation! Lindemann summarizes: "With its commitment to religious freedom, the Alliance, the Anglo-American wing of which did not content itself with mere tolerance but saw public confession of faith as a fundamental right, has also in the establishment of freedoms in countries concerned rendered a notable service and made no insignificant contribution to the development of a civil society in Europe." (943).

[See a more extensive review at www.thomasschirmmacher.net/2012/05/]

Colombo Statement on the Church in Sri Lanka

Religious Liberty Partnership (June 2012)

As members of the Religious Liberty Partnership (RLP) meeting in Colombo, Sri Lanka, we stand with our Christian brothers and sisters in Sri Lanka who seek equality, justice, reconciliation and lasting peace. We specifically call on all Christian denominations and organizations worldwide to take this appeal for prayer and support of those working for religious freedom in Sri Lanka to their members in recognition that we are One Body united in Christ.

The RLP acknowledges:

- The end of the 30-year internal conflict has provided an opportunity for peace and reconciliation amongst all ethnic and religious communities throughout Sri Lanka, and the church has been and remains committed to this effort.
- The end of the armed conflict has also brought to an end the colossal loss of lives and allowed the Sri Lankan people freedom of movement throughout the country without fear for their lives. However we encourage greater efforts to strengthen democratic values, good governance and the restoration of the rule of law in all parts of the country where corruption, abductions and acts of violence can be addressed.
- That despite intimidations and violations of human rights, there is a functioning Parliamentary democracy in Sri Lanka with regular elections being held.
- That although extreme elements within religious sectors have called for anti-conversion laws, the Sri Lankan government has taken care to protect the constitutional right to freedom of religious choice by not enacting proposed laws that would subject religious conversion to criminal scrutiny.
- That the establishment of the Parliamentary Select Committee to resolve tensions and ensure the equal protection rights of all constituent ethnic groups is a critically important initiative.
- The recommendations of the Lessons Learned Reconciliation Commission appointed by the President of Sri Lanka to ensure reconciliation and justice for all citizens affected by the war, and we encourage the Sri Lankan Government to address unresolved issues of accountability as a natural process of reconciliation and nation building.
- The appeal issued by 31 Bishops of the Catholic Bishops' Conference of Sri Lanka, including the Bishop of Mannar, calling for the implementation of the Lessons Learned Reconciliation Commission, and we join with the 63 additional Catholic leaders and others who have urged an end to the intimidation of the Bishops as a result of their calls for reconciliation.

- That the Christian church in Sri Lanka, representing all ethnic communities, must work together in the pursuit of this ministry of reconciliation, and we call on the Catholic community to support formal recognition of the Evangelical Protestant Christians in Sri Lanka, recognizing that in unity Christians can work more effectively towards the peace, development and prosperity of the nation of Sri Lanka.

We call on the worldwide church:

- To pray for the recognition of Evangelical Protestant Christians by the government, as equal citizens with due respect and rights accorded to other religious communities in the country. That the National Christian Evangelical Alliance of Sri Lanka, which celebrates its 60th anniversary in 2012 and is part of the World Evangelical Alliance (with a constituency of 600 million), be recognized as the representative body of Evangelical Christians in Sri Lanka.
- To pray that laws endangering the freedom of religion, conscience and choice, such as anti-conversion laws or arbitrary regulations imposing compulsory registration of places of worship, are not pursued or promulgated by the Sri Lankan government.
- To pray for an end to the forced closure of churches by the police and local authorities, based on an ambiguous circular issued by the Ministry of Religious Affairs.
- To pray for an end to the continued violent attacks on clergy and places of Christian worship.
- To pray that all religious communities will enjoy the Constitutional guarantees on religious freedom and that policies and practices which inhibit these freedoms will be abolished.
- To pray for full national reconciliation, as well as greater understanding and harmony, within Sri Lanka.

The RLP commits:

- To work toward the full realization of the religious rights of all Sri Lankans, including the rights to freely change one's beliefs and freely propagate those beliefs without governmental interference or permission.
- To stand in solidarity with the Evangelical Christian community as they seek to obtain equal rights alongside other religious constituencies in Sri Lanka.
- To call for all our constituencies and the church worldwide to pray for and support the Sri Lankan church as it seeks to respond in a Christ-like fashion to religious liberty violations, and to pray for the freedom of all Sri Lankan citizens under the rule of law.

Editorial note: The list of signatory members of the Religious Liberty Partnership can be viewed at <http://tinyurl.com/RLP-SL2012>

Freedom of religion or belief and recognition issues

UN Human Rights Council, Report A/HRC/19/60 -
Summary, 22 December 2011

Special Rapporteur on Freedom of Religion or Belief

In the present report, the Special Rapporteur on freedom of religion or belief gives an overview of the mandate activities since the submission of the previous report to the Human Rights Council (A/HRC/16/53).

The Special Rapporteur then addresses the theme of freedom of religion or belief and recognition issues. Given many misunderstandings concerning the meaning of “recognition” and the role of the State in this respect, the Special Rapporteur has decided to put a thematic focus on this issue in the present report. He distinguishes between three different meanings of recognition: (a) “recognition” in the sense of the due respect for the status of all human beings as right holders by virtue of their inherent dignity; (b) “recognition” in terms of States providing for the possibility of obtaining the status of legal personality, which religious or belief groups may need for the exercise of important communitarian aspects of their freedom of religion or belief; and (c) “recognition” in the sense of States according a specific privileged status to some religious or belief communities.

In his conclusions and recommendations, the Special Rapporteur notes the importance of clearly distinguishing between the different meanings within the concept of State recognition, in order to avoid possible misunderstandings that could negatively affect the implementation of freedom of religion or belief, or even undermine its status as a universal human right. Consequently, States must ensure that all individuals can enjoy their freedom of thought, conscience, religion or belief on the basis of respect for their inherent human dignity. Respect for freedom of religion or belief as a human right does not depend on administrative registration procedures, as it has the status of a human right, prior to and independent of any acts of State approval. States should furthermore offer appropriate options for religious or belief communities to achieve the status of legal personality, which may be needed to undertake important community functions relevant for the full enjoyment of freedom of religion or belief, which is a right of individuals to be exercised either alone or together with others. Registration procedures for obtaining legal personality status should therefore be quick, transparent, fair, inclusive and non-discriminatory. If States furthermore decide to provide for specific status positions connected with particular financial and other privileges, they should make sure that such a specific status does not amount to *de jure* or *de facto* discrimination of adherents to other

religions or beliefs. With regard to the concept of an official “State religion”, the Special Rapporteur argues that it seems difficult, if not impossible, to conceive of an application of this concept that in practice does not have adverse effects on religious minorities, thus discriminating against their members. Furthermore, specific status positions given by the State to certain religious or belief communities should never be instrumentalized for purposes of national identity politics, as this may have detrimental effects for the situation of individuals from minority communities.

Editorial note: We warmly recommend to read the full report at: <http://www.unhcr.org/refworld/docid/4f3925502.html> [accessed 15 July 2012]

W E A Global Issues Series



Racism

by Thomas Schirmacher
with an essay on Caste
in India by Richard Howell

(WEA GIS, Vol. 8) · ISBN 978-3-86269-035-0
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Noteworthy

The noteworthy items are structured in four groups: dates, annual reports and global surveys, regional and country reports (sorted alphabetically), and specific issues. Though we apply serious criteria in the selection of items noted, it is beyond our capacity to scrutinise the accuracy of every statement made. We therefore disclaim responsibility for the contents of the items noted. The compilation was produced by Arie de Pater of Open Doors Intl. and Prof. Dr. Christof Sauer. The position of editor for the noteworthy section is vacant. See advertisement on page 10 in this issue. Submissions welcome to: Noteworthy@iirf.eu.

Conferences

International Consultation on Religious Freedom Research

Istanbul, Turkey, 16-18 March 2013. Organizers: International Institute for Religious Freedom; Research Group for Human Geography, University of Tübingen, Germany, and others. Intended participants: All who do scholarly research on any topic related to religious freedom, persecution, suffering for faith, martyrdom etc. The intention of the consultation is to strengthen the network of religious freedom/persecution scholar or researchers and to thereby create synergy. Everybody who comes can present on relevant research. See detailed advertisement in this issue of IJRF. Contact: Christof@iirf.eu.

South Africa: Council for the protection and promotion of religious rights and freedoms.

Annual meeting, Pretoria, 19 September 2012. Speakers: Prof. Mark Hill, University of Cardiff, Wales; Judge Bertelsmann. Contact: Prof. Pieter Coertzen, pc@sun.ac.za.

Washington DC, USA: Which model, whose liberty?: Differences between the U.S. and European approaches to religious freedom

11 October 2012. Religious Freedom Project (Berkley Center) and the International Center for Law and Religion Studies at Brigham Young University's School of Law. <http://berkleycenter.georgetown.edu/rfp/events/list>.

Annual reports and global surveys

2011 International Religious Freedom Report

US Department of State, 30 July 2012, www.humanrights.gov. The innovations are: search functions and comparison across regions and themes improved, streamlined format which spotlights illustrative examples rather than cataloging all abuses

of religious freedom, for the first time covering the calendar year. – Related texts: Briefing on the Release by Ambassador-at-Large for International Religious Freedom Suzan Johnson Cook, Release by Secretary of State Hillary Rodham Clinton.

UN: Annual report of the UN Special Rapporteur on Freedom of Religion or Belief (A/HRC/19/60)

Prof Dr Heiner Bielefeldt, Geneva, December 2011, 20 p., <http://tinyurl.com/Bielefeldt-registration>.

EU: Human rights and democracy in the world 2012 – Report on EU action in 2011

EEAS, Brussels, June 2012, 322 p., <http://tinyurl.com/EU-hraction-2011>. The European External Action Service in June published its Report on EU action in 2011, covering bilateral and multilateral actions to promote human rights, and thematic issues such as freedom of thought conscience and religion or belief (3.13).

EU: European Union's Strategy on Human Rights

European Council, Brussels, 25 June 2012, 24 p., <http://tinyurl.com/EUactionplan>. On 25 June 2012 the European Union adopted the Strategic Framework and Action Plan on Human Rights and Democracy to advance the protection and promotion of human rights in EU foreign policy, placing human rights at the heart of EU external policy. The Action Plan includes a mandate for appointing an EU Special Representative for Human Rights in the near future, and contains a commitment to develop guidelines on freedom of religion or belief.

UK: Human Rights and Democracy – The Foreign & Commonwealth Office report on 2011

UK Foreign and Commonwealth Office, London, April 2012, 392 p., <http://tinyurl.com/UK-FCOreport2011>. The United Kingdom's Foreign and Commonwealth Office report of April 2012 contains a section on freedom of religion or belief under the Arab Spring section and under human rights priorities. In addition, each country in the top countries of concern contains a paragraph on freedom of religion or belief.

Female Genital Cutting: Cultural, religious, and human rights dimensions of a complex development issue

Anny Gaul, Berkley Center for Religion, Peace & World Affairs, March 2012, 36 p., <http://tinyurl.com/Berkley-FGC>. According to the author, female genital cutting pits international (and often national) human rights standards against rights to cultural

identity, centralized and intellectual versus local and practical religious teachings and practice, and changing expectations about gender roles against realities of gender relationships as they are experienced at the family and community level. This is the pilot in a series of case studies intended to highlight the complex dimensions of specific global development issues. It is designed as a teaching tool for use in the classroom as a four-hour workshop.

Fundamental rights: challenges and achievements in 2011

European Union Agency for Fundamental Rights, Luxembourg 2012, 272 p., <http://tinyurl.com/FRA-annual-report-2011>. The FRA annual report identifies achievements and challenges in the 27 EU member states and Croatia in 2011. The report identifies 'key developments', 'promising practices' and details on 'FRA activities'. Section 5.7 discusses discrimination on grounds of religion or belief.

Regional and country reports

China: The Chen Guangcheng Report – Coercive family planning in Linyi 2005

Women's Rights Without Frontiers, 2011, 36 p. <http://preview.tinyurl.com/chenreport>. WRWF has obtained a report from Chen Guangcheng's 2005 investigation into coercive family planning in Linyi County, Shandong Province. This report was drafted by celebrated human rights attorney, Teng Biao, and contains fourteen 'Notes'. Chen's investigation exposed the fact that there were 130,000 forced abortions and sterilizations in Linyi in 2005. He was jailed for four years, put under house arrest, tortured and denied medical treatment. WRWF released this report to mark Chen's 40th birthday, November 12, 2011. In the meantime Chen has been able to leave China for the US.

Egypt: Disappearance of Coptic Christian women

CSI, 18 July 2012, 32 p., www.csi-usa.org/TellMyMotherIMissHer.pdf. "Tell my mother I miss her" – The disappearance, forced conversions and forced marriages of Coptic Christian women in Egypt (II), by Michele Clark and Nadia Ghaly. – This report substantiates and confirms an earlier report from November 2009 by verifiable cases. Key findings: The numbers of disappearances and abductions are increasing. Fewer girls are returning to their families. Social media is increasingly used to communicate a victim's status. Minors and mothers of young children are increasingly targeted. Abductions continue to be organized and planned. Captors target women and girls when they are unprotected and vulnerable. Captors sever ties between victims and their families. Captors make use of measures involving force, fraud and coercion.

Eritrea: UNHRC creates new country mandate (special rapporteur)

A/HRC/20/L.19/Rev.1, Geneva, 6 July 2012, 3 p., <http://ap.ohchr.org/documents/alldocs.aspx>. The resolution, presented by Somalia, Djibouti and, Nigeria was adopted by consensus in Geneva. The Human Rights Council strongly condemns (...) The severe restrictions on freedom of opinion and expression, freedom of information, freedom of thought, conscience and religion, and freedom of peaceful assembly and association, including the detention of journalists, human rights defenders, political actors, religious leaders and practitioners in Eritrea; (para 1.b) ... Calls upon the Government of Eritrea, without delay: (...) To respect everyone's right to freedom of expression and freedom of thought, conscience and religion or belief, and freedom of peaceful assembly and association; (para 2.f). – This is the first time that African states have initiated the appointment of a special rapporteur on the human rights situation in another African country without the consent of the state concerned. Only Russia, China and Cuba disassociated themselves from the Council's consensus position, but did not call for a vote.

Iran: Religious freedom in Iran

Open Doors, Whitney, May 2012, 11 p., <http://tinyurl.com/Iran-RFbriefing>. The report describes the position of the recognized Christians and Christian converts. It further presents recent developments worsening the position of all Christians in Iran, including a list of incidents.

Middle East & North Africa: Hearing of the Human Rights Commission of the German Bundestag

<http://tinyurl.com/GermanBT2012>. Source: www.bundestag.de. For this hearing on 9 May 2012 on „Christians and other minorities in the Middle East and North Africa“ five experts (among them IIRF Academic Board member Prof. Dr. Christine Schirmacher) presented extensive written documentation in German. More than two hours of videos of their abbreviated presentations and the debate are also online. <http://tinyurl.com/GermanBT2012TV>.

USA: Statement on religious liberty

United States Conference of Catholic Bishops, Ad Hoc Committee for Religious Liberty: Our First, Most Cherished Liberty – A Statement on Religious Liberty, 12 April 2012, 13 p., <http://tinyurl.com/US-Bishops>. The committee provides evidence why they see religious liberty in the US under attack, assert that religious liberty is more than freedom of worship, present their Christian teaching on the topic and call Catholics for joint action.

Reports, journals, projects, articles

EEA: Christian Engagement in the Public Arena – A Code of Conduct

Brussels, June 2011. http://www.europeanea.org/documents/EEA_Code_of_Conduct_EN.pdf. This code summarises the points in the European Evangelical Alliance's new socio-political approach. The longer document gives a biblical rationale for how EEA believes Christians should conduct themselves in the public arena. The Approach & Code were formally approved by EEA in June 2011. Available in several languages.

CEC Human Rights Training Manual for European Churches

Conference of European Churches, Brussels, 2012. <http://tinyurl.com/CECtraining>. The Civil Society Commission of the Conference of European Churches, published a Human Rights Training Manual for European Churches. The manual contains a human rights reader as well as material for training workshops and seminars.

Dutch Reformed Theological Journal. 2012 Supplement: Law and Religion in South Africa

Edited by Pieter Coertzen. Papers of the first annual conference on Law and Religion in South Africa, held in Stellenbosch, 19-23 September 2011. Online for subscribing libraries via Sabinet: http://journals.sabinet.co.za/ej/ejour_ngtt.html. For hard copies contact: P Coertzen, pc@sun.ac.za.

The Edict of Milan (313-2013): A basis for freedom of religion or belief?

Conference of European Churches, Serbia, May 2012, 2 p., <http://tinyurl.com/Milanedict>. Conclusions of a conference discussing different aspects in which the Edict of Milan could be the source of inspiration and the guideline for practical implementation of freedom of religion or belief. The text is meant to serve as a basis for future cooperation in promoting freedom of religion or belief.

IIRF Reports

www.iirf.eu/index.php?id=401

The International Institute for Religious Freedom started two new periodical publications in January 2012. *IIRF Reports* is a monthly journal with special reports, research projects, reprints and documentation in English. Each issue contains one item only. The *IIRF Bulletin* is a similar journal with different contributions in German. Suggestion of manuscripts welcome.

1. Th. Schirrmacher, The Situation of Christians and Muslims according to the Pew Forum's "Global Restrictions on Religion"
2. Tehmina Arora, India's Defiance of Religious Freedom: A Briefing on 'Anti-Conversion' Laws
3. World Evangelical Alliance, Universal Periodic Review Republic of India: 13th session of the UPR Working Group
4. World Evangelical Alliance, Universal Periodic Review of Sri Lanka: 14th session of the UPR Working Group
5. Draško Djenovic with contributions by Dr. Branko Bjelajac, Serbia: Report on Religious Freedom Issues: November 2008 - December 2011

Leadership

Hyun Sook Foley: From one "Great Leader" to many leaders who are truly great: Leadership training for North Korean defectors. *Journal of Strategic Leadership* (Regent University) Vol. 3,2:23-30. Online: <http://tinyurl.com/Foley2012>.

Opinion of the Advocate General of the Court of Justice of the European Union – Joined Cases C 71/11 and C 99/11: Understanding Freedom of Religion

Advocate General Bot, 19 April 2012, <http://tinyurl.com/opinion-adv-gnrl>. Opinion on two joined cases before the European Court of Justice relating to religious freedom within the context of asylum law, providing a more broad definition of the right to outwardly manifest faith as have courts in recent years.

www.vomclassroom.com (Open Classroom)

This is the site for online workshops sponsored by Voice of the Martyrs, Inc. USA. These courses will guide you through persecution studies, an innovative way to become informed and involved in ministry to the persecuted church. Contact: Roy Stults, PhD, VOM online classroom administrator, rstults@vom-usa.org

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9. God's Mission to the World: The Occasion for Persecution – Part 2 Mission to the Western World

Book Reviews

Sacred fury: Understanding religious violence

Charles Selengut

New York: Rowan & Littlefield, 2008, 237 p., ISBN 978-0742560840, US\$ 33.95.

'So long as religion is about ultimate truth and commitment to the sacred, to a vision of a utopia described in holy scriptures, men and women will be defenders of the faith and willing soldiers in the battles for God' (p. 205).

This is the concluding statement and a good summary of the thoughtful treatise on religion and violence by Charles Selengut, professor, author, and expert on religious fundamentalism. His basic thesis is that though all religions provide a foundation for and teach positive social values and even oppose injustice and violence, there are also within all religions the seeds for violence and war. Thus, most wars, especially recent wars have some element of religion associated with them.

By their very nature, religions generate strong convictions that adherents believe come from God and as such are binding upon the whole human race. Therefore, those who reject or oppose such beliefs are often viewed as enemies of God who must be brought to the truth, either through persuasion or force. The promise of an afterlife filled with beauty and bounty, especially for those who suffer for their faith provides a powerful motivation for the foot soldiers in such sacred wars.

The book addresses violence from five perspectives. First, the author provides a theological perspective by illustrating that violence is incorporated in the scriptures of all three major Abrahamic religions. Second, he provides an overview of various psychological models to understand human aggression, particularly René Girard's mimetic desire theory and Leon Festinger's cognitive dissonance theory. Without fully embracing them, he skillfully demonstrates how modern religious conflicts illustrate such theories. Third, Selengut addresses "apocalyptic violence" by examining the theology, practices and leaders of several movements like Japan's Aum Shinrikyo and the Branch Davidians of Waco Texas. These groups teach that violent confrontation is coming at the end of the world but that their leader has received a divine revelation about how to prepare for it. Such beliefs and loyalty to the god-like leader who frequently views himself as being above corrupt secular governments often leads to violence. Fourth, he convincingly illustrates Samuel Huntington's "clash of civilizations" theory by examining conflicts in the last thirty years that have included orthodox Jews, fundamental Christians and radical Muslims. Finally, Selengut examines personal violence within religions, such as sacred

pain, religious masochism, martyrdom (including religious suicide), and sexual abuse. The concluding chapter outlines several practical suggestions on how to overcome religious violence.

Selengut's book makes several significant contributions, of which I will note only three. First, he provides convincing arguments for and extensive illustrations of his basic thesis – that religion is associated with most of the world's recent conflicts. Second, he makes the weighty point that much of the conflict in our modern world has been encouraged by the religious ignorance of western politicians, academics and business leaders. Though this may not have been a point intended by Selengut, his observation suggests the need for a return to some form of religious education in those secularized societies that have removed it. Third, Selengut's practical suggestions, which include a better informed laity, state intervention that consists of cooperation with religious leaders and institutions and more informed dialogue, are appropriate and a logical outgrowth of his comprehensive research.

The book has at least two issues that require more clarity. First, in his attempt to illustrate that modern violence is found in all religions, Selengut devotes about the same amount of space to violence within Judaism, Islam and Christianity, giving the probably unintended impression that all religious violence is equal. However, the violence perpetuated against abortion doctors and clinics by fundamentalist Christians, which has killed fewer than 20 people in the last 40 years, hardly compares to violence perpetuated by extremist Muslims, which has killed thousands. The theory behind both kinds of violence may be similar and is legitimately pointed out but the consequences have not been the same in these instances.

Second, Selengut largely ignored the conflicts of the last three decades in Africa, including the genocide in Rwanda, the wars in Liberia, Sierra Leone and Côte d'Ivoire and the violent struggle against apartheid in South Africa. Perhaps these were ignored because they do not so easily support his general thesis.

Our world has experienced much religious violence in the last few decades. *Sacred fury: Understanding religious violence* provides a perspective on recent religious violence around the world that is scholarly and well documented but easy to read. It helps one understand the factors and motivations that lead to terrorism. This in turn helps reduce prejudice and stereotyping and increases the desire to respond with love and reason and not violence. Thus, the book is especially useful for academics and students, politicians and expatriates, and those in or near conflict zones. In fact, anyone who wants to better understand the violent conflicts of our contemporary world will benefit from this book.

Prof. Dr. Danny McCain, Professor of Biblical Theology, University of Jos, Nigeria

Martyrdom: A Guide for the Perplexed

Paul Middleton

London: T & T Clark, 2011, 209 p., ISBN 978-0567032188, US\$ 24.54.

Martyrdom, though neglected in theological and religious studies, after the September 11, 2001 incident at the World Trade Center, has become a subject of global significance. Middleton argues martyrdom has a long history and he examines and demonstrates this by comparing martyrdom narratives in the three Abrahamic religious traditions namely, Christianity, Judaism and Islam.

The first chapter examines martyr narratives of individual deaths that are placed within larger conflicts – political, religious, local, and cosmic spheres. His central thesis is that martyrs are created by people who retell and narrate their stories.

Chapters 2 through 4 look at martyrdom in Christianity. The author argues that the early Christians were enthusiastic to embrace for opportunities for martyrdom. Christians demonstrated their readiness to face death as shown by the martyrs' texts. They understood their persecution in spiritual terms and in line with Jewish "holy war" ideology. Middleton argues the concept of holy war is common in all three religions. Through death, Christians conquered death, Satan and the cosmic powers. Two theological themes underlined the early Christians' attitudes to death and martyrdom namely, martyrdom as both an earthly and cosmic spectacle, and following the example and the footsteps of Jesus – participating in Christ's suffering, his death, and his victory.

Middleton discusses martyrdom in Judaism and Islam in Chapters 5 and 6 respectively, pointing out martyrdom in these traditions were struggles against evil and seen as "righting the wrongs in the world." The author concludes the three monotheistic religions share common understandings of martyrdom by seeing it as a cosmic war waged to overthrow evil.

Middleton links "holy war" ideology to western liberal secular ideologies. This ideology finds nothing wrong in killing people if such people are considered enemies in a war context. Middleton observes that the West's desire to spread democracy, freedom for the individual, and war on terror through military force can legitimately be categorized as a Western jihad (p. 184). The book is not a "book of martyrs." It is clearly written, the author's arguments are balanced and sensitive to the three religions he writes about. Although he does not discuss issues of human rights in relation to martyrdom and other related biblical teachings on the subject, the book provides some good material on the subject of martyrology that may be beneficial for our contemporary reflections on the subject.

Prof. Dr. James Nkansab-Obrempong, Associate Professor of Theology, Africa International University, Nairobi, Kenya

The right to religious freedom in international law: Between group rights and individual rights

Anat Scolnicov

Milton Park: Routledge, 2011, 246 p., ISBN 978-0415481144, US\$ 125.00.

This book is based on the author's doctoral thesis at the London School of Economics. It fills an important gap in present academic literature concerning religious freedom in an international context.

Following a brief overview, the author discusses the reasons why freedom of religion is protected at all. Avoiding an in-depth treatment of such central themes as the right to change one's religion and to proselytize, she argues that there is no such thing as a group right when talking about religious freedom. As far as she is concerned all rights are individual, even if they are embedded in a community situation. Even where certain rights are exercised by more than one believer, e.g. when engaging in communal worship or electing leadership, these are still to be regarded as individual rights.

Scolnicov is basically supporting an age-old principle of international human rights law, defending it against other approaches, and pointing out their dangers especially where the protection of minorities is concerned. However, her reasoning does go far beyond the present international norm. This is clearly the case where she argues that state laws must intervene to avoid the discrimination of women or homosexual clergy in state churches (p. 87), justified by the tight intertwinings between state and religion. The question remains why the distinction of doctrinal and administrative questions discussed earlier in the book (p. 83) should not be applicable in these cases too. Her approach also forces a state to define religious and doctrinal questions. Elsewhere however (p. 92 ff) the author warns that this is one of the dangers of understanding freedom of religion as a group right, namely that the state is not equipped to do this and should not attempt it. A further relevant issue which Scolnicov fails to discuss is how her approach could be acceptable in states with a Muslim or Hindu majority.

The book then develops the theme of individual rights by looking at two vulnerable groups: women (p. 126 ff) and children (p. 160 ff). Interestingly, Scolnicov points out that sometimes laws governing women in minority religions are detrimental and more backward than in countries where this religion is a majority. Often governing states find it difficult to intervene in minorities' laws, since this always involves a groups' self-perception (p. 134).

This inspiring book ends with a short discussion of religious freedom as a right of free speech – an ongoing debate. Based on her view of religious freedom as an individual right, the author argues that denying proselytism is understood best as a phenomenon of group protection (p. 198). She is against this and considers that

“hate speech” should be allowed for the sake of freedom when it tackles ideas, but never when it aims at groups or persons.

Not all the ideas covered in this book will be generally accepted, but they do serve to stimulate continued discussion on the contents and limits of human rights and religious freedom.

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Routledge Handbook of Religion and Politics

Jeffrey Haynes (ed.)

London: Routledge, 2010, 448 p., ISBN 978-0415414555, £135.00.

Haynes is Professor of Politics and Director of the Centre for the Study of Religion, Conflict and Cooperation at London Metropolitan University and has written several books on religion and third world politics. In the editor's words, this collection of essays “examines the recent ‘return’ of religion to politics and international relations” (cover). Beside the introduction there are 25 essays from altogether 27 experts. 12 experts come from Great Britain, seven from the rest of the Anglosaxon world (including Australia and Canada), three from Japan, two from Singapore, two from Israel, and one from Sweden. Each essay would be worth its own review.

All essays touch the relationship between specific religions, society and the state, even though the freedom of religion and belief in itself is seldom a topic.

The essays are grouped into four parts. In the first, writers take a general view of eight specific major religions and their relation to politics, both in principle and in the praxis of contemporary states. The religions include Buddhism, Protestantism, Catholicism, Confucianism, Hinduism, Islam, Shiism and Judaism. In the second part follow seven articles with more detailed investigations into religion and governance: secularisation, fundamentalism, the tensions between religion and the state, democratisation, political parties, civil society and finally “Different patterns of compartmentalisation among Christians and Mohammedans (sic!)”. The third part has four more general articles looking at the relationship between religion and international relations. The fourth part, with another five essays, discusses the relationship of “Religion, security and development”, especially religious terrorism, preventing conflict, religion and women, international development and evangelical responses to global warming and human suffering.

Overall the book is a good handbook and start for people involved in politics wishing to understand the global role of religions, as well as the other way round

for people studying religions who need a starting point for their search for the political role of belief systems in theory and reality.

The essays are uneven. Some are superb and give a solid overview about the political landscape and research, e.g. most of the essays in the first part, such as the article “Religion and political parties” by Payam Mohseni and Clyde Wilcox, “Religion and democratisation” (subtitle) by John Anderson (my favorite essay), or “Religion and the state” by John Madeley, discussing the different types of relationship between state and ‘church’ globally.

A few articles are really weak, such as the one “On the nature of religious terrorism”, which neither gives a historical or global overview of religious terrorism nor discusses the problem in specific religions, but gives a very generalised opinion that religious terrorists are not much different from other terrorists. Further: why does Giorgio Shani in “Transnational religious actors and international relations” only go into detail concerning the Roman Catholic Church and the United Sikhs and leave out the Muslim world, especially the Organisation of Islamic Cooperation (OIC)?

Very surprising is the last essay “Changing the climate of religious internationalism: Evangelical responses to global warming and human suffering”. The article in itself is good, but it does not fit in any way into the volume. An essay “Evangelicals and politics” would have been okay, but it would have to present all branches of evangelicalism and this on a global scale. But to single out the topic of climate-change (and even not the political agenda going with it) and to deal exclusively with the US context – something not done concerning any other religious group in the volume – is arbitrary. And then to state, that newer evangelicals are good, as they fight climate change, while older ones are bad, because they ignored environmental issues as a cause of human suffering, is historically too simplistic and opinionated. It is also incompatible with the academic standard of the rest of the book.

The term “fundamentalism” (see index p. 423) is used inconsistently throughout the volume. The editor sees fundamentalism only where there exists a holy book (p. 162). Why that? In Catholicism you can have fundamentalism, even though the Pope is above ‘the book’, and in India and Sri Lanka fundamentalism is prevalent without a single religious book, but with just the same characteristics. In his article “religious fundamentalism” the editor only discusses Christianity, Islam and Judaism and does not even discuss why he leaves out all other religions.

I would like to come back to the first part on the eight major religions. As there are no bios of authors provided, it is hard to tell, but from what I can see, in all cases except Confucianism the authors belong to the religion they write about. It is not by chance, that the critical distance to their religion differs a lot. The Christian authors are quite critical about certain developments in Christianity, the Protestant author more than the Catholic one. The least critical is the article on Islam, which sometimes

comes close to a defence of Islam. Islamism is seen as “primarily” a “political phenomenon” which “cannot be said to stem from some ‘essence’ of Islam” (p. 102). I agree that “Islam is not Islamism”. But to represent the complicated relation between the two as just the opposite by claiming “Islamism is not Islam” does not fit the whole book, which discusses the relationship of religious actors to international politics. If the authors were right, non-religious Islamism should not have been discussed in the book at all. One would have expected in such a handbook that the articles on the major religions would have been more consistent and provided an even balance of distance and understanding.

Prof. Dr. Thomas Schirrmacher, Professor for the Sociology of Religion, Timisoara, Romania, Director of IIRF, Bonn, Germany

Religion and human rights

Nazila Ghanea (ed.)

New York: Routledge, 2010, 4 vols., 1600 p., ISBN 978-0415477871, US\$ 1075.00.

The academic publisher Routledge publishes sets, usually of four volumes, with reprints of a wide range of older and recent articles and book chapters, always edited by a well known scholar and expert on a specific subject. In this ‘Major Works Collection’, a dozen of them so far have appeared in the field of religions (‘Critical Concepts in Religious Studies’). Those sets are not meant for the wider public – as the price of the set is usually above \$1000 – but mainly for libraries and specialists, who want material scattered around the globe and in dozens of publications.

Concerning this collection one could criticize, that its title “Religion and human rights” is wrong because it is too broad. The human right discussed in these volumes is only the “Freedom of religion and belief” and all essays circle around this human right. Under the flag of “Religion and human rights” one would expect a larger range of topics. But if one is interested in the human right under discussion here, namely religious freedom, this is the best selection of articles on the market.

Let me briefly summarize the topics given by the publisher, to prove this: Volume I: Why protect freedom of religion or belief? Volume II: Is freedom of religion or belief an individual or collective human right? Group, collective, and corporate rights. Models for protection of religion or belief. Minority rights. Refugee rights. Volume III: Conflict of rights and freedom of religion or belief in general: On conflict of rights with freedom of religion or belief. Freedom of expression. Women’s rights. Child rights. Volume IV: International standards, persecution and ways forward. International standards and mechanisms regarding freedom of religion or belief.

Persecution and discrimination. Equality, differential treatment, special rights, positive duties, and freedom of religion or belief. Ways forward.

The editor for a compilation of essays on religious freedom has been chosen well, as Nazila Ghanea is Editor in Chief of the *Journal of Religion and Human Rights* and Lecturer in International Human Rights Law at Oxford's Kellogg College. She also initiated and now serves on the Executive Board of the international network 'Focus on Freedom of Religion or Belief' (FoFoRB).

How to select 55 essays out of thousands of published essays, articles and book chapters is always debatable. In my opinion the overall selection is superb. Wherever freedom of religion and belief is studied and these volumes are at hand, students do not need to look for other articles to get started. It is an ideal tool for seminars in universities for studies in a wide range of subjects, including law, comparative religions or sociology.

It is impossible to comment on every essay. But nevertheless some very good and some less valuable contributions should be mentioned.

Highlights on religious freedom, which immediately came to my mind, are included, like Brice Dickson's "The United Nations and freedom of religion" (1995), the editor's "Apostasy and freedom to change religion or belief" (2004), David Keane's "Why the Hindu caste system presents a new challenge for human rights" (2007), "Models of religion-state relations" by Rex Adhar and Ian Leigh (2005) and the superb "Draft model law in freedom of religion" by Dinah Shelton and Alexandre Kiss (1996). Those essays all give a good overview over the international discussion and literature and present positions that are accepted by a broad spectrum of actors in the field of human rights.

A review of course has to also offer criticism and ideas for improvement of which I offer three: (1) Why is there only one historical article (by John Locke from 1640), one from 1974, while all others from 1984 or later? And if you choose only one historical article, is the essay by Locke really the most important one before 1974 representing the development of the religious freedom thinking best? And should not an article by a representative of a religious minority vital to the development of religious freedom thought have been included, e.g. from the Jewish or the Baptist side?

(2) Articles that are merely of regional interest or focus on just one religion were excluded in principle. Why, then, is an article included which asks "Should the United States provide refuge to German Scientologists", though it does not feature any outcome or principle of international interest? It concluded in 1999, that Scientologists in Germany "suffer mainly economic disadvantages", but to describe their present situation "as persecutory ... seems exaggerated". This is an outdated description.

(3) Why is the article "Parental rights and the religious upbringing of children" by T. H. McLaughlin (1984) included? It is more philosophical than religious, arguing for "a non-indoctrinary form of religious upbringing which a liberal can in

good conscience claim”, and it is more a private opinion piece on how to raise children than a needed discussion of the application of parental rights (part of UN’s standards of religious freedom), when theses have to be overruled, and what this means for education and schooling. – But these weaknesses do not overshadow the overall positive impression of the collection.

Prof. Dr. Thomas Schirrmacher, Director of IIRF, Bonn, Germany

Paul and the mission of the church: Philippians in ancient Jewish context

James P. Ware

Grand Rapids, MI: Baker Academic, 2011, 400 p., ISBN 978-0801039683, US\$ 36.66.

In this monograph the North American New Testament scholar James P. Ware first surveys early Jewish views regarding the conversion of Gentiles (23-159; with an emphasis on the significance of Isaiah). Against this backdrop, Ware examines in three chapters various aspects of mission in Philippians 1:12-2:18. He first sketches “The progress of the Gospel in Philippians 1:12-18a” (163-199). The chapter “Suffering and Mission in Philippians 1:18b–2:11” (201-236) is of particular interest. Ware rightly notes that it is essential to understand Philippians 1:12-18 within the larger context of Paul’s exhortation in 1:12-2:18 (actually of the whole letter). Ware argues that “Paul’s conviction that believers must suffer with Christ in order to share his glory is rooted in Jewish thought, and its emphasis on the eschatological vindication of those who suffer for their God. . . . Paul’s courageous witness to the gospel despite the threat of suffering . . . serves within the letter as a model for his converts at Philippi” (234). Paul applies Job 13:14-16 (in the LXX version) to his own situation (Job’s assurance of salvation is his fearless speech and reproof before the ruler who seeks to put him to death). Furthermore, there is a close connection between the call to unity and the threat of persecution: “Paul’s fusion in 1:27-30 of the language of friendship with the language of mission and proclamation reveals his concern that the Philippians respond to the threat of suffering with a united and courageous struggle for the spread of the gospel” (234). Paul’s charge not to be afraid of the opponents (1:28) is an exhortation fearlessly to proclaim the word despite persecution and suffering that will result from it. Ware also suggests that the mission of Paul and of his converts had a counter-imperial aspect: Paul’s example of testimony to Christ – intended to be imitated – was a bold confrontation with Roman claims and power (1:19f); the same applies to his direct exhortation to the readers despite personal risks and suffering to fearlessly spread the gospel in Roman Philippi in Philippians 1:27-30. The third chapter addresses “The mission of the church in Philippians 2:12-18”

(237-284) and argues persuasively that Paul had a strong expectation that his converts engage in congregational evangelism.

Ware offers an excellent analysis of a key New Testament passage on the suffering and persecution of Christians and its relation to salvation. He shows to what extent mission and suffering for the gospel are linked in Philippians. That the Philippians should cease their evangelistic very nature and activities is not in Paul's view. However, he instructs them to spread their faith in a sensitive manner (see Ware's helpful analysis Phil 2:12-18, including the charge in 2:16 to hold forth the word of life, rather than hold fast as in some translations).

Mission in Philippians is also the focus of Mark J. Keown's comprehensive study *Congregational evangelism in Philippians: The centrality of an appeal for Gospel proclamation to the fabric of Philippians* (Paternoster Biblical Monographs; Carlisle: Paternoster, 2008).

Prof. Dr. Christoph Stenschke, Forum Wiedenest, Bergneustadt, Germany and Department of New Testament and Early Christian Studies, UNISA, South Africa

Very stones cry out: The persecuted church – pain, passion and praise

Baroness Cox and Benedict Rogers

New York: Continuum, 2011, 168 p., ISBN: 978-0826442727, US\$ 15.56.

This is a piggy-back ride with leading and renowned activists from Christian Solidarity Worldwide on a journey visiting different countries, and hearing about stories of courage, faith and praise from those who are persecuted for their Christian faith.

Whether you are well versed on the subject or have no current knowledge about the persecution of Christians around the world, this book is a must read. Each chapter focusses on one of the seventeen countries from Burma to Vietnam – touching on a blend of demographic and situational information about each country. Each chapter then sets out to drill down even deeper into personal stories and examples of those that have been directly affected by persecution.

However, this book isn't a morbid book full of sadness and death. Its tone is factual and descriptive rather than emotionally convincing. Further, the authors don't make you feel like you're not good enough because you're not facing death for your religious beliefs.

All in all, the authors have done a great job of communicating the persecution – raising awareness and telling untold stories, but also making this relevant to everyone on a journey with God.

My one gripe about this book is that the authors seem detached from the writing – even though they have personal knowledge and experience of those countries. So although it is factual, perhaps a little more personal perspective would give this book an added dimension. Despite this, it will win the reader over due to its motivating and eye opening stories of persecution.

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Witness of the body: The past, present, and future of Christian martyrdom

Michael L. Budde & Karen Scott (eds.)

Grand Rapids, MI: Eerdmans (The Eerdmans Ekklesia Series), 2011, 238 p., ISBN 978-0802862587, US\$ 22.00.

The purpose of this collection of essays is clearly defined: “returning martyrdom to a more central place in the self-understanding of the church” (VII) and instead of seeing martyrdom “as an object of fascination or dread ... resituate martyrdom within the everyday practices of the church” (VIII). I can welcome this goal from all my heart.

The book is written for a Western audience, mostly unfamiliar with martyrdom. Contributions of authors living in the Majority World are missing. They could have contributed additional insights. In addition, the confessional breadth of opinions seems to be desired (“across the confessional divides of Christianity”, IX), but not really accomplished, because the great majority of the contributors consist of US-American Catholics.

It is a strength of the collection to cover not only martyrdom in the Early Church but in Part III (“Martyrdom destroys the church”) also to deal with the persecution of Christians by Christians especially in the age of Reformation. Brad S. Gregory (“Persecution or prosecution, martyrs or false martyrs? The reformation era, history, and theological reflection”, 107-124) rightly criticizes that from the standpoint of the 21st Century with its focus on human rights it is too easy to judge the prosecution of supposed heretics in the 16th century without really understanding the presuppositions of that age. Having said this I sometimes sensed too much understanding for the prosecutors in this article.

For me there are two highlights amongst the eleven essays about martyrdom. From the article of Stephen Fowl, Professor of Theology at Loyola College of Maryland, “The primacy of the witness of the body to martyrdom in Paul” (43-60) the title of the whole book is derived. Fowl represents the school of “theological interpretation of Scripture”. He tries (and I think, he succeeds) to put martyrdom in the broader context of Romans 12:1-2 where Christians are encouraged to “present” their “bodies as a living sacrifice”.

Every believer is called to the “witness of the body”. This witness is the commitment of our whole being to God’s will and God’s glory. That might lead to martyrdom or not. “Believers can and should always participate in the witness of the body. Whether or not the authorities will kill them for this is largely out of their hands” (44).

My second highlight is “Is anything worth dying for? Martyrdom, exteriority, and politics after bare life” (171-189) by D. Stephen Long, Professor of Theology at Marquette University and Geoffrey Holdsclaw.

The authors analyze that Western secular societies have excluded any goals higher than life from political philosophy. The fear is prevalent that the grounding of “politics in some transcendent goal” might “produce a militaristic society” (171). As a result “...the only rational, dogmatic position from which to begin political thought is that of the preservation of life” (173).

This article is very inspiring in showing how a new commitment to doctrinal truth, i.e. putting God’s will higher than our life, will rightfully challenge the foundations of our current political philosophy and so might be perceived as a threat. The authors should have made it clearer that “What is worth dying for?” not inevitably leads to “What is worth killing for?” (171), and that putting doctrinal truth over life is a common point of radical Muslims and devoted Christians, but that there are decisive differences in what the respective truths are.

Wolfgang Haede, author of “Faithful until death: The story of Necati Aydin, a Turkish martyr for Christ”, Living Sacrifice Books, 2012.

Taken! North Korea’s criminal abduction of citizens of other countries

Yoshi Yamamoto

Washington: The Committee for Human Rights in North Korea, 2011, 140 p., ISBN 978-0977111138, No price given. <http://www.scribd.com/doc/55378738/Taken>.

“Taken” relates the many stories of the individual abductions by North Korea over the past 60 years. The majority of abductions are those counted by the removal of nearly 83,000 Koreans to the North during the initial invasion by North Korea during the Korean War. Another 93,000 Korean immigrated to North Korea, mostly from Japan, deceived into believing they would have a better life in North Korea. And although it documents these as abductions, most of the book’s stories are the individual abductions by North Korea for spy recruiting, spy training, or personal interests of the North Korean government.

Although North Korean abductions were not promulgated for religious (or anti-religious) purposes, a small but critical part of the story told in “Taken” for Christian missions is the deportation of one of the North Korean prisoners, Chantal Sobkowicz. After bringing her to North Korea for translation work, then refusing to allow her to leave, Ms. Sobkowicz was eventually deported for being a Christian missionary in North Korea and continuing to evangelize as a prisoner there. As noted in “Taken”, North Korea released few prisoners, but this report documents that what they wanted to eject from North Korea was Christian missionaries, even if they were brought to North Korea by abduction.

More report than book, “Taken” is a good reference for anyone beginning research into the abduction program of North Korea. It provides a table of all of the documented abductions as well as sources for the many abduction stories, treatment of prisoners, and the evolution of North Korean abductions over the years.

However, I recommend going to the primary sources over this particular report for research or citation of facts regarding abductions because of the characterization of all groups of people that have gone to North Korea (maybe) unwillingly as abductions and the over-emphasis on American based solutions in the report that may not be useful to most of the abductees listed.

Matt Dubois, Colorado Springs, CO, USA

The future of the global church: History, trends and possibilities

Patrick Johnstone

Downers Grove, IL: InterVarsity and Milton Keynes, UK: Authentic Media, 2011, 256 p., ISBN 978-0830856596, US\$ 32.00.

Johnstone chronicles the worldwide history of Christian mission, and projects its future from an evangelical perspective in the context of demographics, major religious movements and ideological developments. An impressive array of color-coded maps and charts presents data on the evangelization of people groups drawn from the World Christian Encyclopedia and Operation World databases.

The time frames and geographical locales of significant persecutions of Christians, beginning under Emperor Nero in Rome, and extending through two unprecedented World Wars and the Cold War of the twentieth century, are briefly described and graphically displayed, together with important political, military and people movements and events during each century. Color-coded maps, tables and pie charts depict the areal extent and severity of the persecutions, the world population, Christians as a percentage of the population, the number of martyred Christians, and the proportions of each category of persecutors and martyred Christians during each century.

The author provides hundreds of topical commentaries, insightful observations, and compelling questions that relate pivotal historic events and trends to the present day and to projected future conditions in the countries and regions of the world. The spectacular explosion of evangelical Christianity during the twentieth century in many developing countries, as compared to much slower or even negative rates of growth in economically more advanced countries, has vast implications for the future, not only in terms of the greatly altered distribution of Christian populations around the world, but how global Christianity will continue to change as it influences, and is influenced by, the prevailing cultures and the potential sources of conflict within those cultures.

Islam is deemed by the author to constitute a threat to future peace and security in those countries and regions where Muslims are in the majority or their numbers are growing, and would presumably represent a major challenge and a potential danger for Christians in those settings. In light of Jesus' promise: "Blessed are the meek, for they will inherit the earth" (Matthew 5.5), Johnstone raises the question on page 67, "How can biblical Christians who are politically marginalized inherit the earth without resorting to worldly methods or weapons?"

This prompts the question, "What might happen if Christians, who with an attitude of love desire to witness to Muslims as friends, sincerely reach out to them as equals in constructive interfaith dialogue, seek to understand and appreciate their perspectives and concerns, and express the desire to cooperate with them?" Such encounters should in no way constrain either Muslims or Christians to compromise their most deeply held religious convictions, but should rather be opportunities for them to overcome ignorance and hostility, build mutual trust and respect, and search for common ground.

Marvin A 'Tony' Drake, PhD researcher in peacebuilding between Muslims and Christians at the Geographic Institute, University of Tübingen, Germany

„Das Wort sie sollen lassen stahn...“: Das Kirchenlied im „Kirchenkampf“ der evangelischen Kirche 1933-1945

Matthias Biermann

Göttingen: Vandenhoeck & Ruprecht, 2011, 427 p., ISBN 978-3525624166, € 82.95.

This recent doctoral dissertation, accepted at the University of Jena, deals with the role of church hymns in the German Church Struggle ("Kirchenkampf") during the National Socialist dictatorship 1933-1945. It analyses the practice of liturgical singing, evaluating primary sources from Protestant church archives from all over Germany, which up to now had remained unconsidered or unpublished (i.e. hand

outs, song sheets, song books). He compares the use of hymns among the Confessing Church ("Bekennende Kirche") and the "German Christians" ("Deutsche Christen"). According to Biermann, both movements are not to be seen as monolithic blocks. The boundaries between the apostate "German Christians" and the persecuted Confessing Church remained rather fluid.

On the one hand, the Confessing Church returned to the reformation roots of the German Protestant Church. Many leading voices (i.e. Barth, Bonhoeffer) were favoring the priority of word (in best pure biblical language) over music. They were critical of the self-centered subjective texts of the pietistic and romantic eras. On the other hand, the German Christians mixed traditional church hymns with popular folk songs and popular classic and romantic pieces (i.e. Wagner's overtures). Yet they did not leave the traditional church hymns unchanged. According to their ideology, they removed any hint of Jewish words or ideas and even cleansed them from soteriological and christological remarks. Such happened to "Großer Gott wir loben dich" (Holy God, we praise Thy name), where hymnbooks related to the German Christians eliminated some stanzas. The God of the German Christians remained a great, omnipotent, transcendent being, who used Hitler to build up his kingdom on earth. The German Christians also composed some new songs which were explicitly nationalistic. Both movements had in common some favorite hymns, like Luther's "Ein feste Burg ist unser Gott" (A mighty fortress is our God). Both also supported new songs. And some of the most influential song writers (i.e. Klepper) were not affiliated to either one of those movements. Not everyone actively participated in the Church Struggle.

Regarding the general role that music plays in times of religious persecution, Biermann's thesis shows two important facts. First, the singing of the Church does not only reflect the experience of persecution but it also shapes the identity of the persecuted church. It unifies those in trouble and gives them one voice. On the side of the apostate Church, it reflects its ideological adaptation to National Socialist propaganda. On both sides, church songs remain a mirror of their time, theology and ideology. Secondly, Biermann can show that strong persecution and imprisonment evoke a change of attitude concerning the value of subjective poetry. This can be shown by looking at the case of Dietrich Bonhoeffer. During his imprisonment, he began to value the songs of Paul Gerhardt which he had formerly rejected for their lack of objectivity. This might indicate the strong effect that solitary confinement has on one's self-reflection.

All in all, Biermann's nuanced study offers stimulating insights into the function and functionalization of church song in the Third Reich.

Daniel Dangendorf, Dipl. Mus. and M.Th. student at Martin Bucer Seminary, Bonn, Germany

The privilege of persecution: And other things the global church knows that we don't

Carl A. Moeller and David W. Hegg

Chicago, IL: Moody, 2011, 160 p., ISBN 978-0802454171, US\$ 13.99.

“What we need is not revival but reformation. Revival will put more people in the pews. Reformation will transform the thinking and the behaviour of the church” (p. 10). This introduction by Brother Andrew sets the tone for a book which demands transformational and reformational thinking in dispersing the traditional approach to the persecuted church from the point of view of our strength and their weakness. By using a well balanced recipe of testimonies, first-hand experiences and key Scripture verses, the two authors explore six areas where the persecuted church can teach the church in freedom what reformational thinking should look like: (1) God and his word, (2) worship and the church, (3) prayer and dependence, (4) community, culture and evangelism, (5) leadership, authority and power, (6) generosity and stewardship.

In these six chapters the authors examine authentic and biblical Christianity and redefine the “normal Christian life” of Christians in the west and in particular the USA. Both authors speak from an experiential point of view with a clear understanding of where the American church currently finds herself in terms of life, theology and practice and the mirror image portrayed by the persecuted church in terms of prayer, community, generosity and worship. A telling statement, probably the best summary of the whole book, is found in chapter three, where the authors make the following statement: “Whether we want to admit it or not, how we view prayer is one of the primary indicators of how we view God” (p. 70).

The major contribution this book makes in a time where most popular books focus on self-enrichment and self-esteem is that the church, as a community of global believers, has a mandate to glorify God and that persecution has a glorious way of stripping the believer of anything and everything that will prevent this from happening. This book is highly recommended for those who understand the necessity to deny the self, take up the cross and follow Christ. For those who seek a self-enriched faith and who see the persecuted church as an unfortunate group of people who find themselves at the wrong place at the wrong time, be ready to be transformed by the renewal of your mind and be prepared to be reformed by how you view authentic Christianity.

Michael Burnard, founder and Vision Developer of INcontext Ministries, www.incontext.webs.com

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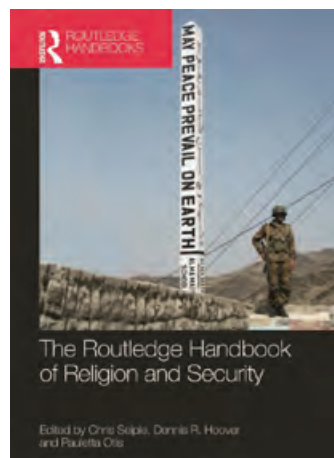
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