



Researching Religious Freedom

Christof Sauer (ed.)

Bad Urach Statement

Towards an evangelical theology of suffering,
persecution and martyrdom for the global
church in mission

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In 1999, anticipating the celebration of the Jubilee 2000, Pope John Paul II created a Commission to study the life and history of the New Christian Martyrs of the 20th Century. For two years the Commission worked in the Basilica of St. Bartholomew, collecting approximately 12,000 dossiers on martyrs and witnesses of faith from dioceses all around the world. After the Jubilee, John Paul II wished that the memory of the witnesses of faith of the 20th Century were made visible in the Basilica of St. Bartholomew. A large icon dedicated to the martyrs of the 20th Century was placed on the high altar, depicting the personal stories of the martyrs studied by the Commission, arranged according to the symbology of the Book of the Revelation.

The editors thank the Community of Sant'Egidio for permission to reproduce the icon.

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Advertisement of editorial position International Journal for Religious Freedom

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 IJRF 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.

Contact: Christof@iirf.eu, IJRF, Prof. Dr. Christof Sauer, P.O. Box 1336, Sun Valley 7985, Rep. of South Africa, Tel. + 27 21 783 0823

Editorial

Researching religious freedom

There are several platforms and networks used by researchers interested in the study of religious freedom. Some of the contributions in this issue emanate from the International Consultation on Religious Freedom Research, held in Istanbul on 16-18 March 2013. They have all undergone the usual peer review process for IJRF – including the opinion pieces. They only represent a fraction of the many papers presented at the consultation. A separate consultation compendium is still being contemplated. The articles fall in roughly three groups: the opinion pieces, research that focuses on various regions and countries and an equal contingent of research on diverse topics relating to religious freedom and persecution.

Paul Marshall as a senior scholar in the field of religious freedom research skillfully reflects in a survey type article on some of the conceptual and methodological problems that he encountered in writing some of the major current reports on religious freedom. Hereby he provides a framework for the other contributions. Thomas Johnson from Prague proposes a philosophical-theological concept of the “Twofold work of God” for interpreting issues of religious freedom within a theory of social ethics. He hopes that this could be a contribution from the Christian community into the broader global political culture.

The offers of research with a specific geographical focus are opened by Anastasia Isaeva from Russia. She examines problems in decisions of the Constitutional Court of the Russian Federation and the European Court of Human Rights regarding the registration of religious organizations. Rodrigo Vitorino Souza Alves and Alexandre Walmott Borges contribute the first article ever in IJRF on Latin America by introducing the readers to Church-State relations and religious freedom in their home countries of Argentina and Brazil. The next two articles are written from within Turkey. Abdulla Kiran is asking why the number of Christians in Turkey declined more than in authoritarian regimes of the Middle East. Looking at the last century he boldly asks whether Turkey pursues a deliberate policy or social engineering project to decrease its Christian population. Wolfgang Häde, a German residing in Turkey, on the other hand studies how Christians in Turkey are presently perceived by non-Christians. He finds a climate of accusations against Christians in a sample of five major Turkish newspapers, particularly in the period 2004/2005 preceding the murders in Malatya. In the last of the geographical contributions, Thomas Schirrmacher surveys religious freedom in Indonesia finding a discrepancy between constitutional protection of religious freedom as well as its enjoyment by a large part of the population and the limited defence of religious freedom in real life, at least for some parts of the population.

Among the various specialized topics, David Taylor from the UK discusses the methodology of a proposed early warning system for religious persecution. Iain T. Benson, who moves between Canada, France and South Africa, discusses how Western law is

increasingly being used to attack religious associations under the guise of “equality” advancement and “non-discrimination” restrictions. The expert on constitutional law and religious freedom proposes a re-framing of the understanding of pluralism, liberalism and diversity. Paul Coleman, a resident of Austria, examines how “sexual orientation” and “gender identity”-movements have managed to raise their influence within the United Nations from obscurity to primacy in the last ten years. As a legal scholar he notes an inherent potential threat to religious freedom in these developments. Daniel Ottenberg, a German scholar of international Human Right Law, surveys the decisions pertaining to religious freedom of the European Court of Human Rights up to July 2013. These are of international importance because they often serve as reference for other courts with similar tasks or where such do not exist. Lovell Fernandez examines from a perspective of International Criminal Law in which cases religious persecution can be considered as a “crime against humanity.” He proposes that measures to counter religious persecution should in future also include holding such persecutors accountable under International Criminal Law. From a perspective of Public International Law, Werner Nel is asking the same question. He further focuses particularly on Christians and additionally queries when such acts could be classified and prosecuted as “genocide by religious persecution” in terms of the Rome Statute in order to end impunity.

As a scholar of Islamic Studies based in Germany, Christine Schirrmacher is querying the positions of contemporary influential Islamic theologians on religious freedom within their interpretation of Sharia. She particularly focuses on their views of the death penalty for apostasy from Islam. Stephan P. Pretorius from South Africa reflects on the abuse of power – under the guise of religious freedom – by religious leaders of what are considered as religious cults. He points out a dilemma for governments in balancing the protection of their citizens against the violation of their human rights and the respect of their religious choices. Finally Antonio Fucillo and Francesco Sorvillo from Italy approach religious freedom as it pertains to objectives for intercultural economic development. They postulate that religious freedom in fact guarantees that religion can contribute to the transformation of today’s economic systems by influencing the economic choices of its adherents. In addition a good complement of noteworthy items and bookreviews awaits the reader.

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

Conceptual issues in contemporary religious freedom research

Paul Marshall¹

Abstract

This article reflects on some of the conceptual and methodological problems that arose in writing some of the major current reports on religious freedom. It focuses on the questions of what is secular and religious, who is a religious adherent, what is religious freedom, and what makes persecution religious? Finally, it discusses the relation of issues of “church and state” to religious freedom.

Keywords Religious freedom research, secular, adherents, religious persecution, church and state, definitions, methods, concepts.

I have been asked to comment on the conceptual and methodological problems that arose in compiling and writing *Religious freedom in the world* (2007), *Silenced: How apostasy and blasphemy codes are choking freedom worldwide* (2011), *Persecuted: The global assault on Christians* (2013) and other publications on religious freedom and persecution. There are of course many technical questions in measuring religious freedom or its absence, but, except in the case of considering available data, I will focus on conceptual issues.

I will focus on the questions of what is secular and religious, who is a religious adherent, what is religious freedom, and what makes persecution religious? Finally, I will discuss the relation of issues of “church and state” to religious freedom.

1. Religious and secular

1.1 What is religion?

The first problem that usually arises in analyzing religious freedom is one common to any discussion of “religion” in general, as distinct from any particular religion, and it is the question “what is religion?” Clearly, if we don’t know what religion is,

¹ Paul Marshall (*1948) is Senior Fellow at the Center for Religious Freedom at the Hudson Institute in Washington DC. He is the author, co-author and editor of more than twenty books on religion and politics. This paper is based on a keynote lecture given at the International Consultation on Religious Freedom Research, 16–18 March 2013 in Istanbul. While adding new and updated material, this essay also draws on three chapters in *Religious freedom in the world*, The range of religious freedom, Secular and religious: Church and state, and The nature of religious freedom.” Spelling follows American English. Article received: 13 April 2013; Accepted: 13 August 2013. Contact: Hudson Institute, Center for Religious Freedom, 1015 15th St. N.W., Washington DC, 20005, USA, Tel +1-202.256.3890, Email: pmarshall@hudson.org.

then it can be difficult to say what religious freedom is, and when it is violated. It also becomes difficult to counter the increasing arguments that there is nothing special about religious freedom (cf. Leiter 2012, Schwartzman 2013).

While most agree that there is a set of phenomena that we can properly call religious, there is no universally accepted definition or specification of what religion is. While there is general agreement that, for example, Islam and Christianity are religions, other situations are less clear. Since Buddhism does not entail belief in a God or gods and is still usually accepted as a religion, then neither theism nor deism is presumably a requirement of being a religion. But, if this is so, is Confucianism then also a religion? Or Taoism? If we include these, we would be close to treating religion as any ultimate or basic belief or commitment, whether or not others regard it as “secular.” Movements such as communism and fascism have been described as “political religions” (cf. Voegelin 1999). Several Western European countries treat “secular humanism” as a religion or, at least, something to be recorded in listings of “religions and belief.” Belgium, for example, recognizes and funds secular humanism (*la laïcité*) on the same basis as it does religions.

In this situation we can either define religion expansively to include these examples, or else say that we are not concerned only with religion per se but with something broader, what Article 18 of the Universal Declaration of Human Rights calls “thought, conscience and religion.”

These are radically different views of the nature of religion, but both strategies yield very similar results. It is now common practice to refer to freedom of “religion and/or belief.”

Article 18 of the Universal Declaration of Human Rights reads: “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.”

In *Religious freedom in the World*, following this and most other relevant international instruments, and most other analysts, religion is taken to include “religion and belief,” so that, where figures and material were available, groups such as Confucians and secular humanists were included and surveyed. In other cases, where available figures on such groups usually list them simply as “non religious,” this too is recorded. In any case, it should be clear that atheists and agnostics can be, and are, also persecuted for their beliefs, and also need something analogous to religious freedom. In Indonesia it is in principle illegal to be an atheist, though this provision is not usually enforced; but any Saudi Arabian, all of whom must, by law, be Muslim, who pronounced himself atheist would face a real risk of being executed for apostasy.

1.2 What is secular?

Another vexed question analogous to what is religious is the problem of what is “secular.” “Secular,” a term that has arisen in a Christian context (Taylor 2007) is a word with as many meanings as the word “religious,” which is not surprising since one of its most common contemporary meanings is “non-religious.” Used politically, it can refer to states, such as India or the United States, that regard secularity as openness and non-discrimination vis a vis religious and other beliefs, as well as noninterference with religious practice. But it can equally refer to states such as China or Vietnam, where secularism is the state ideology and is held to mean the exclusion of religion from public life. At times Turkey has held to a similar view, in which secularity is not seen as religious neutrality but as an, often aggressive, ideology upheld by the state. In 1997, in a brief to the Turkish Constitutional Court arguing that the Muslim-oriented Welfare Party should be declared illegal, Attorney General Vural Savas stated that “secularism... means the determination of social life in the area of education, family, economy, law, manners, attire....” (Yuksel 1999).

The variability of the secular, like the religious, means that secular regimes can pose as great a threat to religious freedom as so-called theocratic regimes. This contradicts a common opinion in the west that most restrictions on religious freedom, and other human rights, come at the hands of religiously identified states, and that the solution to this problem is to have secular states. It all depends on which interpretation of religious and secular we use.

2. Who is a religious adherent?

There are additional complications arising from particular religions. In some instances, being a Jew may be entirely disconnected from belief. There are atheist, agnostic, and believing Jews, even Buddhist Jews. Is Judaism then not a religion but an ethnicity or, rather, both? I have taken it to be both, and ethnic Jews are listed as Jews regardless of their beliefs. Similar issues arise with other religious groups. The term Hindu comes from the same root as the term India, and both refer to the people and beliefs of the Indus valley. Hinduism is diverse and covers a wide range of beliefs. Should it then be regarded as referring to the whole range of beliefs that have been adopted by or spring from the people of the Indus? It is on this basis that India’s nationalist BJP political party claims that Hinduism should be a defining characteristic of the Indian state. Many Hindus claim, on a historical basis, that Buddhism, along with some other religions, is a subset of Hinduism. Consequently, the Indian government has refused to recognize Buddhism, as well as Sikhism and Jainism, as a religion separate from Hinduism.

This also raises the question of who is properly a member of a particular religion. In many countries, people regard themselves as adherents to more than one religion. In India, there are Christians who also regard themselves as Hindus. In Japan and elsewhere, people may also claim to adhere to more than one religion: the total figure of individually claimed religious membership may be higher than the total population of the country. In many parts of Asia and Africa, as well as Latin America, people combine newer religions with indigenous beliefs. In this case, giving the number of, for example, Christians, as distinct from those who follow traditional practices, is a difficult exercise, as the two categories overlap and grade into one another. Membership in religious groups is often neither discrete nor clear.

Even when people are more or less involved only with one religion, there is the question of how much attachment, if any, is required to define an adherent. This is an especially acute problem in Europe, the part of the world where the distinction between religious practice and nominal religious identity is the greatest, although similar questions arise in majority Orthodox Christian, Muslim, and other countries. Government statistics may list high percentages of the population as “Orthodox” or Muslim, even though only a minority of the population claims any religious affiliation at all.

In Scandinavian countries, membership of the Lutheran Church (which usually denotes having been baptized as an infant) is often given as 90 percent plus. However, church attendance is sometimes less than 10 percent of the population. Since the question of who is a member of the church necessarily involves disputed theological questions, not least on the nature of baptism, there is no simple answer as to which of these figures should be used to denote the percentage of “Lutherans” in these countries.

Since, in many countries, religion and political affiliation, as well as religion and legal status, are closely related, the criteria of religious membership can have major political import. In Lebanon, the distribution of high political offices has historically been decided according to the percentage of religious groups in the population. Consequently, figures for confessional groups are highly contested and are currently determined on the basis of a decades-old census. In India and Israel the laws governing marriage and other personal status matters are specific to particular religions. This is also true in much of the Muslim world, and in some countries, such as Pakistan, legal evidence can be given different weight according to the religion (and gender) of the witness.

In assigning people to particular religions, it is, of course, important to know what data are available. Within particular countries, there are surveys that detail people’s beliefs and practices so that it is possible to judge subjective adherence to a religion. However, given the differences of religions, these are not currently avail-

able in a form that allows for comparison between religions and countries, hence are not yet available for use in a comparative survey. But data are now available for at least nominal adherence for many countries on a roughly comparable basis, so I have described religious adherents according to their nominal affiliation or identification with a religious group. Consequently, the description of someone as a Christian in the Netherlands, a Hindu in India, or a Muslim in Indonesia may not necessarily say much about their committed religious belief: it merely specifies a nominal religious identity. While this is a huge distinction, it is largely in the secularized West and countries presently or formerly under communism that it makes the largest statistical difference. In most other parts of the world a person's nominal adherence and religious practice are usually more congruent, thus the figures given for nominal adherence to a religion more closely reflect the beliefs of the populace, if not the depth of their commitment.

3. What is religious freedom?

Just as in medicine, where it is often easier to recognize illness than it is to define health, so in religious freedom research, or advocacy, it is usually easier to describe religious persecution, or restrictions on religious freedom than it is to describe religious freedom itself. Consequently, in my own work, and in the work of others who have sought to score religious freedom, such as the Pew Forum on Religion and Public Life, we have usually derived our scores by tabulating violations of religious freedom.

There is no agreed definition of religious freedom, but we can say that it is different from surveying particular human rights, such as press freedom, which would entail focusing only on particular organizations or practices. With freedom of the press one can look at the intensity of controls on particular media and the weight of penalties applied with those controls. But, unlike press freedom, religious freedom cuts across a wide range of human rights, and may best be regarded as a set of human rights.

I would suggest the following six elements as key components of religious freedom:

1. Freedom for believers to engage in particular practices apparently peculiar to religion – including, *inter alia*, particular modes of diet, dress, prayer.
2. Freedom to gather together for worship (it is particularly regrettable that there is an increasing practice of trying to reduce freedom of religion to freedom of worship).
3. The freedom of religious institutions and organizations to decide on their governance, rules and personnel.
4. The freedom of religious people to found and maintain distinctive social organizations, such as hospitals, family and welfare agencies, as well educational institutions and media.

5. Any human right in so far it involves particular religious bodies, individuals and activities. For example, the freedom to proclaim one's religion or belief involves issues of freedom of speech generally, and is parallel to freedom of speech in other areas of life. A similar situation occurs with freedom of the press and freedom of association: each of these is also a right of religious bodies. This means that we are looking not only at particular "religious rights," but also at any human right insofar as it affects freedom of religion or belief.
6. Freedom from discrimination or attack on the grounds of religion.

There are, of course, many situations where it is not immediately clear whether there is a violation of religious freedom. I suggest these guidelines:

- Are restrictions on religious groups "reasonable"? In the words of many international human rights documents, are they "subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others"?
- The question of whether something is a violation of religious freedom, as distinct from a violation of some other human right, depends on whether someone's religion is a factor, usually not the only one, in the treatment they give or receive. Put another way, would someone of different religious beliefs or no religious beliefs in the same situation mete out or suffer the same treatment?
- We should note that religious freedom can be violated by a government or another religious group even if the violation is not itself for religious motives. The motive is not, per se, the issue; the key question is the result. If a government represses churches, mosques, and temples in the same way as it represses political parties, newspapers and other groups, simply because the government wants no other centers of loyalty or authority in the society, then this is still a violation of religious freedom.

4. When is persecution religious?

There is a common tendency to say that religious persecution is not really religious, but is instead "ethnic," "political," or "economic." Clearly people are persecuted for reasons other than religion. Tutsis in Rwanda were massacred because they were Tutsis, regardless of their religion. However, it is important to emphasize that because something is "ethnic," "political," "economic," or "cultural," it does not mean that it is not also religious, and vice versa. Many things are both "political" and "religious": Europe and Latin America have many Christian Democratic parties, which are both politically and religiously defined. China is officially atheist, and Iran is officially Islamic: since they are states, their definition is necessarily political, but it is also religious.

Identities can also be both “cultural” and “religious”: Tibetan culture and religion are interwoven, as are Mexican or Indian culture and religion. Conflicts can be both “economic” and “religious”: the Sudanese government’s self-proclaimed jihads have striven for control over oil fields and grazing areas, and in doing so have pitted radical Islamists against Christians, animists and other Muslims.

In fact, outside of communist and radical Islamist settings, it is comparatively rare for someone to be repressed merely for their individual confessional beliefs if these beliefs do not affect some other facet of life. It is usually the very interrelation of religion with politics, economics and culture that leads to persecution. Furthermore, religion is often not merely an additional factor but is also intimately interwoven with other factors. Since religion refers, *inter alia*, to basic beliefs and commitments, it is only to be expected that it will be deeply connected to every other area of human life, a fact emphasized by nearly every religion in the world.

Also, in clarifying what is religious persecution, we need to take account not only of discrete acts but also of the context, including the religious context, in which they occur. This may be illustrated by a comparison with the role of race in South Africa during the period of apartheid. There were blacks allied with the Nationalist government and whites fighting for the African National Congress. Nelson Mandela was not imprisoned for his race, but because he was accused of terrorism. The government would have imprisoned anyone, of any race, whom it believed to be a terrorist, and it would have imprisoned anyone for terrorism even for a reason unconnected to apartheid. Would we say then that the South African conflict was political not racial, economic not racial, and cultural not racial? We would not, because we are aware that it was the marginalization of non-whites that drove the government’s opponents, black and white, to take the steps they did. Racial division lay behind government policies, hence acts which were not themselves racially motivated on an individual level could be undertaken to attack or defend a system which was. Similarly, people, regardless of their religion, may be religiously repressed by actions not directly motivated by religious animus but because their repressors seek to maintain a religious hegemony.

5. Church and state

Since the 1947 Supreme Court ruling in *Everson v. Board of Education*, Thomas Jefferson’s phrase “the separation of church and state” has become general shorthand in the United States for the religion clause of the First Amendment and for questions of freedom of religion generally. Unfortunately, this usage has spread to other countries, and we now also encounter the expression “separation of mosque and state” as a means to describe or advocate secularization in Muslim countries. This general usage is probably ineradicable. However, as an accurate or precise de-

piction of the criteria of religious freedom, the phrase is woefully deficient. It tells us very little about many substantial matters of religious freedom. We can see this if we consider church-state relations in Europe (Fox 2008, Fox 2011).

Some European countries have state churches and discriminate against those who are not members of these churches, whether Christian or of another religion. Greece's constitutional preamble says, "In the name of the Holy and Consubstantial and Indivisible Trinity." It declares, "The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ," and "The text of the Holy Scripture shall be maintained unaltered. Official translation without prior sanction by the Autocephalous Church of Greece is prohibited." The state pays Orthodox clergy salaries and finances Orthodox churches. While there are guarantees of religious freedom, non-Christians, and non-Orthodox Christians, suffer discrimination.

In contrast, in England the effects of the state church are relatively minimal. The monarch and some other figures have to be officially members of the Church of England, twelve Bishops sit in the House of Lords, and state occasions follow Anglican forms and traditions. The Prime Minister advises the Queen on the appointment of Bishops and other senior church personnel, and in effect appoints them, but that is the extent of state interference. The state does not fund the church, which faces hard financial times, and, with these exceptions, all other adherents are granted religious freedom. Norway has a state church paid for by public funds, but the church holds a privileged role only with respect to the monarchy and state occasions. Otherwise, all religions have an equal footing. Since Norwegians thought that it would be discriminatory to pay only the official Lutheran Church's clergy, they now give funding to all religious groups, Muslims included.

European countries without state churches are equally diverse.² In some cases, the constitution has a Christian character but there is no state church. The Irish constitution begins "In the Name of the Most Holy Trinity, from whom is all authority and to whom, as our final end, all actions both of men and States must be referred," and says, "The State acknowledges that the homage of public worship is due to Almighty God." However, there is no state church, and no religious body is given preference over any other. The state guarantees not to endow any religion nor impose any disabilities because of religious belief. Ireland is one of the world's most religiously free countries.³

France's 1958 constitution states that it "shall be an indivisible, secular democratic and social Republic," and the state enforces what it regards as a rigid separation between church and state. However, the 1905 law ending recognition and

² A similar variation in Muslim countries is outlined in United States Commission on International Religious Freedom, 2012.

³ See report on Ireland in Paul Marshall, ed., *Religious freedom in the world*.

financing of religions does not apply in the Alsace-Moselle region, which was under German rule at the time of the law's adoption. Hence, the French government still funds Catholic, Lutheran, Reformed, and Jewish activities in that area.⁴ In the rest of the country there is a two tiered system of religious groups, with some having tax exempt status and others denied it. Those denied such status are usually newer religious groups, often castigated as "cults," and often the target of government disparagement and intolerance. France has also created official Muslim groups.

Germany has no state church but the Catholic and Protestant mainline churches have contracts with the state based on which the state renders a paid service in collecting member fees from any of their members who are liable for tax. Any taxpayer can opt out of this system by relinquishing membership of the church, but many non-churchgoers have not done so. Non-tax payers and members of any of the other much smaller churches pay their contributions directly to their churches. The Constitution gives a right to establish private schools, including religious ones, and these are state subsidized. Austria's Fundamental Law gives, "Full freedom of belief and conscience... to everyone." However, it distinguishes between recognised and non-recognised religions. The former can call on the state to help them collect taxes from their members (who are, however, free to leave their church and escape the tax burden).

In Belgium, the Constitution guarantees the rights not only of religious groups per se but also of ideological and philosophical minorities. The state subsidizes religions and beliefs. The Ministry of Justice pays the wages of religious ministers and secular moral advisers, the Foreign Ministry pays missionaries' wages, and the Ministry of Public Works finances places of worship. State funding also goes to support "secular humanism" (*la laïcité*), which is recognized through the Central Secular Council.

Hence, Europe has countries with state churches that are funded, with state churches where the state funds all religious groups and equivalent secular groups, and with state churches that are not funded. It also has countries without state churches where the state does not fund some or all religious groups, and without state churches combined with no funding of religious groups by the state. All these types of countries can have relatively good records of religious freedom.

Questions of church establishment and the relation, or separation, of church and state themselves may tell us little about larger questions of religious freedom. The important issue is what kind of religion or secularity, or type of establishment

⁴ Similarly, the 1905 law did not extend to French Guiana, at the time a colony, and the government of French Guiana continues to fund Roman Catholicism.

or separation, is being propagated. It is vitally important to make careful distinctions between the many different types of systems that exist.

6. Conclusion

I have raised several of the conceptual questions that arise in analyzing and describing international religious freedom, and would like to emphasize that there is no simple, non-controversial, way to answer or avoid these questions. They can be intimately intertwined with theological questions: Baptists and Catholics have very different criteria as to who counts as a member of their church. When we cast the net to include other religions the religion-specific answers vary more widely. The important thing is to clarify, explain, and justify the approach we take.

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Religious freedom and the twofold work of God in the world

Thomas K Johnson¹

Abstract

In light of the high level of documentation of the contribution of freedom of religion to societal well-being, and in view of the extraordinary levels of religiously motivated violence and oppression, it would be worthwhile for evangelicals to reformulate the Reformation “Two Kingdoms” theory of social ethics in a manner that can be appropriated throughout the Body of Christ and perhaps be contributed from the Christian community into the broader global political culture. As a small step in this direction, we can begin to talk about the “Twofold Work of God in the World” and make this theme a standard part of Christian ethics.

Keywords Religious freedom, theology.

1. Truths about society, religion, and culture

There are two overarching truths about our world that should, I think, influence many of our discussions about religion and public life. The first truth is that religious persecution does not only hurt or kill individuals, disrupt families, and decimate religious communities; the lack of religious freedom is closely associated with and contributes to a wide range of social maladies, whereas practiced freedom of religion is associated with and contributes to many aspects of a healthy society and to the entirety of the well-being of a society.² This is well-documented social science. The second overarching truth is that the repression of religious freedom, including religiously motivated violence, is extremely high today, perhaps higher than in most previous millennia, even if such historical generalizations are hard to document. And the problem is almost certainly rising.³ But from the middle of

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² See Brian J. Grim, Religious freedom and social well-being: A critical appraisal, *URF* 2:1, 2009, 37-46; see also Timothy Samuel Shah et al, *Religious freedom: Why now? Defending an embattled human right* (Princeton, NJ, USA: The Witherspoon Institute, 2012), 86 p.

³ See Brian J. Grim, Rising restrictions on religion: Context, statistics, and implications, *URF* 5:1, 2012,

these two truths arises an important question: why is it that there are pockets in the world that have enjoyed significant levels of freedom of religion for decades if not centuries? My great grandparents, grandparents, parents, children, and grandchildren have had the distinct, really extraordinary privilege of living in one of those relatively small pockets in the world which enjoy the wide-ranging benefits of freedom of religion. Why do those pockets exist? And what can be done to expand them to include more people?

Of course one commonly hears that freedom of religion in the West arose out of a social compromise or even a vague social contract among religions and the western Enlightenment or between religions and secularism, such that secularism or a secular Enlightenment becomes the guarantor of religious freedom.⁴ But this description assumes that most or all religions have an inherent drive toward a type of theocracy that would rob adherents of other religions of the right to freely practice their convictions and ignores many crucial facts of religious history. One only has to mention that a man like Roger Williams was moved by deep religious zeal to write freedom of religion into the constitution of his state, Rhode Island, to see the essential flaw in the commonly painted big picture.⁵ And if freedom of religion is dependent on secularism, then most of the human race is doomed to never experience fundamental freedoms, for secularism never has and probably never will extend itself to more than a small minority of the human race. The world today is extremely religious. We need a different narrative and sociological paradigm to describe the origins of life-giving freedom of religion, a paradigm we will be able to promote today.

To understand one of the ways in which freedom of religion became a supposedly secular conviction one must notice the way in which deep convictions with religious roots, but which do not directly have to do with our relation with God or the divine, often migrate from the realm of religion to become ongoing moral themes in a broader culture which then give an orientation and direction to both economic and political behavior.⁶ The phenomenon which Max Weber described in

17-33.

⁴ One of the recent examples of this narrative coming from the pen of a prominent thinker is found in an interview with the important Austrian social philosopher Konrad Paul Liessmann, "Religionen sind ja keine Anleitung zum guten Leben," January 26, 2013, www.derStandard.at.

⁵ See Thomas Schirrmacher, Christianity and democracy, IJRF 2:2, 2009, 73-85, for documentation.

⁶ I am using a distinction between ultimate and penultimate themes in religions and worldviews, recognizing that this distinction is not always 100% clear and that the relation between the ultimate and penultimate in most religions and worldviews is dynamic. For the background for this type of analysis see Thomas K. Johnson, *Dialogue with Kierkegaard in Protestant theology: Donald Bloesch, Francis Schaeffer, and Helmut Thielicke*, MBS Text 175, available at www.bucer.eu. In addition to responding to generally secular interpretations of the origins of religious freedom, the perspective I am arguing here is a response to the theory clearly articulated by Karl Marx and echoing through much of secular-

The Protestant ethic and the spirit of capitalism that moral themes arising in the Protestant Reformation shaped northern European thinking and feeling about work ethics and the economy, is far from the only time this has occurred.⁷ The contribution of a package of ideas, values, and perceptions of moral duty to a culture is one of the several relations that religions have to cultures, and this is one of the several relations of Christianity to culture which I advocate as a Christian theologian.⁸ *This is one of the crucial roots of religious freedom in those pockets of the world's population which not only enjoy freedom of religion but also the wide-ranging social, moral, political, and economic benefits flowing from freedom of religion.*

2. Directly perceived moral duties

There are certain ear-catching lines in the New Testament that are so poignant that they have made defining moral contributions in the history of cultures, even among people who might not accept specifically Christian claims such as the incarnation or the resurrection. For example, many perceive a direct, inherent moral authority when they hear Jesus say, "So give back to Caesar what is Caesar's, and to God what is God's." (Matthew 22:21)⁹ Pontius Pilate seems to have had this experience of

ism, that economic relations determine our moral, cultural, and religious convictions. For example, in *The Communist Manifesto* (1848) Marx claimed that class identity, which arises from economic relations, controls the convictions of a social class in such important realms as ethics, jurisprudence, family, and education. Ironically, it is the history of Communism which provides some of the best evidence that economic and political behavior (including religious freedom or persecution) is heavily shaped or even controlled by the sort of convictions Marx thought were controlled by economic factors. Globally, cultural values and convictions shape and or even direct political, legal, and economic decisions.

⁷ The Protestant work ethic was often summarized under the three values of "diligence, honesty, and thrift," with the background assumption that work is a calling of God, which together form a stark contrast with modern consumerism. Max Weber's study was originally published as an essay entitled "Die protestantische Ethik und der Geist des Kapitalismus" in 1904 and 1905 in volumes XX and XXI of the *Archiv für Sozialwissenschaft und Sozialpolitik*. It was republished in 1920 in German as the first part of Weber's series *Gesammelte Aufsätze zur Religionssoziologie*. It was published in English as *The Protestant ethic and the spirit of capitalism*, (New York, Scribner, 1958; reprint New York, Dover, 2003). My application of themes from Weber to our time appeared as *The spirit of the Protestant work ethic and the world economic crisis*, MBS Text 137, 2009. There have been many criticisms of Weber's thesis, and of the version of it promoted by R. H. Tawney. I think the most important criticism is that Weber seriously misunderstood classical Protestant theology and especially the doctrine of election.

⁸ See Thomas K. Johnson, Christ and culture, *ERT*, 35:1, Jan., 2011. I have repeatedly described four dimensions of the way the biblical message relates to cultures, including correlation, critique, construction, and contribution. Cultural renewal comes by means of the combination of all four relations of the biblical message to cultures.

⁹ Of course Jesus' question about "whose image" was on the coin has always led reflective hearers to consider that even Caesar was a normal mortal, created in the image of God, simultaneously undermining the cult of Caesar worship while also affirming Caesar's real but delegated authority. The biblical quotations in this paragraph undermine totalitarianism.

direct moral authority when Jesus said to him, “You would have no power over me if it were not given you from above.” (John 19:11) The apostle Paul later codified these direct moral experiences into a capsule political theory when he wrote, “Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God.” (Romans 13:1) Suddenly government authorities are perceived as having both authority from God and accountability to God, while there are also realms of human life which belong directly to God over which government has no authority, all communicated in such compact phrases that almost anyone can remember them, allowing many to meditate on their meaning. This is from Jesus, but Jesus did not ask these hearers to first believe something about him before accepting these particular moral principles. These words have a direct and inherent moral authority.¹⁰

This is, I think, one of the crucial cultural origins of freedom of religion. On the one hand, this moral/political package obviously has religious roots, the teaching of Jesus, but on the other hand, these moral perceptions and political convictions are not tightly tied to specific beliefs about Jesus or God, nor are they tightly tied to belonging to a particular religious community. They are the kind of convictions that are ideally suited to be transferred from the specific realm of faith into the broad stream of a moral/cultural inheritance that leads people both to write declarations and laws protecting freedom of religion and then to perceive those declarations and laws as legitimate and worthy of enforcement. This is one of the important means of God’s common grace with a result today that some two billion people enjoy significant religious freedom, even though this work of God’s grace has not yet been extended to the majority of the world’s population.

3. Formulating a paradigm

If this generalized account of the historical/cultural origins of religious freedom is even ten percent accurate, it would be extraordinarily worthwhile to ponder how we might more consciously engage in this process that has already been going on for two millennia. Perhaps, in a generation or two, a higher percentage of our neighbors might benefit from this crucial freedom. To this end, we should glance at how these moral perceptions have been thematized historically in Christian ethics and even at how we might do so in the future.

¹⁰ In this case the properly basic moral authority of these biblical statements arises from the way in which they activate moral principles which were already potentially present (but perhaps suppressed) in human consciousness because of the general revelation of God’s moral law.

To avoid misunderstanding, we should say that the question we are addressing is different from the “Two Ways” doctrine that has been common in Christian ethics since the *Didache*; it is also different from the “Two Cities” doctrine that Augustine articulated in Christian ethics.¹¹ What I have in mind builds on the doctrine of Pope Gelasius I, which he articulated clearly but with a poor choice of terminology with his “Two Swords” doctrine in the 490s. Against the Roman Empire of his time, which though in sharp decline, still had totalitarian instincts, he argued that the two authorities, church and empire, had distinct dignities with distinct functions which must be distinguished, so that the state deals with public order, mundane matters, and temporal affairs while the church addresses divine matters and eternal mysteries. The term “Two Swords” should no longer be used because it sounds too much as though we think the church should carry a sword other than the sword of the Holy Spirit, which is the Word of God; we need to emphasize today that the state has a monopoly on the use of force which was symbolized traditionally by a physical sword. But the biblical themes which Gelasius articulated grew out of the New Testament texts we noted and argued that civil and church authorities have their own distinct dignities and God-given responsibilities such that neither should encroach on the work of the other. The realm of faith and the realm of civic order are clearly distinguished. This is a large conceptual step toward a theory of religious freedom coming from an early pope, which helped lay the groundwork for the development of civil society in the West.¹²

For me as a Protestant it is very interesting the way themes articulated by Gelasius were developed into slightly different “Two Kingdoms” doctrines at the time of the Reformation. We can glimpse the doctrinal development from Gelasius to Luther by saying that whereas Gelasius talked about two swords, Martin Luther talked about two kingdoms, one ruled by the sword and one ruled by Christ through his Word and Spirit. For Luther, both kingdoms are really God’s kingdoms, but in God’s left-hand or secular kingdom, God can remain hidden or anonymous and still accomplish his purposes for that kingdom. The left-hand kingdom is much more than government; it includes all those things that contribute to maintaining and developing earthly life, such as a marriage, family, business, stations, and property.

¹¹ The *Didache* (in Greek *Διδαχή*) was a catechetical document from the late first or early second century which taught that there are two ways, a way of life and a way of death, emphasizing the difference between faith and unbelief. In his *City of God* (in Latin, *De Civitate Dei contra Paganos*) Augustine explained that humanity is comprised of two cities, one shaped by love of God and one shaped by love of self. These valuable Christian doctrines are addressing different questions than we are addressing here.

¹² Some of this history is told effectively by David VanDrunen, *Natural law and the Two Kingdoms: A study in the development of Reformed social thought* (Grand Rapids and Cambridge: Wm. B. Eerdmans, 2010), 21–42.

(The inclusion of these themes other than the state distinguishes Luther's doctrine from late medieval versions of "Two Swords" theory such as that articulated by Boniface VIII in the 1300s, which both placed business under the "Sword" of the church and claimed that the church had a type of authority over the state.) To avoid misunderstanding Luther, one must note that the kingdom rooted in creation and the kingdom rooted in redemption need each other and contribute to each other, so that the health of one is always tied to the health of the other.¹³

Perhaps more strongly than Martin Luther, John Calvin assumed a religiously unified "Christendom," a cultural situation which has long passed. Nevertheless he contributed to two kingdoms doctrine by clarifying characteristics of each. Key attributes of the kingdom of Christ are its redemptive character, its spiritual identity, and its institutional expression in the church. Key attributes of the civil kingdom are its non-redemptive character, its earthly or external identity, and its institutional association with civil government, though it is also associated with other civic institutions. As with Luther, both kingdoms are really God's kingdoms which must be clearly distinguished in our ethics, so that the civil kingdom is especially to be guided by God's natural moral law while the church is the place to apply *sola scriptura*.¹⁴

We have to face the problem that "Two Swords" and "Two Kingdoms" doctrines have repeatedly been misunderstood both among Christians and in the rest of society, even though the underlying properly basic moral apprehensions related to our New Testament quotations have been so extraordinarily constructive.¹⁵ We commonly hear that these Christian moral doctrines mean that public life is left to secularism or to secular political ideologies because Christian theology has become dualistic. And possibly some have used mistaken versions of these doctrines to claim that public officials are not directly accountable to God for their actions, the opposite of what Jesus told Pilate. However, I do not think the standard criticisms of two kingdoms doctrine are accurate. More important, I am convinced that the moral perceptions contained in two kingdoms doctrine have been crucial to the development of freedom of religion and the whole of civil society.¹⁶ Jesus himself

¹³ My description of Luther's views is dependent on Paul Althaus, *The ethics of Martin Luther*, (Philadelphia: Fortress, 1972), 43-82.

¹⁴ See VanDrunen, 67-115.

¹⁵ By this terminology I am suggesting we can distinguish between direct or properly basic moral and spiritual perceptions from our theoretical reflection on these perceptions. This principle of the "New Reformed Epistemology" is important for freedom of religion efforts. A good introduction to this philosophy of knowledge is Kelly James Clark, *Return to reason: A critique of Enlightenment evidentialism and a defense of reason and belief in God* (Grand Rapids: Wm. B. Eerdmans, 1990).

¹⁶ The central philosophical question is if we can honestly distinguish a direct moral truth, such as Jesus' words to Pilate, from a theological truth claim, for example, that God was in Christ reconciling the

distinguished between what must be given to Caesar and what must be given to God, thereby contributing a fundamental moral distinction to many cultures which has led to freedom of religion for many of us. However, we may need to update our terminology so we can communicate this distinction more effectively in Christian theology and ethics, both inside the church and also in our several cultures. For this purpose I propose we substitute the term “Twofold work of God in the world” in place of “Two kingdoms doctrine.”

Under the heading of “Twofold work of God in the world” I have suggested that we talk about six related themes in our theology and ethics.¹⁷ These six are: 1. God’s two revelations, general revelation and special revelation; 2. The two forms in which God gives us his moral law, God’s natural moral law and the biblical revelation of God’s law;¹⁸ 3. The two types of God’s grace, his common grace that makes human life possible and special grace, meaning redemption by faith in Jesus; 4. The two types of righteousness, active civil righteousness, which is also civic responsibility, and passive spiritual righteousness, which is justification by faith in Christ; 5. Two types of wisdom, including God-given practical wisdom about how to live humane lives and spiritual wisdom of knowing God; and finally 6. God’s two kingdoms, meaning the two ways in which God reigns over our lives, including his sometimes hidden and anonymous reign over the affairs of peoples and nations through the structures of creation and his conscious redeeming reign over believers by his Word and Spirit.

An articulation of these six dualities of God’s activity, rather than being dualist or secularizing, is a way to overcome many of the different dualisms that have plagued believers throughout the centuries.¹⁹ It is very important for freedom of religion efforts: it gives us a clearly theological way of talking about life in society that is obviously *neither secular nor theocratic*. It is a theological doctrine that corresponds with what social critics such as Os Guinness are calling a “Civil public square,”

world to himself. This question can also be phrased in theological terms: can we truly distinguish God’s moral law from the gospel? Obviously I think we both can and must make this distinction and should do so very clearly.

¹⁷ A valuable study which shows the internal connections among human rights (including freedom of religion), the natural moral law, and God’s general revelation is Pavel Hošek, “The Christian claim for universal human rights in relation to natural law,” *IJRF* 5:2, 2012, 147-160.

¹⁸ For an excellent article which specifically shows the basis for freedom of religion in God’s natural moral law see David VanDrunen, “A natural law right to religious freedom,” *IJRF* Vol. 5:2, 2012, 135-146.

¹⁹ In *The twofold work of God in the world*, MBS Text 102 (2008 at www.bucer.eu) I argued that a good understanding of these proper dualities overcomes many of the common dualisms faced by Christians in the last 2000 years, including Zoroastrian, Hellenistic, nature/grace, public/private, and postmodern varieties of dualism. This argument was included in my book *What difference does the Trinity make? A complete faith, life, and worldview*, Vol. 7, Global Issues Book Series of the World Evangelical Alliance, 2009, available as a free download at www.bucer.eu.

which contrasts with both a “Sacred public square” and a “Naked public square.” Imitating Jesus, it emphasizes that modern Pilates are directly accountable to God without saying state officials are accountable to a particular religious institution or tradition. We Christians have a way to talk about and promote freedom of religion that neither assumes secularism nor a religious establishment and which assumes that religious pluralism will continue in all the societies in which we live. We have both direct moral intuitions and an ethical theory to explain those moral intuitions, either or both of which can potentially migrate from the realm of our particular religious communities into our wider societies. This will never be complete or total, just as the northern European acceptance of the Protestant Work Ethic was never complete. Nevertheless, even a small and partial migration of this moral/cultural package into wider cultures would be valuable.

What to do? I think that Christian teachers from all our traditions need to directly take up the themes of Two Kingdoms or the Twofold Work of God, both in our teaching in the Christian churches and also in all our discussions with representatives of other religions. Some other religions resist freedom of religion because they feel, unnecessarily, that freedom of religion is associated with secularism. If people who are members of other religions or members of no religion regularly hear us talk about God’s twofold work and frequently hear us quote Jesus’ remarkable words to Pilate or about Caesar, we may be able to slowly contribute a moral package into more and wider political cultures. In this way we might extend the wide range of social benefits related to freedom of religion to a larger number of our neighbors, even if the problem of violence and repression is a problem almost as old as humanity which will certainly continue until our Lord’s return.



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Registration of religious organizations

Problems in decisions of the Constitutional Court of the Russian Federation and ECtHR

Anastasia Isaeva¹

Abstract

This article reflects on some modern legal forms of activities of religious associations and problems of their registration. It focuses on the questions of legal backgrounds for the exercise of freedom of conscience in Russia, international standards of the activities of religious organizations, collective forms of freedom of conscience and religion in the court's decisions. Finally, it discusses the need to amend the existing Russian legislation that does not comply with the principle of secularism enshrined in the 1993 Constitution.

Keywords Religious association, state registration, secularism, traditional church, confessional policy.

Relations between church and state have developed through many centuries. The church's role in society has changed, and this is fixed on the basic laws of all countries. The religious question has always been significant for a multi-national and multi-confessional Russia. Rules of law have traditionally regulated the relationship between state and religious associations. In Russia there are situations where people cannot realize freedom of conscience in its collective form. Existing legal acts set significant limitations on the creation and activity of religious associations, but such restrictions are not imposed on any other type of non-profit organization (e.g. political parties, public associations, and others). This is a limitation of human rights on grounds of faith. At the same time, there are no federal legal norms on missionary teaching of theology and religious culture in educational institutions, chaplains' activities, counterac-

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tion of the antisocial sects, and state support of socially significant activities of the church. Therefore, activities of religious organizations can be arbitrarily restricted, until they are banned. Additionally, in a situation where there are no federal regulations, regional restrictions may be imposed that do not correspond to the principle of equality of religions (for example, there are the laws in the Voronezh and Belgorod regions, etc.). This practice hinders the progressive development of relations in the sphere of realization of freedom of conscience. It also leads to a violation of human rights, because citizens cannot freely realize freedom of religion collectively by creating a religious association, and some of their activities may be prohibited at any time. This circumstance does not comply with the country's political course and should be the subject of legislative reform. The exclusion of these defects should become one of the main directions of reform legislation.

This article compares the legal forms of activities of religious associations with the problem of their registration as decided by the court. This consists of four parts. The *first* describes the legal framework, legal status of religious associations (religious groups and organizations), and discriminatory status of religious groups compared to religious organizations. The *second part* analyzes the international instruments regulating the issue of the status of religious associations and the main principles which should be followed in this field. The *third part* deals with the jurisprudence of the Russian courts and the Constitutional Court of Russia to assess the requirements for registration of religious associations. The fourth section sets out the legal positions of the European Court of Human Rights (ECtHR) in order to prevent and eliminate problems in the legal classification of religious groups and the order of their registration.

Based on the comparative analysis I will suggest amendments to the current Russian legislation to avoid unequal treatment of different types of religious associations, and exclude significant restrictions on freedom of conscience. The paper will examine the Russian experience from a comparative perspective. It could help to modernize regulation and suggest possible practical recommendations to legislators.

1. Russian legal background: implementation issues of freedom of conscience

According to Article 14 of the Constitution of 1993, Russia is a secular state. Religious associations shall be separated from the State and shall be equal before the law, and no religion may be established as a state or obligatory one. This provision is considered by the Constitution of the Russian Federation as one of the fundamentals of the constitutional system.

In the Russian Federation there are a large number of legal acts regulating the status of religious associations.² Some laws do this indirectly (as they are not adopted to regulate the status of such organisations as their main objective), but regularly separate elements of the legal status. For example, the counterextremism law places restrictions on religious freedom. In addition to the Constitution (Art. 14, 28, 30), the 1997 Federal Law on Freedom of Conscience and Religious Associations has an important place in the regulation of questions of realization of freedom of conscience, including in its collective forms.³ And although the said law mainly corresponds to the provisions of the 1993 Constitution and international obligations of Russia, a number of its provisions, in our point of view, have a contradictory character. During his adoption at the session of the State Duma of the Russian Federation (the lower chamber of Parliament) on 19 September 1997 Mr. V. Zorkaltsev, chairman of the Duma committee on affairs of social and religious associations and one of the drafters of the law, spoke as follows before the law was put to a vote:

Nevertheless, I will remind you of the essence of this law. It is this: the law will create a barrier on the path to religious expansion in Russia, it will hinder the development of totalitarian sects and restrict the activities of foreign missionaries, while at the same time creating conditions for the activities of our traditional religions and confessions. I say that to those who today feel that our law is unfit and are planning to vote against it. And I want to put this question to you: whose side are you on, dear colleagues?

That is, the law was conceived as discriminatory from the outset. Its disadvantages include the following: First, the formulation of a preamble is incorrect.⁴ All the religious diversity of Russia is presented as a hierarchy of religions with the recognition of the special contribution “of Orthodoxy to the history of Russia and in the formation and development of Russian spirituality and culture.”⁵ Such legal regulation entails preferences for this church and a negative attitude towards new religious movements. Second, the legislator, dividing religious associations into

² See, the 1993 Constitution of the Russian Federation, the 1996 Federal Law № 125-FZ on Noncommercial Organizations, the 1997 Federal Law № 125-FZ on Freedom of Conscience and Religious Associations, the 1995 Federal law № 35-FZ on charitable activities and charitable organizations, the 2001 Federal Law № 29-FZ on State Registration of Legal Entities and Individual Entrepreneurs, the 2002 Federal Law № 14 on Countering Extremist Activities, the 2010 Federal Law № 27-FZ on Transferring Property of Religious Value Currently under Governmental or Municipal Control to Religious Organizations, etc.

³ The 1997 Federal Law № 125-FZ on Freedom of Conscience and Religious Associations, CL RF 1997, № 3, P. 4465.

⁴ Igor V. Ponkin, Commentary on some articles of the Federal Law on Freedom of Conscience and Religious Associations (Moscow: Institute of State-confessional Relations and Law, 2007).

⁵ Vladimir Lukin, The conclusion of the Commissioner for Human Rights of the Russian Federation.” Russian Newspaper. (April 22, 1999) № 7.

categories depending on their legal status, did not define the scope of rights of both types. Third, there is an absence of legal guarantees and mechanisms of state support for socially significant activities of religious organizations (such as rehabilitation of offenders, prevention of drug and alcohol addiction, care for socially unprotected people, etc.). Fourth, there is an absence of legal basis and mechanisms of government assistance to religious pilgrimage. Fifth, we face inefficiency and even corruption of the existing order of production of the state religious expert examination.⁶ The principle on which the 1997 federal law was based allows the court to prohibit the activities of any religious association and introduces what may be called “quasi-official religion,” because law establishes a preferential status for “traditional” religious organizations and restrictions for new churches and for the activities of foreign missionaries. But the most discussed and controversial issue is legal classification and the system of registration of religious associations. The 1997 federal law provides the possibility of creating two types of religious associations: religious groups and religious organizations. Other types of legal organizational forms are not provided in the legislation. Their main difference is that a religious organization is a registered association of Russian citizens, which has legal personality, but religious groups have no status of legal entity, and therefore, fewer rights. For example, religious groups have no right to establish educational institutions, produce, purchase, export, import religious literature and other objects with religious significance, or to establish mass media. However, all of the above are very typical activities for any kind of religious association.

According to Article 9 of the 1997 federal law, the founders of a religious organization may comprise no less than 10 citizens of the Russian Federation associated as a religious group, having a confirmation of its existence in the given territory within no less than 15 years. In other countries there are no such restrictions on the registration of religious organizations. Or in the country-established compulsory registration of all religious associations (Argentina, Botswana, Vietnam, Cameroon, Mali, Mongolia, Morocco, Benin Republic, the Slovak Republic, Central African Republic, Switzerland, Sweden), or if the registration is not compulsory, but the participants decide to register the association, they can get legal status without time limits for the organization's existence in the country. They can be either a non-profit organization (Canada, Turkey), or have special status as a religious organization (Ukraine, Kazakhstan, Belarus). The term of activity in the country may be consid-

⁶ Anatoly V. Pchelintsev, What should the state religious expert examine? (2009) 3 Russian Justice at 49; Sergei A. Buryanov, Sergei A. Mozgovoy, The problems of implementation the freedom of conscience and trends in the relationship between the state and religious associations in Russia (Moscow: Institute for the freedom of conscience, 2004), Oleg N. Terekhov, Problems of constitutional and legal status of religious associations (Moscow, 2004), etcetera.

ered when the state is granting a special preferential status for religious association (for example, in Austria, when granting the status of “religious confessional communities”). Thus, in Russia if a religious group is not associated with any centralized religious organization, or does not have documents to substantiate its existence in the given territory for 15 years, it will not be registered as a legal entity. Therefore, citizens are not always able to realize freedom of conscience in its collective form as guaranteed by the Constitution and international treaties.

2. International standards and legal framework for the activities of religious organizations

Because of the significance of entity status to the practical functioning of religious and other belief communities, and because of the variety of ways that states may impinge on the rights of such groups in affording them legal entity status, various countries have made commitments related to the right of religious associations on the status of the legal person.⁷ After the Madrid meeting in 1983, the participating states of the OSCE reported that they undertake to “favourably consider applications by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.”⁸ This position was further strengthened in the Vienna Concluding Document (1989), which pointed out that participating states would not only “favourably consider applications,” but also grant at their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries. Thus, the particular form of legal entity can vary in different countries, but access to some form of legal entity, which allows the full range of religious activities, must be provided. Not every type of legal entity allows organizations to carry out the full range of religious activities, and especially as a form of religious group. Provisions of federal law that authorize a legal status to certain organizations (existing in the

⁷ For example, the 1948 Universal Declaration of Human Rights (Art. 18), the 1966 International Covenant on Civil and Political Rights (Art. 18), Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)(Articles 6,7); Helsinki Final Act (1975) (principle VII); Concluding Document of the Madrid Meeting (1983) (paragraph 12 of Questions Relating to Security in Europe); Concluding Document of the Vienna Meeting (1989) (principle 11); Document of the Copenhagen Meeting (1990)(Paragraph 9.4); Charter of Paris for a New Europe (paragraphs 5-6); Budapest Document toward a Genuine Partnership in a New Era (1994)(Chapter IV, 37).

⁸ Concluding document of the Madrid meeting 1980 of Representatives of the participating States of the Conference on Security and Co-operation in Europe, held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference, Madrid, 1983 <http://www.osce.org/mc/40871No> accessed 4 September 2013.

country for at least 15 years), but also prohibit certain types of activities that do not satisfy these criteria. These provisions fail to comply with standards set down by Article 9 of the ECtHR, which stipulates no restrictions on collective worship. Since such a limited status does not allow for the organization to realize its basic religious functions, refusal to provide the necessary legal status means to impose restrictions on the right to practice religion which is contrary to Article 9 of the ECtHR. This article guarantees freedom of thought, conscience and religion. This norm is closely related not only with Article 8, but also with Articles 10 and 11, since freedom to practice religion or belief includes the need to appeal to freedom of expression or freedom of assembly. But freedom of religion is not absolute and may be limited. It is difficult to agree with the refusal to grant entity status only because the organization does not “exist” before it is a “necessity in a democratic society.”⁹ Respect for the rights of religious organizations requires that States adopt laws regulating the sufficiently adaptable activities of religious organizations. They must consider the interests of the different types of religious organizations that exist in each country. But Russian legislation has not fully fixed the international standards of realization of freedom of religion. Citizens cannot establish religious organizations without any restrictions.

3. Case law of the Russian courts

In cases relating to the implementation of freedom of conscience Russian courts have made several decisions, but in these the requirement of “15 years” has not been assessed.¹⁰

The most important case was considered in the Constitutional Court in 1999. The Constitutional Court of the Russian Federation considered the appeal of the Religious Society of Jehovah's Witnesses in Yaroslavl City and the religious association “Christian Glorification Church.” The subject of both appeals was the requirement of Article 27 of the federal law on the need for annual re-registration of a religious organization for 15 years. In this period, they cannot enjoy the rights provided to other religious organizations. The Constitutional Court has not accepted the provisions of the law as unconstitutional and said that it does not apply to religious organizations established before the entry into force of federal law, as well as local

⁹ Cole Durham, Freedom of religion or belief: laws affecting the structuring of religious communities, Organization for Security and Co-operation in Europe Review Conference, September 1999 ODIHR Background Paper 1999/4 <http://www.osce.org/odihr/16698> accessed 4 September 2013.

¹⁰ See, decision №-P of 23 November 1999 in the case of Religious Society of Jehovah's Witnesses in Yaroslavl and Christian Glorification Church // CL RF 1999. №1. P. 6363; decision №-P of 13 April 2000 in the case of religious association “Independent Russian Region of the Society of Jesus” // CL RF 2000. №9. P. 2101; decision №-O of 7 January 2002 in the case of religious association “the Moscow Branch of The Salvation Army” // CL RF 2002. №1. P. 963 and others.

religious organizations, within the structure of a centralized religious organization. In its decision, the court made several conclusions.

First, freedom of religion includes the freedom of creation of religious associations and their activities, which is based on the principle of legal equality. A federal legislator has the right to settle civil legal status of religious associations, including the conditions for recognition of religious associations as legal entities, the procedure of its establishment and state registration, and more. At the same time, the legislator should take into account the universally-recognized principles and norms of international law. Measures taken by the state on establishment and registration of religious organizations should not distort the essence of freedom of religion, freedom of association and their activities. Possible limitation affecting these and other constitutional rights must be justified and proportional constitutionally for significant purposes.

Second, the state may provide some restrictions, in order not to automatically grant legal status of a religious organization, prevent the legalization of sects that violate human rights and law, and prevent missionary activity, including the problem of proselytism, if it is incompatible with respect to freedom of thought, conscience and religion of other people.

Third, the provisions which are analyzed are to be considered in conjunction with other articles of federal law. Thus, the confirmation of 15 years of existence is not required to establish and register a local religious organization which is part of a centralized religious organization. And if a religious organization was founded before the entry into force of the federal law, then such confirmation is not required as a religious group has ceased to exist, transforming itself into a religious organization, which was registered as a legal entity and, therefore, considered to be established. Since that point it has obtained legal capacity. Such a religious organization is not required to re-register annually until the period of 15 years. That is, in its decision the court considered the problem formally. The constitutionality of the restrictions imposed by the Law for religious freedom in regard to other religious organizations is not directly considered. Such a position of the court caused a negative assessment from politicians and lawyers, who suggested that the court "elegantly retired from the recognition that discriminatory rules are unconstitutional", that the decision is limited, that it does not prevent religious discrimination, although it formally satisfies the specific applicants.¹¹ In its decision the Constitutional Court of Russia, instead of considering the content of the provisions of Article 27 of the federal law, found ways to resolve individual problems. It determined that

¹¹ Krasikov A. The Constitutional Court and the freedom of conscience in Russia. Constitutional Law: vostochnoevro-European survey (Number 1, 2000). Vladimir Lukin, The conclusion of the Commissioner for Human Rights of the Russian Federation. Russian newspaper. (April 22, 1999) №7.

the challenged norms should have an entirely different interpretation. They may not apply to religious organizations that have state registration in accordance with the requirements of the former law.

4. The ECtHR's assessment of collective forms of freedom of conscience and religion

The procedure and requirements for registration of religious associations challenges not only Russia but also foreign countries. Many other European countries have experienced (and many still face) serious difficulties in this matter and the ECtHR had to deal with many cases on this topic. For example, the cases *Kokinakis v. Greece* (No 14307/88, 25.05.1993, § 17-18, 31, 33); *Otto-Preminger-Institut v. Austria* (No 13470/87, 20.09.1994, § 47); *Serif v. Greece* (No 38178, 14.03.2000, § 49); *Hassan and Chaush v. Bulgaria* (No 30985/96, 26.10.2000, § 60); *Wingrove v. the United Kingdom* (No 45701/99, 13.12.2001, § 53); *Kalaç v. Turkey* (No 20704/92, 01.07.1997); *Metropolitan Church of Bessarabia and Others v. Moldova* (No 45701/99, 27.03.2002, § 118); *APEH Üldözötteinek Szövetsége and Others v. Hungary* (No 32367/96, 05.10.2000), etcetera analyzed the problems of establishing the aim and object of guarantees of the freedom of thought, conscience and religion; forms of realization of the freedom of religion; the possibility of state intervention and its limits; the right to exercise freedom of religion in the form of an organized structure and the right to register a religious association and have legal entity status; the authorities' refusal to register a group directly affects both the group itself and also its presidents, founders or individual members; the autonomy of religious associations; certain powers of legal entity (such as the rights to own or rent property, to maintain bank accounts, to hire employees, and to ensure judicial protection of the community, its members and its assets) which are necessary for exercising the right to manifest one's religion.

One of the first cases concerning the rights of religious associations was the claim of the member of the *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (judgment of 31 July 2008, No 40825/98). Austria's experience is of great interest to Russia for several reasons. Austria, according to the Constitution of 1920 (the *Bundes-Verfassungsgesetz*), is a federal state as is Russia. This fact is important for the demarcation of competencies and powers between the federal government and regions, including issues of legal regulation of religious associations. In both countries in this area only the federal government may adopt rules of law. Also in the legislation of both countries there are certain periods of time ("trial period") after which religious groups can be registered. For example, in Russia, registration as a religious organization can happen after a group of people shall have conducted their activities for 15 years as a religious group. And in Austria, according to the

1998 Law on the Status of Religious Confessional Communities, a religious group should exist for at least 20 years in order to become a religious society. In addition, this is the first case consideration by the ECtHR against Austria, which discussed issues about the creation and activity of religious associations. The case most frequently discussed is the case on the right of citizens to alternative civilian service.¹²

In this case, Jehovah's Witnesses had filed an application complaining on two points. First, they had been denied registration and therefore the right to become a legal entity for 20 years (even though they had obtained it when the application was filed). And second, once they were officially registered, they were denied the more consolidated status of religious society with its special privileges because they did not fulfil the 10 year registration requirement under the law. Religious organizations are divided into three legal categories (listed in descending order of status): officially recognized religious societies, religious confessional communities, and associations. Each category of organizations possesses a distinct set of rights, privileges, and responsibilities. ECtHR, unlike of the Russian Constitutional Court, in the case on appeal of the Religious Society of Jehovah's Witnesses in Yaroslavl City and the religious association "Christian Glorification Church," considered the merits of the case. It concluded that the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. The court has consistently held the view that a refusal by domestic authorities to grant legal entity status to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association. It also finds that the right of association applies to religious followers and that religious freedom must also be guaranteed through the autonomy of religious communities. The court noted that since religious communities traditionally exist in the form of organized structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified state interference. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society.

The most significant of ECtHR decisions in freedom of conscience protection cases against Russia was the decision of the case *Kimlya and Others v. Russia* of 1 October 2009. In other cases, decided by the ECtHR and connected with obstacles to the exercise of freedom of conscience (such as, the *Moscow Branch of the Salvation Army v. Russia*, *Church of Scientology Moscow v. Russia*, *Kuznetsov and*

¹² See, *Gütl v. Austria*, 49686/99; 12.03.2009; *Koppi v. Austria*, No 33001/03, 10.12.2009; *Lang v. Austria*, No 28648/03, 19.03.2009 and others.

Others v. Russia, Barankevich v. Russia, etc.), the violation of the Convention was established in connection with the fact that it violated Russian law.

In the case *Kimlya and Others v. Russia* violation of the Convention was established in the implementation of the provisions of the 1997 federal law “On Freedom of Conscience and Religious Associations.” Thus, the claim that in terms of the Convention the Russian legislation can serve as an object of the procedure (in compliance with the Convention), but not as a regulator, now confirmed the practice of the ECtHR. The court found a direct relationship between the right of freedom of religion and the right of freedom of association, thereby recognizing the right to establish religious associations as part of basic human rights and freedoms. And in the end the ECtHR concluded that the interference with the applicants’ right of freedom of religion and association was not “necessary in a democratic society” and there had been a violation of Article 9 of the Convention read in the light of Article 11. In this case, unlike in the case *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, religious associations are generally unable to register and have a legal entity in any of the forms. But by law in Austria they can be registered as a religious community.

5. Conclusions

Now in Russia there are many problems in the implementation of freedom of religion. In particular, there is a need to allow the registration of religious organizations without excessive restrictions and to ensure the equal legal status of religious organizations of every kind. The experience of foreign countries can be successfully applied to solve these problems. It is important to develop and adopt a new federal law that would exclude the shortcomings of existing rules, including the requirement to wait 15 years for the registration of religious organizations. This act, in our opinion, should be based on the clear and fully developed concept of relationships within the system: people – church – state. However, changing the basic principles of regulating the freedom of conscience and the legal status of religious associations should not be spontaneous. It should be a well thought out and coherent system of measures, based on the constitutional principles of the secular state and the equality of religious associations.

The implementation of freedom of religion does not depend on the status of a legal entity. Individuals and groups should be free to practice their chosen religion. In turn, the right to acquire the status of a legal entity is essential, if the religious association wants to go through the registration procedure.

Religious associations of any kind must get a status which would provide all the necessary powers to carry out the full range of their activities. In Russia, religious groups cannot enjoy the full range of rights necessary for worship before registering as the organization after 15 years of existence in the country.

The registration process should not be discriminatory. In a multi-religious country public officials must observe strict neutrality and impartiality in their relations with religious communities.

During the implementation of a new state policy it is necessary to consistently adhere to the principle of the autonomy of religious organizations. There should not be any interference in their internal activities, as takes place in Russia now. All religious organizations must have the freedom to organize in accordance with their hierarchical structures (election of spiritual leaders and appointment to the church office), freedom to communicate with the followers of the respective religion, freedom to receive and publish religious literature, freedom of religion spread outside the places of worship, freedom in the use of the media; freedom in the conduct of educational, charitable and social activities, etcetera.

New policy should be carried out in phases, with the introduction of new regulations and rules, their approbation, identification gaps and their subsequent elimination. At the initial stage, Russia needs to make changes to the existing federal law. In addition, it would be advisable to adopt legal acts regulating social relations in areas not covered by this law (e.g., chaplains and missionary activity, etc.).

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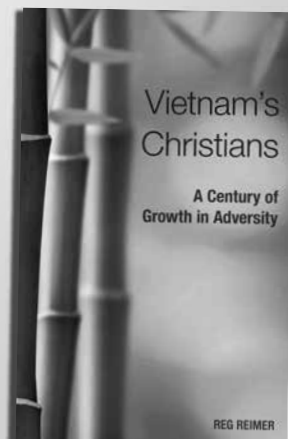
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Church-State relations and religious freedom in Argentina and Brazil

An introduction

Rodrigo Vitorino Souza Alves¹ and Alexandre Walmott Borges²

Abstract

This article presents the legal regime of church-state relations and religious freedom in Argentina and Brazil, as well as the social and judicial practice, based on reports of specialized organizations and judicial cases. It addresses some of the relevant concerns about the interpretation and application of legal and constitutional clauses related to religion. This article aims to provide a foundation for understanding the arguments in those Latin American countries.

Keywords Brazil, Argentina, church and state relations, religious freedom.

Public display of religious symbols; government funding of religious institutions and activities; hate speech; traditional religious practices and human rights; public prayer; religious education in public schools; public policies, judicial decisions and religious values; civil religion; toleration and proselytizing practices. These issues cover many of the major disputes regarding the relationship between state and religion today. Those tensions are related to two central ideas: the separation of church and state, and the religious freedom.

International declarations and treaties have already provided religious freedom as a human right. The United Nations³ has created a global system for protecting human rights. The Universal Declaration of Human Rights (1948) proclaimed the entitlement of religious freedom for everyone and that it “includes freedom to change his religion or belief, and freedom, either alone or in community with others and

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³ Documents of the United Nations are available at <http://www.un.org>.

in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” This right was also endorsed by the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the International Covenant on Civil and Political Rights (1966) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).

Regional human rights protection systems also provided that right. In the Americas, the American Convention of Human Rights (1969), which was ratified by almost all Latin American countries (including Argentina and Brazil)⁴, protect the “freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private”⁵.

The freedom of religion and belief is also provided by those countries’ constitutions. In this introductory article, it is aimed to present the legal regime of church-state relations and religious freedom in Argentina and Brazil, as well as the social and judicial practice, based on reports of specialized organizations and judicial cases. The purpose of its two sections is to provide a foundation for understanding the arguments in those Latin American countries.

1. Argentina

Argentina, a former Spanish colony, for much of its history has been a country with a Roman Catholic majority. According to the CIA World Factbook⁶, from its

⁴ 1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one’s religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

⁵ In the first working session of the Inter-American Court of Rights (February 5, 2001), the Court decided the merit of the case “Last Temptation of Christ” (Olmedo-Bustos et al. v. Chile). This case, which was the first case on freedom of thought and of expression of the Court, was filed by the Inter-American Commission for the Court to decide whether Chile had violated Articles 13 (Freedom of Thought and Expression) and 12 (Freedom of Conscience and Religion) of the Convention. The dispute surrounded Martin Scorsese’ film, “The Last Temptation of Christ”, which The Chilean Cinematographic Classification Council refused to exhibit in Chile because of the defamed presentation of the figure of Christ, a decision confirmed by the Supreme Court of Chile. Although the Inter-American Court found that Chile violated the right to freedom of thought and expression embodied in Article 13 of the American Convention on Human Rights, the Court found that state has not violated the right to freedom of conscience and religion embodied in Article 12.

⁶ Report available at: <http://www.cia.gov>.

population of approximately 42 million people, 92% are Roman Catholic (less than 20% practicing), 2% are Protestant, 2% are Jewish and 4% are affiliated to other religious groups or have no religion. Although the country is considered free, it faces some problems related to church-state relations. The Association of Religion Data Archives⁷ reported that Government regulation of religion, Social regulation of religion and Government favoritism of religion indexes in Argentina are higher than the average of Latin America (the lower the better), which occurs mainly due to state favoritism of the Catholic Church.

1.1 Church-state relations

Argentina has its own church-state relations model. Firstly, the Constitution⁸ was established, as it is written in the Preamble, “invoking the protection of God, source of all reason and justice.” Although this statement was inserted in the Preamble, it is not a rule that must be observed by the people, since it consists in a political declaration only.

However, this declaration made by the representatives of the people is complemented by the second article of the first part of the Constitution, where it is stated that the Federal Government supports the Roman Catholic Apostolic religion. In addition, from 1853 to 1994 the Argentine Constitution commanded that the President would have to practice the Catholic religion. In order to be sworn into office, the President would have to profess his beliefs in God, in the Nation and in the Holy Gospels (Padilla 2004:1). This clause was only removed from the text during the 1994 constitutional reform⁹. Since then, the confessional character of the state has been attenuated, but not eliminated¹⁰.

⁷ Report available at: <http://www.thearda.com>.

⁸ Argentine Constitution (Spanish and English) and Legislation (Spanish only) are available at <http://www.senado.gov.ar>.

⁹ That clause was replaced by articles 89 and 93 of the Constitution, complemented by article 55: Article 55. In order to be elected senator the following conditions are required: to have attained to the age of 30, to have been a citizen of the Nation for six years, to have an annual income of two thousand strong pesos or similar revenues, and to be a native of the province electing him or to have two years of immediate residence therein.

Article 89. To be elected President or Vice-President of the Nation it is necessary to have been born in the Argentine territory, or to be the son of a native born citizen if born in a foreign country; and to have the other qualifications required to be elected senator.

Article 93. On assuming office, the President and Vice-President shall take oath before the President of the Senate and before Congress assembled, respecting their religious beliefs, to: “perform with loyalty and patriotism the office of President (or Vice-President) of the Nation, and to faithfully observe the Constitution of the Argentine Nation, and to cause it to be observed.”

¹⁰ In 1989, the Supreme Court of the Argentinean Nation ruled in the Villacampa v. Villacampa case (312:122, CSJN) that the Roman Catholic religion is not the official religion of the state, despite its favoritism. It also ruled that the confessionalism of the President and Vice President was required because of the Patronage System, which was imposed by the Constitution to the Executive Power.

Another change brought by the reform was the removal of the Patronage clause. It was in the text of the Argentine Constitution of 1853¹¹, under which the President selected bishops from lists proposed by the Senate. The government, through its powers, could intervene in episcopal appointments, an inheritance from the Spanish Crown and remnants of royalism (Padilla 2006: 186).

In 1966, after eight years of negotiations, the Republic of Argentina and the Holy See signed an Agreement by which Argentina granted the freedom of the Holy See in the appointment of bishops. Because of this, from 1966 to 1994, despite the Patronage clause, the appointments of bishops were performed by the Catholic Church alone. The Agreement was confirmed in 1994, when the constitutional clause was superseded.

In relation to the governmental support of the Catholic religion,¹² there are several laws that regulate the matter. At least six of them¹³ establish salaries (paid by the Government) to clerics, such as bishops, priests and seminarians.

The relationship between the Government and religious institutions is coordinated by the Ministry of International Relations and Religion, who mediates the relations between the Argentine state and the Holy See. There are also some legal provisions that regulate governmental relationship with all religious organizations operating in the country to ensure the free exercise of religion.¹⁴

The Roman Catholic Church and the other religious organizations have their legal personality recognized in Argentina. Nevertheless, the Catholic Church has a public nature,¹⁵ with special privileges for historical reasons, while the other organizations must require the recognition of its private personality from the Department of Religion.¹⁶

Given this, even though the reform of 1994 is regarded as a great advance in terms of government neutrality toward religion, since there is no establishment clause in the Constitution, the Catholic Church remains in a position of preeminence.

1.2 Religious freedom

The Constitution guarantees the free exercise of religion. Individuals are entitled to the right to freely profess their own religion.¹⁷ A number of laws that aim to

¹¹ Article 86, §8º, Argentinean Constitution.

¹² Article 2, Argentinean Constitution.

¹³ Law n. 21.540 of 1977, Law n. 21.950 of 1979, Law n. 22.162 of 1980, Law n. 22.430 of 1981, Law n. 22.552 of 1982 and Law n. 22.950 of 1983.

¹⁴ Article 17, Law n. 22.520 of 1982.

¹⁵ Article 33, Law n. 340 of 1869 – the Argentinean Civil Code.

¹⁶ Law n. 21.745 of 1978.

¹⁷ Article 14. All the inhabitants of the Nation are entitled to the following rights, in accordance with the laws that regulate their exercise, namely: to work and perform any lawful industry; to navigate and

ensure the effectiveness of this fundamental right may be mentioned. Firstly, crimes motivated by religious hatred shall aggravate the culpability of the accused person, thus showing that the Government is serious about protecting the individual against religious persecution.¹⁸

Secondly, religious holidays were established, for the Jewish Community *Rosh Hashbanah* (New Year) and *Yom Kippur* (Day of Atonement), and for the Islamic Community *Hijra* (the Migration), *Eid al-Fitr* (the Breaking of the Fast) and *Eid al-Adba* (the Festival of Sacrifice).¹⁹ In addition, salaries of members of the Jewish and Islamic Communities are protected during those non-working days.²⁰

Thirdly, the Federal Law of Education²¹ states that not only family, national and state Governments, Provinces and Municipalities are responsible for education, but also the Catholic Church and other officially recognized religious denominations have to promote education in the country. It means that these organizations are regarded as important role players in the cultural formation of the individuals, and that religious preaching and teaching are allowed and encouraged.

Fourthly, the Military Service Law²² states that the clergy, priests, rectors of churches, pastors, seminarians, members of religious organizations and associations are exempted from the obligation of military service, even in the case of call for mobilization.

Finally yet importantly, religious assistance and freedom of conscience and religion are granted to prisoners.²³ The Law also provides that in every prison Catholic worship must be held if possible, but attendance at these events is voluntary.

1.3 Reports

Although some legal and constitutional issues persisted for many decades, religious pluralism has never been a major concern in Argentina. People of various beliefs have generally lived together in a peaceful atmosphere (Floria 2002:344).

trade; to petition the authorities; to enter, remain in, ...travel through, and leave the Argentine territory; to publish their ideas through the press without previous censorship; to make use and dispose of their property; to associate for useful purposes; to profess freely their religion; to teach and to learn.

Article 20. Foreigners enjoy within the territory of the Nation all the civil rights of citizens; they may exercise their industry, trade and profession; own real property, buy and sell it; navigate the rivers and coasts; practice freely their religion; make wills and marry under the laws. They are not obliged to accept citizenship nor to pay extraordinary compulsory taxes. They may obtain naturalization papers residing two uninterrupted years in the Nation; but the authorities may shorten this term in favor of those so requesting it, alleging and proving services rendered to the Republic.

¹⁸ Article 2, Law n. 23.592 of 1998.

¹⁹ Laws n. 24.571 of 1995 and 24.757 of 1996.

²⁰ Law n. 25.151 of 1999.

²¹ Article 4, Law n. 24.195 of 1993.

²² Article 32 (items 2 and 3), Law n. 17.531 of 1967.

²³ Article 153, Law n. 24.660 of 1996.

The International Religious Freedom Report for 2011,²⁴ made by the U.S. Department of State, confirms that Argentine Legislation and public policies protect religious freedom, and in practice, the state authorities respect it. The government did not demonstrate a trend toward either improvement or deterioration in respect for and protection of the right to religious freedom. There were some reports of societal abuses or discrimination based on religious affiliation, belief, or practice, and some reports of anti-Semitism.

This is confirmed by the 2012 Freedom in the World Report²⁵ of the Freedom House, which states that a major problem remains. Although anti-Semitism is reportedly on the decline and Cristina Fernández de Kirchner appointed a Jewish foreign minister in June 2010 (the first person of the Jewish faith to become foreign minister in the country), Argentina's Jewish community, the largest in Latin America, remains a target of discrimination and vandalism.

1.4 Judiciary court cases

"Virgen del Palacio" case. In 2003, the Association for Civil Rights (ADC) filed a petition for judicial review of the administrative act that allowed the placement of an image of the Virgin of St. Nicolas at the main entrance of a public building. The Association petitioned the Supreme Court of Justice of the Nation to declare the unconstitutionality of this act on the grounds of equal treatment and religious freedom rights, which was upheld by the Court in November 21, 2006 (Padilla 2004:10-12).

"Virgen de Luján" case. This case likewise concerns the discussion about the public display of religious symbols.²⁶ In September 2011, the Association for Civil Rights (ADC) and the Civil Partnership Mar del Plata Atheists filed a lawsuit before the Contentious Administrative Justice of the Province of Buenos Aires aimed to annul the resolution of 28 April 2010 of the Chamber of Deputies of the Province, which decided to enthrone an image of the Virgin of Luján in a Hall of that House. They petitioned for the removal of the image and required that the House would henceforth be refrained from placing any type of religious symbols in that public building, because the Chamber is responsible for laying general laws for all the people of the province through representatives elected by people professing different religions or no religion. The case is not closed yet.

2. Brazil

Brazil is a country characterized by plurality of beliefs. After its Independence in 1822, until the late nineteenth century (during the entire period of the Monarchy),

²⁴ Report available at: <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>.

²⁵ Report available at: <http://www.freedomhouse.org/report/freedom-world/2012/argentina>.

²⁶ Report available at: <http://www.adc.org.ar>.

Roman Catholicism was adopted in Brazil as the official religion.²⁷ Any other faiths suffered restrictions, but they could be practiced privately or in specific places, however, without the form of a religious temple. During this period, almost all the population was Catholic. Since then, Brazilian religious settings have changed. According to the last census in 2010²⁸ 64.6% of the population remains Roman Catholic, while 22% are Protestant, 8% have no religion, 3.2% declared themselves followers of other religions and 2% are spiritualists.

2.1 Church-state separation

Law made this pluralism possible. The first breakthrough came with the Decree n. 119-A of 1890, which prohibited the intervention of the government in religious matters, ensured freedom of worship and extinguished the patronage by which the Vatican delegated to the government the administration of local churches.

In the Bill of Rights of the first Republican Constitution (1891)²⁹ we can find the first Establishment Clause in Brazilian constitutionalism.³⁰ This separation model of church and state can be found in each following Constitution, namely, the Constitutions of 1934, 1937, 1946, 1967, and 1988. The current Constitution,³¹ while in its Preamble declares that it was promulgated “under the protection of God”, kept in its text an Establishment Clause.³²

Civil Legislation ratifies the separation when it states that religious organizations are free to define their organizational structure. Until 2003, every religious organization had to adapt their structures to the requirements of the Civil Code³³ – they were treated like associations or foundations. However, in 2003, the Civil Code was reformed, and it was established that religious organizations may be created and

²⁷ Article 5, the Imperial Constitution of 1824.

²⁸ In Brazil, the agency responsible for official statistics is the Brazilian Institute of Geography and Statistics (IBGE). It performs a national census every ten years. Information on age, household income, religion, education, occupation and other subjects can be found in the IBGE's reports published at <http://www.ibge.gov.br>.

²⁹ The text of the Constitution of 1891 is available (in Portuguese only) at www.planalto.gov.br. Translation by the authors.

³⁰ Article 72. The Constitution guarantees Brazilians and foreigners residing in the country the inviolability of the rights to liberty, security of person and property, as follows:

§ 7º. No cult or church will enjoy official subsidy, nor have relations of dependence or alliance with the Union Government and the states.

³¹ The text of the Constitution of 1988 is available (Portuguese and English) at <http://www.planalto.gov.br>.

³² Article 19. The Union, the states, the Federal District and the municipalities are forbidden to:
I – establish religious sects or churches, subsidize them, hinder their activities, or maintain relationships of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest in the manner set forth by law.

³³ Law n. 10.825.

organized freely, and that the Government is forbidden to deny the recognition or registration of their incorporation and other necessary acts.

Although state and church are separated, the Brazilian Constitution allows the Government to support religious schools, because of their social relevance.³⁴ Concerning religious education in public schools, the Brazilian Constitution states that religious education should be taught in elementary public schools. However, it must not have a proselytizing or dogmatic character and student's participation shall not be mandatory.³⁵ Curiously, the government made an agreement with the Holy See in 2008 (the Concordat) in order to guarantee some rights to the Catholic Church, which include the teaching of Catholic doctrine in public schools during religious education classes.

2.2 Religious freedom

The right to believe and to express the faith has been granted to Brazilians since its first Constitution (1824). However, it was not a Religious Freedom Clause in its full sense. As already said, there were some restrictions to non-Catholics. This situation was changed when the new Constitution was promulgated. Since the 1891 Constitution, religious freedom is largely ensured for every individual.³⁶ It must be said, nevertheless, that during the military government, an authoritarian regime that ruled Brazil from 1964 to 1985, civil rights were restricted, such as freedom of conscience and expression.

³⁴ Article 213. Public funds shall be allocated to public schools, and may be channeled to community, religious or philanthropic schools, as defined by law, which:

I – prove that they do not seek profit and that they apply their surplus funds in education;
II – ensure that their assets shall be assigned to another community, religious or philanthropic schools, or to the Government in case they cease their activities.

Paragraph 1. The funds provided by this article may be allocated to elementary and secondary school scholarships, as provided by law, for those who prove insufficiency of means, when there are no vacancies or no regular courses are offered in the public school system of the place where the student lives, the Government being placed under the obligation to invest, on a priority basis, in the expansion of the public system of the locality.

Paragraph 2. Research and extension activities at university level may receive financial support from the Government.

³⁵ Article 210. Minimum curricula shall be established for elementary schools in order to ensure a common basic education and respect for national and regional cultural and artistic values.

Paragraph 1. The teaching of religion is optional and shall be offered during the regular school hours of public elementary schools.

³⁶ Article 72. The Constitution guarantees Brazilians and foreigners residing in the country the inviolability of the rights to liberty, security of person and property, as follows: §3. All individuals and religious groups can publicly and freely exercise their religion, associating for that purpose and acquiring assets, subject to the provisions of law.

The current Federal Constitution and Legislation are quite advanced in terms of religious freedom. The Constitution guarantees all individuals religious freedom as a fundamental right, prohibiting any discrimination based on grounds of belief.³⁷ Individuals are entitled to the rights of conscience and to practice religion. Religious assistance in collective establishments is granted. Religious societies have autonomy to make decisions internally and receive protection against discrimination. Places of worship and rites have to be protected by the Government. The Constitution, in order to keep religious autonomy, also guarantees that temples are endowed tax immunity.³⁸ The conscientious objection right is also provided.³⁹ In relation to the military service, the Constitution establishes that the Armed Forces may require from the objectors an alternative service (e.g. community service), and that clerics are exempt from military service during times of peace.⁴⁰

In Federal Legislation, there are several rules that ensure and advance religious freedom. For example, Brazil recognizes that religious marriage equates to civil marriage.⁴¹ Religious practices are protected by the Brazilian Penal Law,⁴² it being a crime to mock someone for their religion or to disturb a ceremony or worship service.⁴³ It is also a

³⁷ Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

VI – freedom of conscience and of belief is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed;

VII – under the terms of the law, the rendering of religious assistance in civil and military establishments of collective confinement is ensured;

VIII – no one shall be deprived of any rights by reason of religious belief or philosophical or political conviction, unless he invokes it to exempt himself from a legal obligation required of all and refuses to perform an alternative obligation established by law.

³⁸ Article 150. Without prejudice to any other guarantees ensured to the taxpayers, the Union, the states, the Federal District and the municipalities are forbidden to: ... VI – institute taxes on: ... b) temples of any denomination.

³⁹ Article 5, item VIII, the Brazilian Constitution.

⁴⁰ Article 143. Military service is compulsory as set forth by law.

Paragraph 1. It is within the competence of the Armed Forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, claim imperative of conscience, which shall be understood as originating in religious creed and philosophical or political belief, for exemption from essentially military activities.

Paragraph 2. Women and clergymen are exempt from compulsory military service in times of peace, but are subject to other duties assigned to them by law.

⁴¹ Article 1.515, Law n. 10.406 of 2002. In July 2013, for the first time, the Superior Court of Justice recognized the civil effects of a marriage annulment made by the Catholic Church.

⁴² Executive Order n. 2.848 of 1940.

⁴³ Article 208. Publicly mock someone for reasons of belief or religious function, prevent or disrupt ceremony or practice of religious worship; publicly vilify act or object of worship:

Penalty - imprisonment of one month to one year or a fine.

Paragraph - If there is use of violence, the penalty is increased by one third, not to mention the penalty

crime to practice discrimination based on race, color, ethnicity, national origin or religion.⁴⁴ Examples of discrimination are to deny or impede employment in private enterprise, and to decline or prevent access to business premises, refusing to serve or receive customers or buyers. Brazil also punishes severely the crime of genocide.⁴⁵

2.3 Reports

Firstly, the 2012 report of the Freedom House⁴⁶ declares that “the constitution guarantees freedom of religion, and the government generally respects this right in practice”. The International Religious Freedom Report for 2011 of the U.S. Department of State⁴⁷ endorses this positive situation, noting, however, that there are discrimination practices based on religious belief, including incidents involving anti-Semitism and intolerance towards followers of African-based religions.

Currently, the Brazilian Federation faces some other delicate issues involving the relationship between state and religion, which are not mentioned in those reports. About this, the following examples can be highlighted: the questioning about the inscription “God be praised” in the Brazilian Real bills and the use of crucifixes in courts and other public offices; the relationship between state sovereignty, self-determination and religious freedom of the indigenous groups, especially on the killing of newborn children due to physical disability; the positioning of the Brazilian Judiciary about hate speech; discussion about religious education in public schools and state support of cultural activities with a religious character; the social implications of the Sabbath; the relationship between medical practice and rejection of blood transfusion by patients or their legal guardians.

Certainly, although there is no significant religious persecution in Brazil (but it must be said that religious minorities suffer prejudice in some areas), there are situations endowed with a high degree of importance that need to be better examined. Let us briefly present some of them.

2.4 Judiciary court cases

“Ellwanger” case. Even though Brazilian Constitution guarantees the right to freedom of expression, this right is not absolute. The Supreme Corte ruled, in the Ellwanger Case,⁴⁸ that “hate speech”, which consists of expressions that promote hatred against religious, ethnic or racial minorities, is unconstitutional.

for the corresponding violence.

⁴⁴ Law n. 7716 of 1989.

⁴⁵ Law n. 2889 of 1956.

⁴⁶ Report available at: <http://www.freedomhouse.org/report/freedom-world/2012/brazil>.

⁴⁷ Report available at: <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>.

⁴⁸ *Habeas Corpus* n. 82424-RS, 2003.

“Infanticide” case. Christian missionaries have been accusing the Brazilian Government of allowing the practice of infanticide among Amazonian Indians. At the center of this campaign is the Hakani Project,⁴⁹ which aims to prevent the practice. For them, the right to cultural diversity can never be invoked as justification to tolerate the infanticide. In addition to the campaign, a bill was proposed in 2007⁵⁰ to prohibit traditional practices that are contrary to the Constitution and International Treaties, such as infanticide, rape and aggression. The bill is still being processed.

“Crosses in Courts” cases. In March 2012, the Council of Court Judges of Rio Grande do Sul state unanimously commanded the removal of crucifixes and religious symbols from the court buildings, based on the need to safeguard the public space of the Judiciary by using only the official symbols of the state.⁵¹ Before that, in May 2007, the National Council of Justice (CNJ) found that the presence of religious symbols in courts did not violate the secular state, since these symbols are a cultural trait of Brazilian society.⁵²

“God be Praised” case. Since 1986, the motto “God be Praised” has been included in all Brazilian paper currency. On 12 November 2012, the Regional Federal Prosecutor’s Office in the state of Sao Paulo requested the Regional Federal Court to ensure the removal of the reference to God from the Real bills. The Prosecutor sought a preliminary injunction, in order to restrain the Federal Reserve from publishing the expression on the grounds of equality, non-exclusion of minorities and the concept of a secular state. On 29 November 2012, the Seventh Court of Justice of Sao Paulo rejected the preliminary request, arguing that the motto does not seem to be an imposition of a religion by the state. The legal challenge is still pending.⁵³

3. Final remarks

This introductory article addressed the legal regime and some of the relevant concerns about the relation between church and state in Argentina and Brazil. Although there is no severe persecution against religious groups in these countries, as reported by international organizations, the mentioned issues require further critical and contextual discussions, in order to promote and strengthen religious freedom in Latin America.

Dilemmas concerning religious freedom and church-state relations require difficult solutions. On the one hand, states should guarantee religious freedom to all individuals within their territory and should keep themselves separated from

⁴⁹ More information at: www.hakani.org.

⁵⁰ Bill n. 1.057-2007.

⁵¹ Petition n. 0139-11/000348-0, TJRS.

⁵² Petitions 1.344, 1.345, 1.346 e 1.362, CNJ.

⁵³ ACP 00119890-16.2012.4.03.6100.

religious social life in order to respect civil liberties. On the other hand, civil societies do not live in a vacuum. They operate in a framework defined by principles, on which they are based. There are traditions and customs in every society. According to Ferrari (2011:34-35), “the state is not an empty container that can be filled with whatever content: on the contrary it has a memory and a history that provide guidance in selecting the inputs coming from civil society.” In his opinion, the state is in a continuous transformation under the inputs of civil society and it is made by people with a culture and an identity, which influence court decisions, creation of laws and public administration.

Although Parliaments, National Judiciaries and International Courts have been struggling with great legal issues, perhaps the major problem concerning religious freedom is the lack of effectiveness of law. “Many human rights are neglected, but religious freedom is often strikingly so,” said Paul Marshall (2011). The concern increases significantly when religious freedom is recognized as important not only in its own right but also as central to other human goods, since that freedom is correlated with all civil and political rights.

Legal, political and social problems become more intense when cultural diversity increases, and that is happening in Latin American countries. According to Bhikhu Parekh (2006:295), “from time to time a multicultural society is bound to throw up situations in which deep cultural and moral disagreements between its different communities come to the fore and create a crisis.” The interplay of different cultures in one society requires a broader and conciliatory perspective from social role players, such as individuals, institutions, state agents and political representatives, in order to avoid social fragmentation and anomy.

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Global Challenges

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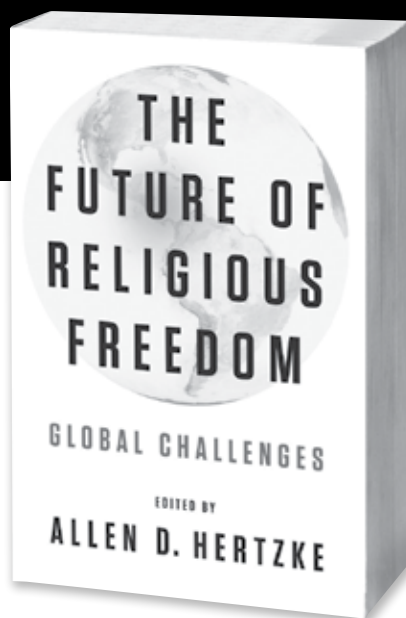
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How a social engineering project affected Christians in Turkey

Abdullah Kiran¹

Abstract

The number of Christians in the Middle East and especially in Turkey has declined systematically. The majority of Middle Eastern countries are known for their authoritarian leaders and whose oppressive regimes are not tolerant of their Christian citizens. But what about Turkey which is known as a secular country? Why has the number of Christians in Turkey declined more in Turkey than in authoritarian regimes of the Middle East? Does Turkey pursue a deliberate policy or social engineering project to decrease its Christian population? This article will try to answer these questions.

Keywords Turkey, Christians, freedom of religion, assimilation, exile.

Christianity originated in the Middle East and from this region it spread to the other parts of the world. At the beginning of the twentieth century, the Christian population of the Middle East was approximately 20%, but now it has dropped to 5% and it is estimated that the present Christian population, which is around 12 million, will have dropped to 6 million by the year 2020. One might ask: Why is the number of Christians dropping so rapidly? What is the reason behind this decline? The majority of Middle Eastern countries are being run by anti-democratic governments and they are intolerant of their Christian citizens. But what about secular Turkey? Why has the number of the Christians in Turkey declined more than that of the authoritarian regimes of the Middle East? How could a “secular” country be so discriminatory against its Christian minority? Is Turkey violating international treaties regarding freedom of religion?

1. Freedom of religion and international treaties

The freedom of religion is among the first rights introduced by the constitutionalist movements of the eighteenth century. According to Section 16 of the Virginia Declaration of Rights, which was written by George Mason and issued on 12 June 1776: “That religion, or the duty which we owe to our Creator, and the manner of dis-

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charging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience.”² This declaration is drawn upon by Thomas Jefferson for the opening paragraphs of the Declaration of Independence of the USA. In Article 10 of the 1791 French Constitution, it is written “No one shall be disturbed on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.”³

Although the struggle for religious liberty has been going on for centuries, the codification of freedom of religion and belief has been realized only in the twentieth century. Article 18 of the 1948 Universal Declaration of Human Rights states that, “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his [her] choice.” Article 18 of the International Covenant on Civil and Political Rights (1966) includes four paragraphs related to the freedom of religion. Article 1 of The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) states that, “Everyone shall have the right to freedom of thought, conscience and religion.”⁴

2. The case of Turkey

The founders of the new Turkish Republic were inspired by western constitutionalist movements and thus the freedom of religion was recognized by the 1924 Constitution. In Article 75 of this Constitution, it is written, “No one shall be criticized because of his/her philosophical belief, religion or sect. All religious ceremonies are free provided that they are not in conflict with security, moral traditions and norms of law.” Although the first and second sentences of the article are in a sharp contradiction to one another, at least freedom of religion is guaranteed under the constitution. But there are other articles which seriously restrict and make the exercise of this freedom impossible; such as Article 2 and Article 26. In Article 2, it is mentioned that, “The religion of the State of Turkey is the religion of Islam.”

² Dreisbach, Daniel L., *George Mason's pursuit of religious liberty in revolutionary Virginia* http://www.gunstonhall.org/georgemason/essays/dreisbach_essay.html.

³ http://avalon.law.yale.edu/18th_century/rightsof.asp.

⁴ Furthermore in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1951), Article 4 of the Convention relating to the Status of Refugees (1954), Articles 3 and 4 of the Convention Relating to the Status of Stateless Persons (1960), Articles 1, 2 and 5 of the Convention Against Discrimination in Education (1962), Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1969), Article 13 of the International Covenant on Economic, Social and Cultural Rights (1976), Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (1981), Article 14 of the Convention on the Rights of the Child (1990) and Articles 12 and 13 of the Draft Declaration on the Rights of Indigenous Peoples (1994) the freedom of religion has been handled and guaranteed by international law and covenants.

In Article 26, it stated that, “The Grand National Assembly itself executes the holy law; makes, amends, interprets, abrogates laws...”⁵ According to this article, the implementation of the “holy law,” which means Sharia law, was among the powers of the Turkish Grand National Assembly. Although these provisions were abolished in 1928, and in 1937 secularism was adopted as one of the six basic principles of the Turkish Republic, in reality, nothing has changed until very recently.

The founding fathers of the Turkish Republic inherited a social engineering policy of eliminating Christians from the previous regime, known as Union and Progress (*İttihat ve Terakki*) and were very faithful on this issue. They did not refrain from placing some secular laws in the Constitution, but they never implemented these articles and in reality acted in the opposite way. On 16 March 1923, when Mustafa Kemal Atatürk addressed the members of the Craftsmen's Association in Adana province, he said, “The Armenians and others, the other elements, those who have established dominion over our Adana have occupied our art centres and acted as the landlord of the county. Without a doubt, there is not injustice and insolence more than this. The Armenians have no right in this fertile country. The country belongs to you, the Turks. This country is historically Turkish, it is currently a Turkish land and will belong to the Turks forever.”⁶ Surely, there were articles regarding freedom of religion in the laws and constitutions, but the spirit of Atatürk's discourse always prevailed. The Christians were a target, but there was also no freedom for other faiths. Almost all religious communities were not allowed to organize themselves as they wanted.⁷

In the 1920s the Christians who were living in Istanbul and made up nearly half of the province's population, were not allowed to travel outside of the province unless they had official permission. For example, until the 1940s, the condition to be able to enrol in The Military Veterinary School was “to be a citizen of the Turkish Republic and come from Turkish descent.”⁸

The secularist character of the Turkish Republic was mentioned in the 1961 Constitution and freedom of religion was referred to in Article 19. In the 1982 Constitution of Turkey the freedom of religion was recognized by Article 24. According to Article 24: “All individuals shall have freedom of conscience, religious beliefs, and, conviction...” It is true that democracy requires the recognition of fundamental rights and freedom of religion must be considered among these rights. However, the scope of the freedom of religion and implementation of this freedom until very

⁵ Earle, Edward Mead, *The new Constitution of Turkey*. <http://www.bilkent.edu.tr/~genckaya/1924constitution.pdf>.

⁶ Atatürk'ün Söylev ve Demeçleri, Atatürk Araştırma Merkezi Yayınları, 2006, 519-521.

⁷ Oehring, Otmar, *TURKEY: Is there religious freedom in Turkey?* F18News on 12 October 2005.

⁸ Oran, Baskın, ‘300 Aydın Bildirisi’ ve ‘Türk’, *Radikal*, 07.04.2013.

recently used to be one of the most important issues facing Turkish democracy. In order to understand the real situation of Christians and the restrictions of freedom of religion, it is necessary to look at the Ottoman era.

2.1 The Ottoman era and the situation of Christians

During the Ottoman era, the principle of “ruling class” (*millet-i hakime*) was accepted and the notion of *millet* (class) was used for different religious communities. On the other hand, the word *millet* referred to the administrative type of different religious communities as well. The Muslims were *millet-i hakime* and the Christians were *millet-i zimni*, which means a class which “is under the protection of a ruling class.” Thus, the system of *millet* allowed every religious community to live according to their beliefs and jurisdiction. For a long period of time, the Ottomans did not force anybody to change his/her religion in order to become a Muslim. The non-Muslim community had the right to elect their own religious leaders and under the authority of their leaders to run their religious, administrative, judicial and educational affairs. They kept the birth and death records of their communities until the Tanzimat Decree, of 1839.⁹ There wasn't any interference in their school curriculum and priests were not restricted in their preaching. Within this framework, they had the right to organize their institutions and thus they had a kind of autonomy.¹⁰

This policy continued during the whole period when the Ottoman Empire was in the ascendancy (1453-1683). During this period, the Ottomans were tolerant of all their ethnic and religious communities. For example, when the Hungarian King intimidated the Serbian King Brankovich and said, “I will destroy Protestant churches all over Serbia and instead of them establish Catholic churches,” the Ottoman Sultan Fatih Mehmet II made this promise to the Serbian King: “If you obey my authority, near every mosque a church will be erected and everybody will be free to pray to his Creator.” In response to this, the Serbian King, instead of obeying the Hungarian King, preferred to live under the Ottoman rule.¹¹ The policy of non-intervention in the religious affairs of Christians continued for more than three hundred years. But at the beginning of the nineteenth century when the Christian communities, such as the Serbs and Greeks, began to ask for their national rights, the situation changed. After the independence of Greece (1830), the Ottoman rulers began to make some reforms to their system in order to appease the Christian communities. Although

⁹ Cevdet Paşa, A., *Tarih-i Cevdet*, Üçdal Neşriyat, Ankara, 1984, c.VI, 2690.

¹⁰ Küçük, Cevdet, Osmanlılarda Millet Sistemi ve Tanzimat, *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi*, İletişim Yayınları, İstanbul, 1985, c.IV, 1007.

¹¹ Akgündüz, Ahmet, *Bilinmeyen Osmanlı*, OSAM Yayınları, İstanbul 2000, 359.

with the Tanzimat Decree (1839) and Islahat Reforms (1856), the Ottomans made some amendments in favour of Christians, they never found them satisfactory.

The Christian communities' desire for self-rule or independence greatly irritated the Ottoman administration. Especially after the Greek Independence, the proportions of Muslims and Christians attracted the ruler's attention and they began to concentrate on this issue. Thus, they started to increase the number of Muslims in some regions, mainly in Anatolia. In the 1820s, the proportion of Muslims in the Ottoman Empire was 59.6%, but later, in the 1890s, with loss of territory and migration, the proportion of Muslims increased to 76.2%. Between 1859 and 1879, approximately 2 million Muslims, mainly Tatars, migrated from the Caucasus region to the Ottoman lands. After the 1878-79 Ottoman–Russian War, there was a great influx from the Balkan region to Anatolia. The war caused the migration of 1.5 million people to Anatolia, while 300 000 of them died on the way. The Balkan Wars, which occurred in 1912-13, caused another wave of migration to Anatolia in which 640 000 people migrated.¹²

The nineteenth century saw an intensive struggle between the Ottomans and Russians; they waged war against each other during 1806-1812, 1828-1829, 1853-1856 and 1877-1878. Especially in the second half of this century, both empires desired to increase the population of their majority religions in the border areas. In 1860 there were some negotiations in Istanbul between the two empires and the Ottomans put pressure on the Russians to allow the migration of Caucasian Muslims to land under their control. The Russians accepted this suggestion on the condition that the Ottomans would settle them in areas far from the border. The migration of Muslims created an opportunity for Russians as well. They were encouraging the Christians, mainly Greeks and Armenians, to come and settle in Russia. In 1861, the Russian Tsar Alexander openly invited the Greeks to come and settle in Russia. But the Russians were not as successful as the Ottomans because the ethnic consciousness of Christians was highly developed and they were not faithful to Russia. After the 1877-78 Ottoman-Russian war, Germany and the Ottomans became close allies and German commanders began to train the Ottoman army. Thus, the Germans too were supporting the idea of Islamizing Anatolia. The German General Von Der Goltz, who first began to train the Ottoman army in 1883, always advised the army officers to leave the Balkans and concentrate on Anatolia.¹³ The Ottoman-Russian wars which occurred after the 1850s to some extent were "population wars."

Under the Ottoman Empire, a Census Department was founded in 1835 for the first time. The most comprehensive census was held in 1881-1893 and its results

¹² Dündar, Fuat, *İttihat ve Terakki'nin Müslümanları İskan Politikası (1913-1918)*, İletişim Yayınları, İstanbul 2011, 56.

¹³ Dündar, Fuat, *Modern Türkiye'nin Şifresi*, İletişim Yayınları, İstanbul, 2008, 44-49, 63.

were issued in 1897. The statistics were given by *Vilayet* (Province) by sex, age, religion and ethnic affiliation. According to this census, the total population of Anatolia (including Istanbul) was 12 490 370 and out of this figure 10 222 839 were Muslims, 1 021 363 were Greeks, and 1 106 086 were Armenians. There were also 140 082 others.¹⁴ After the 1893 census the Ottomans held two more censuses, one in 1905 and the other in 1914. In the Census of 1905, the number of Muslims was shown as 15 508 753, while the number of Orthodox Greeks was 2 823 063 and the number of Catholic Greeks was 29 749. In the same census, the number of Gregorian Armenians was shown as 1 031 708, Catholic Armenians were 89 040 and Protestant Armenians 52 485. According to Kemal Karpat, on 14 March 1914, the population of the Ottoman Empire was as follows: 15 044 846 Muslims (81.02%), 1 792 206 Greeks (9.6%), 1 294 851 Armenians (6.9%) and 388 113 others (2.03%).¹⁵ According to the Encyclopaedia Britannica in 1914 the approximate population of the Empire was as follows: total 25 000 000, of whom about 10 000 000 were Turks, 6 000 000 were Arabs, 1 500 000 were Kurds, 1 500 000 were Greeks and between 1 000 000 and 1 500 000 were Armenians.¹⁶ Dimitri Pentzopoulos states that in 1910 seven million Greeks lived around the shores of Aegean and Black Sea region, which was under the domain of Greece and the Ottoman Empire. At this time, the total population of Greece was 2 631 952 people and the Greek state was representing only 37% of this figure.¹⁷ The figures about the Christian and Muslim population of the Ottoman Empire do not match with one another, but the interesting thing is, during the 1890s and most of the first decade of the 1900s, the Ottoman Census Department was run by either members of Christian minorities or an expatriate. Between the years 1893 and 1896 the directors were Jewish. Between 1898 and 1902 an Armenian, known as Mıgırdıç Sinabyan Efendi, served as director. While he was director, he sent a number of people, mainly from the Armenian community, to France and England to study modern census techniques.¹⁸

However, if the abovementioned figures are correct, then the Christians would have been overrepresented in the Ottoman parliament. After approving the first constitution of the Empire, the first general elections were held in February 1877 and the parliament conducted its first meeting on 19 March 1877. At that time, out

¹⁴ Mutlu, Servet, Late Ottoman population and its ethnic distribution, *Nüfusbilim Dergisi/Turkish Journal of Population Studies*, 2003, 25, 3-38.

¹⁵ Karpat, Kemal, Ottoman population records and the census 1881/82-1893, *International Journal of Middle East Studies*, 9, 1978, 237-74.

¹⁶ *Encyclopaedia Britannica*, 1975, 790.

¹⁷ Pentzopoulos, Dimitri (2002), 27.

¹⁸ Stanford J., Shaw (1978), The Ottoman census system and population, 1831-1914, *International Journal of Middle East Studies*, 9, 325-338.

of 115 members of the parliament, 48 were non-Muslims and thus the percentage of non-Muslim representatives was 42%.¹⁹ Yet, in the first meeting of the Assembly, the representatives of the Greek and Armenian communities asked for their languages to be accepted as an official language of the state.

With the second constitutional era (1908-1912), the Committee of Union and Progress (CUP) came to power on 5 August 1912 and the parliament was shut down. CUP pursued a very intensive forced migration policy. Between 1913 and 1918 almost one third of the Anatolian population was uprooted from their places and settled in different parts of Anatolia. With this population movement, the Arabs, Albanians, Gypsies, Georgians, Kurds and Laz were mixed with one another so as not to create a threat in the future.²⁰

Members of Ottoman parliaments according to their origin

Year	Turks	Arabs	Albanians	Greeks	Armenians	Jews	Slavs	Total
1908	147	60	27	26	14	4	10	288
1912	157	68	8	15	13	4	9	284
1914	144	8	-	13	14	4	-	259

After the second constitutional era, in a “general election” held in 1908, CUP gained almost all the seats in parliament. Out of 289 seats, 288 belonged to CUP. Before elections, CUP, also known as Young Turks, bargained with representatives of all different communities and for each of them, based on their own population, appointed a quota. Thus, the elected members of parliament consisted of 147 Turks, 60 Arabs, 27 Albanians, 26 Greeks, 14 Armenians, 4 Jews and 10 Slavs. This time CUP was in favour of the territorial integrity of the Ottoman Empire and thus had the support of ethnic and religious minorities. Even the Greeks were allowed to establish their own ethnic party in Istanbul, but since the Jewish population was not sufficient for the election of one Member of Parliament, CUP provided a quota for them. According to the election rules, for each Member of Parliament the votes of 50 000 males were needed and by this time the Jewish male population in Istanbul was around 25 000. In October 1911, the Turco-Italian war in Libya and military losses of the Ottoman Empire forced CUP out of office and a political coalition called the Liberal Union came to power. However, the defeats in the Balkans created a new opportunity for CUP and on 23 January 1913, it staged a coup, known as the Sublime Porte incident and established a new cabinet under Şevket Pasha.²¹ After

¹⁹ Dündar, Fuat, *Modern Türkiye'nin Şifresi*, İletişim Yayınları, İstanbul, 2008, 94.

²⁰ Dündar, Fuat, *İttihat ve Terakki'nin Müslümanları İskan Politikası (1913-1918)*, İletişim Yayınları, İstanbul 2011, 13.

²¹ Sonyel, Salah R., *Minorities and the destruction of the Ottoman Empire*, Turkish Historical Society Printing House- Ankara 1993, 250.

this coup and the assassination of Şevket Pasha on 11 June 1913, CUP gradually changed its ideology and in the congress of 1913, the unionist policy was forsaken and the policy of “Nationalism and Turkism” replaced it.²²

There is no doubt that there were millions of Christians within the borders of the Ottoman Empire. But with the collapse of the Empire and the establishment of a new Turkish Republic, within a very short time almost everything changed. After the First World War, when the new Turkish Republic was established, there was still a considerable Christian population. By that time the Orthodox Greeks were used to being one of the largest groups in Turkey. At the beginning of the 1920s, their number exceeded 1.5 million. But in the population exchange between Turkey and Greece, 1.5 million Orthodox Christians were driven out and replaced by Muslim Turks, who mainly came from Western Thrace. By the end of 1923, Greece was faced with an influx of 1.5 million refugees from Turkey. The number of refugees was equal to a quarter of the country's total population.²³ This sudden population exchange almost destroyed the physical connection of Greeks with Anatolia and had a detrimental effect on their spirit. By their departure, they left behind thousands of years of heritage and memories. Thus they could be considered the great loser of the dismemberment of the Ottoman Empire. According to Dimitri Pentzopoulos, in order to understand the nationalist behaviour of Greeks, “one must always bear in mind that the Greeks feel emotionally much closer to Byzantium than to Ancient Athens.”²⁴

2.2 The Kemalist era and Christians

The 1920s and 1930s were a nation building time for Turkey. During this period Turkey struggled to create a national identity which idealized a homogenous society based on the ideology of Kemalism. At that time, nationalism was very common in Europe: in Italy the fascism of Mussolini and in Germany the Nationalist Socialist Party of Hitler were in power. While Hitler and his supporters praised the superiority of the Arian race over all humankind, the supporters of Mustafa Kemal collected skulls to examine and measure them in a laboratory to determine whether they were the skulls of Turks. In this ambiance they even opened the grave of the famous architect Mimar Sinan to examine his skull in a laboratory to see whether or not he was a Turk.²⁵

²² Tunaya, Tank Zafer, *Türkiye’de Siyasal Partiler*, C.2- Mütareke Dönemi, İletişimYayınları, İstanbul 1999, 36.

²³ Pentzopoulos, Dimitri (2002) *The Balkans exchange of the minorities and its impacts on Greece*, Michael Llewellyn Smith, 16.

²⁴ Pentzopoulos, Dimitri (2002), 26.

²⁵ In August of 1935, 347 years after the death of the great architect, his grave, which was at Suleyma-

Especially in the 1920s and 1930s the role of the Turks was greatly exaggerated. The Sumerians, the Hittites, even the Eskimos were all claimed to be Turks. Those who were not from the Turkish race were not considered to be able to make any contribution to civilization. These ideas were injected into society. Mahmut Esat Bozkurt, the Turkish Minister of Justice of Turkey in the 1930s, said, "The one who does not come from Turkish descent has only one right in this country; the right to serve and to be a servant."²⁶ This mentality made life unbearable for ethnic and religious minorities. The regime was not tolerant of practicing Muslims either. The state took a hostile position toward religion and banned all kinds of religious origination. In 1924, the law of "unified education" created the Directorate of Religious Affairs (DİB) with the state forbidding religious education outside of its control. The Sunni/Hanefi interpretations of Islam were accepted as the "official Islam" and the state took the responsibility to teach this interpretation.

According to the Lausanne Treaty, Christians were officially accepted as a religious minority and their minority rights were under the guarantee of international law.²⁷ But the Kemalist mindset did not take the minority rights of the Christians into consideration and they pursued a social engineering project against them. Actually, almost all segments of Turkey's society were the target of this policy, but the case of Christians was the worst. While the aim of this social engineering project was to assimilate different ethnic groups into Turkish identity, for Christians there were only two alternatives: either they could become Muslims and Turks or they would be exiled from the country. For Kemalist ideology the best citizen would be secular,

niye Mosque in Istanbul, was dug up and his skull was removed. This mission of opening the grave was given to three members of the Research Institution of Turkish History, respectively Hasan Ferit Çamlıbel, Afet İnan and Şevket Aziz Kansu. Let us remember that Afet İnan was the spiritual daughter of Mustafa Kemal. Among the team members, Şevket Aziz Kansu was an anthropologist who carefully measured the skull and pronounced that the head was brakisefal, which meant he was a Turk. Just one day after the excavations, the members of the team visited Atatürk in Istanbul and gave him the good news. Atatürk then gave the orders to make a statue of Architect Sinan. Thus, after twenty years, the first statue of Architect Sinan was erected at the Ankara University. The picture of Sinan which currently decorates a Turkish banknote was taken from this statue. Later, for the purpose of restoration, once more the grave was opened, but the skull was not there. Currently nobody knows the fate of Sinan's skull.

²⁶ *Milliyet Gazetesi*, 19 Eylül 1930 and *Yeni Posta Gazetesi* 21 Eylül 1930.

²⁷ In fact, mostly we classify minorities as ethnic, linguistic and religious but when it comes to the Middle East this definition is not sufficient because in this region there are minorities of the minorities. For instance, although the Kurdish population constitutes one of the minority groups in Turkey, in the Kurdish region they have priority over other minorities, such as Yezidis and Syriacs because the Kurds share the same religious affiliation as the majority Muslim Turks. The pressure on Yezidis and Syriacs is not restricted to the Turkish State. They are under the pressure from Muslim Kurds as well. The excessive pressure on Yezidi Kurds and Syriacs forced them to leave their country in the 1960s and settle in Europe and the USA.

Atatürkist, Sunni Muslim and Turk. Unfortunately, this frame did not leave room for the Christian to be a proper citizen of Turkey.

All citizens of Turkey, whether they were Christians or Muslims, had to support the DİB through their taxes. Not only Christians, but even the Alevi who are the largest religious minority in Turkey, were not allowed to open their own prayer houses and temples. Only during the last two decades have they begun to open their houses of prayer, but they still lack legal status. The DİB has a huge budget and considerable authority; it even determines the content of Friday prayers to be read in the mosques. Many citizens of Turkey until very recently refrained from disclosing their religious identity. The Alevi especially had to hide their religious identity until the end of the 1990s.²⁸

The more nationalism increased, the more the status of ethnic and religious minorities worsened. Even in the late Ottoman period some religious minorities had legal status under the *millet* system, but by time of the founding of the new Turkish Republic, this status of minorities disappeared.²⁹ It is really difficult to compare the current status of Christian minorities with that of the Ottoman era. Especially in the last years of the Ottoman Empire, they enjoyed almost every basic right and were represented in the state apparatus. In 1896, there were 2 297 public servants in Istanbul and out of this figure, 597 were non-Muslims, which corresponds to 26% of public servants.³⁰ At that time, many high level Ottoman officers and ministers were Christians, but in the new Turkish Republic, with high level bureaucratic restrictions, almost no Christians were allowed to work as a public servant.

Turkey's Christian population has decreased very dramatically in the twentieth century to the verge of extinction. The last anti-Christian mass violence was orchestrated in 1955 which was carried out by the "deep state". During the 6-7 September incidents, which can be considered as the last link in the massive chain of the social engineering project, in total 5 317 buildings were attacked and plundered including 4 214 houses, 1 004 workplaces, 73 churches, 1 synagogue, 2 monasteries and 26 schools of minorities. Fifty-nine percent of the ravaged workplaces belonged to Greeks, 17% to Armenians, 12% to Jews and 10% to Muslims. During the attacks, 11 people were killed and approximately 300-600 were wounded.³¹ But it was enough to force 80 000 Greeks to abandon Turkey in 1955 and leave their ancestors' land forever. At the beginning of the 1990s, the former Chief of the Special War Department, General Sabri Yirmibeşoğlu, confessed that, "The 6-7 September incidents were the deeds of "deep state." And the aim was accomplished. I

²⁸ Alpay, Şahin, Freedom of religion far from secured in Turkey, *Today's Zaman*, 1 April 2012.

²⁹ Oehring, Otmar, *TURKEY: Is there religious freedom in Turkey?* F18News on 12 October 2005.

³⁰ Dündar, Fuat, *Modern Türkiye'nin Şifresi, İletişim Yayınları*, İstanbul, 2008, 102.

³¹ Aktar, Ayhan, *Sabah*, 5 Eylül 2005.

am asking you: Wasn't it a wonderful plot?"³² Certainly no one can deny that such "wonderful plots" have caused a dramatic decline in the number of the Christian population in Turkey. It is estimated that the current number of Greeks in Istanbul is around 2 000.³³

Until very recently, Christians were perceived as "domestic foreigners."³⁴ In the late 1960s, when the Cyprus conflict surfaced and became an international problem between Turkey and Greece, the state expropriated the land and properties owned by Christian community foundations. The Greek Orthodox Church had owned 11 000 properties in Istanbul, but now owns around 500.³⁵ Due to the escalation of the Cyprus problem, the historic Theological School of Halki (*Heybeliada*), which had opened in 1844 to train Greek Orthodox clergy, was closed down in 1971 and is still closed (at the date of writing).

Kemalist ideology pursued a social engineering project from the very beginning. In implementing their social engineering schedule, the Kemalists benefited from the Union and Progress Party's policies.³⁶ The main target of this project was to assimilate everybody into Turkish identity, whether they were Christian or Muslims, Kurds, Arabs or Circassians. In spite of all this, the Muslim minorities of the country are considered inferior Turks. If they revolt or try to create problems, they are brutally punished. After the collapse of the Ottoman Empire, the majority of those who came from the Balkans and Caucasus region were ready to be assimilated into the Turkish identity, but the Kurds who lived in their own areas resisted this policy. This situation caused many revolts and much unrest among them. In short, Kemalism was a mono-cultural nation building project. Not only Christians but the Kurds, Alevis, faithful Muslims, Islamists, leftists and liberals were targeted in this project. According to the constitution, Turkey is a secular state and the Christians are guaranteed the right to practice their religion freely. But secularism is never understood in Western style and it is used as an ideological tool to guarantee state control over religion. Kemalist authoritarian understanding of secularism never separated state and religion. There was always a state monopoly and control over religion.

Although in recent years the government has implemented some reforms to improve the rights of Christian minorities in Turkey, there is still a long way to go. The

³² Güllapoğlu, Fatih, *Tanksız Topsuz Hareket*, Tekin Yayınevi, 1991, 104.

³³ Akçam, Taner, 6-7 Eylül ve Suriye, *Taraf*, 9 Eylül 2013.

³⁴ Eibner, John, Turkey's Christians under siege, *Middle East Quarterly* Spring 2011.

³⁵ Grossbongardt, Annette, Christians in Turkey: The Diaspora welcomes the Pope, *Der Spiegel*, 28 November 2006.

³⁶ First, in 1889 the organization established as "The Committee of Ottoman Union" (*İttihad-ı Osmani Cemiyeti*) by medical students and one year later changed its name to "The Committee of Union and Progress." In 1906 the organization transformed itself into a political party. Kazım Karabekir, *İttihat ve Terakki Cemiyeti*, YKY, İstanbul 2009, p.209

Justice and Development Party has passed some new laws and according to these new laws, even Christian community foundations can ask for their expropriated properties to be returned. Besides this, the new law makes it easy to open houses of worship, but in many areas of Turkey it is still difficult to pass bureaucratic and local authority obstacles. Religious communities still do not have the right to establish their religion-based organizations and they cannot open educational institutions to teach their religion. Even in Article 39 of the Lausanne Treaty it is written that “Turkish citizens belonging to non-Muslim minorities will have the right to the same civil law and politics as Muslim citizens. All people of Turkey will be equal regardless of their religion.”³⁷ All these restrictions drew the attention of NGOs and human rights commissions who closely follow Turkey. Therefore, the U.S. Commission on International Religious Freedom, in its annual report of March of 2012, listed Turkey as one of the worst offenders of religious freedom. The commission’s list of 2012 includes 16 countries, and among them two were new: Turkey and Tajikistan.³⁸

It is really disturbing to see the name of Turkey among the most serious offenders of human rights and included among mainly Third World countries. There are particular reasons why Turkey was added to the list of “Countries of Particular Concern.” It is sure that one of them stems from the legal position of churches. The Ecumenical Patriarch Bartholomew, spiritual leader of the world’s 250 million Eastern Orthodox Christians, highlights the problem thus: “Our seminary remains closed. We can’t educate our clergy. We don’t have a legal status in Turkey and neither do the Catholic Church, Protestant churches, the Armenian Church, or the Jewish community.”³⁹ It seems that the issues of Christian minority rights to train clergy, offer religious education and maintain places of worship have drawn the attention of the commission.

In the commission’s 2008 report, Turkey is among the countries listed as “under review” and in the 2009 report it included in the “watch list.” According to the commission’s 2012 report Turkey’s situation has deteriorated. Turkey’s foreign ministry has reacted harshly to the report and declared that “this report purposefully ignores further steps taken recently.”⁴⁰ Whether Turkey deserves to be placed among the worst countries of the world or not is a controversial issue, but those who live in Turkey and watch the country closely must admit that the freedom of

³⁷ *Lausanne on its 70th anniversary*, The Ministry of Culture of the Turkish Republic, prepared by Mehmet Özel, 1993, 48.

³⁸ The others were Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, Uzbekistan, Egypt, Iraq, Nigeria, Pakistan, Turkmenistan and Vietnam. United States Commission on International Religious Freedom, Annual Report 2013, <http://www.aina.org/reports/uscirf2013.pdf>.

³⁹ Markoe, Lauren, Turkey, key U.S. ally, cited for religious freedom woes, *The Washington Post*, 20 March 2012.

⁴⁰ Alpay, Şahin, Freedom of religion far from secured in Turkey, *Today’s Zaman*, 1 April 2012.

religion and living conditions of Christians have improved in recent years. In many aspects, it may not be compatible with democratic norms and standards, but in 2012 it is much better than in 2008 and in previous years.

In addition, it is not only the U.S. Commission on International Religious Freedom that criticizes Turkey, Amnesty International, which watches the country very closely, also stated in its report of 2012 and the previous year that Turkey violated freedom of religion.⁴¹ In addition, the Amnesty International report pointed out that under international law, state neutrality and secularism are not legitimate reasons for imposing restrictions on the exercise of the freedom of religion.

The process of applying to join the EU has changed many things in Turkey and during its third term of office, the Justice and Development Party looks more mature and empathetic to the rights of the Christian minority. Christians are aware of this reality and know very well that there is no doubt that the current government is much more tolerant of the minority's basic demands than its predecessors were. But firstly the legal framework must be clarified and secularism should be transformed into constitutional principles. To achieve this, the new constitutional process will provide a great opportunity for a new beginning in Turkey. Whether Turkey will be able to make such a major change in its new constitution or not is a tough question and many people have doubts in this regard. However, Turkey eventually has to face the reality of real democracy and create such an environment that its Christian minorities feel free and consider themselves as equal citizens.

⁴¹ Amnesty says Turkey violates freedom of religion with headscarf ban, *Today's Zaman*, 24 April 2012.

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Perceptions of Christians in Turkey

A study of the climate of accusations against Christians in Turkish newspapers

Wolfgang Haede¹

Abstract

Though Turkey has been a secular and democratic country for decades, the public perception of Christians has been affected by rejection and prejudice. In the years from 2001 to 2007, we saw a development from accusations by official institutions and media against Christians actively propagating their faith to acts of violence against Christians culminating in the murders of three Christians in Malatya/Turkey. The study covers five Turkish daily newspapers and their perception of Christians at the height of a media campaign in 2004/2005. It reveals that the different societal groups in Turkey differ strongly in their view of Christians and their activities. Each group, represented by one of the newspapers, tries to use the discussion for their own political agenda. However, none of the newspapers leaves the opportunity unused to instrumentalize words like “missionary” to arouse negative emotions.

Keywords Christian identity, Turkey, missionary activities, newspapers, prejudice.

The fact alone of being a Christian in Turkey may raise suspicion among Muslim Turks. “The PEW 2008 Global Attitudes Survey among people from 24 countries, including six 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).² That an ethnic Turk³ confesses to be a Christian seems to be

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² Cf. Haede 2012:89. “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 for which was the war in Iraq that was perceived by many people in Turkey as “Christian” nations invading a Muslim country.

³ I am aware of how problematic it is to speak of “ethnic Turks.” Encouraged by the official Kemalist ideology “Turk” was often used in daily life for every Muslim within Turkey. Today the awareness of the diversity of people groups in Turkey is growing.

impossible for many Turks. Because Turks with a Christian identity are so far away from what can be imagined by people in Turkey, converts to Christianity are easily slandered as traitors or even agents of foreign powers.

The media play an important role in forming and reflecting the opinions of people. Therefore, to examine daily newspapers on how they view Christians and Christianity can provide important insights about the kind of accusations with which Christians are confronted. It can also help to get an idea about how diverse these perceptions are and about the common perceptions in spite of this diversity.

1. Christian identity in Turkey

1.1 Christians in the Ottoman Empire

In the Ottoman Empire the organization of society according to “millets,” that is religiously defined people groups (cf. Hage 2007:50-52), provided a certain degree of freedom for Christians. However, this freedom was limited. As an example, the transition of Muslims to a Christian millet was unthinkable.

In the 19th century, European ideas of national identity began to influence the elites of the Ottoman Empire. However, as the attempts to create a multi-religious “Ottoman nation” failed (Lewis 1968:333) Muslim thinkers began to see nation and Islam together. The rebellion of “Christian nations” inspired by European nationalism and their fight for independence that finally led to independent states (for instance Greece 1829, Serbia 1878, and Bulgaria 1908) increased mistrust against Christians and consolidated the idea that only Muslims can be real Turks, faithful to their state (cf. Haede 2012:88).

However, the idea that the ethnic Turk has to be a Muslim was never an empirically proven truth. During the migration of Turkic people from East to West a few of them like the Gagaus Turks, still living in today's Moldavia (cf. Grulich 1984:15-16; Aygil 2003:80-94), had accepted Christianity.⁴ Even inside the Ottoman Empire, the people group of the “Karamanlı” (cf. Aygil 2003:72-79; Anzerlioğlu 2003) consisted of Turkish speaking orthodox Christians. Some considered them Greek Christians having lost their language; but many think they were a Turkic people that accepted Christianity many centuries ago (cf. Aygil 2003:73-76). The Karamanlı had to leave Turkey as Christians when after the foundation of the Republic of Turkey the new state and Greece agreed about an exchange of people groups (Kreiser/Neumann 2009:406).

1.2 Christians in the Republic of Turkey

When Mustafa Kemal, later named Atatürk, founded the Republic of Turkey in 1923, he tried to build the new state not on an Islamic but on a national Turkish identity.

⁴ Cf. also Jenkins 2008:63-64 and Neill 1990:100-110 about early Turkish Christianity.

The legal status of Christians remaining in the new state “on paper was higher than ever before” (Lewis 1986:351), their real importance in the Republic however was minor. Many Muslims were blaming the Christians for the decline and final fall of the Ottoman Empire.

1.3 Turkish Protestant Christians

A very new development in Turkey is the emergence of small evangelical churches consisting mainly of Turk converts from Islam to Christianity as a result of evangelical missionary activities starting anew in the 1960s (cf. Wilson 1996:6-17). While the number of Christians in traditional churches was continually reduced due to the massacres against Christians during World War I, the exchange of population between Turkey and Greece and the mass emigration especially of Christians to the West, the number of Turkish Protestant Christians has slowly but steadily grown up to maybe 4 000 in today's Turkey.

As a Christian identity for ethnic Turks is almost unthinkable for many Turks and on the background of the Islamic view of apostasy as treason (cf. Schirrmacher, Chr. 2000:36-49) this new Christian movement easily became the target of anti-Christian sentiments and verbal attacks. For this reason, the small Protestant missionary movement in Turkey is in the focus of the newspapers I analyzed and in the focus of my research.

2. The background of the media campaign against Christians in 2004/2005

2.1 The National Security Council's report about missionaries

In 2001 the National Security Council (Milli Güvenlik Kurulu), “at the time widely considered the most powerful institution in Turkey” (ESI 2011:7) determined in a report, later published in the daily newspaper *Sabah*,⁵ that missionary activities were a great danger for the country. That was the starting point for a growing media campaign against Christians involved in missionary activities.⁶

2.2 Anti-missionary campaign: religious or nationalistic background?

From today's perspective most commentators would claim that the media campaign against missionaries and the following acts of violence against Christians were not the product of religiously motivated bias, but were rather connected with an ultra-

⁵ Mehmet Çetingüleş, “Misyoner alarmı” (“Missionary Alarm”), *Sabah*, 7 December 2001, <http://tiny-url.com/missionaryalarm>

⁶ Turan 2009:593-627 offers a long list (probably almost exhaustive) of Turkish publications about Christian missionaries until 2009. There is a striking increase of publications of all degrees of quality after 2001.

nationalistic conspiracy against the governing “Justice and Development Party” (Turkish: Adalet ve Kalkınma Partisi – AKP). This conspiracy against the religious and Europe oriented policy of the AKP was mainly supported by military circles and became known as “Ergenekon” (cf. ESI 2011:3-9).

This analysis seems to be true. However, it also needs to be mentioned that the report of the National Security Council was issued in 2001 – that is before the AKP came to power in the fall of 2002. The Turkish journalist Saymaz (2011:27-39) documents that before the crucial report and until the AKP came to power a number of motions in the Turkish parliament against missionary activities were started by members of the AKP (then opposition party) and by the more conservative Islamic Saadet Partisi (SP, “Felicity Party”). As we will see below, the daily newspaper *Millî Gazete*, that is considered the mouthpiece of the SP, was strongly involved in the media campaign.

Therefore, even if it seems to be true that the murders of Christians are the result of an ultra-nationalistic conspiracy, other groups of society contributed to the atmosphere of prejudice and fear that probably motivated the nationalists to choose Christians as a target to seek their own interests.

2.3 The climax of the media campaign in 2004/2005

In the fall of 2004 some factors came together to accelerate the media campaign against Christians actively propagating their faith in Turkey. In December 2004 Turkey and the European Union agreed to begin with talks about Turkey’s membership. The US-American siege and final conquest of the resisting city of Fallujah in Iraq in November 2004 was perceived as a cruel massacre and provoked a public outcry in Muslim countries. Finally, Rahşan Ecevit, the wife of former Prime Minister Bülent Ecevit, declared in a written statement⁷ her fear that Turkey might lose her religious identity, because of the failure of the government to control missionary activities due to being considerate of the European Union.

Because Rahşan Ecevit until then was rather known as a leftist and not very religious person, her remarks provoked many reactions in the media.

2.4 Were the murders of Christians a consequence of the media campaign?

In February 2006, the Italian Catholic priest Andrea Santoro was killed in his church in the Black Sea City of Trabzon by a young Turkish man. In January 2007, the Armenian journalist Hrant Dink was shot dead in front of the building with the office of the Armenian newspaper AGOS. On April 18, 2007, three Christians were terribly slaugh-

⁷ Cf. *Milliyet*, 03.01.2005, 1+16: “Rahşan Ecevit’ten misyoner tepkisi – Din elden gidiyor” (“Reaction to missionaries from Rahşan Ecevit – Religion is gliding out of the hand”).

tered by five young Turkish men in the city of Malatya. The victims were the Turkish converts Necati Aydın and Uğur Yüksel and the German missionary Tilmann Geske.

It is not within the scope of my paper to research in depth how far the media campaign against missionaries triggered the murders against Christians. That exaggerated numbers about new churches that were published in newspapers at least partly motivated the murderers of Malatya is obvious.⁸

2.5 Developments in media coverage after the massacre of Malatya

A quantitative research on the question whether media coverage about Christians was more objective and more positive after the massacre of Malatya is not part of my study. It seems as if mainstream TV and newspapers were shocked by the results that the previous media campaign obviously had yielded. The number and intensity of direct attacks on Christian activities fell. This fact is probably also due to the arrest of ultranationalist activists starting in 2008 and the consequent court case against them under the name “Ergenekon.”

However, as news about a conference in Kocaeli/Turkey in 2012 proves, there are still voices trying to direct anger against Christians to enhance their own political agenda.⁹ In January 2013, just a few months after this conference, the Turkish police arrested a group of people who supposedly planned to assassinate the Turkish pastor of the Protestant Church in Izmit/Kocaeli, Emre Karaali.¹⁰

2.6 Why are missionaries targeted?

As we will see below the main target in criticizing Christians are missionaries (“misyoner”) or missionary activities (“misyonerlik”). There seem to be historical and religious reasons for this special focus. I don’t have the space here to discuss the validity of the accusations.¹¹ However, in Turkey Western missionaries during the last century of the Ottoman Empire are widely perceived as part of the Western efforts to split and destroy this Empire. Today’s missionaries are evaluated in the same manner. The newspaper *Millî Gazete* concisely summarized this mindset: “The missionaries destroyed the Ottoman state; they want to destroy the Republic

⁸ The local Malatya newspaper “Bakış Gazetesi” had warned on February 4, 2005, claiming that 48 house churches had been opened in the city of Malatya (cf. Saymaz 2011:138-139). In fact, by then there was one Christian fellowship in Malatya, meeting in two apartments. One of the murderers, Emre Günaydın, told the police after the murders that he felt, he had to do something, because he had heard about 50 churches in Malatya.

⁹ Cf. <http://tiny.cc/kocaeli> [02.06.2012] reporting about a conference speaker claiming that there are 54 000 Protestant house churches in Turkey (the real number of Protestant individuals maybe being 5 000).

¹⁰ Cf. <http://tinyurl.com/karaali> [11.03.2013].

¹¹ Just as a few works discussing the role of missionaries in the 19th century cf. DeWitt 2004, Pickert 2008, Umit 2008.

too.”¹² Not only newspapers and television channels focused on missionaries and their activities during the years 2001 to 2007. Many books written in Turkish covered the “missionary threat.” Poyraz 2004 (1st ed. 2001), Gündüz 2002, Kerimoğlu 2004 are only a few examples.

To target missionary activities also has religious reasons. Of course, Christian mission in Turkey intends to call Muslims to the Christian faith. Since apostasy from Islam is considered treason by traditional Islam (cf. above 1.3 and Schirrmacher, Chr. 2000:36-49), missionary activities are seen as especially provocative.

In addition, it seems that sometimes missionaries are targeted, because to target Christians as a whole in the present mainstream in Turkey being familiar with human rights issues is considered “politically incorrect.”

3. The choice of the time frame and the newspapers for this study

This present paper presents first findings for a more detailed and elaborate study that will be delivered to the University of South Africa as a dissertation for a DTh in Missiology.

3.1 The time frame

As described above (see 2.3) there was a climax of a media campaign at the end of 2004 and in the beginning of 2005. Some media used certain political developments to start this campaign, others felt obliged to react and present their opinions on Christian activities. Because of the public awareness of the debate, the main points that every group of society wanted to raise were voiced in this short period of time. Therefore, it seemed appropriate to me to limit my study to the months from November 2004 to January 2005.

3.2 The newspapers

Daily newspapers are still important for making and reflecting opinion in Turkey. Typical for the national newspapers is a high number of columnists “who are commenting and analyzing political, social and economical events on a national and international level” (Çebi 1994:191).¹³ Because many of these columnists are guests or even moderators in TV shows and write books, their influence on public opinion can be remarkable.

With the choice of newspapers, I tried to cover the main ideological currents in Turkey of the years 2004/2005. Though the proportions and societal relevance of

¹² “Osmanlı devletini misyonerler yıkmıştı. Cumhuriyeti de yıkmak istiyorlar,” Millî Gazete, 06.01.05, 2, Mehmed Şevket Eygi: “Raşan Ecevit bile feryat etti.” (“Even Raşan Ecevit is crying for help”).

¹³ In the German original: “...die ... die politischen, sozialen und wirtschaftlichen Ereignisse auf nationaler und internationaler Ebene kommentieren und analysieren.”

these currents have changed remarkably since then, all of them are still existent in Turkish society.

I chose for my research the following five national daily Turkish newspapers:

Milliyet ("Nationality") which has a circulation of 260 943¹⁴ was founded in 1950 and can be characterized as liberal democratic (cf. Çebi 1994:197-198). Indeed the newspaper's ownership changed several times since its foundation and so changed the character of *Milliyet*. To put it close to "conservative mass papers" like the German Embassy (*Deutsche Botschaft* 2003:55, footnote 32) does seem not to be justified however, at least for the covered period.

Cumhuriyet ("Republic") with a circulation of 53 960 is the oldest of the still existing Turkish daily newspapers and was founded in 1924 by Yunus Nadi, a co-worker of Mustafa Kemal, the founder of the Republic of Turkey and later named "Atatürk" (Çebi 1994: 196-197). Çebi was probably correct in 1994 when he characterized *Cumhuriyet* as "leftist liberal" (Çebi 1994:195). In 2003 the *Deutsche Botschaft* however named it "leftist national" (*Deutsche Botschaft* 2003:47). Especially since the AKP came to power in 2002 *Cumhuriyet* became more and more the mouthpiece of the "Kemalism," the state ideology introduced by Turkey's founder.

Yeni Şafak ("New Dawn") had a circulation of 121 520 and was founded in 1994. *Yeni Şafak* is known for being close to the governing AKP and its Party Leader and Turkey's Prime Minister Recep Tayyip Erdoğan. Like this party, it stands for a moderate but still political Islamic worldview that tries to bring together traditional Islam and the modern world.

Millî Gazete ("National Newspaper" – circulation 16 887) was founded in 1973 and was viewed as "the mouthpiece of the Islamic-fundamentalist 'Refah Partisi' (RP) ('Welfare Party')" (Çebi 1994:197). When the party of the former Prime Minister Necmettin Erbakan split into the SP ("Saadet Partisi" – "Felicity Party") and the AKP, the *Millî Gazete* continued to defend the positions of the more traditional fundamentalist SP.

Yeniçağ ("New Age") with a circulation of 55 538 was founded only in 2002 with the motto "Dünya'yı Türkçe okuyun" ("Read the world in Turkish"). It represents an ultra-nationalistic worldview.

3.3 How do I evaluate the newspapers?

Because not all of the newspapers had Internet archives for the period of time I researched, I decided to browse the newspapers manually and photograph each available article that somehow deals with Christians and/or Christianity.

¹⁴ These and the following numbers are for sold copies of Turkish national newspapers in the week from 29.11.2004 to 05.12.2004 according to <http://www.medyatava.com/tiraj.asp> [02.06.2012].

For my dissertation, I will base my methodology on Philip Mayring's "qualitative contents analysis" ("qualitative Inhaltsanalyse") with a deductive application of categories (cf. Mayring 2010). This present study however is based on an initial detailed analysis of the texts. I am applying the following questions to the texts: (1) In which contexts are Christians/Christianity mentioned? (2) Is there a positive or negative approach to Christians/Christianity? (3) Which statements are given for the grounds of positive or negative characterization? (4) What are Christians accused of? (5) From which ideological background are the reasons for the accusations given?

4. Perception of Christians in the newspapers

I will start with the one newspaper that was leading in the campaign against missionaries.

4.1 Yeniçağ – the ultra-nationalists

4.1.1 Any closeness to Christianity is suspicious

It is striking how any closeness to Christianity seems to be negative for Yeniçağ. To cast a damning light on the then most important political enemy, the AKP, it seems to be enough to indicate this party's ties with Christianity: They want to lead Turkey to the EU, though the EU's national anthem speaks about God, the Father.¹⁵ The AKP is reported to have applied for membership in the "European People's Party", an organization that also includes Christian Democrat Parties.¹⁶ On December 27, 2004, p 11 Yeniçağ headlines "Hristiyanların kurtarıcısı Tayyip" ("Tayyip, the savior of the Christians"), because a Protestant pastor is quoted saying that the Prime Minister brought improvements for the Christians. On January 3, 2005, a short news (p. 9) reports about one newspaper ("Vakit") blaming another one (Hürriyet) of being "Christian," because the latter had regarded Father Christmas and New Year celebrations as something innocent. It is difficult to find any positive comment about Christians or Christianity in Yeniçağ.

4.1.2 Nationalistic arguments against Christians

From its nationalistic background, Yeniçağ reacts particularly strongly when the national interests of Turkey seem to be at risk. So numerous articles deal with the claim of the Greek Orthodox Patriarchate of Istanbul to be "ecumenical,"¹⁷ which by many nationalists is suspected to be a step to build a small Vatican in Turkey.

¹⁵ Cf. Yeniçağ (in the following YC), 01.11.04, 1.11

¹⁶ Cf. YC, 04.11.04, 10. Headline: "AKP 'Hristiyan' oluyor" ("The AKP becomes Christian").

¹⁷ Cf. e.g. YC, 27.11.04, 9 "Papazın AİHM tehdidi" ("The Priest's threat with ECtHR"), 02.12.04, 9 Hasan Demir: "ABD ve 'Ekümenik' Bartholomeos" ("The USA and ecumenical Bartholomeos"), 27.12.04, 9 –

4.1.3 Religious arguments against Christians

Ultra-nationalism and Islamism cannot be kept completely separate in Turkey. In nationalistic circles the theory of the Turkish-Islamic Synthesis was discussed broadly in the 1970s and 1980s (cf. Kurt 2010). According to this ideology, Turks once found and now have their identity in Islam. If a significant number of Turks would convert to Christianity “one of the main branches ensuring Turkish unity would be broken.”¹⁸ This thought leads to seeing a Turkish convert from Islam to Christianity as traitor.

The religious arguments against Christianity in *Yeniçağ* however are not very deep theologically. On November 7, p. 15 (“Hazreti İsa diyor ki!” – “The venerated Jesus says”) during the Ramadan, the month of fasting, the newspaper can quote long passages about the Islamic Jesus without any reference to the challenges to this by Christian theology. Hulki Cevizoğlu criticizes the tendency of Muslims to wait for Jesus (“Hz. İsa’yı Bekleyen Müslümanlar!” – Muslims waiting for Jesus! 28.12.04, p. 11) though the idea of Jesus’ return is widely accepted in Islamic tradition (cf. Khoury 1998:93).

4.1.4 Political arguments against Christians

The Christian threat is seen as part of a worldwide conspiracy including Israel against Muslims and especially against Turkey.¹⁹ The US soldiers’ fight in Iraq, the opening of a church in Turkey or missionary activities, are summarized with headlines such as in the following column: “Haçlı Hortlaması” (“The Ghost of the Crusades rises”).²⁰ Amongst these political arguments the most outstanding topic is criticism against missionary activities (“misyonerlik”).

4.1.5 Warning against missionary activities

Yeniçağ warned against missionaries and their activities intensely even before the topic came on the agenda in other newspapers. The fact that “Christianity is a missionary religion”²¹ seems to be a reason to warn. To support this warning *Yeniçağ* accuses missionaries of using unethical means like bribing people with money and

Hasan Demir : “Patrik-AKP el ele/Türkiye felâkete!” (“The patriarch and the AKP hand in hand/Turkey towards a disaster”).

¹⁸ “Türk birliğinin [sic!] sağlayan ana kollardan biri kınılmış olacaktır.” Art. Ahmet Gürsoy, *Dini yabancılaşma ve misyonerler* (“Religious alienation and missionaries”), *YC*, 11.01.2005, 12.

¹⁹ Cf. *YC*, 03.12.04, 9, Hasan Demir: “Evet, Bartholomeos ihanet eder!” (“Yes, Bartholomeos is betraying”).

²⁰ *YC*, 10.11.04, 9.

²¹ A quote of the former Chairman of the Presidency of Religious Affairs, Mehmet Nuri Yılmaz, in *YC*, 04.11.04, 8 “Misyonerlik tehlikesiyle karşı karşıyayız” (“We are confronted with the danger of mission work”).

other attractions. To prove the seriousness of the threat, numbers are used that look very exact but are often greatly exaggerated.²² Yeniçağ is not reluctant to use public emotions to show missionaries in a bad light. One columnist maintains that American soldiers in Iraq force the population to become Christians, killing those who resist.²³

As Rağsan Evécit started the climax of the media campaign on January 03, 2005, Yeniçağ seemed to be prepared. From January 4 to 15, 2005, Yeniçağ published a whole-page series of articles on 12 consecutive days against missionaries.²⁴ It is not possible here to list the multitude of accusations against missionaries in this series and in other articles during that time. They range from quoting true information about missionary activities to connecting everything with it, like foreigners buying land in Turkey²⁵. The accusations against Christian missionaries culminate in sentences like, "It draws attention that every missionary involved in Christian propaganda is at the same time a spy"²⁶ or even: "Each missionary activity is an act of terror."²⁷

4.2 Millî Gazete – the Islamists

The Islamist Millî Gazete conforms to the principal opposition to Christian propaganda that we saw in Yeniçağ. Differing from Yeniçağ, it tries to give well-grounded religious reasons for its opposition.

4.2.1 Warning against dialogue with Christians

Before the special anti-missionary campaign started in the beginning of January 2005, the Millî Gazete was more focused on warning against a dialogue with Christians. The Muslim-Christian dialogue was perceived as a trap for Muslims. The Vatican, the Evangelicals²⁸ and the Zionists allegedly used it as just one means for a

²² Cf. YC, 06.11.04, 13, "Misyonerlik çalışmaları üzerine" ("About missionary activities") speaking of 55 000 missionaries in Turkey.

²³ Cf. YC, 10.11.04, p.9, Hasan Demir: "Haçlı Hortlaması" ("Rise of the Crusader").

²⁴ YC, 4-15.01.2005, always 8, Yüksel Mutlu: "Dünden günümüze belgeleriyle ... Misyonerler" ("From yesterday until today documented: missionaries").

²⁵ Cf. YC, 06.01.05, 8: "Değişik kaynaklardan edinilen bilgilere göre yabancıların eline geçen toprakların 100.000 kilometre kareyi bulduğu ileri sürülüyor." ("According to the knowledge from various sources it is maintained that the land that fell into the hands of foreigners sums up to 100 000 square kilometers").

²⁶ YC, 06.01.05, 8: "Hristiyanlık propagandası yapan misyonerlerin aynı zamanda birer casus olduklarına dikkat çekiyor."

²⁷ "Her misyoner faaliyeti bir terör eylemidir." Hasan Demir in: YC, 11.01.05, 9.

²⁸ Interestingly in many Turkish newspapers the word "Evanjelist" or "Evangelist" has become common for "evangelical."

“new crusade.”²⁹ As one reason for the denial of dialogue, Millî Gazete claimed bad intentions on the part of the Christians. The Islamist newspaper saw the bad intentions not only in some hidden political agenda, but also in a principal theological fact: While the Muslims accept Jesus as a prophet, the Christians do not accept Muhammad as a prophet of God.³⁰

The question of a dialogue with Christians mainly seems to be an inner-Islamic discussion. Therefore, a columnist tries to prove that talks about Muhammad with representatives of other beliefs have nothing in common with today's understanding of dialogue.³¹ He maintains: If Muslims accept Christianity as a rightful religion and Christians as going to paradise, these Muslims cannot be considered as believers.³²

Warning against Muslims adopting Christmas traditions the newspaper confers to the Qur'an³³ admonishing not to make friends with Christians.³⁴ In addition, dialogue is not considered necessary, for “What kind of dialogue should we have with other religions whose validity was totally cancelled by Allah?”³⁵

4.2.2 Accusations against missionaries

Millî Gazete, just as the newspaper *Yeniçağ*, was warning against missionaries from the very beginning of the period studied here.³⁶ As the negotiations with the European Union were coming closer, the newspaper complained about the freedom that needed to be given to missionaries as a price to be paid to Europe.³⁷

When Raḥşan Ecevit raised her voice, Millî Gazete considered this fact not as a proof for Ecevit's true faith, but as a sign how bad the situation really is: “When it gets to be unendurable, even people we didn't expect to, do rebel.”³⁸

²⁹ Cf. Millî Gazete (in the following MG), 06.11.04, 2, Mehmed Şevket Eygi: “Papazlı Hahamlı İftar-Diyalog Ziyafeti” (“Meal for breaking the fast with Priests and Rabbis”).

³⁰ Cf. MG, 08.11.04, 13, M. Hamdi Güner: “Misyonerler yüzsüz” (“Shameless missionaries”).

³¹ Cf. MG, 18.12.04, 15, Ebubekir Sifil: “Diyalog Argümanları” (“Arguments about dialogue”). MG, 25.12.04, 14, Ebubekir Sifil: “Diyalog Argümanları (4)”.

³² Cf. MG, 09.11.04., 2, Mehmed Şevket Eygi: “Diyalogçuları Uyanyoruz.” (“We are warning those involved in dialogue”).

³³ Cf. Qur'an Sura 5:51 (according to Paret 2011).

³⁴ Cf. MG, 28.12.04, 15, Mehmet Talu: “Müminleri bırakıp da kafirleri dost edinmeyin.” (“Don't leave the believers and make friends with unbelievers”).

³⁵ “Allah'ın (c.c.) hükümlerini tamamen kaldırdığı diğer dinlerle bizim ne diyalogumuz olabilir ki?,” MG, 10.12.2004, 17, Nedim Odabaş: “Dinler Bahçesi.” (“Garden of religions”).

³⁶ Cf. MG, 04.11.04, 3, article “Misyonerliğe karşı eğitim şart” (“Education is a condition against missionaries”).

³⁷ Cf. MG, 05.11.04., 3, Mehmed Şevket Eygi: “Azgın ve Saldırgan Evanjelistlerle İşbirliği Yapan Müslümanlar.” The headline shows that the real enemies are the moderate Muslims: “Muslims working together with ferocious and aggressive Evangelicals.”

³⁸ “Ama bıçak kemiğe dayanınca demek ki hiç beklenmeyen kişiler bile isyan ediyormuş.,” MG, 04.01.05, 3, Zeki Ceyhan: “Raḥşan Ecevit ve AKP`liler” (“Raḥsan Ecevit and the AKP members”).

Some articles in *Millî Gazete* try to make a distinction between “aggressive missionaries” (“saldırgan misyonerler”) and others: “Missionaries who work in an aggressive, militant, fanatic way, do propaganda and have motivations outside of religion, are aggressive missionaries.”³⁹ The Islamist newspaper doesn’t really describe the “non-aggressive missionary.” In one case, this group is defined as missionaries who are active exclusively in social work.⁴⁰ Unlike other newspapers, which will be studied below, there is however not even a formal declaration that mission work with good motivation should be endured or even made possible in a democracy. The freedom for Christian missionaries to propagate their faith is openly denied with the argument that there is no real freedom in Turkey for Muslims to do this.⁴¹

The accusations in detail conform mostly to those in *Yeniçağ*. Missionaries are accused of using dishonest methods to cheat primarily young people with economical or psychological problems.⁴² Behind the missionary activities a political agenda of the USA to divide Turkey is suspected.⁴³ Missionaries are allegedly not laboring for a religious purpose, but for Israel and for re-Christianizing Anatolia.⁴⁴

4.3 Yeni Şafak – the moderate Islamists

Different from the newspapers dealt with until this point, in *Yeni Şafak* we find at least rudimentary forms of a positive evaluation of Christians. Criticism is stronger when directed to “the West” than to “Christianity”.

4.3.1 Positive evaluation of Christians and Christianity

Though writing mainly from an Islamic perspective *Yeni Şafak*, different from *Yeniçağ* and *Millî Gazete*, shows some positive evaluations of Christianity: The early religious education in the USA is seen as an example for Turkey,⁴⁵ a columnist sees the conservative moral values of evangelical Christians as close to those of Islam⁴⁶ – even though he utters astonishment about the great distance in other political questions.

³⁹ “Saldırgan, militan, fanatik şekilde çalışan, propaganda yapan, din-dışı amaçları olan misyonerler agresif misyonerdir.” MG, 07.01.05, 5, Mahmut Toptaş: “Din elden gitmiyor!” (“The religion is not gliding out of the hand!”).

⁴⁰ MG, 19.01.05, 2, Mehmed Şevket Eygi: “Diyanet’e Açık Mektup (‘An open letter to the Presidency of Religious Affairs’).”

⁴¹ Cf. MG, 07.01.05, 5, Mahmut Toptaş: „Din elden gitmiyor!“ (“Religion is not gliding out of the hand!”).

⁴² Cf. MG, 05.01.05, 4, “Ankara Bürosu: Gençler ‘misyoner’ kısıncında”: “Young people in the claws of missionaries.”

⁴³ Cf. MG, 06.01.05, 5 “Ümmetin hakkını da korumalıyız,” quoting an article of Rahşan Ecevit in the newspaper *Zaman* from 05.01.05.

⁴⁴ Cf. MG, 07.01.05, 5, Mahmut Toptaş: “Din elden gitmiyor!“

⁴⁵ YS (im Folgenden YS), 08.11.04, 4, “Amerika’da din eğitimi” (“Religious education in America”).

⁴⁶ YS, 09.11.04, 5, Kurşat Bumin: “Gerçekten de ,garip bir durum’ ve ,zor bir konu“

When in December 2004 the Prime Minister Erdoğan opened an Armenian Museum⁴⁷ and a few days later a “Garden of Religions” (“Dinler Bahçesi”) in the town of Bellek, close to Antalya,⁴⁸ Yeni Şafak writers count Christians as belonging to the mosaic of religions in Turkey and quote Prime Minister Erdoğan thanking the Armenians for their contribution to Turkish society. The focus of some of this positive evaluation however is not so much to praise Christianity but to show the tolerance of Muslims or (as in the case of Christian education) pursuing their own political agenda, which is more religious education for Muslim children.

4.3.2 Criticism against the West rather than against Christians

Yeni Şafak’s criticism focuses on the West or the Western civilization. By criticizing the West and especially the USA, the writers of the newspaper point to Bush’s religious rhetoric and claim: “America quasi starts ‘wars of religion’ again.”⁴⁹ Though the theological fundamentals of Christianity are hardly ever made a topic, Yeni Şafak nevertheless can see a “white, Protestant, Christian ... Christian/Jew coalition”⁵⁰ as today’s enemy of Islam.

4.3.3 Self-confidence and “turning the table”

While Yeniçağ saw the political and religious efforts of “Western countries” as an attempt to minimize the strength of Turkey, and Millî Gazete saw these as an assault on Islam, Yeni Şafak seems to exhibit more self-confidence. Yeni Şafak interprets the strategy of the West as “to prevent Turkey from claiming the Islamic civilization and to remove the possibility of masses especially from the Western world from becoming Muslims.”⁵¹ Therefore, what is perceived as the fight of the West against the Muslims, is interpreted as driven by fear in a civilization not being sure of itself anymore.

4.3.4 Missionaries – wrong but no real danger

The activities of missionaries in Turkey were not the focus of Yeni Şafak until Raĥşan Ecevit accelerated the discussion. Even then, the newspaper at least partly

⁴⁷ YS, 06.12.04, 1, “Bir İnsanlık Müzesi” (“A museum of mankind”).

⁴⁸ YS, 10.12.04, 1.13, “Medeniyet Dersi” (“Lesson in civilization”).

⁴⁹ YS, 17.11.04, 12, Mehmet Ocaktan “Huntington ve Amerikan saldırgan Evangelist Ruhu” (“Huntington and the aggressive spirit of American Evangelicals”).

⁵⁰ “Beyaz, Protestan ve Hristiyan ... Hristiyan/Yahudi koalisyonu,” YS, 30.11.04, 11, İbrahim Karagöl: “BOP – din inşası ve yeni kitap” (“The Greater Middle East Project – construction of religion and a new book”).

⁵¹ “Türkiye’nin İslâm medeniyeti iddialanna sahip çıkmasını önlemek ve dünyanın, özellikle Batı dünyasının kitleler halinde Müslümanlaşma ihtimalini ortadan kaldırmaktır.” YS, 24.11.04, 10, Yusuf Kaplan “Avrupa’nın Bizansı, Türkiye’nin İslâmı ve Batı’nın korkusu” (“Europe’s Byzans, Turkey’s Islam and the fear of the West”). Cf. for this the following article too: YS, 13.12.04, 10, Yusuf Kaplan: “Batı’nın korkusu: Medeniyet iddiası ve İslâm’ın üçüncü hamlesi” (“The Fear of the West: Claim for Civilization and the Third Onset of Islam”).

tried to defend a pluralistic view of religious freedom. The columnist Fehmi Kuru claims that in an atmosphere of religious freedom Muslims don't have to fear missionaries. However, he presupposes that this freedom does not exist for Muslims in Turkey.⁵² Ali Bayramoğlu, another columnist, can go even further towards tolerance claiming: "To relate to other identities will not be a cause for losing its faith to any society or any individual. On the contrary, getting into contact with those others strengthens this identity and faith."⁵³

Going further into the missionary debate however, *Yeni Şafak* seems to have the desire to prove its Islamic identity. It quotes the minister Mehmet Aydın defending religious freedom in general but accusing missionaries of using material means and material promises like sending students abroad. Some articles present completely exaggerated figures about the missionary success⁵⁴ or accuses all missionaries of having a political agenda going as far as to claim: "The real goal of the missionaries is not to spread religion, but to take away land of this country."⁵⁵

Generally, *Yeni Şafak* sees the real danger not in the missionaries, but in the fact that Muslims are not as active as Christian missionaries are.⁵⁶ However, it seems to be clear to the authors that Western powers use missionaries for very bad purposes. That a person like Raşan Ecevit has to warn of missionaries allegedly shows how bad the situation in Turkey is.⁵⁷ The principle of reciprocity seems not to be a leading motive for *Yeni Şafak*. The newspaper can report about missionary success as if it were a criminal offense,⁵⁸ and a few days later express its satisfaction with the spread of Islam in Europe.⁵⁹

4.4 Milliyet – the liberal democrats

Milliyet shows some effort to defend religious freedom for Christians. The newspaper cannot be said to be part of the anti-missionary campaign; however, it repeats the often-heard accusations against missionaries at least as news.

⁵² Cf. YS, 04.01.05, 12, Fehmi Kuru: "Canhıraş bir feryat" ("A fearful cry for help").

⁵³ "Başka bir kimlikle ilişki kurma, hiç bir topluma, hiç bir ferde kimliğini, inancını kaybettirmez. Tersine, diğerleriyle temas haline geçirerek bu kimlik ve inancı pekiştirir," YS, 04.01.05, 4, Ali Bayramoğlu: "Raşan Ecevit'in kabusu ..." ("The nightmare of Raşan Ecevit ...").

⁵⁴ "In Ankara: 230 illegal missionary churches," "Ankara: 230 korsan misyoner kilisesi" – article with this headline in YS, 08.01.05, 14.

⁵⁵ "Misyonerlerin asıl hedefi din yaymak değil, bu ülkeden toprak koparma..." YS, 17.01.05, 9, Dr. Vehbi Karakaş, "Öğretim Görevlisi: Misyonerler cirit atıyor" ("Associate Professor: The missionaries do as they please").

⁵⁶ Cf. the same article.

⁵⁷ Cf. YS, 11.01.05, 10, Akif Emre: "Türkiye'de her 'misyoner' eşit olabilir mi?" ("Can each missionary in Turkey be equal?").

⁵⁸ Cf. YS, 08.01.05, 14, Evin Göktaş, Ankara: "230 korsan misyoner kilisesi" ("230 illegal missionary churches opened").

⁵⁹ Cf. YS, 10.01.05, 9, "Avrupa İslam'a yöneliyor" ("Europe is turning towards Islam").

4.4.1 Defending religious freedom for Christians

Milliyet tries to defend religious freedom or at least give room for differing opinions. Vandalism against an old Christian church in Van/Turkey is strongly condemned.⁶⁰ Complaints of the Greek-Orthodox Patriarch about limitations of religious freedom are reported without comment.⁶¹ The columnist Taha Akyol argues that the ecumenical title for the Greek Orthodox Patriarch of Istanbul, which is generally denied by Turkish authorities, could even have positive effects on the image of Turkey.⁶² A report about Christmas traditions in different Western countries⁶³ could be interpreted as a certain degree of accepting Christian identity. During the discussion about missionaries triggered by Rahşan Ecevit's remarks the columnist Mehmet Y. Yılmaz expressed a clear commitment to secularism: "Even if tomorrow all Turks believed in the books that were distributed and became Christian that can't be a problem for the secular state."⁶⁴

4.4.2 Criticism against Christianity and missionaries in more indirect form

Milliyet prefers to utter criticism against Christians in a more indirect way. The then chair of the Presidency of Religious Affairs, Ali Bardakoğlu, is reported to see the attitude of Europe to sexual morals as the main problem in Turkey's approaching the EU.⁶⁵ An AKP member of parliament is quoted claiming that a church in Samsun took 64 young people to Italy and gave them work.⁶⁶ The worst headline about missionaries ("Missionary disaster" – "misyoner afeti") is about supposed unethical missionary activities in the Tsunami relief work in Indonesia.⁶⁷

Milliyet tries to defend liberal democratic values concerning religious freedom. However, Milliyet at times tends to join into the campaign against missionaries though with a bit more distance.

⁶⁰ Cf. Milliyet (im Folgenden MI), 08.11.04, 1: "Devlet 'işgal' altında – Taliban'dan ne farkı var!" ("The state is 'occupied' – what is different from the Taliban?") and 17: Şukran Pakkan, Van: "Kiliseyi hedef tahtası yaptılar" ("They made the church a target").

⁶¹ Cf. MI, 03.12.04, 24, Yorgo Kırbaki, Atina: "Bartholomeos, Türkiye'yi Atina'ya şikâyet etti" ("Bartholomeos complained about Turkey to Athens").

⁶² Cf. MI, 04.12.04, 19, Taha Akyol: "Patrikhane meselesi" ("The problem of the patriarchate").

⁶³ Cf. MI, 25.12.04, 23 ("Cumartesi"), "Dünya Noel'i nasıl kutluyor?" ("How does the world celebrate Christmas?").

⁶⁴ "Dağıtılan kitaplara inanıp yarın bütün Türkler Hristiyan olsalar bile, bu laik devletin bir sorunu olmaz." Cf. MI, 04.01.05, 2, Mehmet Y. Yılmaz: "Rahşan Hanım bir yerde hata yapar" ("Mrs. Rahsan is wrong in something").

⁶⁵ Cf. MI, 02.12.04, 19, "Sorun cinsel ahlakta" ("The problem is with sexual morality").

⁶⁶ Cf. MI, 05.11.04, 18, Saliha Çolak: "Ankara: Bedava Kuran için 4 trilyon" ("Ankara: 4 trillions for fee Qur'ans"). Cf. also MI, 13.01.05, 3, Hasan Pulur: "Avrupalı olmanın bir bedeli vardır!" ("There is a price for being European") with some hints on people becoming Christians for material reasons.

⁶⁷ Cf. MI, 14.01.05, 3.

4.5 Cumhuriyet – the secular nationalists

4.5.1 Critical against religion's influence in politics

Cumhuriyet's focus in the inner-Turkish discussion is protecting laicism against the influence of religion on politics. When evaluating Christians, this focus is maintained. Cumhuriyet shows displeasure over the influence of conservative Christians on the US presidential election.⁶⁸ The same article sees Europe as the last island of laicism. When Turkey's candidacy for the EU fills the headlines, another columnist even complains that Europe is not secular enough for Turkey.⁶⁹ When Cumhuriyet warns against missionaries, the motivation is rather anti-imperialistic.⁷⁰

4.5.2 Sympathy and disappointment with the West

In a few articles, sympathy for what is real Christianity seems to be articulated. An article on Christmas about "The desire of Jesus"⁷¹ points out that Jesus came from the Middle East and how far a country like the USA is from his standard of peacefulness.

The secular newspaper seems to express a deep disappointment about the Western civilization that was shown by Mustafa Kemal Atatürk as the goal to strive for.⁷²

4.5.3 Commitment to religious freedom

At the climax of the anti-missionary campaign of other media, Cumhuriyet columnist Oral Çalışlar writes a series of columns with a deep commitment to religious freedom and against the fear of Christian missionaries. "To say that there is the danger of Turkey being Christianized is not realistic."⁷³ Çalışlar shows that looking at numbers Christians in the West have more reason to be concerned about the progress of Islam. In Turkey, there is a lot of propaganda for Islam. "Can't the Christians, make propaganda for their own religion as well? Can't they for instance sell or distribute the New Testament?"⁷⁴

Cumhuriyet not only plays a moderating role in the discussion about Christian missionaries, but we also find a few articles defending the rights of the old churches in Turkey. Ali Sirmen, another columnist, criticizes nationalists who warn strongly against the old orthodox tradition of Greeks getting a cross out of the waters of the

⁶⁸ Cf. Cumhuriyet (im Folgenden CU), 18.11.04, 6, Orhan Bursalı: "Din Savaşları" ("Wars of religion").

⁶⁹ Cf. CU, 17.12.04, 2, Bahir M. Erüreten: "Bir Hristiyan Kulübü ..." ("A Christian Club").

⁷⁰ Cf. CU, 02.01.05, 1.8, Mustafa Balbay: "Ben 2004 ..." ("Me in 2004 ...").

⁷¹ "İsa'nın özlemi," Prof. Dr. Mahir Aydın in: CU, 24.12.04, 2.

⁷² Cf. CU, 18.11.04, 6, Orhan Bursalı: "Din Savaşları" ("Wars of religion").

⁷³ "Türkiye'nin Hristiyanlaşması tehlikesinin olduğunu söylemek gerçekçi değil." CU, 04.01.05, 4, Oral Çalışlar: "Din Elden Gidiyor" ("The religion is gliding out of the hand").

⁷⁴ "Hristiyanlar da kendi dinlerinin propagandasını yapamazlar mı? Örneğin İncil satıp dağıtamazlar mı?" CU, 09.01.05, 4, Oral Çalışlar: "Müslümanlık Propagandası Hristiyanlık Propagandası" ("Muslim propaganda and Christian propaganda").

Golden Horn.⁷⁵ The newspaper tries to take the strong nationalistic emotions out of the discussion about the ecumenical status of the Greek Orthodox Patriarch.⁷⁶

4.5.4 Not free from using prejudice against Christians

It probably reflects the deep sentiments against Christians in the population that even a newspaper like *Cumhuriyet* at times does not escape from using prejudice against Christians and missionaries for its own purposes. Hikmet Çetinkaya⁷⁷ like Çalışlar criticizes the disproportionate discussion about missionaries, but then he himself slides into a conspiracy theory of the US trying to push “moderate İslam” in Turkey.

Cumhuriyet joins the missionary discussion⁷⁸ and criticizes missionary activities, though rather by presenting news instead of commentaries⁷⁹ and by writing from a rather historical and anti-imperialistic perspective.⁸⁰ Early in the debate about the European Union *Cumhuriyet* used anti-Christian prejudice in a caricature: Prime Minister Recep Tayyip Erdoğan and Foreign Secretary Abdullah Gül were signing the European Constitution in Rome. Behind them, we see the statue of a pope. The *Cumhuriyet* caricaturist Turhan Selçuk lets Erdoğan say: “Gül, do you realize that the pope above us is blessing us?”⁸¹

4.6 Summary of the evaluation of newspapers

4.6.1 Differences in the perception of Christians

The study of five newspapers with different ideological backgrounds reveals remarkable differences in the perception of Christians among the different groups of society in Turkey. The Islamists (*Millî Gazete*) have deep theological reasons to see Christians and especially Christians propagating their faith as a danger. They strongly warn against even having dialogue with Christians. The ultra-nationalists (*Yeniçağ*) perceive Christians and missionary activities as a danger for the unity and strength of the nation. On the background of the Turkish-Islamic synthesis, they cannot imagine Turks not being Muslims and still being faithful to their country.

The moderate but still political Islamists of *Yeni Şafak* are wary of attacking Christianity per se. They rather concentrate on trying to show the political agenda behind religious

⁷⁵ Cf. CU, 18.01.05, 4, Ali Sirmen (Dünyada Bugün): “Suyundan Haç Çıkıp Gâvur Olan İstanbul” (“The Istanbul that becomes an unbeliever by getting a cross out of the water”).

⁷⁶ Cf. CU, 12.12.04, 5 (Pazar eki), Selçuk Erez: “Ekümenik nedir?” (“What is ecumenical?”).

⁷⁷ Cf. CU, 11.01.05, 5, Hikmet Çetinkaya: “Din Elden Gidiyor mu?” (“Is the religion gliding out of the hand?”).

⁷⁸ Cf. CU, 10.12.04, 9, Demirtaş Ceyhun 2: “Edebiyatımı Geri İstiyorum” (“I want to have my literature back”).

⁷⁹ Cf. CU, 30.12.04, 6, Ebru Toktar: “Misyonerlik çalışması artabilir” (“Mission work may increase”).

⁸⁰ Cf. CU, 02.01.05, 1.8, Mustafa Balbay: “Ben 2004 ...” (“Me in 2004 ...”).

⁸¹ “Gül, farkında mısın, tepemizdeki papa bizi kutsuyor.” CU, 01.11.04, 3.

activities. They see Islam as being on the rise and the Christians fighting a defensive fight against the superior Islamic worldview. The liberal democrats as represented by *Milliyet* try to defend a Western understanding of a pluralistic democracy even for Christians. The secular nationalists of *Cumhuriyet* don't care so much about the true or the wrong religion. Whenever religion is used for political means, they criticize it.

4.6.2 Using the discussion about Christians for own political agenda

Very often the real adversary of the different ideological groups are not the Christians but the political enemy in their own country. When *Yeniçağ* or *Millî Gazete* write about missionaries, their main intention is to blame the government for not doing enough to hinder the Christians and to strengthen the national or the Islamic identity.

Yeni Şafak, in face of the missionary activities, claims that the political system still does not provide enough freedom to teach Muslims and let them spread their faith. When *Cumhuriyet* attacks George Bush and the Evangelicals in the US, they try to prove to their inner-Turkish opponents how dangerous it is to mix religion and politics. Finally, *Milliyet* in its reaction to the discussion about missionaries tries to prove its commitment to democracy.

4.6.3 Distrust and prejudice against Christians across the different ideologies

In spite of the great variety of the approach to questions about Christians, it has to be mentioned that though in different intensity each of the newspapers at times draws on the existing prejudice against Christians and especially against any effort to convert Turks to Christianity. Especially "missionary" ("misyoner") or "missionary activities" ("misyonerlik") at some point are used as emotive expressions by each of the newspapers.

5. Conclusion

There is no systematic persecution against Christians in Turkey in the sense that presently there is no officially state led planned and open repression of Christians. The analysis of five Turkish newspapers however shows that discussion about Christians and their activities can be an instrument for the political agenda of different societal groups in Turkey. It is no comfort for the Christians that in some cases they are not the real target of the discussions. For as the results of the media campaign in 2004 and 2005 show, the victims of such campaigns are mostly Christians.

The climate of prejudice in the Turkish society against Christians and especially against activities of Christians to spread their faith is further revealed by the fact that even societal groups who fight against a political Islam can at times use words like "missionary" to produce certain emotions.

It would require further research to find out why the activities of a tiny minority like the Protestant missionaries can be such a fiercely discussed topic in Turkish newspapers.

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Religious freedom in Indonesia

A survey

Thomas Schirrmacher¹

Abstract

As a secular democracy Indonesia guarantees religious freedom. The vast majority of the quarter of a billion Indonesians lives in relative freedom. But a certain wahhabization of the country assures, that extremist groups fight Ahmaddiyyas, Christians, Shiites and other Muslim and non-Muslim groups. The government on the one side actively fight the idea of a Muslim state, but as one Islamist party is a coalition party, often does not act to protect minorities.

Keywords Indonesia, Southeast Asia, Saudi Arabia, Islamism, extremism, freedom of religion, Christianity, Islam, Ahmadiyya.

The 240 million inhabitants of the largest Islamic country in the world, Indonesia², are spread out among 750 people groups living on 6 000 islands scattered over 9.5 million square kilometers of ocean. The country is divided into 33 provinces ruled by elected governors.

After the colonial rule of the Portuguese (1511-1605), the Dutch (1605-1942, 1945-1949), the British (1807-1815), and the Japanese (1942-1945), there were dictatorships under President Sukarno (1945-1965) and General Suharto (1965-1998). The transformation into a democracy largely occurred in a peaceful manner, and likewise there were largely peaceful and free elections in 2004 and 2009 which resulted in a majority for a secular nationalistic government with the participation of Muslim parties.

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² The author toured Indonesia for the first time in 1979 for a period of three months. Most recently he visited the country in October 2011 in order to personally hear reports by the Governor of North Sulawesi, among others, as to how he succeeded in bringing calm to the unrest in the province of South Sulawesi and in ending religious persecution there, and in October 2013 to listen to reports by non-Muslim members of the government, for example, the vice-governor of Jakarta. The author testified on religious freedom in Indonesia in 2013 in the EU parliament at the invitation of the Indonesian government.

Since the founding of Indonesia, the military has simultaneously exercised police powers (*dwifungsi* = dual function). It is very difficult to bring military personnel before a court, and when martial law is swiftly declared, it is completely forbidden to do so. The military administration encompasses every village and often functions better than civilian administration. 7.5% of all parliamentary seats (a reduction from a previous 15%) are automatically reserved for the military. In the process, the military is only 30% financed by the national budget and generates the remainder itself, through ownership stakes in companies and through personnel leasing, but also through illegal lumber exports, racketeering, extortion, and corruption.

Corruption is arguably the strongest threat to Indonesia's democracy³ and plays a very large role with respect to the actual situation faced locally by religious minorities. According to Transparency International, Indonesia is one of the countries with the highest rate of corruption in the world, and this enormous level of corruption plays into the hands of Islamists. It is no coincidence that the Governor of North Sulawesi, Sinyo Harry Sarundajang, who is a Roman-Catholic and was installed by the central government as an emergency measure, is regarded as one of the few completely corruption-free politicians. In 2002 he was able to pacify the civil war in Sulawesi.

1. Indonesia's religions

Hinduism was the reigning religion on the islands of Indonesia in the 1st century A.D. Beginning in about 1300, Islam slowly began to spread. From 1525 onwards, the Hindu kingdom collapsed in the interior of Java and became Islamic. By the 18th century all of Indonesia had become Islamic, with the exception of the interior of Bali, Sumatra, Kalimantan, Sulawesi, and Irian.

There are 10 million Hindus, which most notably account for 90% of Bali. Some 20 million inhabitants, above all on Java, Kalimantan, and Papua, belong to tribal religions or animistic systems of belief. However, almost all of them have been registered under one of the six official religions.

2. Christianity in Indonesia⁴

The first Christians in Indonesia were Nestorians who emigrated from Persia in the 10th and 11th centuries A.D. The Portuguese came as the first Europeans in

³ Cf. Bettina David. "Machtverschiebungen zwischen Indonesiens Zentrum und Peripherie" in *Politik und Zeitgeschichte* 62 (2012) 11-12: 23-30.

⁴ Cf. on the history Thomas Schirmmacher. "Indonesian Christianity" in: George Thomas Kurian (ed.). *Encyclopedia of Christian Civilization*. Chicester: Wiley-Blackwell, 2011, pp. 1197-1199. Regarding the Indonesian churches see Heuken, Adolf. *Ensiklopedi gereja*. 9 vols. Jakarta: Yayasan Cipta Loka Caraka, 2004-2006 and on the Catholic Church by the same author. *200 tahun Gereja Katolik di Jakarta*. Jakarta: Yayasan Cipta Loka Caraka, 2007.

1511 and conquered the island of Matalaya and then the Maluku Islands. Catholic missionary work began in 1534. After that the Catholic Church was oppressed by the Dutch, but in 1806 Holland granted them religious freedom. This led to strong growth, primarily on Flores and East Timor. It also led to massive conversions back from Protestantism.

In 1605 and 1617 the Dutch founded the city of Jakarta. Over the course of the next 300 years bit by bit the Dutch acquired control everywhere. This was mostly accomplished without military action. The ruling East India Company had a hostile stance against missions and allowed Dutch pastors to care only for the Dutch. In 1799 the state took over the trading company and conceded religious freedom in 1806. After that, large Reformed churches developed up to 1950 through the efforts of Dutch missionaries, and large Lutheran churches were formed through the efforts of German missionaries.⁵ Most well-known among them was the Batak Protestant Christian Church. Among the six Nias peoples (3.8% of the entire population of Indonesia), 70% on Sumatra are Christians. It was not until after 1950 that the entire range of Protestant diversity came about, above all via Anglo-Saxon missionaries. What is unusual for an Asian country is the high percentage of Lutheran and Reformed churches. Of the inhabitants of the East Nusa Tenggara Province, 55% are Catholics, while 58% of the Papua province inhabitants are Protestants. The Maluku Islands and North Sulawesi have additional concentrations of Christians.

The Indonesian Ministry of Religious Affairs estimates that there are 19 million Protestants and 8 million Catholics in Indonesia. The Christian handbook *Operation World* comes to the following breakdown on the basis of statements by religious communities and leading local experts:⁶ 11% or 26.3 million Protestants (approximately half of them Evangelicals), 3% or 7.1 million Catholics, for a total of 33.4 million.

Christianity grew strongly and exerted a great amount of influence in the 1950s and 1960s.⁷ In the 1970s, the climate between Islam and Christianity began to change, in view of the fact that radical Muslim organizations called for the end of

⁵ Catholic: Raja Oloan Tumanggor. "Adat und christlicher Glaube: Eine missionswissenschaftliche Studie zur Inkulturation des christlichen Glaubens unter den Toba-Batak (Indonesien)". Diss.: Univ. Münster, 2006, Protestant: Lothar Schreiner. *Adat und Evangelium*. Gütersloh: Mohn, 1972; Paul B. Pedersen. *Batak blood and Protestant soul: the development of national Batak churches in North Sumatra*. Grand Rapids (MI): Eerdmans, 1970.

⁶ Jason Mandryk. *Operation World*. Secunderabad (Indien): Biblica, 2010, 446-463.

⁷ Cf. for instance on the situation prior to 1978 Rolf Italiander. *Indonesiens verantwortliche Gesellschaft*. Erlangen: VELM, 1976; Theodor Müller-Krüger. *Der Protestantismus in Indonesien*. Stuttgart: Evangelisches Verlagswerk, 1968 or my report "Religion ist Pflicht in Indonesien." *Idea* 80/81/8.10.1981/S. II-III; *Idea-Spektrum* Nr.56-57/21.10.1981: 25.

the Pancasila with its five to six approved religions.⁸ This occurred for the benefit of Islam as the state religion. In 1978 the government began to limit the exercise of mission work by all religions. The state started to control the foreign relations maintained by churches and to increasingly interfere in the internal affairs of churches. In 1985, the so-called Ormas Law committed all religions to the Pancasila; otherwise, their organizations would be dissolved. In 1992, it was ordered that all government positions were to be allocated according to official proportional representation (87% Muslim, 6% Protestant, 4% Catholic, etc.), also in areas where there was a Christian majority. As a result, the public influence of Christians was completely lost in areas where they had their primary concentrations of inhabitants. In 1993 all Christian government ministers were replaced by Muslim ministers.⁹

3. Wahhabization of the country

The country as it was in 1979 differs noticeably from the Indonesia of today. Similar to what has occurred in India, the traditionally tolerant line of thought towards other religions has suddenly been covered over by fundamentalist perpetrators of violence. Far more than 200 million inhabitants are worried that the Arabization of Islam could lead to ever increasing tensions, and it is embarrassing to them that their country has so often been present in the international media due to Islamist violence: "Fundamentalist Muslims are still trying to replace Indonesian-Japanese culture with an Arab embossed culture of intolerance."¹⁰

In light of the tremendous diversity of the country and the diverging colonial history and history of independence of numerous islands, it is almost impossible to make sweeping statements about the entire country. As it relates to our topic, the conservative Islamic island of Aceh, where the sharia applies as the penal code, has little in common with the predominantly Hindu island of Bali or the Catholic areas in Sulawesi. What applies universally is that acts of violence against non-Muslims do not come from the majority of the population, which traditionally coexists peacefully with other religions. It also does not come from the government. Rather, it comes from a small percentage of Islamists, who orient themselves towards Arab

⁸ Pancasila has been a central part of the Indonesian constitution since 1945. Its five principles are explained in different orders but include "the belief in one God, just and civilized humanity, Indonesian unity, democracy under the wise guidance of representative consultations, and social justice for all the peoples of Indonesia." <http://tiny.cc/pancasila> (19.02.2013)

⁹ Dieter Becker. *Die Kirchen und der Pancasila-Staat: Indonesische Christen zwischen Konsens und Konflikt*. Erlangen, 1996 and my comment in this regard in the "Mitarbeiterbrief der Vereinigten Evangelischen Mission" (VEM) 4/1998: 26.

¹⁰ Pebri and Christian Gossweiler. "Christen und Muslime in Indonesien." *Märtyrer 2010*. VKW: Bonn, 2010, 209-212, here 209.

Islam and in particular Saudi Arabia. Practically all the leaders of parties, organizations and volunteer corps who turn against the Ahmadiyya community and Christians have been educated in Saudi Arabia or in institutions in Indonesia which are sponsored by Saudi Arabia – supported by large amounts of money coming from the Arab world. That represents a creeping Islamization, indeed, a Wahhabization of the country due to a situation where other parties have to consider their demands when it comes to elections.

This creeping Wahhabization of Indonesia has begun to attack the long-standing tradition of religious tolerance and religious freedom in Indonesia. What used to rule, a mystical form of Islam (“Abangan”) as well as the fusion of Islam with pre-Islamic animistic elements and Javanese *Kejawen* and *Kebatinan* mysticism,¹¹ still defines the large majority of the inhabitants, but it has recognizably lost influence in politics, legislation, matters of education, and with respect to social work. Pressure from fundamentalists on the tolerant majority of the population is increasing. Extremism has little support in Indonesia, but it is having major effects.

The starting point of Islamization and the badgering of religious minorities is Saudi Wahhabism.¹² Under the cloak of Islamic solidarity and brotherhood, Saudi Arabia invests enormous sums in Indonesia for the construction of mosques, the building of Islamic schools, and for activities of Da’wa organizations which propagate Islam. The Institute for the Study of Islam and Arabic (LIPIA), which was founded in Jakarta in 1980 and is supported by Saudi Arabia, has been very influential. Ja’far Umar Thalib (born 1961), the founder of the notorious 300-member terror group known as Laskar Jihad,¹³ studied at LIPIA, together with other leaders of the armies of terror. In addition, he studied at the Islamic Mawdudi Institute in Lahore, Pakistan.¹⁴ The most prominent of the violence prone groups in Indonesia is the Front Pembela Islam

¹¹ Thomas Schirrmacher, “Javanische Mystik.” *Factum* 10/1987: 3-6.

¹² Noorhaidi Hasan, Professor at the Sunan Kalijaga Islamic University in Yogyakarta (Indonesia) is the best expert on the Islamist influence of Wahhabism in Indonesia; see the list of publications at <http://tiny.cc/Hasan> (March 15, 2012). Especially worthy of note are: Noorhaidi Hasan, “The Failure of the Wahhabi Campaign: Transnational Islam and the Salafi Madrasa in Post 9/11 Indonesia,” *South East Asia Research* 18 (2010): 675-705; Noorhaidi Hasan, “The Drama of Jihad: The Emergence of Salafi Youth in Indonesia,” 49-62 in: Linda Herrera, Asef Bayat (eds.), *Being young and Muslim: New cultural politics in the Global South and North*, Oxford: OUP, 2010; Noorhaidi Hasan, “Islamist Party, electoral politics, and Da’wa mobilization among youth: The Prosperous Justice Party (PKS) in Indonesia,” RSIS Working Paper 184, Singapore: Rajaratnam School of International Studies, 2009; Noorhaidi Hasan, “Saudi expansion, Wahhabi campaign and Arabised Islam in Indonesia,” 263-281 in: Madawi al-Rasheed (ed.), *Kingdom without borders, Saudi political, religious and media*. London: Hurst, 2008.

¹³ Noorhaidi Hasan. *Laskar Jihad: Islam, militancy and the quest for identity in Post-New Order Indonesia*. Leiden: ISIM, 2005.

¹⁴ Noorhaidi Hasan, “Transnational Islam in Indonesia,” op. cit. 124. Cf. Frauke-Katrin Kandale, *Der Islam in Indonesien nach 1998 am Beispiel der Partai Keadilan Sejahtera*, Berlin: Regiospectra, 2008.

(Islamic Defenders Front), or FPI. It is no coincidence that it was founded in 1998 by Muhammad Riziew Syihab, who was trained in Saudi Arabia.

In Aceh, non-Muslims normally are not under the control of the sharia. In actuality, sharia police spare practically no one (after the models of Saudi Arabia and Iran).¹⁵ In a report dated 1 December 2010, Human Rights Watch collected examples of how the sharia police badger, threaten, and abuse Muslims as well as non-Muslims.¹⁶

The Indonesian fatwa council, *Majelis Ulama Indonesia* (Indonesian Council of Ulema) or MUI, plays a disastrous role since its fatwas directed against religious minorities are actually not legally binding and yet are increasingly used by the government and cast into law. The current President, Susilo Bambang Yudhoyono, makes no secret of the fact that he supports the decisions of the MUI. "What also belongs to the new culture of intolerance is that the Council of Islamic Scholars of Indonesia declared in a fatwa (Islamic legal opinion) in 2005 that pluralism, secularism, and liberalism are not compatible with Islam. Furthermore, Muslims were forbidden from wishing Christians Merry Christmas or from receiving well wishes from Christians for the Islamic holiday of Idul Fitri – which is still common practice in Indonesia."¹⁷

One of the best German authorities on Indonesia has written: "Islamic fundamentalist parties are gaining increasing influence through shrewd tactics. Indeed the Islamic parties only received about one quarter of the votes (five years earlier it was approximately 37%). However, after the non-Islamic parties were not at all prepared to form a coalition with the popular President Yudoyono, or only found themselves prepared to do so very late, he was quasi forced to form a coalition with the Islamic parties. Thus the Islamic parties finally received 11 of the 27 available ministerial posts. Among them were, for example, the Justice Minister Patrialis Akbar, who sees no contradiction between the introduction of Islamic sharia law and the Constitution of Indonesia. But even the Interior Minister, Gamawan Fauzi, who has no party affiliation, issued many laws based upon Islam (e.g. a mandatory head scarf for all female civil servants and students, regardless of religion) in his earlier position as Governor of West Sumatra."¹⁸

The Wahhabization is also expressed in the increasingly Arab oriented viewpoint towards understanding the sharia on the part of many citizens. "For a few years observers have noticed that the relationships between the Muslim Sunnite mainstream and adherents of religious minorities as well as non-orthodox Muslims has deteriorat-

¹⁵ Kristina Großmann et al., "Aceh nach Konflikt und Tsunami," *Aus Politik und Zeitgeschichte* 62 (2012) 11-12: 37-43.

¹⁶ <http://tiny.cc/shariainaceh>, the detailed report "Policing morality: Abuses in the application of Sharia in Aceh, Indonesia," at <http://tiny.cc/policingmorality> (15.3.2012).

¹⁷ Pebri and Christian Gossweiler, "Christen und Muslime in Indonesien," op. cit. 210.

¹⁸ Pebri and Christian Gossweiler, "Christen und Muslime in Indonesien," op. cit. 210.

ed. The opinion research institute LSI (Lembaga Survei Indonesia) has, for example, shown in a study in 2007 that 33% of those asked support measures which typically count as the goals of Islamist organizations. Thus 43% were for stoning in the case of adultery, 25% for the mandatory wearing of a head scarf, 34% for the cutting off of the hand for theft, 39% for a prohibition on interest, and 22% were of the opinion that a woman should not be allowed to hold the office of president. The 2010 Muslim Youth Survey, which was conducted by the LSI in cooperation with the Goethe Institute and the Friedrich-Naumann Foundation, came to quite comparable results.”¹⁹

4. Religion is a duty in Indonesia: Pancasila

Since the time of independence, monotheism has been one of the five pillars of the state ideology anchored in the Constitution of Indonesia as the Pancasila. It was adopted into democracy unchanged from the time of the dictators.²⁰ Among the monotheistic religions fulfilling the requirement, there are six recognized religions, whereby Christianity in its Catholic and its Protestant forms are counted separately.

Whoever does not belong to one of the six religions, for instance animists (if they do not have themselves registered in another religion) or the Baha’i, have difficulties with the authorities when it comes to the registration of births or marriage. That religion in Indonesia is mandatory, naturally and automatically leads to problems for the few atheists in the country. Government employee Alexander Aan (31) was beaten up by a mob on 24 January 2012 and arrested by the police because he expressed his lack of faith in God on Facebook through critical questions, above all “How can God allow that?” The police chief invoked the scholarly council known as the “Indonesian Council of Ulema” with respect to his course of action.

5. The Ahmadiyya Movement

In 2005 and 2007 the MUI issued fierce fatwas against the approximately 300 000 Ahmadiyyas living in the country and belonging to an Islamic “sect,” which was developed out of Islam by Mirza Ghulam Ahmad in 1889. It recognizes prophets after Mohammed and for that reason the majority of Islam regards it as “apostasy.” In 2008 the government, instead of moving against the statement by the MUI, issued a joint decree from a number of ministries freezing the activities of Ahmadiyyas. Ahmadiyyas are not permitted to proselytize Indonesians, an activity which counts as blasphemy and is punishable with up to 5 years of imprisonment. However, Ahmadiyyas may continue to hold their worship services. Nevertheless, it was not sur-

¹⁹ Andreas Ufen, “Politischer Islam in Indonesien seit 1998,” in *Aus Politik und Zeitgeschichte* 62 (2012) 11-12: 30-36, p. 31.

²⁰ Thomas Schirmacher, “Religion ist Pflicht in Indonesien,” *Idea* 80/81/October 8, 1981/pp. II-III; *Idea-Spektrum* Nr.56-57/October 21, 1981: 25.

prising that individual government agencies and many Islamist institutions called for a complete prohibition. And it is also not surprising that in certain cases the police and the army did not intervene or did so much too late when mobs beat up or murdered Ahmadiyyas or destroyed their places of worship. Since 2006, but above all since 2009, Ahmadiyyas have been continually driven from their destroyed homes and live in refugee camps. A worldwide sensation was caused in February 2011 in the case of the public murders of three Ahmadiyyas in front of their homes by a large mob. Some 30 police stood there and did nothing as the murders occurred. The 12 murderers received a symbolic punishment of between three and six months.

As in Pakistan, where the apostasy laws were at first directed against Ahmadiyyas and only later employed against Christians, the religiously legitimized state force against Ahmadiyyas also appears to be having a negative impact on the tolerance exhibited toward Christians. Thus the murder of the three Ahmadiyyas on 6 February 2011 in the province of Central Java and the burning down of three churches in the province of West Java on 8 February 2011 are arguably connected with each other.

6. The most significant cases of persecution of Christians since 1990

The main island of Sulawesi (earlier called Celebes) stretches over 1 300 kilometers. Of the 16.8 million inhabitants, 20% are Christians, and about 90% of them are Protestants. They belong to the best educated and wealthiest inhabitants of Indonesia. The Islamist Jihad armies have turned against long-established Christians there, where they have been most numerous. In the 1990s and after 2000 so far there have been over 1 000 Christians (and a significantly lower number of Muslims) who have died. It was overwhelmingly Christians who were among the 500 000 directly affected by the events on the Maluku and Central Sulawesi. Many of them have not returned to the life they had before the wave of violence.

The percentage of Christians among the 2.2 million inhabitants spread over the 1 000 islands comprising the two Maluku provinces amounts to 29.5%, and Protestants account for 90% of them. The Maluku church, which has existed since 1605, is the oldest Protestant church in Asia. The brutal violence in 1999 and 2000 changed the provinces forever. A maze of ethnic and economic questions, efforts to secede, and political demands exploded as thousands of heavily armed Islamist fighters fell upon the island and Christians started to defend themselves. Four hundred churches and mosques were destroyed. The majority of Christians fled the islands of Ambon, Seram, Ternate, Tidore, and parts of Halmahera. Over 20 000 died, and 500 000 became refugees.

After the serious unrest in Ambon from 1999 to 2002, peace held for almost a decade. In September 2011, the accidental death of a taxi driver, which was mis-

takenly reported in the social media as a case of torture and murder by Christians, led to unrest in which 100 houses were destroyed by fire, leaving 4 000 homeless. Fortunately, the central government immediately sent in the commander-in-chief, the head of the police, and the security minister and sealed off the island to Mujahedin wishing to enter. Twenty-eight potential terrorists were arrested with some 105 weapons. Taking a serious approach to this situation led to a real though fragile calm, a good example that the state, when called upon and when it so wishes, can bring about good results.²¹ Additionally, a large role is played by an unbelievably successful civil law institution, “peace provocateurs.” These are dozens of Christians and Muslims, who together in conversations, restaurants, and the social media rejected false rumors and made it clear that in the case of a renewed civil war, everyone would be a loser.

The percentage of Christians on Irian Jaya is 68%. Irian Jaya is the western part of Papua and has 2.5 million inhabitants. Catholics account for one quarter of the Christians, who are spread out among 238 Melanesian people groups with 274 languages. From among them, only the Ekagi have more than 100 000 adherents. Here the discrimination against Christians takes on completely different features. On the one hand, Christians are predominantly members of the many tribes in the forests and as such are not even seen as humans by Javanese settlers. They are harassed and their property is taken from them, and they are treated brutally by the army. On the other hand, at the time of the dictators the government began a large program of forced resettlement which continues today (*transmigrasi*), bringing 5 000 Javanese to Papua every week, of whom large numbers are Muslims who fill government positions.

7. Compilation of attacks against Christians and other minorities

Organizations as various as the Society for Threatened Peoples, the Islamic Wahid Institute, the Indonesian human rights organization Setara Institute for Democracy and Peace, and the papal council on dialogue, have all determined that there is an increase in violent actions against Christians. The *Jakarta Globe* also called the year 2011 “A Bad Year for Religious Rights.”²²

The best reporting on our topic stems from Muslim and academic research institutes in the country and not from the churches or religions affected.²³ In ad-

²¹ International Crisis Group, “Indonesia: Trouble again in Ambon,” *Update Brief, Asia Briefing* No. 128, Jakarta & Brussels, October 4, 2011, <http://tiny.cc/ambon> (15.03.2012).

²² “Indonesia: A bad year for religious rights,” *The Jakarta Globe*, December 26, 2011, <http://tiny.cc/jakartaglobe> (15.03.2012).

²³ Most important are: the monthly report of the Islamic Wahid Institute: <http://www.wahidinstitute.org/Documents>; the corresponding annual report, most recently for 2010: <http://tiny.cc/report2010>; the

dition to that, there are reports by international human rights organizations full of depictions of individual cases.²⁴

The Wahid Institute, an Islamic organization which promotes tolerance,²⁵ counted 198 severe attacks against religious minorities in 2010 and 276 in 2011. Furthermore, the institute registered 36 laws or restrictions at a local or provincial level which allegedly place non-Islamic practices under penalty.

The Setara Institute for Democracy and Peace in Jakarta and the International Institute for Religious Freedom investigated how many of the 198 violent attacks against religious freedom in 2010 involved government entities. The police were involved in 56 of them, while in 19 cases, district chiefs, and in 17, sub-district chiefs were involved.²⁶

The US Department of State counted 50 significant violent attacks against Ahmadiyyas and 75 such attacks against Christians in 2010.²⁷

The most frequent activity inimical to Christians in Indonesia is the destruction of churches or their closing, together involving 43 churches in 2011. An investigation by the International Institute for Religious Freedom has looked at the development of average yearly destruction of churches over the decades and has revealed an unambiguous development up to the year 2000; since that time the numbers have leveled off at some 50 per year:²⁸ 1945-54, no churches; 1955-64, 0.2 churches; 1965-74, 5 churches; 1975-84, 9 churches; 1985-94, 13 churches; 1995-2000, 84 churches (all per year).

Additionally, it is not only that churches are destroyed. Rather, they are obstructed from the onset. According to an inter-ministerial restriction dating from 2006, a congregation needs 90 members for the construction of a church, 60 signatures from non-Christians who live in the neighborhood, and a letter of recommendation from the local Interfaith Communication Forum (FKUB). The same thing applies to

annual report of the Setara Institute for Democracy and Peace (<http://www.setara-institute.org/>) is normally only available in Indonesian; the 2008 and 2012 annual reports were translated into English, 2012 "Leadership without initiative: The condition of freedom of religious belief in Indonesia 2012, <http://tiny.cc/report2012> (31.12.2013).

²⁴ For instance the 2010 blasphemy report for Indonesia: <http://tiny.cc/blasphemy>; confirmed by the UN High Commissioner for Refugees at <http://tiny.cc/unhcr> (15.03.2012).

²⁵ English: www.wahidinstitute.org/?lang=en.

²⁶ Fernando Perez, "Why religious violence has grown in Indonesia," February 18, 2011. www.iirf.eu, then click "Indonesia" under countries.

²⁷ <http://tiny.cc/state2010>, prior years at <http://tiny.cc/stateprior>; cf. also the recommendations of the United States Commission on International Religious Freedom at <http://tiny.cc/uscirf> (15.03.2012). The newest report by the US Department list further examples, but does not quantify them, <http://tiny.cc/statelatest> (31.12.2013). See especially p. 27-46

²⁸ Vishal Arora, "Why Is Islamic extremism is growing in Indonesia?" (12.10.2011) www.iirf.eu, then click "Indonesia" under countries.

mosques. However, mosques receive the letter of recommendation automatically, and in practice mosques spring up here and there, with even the wildest construction tolerated. In most locations, however, the FKUB – almost always chaired by a Muslim – almost never issues a recommendation with the justification that the building of a church could lead to unrest.

Finally, the use of existing churches is prohibited. A congregation of the long-standing Gereja Kristen Indonesia (GKI) in Bogor, the province of West Java, experienced what Batak churches have mentioned in the past. Although the Supreme Court allowed the congregation on 9 December 2010 to again use their closed church, the province's governor decided – contrary to law – against it and did not follow the ruling. Subsequent to that, the congregation wanted to celebrate a worship service in front of the building. The governor likewise prohibited it and sought to prevent it on October 2011 by means of police force. The congregation filed a complaint about the police violence and charged the police with attacking them. The outcome is still pending. The case also clearly shows that the central government lacks determination or assertiveness to enforce the law fairly.

8. Outlook²⁹

On the one hand, the main cause of the increase in the persecution of Christians as well as the overall restrictions on religious freedom is found in the fundamentalist movements. On the other hand, there is an increasing religious nationalism that equates nationalism with affiliation with a majority religion.³⁰ In Indonesia, an inseparable mixture of both movements presents itself as the main problem behind the declining tolerance with respect to religious minorities.³¹

The main problem is that most often the central government and the governors combat violence on the part of private Muslim extremists against religious minorities much too late and without resolve. Furthermore, they suspend criminal prosecution or protract the legal process against extremists. The governors frequently act on their own authority and worsen the line of approach taken by the federal government.

In Indonesia, the fight regarding the orientation of the state most essentially rages around conduct towards religious minorities and has surely not been lost.³²

²⁹ After this article had already been edited for print, Christian Solidarity Worldwide and Stefanus Alliance published a new detailed report on the situation of all religious groups "Indonesia: Pluralism in peril: The rise of religious intolerance across the Archipelago", that could not be incorporated in the article, www.csw.org.uk/2014-indonesia-report.

³⁰ Thomas Schirrmacher, "Aktuelle Entwicklungen der Christenverfolgung weltweit," 59-82 in Kuno Kallnbach, Helmut Matthies (eds.), *Bedrängt, verfolgt, getötet*, Gießen: Brunnen, 2012.

³¹ Cf. Jacques Bertrand, *Nationalism and ethnic conflict in Indonesia*, Cambridge: CUP, 2004.

³² Andreas Ufen, "Politischer Islam in Indonesien seit 1998" in *Aus Politik und Zeitgeschichte* 62 (2012)

This is demonstrated by the fact that Muslim leaders and human rights organizations are calling upon the president at the top of their voices to dismiss the Religious Affairs Minister Suryadharma Ali. They are doing so despite the fact that as the chairman of the co-governing Muslim United Development Party (PPP) he appears to be untouchable. He has especially made himself conspicuous through his negative statements about Shiites and Ahmadiyyas.³³

Also, there is a shining example of what the state can do in Indonesia. Sinyo Harry Sarundajang was elected as governor of North Sulawesi in 2005 and 2010. He was sent by the central government in 2004 to be the emergency acting governor in South Sulawesi and the province of Maluku, which was in unrest. The terrorist army of Laskar Jihad had killed hundreds of Christians in the province of Maluku. Between the tendencies towards secession on the part of Christians and the brutal violence of the Wahhabi insurgents, life had become impossible. Sarundajang, himself a Christian, without bodyguards, personally sought out the commander of the insurgents, Ja'far Umar Thalib, and negotiated the withdrawal of the jihad army and the suspension of secession plans on the part of Christians. The result was that a governor was again able to be elected in 2005. Thalib witnessed to the fact that it was due to the Christian politician that peace was achieved and that the killing was ended.³⁴

The resolution from the European Parliament in 2011 regarding the persecution of religious minorities in Indonesia³⁵ very well expressed the fact that the situation, in face of the long history of tolerance, has become oppressive. However, it also expressed the fact that all the preconditions are present for establishing complete religious freedom in Indonesia. According to the Indonesian Ministry of Religious Affairs,¹ there are 60,200 Protestant and 11,000 Catholic churches in Indonesia and the number grew from 1997 to 2012 by 284 percent. The Ministry counts 23.5 mio. Christians, thus there is a church building for every 300 Christians. The vast majority of these churches live in freedom and peace with their neighbours. All other world religions also have their buildings scattered through the whole country. Given this relation to the named cases of churches and religious groups in peril, it is obvious, that Indonesia still has all strength to assure, that the great tradition of religious harmony stays the mark of Indonesia in the future.

11-12: 30-36, p. 31, see the sources for the investigations there: <http://tiny.cc/bpd> (March 15, 2012).

³³ "Controversial Religious Affairs Minister must go," *The Jakarta Post* dated January 28, 2012, <http://tiny.cc/jpminister> (15.03.2012).

³⁴ All sources are in Indonesian except for the book by H.M. Attamimy. *Sinyo Harry Sarundajang*, 82. Jakarta/Manado: o. V., 2010. There is a report by Thalib therein, 7-19.

³⁵ "European Parliament Resolution of 7 July 2011 on Indonesia, including Attacks on Minorities," <http://tiny.cc/euparl2011>.

Early warning system methodology

An early warning system for religious persecution

David Taylor¹

Abstract

Agencies serving the persecuted church have shown considerable interest in the idea of devising an early warning (EW) system to give advance warning of potential threats to religious freedom. After researching EW systems in various fields and discovering that no such system exists in the human rights or religious freedom worlds, I decided on a methodology comprising a list of indicators accompanied by a set of explanatory notes and a numerical rating system. These indicators are designed to be used to monitor changes on the ground in countries where there is little current trouble but where the situation could deteriorate.

Keywords Persecution, warning, indicators, structural, state, social, rating, testing, monitoring, response.

Many working in the religious freedom world have long been interested in the proposition that it is possible to capture the experience of the worldwide church as it has faced new manifestations of discrimination, repression and violence in order to learn lessons for the future and thus be better prepared for it². One potential beneficial outcome of this drawing on experience, which is only starting to happen, is that Christians from a country that has already experienced persecution can engage with and advise Christians in another country where something similar is potentially going to happen or where experiences are analogous. Examples might include Nigeria and Kenya; Peru and Colombia.

Another response is that Christians might learn how to adapt their behaviour (without of course compromising their worship and witness) to avert – or at least reduce – “avoidable” or “unnecessary” persecution which essentially stems from negative misconceptions/myths about Christians, often arising from disinformation, especially in the media. This could for example take the form of involvement in

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² For example, see Christof Sauer, “Researching persecution and martyrdom,” *JRF*, 1/1 (2008) 26–48.

social action or distancing the church from unappealing aspects of the West or its foreign policies.

However, the project which I particularly envisaged coming out of this experience was an early warning (EW) system that could use the lessons of recent history to identify potential trouble ahead of time and thus enable prophylactic action to be taken. Quite independently, the Religious Liberty Partnership (footnote) had decided that such an early warning system should be a high priority in its work and voted to take steps to establish one. When these two processes came together in 2011, the Early Warning project, which is the subject of this paper, was born. I set to work on developing a methodology and specifically drafting EW indicators, which seemed to be the best way of capturing these lessons in a usable format.³

1. Related research

I examined a number of analogous fields and models

Analogous fields: the best models tended to be in the drought/famine arena, which was the least analogous to religious freedom. The relevant academic, NGO and UN work otherwise mainly tended to be in the conflict prevention area. Apart from a few very complicated models, like those of Stockholm International Peace Research Institute (SIPRI) and UNOCHA, hardly any seemed to have indicators or other actual EW systems in place (and where they did, they were often very local in scope). This was also the case for most genocide prevention work beyond Senti-nel's work and a few identified "steps" towards genocide. Political risk firms in the private sector often produce country risk indices or similar. I found nothing of this sort in the human rights field.

Models: At one extreme were a few very complicated mathematical/social science formulae for assessing the origins of conflict and predicting it, which defy monitoring (or comprehension at all). Much of the academic work was either of this sort or, more usually, focused on prescriptions for how a good EW monitoring system should work. At the other extreme, many of the "early warning" examples I read were in fact non-explanatory analysis or even just narrative of events which was not linked to any system at all. Among the more practical models were the colour-coded private sector risk models which mostly, however, dealt in broad cat-

³ I would like to thank Victoria Mbogo at CSW who has assisted me through much of the work on this project, particularly in setting up and maintaining the Wikispaces site; the RLP leadership, especially its chair, Mervyn Thomas, and facilitator, Brian O'Connell; the members of the RLP who have shown interest and provided encouragement, and particularly the RLP Early Warning Task Group who have provided helpful feedback, critiques and suggestions; and the numerous people in various fields who have provided me with leads to academic and other work in the field or given their time to discuss aspects of the project with me.

egories and (at the other extreme) the on-the-ground monitoring systems designed to provide warning of potential conflict in a very limited geographical area, and usually in a relatively immediate time frame. None of these models seem to cater for the EW needs of the persecuted church.

2. Scope and aims of the methodology

The indicators that I have drafted aim to provide early warning of risks of future potential religious freedom violations,/denial or persecution (broadly defined) by highlighting events and trends which are possible early precursors of them⁴. As such they inevitably touch on the question of how persecution starts. Implicit in some of these indicators are also sociological indications of why persecution occurs, although the EW methodology does not aim to probe the spiritual, psychological or other human motivations behind persecution. Answers to such “why” questions probably anyway lie outside the scope of an EW exercise.

These indicators are focused exclusively on potential persecution of Christian minorities. They could and should be expanded to include all religious minorities at risk, thus creating a broader Freedom of Religion and Belief Violations EW system. That will require specialist input from those familiar with the experience of such minorities since there may be indicators relevant to them that do not apply to Christians. Alternatively, if it turns out that this would be too unwieldy, separate EW systems could be devised for specific religious minorities, with many of the same indicators probably in play.

Indicator systems are currently drafted on a country basis. Clearly, in some countries, the situation varies widely from one part of the country to another, as is currently the case in Nigeria, for example. I have included an indicator that seeks to capture the impact of such regional variations, but further work may need to be done to generate region-specific indicators in a few cases.

When drawing up these indicators I have drawn on a number of sources. Most importantly I have learned from reading books, papers and reports over the years of my own involvement with the persecuted church written by practitioners in Christian Solidarity Worldwide (CSW)⁵ and elsewhere and by expert authors, and by talking with these experts over the years. I have tried to capture their insights, drawing also on my own experience of the worlds of international diplomacy and analysis, to produce as rigorous and complete a set of indicators as I can. Therefore, this is a largely heuristic exercise.

⁴ See text of the indicators in Appendix 1.

⁵ www.csw.org.uk

The indicators start as far back in time as possible to add as much value as possible; so they are aimed to be used in relation to countries where there is little obvious sign of trouble or where problems fall well short of full-scale persecution. Examples might include Kenya, Bangladesh, Malaysia, and Mexico. The indicators could be adapted to monitor a country where there is current persecution – so as to track any improvement or deterioration – but that would be a separate project, and probably not strictly EW. In any event this kind of tracking is already undertaken by Open Doors in its annual World Watch List.⁶

One of the challenges has been to devise a system that is at the same time rigorous and easy to use, especially for contacts providing information on the ground who are unlikely either to be trained in political science or to use English as their first language.

This EW system is ground breaking in both the human rights and religious freedom fields. There will therefore be plenty of scope for improvement and refinement, not least because it has not yet been tested through live monitoring.

3. Methodology

3.1 Indicators

The drafting of these indicators implies that it is possible to learn or derive from experience and precedent some patterns or sequences in the social, political and economic realms that represent potential precursors to persecution and that you can encapsulate them in a set of indicators. These are warnings of possible risks, not predictions – measuring the timing of an event is always the most challenging element. So they are not grouped chronologically. However, it might be possible with more work to divide them chronologically into a 1st stage, 2nd stage, 3rd stage sequence, although the inevitable crossover between them will reduce clarity. The disinformation-discrimination-persecution paradigm⁷ might provide a basis.

There are 40 generic indicators, and four⁸ that are available to be completed in the event that there is a need in a particular case for country-specific indicators that do not appear among the generic ones. They attempt to capture all the identifiable factors that could lead to the prevalent forms of persecution. In order to keep the

⁶ Cf. Christof Sauer, *Measuring and documenting persecution of Christians: A case study of the World Watch List*, in *Mission, memory and communion: Documenting world Christianity in the Twenty-First Century*, ed. by Michael Nai-Chiu Poon, Marek A. Rostowski, OMI and John Roxborough (Singapore: The Centre for the Study of Christianity in Asia, Trinity Theological College, 2013). Christof Sauer, "Measuring persecution: The new questionnaire design of the World Watch List," *IJRF* 5/2 (2012), 21-36.

⁷ This paradigm of an escalation of events leading to violent persecution has been widely propagated by Godfrey Yogarajah, Johan Candelin and Paul Marshall, cf. G Yogarajah, "Disinformation, discrimination, destruction and growth," *IJRF* 1/1 (2008) 85-93.

⁸ One in each of the four sections – see below.

indicators short and simple, a separate explanations document was prepared, providing clarification and examples in relation to each numbered indicator.⁹

After some thought and inquiry, it was decided to divide the indicators in two ways. Firstly structural factors were separated from dynamic factors. This seems to be a helpful distinction. Various EW systems that I have analysed separate structural and dynamic factors, although the terminology inevitably varies: Swisspeace's FAST EW system used root and proximate factors, and others describe structural factors as a country's predisposing or underlying risk factors. The Sentinel Project and SIPRI actually use three categories: structural factors (UN data etc.), accelerating factors (i.e. dynamic factors) and trigger events. Apart from the added complexity involved in a 3-way split, I tend to see trigger factors as very close in time to the risk being monitored and thus more of an acute warning than an early warning.

The second division was between state and non-state actions or developments. The state/social division reflects the recent history of the persecuted church, where bottom-up grass-roots societal pressure on Christians has become as important a factor as more traditional top-down government repression, as reflected in Brian Grim's well-established government restrictions/social hostilities division in his Pew reports.¹⁰ One UN agency (UNSR) also includes a third category of international factors in its methodology, but these seem relatively unimportant and easily accommodated within a state/non-state paradigm.¹¹

The structural indicators highlight the kind of permanent – or at least underlying and persistent – factors that characterise a state or society and that predispose it to the emergence of the dynamic trends that form the rest of the list. The dynamic indicators encompass both the secular and religious realms and comprise both general socio-political developments that are potential precursors and developments that more specifically bear on Christians or other religious minorities.

3.2 Rating system

I have designed the system so that numerical values relating to levels of risk can be assigned to each indicator. A numerical rating system allows establishing a starting point in monitoring each indicator and then to track both improvements and deteriorations in the area it covers. In other words, mitigating factors are reflected within the scoring rather than being assigned restraining indicators of their own, which would in most cases simply be the mirror image of the driver indicators I

⁹ See Appendix 2.

¹⁰ www.pewforum.org/category/publications/restrictions-on-religion.

¹¹ On this issue cf. Brian W. Grim, "Cross-national influences on social hostilities involving religion and government restrictions on religion," Pew Forum, 2012, <http://www.pewforum.org/files/2012/09/cross-national-analysis.pdf>.

have drafted. At the risk of complicating the rating system, we concluded that it was useful to distinguish between the importance of a particular indicator as a feature in the country in question and the scale or intensity of it at a particular moment. In some ways, this mirrors the structural/dynamic distinction, in which importance tends to concern features that are more enduring while scale/intensity focuses on the more immediate impact of events.

The intention at this stage is neither to compare countries by adding up respective totals nor to assess overall risk in a particular country or category by totalling up scores in any way. Nor have I grouped the indicators into categories (beyond the basic 4 divisions described above), which would enable scores to emerge for groups/categories of indicators, as commercial risk firms such as Jane's Information Group and Global Risk Monitor do. Nor for the same reason have I attempted to weight some indicators to give them more influence than others. In contrast to the commercial country risk models, the purpose of this EW exercise is simply to monitor the individual indicators to see if the level of specific threat in any one of them changes. In any case I am not convinced that such exercises, were they practicable, would yield any greater clarity or insight for our purposes, but further work would be needed to reach a firmer conclusion.

While the aims of the methodology do not include cross-country comparison as such, it will be important to ensure that ratings are consistent as between countries so that the overall rating system is coherent. It may also turn out in practice that useful light can be shed on the situation in countries both inside and outside monitoring by reading across to indicators that have been rated in other countries.

In order to keep the rating system as simple as possible, I was advised to restrict the scale to 1-5 rather than 1-10. The numbers between 1-5 signify the following in relation to importance: 1. Very minor; 2. Minor; 3. Important; 4. Very important; 5. Highly significant factor. And in relation to intensity/scale: 1. Minor; 2. Notable; 3. Significant; 4. Prevalent and intense; 5. Very serious and widespread issue.

3.3 Testing

Ultimately the soundness and usefulness of the methodology will be tested by actual use. At present, it is being tested live on three pilot countries. I had hoped that we would have had some results by now, but delays in responses have slowed us down.

In order to provide some pre-test of the methodology before live monitoring, we decided to see how the methodology would have performed in identifying the historical early signs of a real case of current persecution and also how it performed in relation to a current real case of a country in transition – based in each case on contemporary reporting. Eritrea was chosen as an example of state repression and northern/central Nigeria as an example of societal tensions; Egypt was chosen

as the current case. The exercise was imperfect since it relied simply on reading 1990s agency reports on Eritrea and Nigeria and a current annual report from one of the RLP member agencies on Egypt.

The results on Eritrea and Nigeria were very encouraging. No major issues surfaced that were not covered by the draft indicators, but the exercise enabled a few minor additions to be made. Of the then 36 active indicators (now 40), 15 came into play in Eritrea and 22 in Nigeria (probably because of the more complex situation there). A total of 30 out of the 36 came into play altogether. Likewise, on the Egypt report, 24 indicators out of 36 came into play and no issues emerged that the indicators did not capture. This admittedly crude exercise suggests that at least there is a good overlap between the reality of the early events that turned out to be the precursors of persecution and the indicators – and that the indicators seemed to capture them well.

4. Monitoring

The second stage of the exercise is setting up and implementing a system that enables live and effective monitoring of the indicators over time to track changes. The monitoring clearly needs to be a rolling, continuing process, probably stimulated by periodic reminders from a central coordinator. The system needs to combine swift, objective and accurate reporting from local sources on the ground¹²; monitoring of local and international media of various sorts to provide balance and broader context as well as a well-informed and rapid consensus-based assessment of the information. The latter is currently the proposed model for deciding whether any changes in ratings are called for as a result of a given development.

Further work could perhaps be done on whether such a qualitative consensus of experts is an adequate basis for ratings changes or whether some quantitative elements are needed (e.g. the number of incidents of the type under scrutiny in a given period). It might also be worth investigating whether changes in particular combinations of indicators (i.e. particular coincidences of factors), as well as increases in individual ratings, are significantly indicative.

As part of the assessment, there is also a judgement to be made about the significance of agreed rating changes and whether a change needs to be communicated to stakeholders as an early warning. Significant changes could include a jump in one indicator; a simultaneous rise in several; or a steady rise in one or more over time. Some sort of definition of what constitutes an “early warning” thus needs to be arrived at. It is then key to communicate early warnings swiftly to stakeholders in order for timely action to be considered in response.

¹² Whether directly or mediated through the participating RLP member agencies.

Local information sources on the ground will often be the direct beneficiaries of such an EW system, which will hopefully encourage active participation. They will need to be well briefed and debriefed at regular intervals¹³. Potential international, regional and national information sources and allies in monitoring (both Christian and secular) are numerous, limited mainly by the size and capacity of the central monitoring team to absorb information.

The above requires some kind of online information sharing platform. Something simple such as Wikispaces or Google docs might suffice, but the answer to this will emerge when monitoring is underway. It would obviously be helpful to create a track record of changes in ratings in the monitoring system database to allow seeing at a glance the recent history of changes and any patterns that emerge from it.

5. Responding to early warnings

The third stage is responding swiftly when the monitoring suggests that enough has changed that an early warning should be issued and action is required. This could be because trouble is now likely to break out in the foreseeable future, but also because prophylactic action could be taken to prevent a further deterioration. As indicated above, further work could usefully be done to provide a methodological base for defining an EW, perhaps going beyond responding to a jump in one indicator or a rise in more than one to look at changes in particular combinations. At present it is difficult to see how warnings could be accompanied by a rigorously based indication of likelihood, severity or timeframe of the threat in question.

The key overall point that must be borne in mind throughout is that the system needs to be simple to use as well as robust, particularly since few of the users will be political scientists or native English speakers. This is one reason why the indicators have been kept as brief as possible, but accompanied by a fuller set of explanatory notes clarifying each indicator.

6. Outcomes and benefits

Potential outcomes/benefits include:

- There is scope for action to forestall persecution rather than just react to it.
- Christians globally can be involved in prayer and campaigning ahead of persecution to seek to highlight it and prevent it.
- Proactive/preventative advocacy, quiet diplomacy, third country lobbying, media work, reconciliation work etcetera can be undertaken where appropriate.

¹³ Lessons will be learned about the most effective type of respondent and how their monitoring of the indicators is reported as the monitoring phase develops.

- There are opportunities for capacity building, training, sharing of experiences/ lessons learned between Christians ahead of time.
- Early warning facilitates more effective forward planning and strategizing by religious freedom/persecuted church agencies.

Ideally it should be possible to monitor all the countries where Christians are at risk. In practice resources will probably restrict us to a few, at least for the medium term, depending on funding.

It may also prove possible to rewrite the indicators and turn them into a theory or model of improvement/deterioration in the outlook for religious freedom. Again this requires further thought and work.

Appendix 1: Early warning indicators

A. Structural - State

1. Previous history of disinformation/discrimination/persecution of religious minorities.
2. Laws or constitution privileging people of one religion or discriminating against those of another; or failing to protect religious freedom.
3. Autocratic regime, whether or not lacking legitimacy.
4. Weak central control and considerable de facto local power (e.g. Nigeria).
5. Political vacuum due to people's alienation from mainstream parties.
6. Any other indicators specific to this country.

B. Structural - Non-state

7. Previous history of societal hostility to religious minorities.
8. Heterogeneous societal make-up.
9. Wide levels of poverty/exploitation/unemployment/illiteracy.
10. Engaged diaspora hostile to religious minorities.
11. Particular geographical "hotspots" within the country with potential to generate wider problems.
12. Any other indicators specific to this country.

C. Dynamic - State

13. Political change that could affect Christians.
14. General deterioration in human rights or increase in authoritarianism.
15. Signs of weakening of existing autocratic regime (e.g. capacity of security forces) and growing insecurity.

16. Electoral or other political exploitation of religious/sectarian issues to achieve/maintain power.
17. Policy change proposals, court decisions or draft legislation disadvantaging Christians.
18. Culture of impunity/lack of redress among officials over social pressures on Christians which involve breaches of the law.
19. Official anti-Christian propaganda/hate speech.
20. Official suspicion of Christian social agenda.
21. Signs of emerging discrimination against Christians in politics, civil service.
22. Changes to education curricula on other religions likely to increase hatred.
23. Weakening external constraints on restrictive human rights policies.
24. Developments in a neighbouring country or the region which could negatively affect Christians in this country.
25. Increasing pressure, disinformation, discrimination, restrictions, persecution or other developments as in 13-24, negatively affecting other religious minorities.
26. Any other indicators specific to this country.

D. Dynamic - Non-state

27. Rising regional or sectarian threats to political, social or economic stability.
28. Migration or other demographic shift that changes the religious composition of a key region.
29. Growing culture of lawlessness and/or violence.
30. Deteriorating economic conditions creating hardship and tensions.
31. Emerging economic marginalisation of Christians.
32. Rise of religious nationalism or Islamism.
33. Increasing religious observance.
34. Increasing hard-line Islamist influence on government or society.
35. Calls for discriminatory/restrictive legislation on churches, charities or NGOs.
36. Emerging disinformation or calls for action targeting Christians.
37. Signs of resentment at church growth/conversions.
38. State or established churches/other religious authorities seeking to curb new churches.
39. Rise in secularist pressures and influence of atheist ideology.
40. Continuing or worsening church divisions and traditional confessional attitudes.
41. Irresponsible media reporting arousing passions.
42. Developments in a neighbouring country or the region which could negatively affect Christians in this country.

43. Increasing pressure, disinformation, discrimination, restrictions, persecution or other developments as in 27-42, negatively affecting other religious minorities.
44. Any other indicators specific to this country.

Appendix 2: Explanation document (for indicators 13-44)

C. Dynamic – State

13. This could be both orderly change (e.g. elections); or sudden/violent change (e.g. a coup or civil war); or advent to power of a group with oppressive ideology, rhetoric or record (e.g. EPLF in Eritrea).
14. This could include reduced civil society, press and other freedoms, judicial autonomy or police integrity; or promotion of collective/"cultural" rights over individual freedoms.
15. Examples include Syria and Iraq where Christians are put at greater risk of sectarian attack.
16. This could be a government, governing party or opposition party.
17. Examples include proposals for introduction of sharia law, blasphemy laws or defamation of religion laws or anti-conversion laws. This refers to actual judgments, policy papers and proposals as opposed to demands from parties and other societal groups (see indicator 34 and 35 under Non-State).
18. Includes failure by government or parts of it (e.g. local level, individual officials) to enforce the law to curb incitement to religious hatred; official "blind eye", tolerance or connivance creating culture of impunity, lack of accountability or redress over social hostility.
19. Includes talk of Christianity as a threat to national security, identity or majority religion; as "imported"/under Western influence/"fifth column"; of Christians as disloyal to state or having a political agenda. Also association with unattractive Western foreign policies (e.g. wars, globalisation, unfair trade, indifference to AIDS problem) and "decadent" social mores (see also non-state indicator 36).
20. Includes negative reaction to church speaking out, for example, on social justice issues; suspicions about Christian outreach to the marginalised (e.g. Dalits in India).
21. Examples include "glass ceilings" or exclusion from working in security services (e.g. Egypt).
22. For example Saudi textbooks demonising Christians, Jews and Shia.

23. Notably, waning Western influence on governments after Iraq, the financial crisis etcetera and rising non-Western (e.g. BRICs and CHIME countries) influence.
24. Examples including anti-conversion laws in South Asia and Iraq/ Syria spillovers.
25. Often what happens first to other religious minorities is an indicator of what potentially will happen later to Christians.
26. Any other indicators specific to this country.

D. Dynamic – Non-state

27. Includes religious/regional/ethnic/tribal/sectarian/land ownership tensions and exploitation of religion to secure property ownership, resources or other political/ economic advantage.
28. Includes natural migration, internal displacement and government resettlement programmes.
29. Includes lawlessness, violence, activities of criminal gangs or militias, political intimidation, for example, narco-crime in Mexico, Colombia; emergence of armed groups in Nigeria, India.
30. Signs include increasing hardship and unemployment; anger at falling living standards and/or corruption; envy of Christians' business/educational attainments.
31. One form would be discrimination in employment; another access to education.
32. Includes Hindu/Buddhist nationalist, Islamist or other extremist/nationalist groups, parties and gangs.
33. The key point is the influence on society and government of increasing religious piety/observance.
34. Signs include foreign (especially Saudi) involvement in/funding of Islamic groups and institutions; calls for sharia law; anti conversion laws; blasphemy or defamation of religion laws; rise of more intolerant forms of Islam.
35. Targets of such moves include "sects"; registration; anti-conversion; church building, access and worship; hiring of staff; Christian schools etcetera; publications; evangelism/proselytising; foreign funding or contacts; entry of missionaries/ownership of businesses by foreigners (aimed at missionaries); wearing of religious symbols; Christian marriage, divorce, burial, clergy training; social interaction including intermarriage.
36. Includes hate speech, dehumanising propaganda, disinformation, stereotyping, negative comment about Christians in sermons, speeches, media outlets, Islamist or other websites, blogs, forums etcetera (see also state indicator 19).
37. This could provoke a range of negative reactions.

38. Examples include Orthodox Church in Russia, Muslim authorities in Central Asia.
39. Especially in the West and other more economically developed countries.
40. Includes churches becoming more divided internally and in relation to other denominations; weak leadership; continuing “bunker mentality”; failure to respond to political change, for example, the need to be politically engaged in Arab Spring countries; departure/emigration of young potential leaders.
41. Includes reporting of domestic events (e.g. “abductions” of alleged converts to Islam in Egypt) and often of external events, for example, the same “abductions” replayed in Iraq, wars in Muslim countries, perceived slights to a religion or religious figures (e.g. Danish cartoons) arousing passions, especially when reporting is exaggerated or false.
42. Examples including anti-conversion laws in South Asia and Iraq/ Syria spillovers.
43. Often what happens first to other religious minorities is an indicator of what potentially will happen later to Christians.
44. Any other indicators specific to this country.

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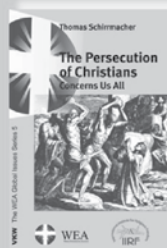


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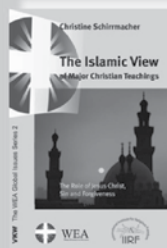
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The attack on Western religions by Western law

Re-framing pluralism, liberalism and diversity

Iain T. Benson¹

Abstract

This paper discusses how law is increasingly being used to attack religious associations under the guise of “equality” advancement and “non-discrimination” restrictions. I explore two important insights: first that the concept of “transformation” has been distorted, to shelter approaches to law that fail to respect properly associational diversity. When misused, “transformation” seeks to change the moral viewpoints or religious beliefs of religious associations by force of law. Second, the paper discusses the expansion of law so that it becomes a threat to associations. The “goods of religion” and the “limits of law” need to be more widely recognized and understood both by religious communities and by those involved in law, politics and the media. These insights demonstrate how “equality activists” employ a rhetoric of “equality” to produce inequality, “diversity” to produce homogeneity and “non-discrimination” to discriminate against religious communities and religious beliefs. Several solutions for identifying these errors and resisting them are outlined in brief.

Keywords Law and religion, definitions of liberalism, pluralism, diversity, transformative constitutionalism, political theology, civil religion, constitutional theocracy, law as religion, freedom of association, values versus virtues, homophobia, heterosexism, civic totalism, egalitarian absolutism, holistic pluralism.

1. Introduction: Minimizing the public place for religions and law becoming *like* a religion

Many people are aware that with secularism, understood as an anti-religious ideology rather than in some of its more benign forms,² we can see a movement that seeks to

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² Some wish to speak of “open secularism” etcetera as if the term “secularism” can be given a more pleasant face. For reasons I have set out elsewhere, I believe this strategy to be mistaken and that the term

minimize the public place and relevance of religion. What is less recognized, however, is that certain contemporary approaches to law wish to extend law and make it serve the function, increasingly, *of a religion with one moral viewpoint*. By doing so, these approaches attack religious associations themselves and usurp the proper social roles that religions play including diversity in relation to moral debates of the day. This tendency needs to be understood and this article hopes to assist in its recognition and in arguments to counteract the apparent legitimacy of such approaches.

Litigation over recent decades in North America, the United Kingdom, Europe and South Africa has become more and more dominant as a forum not only for legal battles but for “resolving” disputed social issues.³ What many are not so aware of is the extent to which law has become dominated in a large part by highly secularized elites who function with concepts that are, whether they realize it or not, deeply antagonistic to the properly public place for religious involvement and the nature and role of diversity in a free and open society. Though many in these elite groups use terms such as “equality”, “non-discrimination”, “diversity” and “pluralism” giving the impression that their theories will respect rights, pluralism and diversity, what they mean by them is very different from what religious believers and their religious associations might imagine these terms to mean in relation to the freedoms of religion and association as long understood.

“secularism” should be used when we mean the essentially anti-religious ideology for which the word “secularism” was coined in 1851 by George Jacob Holyoake. A similar problem exists with some uses of the conception of “secular”. See: Iain T. Benson Notes towards a (re)definition of the secular (2000) 33 *UBC Law Rev* 519 and Considering secularism, in D. Farrow, (ed.), *Recognizing religion in a secular society* (Montreal: McGill-Queens UP, 2004) 83-98. See also, arguing for what it calls “open secularism”, Jocelyn Maclure and Charles Taylor (trans. Jane Marie Todd), *Secularism and freedom of conscience* (Cambridge: Harvard UP, 2011) 58-60. What the authors describe as “open secularism” and support as “neutral”, however, would be less confusingly described as “non-establishment.” “Secularism” has an origin that is, in fact, anti-religious and understanding this and reserving the term to describe this phenomenon serves a useful purpose. Nothing is added to “non-establishment” by employing the confusing term “open secularism”. The authors’ claim that “open secularism” is a “liberal-pluralist model” that has, in Quebec, “achieved a satisfying balance, at least in comparative terms, between respect for individual rights and freedoms and the imperatives of life in society” (60). This claim seems extraordinary in light of the stream of litigation from that province by individuals and communities who argue that their religious rights are being unfairly restricted. The legal facts deny the theory being put forward by Maclure and Taylor. Their volume provides a good example of why the term “open secularism” should not be used.

³ I have put the word “resolving” in quotation marks here because it is widely recognized that the legal process is far from an ideal way of building social consensus. Judicial review tends to produce “winners” and “losers” and does not tend to be suitable (to say the least) for the forming of compromises. The larger the scope that law takes on for this form of “resolution”, the greater the temptation for politicians to try and avoid “hot potato” issues by, in effect, delegating them to the courts. Neither suit the ongoing purposes of a thriving constitutional order that respects the proper role of civil society and the right of citizens to dissent and form associations of like-minded people around differing beliefs. See: Charles Taylor, *The malaise of modernity* (Toronto, Anansi, 2001) 114 ff.

2. Identifying “pseudo-liberalism”, “civic totalitarianism”, “egalitarian absolutism” and making law into a religion

When examined closely, many contemporary conflicts, such as those involving religions and disputes over sexual conduct and marital status, exhibit a “trump rights approach” that would give one side greater weight than the other rather than strive to examine context so as to ensure proper protection of diversity, dissent and difference. Such accommodation and toleration is necessary in order to safe-guard the importance of the context for rights in a constitutional democracy – that is, the diversity which such theorists say that they support. It is important to recognize the divergence between a theory that says it is “liberal” and “tolerant” with forms of academic or practical advocacy that show by what they seek to accomplish that they are neither “liberal” nor tolerant.

What happens when one viewpoint seeks to dominate others without allowing places for dissent (on such issues as sexual conduct or the status of marriage or beliefs about gender roles between men and women) is that we see law being used as the means of forcing one set of beliefs to be dominant. There are signs that law is being used to usurp the role of religious associations. Recent writings by legal scholars refer, approvingly, to both “constitutional theocracy” and “political theology” in which it is observed that law and politics can become theological in practice. Such developments, of course, are a variant of the long history of ideas in relation to “civil religion.”⁴ Still other scholars have written of the risk of human rights being viewed as an “idolatry” or, on the other hand, observing that human rights is “the new secular religion of our time” and do so without rejecting this new extension.⁵

The threat comes not only from this sort of divinization of law or politics but also from a diminution of the protections that exist in law for religious diversity. Thus, one recent book, published in Canada, views both “accommodation” and “tolerance” as

⁴ See, for example, Ronald Weed and John von Heyking, (eds.) *Civil religion in political thought* (Washington D.C.: The Catholic University of America Press, 2010)

⁵ See: Irwin Cotler, Jewish nongovernmental organizations, in John McLaren and Harold Coward, (eds), *Religious conscience, the state and the law* (New York: SUNY Press, 1999) 77 – 96 at 77. Cotler was formerly Canada’s Federal Minister of Justice as well as being a noted human rights expert. Taking a very different approach to Cotler is fellow Canadian Michael Ignatieff, Human rights as idolatry, in Amy Gutman ed. *Human rights as politics and idolatry* (Princeton: Princeton UP, 2001) 53. Ignatieff writes that: “[h]uman rights is misunderstood, I shall argue, if it is seen as a “secular religion.” It is not a creed; it is not metaphysics. To make it so is to turn it into a species of idolatry: humanism worshipping itself. Elevating the moral and metaphysical claims made on behalf of human rights may be intended to increase its universal appeal. In fact, it has the opposite effect, raising doubts among religious and non-Western groups who do not happen to be in need of Western secular creeds.” Human rights, like all areas of law, needs to develop a richer conception of context within which to interpret vague and powerful terms such as “equality” and “non-discrimination” – much greater attention needs to be paid to differential contexts such as those represented by religions. Respect within law and politics for a robust conception of associational diversity and difference is essential to human freedom.

obstacles standing in the way of “deep equality”. The volume suggests that it is necessary to move beyond both concepts in order to achieve a “cohesive” society!⁶ All of these moves show a failure to understand the proper jurisdictions of law and religion and exhibit an insufficient grasp of history and political theory and the dangers to culture when religions are suppressed and the law becomes, in essence, “theocratic.”⁷

The late legal historian, Harold Berman, rejected what he referred to as “a form of secular religion or idolatry” which involved “...the worship of a constitutional principle for its own sake, coupled with a high degree of scepticism concerning any justification for such worship other than immediate self-interest, whether individual or collective.”⁸ According to Peter Berger, a leading sociologist of the last half century:

There exists an international subculture composed of people with western-type higher education, especially in the humanity and social sciences, that is indeed secularized. This subculture is the principle “carrier” of progressive, enlightened beliefs and values. While its members are relatively thin on the ground, they are very influential, as *they control the institutions that provide the “official” definitions of reality, notably the educational system, the media of mass communication and the higher reaches of the legal system.*⁹

What this means is that when we are dealing with the law and the media we must recognize that these sectors are heavily over-represented by those, such as many Western journalists, judges and lawyers, who have little time for religion at best and actively wish to attack it at worst. It means, as well, that many simply do not appreciate its importance and this is evident in their coverage and decisions.¹⁰ Ours is increasingly a “show me” age in which empiricism matters increasingly to poli-

⁶ See: Lori Beaman, (ed) *Reasonable accommodation: Managing diversity* (Vancouver: UBC Press, 2012) the concept of “deep equality” that wishes to view both “accommodation” and “tolerance” as *passé* is in opposition to a richer understanding of multi-culturalism and diversity that could be called “deep diversity”; only diversity is consistent with freedom.

⁷ Giorgio Agamben, (trans. Leland De la Durantaye), *The Church and the Kingdom* (London: Seagull Books, 2012) in his most penetrating reflection of the role of the Church in relation to time and pilgrimage, has noted the extension of law as follows: “With the eclipse of the messianic experience of the culmination of the law and of time comes a most unprecedented hypertrophy of law – one that, under the guise of legislating everything, betrays its legitimacy through legalistic excess” (40).

⁸ Harold Berman, *Faith and order: The reconciliation of law and religion* (Grand Rapids: Eerdmans, 1993) 218.

⁹ Peter L. Berger *The de-secularization of the world* (Grand Rapids: Eerdmans, 1999) 34 (emphasis added). Such presence within the forces that give the most present cultural *descriptions* (education and media) and *decisions* (politics and law) goes some way to explain the dominance of the wide-scale belief in “secularization” despite not only the lack of an empirical base to support it but greater empirical proof for its *opposite* – the truth that religions are more significant world-wide not less.

¹⁰ See, on the empirical claims for the goods of religion, Brian J. Grim *Religious freedom: good for what ails us?* (2008) 6 *Rev Faith and Int'l Aff* 3-7.

tics and law. For this reason we must pay attention to the facts of the *goods that religions serve* as well as the theoretical arguments for their respect. In this article I will give some recent examples of the language and strategy of attacks on religion and how a better understanding of key terms can serve to resist such attacks.

3. Culture needs religions: Law and politics are not proper replacements for religious associations

For reasons that follow, the best view is that all these conceptions of law as a replacement for religion should be rejected since law is not capable of doing what religions do culturally. Whether these attempts to mimic the roles and powers of religion in law and politics are called “civil religion,” “constitutional theocracy,” “political theology,” “human rights idolatry” or “deep equality,” all should be rejected as inappropriate usurpations of the public role of religions in culture and an over-extension of laws that need to allow space for differing conceptions to co-exist. Religions, which, by definition, believe different things are likely to conflict with each other which is why associational independence is important not only to freedom but to peaceful co-existence. Religions understood properly as associational are diverse and therefore stand necessarily “outside” the public, the political or the legal (while they may overlap with each of these spheres and with other religions).

The quest to establish civil religion or to make an idol out of human rights or the constitution is doomed to failure for several other reasons: briefly stated here are three:

1. *Religious associations are joined* (or have a significant voluntary dimension) whereas, usually, citizens do not join a state in the same way. The boundaries of the state are much more formal and difficult to change;
2. *Religions maintain allegiance through binding by affection*; the state and the law do this in different ways. Related to this, religions seek to share their faith in their project with others. The law and the state do not do this to the same degree, nor should they; and
3. *Religious associations are genuine communities with their own rules based on transcendental commitments – the law functions differently*. While there may be similarities in that both have rich symbolic languages, there are important distinctions between law and its “community” of lawyers, judges and academics and those who live in religious communities. First, the law is there for everyone and must be administered impartially between all sub-communities that make up the wider culture and its common symbols should give fair access to all, not preferred membership or voice to some. Religious symbolism and life does not operate this way. Superficial similarities between a “sacred text” and the authority of law, or the idea of legal judges as “high priests”,

should not be over-extended to draw a parallel between religion and law where the social functions are so different and the effects of jurisdictional blurring are negative.

4. Law as “constitutional theocracy” and politics as “political theology” or “civil religion” should all be rejected

Canadian scholar Ran Hirschl, in his recent work with a most telling title, is correct to refer throughout his book *Constitutional Theocracy*, to the “high priests of the civil religion in Johannesburg” (187); “the high priests of constitutionalism” (citing, particularly, South Africa and Canada as examples, 203); “today’s philosopher king judges” (240); and in his reference to “the religion-like nature of the constitutional scripture” (249). He is correct to do so if we speak of how some look at law but not, however, if we accept (as he seems to) this as an *appropriate* view of the law.

Another temptation is to urge citizens to embrace the return to singular conceptions such as *a* political theology or *a* civil religion or *a* constitutional theocracy.¹¹ In each case, these singularities will be oppressive of the diversity of belief and opinion that associational life alone provides. What is needed for the claims of those who support civil religion or a “global civil religion” is not a civil religion at all, but an approach to the appropriate delineation and furtherance of religions (plural) within the civil and global settings. The law should be in the business of superintending, to the minimum degree, the conflicts that extend beyond what is acceptable between the communities. There are limits to religion and what an association may wish to do, as there are for all areas of human endeavour. The articulation of the limit, however, must recognize the limitations of law itself, something that law has been rather weak at doing.¹² Like “civil religion” we need to be wary of these attempts to divinize or idolatry law and human rights or politics and explain why they are inappropriate usurpations of the role properly played by religions in societies.

5. What about claims that law can be “transformative”?

It is common to hear that law can be in the business of social “transformation”; are all such claims illegitimate? In what way may we speak meaningfully about law

¹¹ Ran Hirschl, *Constitutional theocracy* (Cambridge: Harvard U.P., 2010); the sort of error committed, in a different way by Paul Kahn in *Political theology* (New York: Columbia UP, 2009) and the latter’s former student at Yale, Canadian academic Benjamin Berger, who, while he superbly explains why law “fails to appreciate religion as culture” comes very close to suggesting that law constitutes both a “community” and a “culture” of its own; see: Benjamin Berger, Law’s religion, in Richard Moon, (ed.), *Law and religious pluralism* (Vancouver: UBC Press, 2008) 264 at 288.

¹² See Francis Lyall, Religious law and its application by civil and religious jurisdictions in Great Britain, in Ernest Caparros, (ed.), *Religion in Comparative Law*, (Brussels: Bruylant, 2000) 253; Michael J. Perry, *The political morality of liberal democracy* (Cambridge: Cambridge UP, 2010) 75.

as transformation? The answer is that we *may* speak of law as having ambitions to transform society *only if* such legal ambitions respect adequately the basic conditions of a free and democratic society including respect for both associational diversity and associational integrity. Law and politics must not unduly interfere with religious associations and should, ideally, co-operate with them. Seeking some kind of homogeneity or convergence in which religious communities are bleached out is inconsistent with constitutional freedoms properly understood. What do we mean by “undue” interference? Law or politics interfere inappropriately or unduly when they attempt to force the beliefs or conscience of citizens to change, *in relation to matters that are openly contestable*, in ways that are not chosen by the citizens themselves. This places real and necessary obstacles in the way of quests for “transformation” that seek to crush religious diversity on certain matters.

There are many debates in contemporary society that raise controversial questions and that have irreconcilable philosophical or moral frameworks. Such matters as medical ethics in relation to abortion, euthanasia and a health care worker’s “duty to refer” for example, or what matters will allow dissent in relation to controversial forms of marriage (same-sex marriage comes to mind) are not reconcilable given the divergent starting points for analysis. Those who seek to change society should do so through the co-operation of civil society properly respecting its diversity yet the temptation is to do so through the violence of law. To choose law for wholesale reform *over against religious diversity* is to threaten freedom itself and so such approaches cannot properly be considered transformative or acceptable. This is why religious employers *must* be allowed to discriminate (i.e. make distinctions) in favour of religious employees or rules and why such distinctions are not “unfair” discriminations with which the law should interfere as long as they are done with sufficient notice and consistent practice and so on.¹³

What this says about “transformative constitutionalism”¹⁴ is that ambitions towards reformation of society will have to take different forms with foci in different places than the current focus on rights-based litigation which tend to create winners and losers, not the conditions of accommodation and diversity which involve co-existence

¹³ Failure to grasp or accept the structural and contextual nature of distinctions so that not all distinctions or discriminations constitute “unfair” discriminations may be seen in various recent writings. See, for example David Bilchitz, *Why courts should not sanction unfair discrimination in the private sphere: A reply* (2012) *SAJHR*, 296 discussed further below and, generally, the collection of essays edited by Lori Beaman, (ed.), *Reasonable accommodation* (2012), note #5 above.

¹⁴ As with other terms such as “liberalism”, “pluralism”, “equality” and so forth, the concept of “transformative constitutionalism” is multi-valent and so a variety of interpretations are possible. Not all will be subject to the claim I make about “law becoming a form of religion” which I reject. See, generally, on multi-valence, Malise Ruthven, *Fundamentalism : A very short introduction* (Oxford: Oxford UP, 2007) 5ff.

with *disagreement*.¹⁵ Moving the focus of transformation from law to civil society (including but not limited to politics) will, ideally, gradually shift the focus from litigation as a means of forced outcomes. This form of more consensual development will perhaps, in some ways, result in slower forms of social development, to the chagrin of activists, but in the long run it will provide a more meaningful form of social change or understanding and avoid the risks of backlash that unjust approaches will produce.

The advancement of minorities and developments in relation to equality and non-discrimination will continue but the focus will change direction and face, rather than the courtrooms, the more appropriate chambers of change – legislative chambers and associational meetings and the usual repertoire of active civil society driven political frameworks. The emphasis will be less on legal challenges and outcomes where the advancement of particular agendas rather than associational diversity is presumed to be the important principle. The focus will and should be, increasingly, on political and civic discourse and debate seeking to change the minds of those in different associations towards larger conceptions of shared goods. Also, and this is key, the search for justice, when it is in the courts (as it will sometimes rightly be) will involve the use of presumptions such as one *that needs to be created in favour of associational diversity* with a view to preserving and encouraging diversity within appropriate legal limitations. Such presumptions may be rebutted but the onus is on those who challenge associational and religious diversity, not on the associations as is currently the case.

6. Understanding varieties of pluralism and liberalism and rejecting false versions of both

All terms can contain ambiguity and multiple meanings. Similarly, there are a variety of meanings and possible interpretations for most concepts. In relation to “liberalism” and “pluralism”, however, it is important to choose conceptions of central terms that respect and encourage diversity, and, as far as possible, independence. Some tend towards greater understanding of associational diversity and robustness, and others leave that sort of question undeveloped. Still others are aggressively arrayed against religious diversity and assume, if they do not express it openly, that law and politics should help particular viewpoints to triumph publicly. Some go so far as to suggest that other viewpoints than their own should be “attacked” legally and religious believers and their associations “coerced” by law to change their “hearts and minds.”¹⁶ On sexual matters,

¹⁵ I have written about the theory underlying this and the tensions in various approaches to liberalism in Iain T. Benson, *Living together with disagreement* (Ballan Australia: Conor Court, 2012).

¹⁶ Two examples supporting “attack” and “coercion” are as follows: in the first, urging legal “attack” on traditional views of heterosexual marriage and the other suggesting that religions should lose in conflicts with “equality” (particularly in relation to sexual orientation claims) and that law should “coerce

religious viewpoints are stigmatized as “homophobic” or “heterosexist” and said to be “abhorrent.” People who use this form of argument have no respect for others who hold different viewpoints and would seek to force the alternative viewpoints on sexual morality to be treated as equivalent to racism – which, of course, sexual views are not, since race is not a choice but sexual conduct (heterosexual or homosexual) is.

7. Towards “holistic pluralism”

A better approach to pluralism than these false and aggressive ones is a recent call to recognize what its author refers to as “integral” or “holistic pluralism.” Fred Dallmayr seeks to overcome the extremes of either radical fragmentation or monistic unification by a quest for an understanding of mutual relatedness and engagement.¹⁷ Dallmayr’s insight into the development of “integral pluralism” is important:

One might say that, whereas in traditional monism (as well as dualism) the unifying structure is imposed from the top down, the linked quality of integral pluralism emerges from the bottom up - in a way that can never be fully predicted or exhaustively mapped.¹⁸

change in [the] hearts and minds” of believers, see: Pierre de Vos, Same-sex sexual desire and the re-Imagining of the South African family, (2004) 20(2) *SAJHR*, 179 at 187 and David Bilchitz, Why courts should not sanction unfair discrimination in the private sphere: A reply (2012) *SAJHR*, 296 at 314. Both writers would call themselves “liberals” yet more accurate assessments would reject their perspectives, at least on these issues, as constituting “civic totalitarianism” not liberalism since they allow no space for diversity and have no respect for alternative moral viewpoints other than their own. On the nature of “civic totalitarianism” and why it applies to claims that religions should not be entitled to have alternative viewpoints in relation to controversial matters, see William Galston, Religion and the limits of liberal democracy, in D. Farrow (ed.), *Recognizing religion in a secular society* (Montreal: McGill-Queens, 2004) 41-50 at 43-44, 49. The claim, implicit but clear, that religious viewpoints that say same-sex sexual conduct is immoral should be challenged by law, and stigmatized as “homophobic” or “heterosexist” (both terms which Pierre de Vos and David Bilchitz and others, use) effectively suggests that only the sexual moral views of those who accept the moral legitimacy of same-sex conduct should be accepted. With this presupposition the stage is set to “coerce change” by force of law. Of course, matters of sexual morality are precisely the sort of things about which reasonable people (and institutions) ought to be able to disagree. That “sexual orientation” has more or less successfully come to be viewed by a generation of jurists, lawyers and journalists, as conveying the right to *act on that orientation* in all settings (including religious ones) is one of the unusual aspects of the current time. Religions, of course, place restrictions on *heterosexual orientation* as well as homosexual orientation (consider the prohibitions on “fornication” or “adultery” and rules involving marriage that apply to heterosexuals as well as homosexuals) yet this is virtually never discussed because to do so would suggest, rightly, that religious viewpoints are not “homophobic” but have a different view of sexual morality for everyone no matter what their “orientation.” In this area, rhetoric trumps logic and the terminology is as slippery as the tactics that are often employed to win arguments or court cases.

¹⁷ Fred Dallmayr, *Integral pluralism* (Lexington: University Press of Kentucky, 2010) 9.

¹⁸ *Ibid* at 9

A pluralistic universe of the sort Dallmayr envisions, “is more like a federal republic than an empire or a kingdom.”¹⁹ Again, quoting William Connolly, Dallmayr draws on the ethical and political implications of mutual connectedness and engagement, and quotes Connolly when he writes: “pluralism, particularly of the multi-dimensional, embedded variety supported here, requires a set of civic virtues – in fact, pluralist virtues – to sustain itself.”²⁰ What this means is the search for a “public ethos” that “solicits the act of cultivation of pluralist virtues by each faith [or group] and a negotiation of a positive ethos of engagement between them.”²¹ Dallmayr invokes the importance of forbearance and a “presumed generosity in a larger ethos of pluralism.”²² The essence here is co-operation, not domination and certainly not “attack” or “coercion.”

8. Religions have work to do in order to understand and live within pluralistic societies

Dallmayr criticizes religion for erecting three obstacles in the way of integral pluralism:

1. *The recruitment of religion for strictly worldly purposes*, that is, its enlistment in the pursuit of power, wealth and domination – possibly hegemonic or imperial domination (the “politicization of religion”);
2. *The retreat of religious faith into a purely inward or “private” disposition*, shunning all involvement in social affairs – this is the opposite of no. 1 and may be referred to as the “privatization of religion;” and
3. *A quasi-Manichean division between good and evil, religious and non-religious motives* – in the sense that an ethical or religious disposition is narrowly confined to private life, while politics, especially international politics, is viewed as being entirely in the grip of immoral power politics.²³

¹⁹ Here Dallmayr is quoting William James at 9.

²⁰ *Ibid* at 11. The importance of re-understanding “virtues” rather than the common but shallow and confusing language of “values” has been discussed by many contemporary philosophers and their work is reviewed in detail in Iain T. Benson, Do “values” mean anything at all?: Implications for law, education and society” (2008) *Journal of Juridical Science* 33 (1): 117-136. This distinction between “virtues” and “values” goes to the root of the moral language of religion and society in our day. Despite this, some religious writers fail, without any serious analysis, to appreciate its importance: see, for example, John G. Stackhouse Jr. *Making the best of it: Following Christ in the real world* (Oxford: OUP, 2008) 337 n.20. The issue is a deep one and of critical importance as it goes to the heart of not only moral language but the relationship between philosophy and theology. Similar unwillingness to engage the problems of using “secularism” and “secular” incorrectly is also, unfortunately, a notable feature of our times.

²¹ *Ibid*

²² *Ibid*

²³ *Ibid* at 18

To get beyond these obstacles, Dallmayr calls for ethical engagement and “lateral embroilment.” This involves the work of “dialogue and interrogation.” Dallmayr draws upon a wide variety of influences in order to describe this new approach to pluralism and holism and notes:

Clearly, religious and ethical teachings are bound to impact contemporary politics - not with the aim of solidifying a monistic power structure but with the intent of promoting human self-rule and responsible democratic agency, an agency that remains open to the demands (and plural interpretations) of ethics and religion. Differently phrased, the task of religion and ethics in our time is not to buttress but to contest or critique sovereign political power; for this reason, their locus of activity is mainly on the level of “civil society” or the “public sphere” rather than that of government.²⁴

Here, indicating that the project of integral pluralism is not utopian, is Dallmayr’s recognition that “...unified harmony is bound to be accompanied by tension, disharmony, and struggle, a fact that is one of the hallmarks of integral pluralism.”²⁵

The vision that Dallmayr develops of a pluralistic society committed to dialogue and engagement, fully cognisant of the ongoing reality of disagreement and conflict, is one that clearly rejects, *and calls for legal response in rejecting*, movements towards monistic domination of the sort just referred to. It is that monistic domination, although phrased in the common but ambiguous language of “furthering equality” or “improving dignity” or rejecting “discrimination” or pursuing “transformative constitutionalism” that needs close scrutiny. *When methods are proposed, that in each case fail to respect difference and diversity, these lofty goals are no longer useful to a just application of the law and are not justifiable.*

9. Conclusion: Law should view religions more positively, recognize their importance to the common good and society and say so in legal judgments

Here and there a legal judgment may stand out as a beacon of insight in the rather bland landscape of contemporary judgments that misunderstand religions and fail to accord them respect. One notable exception to the general trend towards tepid and unenthusiastic treatments of religion is the recently retired judge of the South African Constitutional Court, Justice Albie Sachs. Here is what he said about religion and community and culture in a leading case on religion in South Africa. I know of no decision like it anywhere else. Sachs wrote:

²⁴ *Ibid* at 19

²⁵ *Ibid* at 20

[F]reedom of religion goes beyond protecting the inviolability of the individual conscience. For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe. For millions in all walks of life, religion provides support and nurture and a framework for individual and social stability and growth. *Religious belief has the capacity to awaken concepts of self-worth and human dignity which form the cornerstone of human rights. It affects the believer's view of society and founds the distinction between right and wrong. It expresses itself in the affirmation and continuity of powerful traditions that frequently have an ancient character transcending historical epochs and national boundaries.*²⁶

The Canadian Supreme Court, which has had ample opportunity to say comparably strong or even encouraging things about the importance of religion, has never done so. It has, nonetheless, recognized a relationship between society and the freedom of religion as follows:

[the] freedom of religion is a fundamental right and represents a major triumph of our democratic society. The philosophical and political values underpinning Canadian democracy recognize the need to respect the diverse opinions and beliefs that guide the consciences and give direction to the lives of all members of our society.²⁷

Freedom of religion then is not just the right to have beliefs privately but the right to engage in the public dimensions of manifestation, declaration and teaching. What has occurred from time to time in Canada though, has been a caving in to a reduction of the freedom of religion in two main ways: individualism and privatization. Sadly some scholars have also been guilty of these errors. Thus, there are theories of rights in Canada and South Africa that are reductive of the communitarian conceptions of rights contrary to the importance, in relation of religious rights particularly, of their community and public dimensions.²⁸

²⁶ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 36, (emphasis added) per Albie Sachs J. ("*Christian Education*").

²⁷ *Congrégation des témoins de Jéhovah de St. Jérôme-Lafontaine v Lafontaine (Village)*, (2004) 2 SCR 650, para 64 per LeBel J. dissenting. On the essence of the freedom of religion see: *R. v Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at 353-354.

²⁸ Unacceptably "individualistic" reading of rights and particularly religious liberty may be found all too easily in scholarly work in this area, see: Lorraine E. Weinrib, Ontario's Sharia law debate, in Richard Moon (ed.), *Law and religious pluralism in Canada* (Vancouver: UBC Press, 2008) 239, 246-247.

Three contemporary writers offer important insights. Oxford philosopher Joseph Raz, himself not a theist, has rightly viewed religions as a key means of further conceptions of the common good which can act as a check on the fragmenting tendencies of individualism.²⁹ Another leading contemporary non-theistic philosopher, Jürgen Habermas, has noted the importance of religious voices in the political public sphere, in a way that would apply to the legal sphere, and adds an important caution about their truncation:

For functional reasons, we should not over-hastily reduce the polyphonic complexity of public voices, either. For the liberal state has an interest in unleashing religious voices in the political public sphere, and in the political participation of religious organizations as well. It must not discourage religious persons and communities from also expressing themselves politically as such, for it cannot know whether secular society would not otherwise cut itself off from key resources for the creation of meaning and identity... *Religious traditions have a special power to articulate moral intuitions, especially with regard to vulnerable forms of communal life. In the event of the corresponding political debates, this potential makes religious speech a serious candidate for transporting possible truth contents, which can then be translated from the vocabulary of a particular religious community into a generally accessible language.*³⁰

What the current situation shows is that law is being used in many instances to attack and undermine the respect that should be owed to religious associations. As I have demonstrated, resources exist within contemporary theory to challenge these attacks on religion *so long as religious leaders and their lawyers are made aware both of the nature of these challenges and the best theoretical arguments with which to expose and resist them*. Claims for “equality,” “non-discrimination” or “transformation” that are premised openly or covertly on getting rid of and attacking diversity, particularly religious diversity, must be recognized for what they are – threats to the open society functioning under an appropriate approach to constitutional principles. No one should be fooled any longer: the claims by egalitarian absolutists and civic totalists are illiberal and dangerous to ordered freedom and need to be understood for what they are and challenged with more just arguments that give place to contending viewpoints in a genuinely liberal manner that allows for diversity and co-existence.

²⁹ Joseph Raz, *Ethics in the public domain: Essays in morality of law and politics* (Oxford: Clarendon Press, 1994) 121.

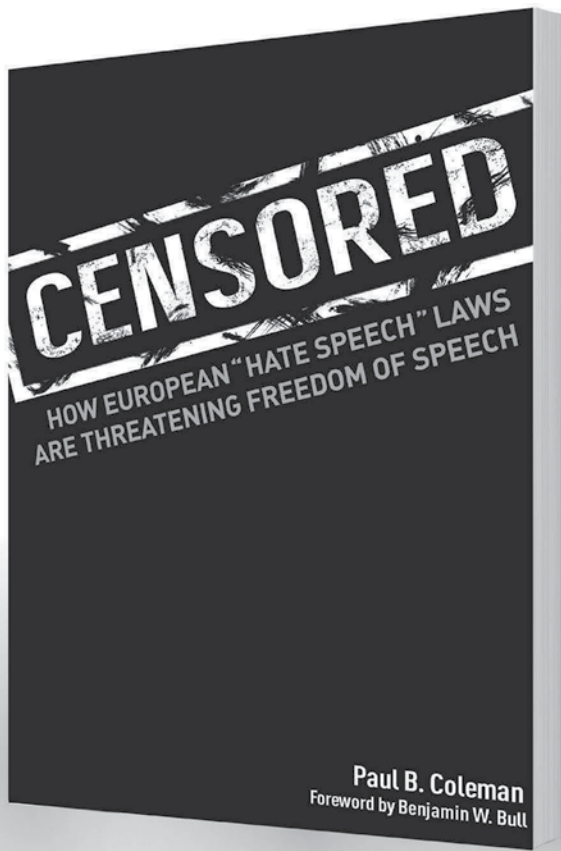
³⁰ Jürgen Habermas, Religion in the public square (2006) *European Journal of Philosophy* Vol. 14 No. 1, 1–25 at 10 (emphasis added). See also, Louis Dupré, “The common good and the open society” (1993) 55 *The Review of Politics*, 687 at 707–8.

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Paul Coleman challenges the widespread support for "hate speech" laws found at a national and European level, by arguing that criminalizing speech is illiberal, dangerous and leads to a culture of censorship.

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‘Sexual orientation’ and ‘gender identity’ at the UN

From obscurity to primacy in ten years

Paul Coleman¹

Abstract

This article examines the significant changes that have occurred at the United Nations in the past decade in regard to the so-called “sexual orientation” and “gender identity” movement. After examining the events that have taken place in the past decade, this article will consider the implications for religious liberty. The recent experiences of several Western nations indicate that a worldwide push for “sexual orientation” and “gender identity” laws could lead to significant restrictions on freedom of religion.

Key Words Sexual orientation, gender identity, United Nations, religious liberty.

On 26 July 2013 in Cape Town, South Africa, the United Nations Office of the High Commissioner for Human Rights (OHCHR) launched an “unprecedented United Nations global public education campaign for lesbian, gay, bisexual and transgender (LGBT) equality.”² The campaign is the latest effort in the so-called “sexual orientation” and “gender identity” (SOGI) movement³ – a movement that has gained tremendous ground at the United Nations (UN) in the past decade.

Prior to 2003 “sexual orientation” and “gender identity” was not considered a topic of concern for the UN General Assembly or its intergovernmental bodies, nor was it being treated as a priority of UN member states’ foreign policy. While the UN Human Rights Committee expressed the view in *Toonen v. Australia* (1994)⁴ that laws criminalizing homosexual behaviour were in breach of the International

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² <www.unfe.org/en/about>.

³ As both “sexual orientation” and “gender identity” are highly disputed terms that are far from having settled definitions, I shall use quotation marks when referring to them.

⁴ UN. Doc. CCPR/C/50/D/488/1992.

Covenant on Civil and Political Rights, the interpretation of the Committee did not create an immediate impact beyond the treaty monitoring bodies and the UN “independent experts.”⁵ However, in just ten short years the issue has gone from relative obscurity to human rights primacy.

In the past decade dozens of speeches have been made in support of the SOGI movement by senior UN officials such as the UN Secretary-General, Ban Ki-moon, and the High Commissioner on Human Rights, Navi Pillay,⁶ and various UN entities have incorporated “sexual orientation” and “gender identity” issues into their work.⁷ The US has declared that “advancing the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons” (LGBT) worldwide is an “Obama Administration foreign policy priority,”⁸ the British government has indicated that foreign aid will be withheld from countries that do not advance LGBT issues⁹ and the European Union has recently produced extensive guidelines explaining how it will promote “LGBTI rights” around the world.¹⁰ Additionally, high profile and well-funded non-governmental organizations (NGOs) such as Amnesty International and the International Commission of Jurists have made the SOGI movement a centrepiece of their work.¹¹

Thus, despite there being no mention of “sexual orientation” or “gender identity” in a single UN treaty, despite the on-going contention about the terms themselves and despite the fact that nearly half the UN Member States have criminal bans

⁵ Despite claims to the contrary, the UN treaty monitoring bodies such as the Human Rights Committee cannot impose obligations on UN Member States. As Michael O’Flaherty, a former HRC committee member and significant figure in the SOGI movement has explained: “Treaty bodies do not have judicial powers and in no case have they been empowered to determine violations of the treaties by the state parties.” See Piero A. Tozzi, J.D. *In Belize, Global “Gay” Movement’s Legal Roadshow Comes to Town*, Turtle Bay and Beyond (May 20, 2013).

⁶ See <www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTSpeechesandstatements.aspx>.

⁷ E.g. Office of the United Nations High Commissioner for Human Rights, United Nations Development Programme, United Nations Children’s Fund, United Nations Educational, Scientific and Cultural Organization, the Office of the United Nations High Commissioner for Refugees, International Labour Organization, World Health Organization, United Nations Population Fund and Joint United Nations Programme on HIV/AIDS. See ‘Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity,’ OHCHR (A/HRC/19/41), 3.

⁸ *Advancing the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons Worldwide: A State Department Priority*, Bureau of Public Affairs (June 28, 2013).

⁹ *Cameron threat to dock some UK aid to anti-gay nations*, BBC News (October 30, 2011).

¹⁰ *Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons*, Council Of The European Union (June 24, 2013).

¹¹ Amnesty International champions same-sex “marriage” around the world and argues it is “enshrined in international human rights standards” <www.amnestyusa.org/our-work/issues/lgbt-rights> . The International Commission of Jurists lists “Sexual Orientation and Gender Identity” as one of its top six priorities alongside issues such as the independence of the judiciary and the rule of law <www.icj.org/themes/>.

on homosexual behaviour, a radical shift has taken place within several UN entities, leading to the first ever resolution being adopted on "sexual orientation" and "gender identity" in 2011. The resolution was quickly followed by a flurry of activity and there will undoubtedly be much more to follow in the near future.

This article will outline the events that have taken place at the UN in the past decade before considering how religious liberty will be affected by a growing acceptance and promotion of the SOGI movement in the future.

1. A timeline of events: 2003 to 2013

1.1 The failed Brazil Resolution (17 April 2003)

With almost no indication that such an event was about to take place, the first SOGI resolution was brought to the UN in April 2003.¹² The draft resolution was introduced by Brazil before the then-Commission on Human Rights and was supported by several European countries and Canada. The draft resolution was relatively modest in its reach but did not come close to succeeding. The tabling of 55 amendments by Saudi Arabia, Pakistan, Egypt, Libya and Malaysia ensured that consideration of the resolution was postponed to the following year and in 2004 neither Brazil nor any of the other co-sponsors attempted to bring the resolution forward for a vote.¹³

The Brazil resolution has since been labelled a "debacle" and as a result of its failure "the conventional wisdom was that a voted resolution would never succeed."¹⁴ Lobbying efforts instead turned to joint statements that could be delivered at the UN by Member States without the need for backing by other countries.

1.2 The New Zealand Joint Statement (15 April 2005)

Exactly two years after the failed Brazil resolution, during the 61st Session of the then-Commission on Human Rights, New Zealand successfully delivered the first joint statement on "Sexual Orientation and Human Rights."¹⁵ The statement was supported by 32 countries, predominantly from Europe, and stated, *inter alia*, that "Sexual orientation is a fundamental aspect of every individual's identity and an immutable part of self. It is contrary to human dignity to force an individual to change their sexual orientation, or to discriminate against them on this basis."

In 2006 the discredited Commission on Human Rights was replaced by the Human Rights Council, and further joint statements were initiated at the new UN body.

¹² E/CN.4/2003/L.92.

¹³ E/CN.4/2003/L.106-110.

¹⁴ Alli Jernow, *What Western Gay Rights Agenda?*, IntLawGrrls (February 7, 2012).

¹⁵ UN Commission on Human Rights, *New Zealand joint statement on promotion and protection of human rights*, (April 15, 2005) available at <www.arc-international.net/global-advocacy>.

1.3 The Norwegian Joint Statement (1 December 2006)

By 2006 the influence of pro-homosexual lobby groups could clearly be seen at work in various UN entities. In 2005 one such group, ARC International, established an office in Geneva with the intention of lobbying the newly formed Human Rights Council. A year later the Yogyakarta Principles were launched by a self-described “distinguished group of human rights experts.” The highly controversial guide on the “application of international human rights law in relation to sexual orientation and gender identity,” initiated by ARC International, has no formal power but does illustrate the recent convergence of pro-homosexual lobby groups and UN officials: around half the signatories were the former and half the latter.¹⁶

The lobbyist influence was also at work within the UN machinery and during the 3rd Session of the Human Rights Council, Norway delivered the next joint statement on “Human Rights Violations Based on Sexual Orientation and Gender Identity” on behalf of 54 nations.¹⁷ The statement urged the Human Rights Council to “pay due attention to human rights violations based on sexual orientation and gender identity” and requested the President of the Council to “provide an opportunity, at an appropriate future session of the Council, for a discussion of these important human rights issues.” ARC International claim they were “instrumental in conceiving, drafting and implementing” the joint statement.¹⁸

Directly following the Norwegian joint statement, 19 ECOSOC-accredited NGOs delivered a statement on behalf of a further 400 NGOs that dovetailed with the Member States’ joint statement.¹⁹ The intervention called upon the UN to take further action and concluded that “this issue will not go away.” Indeed it did not.

1.4 The General Assembly Statements (18 December 2008)

In December 2008 the SOGI movement was brought before the General Assembly for the very first time. During the 63rd Session of the General Assembly a pre-recorded statement was given on behalf of the United Nations High Commissioner for Human Rights, Navi Pillay, on the theme of “Gender Identity, Sexual Orientation and Human Rights.” The statement contended that, “There is now a considerable body of decisions affirming that discrimination on the basis of sexual orientation is contrary to international human rights law.” It further stated that laws criminalizing

¹⁶ <http://www.yogyakartaprinciples.org/principles_en.htm>. For a critique see Piero A. Tozzi J.D., ‘Six Problems with the “Yogyakarta Principles,”’ IORG, Number 1 (April 2, 2007).

¹⁷ *UN Human Rights Council, Human Rights Violations Based on Sexual Orientation and Gender Identity*, (Dec. 1, 2006) available at <www.norway-geneva.org/unitednations/humanrights/hrc011206/>.

¹⁸ See <www.arc-international.net/about>.

¹⁹ *UN Human Rights Council, NGO Joint Statement on Sexual Orientation, Gender Identity & Human Rights* (Dec. 1, 2006) available at <<http://www.ilga-europe.org/>>.

homosexual behaviour were "anachronistic" and "inconsistent with international law" and spoke of the need to overturn "decades of prejudice and intolerance."²⁰

The statement also lent support to a new joint statement on "Human Rights, Sexual Orientation and Gender Identity" delivered by Argentina on behalf of 66 States. Although the statement was delivered by the Argentinean ambassador, it was the creation of the French and Dutch foreign affairs ministries²¹ – together with the intense lobbying efforts of a number of pro-homosexual lobby groups.²²

This was the first time that any such statement had been given at the UN General Assembly and it was not without opposition. The Holy See Delegation opposed the statement, noting that, "Despite the *statement's* rightful condemnation of and protection from all forms of violence against homosexual persons, the document, when considered in its entirety, goes beyond this goal and instead gives rise to uncertainty in the law and challenges existing human rights norms."²³

Furthermore, an alternative statement supported by 57 Member States was read by the Syrian Delegation on behalf of the Organization of the Islamic Conference (OIC). The Syrian statement highlighted the lack of legal grounds for the SOGI statement, arguing that it fell "within the domestic jurisdiction of States counter to the commitment in the United Nations Charter to respect the sovereignty of States and the principle of non-intervention." The Syrian statement also criticized the use of the terms "sexual orientation" and "gender identity," arguing that particular sexual interests or behaviours could not be attributed to genetic factors and that the protection of such behaviours could open the door to the legitimization of many other forms of sexual behaviour in the future, including paedophilia.²⁴

With 66 States supporting the SOGI statement, 57 States condemning it and many more refusing to be drawn either way, the future success of the movement was far

²⁰ UN General Assembly, *Address by Ms. Navanetham Pillay, United Nations High Commissioner for Human Rights, on the theme of gender identity, sexual orientation and human rights* (Dec. 18, 2008) available at <www.arc-international.net/global-advocacy/sogi-statements/hc-ga-200>.

²¹ See *Statement on Human Rights, Sexual Orientation and Gender Identity* (December 18, 2008) available at <www.gayswithoutborders.files.wordpress.com/2008/12/droit-lgbt.pdf>.

²² Commenting on the Joint Statement, homosexual activist Peter Tatchell stated on his website: "As well as IDAHO, I pay tribute to the contribution and lobbying of Amnesty International; ARC International; Centre for Women's Global Leadership; COC Netherlands; Global Rights; Human Rights Watch; International Committee for the International Day Against Homophobia; International Gay and Lesbian Human Rights Commission; International Lesbian, Gay, Bisexual, Transgender and Intersex Association; International Service for Human Rights; Pan Africa ILGA; and Public Services International." See Peter Tatchell, *66 countries sign UN gay rights statement*, PeterTatchell.net (Dec. 18, 2008).

²³ *Statement of the Holy See Delegation at the 63rd Session of the General Assembly of the United Nations on the Declaration on Human Rights, Sexual Orientation and Gender Identity* (Dec. 18, 2008) available at <www.vatican.va>.

²⁴ UN General Assembly, *Response to SOGI Human Rights Statement* (December 18, 2008) available at <www.arc-international.net/global-advocacy/sogi-statements/>.

from certain. Indeed, it was still possible that support would dwindle each year as opposition increased, as was happening with the “defamation of religion” movement taking place at exactly the same time.²⁵

Crucially, however, a change to the US administration at the end of 2008 saw a reversal of its previous position at the UN. Having refused to support the SOGI statement under President Bush, the US signed the document at the beginning of 2009 – signalling a significant change of foreign policy priorities under the Obama administration.²⁶ The SOGI movement had found a powerful new ally.

1.5 The Colombian Joint Statement (22 March 2011)

Two years passed and the SOGI movement returned to the Geneva-based Human Rights Council in March 2011. During the 16th Session of the Human Rights Council Colombia delivered a joint statement on “Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity”²⁷ on behalf of a record 85 Member States, including, for the first time, South Africa. At the time South Africa was one of only six countries in the world to mention sexual orientation in its constitution and many were surprised it had not supported previous SOGI statements. Faced with a combination of international and domestic pressure and intense lobbying efforts, South Africa eventually joined the statement and gave its support to the SOGI movement.²⁸

With several joint statements now achieved at both the Human Rights Council and the General Assembly, the newly found support of the US and South Africa and the backing of high-ranking UN officials, the SOGI movement developed one step further – securing a first UN resolution later that year.

1.6 The Human Rights Council Resolution (17 June 2011)

In June 2011 the Human Rights Council adopted resolution 17/19 on ‘Human rights, sexual identity and gender identity’ – the first time that any UN body has approved a resolution in support of the SOGI movement.²⁹ The resolution called upon the High Commissioner for Human Rights to commission a study “documenting

²⁵ See e.g. Lorenz Langer, *The Rise (and fall?) of Defamation of Religions*, 35 YALE J. INT’L L. 257, 258 (2010).

²⁶ See e.g. *Department of State’s Accomplishments Promoting the Human Rights of Lesbian, Gay, Bisexual and Transgender People*, U.S. Department of State (Dec. 6, 2011).

²⁷ UN Human Rights Council, *Joint Statement on Ending Acts of Violence Related Human Rights Violations Based on Sexual Orientation and Gender Identity* (March 22, 2011) available at <www.refworld.org/docid/4eb8f32e2.html>.

²⁸ See Human Rights Monitor Quarterly 2:2011, 5 and Human Rights Monitor Quarterly 3:2011, 4, available at <www.ishr.ch/quarterly>.

²⁹ A/HRC/RES/17/19/Rev.1.

discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.”³⁰

Breaking from other African nations, South Africa joined forces with the US and took the lead with the resolution, introducing it before the Human Rights Council. Pakistan spoke against the resolution on behalf of the OIC and Nigeria also spoke against the resolution, arguing that 90% of Africans were against it.³¹ Despite clear opposition, the resolution was narrowly adopted by 23 votes to 19 with the three abstentions.

Although the scope of the resolution was relatively limited, commentators were quick to note that, “Placed into historical context ... the adoption of this resolution is remarkable.”³² Given that, in 2011, “a resolution still remained only a distant possibility,”³³ the pro-homosexual lobby similarly saw it as their biggest success at the UN so far.³⁴

The resolution launched the OHCHR’s official SOGI policy. While previous developments had centred on State-driven (or perhaps more accurately, lobbyist-driven) joint statements, the resolution gave the UN an official mandate to operate – in concrete ways and ways yet to be revealed. As the fourth and final point of the 2011 resolution stated, the Human Rights Council, “Further decides to remain seized of this priority issue.” Similarly, the joint press release of pro-homosexual lobby groups concluded, “Now, our work is just beginning.”

1.7 The OHCHR Report and further UN activity (2011–2012)

On 17 November 2011 the OHCHR published the first UN report on sexual orientation and gender identity and submitted it to the General Assembly.³⁵ While the report rightly condemns violence, killings, torture and other forms of cruel, inhuman and degrading treatment, the majority of the report goes well beyond the issue of violence and instead focuses on issues of discrimination.³⁶

³⁰ *Id.*, at § 1.

³¹ See UN Human Rights Council, *Council establishes mandate on Côte d'Ivoire, adopts protocol to child rights treaty, requests study on discrimination and sexual orientation* (June 17, 2011) available at <www.ohchr.org/EN/NewsEvents/Pages/Media.aspx>.

³² Human Rights Monitor Quarterly 3:2011, 4.

³³ *Id.*

³⁴ See e.g. *Historic Decision at the United Nations: Human Rights Council Passes First-Ever Resolution on Sexual Orientation and Gender Identity*, International Service for Human Rights (June 17, 2011) available at <www.ishr.ch/news/lgbt-rights>.

³⁵ *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, Ohchr (Nov. 17, 2011), (A/HRC/19/41).

³⁶ For a critique, see *Policy Brief on OHCHR Report on Sexual Orientation and Gender Identity*, Family Watch International (2011).

The report contends that “sexual orientation” and “gender identity” discrimination exists in every aspect of society, including employment, health care, education, freedom of speech and assembly, and in the family and community. In each of the chosen areas, examples are given of discrimination. For example, in the field of education the report notes that sex education is as an “area of concern” and claims that the right to education “includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality.”³⁷ Citing the Special Rapporteur on the right to education, the sex education must “pay special attention to diversity, since everyone has the right to deal with his or her own sexuality.”³⁸

Therefore, to combat the alleged discrimination, the High Commissioner recommended that Member States, “Enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among prohibited grounds.”³⁹

The OHCHR report was followed up with an extensive booklet, entitled ‘Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law,’ published in September 2012,⁴⁰ and a Human Rights Council Panel Discussion on the issue.⁴¹ The OHCHR has also dedicated a section of its website to “LGBT discrimination,” created a UN email account on “LGBT Human Rights”⁴² and recently launched an “unprecedented” LGBT worldwide campaign.⁴³

Through various different actions over the past two years, the immediate aims of the UN in regard to the SOGI movement have now been clarified and listed. In some places this list is referred to as “recommendations” but in other places – even within the same document – they are listed as “core legal obligations.”⁴⁴ The list is as follows:

- i. Protect individuals from homophobic and transphobic violence;
- ii. Prevent torture and cruel, inhuman and degrading treatment;
- iii. Repeal laws criminalizing homosexuality;
- iv. Prohibit discrimination based on sexual orientation and gender identity;

³⁷ A/HRC/19/41 at § 61.

³⁸ *Id.*

³⁹ *Id.*, at § 84(e).

⁴⁰ *Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law*, OHCHR (September 2012).

⁴¹ Resolution 17/19, § 2, called for the UN Human Rights Council to hold a panel discussion on “sexual orientation” and “gender identity”, which it did in March 2012. In response, the OIC wrote to the President of the Council to once again outline the concerns of its Members, see *Permanent Mission of Pakistan to the United Nations and other International Organizations*, No. Pol/SO/2012, (Febr. 14, 2012).

⁴² See <<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>> and LGBTHumanRights@un.org.

⁴³ See <<https://www.unfe.org/en/about>>.

⁴⁴ See *Born Free and Equal* *supra* n 40, 5 and 13.

- v. Safeguard freedom of expression, association and peaceful assembly for all LGBT people.⁴⁵

Regarding the implications for religious liberty, item “iv” is of particular concern. The notion that there is a core legal obligation upon States to enact comprehensive non-discrimination laws that include “sexual orientation” and “gender identity” as prohibited grounds is clearly contestable. It has never been accepted by Member States that “sexual orientation” and “gender identity” form part of the “other status” language within the non-discrimination articles of the international human rights treaties,⁴⁶ and, even if “sexual orientation” and “gender identity” were implicitly present in the “other status” provisions, this would not create a positive obligation on Member States to enact legislation.

Thus, while it is far more accurate to refer to the list as “recommendations” rather than “core legal obligations,” in whatever terminology the list is described, it is clear what various UN entities have set out to achieve: ubiquitous non-discrimination legislation that includes “sexual orientation” and “gender identity” as a protected class. If this aim is realized, there will be major implications for religious liberty.

2. The implications for religious liberty

Opposition to the SOGI movement at the UN has focussed on a number of issues. For example, it has been argued that it overrides the sovereignty of States and the principle of non-intervention,⁴⁷ it introduces new norms that are without legal foundation⁴⁸ and it undermines traditional concepts of the family.⁴⁹ What have been less clearly explained within the intergovernmental bodies are the implications that the movement will have on religious liberty.

However, non-discrimination laws covering “sexual orientation” and “gender identity” have now been in existence long enough in some Western nations that the consequences can clearly be seen. As will be detailed below, an undeniable pattern has now emerged: wherever such laws are adopted, religious liberty is diminished.⁵⁰

⁴⁵ See *Id.*, 13 and <www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>.

⁴⁶ See Universal Declaration of Human Rights, Article 2; International Covenant on Civil and Political Rights, Article 2(1) and 26; International Covenant on Economic, Social and Cultural Rights, Article 2 and Convention on the Rights of the Child, Article 2.

⁴⁷ See e.g. *supra* n 28 above.

⁴⁸ See e.g. OIC Letter, *supra* n 41, §§ 4 and 5.

⁴⁹ See e.g. the speech delivered at the UN by the Nigerian representative in opposition to the SOGI movement: “Our own concept of children is that children come from the combination of the man and the wife, under the family husband and wife. It also touches on what we regard as family because for us family stands at the heart of everything we do. We live for the family” available at <www.standforfamiliesworldwide.org/sffww/obamas-sexual-agenda/>.

⁵⁰ See e.g. Stephen Baskerville, *The sexual agenda and religious freedom, Challenges in the Western world*, URF 4:2 2011 (91–105).

2.1 Employees

Firstly, it is now clear that religious employees face significant problems when SOGI non-discrimination laws are introduced. Courts have consistently held that when a religious employee has a conscientious objection in the workplace because he cannot endorse, condone or approve homosexual behaviour, no exemption needs to be made. The employee will have to fall in line or leave his job. This position was reiterated in the recent European Court of Human Rights cases of Gary McFarlane and Lillian Ladele against the United Kingdom.⁵¹ Both McFarlane and Ladele were dismissed from their respective jobs for refusing to perform duties that they believed endorsed homosexual behaviour. Rather than uphold their freedom of conscience as protected by Article 9 of the European Convention on Human Rights, the Court held that dismissing the Christian employees was perfectly legitimate.

In Canada, following the introduction of same-sex marriage in 2004, courts have held that forcing marriage commissioners to resign because of their religious beliefs is not unlawful discrimination and the state has no duty to accommodate them.⁵² Moreover, enacting exemptions for marriage commissioners that would allow them to conscientiously object from performing same-sex marriages “would violate the equality rights of gay and lesbian individuals” and would be unconstitutional.⁵³

Similarly, in 2008 the Dutch Equal Treatment Commission (*Commissie Gelijke Behandeling*) ruled that, contrary to its previous decisions, civil union registrars were required to celebrate same-sex marriages and public authorities must play an “exemplary role” in combating discrimination.⁵⁴ This position was solidified in legislation in 2011.⁵⁵

2.2 Employers

Religious employers have also had their religious freedom attacked in the wake of SOGI non-discrimination laws. In particular, employers now face burdensome restrictions regarding the hiring and dismissing of employees.

⁵¹ *Eweida and others v United Kingdom*, (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10), 15 January 2013. An appeal to the Grand Chamber was rejected.

⁵² See *Marriage Commissioners Reference* 2011 SKCA 3 § 13.

⁵³ *Marriage Commissioners Reference* 2011 SKCA 3. In 2009 a marriage commissioner who refused to perform a same-sex marriage ceremony was held to have acted in a discriminatory manner contrary to the *Human Rights Code* and had to pay the offended party \$2,500 in damages. See *Nichols v. Saskatchewan* (Human Rights Commission), 2009 SKQB 299, [2009] 10 W.W.R. 513.

⁵⁴ See Opinion No 2008-40, available at <www.cgb.nl>. For an explanation of the case, see *Rikki Holmaat, Netherlands Report on Measures to Combat Discrimination: Directives 2000/43/EC and 2000/78/EC*, European Network of Legal Experts (2008).

⁵⁵ *Motie van Gent c.s., Tweede Kamer* 2010-2011, 27017, nr 77.

In the Canadian case of *Heintz v. Christian Horizons*⁵⁶ an employee brought a complaint against her employer, a large Christian charity, after she was dismissed for entering into a homosexual relationship. Christian Horizons required all employees to sign a statement of faith and follow a biblical code of conduct that prohibited, amongst other things, extra marital relationships and homosexual relationships. Following her dismissal, Ms. Heintz sued for discrimination and in 2008 the Tribunal held that the employer had discriminated on the grounds of sexual orientation and had created a "poisoned work environment." Christian Horizons was ordered to pay \$23,000 in damages and abolish its lifestyle and morality code requirement.⁵⁷

In the UK case of *Reaney v. Hereford Diocesan Board of Finance*⁵⁸ Mr. Reaney, a practicing homosexual, applied for the position of Youth Officer in the Church of England. Following an interview, the Bishop of Hereford informed Mr. Reaney that he would not be appointed as the Youth Officer, on the basis that the Church could not condone a homosexual lifestyle during his employment and the Bishop believed that, despite his assurances to the contrary, Mr. Reaney was in no position to commit to a life of celibacy. Mr. Reaney launched a sexual orientation discrimination claim against the diocese and was awarded £47,000 in damages.⁵⁹

A similar case took place in Finland in 2004 when a lesbian woman sued a church for sexual orientation discrimination because she was not appointed to the position of chaplain. The Vaasa Administrative Court annulled the decision and held that the Evangelical Lutheran Church could not refuse to appoint the woman on the basis that she was publicly living in a same-sex relationship.⁶⁰

2.3 Private associations

The limitation on freedom of association has not just affected religious organizations that act as employers; private voluntary associations have also come under threat. In the US case of *Christian Legal Society v. Martinez*,⁶¹ the Hastings College of Law refused to recognize the Christian Legal Society as an official student organization because the society required members to sign their statement of faith. Because the statement affirmed the Christian view that sexual activity should not occur outside of marriage between a man and a woman, the college rejected its

⁵⁶ *Heintz v. Christian Horizons*, 2008 HRT0 22 (CanLII).

⁵⁷ *Id.*, at § 286. The law was somewhat clarified on appeal but the Tribunal's order was upheld. See *Ontario Human Rights Commission v. Christian Horizons*, 2010 ONSC 2105 (CanLII).

⁵⁸ ET judgment 17 July 2007 (Case No: 1602844/2006).

⁵⁹ £47,000 fine for Bishop sued by homosexual youth worker, *The Christian Institute* (Febr. 12, 2008).

⁶⁰ Vaasa Administrative Tribunal, Finland, vaasan Hallinto-oikeus - 04/0253/3. See *Handbook on European non-discrimination law*, EU Agency For Fundamental Rights (2010), 50.

⁶¹ 130 S.Ct. 2971 (2010).

application as a registered student group because it excluded students based on sexual orientation. In 2010 the US Supreme Court upheld the college's policy.

Likewise, various university Christian Unions in the UK have faced pressure to be removed from campus because requiring leaders to sign a doctrinal statement was seen to be discriminatory. Further, in Edinburgh University, the Christian Union was prohibited from running a course on sexual ethics anywhere on campus because it was deemed "offensive" to homosexuals.⁶²

2.4 Educational establishments

Private educational establishments have also been impacted by SOGI non-discrimination laws. In 2005 the Károli Gáspár Calvinist University in Hungary was sued by the Háttér Support Group for Gays and Lesbians after the University dismissed a student for engaging in homosexual behaviour and subsequently published a declaration stating that: "The church may not approve of the education, recruitment and employment of pastors and teachers of religion who conduct or promote a homosexual way of life." The case went all the way to the Supreme Court before the University was cleared, although subsequent amendments to Hungary's non-discrimination legislation mean that a different decision could be reached on similar facts in the future.⁶³

In Canada the Ontario Ministry of Education released a memorandum in 2009 which stated that school boards must "give support to students who wish to participate in gay—straight alliances."⁶⁴ The memorandum applied to both public schools and private Catholic schools. Rather than being allowed to govern their own internal affairs, Catholic schools were forced to allow the pro-homosexual groups into their schools. Moreover, the Minister of Education later confirmed that the groups cannot be used to counsel students to reform their sexuality or try to dissuade them from engaging in homosexual behaviour.⁶⁵ More recently, the Ontario Premier confirmed that the issue was not a matter of choice for school boards or principals and commented that the government was more interested in "changing attitudes" on homosexuality than changing laws; a process that "should begin in the home, extend deep into our communities, including our schools."⁶⁶

⁶² *Defending your Christian Union*, The Christian Institute (May 2007).

⁶³ *Háttér Társaság a Melegekért v. Károli Gáspár Református Egyetem* (2005). See András Kádár, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Hungary Country Report*, European Network of Legal Experts (2011) 93.

⁶⁴ *Ontario Ministry of Education Policy/Program Memorandum*, No. 145, (October 19, 2009) 6.

⁶⁵ See Patrick B. Craine, *Mandated gay clubs in Catholic schools can't help students overcome homosexuality*: Ontario gyvmt LifeSiteNews (April 8, 2011).

⁶⁶ *Premier Dalton McGuinty's Remarks to Pride Gala*, Office of the Premier (July 4, 2011).

In the US a New York court held that because of non-discrimination laws, a private, religiously affiliated university could not prohibit same-sex couples from living together in university housing.⁶⁷ Similarly, a District of Columbia court has held that a sexual orientation non-discrimination law required a private, religiously affiliated university to give "tangible benefits" to a proposed student organization that engaged in homosexual advocacy.⁶⁸

2.5 Businesses

In some countries SOGI non-discrimination laws have also been applied to the marketplace as well as the workplace. This has had a detrimental effect on business owners that have sought to act on their religious convictions in their business life as well as their private life.

In 2009 British guesthouse owners Peter and Hazelmary Bull were sued £3,600 for refusing to offer double-bedded accommodation to unmarried couples, including same-sex couples.⁶⁹ Their guesthouse now faces closure. Other Christian guesthouses have also been successfully sued.⁷⁰

In Canada a Christian printing business was sued after the owner, Mr. Brockie, refused to print material for a homosexual advocacy organization. Mr. Brockie believed that he should not assist in the dissemination of information intended to spread the acceptance of homosexuality but he had no problem acting for customers who were homosexual. After six years of legal proceedings he eventually had to pay \$5,000 in damages.⁷¹

In the Netherlands a company was sued for refusing to make bath towels that advertised an organization that promoted homosexual behaviour. The company had made it clear on its website that it would not do any work that was blasphemous or offensive to the morals of the company.⁷²

In the US a wedding photography company was sued after it refused, for religious reasons, to photograph a same-sex couple's "commitment ceremony." The court ordered the company to pay over \$6,000 to the same-sex couple and seven years after the incident, the legal proceedings remain on-going.⁷³

⁶⁷ *Levin v. Yeshiva Univ.*, 754 N.E.2d 1099 (N.Y. 2001).

⁶⁸ *Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 21-30 (D.C. 1987).

⁶⁹ *Bull and Bull v. Hall and Preddy and Hall* [2012] EWCA Civ 83.

⁷⁰ See *Black and Morgan v Wilkinson*, [2013] EWCA Civ 820 in the UK and *Eadie and Thomas v. Molnar and others* 2010 BCHRT 69 in Canada.

⁷¹ *Brockie v. Ontario (Human Rights Commission)* [2002] O.J. No. 2375 (Sup. Ct. J. (Div. Ct.)).

⁷² See ETC 2010-32 of 9 March 2010. For more information, see *European Anti-Discrimination Law Review No. 11 – 2010*, European Network of Legal Experts (2010) 67.

⁷³ *Elane Photography, LLC v. Willock*, Case. No. CV-2008-06632, (N.M. Court of Appeals, No. 30,203, May 31, 2012).

Similar cases are now appearing throughout the Western world, as business owners such as florists⁷⁴ and bakers⁷⁵ are refusing, on the grounds of religious conviction, to provide their services to same-sex ceremonies.

As with the other areas listed here, if SOGI non-discrimination laws are successfully pushed around the world, business owners being sued on account of their religious convictions will become commonplace outside of the West.

2.6 Charities

Remarkably, even charities that have served the public for over a century have come under threat from SOGI non-discrimination laws and some have even been shut down.

In Australia a Christian charity, the Wesley Mission, was sued after it refused the application of a same-sex couple to become foster carers on the basis of their homosexual lifestyle. The same-sex couple complained of unlawful discrimination on the basis of sexual orientation and the Administrative Decisions Tribunal originally found against the Christian charity because it believed monogamous heterosexual marriage was not a doctrine of the Christian church as a whole.⁷⁶ Although the charity eventually won its case, it took seven years and multiple court hearings to defend itself.

Charities in the UK have not been as successful in the Courts, and in 2008 faith-based adoption agencies that refused to place children with same-sex couples were forced to close down or remove their religious ethos.⁷⁷ This was despite the adoption agencies being widely recognized as amongst the best in the country.⁷⁸

2.7 Indirect effect of SOGI non-discrimination laws

As SOGI non-discrimination laws spread among legal systems throughout the world,⁷⁹ the result of such laws go far beyond the direct effects listed above. There are numerous other indirect effects that flow from elevating “sexual orientation” and “gender identity” above religious liberty. For example, the free speech of those who speak out against homosexual behaviour is increasingly threatened,⁸⁰ access

⁷⁴ Ben Johnson, *Elderly Christian florist faces thousands in fines for refusing to provide flowers for gay 'wedding'*, LifeSiteNews (April 10, 2013).

⁷⁵ Ivan Moreno, *Colorado gay discrimination alleged over wedding cake*, The Gazette (June 6, 2013).

⁷⁶ *OV and OW v QZ and Uniting Church in Australia Property Trust (NSW) (No. 2)* [2008] NSWADT 115 (1 April 2008) § 126.

⁷⁷ *Adoption agencies shut under 'equality' laws*, The Christian Institute (April 2009).

⁷⁸ See Paul Coleman and Roger Kiska, *The proposed EU "equal treatment" directive: How the UK gives other EU member states a glimpse of the future*, IJRF 5:1 2012 (113–128). The last remaining Catholic adoption agency lost its case at the end of 2012. See *Catholic Care v. The Charity Commission*, FTC/52/2011, 2 November 2012.

⁷⁹ There are currently 54 States that prohibit discrimination on the ground of sexual orientation in the area of employment. See (A/HRC/19/41), p.17.

⁸⁰ See e.g. *Hammond v DPP* [2004] EWHC 69 (Admin) (31 January 2004); *Saskatchewan (Human*

to premises is starting to be denied to religious groups on the basis of so-called "equality and diversity" policies⁸¹ and believers in traditional marriage can find themselves open to abuse – including hate mail and death threats.⁸²

Thus, the introduction of SOGI non-discrimination laws consistently results in the withdrawal of tolerance for those who hold a differing view. In April 2012 the current Mayor of London, Boris Johnson, summed up this position perfectly. After banning bus advertisements deemed to be "homophobic" he proudly proclaimed: "London is one of the most tolerant cities in the world and is intolerant of intolerance."⁸³ Such unashamed intolerance for anyone who voices disagreement with the aims of the SOGI movement is clearly a worrying trend. Moreover, it demonstrates that the implications of the SOGI movement not only encroach upon religious freedom, but other basic human rights such as freedom of speech and freedom of assembly, which for decades have been the bedrock of UN human rights treaties.

3. Conclusion

This article has sought to highlight two things. Firstly, the last ten years has seen the joining together of well-funded lobby groups, a growing number of Member States and key UN entities to push the "sexual orientation" and "gender identity" movement from the fringes of UN human rights activity to its very centre. Secondly, this development, particularly the recommendation to have SOGI non-discrimination laws introduced throughout the world, will have significant implications for religious liberty. The introduction of such laws in the West has undoubtedly threatened religious liberty in a number of different areas: employees, employers, private associations, educational establishments, businesses and charities have all been negatively affected. Thus, if UN entities such as the OHCHR are successful in pushing newly adopted SOGI recommendations on other Member States, the threat to religious liberty will spread from the West into other regions across the globe.

Rights Commission) v. Whatcott, 2013 SCC 11.

⁸¹ For example, in 2012 a Christian group was prevented from hosting a conference on marriage at the Law Society because it allegedly breached the hosts' "diversity policy". See *Law society cancels pro-marriage conference amid diversity dispute*, Legal Week (May 14, 2012).

⁸² For example, British politician, David Burrowes MP, revealed that he has received hate mail and death threats for supporting marriage in parliament. See Rowena Mason, *Tory MP gets 'death threats' over gay marriage opposition*, The Telegraph (Febr. 3, 2013).

⁸³ The adverts suggested people could change their sexuality and were launched by a UK Christian Charity, Core Issues Trust. Time Magazine awarded this quote its "quote of the day" available at <<http://content.time.com/time/quotes/0,26174,2111895,00.html>>.

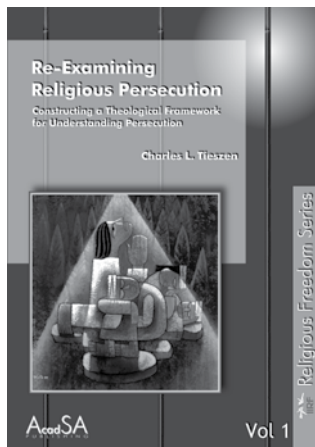
Re-Examining Religious Persecution

Constructing a Theological Framework for Understanding Persecution

Charles L. Tieszen

This innovative study examines the shortcomings evinced by many modern studies of religious persecution. Noting the gaps in current theological reflection, Tieszen offers a theological framework in which the religious persecution of Christians can be properly and theologically understood and responded to. Perhaps most importantly, a definition of persecution is put forth that seeks to incorporate necessary and often overlooked elements.

Todd M. Johnson, Center for the Study of Global Christianity, South Hamilton, MA, USA



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The European Court of Human Rights

Old and new findings on freedom of religion and belief

Daniel Ottenberg¹

Abstract

Freedom of religion and belief is one of the oldest and at the same time most disputed Human Rights. As their legal protection is most elaborated in Europe by its court and other Human Rights bodies meticulously take into account its findings, this article recalls some old findings of the court, but also discusses the latest judgments until July 2013.

Keywords Proselytism, definition, registration, mocking religions, religious objection, trade unions in religions.

Freedom of religion and belief stands out as a right in the basket of Human Rights. It has increasingly come under attack in recent years. While the debate is heating up, it is important to recall several basic findings concerning this right and to present some recent developments.

1. Significance of freedom of religion and belief (FORB) for human rights

FORB is one of the oldest Human Rights. Despite this fact, it has always been one of the most debated ones². The original aim of FORB is to protect minorities, and this has always to be kept in mind, for this is a very helpful guideline in today's discussions about the scope of protection of this Human Right.

It is a comprehensive right in the respect that it protects having a belief ("forum internum"), acting according to ones' beliefs ("forum externum"), acting in community with others ("the collective dimension") and last but not least, it touches upon several other Human Rights – a fact the European Court of Human Rights takes into account as it ruled in many cases that FORB has to be interpreted "in the light of another Right of the Convention" as will be shown later. Concluding on

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² Malcolm D. Evans, 1997. *Religious liberty and international law in Europe*. CUP, Cambridge, 6ff.

its significance, it is correct to say that no Human Right suits better for serving as litmus test for the protection of all Human Rights than FORB.³

2. How it all started in Europe

The first case dealing centrally with the question of FORB in Europe as well as with the question of proselytizing has been a case started by Jehovah's Witnesses.⁴

Minos Kokkinakis was a 74 year old man, who from the age of 17 professed his faith as Jehovah's Witness. During his lifetime, he had been imprisoned (or detained in times of war) more than 60 times. A talk with a neighbour brought him to the European Court of Human Rights. The applicant and his wife had talked about their faith with an orthodox cantor's spouse living in the neighbourhood. Though she did not convert, all national courts dealing with the case convicted him of proselytism, for he had "taken advantage of the woman's lack of experience, low level of intelligence and simpleness." His prison term of four months was changed to a fine of 400 drachmas per day.

Without repeating all details of the case, I would like to mention some essential points. The case very clearly shows that FORB cases in Strasbourg are generally started by minority religions. And interestingly enough, many times it is not a Christian minority starting the case. Christian majority religion can even be the offender, like the Greek-Orthodox church in this case. The keyword here is proselytism: the main question was to what extent the Convention allows sharing one's faith, as this is penalized in Greek national law.⁵

The protection of FORB in Europe is guaranteed by Article 9 of the European Convention of Human Rights from 4 November 1950.⁶ As a blessing in disguise, the Court used the Kokkinakis case to frame a general statement on the importance and value of FORB in the concert of Human Rights and more generally in society. This

³ Consequently, it has been called serving "as lynchpin of human progress and thriving societies", Allan D. Hertzke, 20113. Advancing the First Freedom in the 21st century, in: A.D. Hertzke (ed.), *The future of religious freedom – Global challenges*, OUP, Oxford, 26. It is also frequently called a "canary in the coalmine".

⁴ ECtHR, Judgment of 25 May 1993, No. 14307/88, Kokkinakis vs Greece, Series A No. 260 A, p. 18. All judgments and decisions of the Court can easily be found at the Court's website, using the HUDOC database: <http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#>.

⁵ Though the terminology might change, this question is vividly debated around the world nowadays, too, be it anti-conversion laws in several states of India (and discussed in Bhutan and Sri Lanka), be it the question of changing religion ("apostasy") in the Muslim World.

⁶ The text can be found here: http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer.

statement has been repeated again and again in subsequent judgments until today. Every time, the court apparently seems to find it important to recall its basic finding:

As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.⁷

This is the guiding theme and has also to be taken into account when it comes to justifying limitations. Despite this clear statement, it should also be noted that European findings on Human Rights in general and on FORB in particular are closely monitored around the world and the court’s findings are easily misunderstood or misused. One example can be found in the history of the Kokkinakis decision itself. The court had not ruled out the possibility of what it called “improper proselytism,” but did not define it – it was not relevant for the case in question.⁸ Sri Lanka relied on exactly this technical term when it was drafting its law on unethical conversions in 2004, though the draft did not become law in the end.⁹ Looking for justifications, the thinking behind seems to have been: “If even this renowned Human Rights court says that there is something like unethical conversions, the law will find less criticism.” Other regional Human Rights courts and domestic courts look to Strasbourg as well.¹⁰ Therefore it is justified to focus on European findings in this presentation.¹¹

3. Some “old” findings

In this presentation’s framework it is not possible to give an all-encompassing outline on all judgments dealing with FORB. Some reminders for today’s discussions are given, leaving necessarily some gaps.¹²

⁷ ECHR, Kokkinakis vs Greece, as quoted, par. 31.

⁸ ECHR, Kokkinakis vs Greece, as quoted, par. 48.

⁹ Country Report Sri Lanka 2005, UN Special Rapporteur of freedom of religion and belief, E/CN.4/2006/5/Add. 3, par. 70.

¹⁰ Cançado Trindade, EuGRZ 2004, p. 157 ff., Michael Kirby, “The Australian Debt to the European Court of Human Rights”, Liber amicorum Luzius Wildhaber 2007, p. 391 ff.

¹¹ Of course one should not neglect the work of UN instruments, namely the Special Rapporteurs, the Human Rights Committee under the Additional Protocol of the CCPR and the Human Rights Council. Africa has started its own regional system of Human Rights protection whereas Asia is still limping behind. The Islamic World does not lack Human Rights declarations, though these are seriously jeopardized by Sharia reservations and devalued by a lack of enforcement.

¹² For an all-encompassing overview concerning the Strasbourg court’s judgments on FORB refer to Ottenberg, Der Schutz der Religionsfreiheit im internationalen Recht, PhD thesis Saarbrücken University

3.1 Definition of religion

First of all, it seems important to recall how the Court defines “religion” or rather, how it refrains from doing so. Until today, there is no legal definition of what qualifies as religion in the court’s view. Even when the court could have done so because of the particularities of the case, it kept silent. The judgment “Mouvement raëlien Suisse vs Switzerland”¹³ could have been dealt with from a FORB perspective, but the court decided to try it under the question of freedom of expression.¹⁴ The decision not to give a definition on what qualifies as religion may be deemed as wise. It is a decision taken decades ago and in fact was “inherited” from the now historical European Commission on Human Rights.¹⁵ The latter decided to introduce some guidelines, but apart from that to include all kinds of religions. Among others, the druid¹⁶ religion qualified as religion in a decision as early as 1987 and enjoyed protection under Article 9.¹⁷ Those broad guidelines include a “certain identifiable seriousness” as well as a “coherent view on fundamental problems.” Adherents to a certain religion or worldview should at least be able to explain what they believe in. This is not to say that they be able to give a course on apologetics, but at least the most fundamental and basic questions should be answered. The request of someone adhering to the “Wicca” religion, demanding a special treatment while imprisoned, without giving any further explanation, did not qualify.¹⁸ This debate is not outdated as the recently popped up “religion of the flying spaghetti monster” shows.¹⁹

3.2 Registration issues

Whereas it is accepted by international law that the state may demand the registration of a religion, this requirement may not be used to limit the possibility and ability of believers to meet for religious purposes.²⁰

2009, Nomos Verlag, Baden-Baden. This thesis covers more than 200 judgments and decisions until October 2008. The newer judgments are monitored by the author and are on file with him.

¹³ Judgment of the Grand Chamber from 13 July 2012, No. 16354/06.

¹⁴ Decided by a narrow margin of 9 to 8 that the Swiss government had infringed upon this freedom.

¹⁵ Which due to a major change in the convention’s protection system ceased to exist in 1998.

¹⁶ Which is a religion that emanated from 18th century United Kingdom, counted among the “neopagan” religions. One of its centres is Stonehenge.

¹⁷ European Commission on Human Rights, Decision of 12 July 1987, No 12587/86, Chappell vs United Kingdom, DR 53, p. 241, par. 1.

¹⁸ European Commission of Human Rights, Decision of 4 October 1977, No 7291/75, X vs United Kingdom, DR 11, p. 55 ff.

¹⁹ Whether these “Pastafarians” really would qualify as religion remains to be seen, reportedly this “church” plans to take Poland to court on the issue of recognition, The Telegraph, 19 March 2013, <http://www.telegraph.co.uk/news/worldnews/europe/poland/9940397/Church-of-the-Flying-Spaghetti-Monster-vow-to-take-Poland-to-European-court.html>.

²⁰ ECHR, Masaev vs Moldova, Judgment of 12 May 2009, No. 6303/05.

A Muslim group was fined as having met as members of an “illegal religious group” by Moldovan authorities. Muslims are a minority religion in this country. The domestic decisions had been criticized by national courts without amending them.

Again, FORB protects a religious minority. The court clarified that registration is no prerequisite for a meeting for religious purposes.²¹ Due to the fall of the Berlin Wall in 1989, many religious groups in Central and Eastern Europe re-organised, broke apart and struggled to find a new relationship with the state due to their leadership’s collaboration with communist rulers as well as new-drawn borders. The court had countless opportunities to give guidelines on registration and (self) organisation of religions.²² Leading cases for these questions are *Hasan and Chaush vs Bulgaria*²³ and *Metropolitan Church of Bessarabia and others vs Moldova*.²⁴ The court kept on repeating that in those cases domestic authorities have to apply strict neutrality and impartiality. All decisions have to be made in a non-discriminatory way, both in process and result.

When Moscow authorities decided not to register the local branch of the Salvation Army due to public safety reasons – as they were seen as a “para-military troop” – and despite the fact that other local branches in Russia had been registered successfully, these standards were not met.²⁵ A short time later, Jehovah’s Witnesses finally faced non-registration due to public safety and health issues after at least five attempts and several years spent on the process. The court reiterated that state authorities bear the full burden of proof and that limitations have to be construed strictly for convincing and compelling reasons.²⁶ If the state decides to grant access to state funds and/or religious services in schools, hospitals, prisons or other social facilities, these rules have to be applied as well.²⁷

²¹ A message which still has to be heard in many countries around the globe, such as Central Asia, Russia or – recently – Vietnam, where a new very restrictive registration law was introduced. See <http://www.opendoorsusa.org/News/2013/March/Two-steps-back>.

²² *Orthodox Church (Metropolit Innokentiy) and others vs Bulgaria*, Judgment of 22 January 2009, No. 412/03 and 35677/04; *Mirolovovs and others vs Latvia*, Judgment of 15 September 2009, No. 798/05; *Greek-Catholic Parochy Sâmbala Bihor vs Romania*, Judgment of 12 January 2010, No. 48107/99; *Fusu Arcadie and others vs Moldova*, Judgment of 17 July 2012, No. 22218/06.

²³ ECHR, GC, Judgment of 26 October 2000, No. 30985/96. This judgment, dealing with the leadership of the Muslim community, also shows the complexity of such cases, which provoked a second judgment: *Supreme Holy Council of the Muslim Community vs Bulgaria*, Judgment of 16 December 2004, No. 39023/97.

²⁴ ECHR, Judgment of 13 December 2001, No. 45701/99.

²⁵ ECHR, Moscow Branch of Salvation Army vs Russia, Judgment of 5 October 2006, No. 72881/01.

²⁶ ECHR, Jehovah’s Witnesses of Moscow vs Russia, Judgment of 10 June 2010, No. 302/02.

²⁷ ECHR, *Savez Crkava „Riješivota” and others vs Croatia*, Judgment of 9 December 2010, No. 7798/08; the applicants were Protestant Churches.

Those cases do not only come from Eastern Europe. Austria faced similar questions in 1998 when it introduced a law on registration of religions which stated that for acquiring a recognized status the religion had to be active in the country for ten years and represent a number of 2% of the country's population. At this time, that meant around 16 000 people, a threshold virtually no minority religious community was able to cross.²⁸ Taking into account the fact that the applicant already had waited for more than 20 years, the court discarded the time rule as not justified and refrained from judging on the important question whether such a high threshold would also qualify as an infringement of FORB.²⁹ Finally, fears of terror and questions of national security are accepted as valid justifications for limiting FORB. But again the state bears the full burden of proof and cannot detain relevant documents for security reasons only.³⁰

3.3 On mocking religions

Another debate relates to the question of mocking religions. What is acceptable and where are the limits? The court set two guidelines: the state's duty is to remain neutral and to respect religious convictions. Framed differently, the state should protect religious peace. The leading case was decided in the 1990's.³¹

Several presentations of a film dealing with censorship in 19th century due to religious reasons ("showing the absurdities of Christian faith") were cancelled after the Catholic Church of Tyrolia had intervened and criminal procedures against the organizer were started. After a private presentation to the Austrian court, the film was banned and after a separate process destroyed.

The Strasbourg court stated that freedom of expression has to be interpreted in the light of FORB. Whereas critics considered this a mere protection of religious feelings, the court reiterated its position and even enforced it by saying that the state has a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profanatory.³² Bearing in mind how important the court esteems freedom of expression, this approach of balancing different interests is surprising. In dealing with cases concerning freedom of expression, the court keeps on repeating one paragraph as is its habit with FORB.³³ The relevant paragraph says:

Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of

²⁸ ECHR, *Jehovah's Witnesses in Austria vs Austria*, Judgment of 31 July 2008, No. 40825/98.

²⁹ ECHR, *Jehovah's Witnesses in Austria vs Austria*, as quoted, par. 79.

³⁰ ECHR, *Nolan and K vs Russia*, Judgment of 12 February 2009, No. 2512/04.

³¹ ECHR, *Otto-Preminger-Institut vs Austria*, Judgment of 23 August 1994, No. 13470/87.

³² ECHR, *Wingrove vs United Kingdom*, Judgment of 25 November 1996, No. 17419/90, par. 52.

³³ See footnote 13 above.

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.” This means, amongst other things, that every “formality,” “condition,” “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued.³⁴

In all these cases, finding a balance between the different interests involved requires that the state has what the court calls a “certain margin of appreciation.” Not surprisingly, these decisions have been heavily discussed. Whereas there may be good reasons to follow the court’s findings in the respective cases, a general problem should not be overlooked: in both cases, the court protected the majority religion without even noticing, let alone reflecting it. Bearing in mind that FORB in most cases means protecting minorities, the court’s approach is not without problems. What happens if a religious minority offends the religious feelings of the majority? This remains to be seen.

Recalling that the court serves as a standard-setting institution, these judgments are not unproblematic, either. Many countries tend to argue that laws are justified to protect the majority religion and the feelings of adherents. Minority rights tend to be neglected. Therefore, the court’s approach is dangerous. In a comparable case, the Inter-American Court of Human Rights ruled not to decide on the question whether the Convention protects religious feelings. It rather said that pre-censorship is not allowed under the Convention’s scope.³⁵

4. Some “new” findings

4.1 New efforts on registration

Recognizing that a direct limitation of registration faces strict requirements by the Strasbourg court, countries seek new ways of limiting religions. Austria and France tried to limit religious organisations using tax law. Be it that religious organisations were treated as commercial entities, be it that they were convicted to refund “undue tax exemptions,” the court reiterated its guidelines and applied them to indirect limitations as well,³⁶ resulting in the state’s obligation to pay back high tax fees.

4.2 Religious workers

In several cases, the court decided that working for a religious organisation may have a price.

³⁴ ECHR, *Handyside vs United Kingdom*, Judgment of 7 December 1976, No. 5493/72, par. 49.

³⁵ IACtHR, Judgment of 5 February 2001, *Olmedo Bustos and others vs Chile*, Series C 73.

³⁶ ECHR, *Jehovah’s Witnesses in Austria vs Austria*, Judgment of 25 September 2012, No. 27540/05; ECHR, Three judgments concerning “aumisme”, a Hindu sub-group, *Association Culturelle du Temple Pyramide vs France*, Judgments of 31 January 2013, No. 50471/07 and others.

The applicant³⁷ served as lecturer of philosophy at a Catholic University in Milan/Italy. His annual contracts had to be prolonged by bishopric approval according to a concordat. Due to his deviating views, the bishop denied approval. Subsequent court proceedings approved this.

The court did not decide on a violation of FORB, but focused its findings on freedom of expression in connection with the right of fair trial. As the applicant never learned what exactly he was accused of, the court saw rights as violated. It stated that neither domestic courts nor the Strasbourg court are allowed to deal with the question if the applicant's opinions deviate from official religious teachings, but are called to check the process. As the latter was flawed according to Convention standards, the court found a violation.³⁸

In two other cases the court had to deal with applicants working for religious organisations, though not in a teaching position.

In the first case³⁹, the applicant was an organist serving in a Catholic church as musician. When his marriage broke apart, he got divorced, therefore his contract was terminated.

In the second case,⁴⁰ the applicant worked in a kindergarten run by a Protestant church. Though nominally Catholic, it later turned out that she in fact was a member of the Unification Church. Therefore her contract was terminated.

In the first case, the court ruled a violation of FORB as it held that an organist work's scope is simply making music and not being incorporated to the religious teachings. This may be a valid reasoning, though two aspects should be noted: firstly, one should note that the court's reasoning follows a very narrow understanding of belief and the religious organisation's need and right to define its belief itself. Secondly, by distinguishing different levels of religious teaching, the court runs into questions of classification.⁴¹ According to the court's approach, the second case was solved easily, as the applicant was a kindergarten worker who teaches children and serves as a role model.

In a recent case,⁴² the court affirmed its concept of dealing with this kind of questions once more.

³⁷ ECHR, *Lombardi Vallauri vs Italy*, Judgment of 20 October 2009, No. 39128/05.

³⁸ ECHR, *Lombardi Vallauri vs Italy*, as quoted, par. 55.

³⁹ ECHR, *Schüth vs Germany*, Judgment of 23 September 2010, No. 1620/03.

⁴⁰ ECHR, *Siebenhaar vs Germany*, Judgment of 3 February 2011, No. 18136/02.

⁴¹ In a Christian school, there will be teachers on religious subjects who easily qualify as someone having a direct bond to the teaching. But what about the teacher of English language, what about the sports teacher? And how to deal with the school's caretakers and canteen workers?

⁴² ECHR, *Fernández Martínez vs Spain*, Judgment of 15 May 2012, No. 56030/07 (pending before the

The applicant was a Catholic priest, ordained in 1961 and applied for dispensation of his celibacy in 1984. He married one year later and fathered five children. Since 1991, he taught Catholic religion at a state-run school on a one-year contract basis, renewable by bishopric approval. In 1996, he started giving interviews on behalf of a “movement for optional celibacy,” arguing for more democracy in the church, as well as against the church’s positions on abortion, divorce, contraception and sexuality in general. In 1997, the Vatican granted him dispensation from celibacy, informing him that this grant meant a termination of all religious teaching unless the local bishop decides otherwise. The bishop of Cartagena decided not to grant a further approval, so his working contract was terminated.

The court firstly distinguished this case from the cases quoted above by the fact that the applicant was no layman, but a professional. Therefore, the court stated, he bears a higher risk by deviating from the religion’s official views.⁴³ As the Vatican additionally informed him of potential consequences of his decision, he knew the results for his professional work. As there is a special bond of trust between a minister and his religion, the latter has a wider margin of appreciation to decide how to react. If it decides that the minister broke the bond of trust, it is allowed to terminate the contract. The reasoning applies even more if a minister teaches minors, who are easier to influence.⁴⁴ This decision fits well in the court’s general approach,⁴⁵ though it remains to be seen if it will be upheld by the Grand Chamber, where the applicant appealed.

4.3 On wearing religious attires and having religious views

Recently, four judgments of the court made headlines worldwide. As the court decided to deliver only one judgment, the four cases shall be briefly summarized here.⁴⁶

The first applicant, Ms Eweida, was working as desk officer for British Airways ground crew. Being of Coptic origin, she was wearing a cross on a necklace. When BA issued company rules banning all religious attires, Ms Eweida first agreed. Later she decided to continue wearing her cross and after refusing to take it off or to be

Grand Chamber since 24 September 2012, hearing held on 30 January 2013).

⁴³ ECHR, Fernández Martínez, as quoted, par. 83.

⁴⁴ ECHR, Fernández Martínez, as quoted, par. 85+87.

⁴⁵ It fits a decision made by the European Commission of Human Rights, dealing with a doctor working for a Catholic Hospital, opting publically against the Catholic view on abortion, Commission, Rommelfanger vs Germany, Decision of 6 September 1989, No. 12242/86, DR 62, p. 151.

⁴⁶ ECHR, Eweida and others vs United Kingdom, Judgment of 15 January 2013, No. 48420/10 and others.

based in the back office, was sent home. Due to heavy public criticism, a short time later BA amended its company rules, so the wearing of a cross was possible again. The second applicant, Ms Chaplin, worked as a nurse in a geriatric ward and had worn a cross on a necklace since 1971. Her employer's policy was that due to security and infection reasons no free-swinging jewellery was allowed. When new uniforms with V-shaped necks were introduced, she was asked to take her cross off and after refusing, was offered the option of wearing a brooch. When she refused again, she was removed to a non-nursing position which was later made redundant.

The third applicant, Ms Ladele, worked as a registrar at the London Borough of Islington. Her employer followed a strict policy on equality. When she had worked there for several years, the employer decided to designate all registrars for civil partnerships. As this did not comply with her religious convictions, she first managed to shift duties when civil partnerships had to be registered, but soon two colleagues complained. A disciplinary hearing did not find a solution, the proposal being that she registers the civil partnerships while ceremonies are conducted by a colleague. Her contract was terminated.

The fourth applicant, Mr McFarlane, worked as a therapist for a private counselling company. The rules of the professional association demanded strict neutrality towards the clients. His duties included counselling to same-sex couples and though he had concerns because of his religious convictions, he did so. He started and finished a post-graduate study which did not resolve his doubts. In several talks with his supervisor, he aired his doubts, but announced that his views would be evolving. The supervisor decided to warn the company's managers that the applicant "either is confused or lying." This assessment led to his dismissal for "gross misconduct."

Concerning the first applicant, the court reiterated that the state has a margin of appreciation in deciding where to strike a balance between FORB and other rights. In wearing religious attire and acting according to one's beliefs the court demands a "certain level of cogency, cohesion and importance."⁴⁷ Stressing the state's duty to remain neutral and impartial, the court demands that acting according to a religious conviction has to be "intimately linked, not only inspired by faith."⁴⁸ Consequently, the court ruled that the state did not strike a fair balance because the cross was discreet and did not distract from her professional appearance.⁴⁹ Therefore, it considered FORB had been violated.

⁴⁷ ECHR, Eweida, as quoted, par. 81.

⁴⁸ ECHR, Eweida, as quoted, par. 82.

⁴⁹ ECHR, Eweida, as quoted, par. 94.

Whereas this finding correlates with the general approach the court takes in these questions, a dangerous by-argument should be highlighted. The court reasoned that the very fact that BA amended its company rules shortly after its publication shows that no fair balance was found. Though this reasoning is coherent, it does not add to the understanding of FORB according to the Convention and can even be misleading as such an amendment could easily be made a prerequisite for judging on the question of a fair balance.⁵⁰

The result proved correct, which is also the case with the judgment concerning Ms Chaplin. The court decided that limiting the freedom to act according to a religious belief for reasons of public health and considerations of safety can be valid. As those rules were neutral – Sikhs and Muslims were not allowed to wear special garments of religious attire, if they were also seen as dangerous – the court decided that the limitation of FORB was justified.⁵¹ Given that acting according to a religious belief and conviction also includes testifying about this faith, it is difficult to see why the alternative offered to the applicant of wearing a brooch was not acceptable to her. If there are reasons for limiting the testimony in a certain manner, this is within the state's margin of appreciation.

The court accepted the state's wide margin of appreciation in Ms Ladele's case, ruling that it struck a fair balance and the termination of contract was proportionate, especially taking into account that the state's aim to protect the rights of others was also guaranteed by the Convention.⁵² But this reasoning of the court has to be questioned for the following reasons: firstly, civil partnerships are still not accepted in all member states, so they enjoy a wide margin of appreciation. This very fact should have made the court cautious as the views on this issue are still evolving and other opinions deserve protection as well. At minimum, the court should have been more careful in its reasoning. Secondly, the applicant never imposed her worldview on any of her clients. Her situation can be compared to that of a conscientious objector and should have been taken into account accordingly.⁵³ And thirdly, she started to work in her special task as marriage registrar before the policy changed or this was even foreseeable. The court demands adaption to all possible changes, notwithstanding the employee's conscience. This neglects FORB and takes it out of the picture rather than striking a fair balance as it demands that every personal conviction has to step behind general societal developments.⁵⁴ This approach tends

⁵⁰ Especially given the court's lighthouse function as referred to above.

⁵¹ ECHR, Eweida, as quoted, par. 98.

⁵² ECHR, Eweida, as quoted, par. 106.

⁵³ This is the reasoning in a dissenting opinion by judges Vučković and de Gaetano. The introduction of "religious objection" might raise new questions, though.

⁵⁴ Therefore, the reasoning by the third intervening party, the National Secular Society, freedom to re-

to neglect the “forum externum” at least, though it is part of a broader trend. One scholar recently hinted to that “resistance to sexual orientation equality (less so abortion) is already treated by many as if it were morally indistinguishable from racism.”⁵⁵ The judgment certainly does not contribute to protect FORB in this respect.⁵⁶

Compared to the McFarlane case, one could argue that conscientious reservations should be able to develop in the course of time, but it can be distinguished from Ladele by the fact that Mr McFarlane knew what his duties would comprise when he started his employment whilst Ms Ladele did not. In that respect, the McFarlane case is rather comparable to cases like *Rommelfanger*: if someone starts to work knowing about certain moral preconditions or teachings of his or her employer, one can stipulate an agreement to abide by these decisions. The appeal for referral to the Grand Chamber was rejected in May 2013.⁵⁷

4.4 On establishing trade unions

A recent case⁵⁸ clarifies the scope of the right to self-organize a religious organisation.

The applicant was the trade union translated “The Good Shepherd,” founded in April 2008 by 32 orthodox priests and three lay members, contradicting a rule of the Romanian Orthodox Church’s Statute according to which priests are not allowed to participate in any association and to stand domestic or international trial without bishopric consent. The domestic courts finally denied registration, a chamber of ECHR found Article 11 (right of association) as violated by a vote of 5:2.

Whereas the Grand Chamber quotes several international treaties of ILO, EU and CoE, it reiterates the state’s wide margin of appreciation in social and political issues.⁵⁹ The majority vote⁶⁰ also accepts that the denial of registration was necessary

sign is the ultimate guarantee of freedom of conscience which may be seen as a consequence of the court’s finding. The Strasbourg institutions had ruled accordingly until now only when applicants deviated from their religious employer’s teachings – and put up additional qualifications, see *Rommelfanger* and *Fernández Martínez*, as quoted.

⁵⁵ Gerard V. Bradley, *Emerging challenges to religious freedom in America and other English-speaking countries*, in: Allen D. Hertzke (ed.), as quoted, 215 ff (230).

⁵⁶ Roger Trigg, “Canary in the coal mine: Mounting religious restrictions in Europe,” <http://berkleycenter.georgetown.edu/rfp/essays/canary-in-the-coal-mine-mounting-religious-restrictions-in-europe>; undated.

⁵⁷ ECHR Press Release ECR 161 (2013) of 28 May 2013.

⁵⁸ ECHR, *Sindicatul “Pastorul cel Bun” vs Romania*, Judgment of the Grand Chamber of 9 July 2013, No. 2330/09.

⁵⁹ ECHR, *Sindicatul*, as quoted, par. 133.

⁶⁰ The vote was 11:6.

in a democratic society. The question if the matter in dispute is a real challenge to the religious community's autonomy and not a mere allegation has to be answered by domestic courts while the state has to remain neutral and impartial in its approach.⁶¹ As there is no common approach within the member states concerning the representation of employees in religious organisations, the court grants a wider margin of appreciation for national authorities in this respect.⁶²

Again, the court leaves a potential loophole especially for international observers, in saying that it is possible to distinguish religious affairs and activities of a "mere financial nature."⁶³ This remained an obiter dictum in this case, but leaves the possibility to restrict religious self-organisation. In a concurring opinion this is highlighted by stating that the clergy is neither working in a normal reciprocal employment, nor for the bishop or the church.⁶⁴ One even could say that a clergyman works for the deity in following his calling.

5. What else?

Of course, there is a lot more to discover and to learn from the Strasbourg Court.⁶⁵ When dealing with FORB, one should always keep in mind that other rights can be affected as well. For example, parents as well as children have a right to education, including religious education according to the court,⁶⁶ which stresses impartiality in order to avoid indoctrination.⁶⁷

Finally, there may be relevant European judgments beyond Strasbourg. The court of the European Union, the European Court of Justice, recently gave a judgment concerning asylum seekers in Europe.⁶⁸ It used to be normal practice in several European countries including Germany that converts seeking asylum for religious reasons were sent back by reasoning that converts would still be free to live their newly-won faith along the lines of "forum internum." This reasoning, also known – a bit cynically – as "margin of religious subsistence," did not protect FORB as guaranteed in international documents.⁶⁹ The Luxembourg court decided against

⁶¹ ECHR, *Sindicatul*, as quoted, par. 159, 165.

⁶² ECHR, *Sindicatul*, as quoted, par. 171.

⁶³ ECHR, *Sindicatul*, as quoted, par. 144.

⁶⁴ ECHR, *Sindicatul*, concurring opinion of judge Wojtyczek, par. 6.

⁶⁵ ECHR, *Lautsi vs Italy*, Judgment of the Grand Chamber of 18 March 2011, No. 30814/06, the Grand Chamber voted 15:2 against a violation. ECHR, *Leyla Şahin vs Turkey*, Judgment of the Grand Chamber of 10 November 2005, No. 44774/98, the Grand Chamber voted 16:1 against a violation.

⁶⁶ ECHR, *Folgerø and others vs Norway*, Judgment of the Grand Chamber of 29 June 2007, No. 15472/02.

⁶⁷ ECHR, *Hasan and Eylem Zengin vs Turkey*, Judgment of 9 October 2007, No. 1448/04.

⁶⁸ ECJ, *X and Y vs Germany*, Judgment of 5 September 2012, C-71/11 and C-99/11; its cases can be easily accessed online: http://curia.europa.eu/jcms/jcms/_6/.

⁶⁹ This was a rather theoretical thought that converts are not in danger in countries such as Iran, Pakistan

this practice as the level of protection of asylum for religious reasons has to reach the full-fledged international guarantee of FORB.

6. Conclusion

The German judge for the European Court of Human Rights was quoted in one of her first interviews after being appointed in 2010: “Freedom of religion will be one of the most important topics of the court.”⁷⁰ Until now, she seems to be right.

or even Turkey, provided they stay quiet about their faith.

⁷⁰ Judge Professor Angelika Nußberger, quoted in the German newspaper “Tagesspiegel,” issue of 24 June 2010.

Religious persecution as a crime against humanity

Ending impunity

Lovell Fernandez¹

Abstract

Religious persecution manifests itself in various harmful ways. Traditional intervention strategies are useful but limited. The article explores the need to reinforce the combating of religious persecution with the increased use of international justice mechanisms. In particular, the article studies how the crime against humanity of persecution can be used to hold religious persecutors accountable under international criminal law.

Keywords Persecution, international criminal law, International Criminal Tribunal for the former Yugoslavia, crimes against humanity.

The word “persecution” immediately conjures up images of early Christians being torn apart by wild beasts before cheering crowds in Rome’s Colosseum. This happened during the reign of Emperor Diocletian, during which a two-decades-long massacre accounted for almost half of all martyrdoms in the early Church.² Throughout the last 2 000 years, persecution on religious grounds has manifested itself across the world until the present day. In July 2013 Amnesty International (AI) published a report which shows that Egypt’s Coptic Christians are subjected to unending “discrimination by the authorities and receive inadequate protection from the state from sectarian violence, when not targeted directly by security forces.”³ Many Coptic churches have been closed down or destroyed for allegedly failing to obtain official consent to operate. Another current example is the reign of terror conducted by Boko Haram, a Salafi-jihadi Muslim group operating mainly in north-eastern Nigeria and which is accused of killing numerous Christian worshippers

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² D. MacCulloch *A history of Christianity* (2010, Penguin) 176.

³ Amnesty International, *Egypt: “There was no door on which I did not knock” - Coptic Christians caught in attacks and State’s failures*, 26 July 2013, available at: <http://www.refworld.org/docid/51f2615b4.html> (accessed 15 September 2013).

and assassinating Muslims opposed to it.⁴ In August 2013 the Office of the Prosecutor of the International Criminal Court (ICC) issued a report stating that from the available information, there is a reasonable basis to believe that since July 2009, Boko Haram has committed the crimes of (1) murder constituting a crime against humanity under article 7(1) (a) of the International Criminal Court (ICC) Statute and (2) persecution constituting a crime against humanity under article 7(1) (h) of the ICC Statute.⁵ At the time of writing, the Office of the Prosecutor has advanced the preliminary examination to establish whether the situation meets the criteria established by the ICC Statute to warrant an investigation by the ICC.⁶

This article studies religious persecution in relation to the emerging body of international criminal law, which penalizes the crime against humanity of persecution. It looks at how the campaign to uphold the right to freedom of religion or belief can be reinforced by resorting to international criminal law which, as Thomuschat puts it, “embodies the new quality of international law, which is no longer limited to the rules of true interstate matters, but reaches deep into the state’s domestic sphere.”⁷

1. Coming to grips with the meaning of persecution

In recent years, a vast body of literature on the topic of religious persecution has come into existence. However, in the absence of a universally accepted definition of religious persecution, the notion of persecution means different things to different people or groups against whom states implement discriminatory policies. It would be mistaken, as Tieszen points out, to think of persecution as a “strictly violent act that may end in martyrdom” or as “all forms of suffering”.⁸ For example, in 2007 a German family of Bissingen who had sought to home school their children on religious grounds were heavily fined and had their children forcibly placed in schools by the police. As a result, the family left Germany and applied for political asylum in the United States. Their application was granted by a United States Federal Immigration judge on the grounds that the “German government was persecuting them on account of their religious convictions.”⁹ In issuing his order, the judge went

⁴ See generally International Criminal Court (Office of the Prosecutor) *Situation in Nigeria – Article 5 Report*, 5 August 2013 available at www.icc-cpi.int/iccdocs/.../SAS%20-%20NGA%20-%20Public%20version.

⁵ Ibid 30.

⁶ Ibid.

⁷ C. Thomuschat “Das Statut von Rom für den Internationalen Strafgerichtshof” (1998) 73 *Die Friedens-Warte* 335 at 347 (Cited and translated by G. Werle *Principles of International Criminal Law* 2nd ed (2009, Asser Press) 111.

⁸ C.L. Tieszen “Towards redefining persecution” (2008) 1 *IJRF* 67at 68.

⁹ Cited by M.P. Donnelly “Religious freedom in education: Real pluralism and real democracy require

on to say that “this particular policy of persecuting homeschoolers is repellent to everything” that Americans believe.¹⁰ Another example of how persecution has been interpreted, is the fact that prior to a seminal judgement handed down by the Court of Justice of the European Union (CJEU) in 2012, there was a tendency amongst European courts to reject applications for asylum for religious reasons on the grounds that applicants could avoid persecution if they practised their religion privately and secretly in their home country. In its September 2012 ruling the CJEU rejected the narrow construction placed by national courts on religious freedom, according to which asylum was granted only in cases of extreme persecution, meaning that only where people’s affiliation to a religion exposed them to the risk of incurring physical harm. Instead, the CJEU held,¹¹ thus binding all courts in the European Union, that the curtailment of the right to manifest one’s religion in public justifies the granting of refugee status, if the competent authorities reasonably think that the applicant will on his return to his country of origin engage in religious practices that will expose him to a real risk of persecution, and the fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.¹²

2. Interventions on behalf of the persecuted

Resorting to the law to obtain relief against religious persecution is an avenue open only to those who can gain or are allowed access to the courts. The drawback here is that legal proceedings are expensive and can be protracted. Also, a persecuting state is most unlikely to grant legal aid to an indigent person who is the very target of its persecution policy. Christine Schirrmacher writes that although Sharia law explicitly requires that an apostate be visited with the death penalty, in practice the sentence is rarely executed, though this cannot be ruled out in certain countries.¹³ A loyal Muslim who kills an apostate even before he repents or is tried by a court, will only very rarely be charged with murder himself, meaning that he may do so with impunity.¹⁴

Effective recourse to the law presupposes that accused persons or complainants will be guaranteed a fair hearing. This means, among other things, that the court is independent of political interference, that accused persons or complainants have a right to approach the courts and a right to appoint counsel of their choice, that they

real choices for parents” (2011) 4 *IJRF* 61 at 62.

¹⁰ *Ibid.* 63.

¹¹ *Bundesrepublik Deutschland v. Y* (C-71/11), *Z* (C-99/11), C-71/11 and C-99/11, European Union: Court of Justice of the European Union, decision of 5 September 2012.

¹² At para 79.

¹³ “Defection from Islam in context: A disturbing human rights dilemma” (2010) 3 *IJRF* 13 at 29.

¹⁴ *Ibid* 30.

have a right to a public hearing, a right to call witnesses and to cross-examine the witnesses of the opposing party, a right to take a decision on appeal, and a right to have a judicial decision in their favour enforced by the law. In practice, Saudi Arabia, for example, adopted a Basic Law in 1992 which does not provide for freedom of religion, freedom of speech and expression, equality before the law, fair trial rights, the right to the physical inviolability of the person, and the right to freedom of association and assembly.¹⁵ These are precisely the rights that need to be asserted where the freedom to manifest one's faith is curtailed or penalised.

It is exasperating for the victim of religious persecution where the persecuting state theoretically subscribes to upholding international norms regarding the protection of religious minorities, and where such norms have been incorporated into law, but where in practice, judges interpret and apply such norms subject to the whims of the Executive. In his case studies from Pakistan, Saudi Arabia and Sudan,¹⁶ Eltayeb points out that until General Zia assumed power in Pakistan in the 1970s, Pakistani judges based their judgments on the country's 1956 and 1962 constitutions, embracing in their decisions international norms of freedom of religion as well as Islamic legal texts supporting the protection of religious minorities. However, with Zia's ascent to head of state, "an Islamization process has encroached on the independence of the judiciary and undermined its role in protecting the fundamental rights and freedoms of individuals, including the right to freedom of thought, conscience and religion or belief."¹⁷ The independence of the Sudanese judiciary, too, was similarly compromised in the early 1980s, following President Nimeiri's assumption of power.¹⁸ In both countries, the persecution intensified, namely the case of the apostate Ahmadiyya in Pakistan and the Republican Brothers in Sudan, showing how the judiciary could be manipulated to reach decisions in violation of constitutional norms.¹⁹

3. Interventions by United Nations bodies

At present, there are four treaty-based bodies charged with supervising the interpretation and application of the right to freedom of religion. They are: The UN Council for Human Rights; the Committee on the Elimination of Racial Discrimina-

¹⁵ See International Commission of Jurists' Submission to the UN Human Rights Council (2-13 February 2009) available at lib.ohchr.org/.../ICJ_SAU_UPR_S4_2009_TheInternationalCommission.

¹⁶ M.S.M. Eltayeb *A human rights approach to combating religious persecution* (2001, INTERSENTIA) 191.

¹⁷ Ibid 196. For more recent examples of harsh penalties imposed by Pakistani judges for alleged blasphemous conduct, see A. Buwalda and G. Yogarajah "No justice for minorities in Pakistan" (2011) 4 *IJRF* 101 at 103-105.

¹⁸ Eltayeb note 16 above 196.

¹⁹ Ibid 197.

tion; the Committee on Economic, Social and Cultural Rights; and the Committee on the Rights of the Child. In practice, these bodies perform a salutary task but with limited success. This is due to the fact that the committees are comprised mostly of persons who are not necessarily appointed on the basis of their competence, but on the “lobbying effectiveness of the nominee’s country’s representative at the UN, bloc voting and general diplomatic bargaining”.²⁰ They meet only twice or thrice a year, and only for a few weeks, and are under-resourced and dependent on the UN for their budgets. They lack independent fact-finding and investigative capacity, hold no oral or public hearings and cannot cross-examine witnesses or experts. They further lack the authority to enforce their views which “states frequently ignore”; and they are not vested with powers to hold states accountable which fail or refuse to submit compliance reports.²¹

Besides the abovementioned committees, there is the office of the UN Special Rapporteur on freedom of religion or belief which was created in 1986 to look into violations of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.²² The Special Rapporteur performs a more hands-on job than the committees, for the work entails conducting actual country visits during which the incumbent speaks directly to victims, their families, human rights activists, representatives from faith groups, government, parliament and the courts.²³ The Special Rapporteur is able to respond speedily to a complaint, an allegation or an urgent appeal, regardless from whom it emanates, and does not have to wait until all the basic facts are at hand or until the complainant has first exhausted all the available national remedies. The Rapporteur first communicates with the responsible government confidentially through diplomatic channels, but after an average period of two months – except in urgent matters – the letters of complaint or appeal, including the reply or silence of the government concerned, are publicly made known to the UN Human Rights Council and are posted on the website of the Office of the UN High Commissioner for Human Rights.²⁴

The Special Rapporteur’s mandate is not treaty-based, which means complaints and appeals can be dealt with from victims of religious persecutions throughout the world, and not only from those in states that have ratified specific treaties and have accepted the optional complaints procedures or protocols. This flexible man-

²⁰ G. Robertson *Crimes against humanity* 3rd ed (2006, Penguin) 62-63.

²¹ *Ibid.*

²² Adopted by the UN General Assembly on 18 January 1982 [UN Doc.A/RES/36/55 (1981)].

²³ “Protecting and implementing the right to freedom of religion or belief: Interview with Heiner Bielefeld” available at <https://www.deutschland.de/en/topic/politics/global-issues-law> (accessed on 10 September 2013).

²⁴ *Ibid.*

date also enables the Special Rapporteur to respond to intra-religious persecutions, which are not covered by any of the UN treaties, but which in a wider context engage the right to freedom of thought, expression, religion or belief.²⁵

The Special Rapporteur is therefore better positioned to intervene more meaningfully and more expressively than the UN committees mentioned above. A drawback of the Rapporteur's work is that he visits a country only when it invites him, which reduces his oversight to spot checks. While the Rapporteur admittedly lacks judicial authority and, at best, can make only unenforceable recommendations, these drawbacks are compensated for by quick responses, face-to-face encounters with all parties concerned, constructive dialogue, and a high-level publicity of the situation. However, as in the case of all special rapporteurs, there is a need to create procedures that allow for a follow-up visit to the country in question. The present lack of such follow-up missions is a weakness.

For all their limitations, the bodies mentioned above perform a vital function. There is no one-size-fits-all method of combating religious persecution, for each situation calls for a particular response or combination of responses. One such response, to which the discussion now turns, is making more use of international criminal law to hold religious persecutors accountable at law.

4. Persecution as an international crime

4.1 Genesis and evolution of the crime

The term "crime against humanity" was first coined in 1915, following the massacre of Armenian Christians in Turkey. Britain, Russia and France issued a joint statement, threatening post-war retribution, and announcing that all those involved would be personally liable "for new crimes...against humanity and civilization."²⁶ However, nothing came of this, partly because the trials, in which only a few were convicted, were conducted in weak military courts which left no recorded judgments,²⁷ and partly because of the sudden post-war series of victories by Turkish armies under the command of Kemal Atatürk.²⁸ It was only after the persecution and genocide of another religious minority in the 1930s and 1940s, namely the European Jews, that crimes against humanity were first explicitly formulated in the Nuremberg Charter and punished as a crime by the Nuremberg Tribunal. Article 6 of the Charter defined crimes against humanity as acts committed against any civilian population, before or during the war, and included crimes such as murder, extermination, enslavement or political, racial *and religious persecutions*.

²⁵ See Eltayeb note 16 above at 205.

²⁶ J.F. Willis *Prologue to Nuremberg* (1982, Greenwood Press) 26.

²⁷ Robertson note 20 above at 22.

²⁸ MacCulloch note 2 above at 924.

The Nuremberg trial itself set a colossal precedent in international law when in its judgment, the tribunal held in a famous passage that “[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”²⁹ This means that today international crimes can be committed by state officials as well as by private persons.³⁰

No further trials involving the prosecution of crimes against humanity were held during the Cold War period, which was marked by some of the most appalling atrocities perpetrated in wars and under tyrannical heads of state. It was not until the 1990s, after the tragic genocide that almost wiped out the Tutsi population of Rwanda, and the execution of 7 000 Muslims in Srebrenica, that the crime of religious persecution as a crime against humanity was tried by an international tribunal.

4.2 Persecution under the Statutes of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

“Persecution” is included in Article 5 of the ICTY Statute and Article 3 of the ICTR Statute. The provisions permit the prosecution of persons for the “seizure or destruction or wilful damage done to institutions dedicated to religion” as a war crime,³¹ and as genocide when the acts are “committed with the intent to destroy, in whole or in part, . . . a religious group.”³² Both Statutes authorize the prosecution of people responsible for religious persecution as a crime against humanity.³³ However, as the formulations in both the ICTY and ICTR Statutes merely characterise “persecution” as a specific crime, without defining the term further, the task of elaborating the definition has been left largely to the ICTY and ICTR tribunals.

In one of the first cases tried by the ICTY, the *Tadić* case, in which the accused was charged with the crime of religious persecution as a crime against humanity, the Trial Chamber held that persecution “encompasses a variety of acts, including, *inter alia*, those of a physical, economic or judicial nature, that violate an individual’s right to the equal enjoyment of his basic rights.”³⁴ Endorsing the view that

²⁹ IMT, Judgement of 1 October 1946, in *The Trial of German major war criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany* Part 22 (1950) 447.

³⁰ *Prosecutor v Kunarac et al* ICTY Case No. IT-96-23 and IT-96-23/1-T Judgement of 22 February 2001 at para 494. See also G. Mettraux *International crimes and the AD HOC tribunals* (2006, Oxford) 277; A. Bianchi “State responsibility and criminal liability of individuals” in A. Cassese (ed.) *The Oxford Companion to International Criminal Justice* (2009, Oxford) 16–17.

³¹ Art. 3 (d) ICTY Statute.

³² *Ibid* art. 4 (2) read with art. 4 (3); art. 2(2) read with art. 3 ICTR Statute.

³³ Art. 5(h) ICTY Statute; art. 3(h) ICTR Statute.

³⁴ *Prosecutor v Tadić* ICTY Case No. IT-94-I-T, Judgement of 7 May, 1997 at para 710.

persecution “can consist of the deprivation of a wide variety of rights” the ICTY Trial Chamber, in its judgement in *Prosecutor v Kupreškić et al* stated furthermore, that persecutory acts need not be expressly prohibited in the ICTY Statute, and that it is irrelevant whether or not such acts are legal under national laws.³⁵ In the *Matrić* trial, the ICTY Chamber defined persecution as a crime against humanity as an act or omission which (1) discriminates in fact and which denies or infringes upon fundamental rights as provided in international customary or treaty law and (2) was carried out deliberately with the intention to discriminate on political, racial or religious grounds.³⁶

What distinguishes persecution from other crimes against humanity is that in the case of persecution, the mental element of the crime must be the conscious intent to commit the underlying crime or act on a discriminatory basis.³⁷ The perpetrator must act with the specific intent to discriminate³⁸ on political, racial or religious grounds, and this intent must be aimed at a group, rather than an individual, as the mental element requirement “is the specific intent to cause injury to a human being because he belongs to a particular community or group.”³⁹

As regards the material elements (the conduct) of the crime, there is no exhaustive list of acts that may constitute persecution. The ICTY has expanded the definition of persecution to include other persecutory acts outside those specifically enumerated in the ICTY Statute. These other acts must be equivalent in gravity to the other crimes against humanity listed in Article 5 of the ICTY Statute,⁴⁰ namely murder, extermination, enslavement, deportation, imprisonment, torture, rape, and other inhumane acts. To meet the equal gravity test these other acts must constitute a denial or violation of a fundamental right laid down in international customary law⁴¹ and must be determined on a “fact-specific inquiry.”⁴²

³⁵ *Prosecutor v Kupreškić et al* ICTY Case No. IT-95-16-A, Judgement of 14 January 2000 at para 614.

³⁶ *Prosecutor v Matrić* ICTY Case No. IT-95-14-T, Judgement of 12 June 2007 at para 113. See also *Prosecutor v Kupreškić et al* note 35 above at para 621; *Prosecutor v Kmojelac* ICTY Case No. IT-97-25-T, Judgement of 15 March 2002 at para 431; *Prosecutor v Tadić* note 34 above at para 707.

³⁷ *Prosecutor v Kupreškić et al* note 35 above at para 607; *Prosecutor v Stakić* ICTY Case No. IT-97-24-A, Judgement of 22 March 2006 at para 323; *Prosecutor v Simić et al* ICTY Case No. IT-95-9-A, Judgement of 28 November 2006 at para 86.

³⁸ *Prosecutor v Blaškić* ICTY Case No. IT-95-14-A, Judgement of 29 July 2004 at para 164; *Prosecutor v Stakić* note 37 above at para 328; *Prosecutor v Kordić and Ćerkez* ICTY Case No. IT-95-14/2-A, Judgement of 17 December 2004 at para 111.

³⁹ *Prosecutor v Kordić and Ćerkez* note 38 above at para 111; *Prosecutor v Matrić* note 36 above at Para 120.

⁴⁰ Mettraux note 30 above at 178; *Prosecutor v Kmojelac* note 36 above at para 435. *Prosecutor v Kmojelac* note 36 above at para 221.

⁴¹ *Prosecutor v Kordić and Ćerkez* note 38 above at para 103; *Prosecutor v Blaškić* note 38 above at para 139.

⁴² *Prosecutor v Stanišić and Ćupljanin* ICTY Case No. IT-08-91-T, Judgement of 27 March 2013 at para 70;

Both the ICTR and ICTY Tribunals have identified, among others, the following acts as persecution: participation in attacks on civilians, including indiscriminate attacks on cities, towns, and villages; as well as the seizure, collection, segregation, and forced transfer of civilians to camps; calling-out of civilians; beatings; forms of sexual assault; such attacks on property as would constitute a destruction of the livelihood of a certain population; destruction or wilful damage to religious and cultural buildings; or the destruction and plunder of property where this is serious enough, either by reason of its magnitude or because of the value of the stolen property or the nature and extent of the destruction; unlawful detention of civilians, and serious bodily and mental harm.⁴³ The withdrawal of voting rights may be regarded as persecution,⁴⁴ and under certain circumstances, “hate speech” can also constitute persecution.⁴⁵

The conduct is discriminatory when the victim is targeted because of his or her membership, or imputed membership,⁴⁶ in a group defined by the perpetrator on a political, racial or religious basis.⁴⁷

Generally, the acts underlying persecution need not be considered a crime under international law;⁴⁸ in fact, they need not be inherently criminal, though they may become criminal and persecutory if committed with discriminatory intent.⁴⁹ Furthermore, a single omission may suffice to constitute persecution, as long as it was deliberately intended to discriminate. But it is not enough that there be discriminatory intent. The act or omission must have discriminatory consequences, which means it must be shown that the victim was in fact persecuted.⁵⁰ This requirement exists to avoid someone being found guilty without anyone having been actually

Prosecutor v Bránin ICTY Case No. IT-99-36-A, Judgement of 19 March 2004 at para 295.

⁴³ Mettraux note 30 above at 184; Cassese note 30 above at 454.

⁴⁴ Werle note 7 above at 256.

⁴⁵ *Prosecutor v Nahimana et al* ICTR Case No. ICTR-99-52-T, Judgement of 3 December 2003 at paras 1072-1084. The Appeals Chamber in the *Nahimana* case held that speech that incites violence against a population group on any discriminatory grounds constitutes actual discrimination, but that hate speech alone does not constitute a violation of fundamental rights; a speech by itself cannot directly kill members of a group, imprison or physically injure them. *Prosecutor v Nahimana et al* ICTR Case No. ICTR-99-52-A, Judgement of 28 November 2007 at para 986.

⁴⁶ *Prosecutor v Kmojelac* ICTY Case No. IT-97-25-A, Judgement of 17 September 2003 at para 185.

⁴⁷ *Prosecutor v Stanišić and Ćipljanin* note 42 above at para 68; *Prosecutor v Kordić and Čerkez* note 38 above at para 68; *Prosecutor v Vasiljević* ICTY Case No. IT-98-32-A, Judgement of 25 February 2004 at para 113.

⁴⁸ *Kvočka et al v Prosecutor* ICTY Case No. IT-98-30/1-A, Judgement of 28 February 2005 at para 323.

⁴⁹ *Prosecutor v Kvočka et al* ICTY Case No. IT-98-30/1-T, Judgement of 2 November 2001 at para 186. See also *Tadić* case note 34 above at para 710.

⁵⁰ *Prosecutor v Vasiljević* ICTY Case No. IT-98-32-A, Judgement of 25 February 2004 at para 245; *Prosecutor v Kmojelac* ICTY Case No. IT-97-25-A, Judgement of September 2003 at para 432.

persecuted.⁵¹ There are cases where the destruction of the property of the persecuted person in itself may not have as severe an effect on the victim as to amount to a crime against humanity, for example, burning the victims' car, unless this results in the loss of "an indispensable and vital asset to the owner."⁵² Similarly, destroying a cultural heritage site or places of religious worship may qualify as persecution where such acts have serious adverse effects on a strongly religious population.⁵³

These varied interpretations that the UN ad hoc tribunals have read into the meaning of persecution constitute a useful platform from which to start placing religious persecution more affirmatively within the ambit of international criminal justice. Many of the discriminatory and restrictive practices applied against minority (but also majority) religious groups or sub-groups, and the dire consequences for those affected by them, are real and eminently contemporary.⁵⁴ Research shows that countries that prohibit blasphemy, apostasy or defamation of religion tend to have more restrictions on religion.⁵⁵ This has been found to be strikingly so in North Africa and in the Middle East, where governments "were twice as likely as governments worldwide to resort to physical force when dealing with religious groups."⁵⁶ Instances of such force included killings, physical abuse, imprisonment, displacement from home, or destruction of religious property.⁵⁷ According to Grim, Europe's worryingly increasing social hostility to the growing Muslim immigrant population also harbours the potential to fuel governments to impose religious restrictions.⁵⁸ This, in turn, could have the effect of feeding into a circle of social violence against religious groups, as happened in Nazi Germany and as is happening at present in Iraq.⁵⁹

As a preliminary conclusion we can say that persecution sits, as one writer puts it, "very much at the core of crimes against humanity."⁶⁰ The ICTY's jurisprudence, in particular, has contributed immensely to the development of our understanding

⁵¹ See G. Acquaviva *Forced displacement and international crimes* (2011, UNHCR, PPLA/2011/05) available at www.unhcr.org/4e0346344.pdf (accessed 10 September 2013).

⁵² *Prosecutor v Kupreškić* note 35 above at para 631.

⁵³ *Prosecutor v Kordić and Čerkez* note 38 above at para 207.

⁵⁴ See, for example European Parliament recommendation to the Council of 13 June 2013 on the draft EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief [2013/2082(INI)] P7_TA-PROV(2013) 0279; B.J. Grim "Rising restrictions on religion: context, statistics and implications" (2012) 5 *IJRF* 17 at 23- 25.

⁵⁵ See B.J. Grim note 54 above at 25. *IJRF* 17 at 25.

⁵⁶ *Ibid.* 27.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* 32.

⁵⁹ *Ibid.* 32.

⁶⁰ W.A. Schabas *The International Criminal Court: A commentary on the Rome Statute* (2010, Oxford) 175.

of persecution as a crime against humanity. In fact, persecution has often been the “most analyzed specific act”⁶¹ in the jurisprudence of international criminal judicial bodies. But with the ICTY and ICTR now winding up the last cases before them in order to close shop for good, international crimes are now a matter of the ICC which came into existence in 2002. The discussion will therefore turn to the crime of humanity of persecution under the ICC Statute, and will expound briefly on some of the aspects of persecution which have not been dealt with above.

4.3 Persecution as a crime against humanity under the International Criminal Court Statute

Article 7(1) of the ICC Statute defines a crime against humanity as comprising those crimes listed in the definition that are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. One of the listed crimes is “persecution against any identifiable group or collectivity on...religious...grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any other crime within the jurisdiction of the Court.”

This means that the acts of persecution must be connected to any of the other ten categories of acts enumerated in Article 7 (1), including but not limited to murder, forcible transfer, imprisonment, torture, persecution, enforced disappearance, and crimes of sexual violence – or to the crime of genocide (Article 6) and war crimes (Article 8).

The ICC Statute defines persecution as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”⁶² The perpetrator must engage in a course of conduct involving multiple acts which are “part of a widespread or systematic attack against any civilian population...pursuant to or in furtherance of a State or organizational policy to commit such an attack”.⁶³

The criterion “widespread” can be derived from the number of victims or from the geographic area over which the attack extends. A single act, too, can be a widespread attack, if it affects many civilians, for it “is the attack that must be widespread or systematic and not the acts of the perpetrator.”⁶⁴ The word “systematic” refers to the organized nature of the acts and the overall action, the reason being to avoid making isolated acts punishable as crimes against humanity. But it is not

⁶¹ M.C. Bassiouni *Crimes against humanity* (2011, Cambridge) 405.

⁶² Art. 7(2) (g).

⁶³ Art. 7(1) and 7(2) (a).

⁶⁴ C. de Than and E. Shorts *International Criminal Law and Human Rights* (2003, Sweet and Maxwell) 92.

necessary that there be a plan or a policy, although the existence of one would help to prove the systematic nature of the attack.⁶⁵

4.4 The status of the perpetrator

Some states make no bones about the government's resolute determination to restrict and severely weaken the exercising of religious freedom. Such states usually have dragnet laws that criminalize almost any conduct of a minority religious group. The law is enforced rigorously and mercilessly, and the criminal justice apparatus works in such a way that the accused has no chances at all of being acquitted, either because judges have a wide margin of discretion in interpreting a vaguely defined law,⁶⁶ or because the accused person has only a limited right to legal representation or to call witnesses. For example, in Pakistan, which has broadly defined anti-blasphemy laws, only Muslims may be attorneys and witnesses, and accused persons have no legal claim against those who falsely accuse them of blasphemy.⁶⁷

In cases where state officials carry out the persecutory acts, with the state looking away and declining to protect the individual or to prosecute those responsible, there can be little doubt that the state endorses such conduct, which gives effect to a state's persecutory policy.⁶⁸ But what liability is incurred where the persecutory act is carried out by a private person without authorization by the government, or by a criminal gang, a guerrilla group or a terrorist organization? It does not matter whether or not the perpetrator is a state official or a member of an organization, for any person implementing or acting in support of the policy of the state or organization can be held liable for the crime of persecution.⁶⁹ A striking historical example "is the denunciation of a single Jew to the Gestapo, which was part of the process of excluding German Jews from cultural and economic life in the Third Reich."⁷⁰ It is not even necessary that the perpetrator use physical force, for the word "attack" covers any mistreatment of the targeted civilian population,⁷¹ and may include non-violent conduct, such as internment, discrimination or deportation.⁷² As to other non-state actors, the prevailing view is that if the policy element is taken into account, it is not necessary that the organization responsible for the persecutory

⁶⁵ *Prosecutor v Kunarac et al* note 30 above at para 98; *Prosecutor v Krstić* ICTY Case No. IT-98-33-A, Judgement of 19 April 2004 para 225.

⁶⁶ See T. Arora "India's defiance of religious freedom" (2012) 5 *IJRF* 59 at 63-64.

⁶⁷ A. Buwalda and G. Yogarajah "No justice for minorities in Pakistan" (2011) 4 *IJRF* 101 at 102.

⁶⁸ Werle note 7 above at 302.

⁶⁹ *Ibid.*

⁷⁰ *Ibid* 297.

⁷¹ Mettraux note 30 above at 157; K Ambos *Internationales Strafrecht* (2006, C H Beck) 212; Werle note 7 above at 297.

⁷² De Than and Shorts note 64 above at 91.

policy controls or governs a particular geographic area; all that is required is that the group of people, regardless of whether or not they are an organization, have the capacity to commit a widespread or systematic attack on a civilian population.⁷³ This view was recently upheld by the Trial Chamber of the ICC in the *Kenya* case when it laid down that the criterion of what constitutes an organisation is not “the formal nature of a group and the level of organization”, but whether the group “has the capability to perform acts which infringe on basic human values.”⁷⁴

5. Ending impunity – bringing the culprits to book

The campaign against religious persecution needs to be conducted on several fronts. These range from exercising religious tolerance, expressing solidarity with the persecuted, engaging in inter-religious dialogue, or through to education. All these initiatives make ample sense, but need to be harnessed in tandem with each other, and more importantly, need to be reinforced with active, affirmative conduct. Tolerance, for example, requires more than the mere show of broad-mindedness or the capacity to endure; it requires, as Diana Eck has put it, to be translated in a plural society to mean “nurturing of constructive dialogue, revealing both common understandings and real differences.”⁷⁵ Helmut Schmidt, when he was then Chancellor of the Federal Republic of Germany, emphasized this point in an address to Protestants in the former German Democratic Republic, when he said that “he who stands for tolerance must desire and seek dialogue with the other.”⁷⁶ The critical role education can play in combating religious prejudices has been stressed repeatedly.⁷⁷

But the literature on the topic of religious persecution has largely skirted the issue of bringing the perpetrators to book. Thomas Schirrmacher and Thomas K. Johnson have rightly pointed to the need to resort to legal justice. They argue that, while mediation, arbitration and reconciliation must always be prioritised before resorting to the law, “reason demands that we be clear that going to court can be a responsible choice for Christians.”⁷⁸ Kuzmic is even more explicit when he calls on Christians “wherever and whenever possible” to “engage in political advocacy and the pursuit of international justice.”⁷⁹ It is, therefore, submitted that the campaign

⁷³ Ambos note 71 above at 215; Werle note 7 above 301.

⁷⁴ Kenya ICC-01/09 Pre-Trial Chamber, Decision of 31 March 2010 at para 95.

⁷⁵ Cited by Donnelly note 7 above at 63.

⁷⁶ H. Schmidt *Religion in der Verantwortung: Gefährdungen des Friedens im Zeitalter der Globalisierung* (2012, Ullstein) 106. See also E/CN.4/1994/79 at para 98 on the importance of intra-religious dialogue.

⁷⁷ See A/HRC/22/51 (December 2012) 18-21.

⁷⁸ “May Christians go to court?” (2011) 4 *JRF* 17 at 20.

⁷⁹ Cited by C.L.Tieszen “Agonizing for you: Christian responses to religious persecution” (2009) 2 *JRF* 87

for the right to religious freedom needs to be supported by strategies aimed at bringing the organs of international criminal justice to become more aware of how religious persecution manifests itself in its various guises. We need to go beyond the level of entreating persecuting governments to tolerate or to refrain from punishing people who are exercising their right to freedom of religion or belief. Freedom of religion is part of customary international law,⁸⁰ which is not only a source of international criminal law, but also part of it.⁸¹ It is therefore binding on all states and individuals alike.⁸² Individuals can no longer hide behind the shield of state sovereignty, claiming personal immunity, for international criminal law ascribes criminal responsibility to the individual person, including an incumbent head of state.⁸³

Making religious persecution a more urgent issue of international criminal justice is bound to cause outrage amongst those known for their persecutory acts, but this does not derogate from the necessity to make it such an issue.⁸⁴ The fact that the genesis and evolution of crimes against humanity is largely traceable to the 20th century persecution of religious minorities, should serve to reinforce the validity and legitimacy of the campaign against religious persecution. Introducing the criminal justice element more explicitly and volubly into the promotion of the right to religious freedom or belief is likely to spawn a new vanguard of legal scholarship on this topic which, in turn, will help the courts to elaborate the contours of the crime. It is therefore crucial that this theme become part of the agenda at international conferences, seminars and workshops dedicated to international criminal justice.⁸⁵

6. Conclusion

Religious persecution is a matter of constant concern which continues to manifest itself in the present day. Traditional ways of intervening on behalf of the victims of religious persecution are estimable and useful, but remain limited in their effectiveness. The advent of international criminal law and the creation of international criminal tribunals to try persons accused of committing international crimes, of which the crime against humanity of persecution is one, reaffirms the international community's push to hold individuals accountable, for crimes are committed by people and not states. The ICTY in particular has played a hugely important role in

at 95.

⁸⁰ K.Thames "Mechanisms for religious freedom advocacy" (2011) 4 *IJRF* 115 at 116.

⁸¹ *Prosecutor v Furundžija* ICTY Case No. IT-95-17/1-T, Judgement of 10 December 1998 at para 227; Mettraux note 27 above 270.

⁸² Cassese note 27 above at 91.

⁸³ See Werle note 7 above at 40.

⁸⁴ Thames note 80 above at 117.

⁸⁵ See Thames note 80 above at 116-118.

elaborating the definition of the crime of “persecution”, thereby setting legal precedents in the area of religious persecution upon which the ICC can draw in the future. The preliminary examination presently being undertaken by the ICC’s Office of the Prosecutor with regard to the situation in Nigeria underscores the need to make more meaningful use of international criminal law to bring persecutors to book. However, the organs of international criminal justice do not react instinctively to situations; they depend on information that is brought to light through the work of NGOs, human rights activists, scholarly writings, the public media and on the voices of those who speak out vociferously against religious persecutory acts so that they are brought fully within the ambit and the grasp of international criminal justice.

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When can the persecution of Christians be considered as genocide or a crime against humanity?

A hypothetical study on the use of international criminal law to counteract impunity for religious persecution

Werner Nicolaas Nel¹

Abstract

The right to freedom of religion is an undeniable human right prescribed and protected by the rule of law, but persecution restricts the exercise of religious freedom. In countries where Christians are persecuted, the domestic legal system is usually prejudicial and incompetent, and victims are left unprotected. In counteracting the impunity for religious persecution in the domestic arena of countries of serious concern, international criminal law may be used to prosecute individuals responsible for severe acts of persecution of Christians by classifying these acts as either a “crime against humanity of religious persecution” or “genocide by religious persecution” in terms of the Rome Statute.

Keywords Genocide, crimes against humanity, International Criminal Court, combating impunity, international human rights, persecution of Christians, religious freedom.

1. Introduction

The right to freely adopt, change or manifest one's religion or belief through worship, observance, practice, ceremonial acts, teaching or otherwise must be regarded as a right to which everyone is entitled. However, for some it is not a natural privilege they can freely enjoy, but rather something they must practice in secret or under jeopardy.

Religious persecution remains a human rights concern. Despite the recognition of religious freedom as a universal human right, religious groups are still being persecuted on a daily basis.² “In this past century alone, more Christians were

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² Reliable statistics on the number of those persecuted because of their religion or of those murdered

murdered for their faith than any other century in human history, an estimated 200 million.”³ The nature of internal armed conflicts, such as the situation in Darfur, often blurs the line between ethnic and religious violence.

...religious intolerance are among the causes of violence, ethnic cleansing, and armed conflict, leading to genocidal policies and practices, and often serious violations of international humanitarian law... international prosecution systems, as provided by the ICC, are to be resorted to in the pursuit of criminal accountability.⁴

Advocates of religious freedom aspire to create awareness and enforce measures aimed at the prevention of the global human rights concern that is religious persecution, a concern which seems to be a muted topic in much of the international community. In view of the unimaginable human rights atrocities committed during the 20th century and the internationalized concern regarding global human rights violations, the international community must unify in a conscious determination to exhaust every remedy available to deter the recurrence of grave crimes.

This article aims to advocate a progressive method or process as a sanction-based solution to curb religious intolerance and impunity whereby religious persecution as a human rights concern may be protected and enforced. This article will attempt to define religious persecution and validate serious acts of religious persecution as a crime of serious concern to the international community, therefore necessitating the criminal prosecution of the individuals responsible for such acts as crimes against humanity of persecution and genocide by persecution in terms of the Rome Statute.⁵

2. Religious freedom as a fundamental human right

Human rights are generally understood as “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being”.⁶ Religious freedom may be categorized under civil and political rights which form part of the fundamental human rights. It was amongst the first to be recognized and is codified in international legal instruments.⁷

for their faith are hard to produce. Cf. T. Johnston and T. Schirmacher in Taylor/Reimer/van der Meer: *Sorrow and blood*, Pasadena 2012.

³ Jeff King, President of International Christian Concern, at www.persecution.org/about-us/the-problem. Accessed on 03/04/2012.

⁴ *Max Planck Encyclopedia on Public International Law*, Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press (2011) par 22.

⁵ *Rome Statute of the International Criminal Court*, Doc. A/CONF.183/9 of 17 July 1998 in force 1 July 2002 (2002).

⁶ M. Sepúlveda et al, *Human Rights Reference book* (2004), 3.

⁷ Universal Declaration of Human Rights (UDHR), adopted by General Assembly resolution 217 A (III) of 10 December 1948; the International Covenant on Economic, Social and Cultural Rights, General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976 (ICESCR); and the International Covenant on Civil and Political Rights (General Assembly resolution 2200A (XXI)

The persecution of Christians for the exercise of their religious beliefs, thoughts, practices, worship and teaching is a limitation on the right to freedom of religion, thought, expression and assembly.

3. Nature and forms of religious persecution

Religious persecution is in essence the discrimination against a religious group and implies “any distinction, exclusion, restriction or preference which is based on... religion... and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁸

The fundamental core elements of persecution are harm, severity, and legitimacy.⁹

Harm – The element of physical harm associated with persecution is the most widely understood and universally accepted form of harm and for our purposes is the most relevant. Numerous acts may constitute physical harm, these acts may include: torture, imprisonment, murder, extermination and other inhumane acts done against any civilian population.

Severity of harm – Harm can only amount to persecution when a certain degree or threshold of severity has been reached, however the degree or threshold of the severity of harm is a contentious issue.¹⁰ Rempell suggests a continuous suffering model, whereby harm is not only assessed as isolated incidents, but also in terms of its cumulative effect. The continuous suffering model assesses the physical harm as well as the long term psychological harm that may be caused by acts of persecution.

Legitimacy of harm – The requirement of legality requires that there must be no justifiable reason why the persecutory harm may be inflicted on a person or group of persons.¹¹ However, “freedom of thought and religion is an absolute right that does not permit any limitation.”¹²

Religious persecution may take various forms:

Communism and religious nationalism: The constitutional order of communism places restrictions on certain human rights, including religious freedom, for example in Vietnam.

Islamic extremism: This form of persecution may be directly attributed to the state with the enforcement of Sharia law, for example in Mali, or may be attributed to Islamic extremist groups or organizations, such as Boko Haram in Nigeria. In Iran

of 16 December 1966, entry into force 23 March 1976)(ICCPR).

⁸ *Ibid* (n 4) Max Planck Encyclopedia, 611.

⁹ S. Rempell, Defining persecution (October 8, 2011). *Utah Law Review*, Vol. 2013, No. 1, 2013, 1.

¹⁰ *Ibid* (n 9) Rempell, 29.

¹¹ “Even if harm reaches the requisite severity, an applicant cannot establish he or she was (or will be) persecuted if the inflicted harm is normatively justified or otherwise permissible.” *Ibid* (n 9) Rempell, 39.

¹² *Ibid* (n 6) Sep. Iveda, 203.

“...only Armenians and Assyrians can be Christian – ethnic Persians are by definition Muslim, and therefore ethnic Persian Christians are by definition apostates”.¹³ In the island state of the Maldives “the Maldivian government views itself as the protector and defenders of Islam... all deviant religious convictions are strictly forbidden”¹⁴ which leads to the prohibition on public Christian gatherings and imprisonment.

Religious persecution from a legal perspective is the systematic maltreatment of a person, entity or group due to their religious affiliation which may cause physical harm, psychological damage or a deprivation of human rights for which there is no justification and which has reached a certain degree or threshold of severity through varied sources of acts.

4. Working definition – defining religious persecution in international criminal law

The intricacy and politicisation of religious persecution creates great difficulty in defining persecution in the context of international criminal law. The varying forms of persecution are a further challenge in the demarcation of a working definition for religious persecution. In some instances the discrimination against Christians takes on specific forms based on governmental ideologies.

Tieszen provides a theological definition for the religious persecution of Christians:

Any unjust action of varying levels of hostility, directed at Christians of varying levels of commitment, resulting in varying levels of harm, which may not necessarily prevent or limit these Christians' ability to practice their faith or appropriately propagate their faith as it is considered from the victim's perspective, each motivation having religion, namely the identification of its victims as 'Christian', as its primary motivator.¹⁵

Having considered the severity, nature and forms of the persecution of Christians, the writer offers the following working definition of religious persecution for purposes of this hypothetical study:

Unjustified acts, which severely violate or deprive, a believer or believers of a specific religious group, of their fundamental human rights, through a systematic oppression or attack on the religious group and/or their religious beliefs or affiliations or lack thereof, with the specific intention to oppose or eliminate the religious group in whole or in part, because of the religious conviction of the group.

¹³ Open Doors website: <http://tiny.cc/opendoorsiran>. Accessed 06/06/2012.

¹⁴ Open Doors website: <http://tiny.cc/opendoorsmaldives>. Accessed 06/06/2012.

¹⁵ C.L. Tieszen, *Towards Redefining Persecution* (2008), 168.

5. Internationalization of persecution of Christians

The principles of public international law provide for the protection and enforcement of human rights as is illustrated by the International Bill of Human Rights.¹⁶ There are also numerous human rights conventions and institutions creating a wide range of mechanisms for monitoring compliance with and the protection of human rights at an international level, such as the United Nations Human Rights Committee, as well as at the regional level.¹⁷ Finally, the International Criminal Court (ICC) is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community,¹⁸ crimes which by their very commission are serious and obvious infringements of fundamental human rights on a considerable level.

Despite the recognition of the right to religious freedom at the international level and the obligation on all states in terms of customary international law¹⁹ to protect religious freedom, the implementation of human rights is inconsistent. For example, the ideologies of atheistic states and Islamic sentiments restrict or even criminalize Christian activities. As a result, advocating on behalf of persecuted religious minorities may require a more severe proscription for the infringement of religious freedom. Consequently, it could be argued that the infringement of religious freedom is not adequately enforced by the individual state at a national level, and may therefore require the enforcement of effective penal sanctions against the perpetrators or authors of these human rights violations on an international level.

There are factual indications that several situations and investigations currently before the international criminal court regarding specific cases of genocide and crimes against humanity may have substantial elements of religious persecution, such as the situations in Sudan,²⁰ Nigeria²¹ and Mali.²² However, religious persecution is not the primary reason for the prosecution or investigation into these situations by the prosecutor of the ICC.

¹⁶ Article 18 of the UDHR & article 18 of the ICCPR.

¹⁷ African Commission on Human and Peoples' Rights; the European Court of Human Rights; and the Inter-American Court and Commission of Human Rights.

¹⁸ Article 5 of the *Rome Statute*.

¹⁹ Charter of the United Nations and Statute of the International Court Of Justice, San Francisco, 24 October 1945. ICJ Statute defines customary international law in Article 38(1)(b) as "...as evidence of a general practice accepted as law".

²⁰ *"The regime's leaders are mainly radical Islamist and the ruling National Congress Party a means to further an Islamic agenda. Incidents against Christians include faith related killings, damaging Christian properties, detention and forced marriage as well as arrests, deportations and raids on church offices."* <http://tiny.cc/opendoorssudan>. Accessed 15/01/2014.

²¹ Refer to p. 11.

²² Refer to p. 9.

6. The persecution of Christians as crimes against humanity and genocide

6.1 Crimes against humanity

Article 7 of the Rome Statute defines “crimes against humanity” as acts “...committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”

The Rome Statute Explanatory Memorandum states that crimes against humanity:

...are particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human being... part either of a government policy or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority... and will reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice.²³

6.2 Important characteristics of crimes against humanity in general

An attack may be identified as crimes against humanity if it comprises the following essential characteristics:

“The attack” – An “attack” may be described as a course of conduct involving the commission of acts of violence, which need not be very large in scale to meet the requirements of severity.²⁴

“Committed as part of a widespread or systematic attack” – The acts or crimes must be committed, either on a *widespread*²⁵ scale, and/or *systematically*,²⁶ to warrant the charge.²⁷ The motive or reason is not a material element of the crime.²⁸

“Directed against any civilian population” – The acts or crimes committed may focus on any civilian group and a specific discriminatory intent need not be proven, except in the case of persecution.²⁹

²³ G. Horton, *Dying Alive – A Legal Assessment of Human Rights Violations in Burma*, April 2005, co-funded by The Netherlands Ministry for Development Co-Operation. Par 12.52.

²⁴ G. Mettraux, *International Crimes and the Ad Hoc Tribunals*, (2006), 156.

²⁵ Widespread refers to the large-scale nature of the attack and the number of victims – International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-A, Appeals Judgment, 17 December 2004, par. 94.

²⁶ “A systematic attack means an attack carried out pursuant to a preconceived policy or plan” – International Criminal Tribunal for Rwanda (ICTR): *Prosecutor v. Clement Kayishema*, Case No. ICTR-95-1-T, 21 May 1999, par 123.

²⁷ *Ibid* (n 24) Mettraux, 171.

²⁸ “Crimes against humanity are distinguishable from genocide in that they do not require an intent to ‘destroy in whole or in part’, but only target a given group and carry out a policy of ‘widespread or systematic’ violations.” M. Cherif Bassiouni, *Crimes Against Humanity*. <http://tiny.cc/crimesofwar>. Accessed 27/02/2013.

²⁹ *Ibid* (n 23) Horton, par 12.52.

“With knowledge of the attack” (mental element) – The acts or crimes must be carried out with a level of direct intent (*dolus eventualis*), whereby the perpetrators’ foremost intention is not the attack itself, but he foresees the necessity of the attack in order to attain his objective. Article 30 of the Rome Statute requires that the material elements of the crime are committed with intent and knowledge.

6.3 Crimes against humanity of persecution

The Rome Statute lists a number of specific acts or omissions³⁰ which constitute crimes against humanity if committed as part of a widespread or systematic attack. Article 7(1) read together with Article 7(1)(h) and Article 7(2)(g) of the Rome Statute defines crime against humanity of persecution as acts;

...the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectively... against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, ...committed as part of a widespread or systematic attack.

In the *Bogosora* case the court stated that:

the crime of persecution consists of an act or omission which discriminates in fact and which: denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*).³¹

In defining the objective element (*actus reus*) of persecution, the Tribunal for Yugoslavia³² has laid down a severity or gravity test whereby an act of persecution may constitute a crime against humanity: A gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other crimes against humanity enumerated in Article 7 of the Statute.

A persecutory act that reaches the same level of gravity as the other acts of crimes against humanity, provides us with a framework of fundamental human

³⁰ State or organizational action can, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. *The Elements of Crimes – Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May-11 June 2010* (ICC publication, RC/11).

³¹ ICTR: *Prosecutor v Théoneste Bagosora*, Case No. ICTR-98-41-T, 18 December 2008 par 2208.

³² ICTY, in the case of the *Prosecutor v Kupreškić et al.* Case No. IT-95-16, 14 January 2000.

rights which, if infringed upon in terms of the elements of persecution, may be classified as crimes against humanity, they include amongst others: the right to life; right to be free from arbitrary arrest, detention or exile; the right to freedom of belief and opinion; the right to freedom of peaceful assembly; the right to equality and the right to be free from discrimination; the right to freedom of thought, conscience and religion; and the right to manifest a religion or belief in teaching, practice, worship and observance. If any listed act, such as murder or torture, was committed with knowledge of the attack and directed with the intention to discriminate against an identifiable group based on political, racial, national, ethnic, cultural, religious, gender or other grounds, the acts go beyond mere crime against humanity of murder or torture, and constitute also crimes against humanity of persecution.

The elements of crimes against humanity of persecution in terms of the Rome Statute may be summarized as:

The perpetrator severely deprived contrary to international law one or more persons of fundamental rights... targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such... targeting was based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law.

The conduct was committed in connection with any act referred to in Article 7 paragraph 1³³, of the Statute or any crime within the jurisdiction of the Court...

The perpetrator knew that the conduct was part of or intended the conduct to be part of widespread or systematic attack directed against a civilian population"³⁴ in order to weaken or destroy the specified group.³⁵

6.4 Situations of crimes against humanity of persecution in the contemporary international criminal justice system

Mali – On the 18th of July 2012 the Government of Mali referred the situation in Mali as from January 2012 to the Prosecutor.³⁶ During the internal armed conflict various atrocities were committed including murder, rape, mutilation, cruel treatment and

³³ Art 7(1) – Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

³⁴ *Ibid* (n 23) Horton, par 11.57.

³⁵ *Ibid* (n 23) Horton, 24. As long as the attack is part of a widespread or systematic policy, the reasons or aims of the policy are secondary.

³⁶ Referral letter by the Government of Mali. <http://tiny.cc/lettermali>. Accessed 23/01/2013.

torture, amongst others. There is also evidence of intentional attacks directed against religious buildings.³⁷ Because these acts were perpetrated during the internal armed conflict, the ICC has preferred to classify these acts as war crimes, although crimes against humanity or genocide are not discarded in the indictment.³⁸ Reports from NGO's concerned with the persecution of the Christian church suggest that Christians are being condemned by the war crime atrocities.^{39 40} Despite an international French military intervention in Mali in January 2013, Christians still fear an Islamist advance on the southern parts of Mali.⁴¹ Preliminary research indicates that the enforcement of Sharia law on Christians in Mali is a clear violation of the right to religious freedom.

An explicit State policy of widespread and systematic attacks does not exist, however a wide practice of atrocities tolerated or condoned by an organizational group or a *de facto* authority is definitely applicable therefore constituting an omission by the Malian government.

"Burmanization" policy – The Republic of the Union of Myanmar / Burma has been classified as the leading country of particular concern regarding the restriction or violation of religious freedom, by the United States Commission on International Religious Freedom.⁴² The Burmese Military Regime is regarded as a government that have engaged in or tolerated "particularly severe" violations of religious freedom.⁴³ The USCIRF annual report of 2013 suggests a universal denial of religious freedom including, "religious freedom violations against ethnic minority Christian... communities, with serious abuses against mainly Christian civilians during military interventions in Kachin State."⁴⁴

Horton considers the conduct by Junta in Burma / Myanmar to validate its classification as either genocide or crimes against humanity. "Burmanization", as it is referred to, is a policy of religious and cultural destruction. Horton concludes that

³⁷ Report on the Situation in Mali. Par 109 – 113. <http://tiny.cc/reportmali>. Accessed 23/01/2013.

³⁸ "The information is insufficient to conclude that these alleged acts were committed in the context of a widespread or systematic attack against the civilian population and in furtherance of a State or organizational policy. This assessment may be revisited in the future." – Report on the Situation in Mali, *Ibid* (n 40) Par 132.

³⁹ World Watch Monitor – "Hope in Mali rises with international military intervention" (15 January 2013). <http://tiny.cc/worldwatchlist>. Accessed 23/01/2013.

⁴⁰ Human Rights Watch – "Mali: War Crimes by Northern Rebels" (30 April 2012). <http://tiny.cc/human-rightswatch>. Accessed 23/01/2013.

⁴¹ *Ibid* (n 39) World Watch Monitor.

⁴² Annual Report of the U.S. Commission on International Religious Freedom, April 2013 (Covering January 31, 2012 – January 31, 2013), 6.

⁴³ International Religious Freedom Act of 1998 (IRFA) defines "particularly severe" violations as ones that are "systematic, ongoing, and egregious, including acts such as torture, prolonged detention without charges, disappearances, or other flagrant denial[s] of the right to life, liberty, or the security of persons."

⁴⁴ *Ibid* (n 42) Annual Report of the U.S. Commission on International Religious Freedom, 6.

the atrocities committed in Burma justify its classification as crimes against humanity of persecution inflicted against religious minorities in an apparent attempt to “make life physically unsustainable for victims over the long term.”⁴⁵

Nigeria – After analyses of alleged crimes, including: killings, abductions, rape and sexual violence, committed in Central Nigeria since mid-2004, the office of the prosecutor opened a preliminary examination of the situation in Nigeria. The ICC has unfortunately failed to address the “systematic persecution, discrimination and marginalization of Christians in the Northern States of Nigeria.”⁴⁶

“Christians of Northern origins have been the subject of targeted killings, burning and bombings of their churches and property along with other forms of discrimination and marginalization.”⁴⁷

It is unfortunate to note that the ICC is reluctant to define a conflict or actions emanating from religious connotations as religious persecution.⁴⁸ In the recent Preliminary Examination Report of the Office of the Prosecutor to the Assembly of States Parties⁴⁹ regarding Nigeria, the report clearly states that the mischaracterization:

“...conceals the source of the violence by implying that the primary reason violent ‘clashes’ have occurred in Nigeria is due to divisions between ‘indigene’ and ‘settler’ communities and ethnic differences, rather than any other causes such as the religiously motivated attacks of Boko Haram.”⁵⁰

The lack of conviction in defining violent “clashes” in the northern states of Nigeria as religious persecution, trivializes the persecution of Christians in Nigeria.

6.5 Classifying acts as crimes against humanity of religious persecution

The writer contends that the following elements should be applied in order to ascertain whether a specific situation or a range of actions could be classified as crimes against humanity of religious persecution:

A course of conduct or omissions;

- that is of a widespread or systematic nature;
- directed against a protected group as a response to their religious beliefs or affiliations or lack thereof;

⁴⁵ *Ibid* (n 23) Horton, 24.

⁴⁶ U. Danfulani, “Ethno-religious crises in northern Nigeria as self-determination movements or religious fundamentalism: The impact of violent conflicts on Religious Freedom” Paper presented at the International Consultation on Religious Freedom Research on 16 March 2013.

⁴⁷ *Ibid* (n 46) Danfulani.

⁴⁸ “Jubilee Campaign Engages the International Criminal Court at The Hague”. <http://tiny.cc/jubileecam-paign>. Accessed 06/06/2012.

⁴⁹ <http://tiny.cc/otpreport>. Accessed 06/06/2012.

⁵⁰ *Ibid* (n 48) Jubilee Campaign.

- regulated or enforced through a State or organizational policy or of a wide practice of atrocities tolerated or condoned by a government or a *de facto* authority actively promoting or encouraging such an attack against the religious group;
- with the specific intent to deprive the members of the religious group of their fundamental human rights because of their membership of the religious group;
- while the perpetrator/s knew or should have known that the conduct was part of or intended the conduct to be part of the widespread or systematic attack directed against the religious group; and
- reaching the level of seriousness of a large scale of gross or blatant denials of fundamental human rights in connection with other instances of religious persecution or other crimes of serious concern.

6.6 Genocide

The term “genocide” was coined by Polish lawyer Raphael Lemkin during World War II to label the crimes committed by Nazi Germany against the European Jews during the Holocaust.⁵¹ “The criminalization of genocide seeks to protect certain groups’ right to exist.”⁵²

Article II of the Convention on the Prevention and Punishment of the Crime of Genocide was the first international legal instrument that defined genocide:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

The Genocide Convention has become part of customary international law, a peremptory norm,⁵³ as well as an obligation *erga omnes*.⁵⁴ The Convention makes the prevention and punishment of genocide binding on all states⁵⁵ and places an obli-

⁵¹ G. Werle, *Principles of International Criminal Law* (2005), 190.

⁵² *Ibid* (n 51) Werle, par 566.

⁵³ K. Kittichaisaree. *International Criminal Law* (2001), 67.

⁵⁴ *Case concerning the Barcelona Traction, Light and Power Company, Ltd* (Belgium v Spain) of 1970, ICJ Reports 3 at 32. Obligations *erga omnes* refers to obligations owed by all states towards the international community.

⁵⁵ *Case concerning the Barcelona Traction, Light and Power Company, Ltd* (Belgium v Spain) of 1962, ICJ

gation on states to enact “the necessary legislation to give effect to the provisions of the present Convention and... to provide effective penalties for persons guilty of genocide.”⁵⁶ States are further compelled to prosecute persons charged with genocide by a competent domestic tribunal of that state in the territory of which the act was committed, or alternatively if the state is unwilling or unable to prosecute at a national level, the state must refer the matter to an international penal tribunal that may have jurisdiction.⁵⁷

6.7 Important characteristics of genocide

An act may be identified as genocide if it comprises the following essential characteristics:

Genocidal acts – Either acts or omissions⁵⁸ may constitute genocidal acts.⁵⁹ Genocidal acts include “*acts against the physical or psychological integrity of the group or its existence or biological continuity.*”⁶⁰

Mental element of genocide (*mens rea*) – What is required is a “physiological nexus between the physical result and the mental state of the perpetrator.”⁶¹ The perpetrator must, at the time of committing acts constituting genocide, be aware of the wider intention of such an attack. The perpetrator is also required to realize that the individual is part of such a group and that the group is protected under the Genocide Convention.

Motive or purpose of the genocidal acts – Genocide requires the specific intent to destroy or attempt to destroy the group or a part of it.⁶² The distinctive characteristic which separates the crime of genocide from the other core crimes is the specific intent (*dolus specialis*) of genocide, which is to destroy all or part of a group.⁶³

Destruction of a group *in whole or in part* – In considering the meaning of “*in part*” the ICTY stated that: “The part must be a substantial part of that group... the part targeted must be significant enough to have an impact on the group as a whole.”⁶⁴

Reports.

⁵⁶ Article 5 of the *Genocide Convention*.

⁵⁷ Art 6 of the *Genocide Convention*.

⁵⁸ ICTR: *Prosecutor v Kambanda*, Case No. ICTR-97-23-S, ICTR T.Ch., 4 Sept 1998, par 39. The court found that Kambanda, as Prime Minister of Rwanda, had failed to take action to stop the Rwandan genocidal massacres.

⁵⁹ *Ibid* (n 53) Kittichaisaree, 71.

⁶⁰ *Ibid* (n 51) Werle, 190.

⁶¹ *Ibid* (n 53) Kittichaisaree, 72.

⁶² *Ibid* (n 51) Werle, par 565.

⁶³ *What is Genocide?* Website of the Faculty of Law, McGill University. <http://tiny.cc/whatisgenocide>. Accessed 01/03/2013.

⁶⁴ ICTY: *Prosecutor v Radislav Krstic*, Case No. IT-98-33-T, 2 August 2001.

Protected groups – The Convention criminalizes acts of genocide against certain protected groups based on nationality, ethnicity, race or religious characteristics. The perpetrator must know or perceive the individual to be a member of such a group.

6.8 Genocide by religious persecution

Genocide by religious persecution can be regarded as the intentional large-scale discriminate violation of the fundamental right of existence of members belonging to or affiliated with a specific religious group. Advocates of religious freedom refer to this phenomenon as martyrdom.

If one is martyred, it is because they were persecuted in such a way as to result in death... a martyr's experience preceding his or her death is understood as religious persecution. It is the actual death of an individual that qualifies them as a martyr... one cannot experience martyrdom apart from his experience of (religious) persecution.⁶⁵

Martyrdom is a specific form of religious persecution and may be categorised as genocide if the perpetrator has the specific intention to destroy, in whole or in part, an identifiable religious group. If this proposition is accepted we may refer to this form of genocide as genocide by religious persecution. The nature of genocide is inherently discriminatory in nature based on, amongst other grounds, religion. To therefore infer that genocide committed against a specific religious group with the intention to destroy that group is a specific form of religious persecution, is justified. Genocide by religious persecution can be validly distinguished from crimes against humanity of religious persecution depending on the intention of the perpetrator and reliant on the conduct which violated the fundamental right.

6.9 Situations of genocide by persecution in the international criminal justice system

The Bosnian Genocide case is a prime example of genocide by persecution, whereby the large scale killing of Bosnian Muslims formed the basis for the prosecution of the leadership of the Bosnian-Serb Army. The ICTY judged that the 1995 Srebrenica massacre was genocide.⁶⁶

⁶⁵ C.L. Tieszen, *Re-examining Religious Persecution* (2008), 33.

⁶⁶ ICTY: *Prosecutor v. Radislav Krstić* – Appeals Chamber – Judgment – IT-98-33 (2004) ICTY 7 (19 April 2004).

By seeking to eliminate a part of the Bosnian Muslims, the Bosnian Serb forces committed genocide. They targeted for extinction the forty thousand Bosnian Muslims living in Srebrenica... and deliberately and methodically killed them solely on the basis of their identity.⁶⁷

In Côte d'Ivoire a civil war broke out after the 2010 presidential election. The result of the election was that the opposition leader Alassane Ouattara had defeated the incumbent president Laurent Gbagbo. However Gbagbo refused to relinquish power which resulted in post-election violence during which more than 3 000 persons died. Atrocities were committed both by the Ivorian army and the Forces Nouvelles de Côte d'Ivoire loyal to Gbagbo. On 3 October 2011 the pre-trial chamber of the ICC authorized an investigation into the violence in Côte d'Ivoire. The prosecutor of the ICC is investigating the role played by members of Ouattara's government.

The crimes that took place in Côte d'Ivoire... may be qualified as genocidal massacres, ... the assaults were often directed at specific ethnic or religious communities... the attacks were the result of an organizational policy of Laurent Gbagbo and his forces. The murders, rapes, persecutions and other inhuman acts were committed with the intent to partially destroy ethnical, religious and national groups.⁶⁸

6.10 Classifying acts as genocide by religious persecution

Genocide in the context of genocide by killing; genocide by causing serious bodily or mental harm; genocide by deliberately inflicting conditions of life calculated to bring about physical destruction; genocide by imposing measures intended to prevent births; and genocide by forcibly transferring children, may all be classified as specific forms of genocide by religious persecution if the genocidal acts are directed at, and intended to, destroy the existence of a specific religious group.

The writer contends that the following elements should be applied in order to ascertain whether a specific situation or a range of actions should be classified as genocide by religious persecution:

The deliberate and systematic repudiation of fundamental human rights;

- by a course of discriminate genocidal attacks or omissions;
- against the physical or psychological integrity;
- or the existence, or biological, or social continuity;

⁶⁷ ICTY: "Address by ICTY President Theodor Meron, at Potocari Memorial Cemetery", The Hague, 23 June 2004.

⁶⁸ *Genocide Watch: Côte d'Ivoire*. www.genocidewatch.org/cotedivoire.html. Accessed on 05/03/2013.

- of a protected group as a response to their religious beliefs or affiliations or lack thereof;
- with the specific intent to destroy or attempt to destroy the essential foundations of the life;
- of the entire religious group or a substantial part thereof;
- as part of a coordinated plan tolerated or condoned by a government or a factual authority actively promoting or encouraging such an attack against the religious group;
- while the perpetrator/s, at the time of committing acts constituting genocide, was aware or should have been aware of the wider intention of such an attack against members of the religious group based solely on the martyrs' membership to the religious group.

7. Conclusion

Combining relevant acts of religious persecution with the requirements for the prosecution of acts classified as core crimes under the Rome Statute results in a barometer for classifying severe acts of religious persecutions as crimes against humanity of persecution or genocide by persecution. With this classification directive, contemporary case studies of religious persecution may be evaluated in order to ascertain whether or not such religious persecution could be validated as crimes that shock the conscience of humankind, thus necessitating the criminalization and prosecution of such acts at a national level or if domestic courts are incompetent or unwilling to do so at an international level.

The international community has created effective mechanisms for the protection of human rights as well as the restriction of impunity. The prosecution of the authors or initiators under international criminal law may be used as a mechanism to effectively safeguard religious freedom by prosecuting severe acts of religious intolerance. Classifying and effectively prosecuting acts of religious persecution as crimes against humanity and genocide may serve the purpose of conserving the right to manifest one's freedom of religion or belief as a universally protected right, and not just a privilege bequeathed on some.

Whilst there is still comprehensive research and a thorough analysis of relevant case studies required to validate specific situations of religious persecution as crimes against humanity of persecution and genocide by persecution, it should be clear that the criminalization of religious persecution in this way will elevate the crime of religious persecution and confirm its inclusion as part of the international core crimes.

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Apostasy

What do contemporary Muslim theologians teach about religious freedom?

Christine Schirmmacher¹

Abstract

What are the positions taken by influential Islamic theologians on religious freedom? How do classic Islamic theologians at influential institutions of scholarship such as al-Azhar-University in Cairo or the Islamic University of Medina judge this question? A minority of theologians express themselves bluntly by saying that religious freedom is for them exclusively the freedom to belong to the one true religion, Islam, or to turn towards it. And furthermore, in the case where there is doubt or criticism among Muslims, their idea is that the death penalty immediately has to be administered. For an additional minority, religious freedom applies to every individual and means the freedom to accept Islam or to turn from it, completely in the sense of the UN Universal Declaration of Human Rights. A 'moderate' majority of theologians defines religious freedom in a differentiated manner nowadays: In countries characterized by Islam they advocate for non-Muslims - in particular for Jews and Christians - a situation where they may retain their religion and not convert to Islam. For Muslims, however, they define religious freedom exclusively as freedom of thought with the possibility, under certain circumstances, of secretly holding doubts about Islam.

Keywords Sharia law, death penalty, apostasy, religious freedom, Islam.

1. Religious freedom – a one-way street?

What are the positions taken by influential Islamic theologians on religious freedom? Is the death sentence against people like Pastor Yousef Nadarkhani which had previously been issued on June 28, 2011 by the Supreme Court of Iran on account of apostasy, covered by the Koran and Islamic theology, or does this merely have to do with power politics? And how do classic Islamic theologians at influential institutions of scholarship such as al-Azhar-University in Cairo or the Islamic University of Medina judge this question?

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The question of religious freedom is judged variously from within Islamic theology. A minority of theologians express themselves bluntly by saying that religious freedom is for them exclusively the freedom to belong to the one true religion, Islam, or to turn towards it.² And furthermore, in the case where there is doubt or criticism among Muslims, their idea is that the death penalty has to be administered immediately. For an additional minority, religious freedom applies to every individual and means the freedom to accept Islam or to turn from it, completely in the sense of the UN Universal Declaration of Human Rights.³

A “moderate” majority of theologians defines religious freedom in a differentiated manner nowadays: In countries characterized by Islam they advocate for non-Muslims – in particular for Jews and Christians – a situation where they may retain their religion and not convert to Islam. For Muslims, however, they define religious freedom exclusively as freedom of thought with the possibility, under certain circumstances, of secretly holding doubts about Islam. Whoever publicly confesses or propagates his deviating notions, however, according to the opinion of a broad majority of traditionally trained theologians, deserves the death penalty⁴ – even when there are only a few countries in which it would be at all possible to bring an apostate before a court. However, an apostate is quickly viewed as an enemy of the state. Such a situation can be at times very dangerous if legal scholars in mosques make calls to kill apostates and if society persecutes such renegades or in some cases even executes them in broad daylight. This for instance was the case with the Egyptian secularist Farag Fawda, who was murdered in broad daylight in 1992 in Cairo. This occurred after two scholars at the al-Azhar University, Muhammad al-Ghazali und Muhammad Mazru’a, had convinced those who became the perpetrators that it is the religious duty of every believer to execute apostates.⁵ The roots of this understanding lie in Sharia law, which from the early days of Islam up to the 10th century called for the death penalty for apostates in Sunni as well as Shiite Islam.

² The well-known Indian theologian and activist Abu l-A’la Maududi (1903-1979) has extensively written about the “freedom” everyone has to accept Islam but no other religion; otherwise he is to be punished with the death penalty: Abul Ala Mawdudi. *The punishment of the apostate according to Islamic law*. The Voice of the Martyrs: Mississauga, 1994.

³ An example would be Abdullah Saeed (born 1960), professor of Arabic and Islamic Studies in Melbourne, Australia, who has published extensively on the topic of religious freedom; see for example: Abdullah Saeed; Hassan. *Freedom of religion, apostasy and Islam*. Ashgate: Aldershot, 2004.

⁴ This is for example the position of the influential Egyptian born theologian Yusuf al-Qaradawi (born 1926) who interprets conversion from Islam to another religion as state treason: Yusuf al-Qaradawi. *jarimat ar-ridda wa-’uqubat al-murtadd fi dau’ al-qur’an wa-’s-sunna. silsilat rasa’il tarshid as-sa’wa*, Nr. 6. Maktabat wahba: Kairo, 2005/3.

⁵ Cf for instance the depiction of the case in Armin Hasemann. “Zur Apostasiediskussion im Modernen Ägypten,” in: *Die Welt des Islam* 42/1 (2002), 72-121.

2. The consequences of apostasy from Islam

As a result, Muslims as well as representatives of classic Islamic theology consider an individual's orientation towards Islam to be desirable and yet condemn his or her falling away. This applies all the more when the "apostate" turns to another religion, such as for instance the Christian faith, which is held by Islamic theology as superseded and adulterated. As a consequence, Muslims who become Christians or, in rare cases, Buddhists for instance, or who are members of a non-recognized minority such as the Baha'i, are confronted with a number of difficulties.

Often the family has no understanding at all when it comes to a change of religion. It may attempt to change the individual's mind and at times threatens them, for apostasy as a general rule means disgrace, treason, and scandal. In most countries characterized by Islam, the convert can indeed not be condemned to death according to law, but the individual can at least be disinherited and forced to divorce (since according to Sharia law a Muslim may not be married to a non-Muslim). The apostate is threatened with the removal of his children (since according to Sharia law Muslim children may not be raised by a non-Muslim), and he often loses his job (since practically no one will employ a convert) and home.⁶ It is not uncommon for him to be cast out by his family. In dramatic cases, it can go so far that members of the family or society themselves lay hands on the convert and mistreat him, force him into psychiatric care, or even attempt to kill him. Many believe that the public loss of face due to having a convert in the family cannot be tolerated. Others hear from an imam or mullah that according to Sharia law it is the duty of every believer to kill apostates from Islam in order to defend Islam, since the Western world – especially the USA – has set out to destroy Islam and to "buy" converts and send them out as spies.

Because according to Sharia law it is not possible to leave Islam, the children of apostates in any event remain Muslims. They also have to be raised as Muslims and have to undergo Islamic religious instruction. They may only get married within the framework of an Islamic ceremony and their children likewise legally count as Muslims, even if they, their parents, and their grandparents have converted to Christianity. In many states a converted married couple or a converted parent is threatened with the removal of the children, if for instance a relative files a legal suit charging that "Muslim children" are not allowed to grow up among Christians, which Sharia law prohibits.

For that reason the charges of unbelief, apostasy from Islam, and blasphemy in countries characterized by Islam count as the most serious charges there are.

⁶ Some of the social consequences are mentioned by W. Heffening. Murtadd. In: *Encyclopedia of Islam*/2, Vol. VII. E. J. Brill: Leiden, 1993, 635-636.

They are not only leveled in cases where a person leaves Islam or brings guilt upon himself for blasphemy. They are times directed against undesirable political opponents or used in order to extort possessions. This is particularly the case in Pakistan. "Blasphemy laws," have existed there since colonial times, and they have been used as a powerful weapon, having been exacerbated step by step since 1980 in order mainly to apply pressure to the special Islamic community known as the Ahmadiya, as well as Christians.

3. Blasphemy laws in Pakistan and their victims

Thus Shabaz Bhatti, the Religious Minorities Minister and member of the ruling Pakistan Peoples Party (PPP), was murdered in 2011 in Islamabad after he had announced that he wished to revise the blasphemy laws applicable in Pakistan. The blasphemy laws, which were tightened in 1980, 1982, 1984, and 1986, threaten degrading remarks about the caliphs, the wives, family, and the companions of Muhammad, and the defilement, destruction, or desecration of the Koran with lifelong imprisonment. Furthermore, the degradation of Muhammad is threatened with the death penalty. From 1986 to 2007 there were over 4 000 charges filed on account of blasphemy.⁷

Shabaz Bhatti was dragged from his car by three assassins and publicly executed on the way to his ministry on 2 March 2011. The terror group Tehrik-i Taliban Pakistan (TTP) later assumed responsibility for the act. The ruling Pakistan Peoples Party (PPP) condemned the act in a restrained manner and retracted its proposal to revise the blasphemy laws from Parliament.

The prior Governor of Punjab and close friend of the ruling President Asif Ali Zardari, Salman Taseer, lost his life for the same reason. He was shot and killed by his bodyguard Malik Mumtaz Hussein Qadri, at a market in Islamabad. The remaining members of his security unit did not intervene. The background of the action was that Governor Taseer had visited the condemned Christian Asia Bibi in prison, who had been sentenced to death by hanging. Governor Taseer had assured her of his support.⁸ Asia Bibi had been condemned on 8 November 2010 by a court in the Province of Punjab on account of an alleged insult to Muhammad. A year earlier, as a day laborer on an estate, she had fetched water for female Muslim workers. Before accepting the water, they requested her to convert to Islam because the water was otherwise "impure," to which Asia Bibi is supposed to have answered with her

⁷ These figures are mentioned by Theodore Gabriel. *Christian citizens in an Islamic state. The Pakistan experience*. Ashgate Publishing Limited: Aldershot, 2007, 66.

⁸ Cf for instance the reports: "Vor einem Jahr erstes Todesurteil gegen eine Frau wegen Blasphemie." <http://tinyurl.com/igfmreport> (14.04.2012).

confession that Jesus Christ is the true prophet – Asia Bibi later disputed, however, that she had ever said those words.

A number of days later demagogic slogans were propagated against her over loudspeakers from the mosque. Then inhabitants of the village sought to take her by force. This was prevented by the police when they arrested her. Under pressure by Islamic clerics, a charge was brought against Asia Bibi on account of blasphemy, and she did not receive defense counsel. On 9 November 2010, in the court of first instance, she was sentenced to pay two and one-half years' salary and condemned to death by hanging. Asia Bibi has not yet been executed, but remains in prison, and there is hardly any hope left that she can be released and be united with her family in the near future.

While human rights organizations have advocated her release, President Asif Zardari has been warned by radical Islamic forces not to pardon her. Up until now there has not been an execution on account of blasphemy in Pakistan, but there are, however, numerous individuals who have been charged with blasphemy and are imprisoned. A number of those charged became the victims of lynching prior to the court proceedings.

4. Reasons for the rejection of complete religious freedom in Islam

The most prominent statement in the Koran on religious freedom is surely the verse: “Let there be no compulsion in religion” (Sura 2:256). Numerous Muslim theologians have emphasized that no one may be forced to convert to Islam. This is also mirrored in parts of the Islamic history of conquest: In areas conquered by Muslims, Christians and Jews were as a general rule allowed to retain their faith and their religious autonomy and thus did not have to convert. They were “subdues” (*dhimmi*) who had to pay special taxes and submit to the authorities. They were tolerated, second class citizens and legally discriminated against since they adhered to a religion that due to its deviation from Islam was viewed as adulterated and had been superseded by Islam.

Whoever has converted to Islam at some time, however, may not leave Islam. For that reason, according to the predominant opinion among theologians, Sura 2:256 does not mean that Islam would advocate free change of religion in both directions and the equality of all religions. Rather, it is often so interpreted to mean that no individual can be forced into the act of “belief” (in the sense of being convinced).

Conversion to Christianity counts as basically false because the Koran views Judaism and Christianity as inferior religions: It appears to be a regress to a superseded belief, which from the point of view of Islam was corrected and replaced by

the “seal of the prophets” (Sura 33:40). The Cairo Declaration on Human Rights mentions Islam for instance in Article 10 as “the religion of true unspoiled nature,”⁹ thus the unadulterated religion which naturally corresponds to every individual; every deviation from it is counted inferior. Additionally, Christianity appears to many theologians to be a “Western” religion, a religion of the crusaders and colonial lords and linked to Western political dominance.

An additional reason for the rejection of the freedom to change religions lies in the fact that turning away from Islam is not viewed as a private matter by many Muslims. Rather, it is a disgrace for the entire family or even a political act. It foments unrest, brings about turmoil, or is seen as a declaration of war on the Muslim community. Due to the fact that after Mohammed’s death in 632 several tribes on the Arabian Peninsula who had initially accepted Islam turned from it, Abu Bakr, the first caliph after Mohammed, fought these tribes in the so-called Ridda wars (apostasy wars) and successfully struck down the insurgency.¹⁰ Owing to the “apostasy wars” of early Islam, apostasy has from early on been linked in the collective memory of the Muslim community with political insurrection and treason and the suppression of this act of treason.

5. The Koran, tradition, and Islamic theologians on apostasy

On the one hand, the Koran itself speaks of unbelief and of “straying” (Sura 2:108), for which the punishment of God and “a grievous chastisement” (9,74) are threatened, but it does not define an earthly punishment and does not name a method of flawlessly determining apostasy. A number of verses even appear to suggest free choice of religion (e.g., Sura 3:20), while others, such as Sura 4:88-89, warn Muslims to “seize them and slay them” who “turn renegades.” An ambiguous textual finding is thus present, and it is interpreted by a small number of Muslim theologians to say that the Koran advocates complete freedom of religion. This is due to the fact that no clear textual finding of the elements of the offense of apostasy can be made. Others, however, argue that the Koran votes for the death penalty in the case of apostasy, for example, owing to verses such as Sura 4:88-89. What is first of all spoken of here in the verse are “hypocrites” (Arabic: *al-munafiqun*), who wish that all were as unbelieving as they are. And then it states:

But take not friends from their ranks until they flee in the way of God (from what is forbidden). But if they turn renegades, seize them and slay them wherever ye find them; and (in any case) take no friends or helpers from their ranks . . .

Sura 9:11-12 also has to do with those who have joined the Muslim community – verse 11 mentions repentance, ritual prayer, and the giving of alms as marks of

⁹ See the text: <http://tiny.cc/cairodeclaration> (15.09.2013).

¹⁰ Cf Tilman Nagel. *Mohammed. Zwanzig Kapitel über den Propheten der Muslime*. Oldenbourg: München, 2010, 193-198.

their new adherence to Islam. They then “violate their oaths” and the call is: “Fight ye the chiefs of unfaith” (Arabic: *fa-qatilu a’immat al-kufr*). With these verses as well as the incipient and militarily defeated movement of apostasy, the *Ridda* wars, which occurred on the Arabian Peninsula upon Muhammad’s death, numerous theologians derive from apostasy a political danger to the Muslim community.

Islamic tradition as it was compiled up to the 9th/10th century (with reports about Mohammed and the first Muslims and their actions) condemned turning away from Islam far more sharply and called more clearly for the death penalty.¹¹ Tradition expressly uses the term “apostasy” (Arabic: *ridda*) for turning from Islam and reports the execution of individual apostates, for instance by caliphs, and several times calls for administering the death penalty to apostates.

The most often quoted tradition relating to advocacy of the death penalty in this context is the dictum attributed to Muhammad: “Whosoever changes his religion, kill him” (Arabic: *man baddala dinahu fa-’qtulubu*).¹² Other theologians in turn doubt the genuineness of this dictum and have not allowed it to count as justification of the death penalty.

Admittedly the founders and students of the four Sunni legal schools of religious law as well as the most important Shiite school of law go along with this call for administering the death penalty for turning from Islam. The result is that from the early days of Islam, the majority of influential theologians call for the death penalty in the case of conversion and have set this down in binding form in texts for criminal law within Sharia compendia.¹³

6. Who is an apostate?

Over the course of centuries, Islamic theologians have indeed compiled many marks of apostasy – first and foremost are the denial of God and the belief in many gods. Thus these marks of apostasy are denials of the center of Islamic theology, monotheism – but at no point can a comprehensive definition of apostasy be found in the normative texts or in the work of any theologian.¹⁴ All the circumscriptions up to this day have not

¹¹ Lutz Wiederhold. Blasphemy against the Prophet Muhammad and his companions (*sabb al-rasul, sabb al-sa’abah*): The Introduction of the topic into Shafi’i legal literature and its relevance for legal practice under Mamluke rule. In: *Journal of Semitic Studies* 42/1 (1997), 39-70.

¹² This tradition goes back to Ibn ‘Abbas; Bukhari (*istitabat al-murtaddin, bab 2*, Vol. 9, book 84, No. 57) mentions it among others, also Ibn Maja (*hudud, bab 2*) as well as al-Nasa’i (*tahrim ad-dam, bab 14*). Cf the overview over the texts of tradition at A. J. Wensinck. *Concordance et Indices de la Tradition Musulmane*, 7 vols., E. J. Brill: Leiden, 1936-1969, vol. I, 153 and vol. V, 287.

¹³ Cf Frank Griffel. Apostasy. In: *Encyclopaedia of Islam*/3. <http://tiny.cc/encyclopeadia> (15.09.2013); Wael Hallaq. Apostasy. In: *Encyclopaedia of the Qur’an*, vol. 1. E. J. Brill: Leiden, 2001, 119.

¹⁴ Some conditions necessary to “prove” apostasy are mentioned for example by Mahmoud Ayoub. Religious freedom and the law of apostasy in Islam. In: *Islamochristiana* 20 (1994), 88.

been sufficiently comprehensive on the basis of content or have remained vague. Thus, throughout history there has only been limited consensus achieved among scholars. The lack of a scholarly hierarchy in at least Sunni Islam has also contributed to this situation.

Far-reaching consensus exists from early days onward that distancing oneself from Islam in word or deed counts as apostasy. This is the case even if the involved party only expressed itself in jest. Likewise the permanent, deliberate non-observance of the Five Pillars of Islam counts as apostasy, in particular the duty to pray, the non-observance of which cannot be explained away on various grounds (such as illness, travel, or the like). Additionally, every conviction which essentially contradicts the basic teachings of Islam is generally counted as apostasy, such as the denial of God or a declaration of the invalidity of the Sharia.¹⁵

The fact remains that from the early days of Islam and throughout the entirety of Islamic history, people have been executed on account of their apostasy. Gaps in the reconstruction of history leave us unsure whether the death penalty was administered in every case, in particular during the early days of Islam, whether the apostate received an opportunity to repent, and just who was justified in the first place to judge what constituted apostasy and to bring charges and conduct executions. Up to the 19th century, there are known individual cases of executions, but there are cases of pardons as well.

In the 20th century the topic received a brand new meaning. In connection with the rise of Islamism and the call on the part of politico-Islamic forces to bring about the complete implementation of the Sharia, there have been increased calls for the execution of apostates. Individuals who interpret the Koran progressively, women's rights activists, critical journalists, and authors, secularists, and members of minorities have increasingly been charged with apostasy. As a result, there have been at least 50 charges of apostasy brought before courts in the last 20 years in Egypt, among them the famous case of the Koran scholar Nasr Hamid Abu Zaid. He had to flee from Egypt to the Netherlands in 1996 on account of apostasy charges.¹⁶ A number of theologians even called at that time for the introduction of the death penalty into Egyptian law.

7. Apostasy in the 20th century: A confession of faith as a coup attempt

There is an increasing attempt, especially by Islamists, to show that the persecution of apostates has "always" been practiced and apart from that, is a compulsory ac-

¹⁵ Cf. Adel Theodor Khoury (Translator). *Der Koran, Arabisch-Deutsch. Übersetzung und wissenschaftlicher Kommentar*. Gütersloher Verlagshaus: Gütersloh, 1991, vol. 2, 94-98.

¹⁶ The whole case of Abu Zaid is analysed in the following dissertation: Jörn Thielmann. *Nasr Hamid Abu Zaid und die wiedererfundene hisba. Sari'a und Qanun im heutigen Ägypten*. Ergon: Würzburg, 2003.

tion. This is due to the idea that in the case of apostasy one is dealing with a capital crime. In modern times, apostasy is frequently equated with treason, insurgency, the revocation of political loyalty, and subversion.

Nowadays Muslim theologians usually defend one of three positions on the question of apostasy: A minority, such as the influential Pakistani theologian, journalist, and political activist Abu l-A'la Maududi (d. 1979), calls without compromise for the death penalty for every individual who leaves Islam.¹⁷ Another minority, including the theologian Abdullah Saeed (b. 1960), who hails from the Maldives, calls for complete freedom of belief. In his case, freedom also includes the latitude to turn from Islam to a new religion without consequences. Abdullah Saeed is also of the opinion that threatening a convert with the death penalty at the time of early Islam was motivated by the Islamic community's desire for political survival and for that reason nowadays no longer has any implication.¹⁸

The majority of classical Islamic theologians supposedly advocate the understanding of the internationally influential Egyptian scholar Yusuf al-Qaradawi (b. 1926). According to this position, a Muslim may indeed entertain definite doubts in his innermost being. This is due to the fact that the innermost being of an individual is not accessible to anyone and for that reason cannot be judged. However, according to Qaradawi's understanding, the individual may not speak with anyone about his doubts, may not convert to another religion, and may not attempt to entice an individual away from Islam. He may also not criticize the Sharia, Islam, the Koran, or Mohammed in any respect. If he does this, however, Qaradawi views it as inciting insurrection, treason, and divisiveness within the Muslim community, which has to be prevented and punished: In this case al-Qaradawi considers the administration of the death penalty to be compulsory. His definition of "freedom of belief" does not mean religious freedom. Rather, it is only a freedom of inner thought and conviction, without this being allowed to come to expression. In the process, a personal profession of faith becomes treason.¹⁹

7.1 The case of Yusuf Nadarkhani

Pastor Nadarkhani was initially arrested in 2006, again on 12 October 2009, and had remained for a long time in an intelligence services detention facility in Lakan outside of the city of Rasht in the northern part of Iran. After what was supposedly an order in December 2011 directing the state authorities to attempt for at least one

¹⁷ Abul Ala Mawdudi. *The punishment of the apostate according to Islamic law*. The Voice of the Martyrs: Mississauga, 1994.

¹⁸ Abdullah Saeed; Hassan. *Freedom of religion, apostasy and Islam*. Ashgate: Aldershot, 2004.

¹⁹ Yusuf al-Qaradawi. *jarimat ar-ridda wa-'uqubat al-murtadd fi dau' al-qur'an wa-'s-sunna. silsilat rassa'il tarshid as-sa'wa*, Nr. 6. Maktabat wahba: Kairo, 2005/3.

year to motivate Nadarkhani to return to Islam, it turned out that he had not been executed. He had presumably been submitted to mistreatment and torture. One means of pressure was first of all the arrest of Nadarkhani's wife on 18 June 2010 and her conviction to lifelong imprisonment. After this did not move Nadarkhani to return to Islam, she was released. The authorities also threatened the parents with the removal of the children from their custody so that they could be raised in a Muslim family. On 22 September 2010, Yusef Nadarkhani was sentenced to death by hanging in a judgment by the Chamber of First Instance of the Iranian Revolutionary Court. This was on account of "dissemination of non-Muslim teaching" and "apostasy from the Islamic faith." On 28 June 2011 the judgment was confirmed by the Third Chamber of the Supreme Court in Qom. Gholamali Rezvani, Vice- Governor of the Provinz of Gilan, labeled Pastor Nadarkhani a "Zionist" who had "made himself guilty of corruption and had committed high treason." Other Iranian media designated him a "rapist," "burglar," and an "extortionist." He was denied all contact with his family as well as his legal counsel. Nadarkhani's lawyer, Mohammad Ali Dadkhah, was sentenced in July 2011 to lashings, 9 years of imprisonment, and a 10-year occupational ban as a lecturer and lawyer in addition to a fine. Pastor Nadarkhani was finally unexpectedly released on 9 September 2012. Although this case has tentatively come to an end, it should not make us forget the many people who are still in prison in Iran only because their faith deviates from the state propagated form of Islam, many of whom are subjected to torture and mistreatment in various forms.

Although the Iranian Constitution guarantees religious freedom, the death penalty can be carried out any day against people like Pastor Nadarkhani who are considered apostates. Additionally, Iran, by signing the International Covenant on Civil and Political Rights, has incurred the obligation of allowing its citizens the right to freedom of thought, conscience and religion. It might be that the international response to the case in political circles and the media had prevented Nadarkhani's execution.

Nadarkhani has for years been the first convert where the Iranian judiciary has openly named "apostasy from Islam" as the justification for their death sentence. Earlier converts were mostly charged with other offenses such as "espionage" or "drug dealing." Others, such as the Iranian pastor Mehdi Dibaj, were dragged outside in broad daylight, and later found dead.²⁰ Since the Iranian government finds itself presently under tremendous pressure, converts from Islam and underground churches see themselves confronted with numerous arrests, forms of intimidation, and now what may soon possibly be the first execution on account of apostasy.

²⁰ Eliz Sanasarian. *Religious minorities in Iran*. CUP: Cambridge, 2000, 124-125.

7.2 Religious freedom according to Iran's definition

Due to a change in penal law, an insult to Muhammad has indeed been punishable by threat of the death penalty since 1996. However, up until now the Iranian Penal Code contains no paragraph explicitly calling for the death penalty in the case of apostasy from Islam. The currently applicable penal code in Iran is codified in the 30 July 1991 Islamic Criminal Code of Iran. It has been provisionally in force since that time and is extended every two years. However, it is not a part of the legislative penal code as passed by Parliament. Yet there have already been advances to openly hold apostasy to be a violation of penal law.

Thus in the Iranian Parliament on 9 September 2008 (*Majlis*) there was a legal draft passed regarding “apostasy, heresy, and witchcraft,” which provides for the death penalty for apostasy.²¹ However, the law has apparently up to now (April 2012) not yet been presented to the Iranian Guardian Council for its approval. If that were to happen, the Guardian Council would have to make a decision regarding the law placed before it within a brief period of time. If the law were passed, it would be the first time apostasy would be codified as a statutory offense in Iran. In 1979 Iran basically introduced the Sharia in its entirety into its legal system. For that reason, apostasy currently counts in Iran as a serious offense, even if there is no explicit law in this connection. According to the new and not yet ratified Islamic penal code, the following would apply according to Articles 225.7 and 225.8:

Punishment for a (. . .) [male] apostate . . . death . . . The highest penalty for apostate women (. . .) is lifelong imprisonment. During this time of punishment her living conditions will be made difficult as directed by the court and attempts will be made to guide her to the right path and to be encouraged to issue a retraction.

Ayatollah Ruhollah Khomeini defines these “difficult living conditions” in the following manner:

She is to receive lashings at the five daily prayer times, and her quality of life and amount of food, clothing, and water have to be reduced until she demonstrates remorse.

Essentially, owing to the general validity of Sharia law, which provides for the death penalty for apostasy, the Iranian administration of justice is obliged to punish apostasy. Article 167 of the Islamic Republic of Iran Constitution stipulates that a judge has to base his judgment on Islamic sources, or more specifically, valid *Fatawa* (legal opinions) in cases where a law covering a particular issue is lacking.²²

²¹ The text appeared with the date December 11, 2007 on the page of the Iranian Ministry of Justice. <http://tinyurl.com/maavanews> (14.05.2011).

²² Thus Hossein Soodmand for instance was brought before a court on 3 December 1990 in Mashad due to his apostasy from Islam 30 years prior. In spite of the lack of a corresponding paragraph in the Iranian penal code, he was sentenced to death by hanging by invoking Sharia law on apostasy:

Additionally, according to Article 170 of the Constitution, no judgment can be made which contradicts the laws of Islam.

Article 226 of the Iranian Penal Code additionally permits the killing of an apostate without charges and court proceedings. Furthermore, according to Article 295 of the penal code, the executor administering the death penalty upon an apostate or a person held to be an apostate is not to be punished. There are thus a number of regulations, which allow a convert to be punished with death at any time in Iran.

At least since 2009, the time of the onset of the “Green Revolution,” converts from Islam to Christianity and similarly many women’s rights activists have been especially severely persecuted, their private meetings dissolved, and the members of house churches sentenced to long periods of imprisonment or even condemned to be executed.

Since the death penalty can be administered for numerous offenses, charges against apostates are possible at any time under the claim of one of these offenses. They include murder, drug smuggling, terrorism, war against God (*Mohareb*), armed robbery, mugging (highway robbery), subversion, obtaining weapons, treason, embezzlement and the misappropriation of public funds, forming gangs, insults against and desecration of institutions of Islam or holy individuals (which, for example, counts essentially as a given in the case of missions work by converts) as well as rape, homosexuality, sexual relationships between a non-Muslim and a Muslim, and adultery.

8. The topic of religious freedom belongs on the international politics and diplomacy agenda

To summarize, a paradoxical situation emerges where in a number of countries characterized by Islam the right to religious freedom is expressly recognized,²³ and yet nowhere is there positive as well as negative religious freedom in all directions. Rather, there is only the freedom to convert to Islam or to retain Islam. In the process, the question of the justification of religious freedom on the basis of frequently dramatic consequences for an apostate not only has a religious dimension but rather also social as well as political consequences. Even when many Muslims personally never lay a hand on a convert or more specifically would at least consider his condemnation to be problematic, the fact remains that neither classic nor

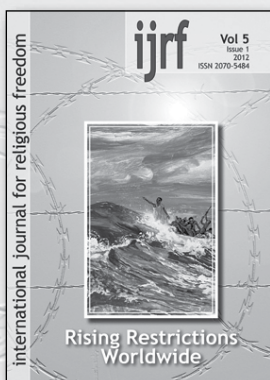
Alasdair Palmer. Hanged for being a Christian in Iran, 11 October 2008. <http://tiny.cc/hangediniran> (May 13, 2011).

²³ For several examples of corresponding passages in the texts of the constitutions of Syria, Jordan, Algeria, Yemen, Mauritania, and Morocco, which guarantee religious freedom, see Sami A. Aldeeb Abu-Sahlieh. “Le Délit d’Apostasie aujourd’hui et ses Conséquences en Droit Arabe et Musulman,” in: *Islamochristiana* (20) 1994, 93-116, here 96ff.

contemporary Islamic theology has up to now provided a largely accepted positive justification for religious freedom, nor an essential condemnation of the death penalty for apostasy. The result is that the term apostasy is very changeable in how it is filled with meaning and how it finds application in various situations.

The lack of religious freedom always involves a lack of political and individual civil rights and liberties. In the face of a democratically chosen Islamist majority, for example in Egypt after the Arab Revolution, which on the basis of their Sharia orientation holds to a unity of religion and the state, true religious freedom for minorities and those who think differently will hardly be initiated in the foreseeable future. In addition to women, those bearing the brunt are especially converts who cannot claim any legal status in a society characterized by Sharia law.

Religious freedom is a fundamental human right. For that reason, the topic of religious freedom belongs on the international politics and diplomacy agenda. We owe it to all those who are imprisoned, harassed, bullied, and even executed daily for their convictions – be they of a religious nature or not – to at least raise our voice from our position in the affluent, free West where it does not cost us anything. Human rights are indivisible. We enjoy their fruits today because others – not uncommonly due to the perspective of their own faith – believed in these ideas and stood up for them despite the personal disadvantages they experienced. This should be a reminder and an incentive to follow suit.



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Religious cults, religious leaders and the abuse of power

Stephan P Pretorius¹

Abstract

The abuse of authority by religious leaders, accepted as persons of authority and upholders of moral values, has led to violations of human rights within religious cults. This article discusses the means by which cults obtain undue authority and influence in society and create an illusion of utopia while causing harm to believers. I propose measures to ensure that instead of remaining “untouchable”, religious leaders take responsibility for their own practices, ensuring that no harm will be caused through internal rules of conduct. If such behaviour comes under the guise of religious freedom, governments are put in a dilemma of simultaneously safeguarding both religious freedom and the well-being of its citizens.

Keywords Freedom of religion, religious abuse, cults, abuse of trust, religious leaders.

The right to religious freedom sounds idyllic. However, although cults present a picture of “utopia,” those that lead them can succeed in abusing this right, to the detriment of cult members and of broader society. This situation warrants to be addressed not only in the interest of those caught up in these groups but also for the harmonious functioning of society in general. The question presents itself: How do these religious leaders conceal the misuse of their positions of authority?

1. Religion and its dynamics

The fact that there are many religions makes it difficult to formulate a single definition of religion. Each religion has its own belief system, and the premise on which religions rest gives rise to doctrines and practices that are not measurable against “earthly” standards. Believers have the right to participate freely in the rituals and practices associated with that particular religious belief. Moreover, a religion is generally evaluated through comparison with a believer’s own belief system.

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As societies became aware of the importance of protecting citizens against different kinds of abuse, including the atrocities at times committed under the banner of religion, international conventions such as The Universal Declaration of Human Rights (HDHR) of 1948 and the International Convention on Civil and Political Rights (ICCPR) of 1976 were established.

Over recent decades close attention has been paid to the dynamics of religious cults believed to be harmful to, and even disruptive of the harmonious functioning of society. In this article I will focus on some of the dynamics of religious cults that have given rise to extreme and harmful actions² by some cults in the past and continue to pose a threat to the well-being of their followers and of broader society.

1.1 Dynamics of religion that pose a challenge

Human beings feel comfortable with hierarchy that in turn makes them vulnerable to domination. According to Naff (2010:1) it is also important for human beings to have status. Some aspire to be kings or leaders others are rebels, outlaws, or committed followers. An important driver to get people following a political or religious leader is an ideology of passion. Passion is a powerful emotion that can range from raw hatred to pure love, from self-denial to total surrender. The ultimate goal of religion to obtain salvation or enlightenment inspires passionate commitment of the believer and displays a number of generic traits that account for its far-reaching impact on the mental ability, actions and well-being of humans (Cleary sa: 1–4; Leiter 2008; Engel 2011):

- The prescriptive nature of a belief system of a religion can dull the mind and weaken the senses. Some religions override common sense, human reason or a usual sense of proportionality. Think of the catastrophic cruelty, as was witnessed on 11 September 2001. Religion can create a mental illusion of what is believed to be the “will of God.” One thinks here of the Christian and anti-Semitic crusades in history as expressions of “God’s will,” and the Islamic jihad, engaged in demonstrating that “Allah is great.” Religious extremism is characterized by the belief that any action performed in the name of God denies primary and foundational preservations of life and does not value human life, as is evident in the case of a suicide bomber.

² For instance, more than 900 followers of Jim Jones of the People’s Temple died in 1979 in Guyana, most of cyanide poisoning after ingesting the substance in a drink. The followers of David Koresh in Waco, Texas died in an attack by the FBI on their compound in 1983. The sarin gas attack staged by the Aum Shinrikyo cult in a subway station in Japan in 1985 left a number of citizens harmed. Three hundred followers of the Restoration of the Ten Commandments cult died in 2000 in Uganda. The suicides of the followers of The Solar Temple and Heaven’s Gate in Europe in the early 1990s inspired government action.

- Some religions suggest that financial contribution in the form of tithes and offerings guarantees blessing.
- A universal characteristic of religion is the belief in unseen forces that have an impact not only on their human existence, but also in the life hereafter, more powerful than earthly goods, money, political power or earthly institutions (Engel 2011:2).
- The transcendental nature of religion defies proof and the tenets of their religion have infinite value, surpassing earthly goods, and may not be compromised (Engel 2011:10).
- Believers know that there are unexplained aspects to their belief, but faith is a substitute for what is not known (Engel 2011:6). In some religious groups tangible punishment can be inflicted on members for disobeying commands.

It is evident from the abovementioned dynamics of religion that reference to a higher cause and redemptive reality may inspire a passion and zeal that can cloud the judgment and discernment of believers, internal processes which would otherwise safeguard them from falling prey to abuse. Participation in internal religious practices of the group in order to find favour with God or obtain salvation is characterized by a wholehearted commitment to enduring whatever consequences or impact this may have on the well-being of the believer.

This clearly indicates a grey area in the harmonious functioning of religion. Despite members' rights to freely participate in the practices of their religion, the possibility of the subtle abuse of this right within religion as a result of the dynamics of religion must not be ignored. The abuse of this freedom creates an environment conducive to exploitation by some religious leaders through their positions of authority and trust.

1.2 What constitutes religious abuse?

Abuse in general refers to a person having "power over another person or persons, and using that power to cause hurt or harm" (Blue 1993:12), it is when a person's "sense of well-being and spiritual and emotional growth is diminished" through the actions of another person (Watts 2011:2). Abuse can be physical, sexual, emotional and spiritual, to name but a few forms, and all kinds of abuse leave scars on a person's psyche. Religious abuse specifically is "inflicted by persons who are respected and honoured in society for their role as religious leaders and models for spiritual authority" (Enroth 1992:29). The status of religious leaders as trustworthy people makes believers vulnerable to their authority and abuse and can lead to the manipulation and abuse of followers (Blue 1993:14).

Religious abuse occurs across denominations, in non-denominational churches, in religious groups and across faiths. One form of religious abuse, however, takes place in cults when a believer is coerced under the guise of religion through a particular

belief system to act in such a manner that his/her dignity and ability for self-attainment is numbed or overridden for the sake of a selfish or ideological cause of the cult leader or cult. Some believers will stop at nothing to attain the goals set by the group, even if it leads to the infringement of basic human rights, and a forsaking of loved ones, family and own ambitions, even to the point of death. The demands of these groups at times also include actions that are considered unreasonable and unacceptable by the rest of the population, such as name changes, plastic surgery, and surgical castration or sterilization (Davis 2000:257). It can further entail people's refusal to obtain medical attention when they are ill³ or the surrender of all personal possessions.

Religious abuse displays three important elements, namely the misuse of a position of authority, the misuse of trust and the misrepresentation of the truth.

1.3 Abuse of religious freedom

The need for the protection of human rights originated as a result of the abuse of human beings in different spheres of life and is based on the fundamental belief that each human being must be treated with dignity and respect and has equal rights. What is meant by human dignity?

For Snyder et al (1976), "human dignity" refers to various basic values. Kelman (1977:531) believes that human dignity refers to the "status of individuals as ends in themselves, rather than a means to some unrelated end." Individuals are part of an "interconnected network of individuals who care for each other, who recognize each other's individuality, and who respect each other's rights" (Kelman 1973:48–49). Two components of human dignity can be distinguished, namely the identity of the person and his/her position in the community: Each individual is accorded identity as a worthy and valuable person. In the community context, an individual's life must be valued by others. A person's sense of dignity thus entails a perception of self-worth and to be valued by others (Kelman 1977:532). This further means that a person enjoys individual freedom and social justice which is inseparable and interdependent. Societies are evaluated in terms of their consistency with human dignity by how effectively they provide identity and community for their constituencies (Kelman 1977:532).

For Kelman (1977:534), social institutions fail to uphold the human dignity of their citizens when:

- Such institutions fail to provide adequately for the needs and welfare of the population and when equal access to benefits are only provided to some segments of the population;

³ Jehovah's Witnesses for instance refuse blood transfusions, even if a person's life could be saved through this procedure.

- Individuals do not have the freedom to express their views and participate in decision-making. Even the views of dissenters are important as “a mechanism to alert society to the shortcomings in institutional functioning.”

Although religious freedom is the right of each world citizen, the permissible scope of the expression of religious freedom remains a bone of contention all over the world. The universal right to freedom of religion is based on the premise that religious exercise must be free and voluntary, and that it should in no means pressure, harm or coerce anyone into action or participation. In this article particular emphasis is placed on religious groups also known as cults that through their practices and functioning contravene the fundamental principle of human dignity. This is accomplished through the employment of techniques and practices that deny believers their right to freedom to live their lives according to their own choices or goals.

2. The challenge of abuse in cultic groups

Cultic groups can display specific traits and function in a manner resulting in the abuse of members and the violation of their dignity. As was indicated already, believers are not necessarily protected from abuse in a religious setting but are equally or even more vulnerable as a result of the dynamics of religion. In religious cults additional aspects to dynamics of religion contribute even more in creating an environment conducive for abuse as will be explained below.

2.1 Dynamics in cults

Cults portray the world as bad and the particular group as good (Salande & Perkins 2011:382). Cult members are therefore taught that to be free from contamination by the evil world, they must be separated from it. To ensure separateness two important principles are required, namely, isolation and insulation. Isolation can be consciously created through group dynamics and unconsciously accepted by the members, and can entail physical isolation, as is the case with a commune. It can also be social isolation established through discouragement to socialise with outsiders. This isolation will ensure that cult members are “unsullied by the world” and an ideal environment for control is created (Wilson 1959:10) and that members are progressively alienated from support systems (family and friends) outside the group (Salande & Perkins 2011:383). Separation from families and other support systems is progressively obtained through the belief that the leader and group deserve their unwavering commitment that is in stern competition with the member's loyalty towards family. The constant pressure to value group commitments over family and other social considerations slowly drives a wedge between believers and family ensuring spontaneous isolation (Whitsett & Kent 2003:492). The language used in cults is often character-

ized by family images, with cult members being referred to as “brothers” and “sisters”, and parental roles being attributed to the cult leaders (Deikman 1994:76–79). In the Unification Church, for example, the now deceased leader Sun Myung Moon was referred to as “true father” and his wife as “true mother.” The leader of another group known as The Family was referred to as “father” or “grandpa” (Kent 1994:39). The cult family thus progressively replaces the biological family, and the family system is replaced by the authoritative cult system (Galanter 1990:544).

Isolation is further ensured through a busy programme offered by the group that ensures that believers devote the largest proportion of their time to the activities of the group.

Insulation refers to a set of prescriptive behavioural rules intended not only to protect the values of the cult but also to defuse so-called negative influences when contact with outside influences does occur (Wilson 1959:10–11). The belief that one has been specially chosen, acts as motivation to withstand temptations from outside and remain pure.

With believers isolated from the outside world, these groups are able to function unimpeded. While other mainstream religions function within society, and their practices and doctrines are visible and known to the general public, cults are more secluded and hidden from the public eye. The isolation of cults provides a breeding ground for all kinds of abuse ranging from coercion, intimidation, threats, physical and verbal abuse, manipulation and sexual bullying, to forfeiture of personal finances (Salande & Perkins 2011:382). Jim Jones of the People’s Temple abused his followers and punished them with harsh work schedules, humiliation, solitary confinement and non-consensual and non-medical injection of psychotherapeutic drugs (Hall 1987:240–241). Marshall Applegate, leader of Heaven’s Gate, formulated his asexual doctrine, which led to his own as well as other male followers’ surgical castration (Davis 2000:257).

Extreme religions claim to have the exclusive truth and demand that their followers adhere to the prescriptions of their distinctive faith. Any deviation from their doctrines is condemned, dissenters are shunned as apostates and the outside world is repudiated. Most cult members are also subjected to a special diet, dress code, own language, isolation, limited or no socializing with other churches or religions, and persecution.

The strictness of cults advances cohesiveness, shared belief and thought and behavioural conformity and a strong sense of camaraderie amongst members, thus securing greater control over believers and their lives. The isolation and strict adherence to the cult commands mould the believers’ minds and redirect their thinking to such an extent that their own ideas are suppressed and their own ambition whittled away. Isolation and insulation ultimately result in cult members suppress-

ing their own identity to make room for the group identity that functions according to the strict instruction of the leader.

2.2 Manipulation of the concept of religious freedom

If the right to freedom of religion unduly empowers any religion to exceed the boundaries of reasonability and humanity, infringes on the basic human rights of followers, strips any follower of his or her human dignity or exploits susceptible followers, the situation requires intervention.

Apart from the dynamics, cults can also obtain acceptance, influence and undue authority through their wealth (Rudin 1981:21), obtained through property, businesses, contributions from members and other donors, high fees charged for lectures or assistance, and the subtle take-over of financial assets of members that is largely tax exempted because of their status as religions or non-profit organizations. The People's Temple of Jim Jones had over ten million dollars in various bank accounts at the time of the mass suicide in Guyana (Rudin 1981:22) and The Unification Church of Sun Myung Moon is believed to be very wealthy and influential as a result of many business ventures. Money buys power, and some cults can afford the best legal assistance to fight their opponents. They instil fear into journalists, academics and others who dare to write about them and campaign against legislation aimed at curbing their activities. The Unification Church for example, has even hired journalists to write for their newspaper, *Newsworld*. The combination of wealth, influence and sophisticated techniques of influence indeed make cults a force to be reckoned with.

The charisma of their leaders and the cunning use of words and body language to manipulate situations (Enroth 1992) should not be underestimated. When confronted about practices perceived by outsiders to be harmful, these leaders often resort to a "victim versus oppressor" strategy. Those who warn about the practices and dynamics of these groups are termed "hate groups" and castigated. Cult leaders are trying to silence opposition either by legal action or attempts to instil fear. They are skilled at using people around them to obtain their desired results, while themselves leaving no trace as manipulators.

Dunlop (2001:1-3) explains how powerful the dynamics of these groups are, affording them undue authority and making them virtually "untouchable":

- Legally cults largely misuse the provisions for religious freedom to protect them from outside investigation or regulation.
- Morally their questionable actions are justified by their own internal moral codes.
- Philosophical or theological criticism is not entertained, "since a cult belief system is formulated based on its own internal logic, and is impenetrable to an outsider."

- Empirical or scientific criticism is inappropriate because the tenets of a cult belief system are beyond reproach.
- Criticism by ex-members is deemed worthless and rejected as attempts to “badmouth” cults and hold unresolved issues against them.

Unjustified religious immunity to outside criticism obtained by hiding behind religious freedom increases the possibility of deceptive or psychological techniques for gaining control over adherents. In such cases it would seem that the provisions for religious freedom are focused on the protection of religious groups and organizations rather than on the individual rights of their members (Dunlop 2001:1-3).

In the light of the aforementioned almost “untouchable” status of cults, family and friends of members in these groups and members of society become suspicious of the true intentions of cults and question them. Unfortunately, many of the reactions by family and friends to cults are emotional reactions that result in providing an even stronger case for the justification of cults. Many cultic groups counter by resorting to or threatening legal action. In South Africa, RIGHT (Rights of Individuals Grant Honor To), an organization that studied the dynamics of these groups, was threatened with legal action because it was believed to be guilty of making defamatory comments about certain groups in South Africa. RIGHT’s website was also taken down twice when it reported that a particular religious group was involved in practices believed to be harmful to its members (see Afrihost 2010). Another group in South Africa has laid a complaint at the South African Human Rights Commission (see SAHRC 2012) against authors who have published academic literature about them which allegedly violates its right to freedom of religion.

In recent times, groups and human rights organizations have increasingly advocated for society simply to accept these cultic groups. One such organization is Forum for Religious Freedom Europe (FOREF) (Zoehrer 2008, FOREF). There is an attempt to pressurize society into growing accustomed to cultic groups and to stop being vigilant and cautious about them. Some academics also refer to cults as “new religions” or “new religious movements” in order not to be offensive, others even downplay the concerns about the dangers of cults as “moral panic” (Jenkins 1998).

The evaluation of cults must be done in a balanced manner that will not lead to generalization. The evaluation should not be hampered by fear or other threats exerted by cults in order to silence information that alerts society to the harm inherent in the culture and dynamics of some of these groups.

2.3 The dangers of religious abuse in cults

Pointing out the dangers posed by cult dynamics to the well-being of believers and society is not intended to deny any religious group its right to religious freedom. It

is rather an attempt to draw attention to the subliminal inherent power of religious dynamics at times to be exploited by supposedly trustworthy and respectable leaders in authority.

Dangers include the following (Rudin 1981):

- Cults are authoritarian and anti-democratic and can pose a danger to society since members are often encouraged to disobey laws that are believed to be subordinate to the higher cause of the group (Rudin 1981:31).
- A danger to the well-being of believers. Despite some believers finding happiness in these groups they are exposed to extreme and at times harsh conditions such as insufficient diet, long working hours without remuneration because the work is said to be for God, sleep deprivation, unsuitable clothing, strict behavioural prescriptions, alienation from support structures and family and unsanitary conditions (Goldberg 1997).
- Psychological and emotional danger to members caused by the culture of the cult referring to the irrefutable instructions of the leader and tenets of the group that progressively result in the erosion of intellectual abilities including their reasoning power, critical thinking and decision-making ability that in turn also diminishes their self confidence and own ambitions (Goldberg 1997; Morse & Morse 1987).
- Threat to life itself. This is demonstrated by the reports of disappearances and the suicides of members, as in the cases of the People's Temple in Jonestown, Heaven's Gate and the Solar Temple to name a few.
- Cults' misrepresentation of what they stand for is also a danger resulting in people being lured into cults (Zimbardo 1997) believing that they are joining a legitimate group that will not abuse them (Almendros, Carrobes & Rodriguez-Carballeira 2007).
- Danger to family bonds as pillars of a healthy society. "The dynamics of cults subtly erode family bonds and subtly drive a wedge between families through demonization of cult members' previous or "old" life, restriction on social contact and strict financial and time commitments that constantly increases the pressure on members to value group commitment above family considerations" (Whitsett & Kent 2003:492).

2.4 How to deal with leaders who abuse positions of authority

Attempts to point out that some religious groups are more likely to abuse followers through their psychological dynamics, their isolation from broader society, and their strict adherence to the prescriptions of their belief have been met with opposition and caution (Richardson 1993; Barker 2002; Richardson & Introvigne 2001). Despite this opposition it cannot be denied that legitimate religion encourages honesty, trans-

parency, critical thinking and well-considered actions. If cults through their misrepresentation of truth present a threat to the well-being of members of society, heightened by the secrecy with which they conduct themselves, society must be alerted.

Unfortunately, society and governments tend to take notice of what really happened inside a cult only following a tragic occurrence, either because they are not informed or because these groups function on the periphery of society and were initially presented as honourable. It is the right of citizens to know whether a religious group has abusive tendencies, just as it is their right to be protected from such a situation. If any government fails in allowing some form of monitoring of religious practices that are harmful to members of society through nongovernmental organizations, it has forsaken its duty to ensure that the human dignity of each citizen is protected. It is not suggested that government must interfere but that it should acknowledge watchdog organizations acting on behalf of society. However, because some religions allege that their freedom is infringed upon by those who would accuse them of abusive practices, it is hoped that the following proposals will assist in creating a workable practice of intervention. The following measures as interventions are proposed:

- Each religion must take responsibility for its actions and practices through the establishment of “voluntary codes of conduct that can serve as tools to prevent and resolve conflict” (Richards, Svendsen & Bless 2010:68).
- Religious leaders as figures of authority who are trusted and act as moral societal role-models familiar with the vulnerability of religious dynamics must be sensitive to possible abuse and must ensure that their actions and practices are always within the framework of fairness and reasonableness.
- Religious leaders who believe in the right to freedom of religion must take action when they observe abuse of this right.
- Members of society should report abuse to a religious leader or consult with knowledgeable persons who have studied cults.
- School curricula should include a subject dealing with religious practices in order to educate children about the dangers of abusive religious leaders.
- Non-governmental watchdog organizations must be established that conduct research and distribute information on the possibility of harmful practices.⁴

⁴ Different organizations of this nature exist in Europe and other parts of the world some of them even federal offices in countries like France, Belgium, and Austria. There is also an umbrella organization for these organizations in Europe known as *Fecris Fédération Européenne des Centres de Recherche et d'Information sur le Sectarisme* (Federation of European Centres for Research and Information on Sectarism). One such organization in South Africa is *Cultism Dialogue* (www.cultismdialogue.com), *Care South Africa* (www.aserac.co.za) is another, similar organization.

Watchdog organizations in broad terms must warn against religious practices that present a threat to mental or physical health, threaten the integrity of family life, display extreme focus on financial contributions of members to their own detriment, limit freedom of movement in and out of a group and jeopardize the safety and well-being of minors and children.

3. Conclusion

Religion can be dangerous. Religion can either encourage and strengthen, or else destroy people's lives. The difference lies in the application or misuse of the dynamics of religion, making followers vulnerable to influence. The religious leaders who exploit followers into taking extreme measures ensure that a general negative connotation may be attached to religion. The abuse of the vulnerability of believers by some religious leaders cannot and should not be tolerated.

It will remain the task of watchdog organizations to alert and warn about such groups. They have a responsibility not to stand back and allow pressure or cult lobbyists to undermine them, thus placing cults beyond criticism.

Society has the right to voice its opinion and critique religious groups if it feels that religion is becoming abusive and is being used for purposes other than the edification of believers. Watchdog organizations should be in place in any society to act as counterweights to abuse, for the sake of the protection of citizens.

Religious leaders, on the other hand, as respected members of society and exemplars of morality must be aware that they cannot escape criticism from society and must ensure that they do not abuse their positions of authority to exploit vulnerable followers, and must be willing to speak openly about their groups to ensure a harmonious society. Each person must be afforded the right to make his/her own choices and be entitled to live his/her life on the basis of his/her own goals, values and ambitions, and in so doing remain an individual with human dignity, identity and individuality intact acknowledged as valuable members of society.

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Religious freedom and objectives for intercultural economic development

Antonio Fuccillo¹ & Francesco Sorvillo

Abstract

There is a gap between economics and other social sciences, which has allowed religion to be overlooked as an economic factor. Religion softens the self-interest inherent in capitalism and allows for intelligent globalization. Religious freedom in fact guarantees that religion can contribute to the transformation of today's economic systems by influencing the economic choices of its adherents.

Keywords Religious freedom, public goods, choice, self-interest, ethics.

1. The theory of public goods: religious freedom as a public good

We have been discussing for some time in the Western world the idea of moving beyond theories based on the extreme individualistic vision of homo economicus, overly captured in mathematical methods that have partially caused the gap between economics and other social sciences. To get closer to the needs of multicultural populations today, an interesting intellectual recovery operation of so-called "common goods" has started, based on the principle that anything that cannot be legitimately included in the definition of individual selfish possession, therefore, escapes from the grip of "mathematical calculation."²

Notions such as "green economy" become commonly used to define the fact of profound reflection on the need for sustainable development for the people without developing into an excessive privatization of resources, but rather aims at respecting collective priorities such as the environment, culture, air, water, etcetera, albeit today with a particular attention to the intercultural perspective.

It has been correctly pointed out that "today's modern thinking is based on the simple assumption that the exploitation of the common good through a process of consumption is an inevitable privatization in favour of those who are best able to enjoy and profit from it. As we know, however, common goods cannot be reduced

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² Recently cf. G. Martino, *Economia delle crisi. Il bene dell'uomo contro la dittatura dello spread*, Baldini&Castoldi, Milano, 2012.

to mere simple objects (natural resources): in fact, they acquire value to the extent that they are intimately linked with life.”³

The model of the survival of the fittest in the context of economic contest and competition prevails in the Western world in opposition to the communitarian world view and thus loses sight of the benefits of solidarity between individuals and peoples, neglecting that using resources ethically can at the same time contribute to a truly sustainable development, and is also compatible with the different cultures that exist in today's globalized world.

In this perspective, we speak of “social capital” in respect of evaluating a system of “welfare” with renewed attention for those “immaterial societal” aspects which have been completely excluded from the radical market economy aimed only at individual profit.⁴

The debate on the social perspective of the consequences of globalization focuses mainly on five main areas of research that have been brilliantly limited to the effects produced by purely economic elements of the phenomenon, that is, the integration of global markets, the effects on income distribution, and the effects on economic policy decisions by single states.⁵ At the same time the purely political consequences were also highlighted (always within this schematic perspective), both for the factual sovereignty of nation states and for the practical possibilities of the development of an international government.

A particular importance is also attributed to the cultural aspects of the phenomenon which, rightly, also merits attention for the economic effects that it can directly influence.⁶

In this last respect there is also the need to look from an intercultural perspective at the effects of multiculturalism as a product of migrations, because of the impact that this phenomenon has on legal systems.⁷ The resulting “battle” is not only a “political-linguistical” one but moves decisively towards the “re-categorization of the existing normative generalizations” in the sense that traditionally liberal categories such as “freedom” are used to change the indigenous power structures pushing towards a renegotiation of the social coexistence rules with the minority “outgroups.”⁸ Next to the local traditions, imported ones start to co-exist and there

³ U. MATTEI, *Beni comuni. Un manifesto*, Laterza, Bari-Roma, 2011, XVI.

⁴ A. QUADRIO CURZIO – G. MARSEGUERRA, *Introduzione- Fiducia e solidarietà per lo sviluppo della società*, in AA.VV., *Social capital and human development*, Scheiwiller, Milano, 2009, 20.

⁵ Already highlighted in A. FUCCILLO, *I mercanti nel tempio: economia, diritto e religione*, Giappichelli, Torino, 2011, 3.

⁶ R. DORE, *Globalizzazione(2) Aspetti economici*, in *Enciclopedia delle scienze sociali*, Treccani, Vol. IX, Roma, 2001, 167.

⁷ M. RICCA, *Oltre babele. Codici per una democrazia interculturale*, Dedalo, Bari, 2008, 177 ff.

⁸ M. RICCA, *Culture interdette. Modernità, migrazioni, diritto interculturale*, Bollati Boringhieri, Torino,

is no doubt that religion plays an important role in this context, with the effect of producing an encounter between different faiths which, if not governed by a truly intercultural legal system, can turn into confrontation. One must therefore create the conditions that “foreigners and in any case minorities” have the right “to be recognized *by* the law and not just *before* it.”⁹

The question is, however, whether the “social” can have an autonomous role in such an economic system which, in some way, not only addresses the legislative policy choices facing the business world and production in general, but also access to legal and economic instruments. It is necessary, therefore, to determine whether a social “factor” can somehow contribute fully to the evaluation of an economic system which is efficient and also reliable, and which also cares about the well-being – in terms of quality of life – of its subjects. Such a “method” is, for example, at the basis of the “non-profit” economy where one tries to combine an acceptable economic performance with more than just good social results.¹⁰

The evolution of the role of nation-states, including in geopolitics, has highlighted how the changes that globalization induced in society have created a world completely asymmetrical compared with the situation in the past, certainly emphasizing the interdependence of all systems involved in the economy, but also as a logical consequence on the behaviour of people and their “behaviour before the law.”¹¹ The movement of people that characterizes our time, for example, produces an “intercultural re-population” that can be used as an “opportunity to overcome the processes of alienation inherent in the work experience in a macro-industrial context, the driving force of complex societies dominated by a ‘capitalist market economy’; and from which could emerge a proposal for “fair and intercultural trade.”¹² It strengthens the idea that we should pursue an intelligent globalization rather than aspiring for its widest possible expansion and fulfilment which also produces a lot of social unhappiness.¹³

The exercise of “religious freedom” both of individuals and of groups, translating into behaviours that involve choices of belonging and faith, is certainly able to

2013, 90.

⁹ M. RICCA, *Pantheon. Agenda della laicità interculturale*, Torri del vento, Palermo, 2012, 29.

¹⁰ Recently, cf. AA.VV. *Non profit. Dalla buona volontà alla responsabilità economica*, M. ELEFANTI (ed.), Dehoniane, Bologna, 2011; especially on the evaluation of “performances”, C. D’ESTE, *La valutazione delle performances*, ibidem, 221 ff.

¹¹ Such “asymmetry” is well highlighted by G. PICCO, *Lo scenario geopolitico: minacce e opportunità dei nuovi allineamenti*, in AA.VV., *La globalizzazione tra politica ed economia*, T. MACCABELLI e G. PROVASI (ed.), Laterza, Bari-Roma, 2006, 7 ff.

¹² M. RICCA, *Riace, il futuro è presente. Naturalizzare il “globale” tra immigrazione e sviluppo interculturale*, Dedalo, Bari, 2010, 126 ff.

¹³ D. RODRIK, *La globalizzazione intelligente*, Laterza, Bari-Roma, 2011.

influence the economic-legal system in the sense that where it is most stimulated, the phenomenon of cultural migration is more effectively achieved by producing a direct impact on the systems of destination. One of the rules of conduct that follows from this (obviously for the faithful) is that religions represent a transnational element, given that they are not bound by the territorial boundaries that limit the application of state legislation, and are thus rather conditioned by aspects of migration exactly like individuals and groups.

The ties with religious values produce social well-being because they enable believer-workers to comply with their own scale of values which contributes to their well-being and therefore increases their production capacity, but also because religions usually attribute values to economic development that are different from the ones merely based on pure profit, thus contributing to a more social orientation of the indicators of economic well-being of a population.¹⁴

The crux of the concerns of the Catholic Church, for example in its social doctrine, is shown by the words of Pope Benedict XVI when he states that “the increasingly globalized world makes us neighbours but does not make us brothers.”¹⁵ The centrality of mankind, understood more and more as a “person”, leads to a new “humanism”, recovering the ontological nature of existence by way of a return to the values inherent in a human being that wants to be free from excessive technological constraints. Even among economists the idea is gaining ground that a social ethic is needed in economics, as is the insight of mutual benefits, in the sense of the usefulness that economics can have for ethics itself.¹⁶ The separation of economics from ethics seems to have seriously impoverished the so-called “welfare economics”, and the notion of “behaviour driven by self-interest has severely limited (...) the scope of the economic forecasts and hampered research into a number of important economic relationships driven by behavioural differentiation.”¹⁷ Thus, the religious precepts relating to economics meet their counterpart in the very common idea that it is necessary to find ways to mediate between the requirements of the global market and those of the well-being of the people involved.

In Christian ethics, for example, the revival of the importance of “human rights” within the ecclesiastical community itself has also led to a renewed attention for economic and social rights that are not only those of the individual directly concerned but those of the other as if it were an explicit defence of general respect for mankind, in stark contrast to individualistic subjectivism.¹⁸

¹⁴ The tradition of the Swiss Calvinism, for example.

¹⁵ *Caritas in veritate*, n.19.

¹⁶ A. SEN, *Etica ed economia*, Laterza, Bari-Roma, 2002, 97.

¹⁷ A. SEN, *Etica ed economia*, cit., 98.

¹⁸ J.Y. CALVEZ, *I monoteismi e i diritti dell'uomo*, AA.VV., *La religione*, P. SACCHI (ed.), vol. V, *I Temi*, Utet,

The presence in religions (in this case just mentioned) of doctrinal precepts underlying the management of the economy is an incontestable fact. In the ethical perspective that the same religions set themselves, it is clear that the economic precepts taken for granted are divulged by them as if based on the eschatological values specific to each religion. In this way, the concept of “win-lose” typical of any economic competition is characterized by the kind of “reward” that the right conduct brings, that is, “salvation” which, however, does not guarantee success in the market.

In fact, we are dealing here with precepts based also on the idea of “giving freely”, on the social outcome that is achieved by acts of economic participation in community life which lie mostly outside the competitive dynamics typical of our global society¹⁹ (in this perspective, one also speaks of “ethical giving”²⁰). The evaluation of these acts takes into account the quality of human relations as “the component that weighs more (even with respect to income) in the self-assessment of subjective well-being.”²¹ It goes without saying that compliance with this ethical behaviour does not always match the needs of the real economy, although it is still necessary for the achievement of key results in the economy of social welfare. Religion is more and more serving as a bulwark against the excesses of the market economy, stimulating the adoption of a new spirit of capitalism, that is, a new capitalist ethic that balances the need for profit with that for social justice.

Wherever, therefore, the exercise of freedom of religion is guaranteed, the abovementioned values migrate more effectively into the social fabric and from there directly into the exercise of economic activities, and contribute to a recovery of ethical values in the real economy, with immediate effect on the social well-being of individuals. Reasoning thus, “religion” becomes a “common good” and the freedom to exercise it a value to defend, also in an economic context.

2. Economics and religion: the reasons for the need of intercultural relationship

The preceding observations invite us to expand our thinking on today’s relationship between economics and religion, thereby including the possible links between the

Torino, 170-171.

¹⁹ On the relevance of the theories of “anti utilitarianism” cf. A. CAILLE’, *Critica della ragione utilitaria*, Torino, 1991.

²⁰ A. FUCCILLO, *Dare etico. Agire non lucrativo, liberalità non donative e interessi religiosi*, Giappichelli, Torino, 2008. On the relevance of “relational goods”, cf. V. BERLINGO’, *Beni relazionali. L’apporto dei fatti di sentimento all’organizzazione dei servizi sociali*, Giuffrè, Milano, 2010, 7 ff.

²¹ L. BRUNI, *Reciprocità. Dinamiche di cooperazione, economia e società civile*, Mondadori, Milano, 2006, 5 ff.

varying degrees of recognition of religious freedom and the possible achievement of concrete objectives of intercultural economic development.

Religions have in fact always confronted economic systems in their doctrine, relating them mainly to the ethics of their teachings, and in this field each of them has a flourishing tradition that has an impact on individuals and guides their actions.

The consequences are evident in areas (such as economics), too often superficially described as completely secularized, where the sacred and sacredness are something extraneous or irrelevant, but in which the impact of certain religious ideologies becomes nevertheless tangible.

Today, in fact, it is the effects of ethical references (traditionally – though not exclusively – the domain of religions) that revive the idea of an economic development equal for all, and a decisive rejection of the serious inequalities that characterize modern globalized societies.

It is undeniable that the West – first of all Europe and the United States – are suffering from a particularly virulent and long lasting economic crisis. It is a crisis that is affecting the real economy even more than the financial economy, and it is ironic that it is precisely the latter which is constantly in the spotlight of international observers and analysts (not to mention the world's financial institutions), revealing in this way a deviation from reality that has led some to affirm that we are not just witnessing one of those economic crises that periodically afflict market economies, but the decline of an entire model of development,²² thus allowing theories of negative growth to enter the scene.²³

In such a complex situation we must situate the relationship between economics and religion, reviving a relationship that certainly has ancient origins. Religion can, in fact, be considered both a driving force for the economy and an important conditioning factor of markets. Religious affiliation is experienced by the faithful as participation in a strong group, with its own rules from which they derive the juridical meaning of obligations and duties, and to which they attach an importance which at times is greater than that of the equivalent state laws. Compliance with the “rules” derived from “religious laws” is also expressed in the way legal acts particularly suited to positively reveal the subject's freedom of religious belief are enacted,²⁴ requiring in effect a reformulation of the conceptual categories traditionally used.²⁵

²² S. FERLITO, *Diritto soggettivo e diritti umani. Una comparazione giuridica*, notes for the forthcoming course of lectures at Instituto de Derechos Humanos “Bartolomé de las Casas” dell'Universidad Carlos III de Madrid, 16-18 April 2012.

²³ On theories of decrease cf. S. LATOUCHE, *L'invenzione dell'economia*, Bollati-Boringhieri, Torino, 2010 and others.

²⁴ S. FERRARI, *Lo spirito dei diritti religiosi. Ebraismo, cristianesimo e islam a confronto*, Il Mulino, Bologna, 2002, 203 ff.

²⁵ M. RICCA, *Culture interdette*, cit., 94 ff.

The importance of these acts in national law occurs through their translation in the legal instruments of state law that are shaped in this way in accordance with said interests by the religious acts of those who create them. The choices that are made are accomplished in accordance with a religious precept which is then channelled into the legal and economic systems.²⁶ The influence of religious denominations is therefore ambivalent: firstly by conditioning directly the choices of the faithful, and secondly through policies conditioning the state's superstructure state and/or its legal order.

This type of conditioning that can be defined as "political" is carried out through so-called *religious lobbying*.²⁷ Religions, also because of their numerical strength and the traditions that characterize them, are certainly present on the political scene where they claim compliance with the ethical principles that are at the basis of civil life, and that translate into concrete acts of economic policy.

The legal order of the state, therefore, while cloaked – in some countries – in an ostentatious secularism of its positive law, in reality is subjected to the practical influence of the religious choices of its subjects in a polycentric way, that is, both at the production stage of the policy rule, and at the stage of its practical application, the latter being directly influenced by how the choices are directed toward the use of the legal instruments put in place in the abstract sense by the system.

In a world thus structured, it follows directly that economic development can also be considered – in a novel way – as a function of religious freedom, in the sense that it becomes a key variable.

Religious freedom in fact guarantees that religion can contribute to the transformation of today's economic systems, paving the way for a different kind of globalization: a "globalization from below", which promotes the idea that we should ensure that the cycle of life comes before the cycle of money, to counteract the "elite globalization" which puts the cycle of money before the one of life, all in accordance with a uniform trend that seems fundamentally opposed to economic neoliberalism.

In this way there emerges a new approach to economics which provides for a more social conception and proposes as an innovative force the introduction of an active role for citizens who begin to behave as stakeholders in market processes. This means that today, next to "traditional" consumers", there will be a category of people who include in their preferences a series of elements of fairness: social equity, the environment and, last but not least, fairness of a religious nature. Acting

²⁶ A. FUCCILLO, *L'attuazione privatistico della libertà religiosa*, Jovene, Napoli, 2005, 41 ff.

²⁷ G. MACRÌ, M. PARISI, V. TOZZI, *Diritto ecclesiastico europeo*, Laterza, Bari, 2006, 109 ff.

consistently in accordance with their “guidelines”, in which religious values are fully incorporated, they may affect with their voting, consumption and savings behaviour the economic and political orientation of modern society in a kind of push from the bottom aimed at implementing new forms of social economy, while at the same time ensuring new development opportunities.

The role of religions in this field emerges in positive ways whenever nations, through the recognition of high levels of religious freedom, allow religions to fulfil their guiding functions, in both social and economic policy, providing a concrete example to assist the “economic agents” in choosing according to basic values that are an expression of their religious adherence, thus combining economic and idealistic-solidarity values²⁸ and in this way, moving closer to the needs of people who profess them. With this approach one can thus add substance to the guidelines of the “social doctrine” proposed by religions, and in that sense the recognition of cross-cultural religious freedom becomes functional for a full understanding of the entire system.

3. Religious factors and asymmetric information in economics

An important factor conditioning the market through the “religions” is the presence of so-called “asymmetric information”,²⁹ or the provision of services about which the user is not able to predetermine their actual quality, while fully perceiving their value.³⁰

For religions this occurs first of all during the phase of access to the group. The rules laid down by a religion are generally respected because people acknowledge that they contain an element of “truth” from the simple fact of their origin. It is a well known fact that when a legal rule is voluntarily adhered to, the choice which motivates this adherence creates a much stronger constraint and one of the consequences is that the maker of this choice deems correct all precepts and recommendations that come from the group. One is therefore tempted to eliminate information asymmetries through the mediation of the religious group to which one belongs, which shows that this can be a factor potentially distorting the market.

Eliminating information asymmetry is of course in many cases a necessary instrument to “correct” market distortions, because it intervenes to correct the deficiencies previously mentioned. In the case of religions, however, the group does not take a position independently and impartially, but propagates and defends its own principles and doctrines, thus affecting the faithful who are committed to them.

²⁸ Cf., A. M. LEONORA, *Le economie carismatiche nella Chiesa cattolica a Catania*, in *Diritto e religioni*, vol. I, Pellegrini, Cosenza, 2008, 521.

²⁹ This is one of the most important phenomena that influence the market and the lack of information is rightly considered a factor distorting capacity of free choice by the so-called “consumers”.

³⁰ A. FUCCILLO, *I mercanti nel tempio*, cit., 15 ff.

The latter is the other factor by which religions position themselves in the process of eliminating the aforementioned asymmetries. By recommending a certain way of life, in accordance with the precepts of the faith, they intervene in the market by directing choices of their followers who become atypical consumers in the sense that they are no longer entirely free to exercise the options typical of the free market. Religious affiliation becomes, therefore, a factor affecting the economic choices of each follower, and able to influence the market, thus contributing to the destruction of the dogma of its infallibility as a tool for the regulation of trade and distribution of economic welfare.³¹

This potential impact of religions on markets is empirically verifiable, and is directly related to the quantity and quality of “religious freedom” granted or recognized by the system concerned.

It is clear that the religious behaviour of populations has a strong influence both on consumption and on the selection of legal instruments made available by national law in which this “asymmetric potential” may manifest itself as well.³²

With the exercise of the freedom of choice, religious rules are given increased importance within the system by a legal instrument allowed by the same system and that is therefore directly proportional to the amount of religious freedom exercised.

The choice of the legal instruments is thus based on religious beliefs, which may result in the exclusion of alternative instruments too far removed from the religious precepts in which the faithful tend to recognize themselves.

The importance of religions in legal and market dynamics, however, also exacerbates the competition between them to win more followers and more space.

The believer “seen as a customer, can indeed choose, in a fleeting and fickle way, from several products offering containing or not containing God, just as he can choose between different types of massage, refrigerators, home videos, shampoos, restaurants (...).”³³

Law, economics and religion, therefore, co-exist in this context in the sense that the economy gives religion a new operating model to “compete” in the market for offers made to potential believers from various denominations, and the law provides the technical tools necessary for the regulation of this type of action. In this sense, the religions themselves become competitors in the market and play a decisive role in its dynamics, whether in the search for new and growing areas of action or in guiding the choices of their followers towards forms of consumption in line with their beliefs.

³¹ Among the various criticisms of the “market” note G. CALABRESI, *Il dono dello spirito maligno*, Giuffrè, Milano, 1996.

³² Cf. AA.VV., *I mercanti nel tempio*, A. FUCCILLO (ed.), cit.

³³ U. BECK, *Il Dio personale. La nascita della religiosità secolare*, Laterza, Bari-Roma, 2009, 185.

4. Ethical development, religion and the cross-cultural domain

The current economic and financial crisis generated by the U.S. subprime mortgage bubble, continues to influence international economic policy at every level, and raises serious questions about the adequacy of the capitalist approach for tackling social inequalities and promoting the common good, and new variables tend to modify the traditional vision of the economy based on a separation of the objectives of the enterprise (making profit) from those with an ethical dimension.

The discussions started in recent years in this context seem to have mitigated some doubts whilst having at the same time generated new ones, affirming the inability of the system to auto-regulate itself and to abandon if possible the capitalist dogma of *profit at any cost*.³⁴ Therefore we are currently searching for the ideal way to escape. So, what is currently being sought is a sure way to get out of the so-called “positional competition ranking”, meaning by this classification a relatively new form of economic competition, particularly hazardously harmful, which furthermore tends to destroy with its collateral effects the bonds between human beings.

In the ranking competition concept, the purpose of economic action is not striving for a common goal of social welfare, but the Hobbesian philosophy “*mors tua vita mea*” that fuels distorted selection processes designed to neutralize those “ranking second” in the market race.³⁵

In this way social ties are reduced to purely mercantile relations and economic activity becomes inhuman and inefficient, generating, in a vicious circle, deep pockets of inequality, usually contested by the religions when they apply their capacity to “guide” as an expression of their religious freedom.

It therefore seems more and more that the economic duties to be performed remain totally detached from the effects they produce.³⁶ Assumptions of this kind can no longer be upheld, because the world has acquired an enduring intolerance of inequality, both between and within nations, as if post-modern man, informed and worldly, after political democracy now begins to claim seriously the right to economic democracy,³⁷ having noticed, perhaps guiltily late, that the latter is more

³⁴ Recently Ernst-Wolfgang Bockenforde has proposed an interesting analysis of capitalism as a system of action in *Di cosa soffre il capitalismo*. He stresses that “the principle that moves and dominates the system, and whose functional rationality makes everything else, is the realization of profits, capital increase, the increase in production and productivity, self-affirmation and growth in the market.” Cf. E. W. BOCKENFORDE, G. BAZOLI, *Chiesa e Capitalismo*, Morcellania, Brescia, 2010, 23 ff.

³⁵ So S. ZAMAGNI, *Economia ed etica: la crisi e la sfida dell'economia civile*, La scuola, Brescia, 2009, 13.

³⁶ A detailed analysis of the link between duties and consequences of action even from a historical and philosophical perspective, is contained in the volume of A. SEN, *Denaro e valore: etica ed economia della finanza*, Edizioni dell'Elefante, Roma, 1991, 82 ff.

³⁷ Cf. L. BRUNI, *Economia di comunione: giustizia economica, scommessa possibile*, in *Mondo e Missio-*

important than the former since a really global defence of subjective legal positions in today's legal systems depends also and above all on this awareness.

So, today's financial crisis that drugs the markets and destroys even the "relational heritage", does not need an economic recapitalization but rather needs a truly ethical recapitalization, a claim that has always been made by religions in the first place. In this area, the same religions can play a major role in mitigating negative effects of market systems by promoting a new approach to the economy that could be called ethically oriented, and by applying a consistent set of values to real-life situations. In this way it will be possible to transform "ethical risks" into "ethical opportunities", identifying general guidelines of moral conduct which, by their very nature, have the character of transnational applicability.

Religious freedom in this process is the framework for assessing correctly this phenomenon. In fact, it guarantees the acknowledgement of the other and enables a convergence on platforms of common values, thus representing a tool for the effective reduction of differences.

Higher standards of religious freedom therefore go hand in hand with better economic performance, the latter to be considered in terms of significant improvements in ethical quality and greater respect for human rights in the workplace, provided of course, that they are interpreted in a multi-religious and inter-cultural way.

5. Financial choices and religious factors

Recently, economic research seems to go beyond the rational, meeting "in the field" the search for the spiritual, which is one of the manifestations of the vast inner world of religion.³⁸

In this area, "modern culture has always been accustomed to privilege the tip of the iceberg, neglecting the huge base and its depths. In particular, developed countries seem to have favoured economic, technological and scientific development, thereby forgetting 'human development', the development of the soul, the spirit, of vital energy and of hope."³⁹

However, not everything seems to be lost, thanks to its rediscovery in the different cultures of a new dimension of religiosity, which, as we have seen, also expresses its potential in economic terms as a novel entry point for new expressions of inter-cultural religiosity.

ne, maggio 2011.

³⁸ On the relationship between financial and religious factors, cf. F. SORVILLO, *Scelte finanziarie, contratti bancari e fattore religioso*, in www.lettereanimate.com, Martina Franca, 2012.

³⁹ ISTITUTO BUDDISTA ITALIANO SOKA GAKKAI, *Felicità in questo mondo. Un percorso alla scoperta del Buddismo e della Soka Gakkai*, Firenze, 2001, 34.

In this respect, an important impetus seems to come from open borders and the ever wider exchange between cultures as a result of migration processes related to the aforementioned phenomenon of globalization.⁴⁰

Here, its materialisation has brought to light composite realities that profoundly impact everyone's life. Personal habits are transformed (take eating habits, for example) because of the interplay between different religious habits as a result of the relationship with new religious movements and are therefore called upon to exhibit new forms of contact and exchange.

The problem of cultural differences is thus converted in that of interpreting and decoding the messages and actions of social actors, an operation to be achieved without ever losing sight of the cultural context.

A simple operation of comparative law is not enough to understand the meaning of words and behaviours expressed by people from other cultures; what is needed is rather an inter-cultural translation aimed at revealing the underlying meaning of overt behaviours and actions.⁴¹

In an economic setting, these features manifest themselves in the objective to create mutual synergies between law, economics and universal values present in both the great monotheistic religions, and new religious movements.

The task of legal practitioners becomes that of bringing together into a single framework the universal values present in the intellectual heritage and cultural experience of migrant communities, opening up the skills and the results of "domestic" activities to the potential influence from those who do not belong to the religions of the resident populations.⁴²

From this point of view the religions themselves do not give rise to economic systems, but give these same systems principles, values or goals that they may pursue. This is done through the same osmotic process described above as they are an integral part of the society in which the processes of production and consumption take place.

Therefore, within economic systems, trade and transactions continue to be conducted according to the rules of the market, which can be considered "more or less religious" only to the extent that a particular religion is able to influence it from inside with its values and principles.

⁴⁰ Cf. L. TALLARITA, *Verso un neomadismo? Fenomeni migratori, fissità e mobilità nella società globalizzata*, Social books, Palermo, 2008; and V. COTESTA, *Sociologia dei conflitti etnici. Razzismo, immigrazione e società multiculturale*, Laterza, Roma-Bari, 2001.

⁴¹ On translation indices of cultural diversity cf. M. RICCA, «Multireligiosità», «Multiculturalità», «reazioni dell'ordinamento». *Tre segnavia per il diritto interculturale*, in A. FUCCILLO (ed.), *Multireligiosità e reazione giuridica*, Giappichelli, Torino, 2008, 169 ff.

⁴² Cf. G.B. MANSUR, *Islamic finance in retail banking in Italy*, conference speech at the headquarters of the ABI, Roma, 2010, 5.

For example, this is what happens today in Islamic finance, a phenomenon in constant expansion.

However, the interest that this type of economy generates is not the result of simple statistical evaluations by analysts but real evidence such as the considerable resistance to cyclical crises in financial markets,⁴³ not least the one triggered by the default of the system of subprime mortgages.

The principles of operation of Islamic banks, in fact, make this type of banking institution more resilient to fluctuations and episodes of crisis, typical of financial markets, and so attract attention even from their Western competitors.

The characteristic feature of Islamic banks, in addition to the marginal role attributed to interest in their products and operations, is found in the application of principles of both asset-backed financing and of partnership models, that is, of partnerships between bank and customer in financial decisions and their consequences for the latter, by way of a preference for transactions of the real kind with subsequent sharing of the risk of loss of capital invested.

In this way, “the participation in the financial risk legitimates the profit that each party derives from the investment of money and ensures that human activity prevails on automatic capital gains, thus freeing, in principle, the contractual relationship from random, abusive and speculative elements, and ensuring the maximum possible equity between the parties in the contract.”⁴⁴

In this way, banking is not exclusively aimed at corporate profit maximization, but must work towards building a sustainable economy in which it becomes an instrument supporting the principles of social justice and equitable distribution of wealth among all of the members of the Islamic community.

In this sense, religion becomes a function of moral suasion of individuals, but especially of the company managers, forced, in their selection of targets and parameters of corporate positioning, not only to take into account factors like profit and the stability or survival of their companies in the markets, but also to provide a coherent response to the values imposed by religious observance.

This framework, combined with the strong sense of religious affiliation that characterizes Muslim society, becomes fully functional in conveying the choices of “client-believers” to forms of banking products specifically designed to ensure satisfaction and respect for their needs, in particular those of a religious nature.

⁴³ R. HAMAUI, M. MAURI, *Economia e finanza islamica. Quando i mercati incontrano il mondo del Profeta*, Il Mulino, Bologna, 2009, 66.

⁴⁴ G.M. PICCINELLI, *Operazioni islamiche di provvista e di gestione del risparmio: il modello del cliente-socio*, in AA.VV., *La banca islamica e la disciplina bancaria europea*, G. GIMIGNANO & G. ROTONDO (ed.), Giuffrè, Milano, 2006, 20 ff.

However, these results are not the exclusive preserve of Islamic banks. For example, in recent years, the problem of ethics in economic decisions and the possibility of satisfying religious interests in acts of negotiation have also been addressed in Italian law.

In this sense, the wish was for a “return to more morality” capable of leading the market back to economic models ready to satisfy the quest for ethical sustainability in view of global poverty, and environmental sustainability in view of the many disasters and the ongoing global climate change.⁴⁵

The satisfaction of these needs has stimulated within the Italian credit institutions the particular experience of the Ethical Bank.⁴⁶ In fact, it began as a “meeting point between savers (who share the need for a more conscious and responsible management of their money) and socio-economic initiatives that are inspired by a model of sustainable human and social development where the production of wealth and its distribution are based on the values of solidarity, civil liability and the realization of the common good.”⁴⁷

The general objectives in particular render the Ethical Bank’s ultimate goals real in the sense that it addresses mainly the financing of categories of persons “not” or “hardly bankable”, suggesting, in this way, more control of consumption and more attention to the use of savings by directing them towards nobler, social uses, on the basis of choices characterized by high “rates” of moral integrity.

More examples could be provided. Just think of the use of microcredit as a tool for promoting financial inclusion of marginalized segments of the population, or of the forms of fair trade actually carried out in developing countries in the South of the world by way of production processes based on respect for hard work and natural resources, in order to provide, at the same time, the countries and markets in the North with new products that meet the demands for quality and price of “ethically oriented” consumers, thus helping to translate into reality paths of sustainable globalization.⁴⁸

⁴⁵ For instances of moral economy, social trends and the Green Economy, see L. MARIANO, *Etica utile. Il guado: la crisi economica nell’era promessa della responsabilità*, Utet Università, Novara, 2009, 41 ff; on the relationship between ethics and economics according to the social doctrine of the Catholic Church cf. D. TETTAMANZI, *Etica e Capitale. Un’altra economia è davvero possibile?*, Rizzoli, Milano, 2009; J.H. MATLÀRY, *Diritti umani abbandonati? La minaccia di una dittatura del relativismo*, Eupress Ftl, Lugano, 2007, 105 ff.

⁴⁶ The idea of Cooperative Bank Ethics took shape after the experience in Verona by the credit union in May 1978. On its history cf. M. Calvi, *Sorella banca. Passato, presente, futuro di Banca Etica*, Monti, Saronno, 2000.

⁴⁷ L. BECCHETTI, L. PAGANETTO, *Finanza etica, commercio equo e solidale: la rivoluzione silenziosa della responsabilità civile*, Donzelli, Roma, 2003, 167.

⁴⁸ Cf. E. VIGANÒ, M. GLORIO, A. VILLA, *Tutti i numeri dell’equo: il commercio equo e solidale in Italia*, Edizioni dell’Asino, Roma, 2008, 13.

All these examples serve to emphasize that the relationship between financial and religious factors, far from being a theoretical invention, represent an actual reality that has a development potential not yet well explored although sometimes already tested as in the case of “cooperative” labour.⁴⁹

6. Concluding remarks

It is clear that the exercise of religious freedom is directly proportional to the pursuit of economic development between cultures. Our daily lives have, in fact, not only an impact on the traditional environment in which we live, but also on the global environment. It is equally clear that, among the elements that characterize human existence, religion plays a fundamental role of cultural glue but is also the source of action between the so-called “Matrixes of meaning.”⁵⁰ We live, in fact, in a world where “people face each other across deep canyons of geography, language and nationality. More than in any other time in the past, we all depend on people whom we have never seen, and who in turn depend on us. The problems we face – economic, environmental, religious and political – are global and have no chance to be resolved unless people, however far away, will unite and work together as they have never done before. We think of global warming, fair trade rules, environmental protection of the environment and of animal species, the future of nuclear energy and the dangers of nuclear weapons, the labour movement and the establishment of decent working conditions, the protection of minors from drug dealing, sexual abuse and illegal work. All these issues can be addressed effectively only at the supranational level. And this list could be extended almost indefinitely.”⁵¹

There is, therefore, a true global interdependence from which none of us can withdraw. The economy is certainly a bonding element between peoples, and is a more effective vector than the law for global inter-cultural communication. This has the effect that even our simplest decisions as consumers can touch the living standards of people in distant countries, which are involved in the production of what we use.⁵² That’s why all the choices of both production and consumption should take place within this new idea of a globalized world where religions can play the role as a barrier to self-interest as well as in the development of a real solidarity and inter-cultural economy, enhancing the social dimension.

⁴⁹ Cf. A. DE OTO, *Precetti religiosi e mondo del lavoro. Le attività di culto tra norme generali e contrattazione collettiva*, Ediesse, Roma, 2007.

⁵⁰ M. RICCA, *Oltre Babele*, cit., 177 ff.

⁵¹ M. C. NUSSBAUM, *Non per profitto. Perché le democrazie hanno bisogno di cultura umanistica*, Il Mulino, Bologna, 2011, 95.

⁵² M. C. NUSSBAUM, cit., 96.

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Mission is being done in the context of suffering and persecution
and to undergird it with a solid biblical and theological foundation is
the need of the hour.

*Godfrey Yogarajah, Executive Director,
Religious Liberty Commission, World Evangelical Alliance*

In my global travels, I encounter persecution and religious liberty
issues as a prime challenge to the Christian church.

*Dr Geoff Tunnicliffe, International Director,
World Evangelical Alliance*

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Noteworthy

The noteworthy items are structured in four groups: Global surveys, reports, specific issues, and further reading. They are preceded by a news item. Though we apply serious criteria in the selection of items noted, it is beyond our capacity to scrutinize the accuracy of every statement made. We therefore disclaim responsibility for the contents of the items noted. The compilation was in part produced by the interns Lauren E Johnson, Josuha E Schow, and Tiffany L Ash, and edited by Dr. Christof Sauer. Submissions welcome to: noteworthy@iurf.eu.

News

Religious Freedom & Business Foundation

Annapolis, MD, USA, February 2014, www.ReligiousFreedomAndBusiness.org. The Religious Freedom & Business Foundation founded in February 2014 aims "to educate the global business community about how religious freedom is good for business, and to engage the business community in joining forces with government and non-government organizations in promoting respect for freedom of religion or belief." The president is Brian J. Grim, PhD, formerly with Pew Research Center in Washington, DC.

Annual Reports and Global Surveys

2012 International Religious Freedom Report

U.S. Department of State: Washington, D.C., 20 May 2013; executive summary, 23 p.; length of individual reports varies. <http://tinyurl.com/USDOS-IRFR-2012>. The United States Bureau of Democracy, Labor and Human Rights has released its annual comprehensive report, following the same format as last year and containing nearly 200 individual reports on individual countries and territories. These reports detail the status of religious liberty – in both policy and practice - as well as U.S. actions in each region. The report also highlights the status of countries previously designated as countries of particular concern (CPCs) by the USCIRF under the International Religious Freedom Act.

Freedom of Religion or Belief Prisoners List 2013 in 25 countries

Brussels 2014: Human Rights Without Frontiers Int'l. www.hrwf.org

Freedom of Religion or Belief World Report 2012

Brussels: Human Rights Without Frontiers Int'l. 2013, 142 p. <http://hrwf.org/images/reports/2013/forbannualreport.pdf>. Editors: Willy Fautré, Mark Barwick, Jan Nils Schubert & Alfiaz Vaiya.

Hate Crimes in the OSCE Region, Incidents and Responses

OSCE Office for Democratic Institutions and Human Rights (ODIHR): Warsaw, Poland, November 2013, 179 p. <http://tinyurl.com/OSCE-Report>. The Organization for Security and Cooperation in Europe has released its annual report on hate crimes using hard data and other information about the extent and types of hate crimes in the OSCE region in 2012, including information about hate crime categories, developments in legislation and responses to hate crimes by government and NGOs. The report comes in four parts. The report encourages states to increase data collection on hate crimes, adopt legislation punishing hate crimes, and equipping law enforcement officials to prevent and respond to hate crimes.

Observatory on Intolerance and Discrimination Against Christians: 2012 Report

OIDAC: Vienna, Austria, 20 May 2013, 68 p., <http://tinyurl.com/OIDAC-2012>. This report is comprised of two parts. The first deals with legal restrictions affecting Christians in Europe, and the second is OIDAC's annual report on exemplary cases of intolerance or discrimination against Christians in 2012.

Open Doors International: World Watch List 2014

Open Doors, Ermelo, Netherlands, January 2014, 4 p. <http://www.worldwatchlist.us>; www.opendoorsuk.org/resources/persecution. The World Watch List represents the 50 countries where persecution of Christians is the worst and is compiled from detailed information provided by Open Doors staff and independent experts. North Korea ranks No. 1 for the twelfth consecutive year.

Pew Forum: Religious Hostilities Reach Six-Year High

Pew Research Center's Forum on Religion & Public Life, Washington, DC, January 2014, 25 p. <http://tinyurl.com/pew2014>. The Pew Forum's most recent study on global religious restrictions reveals that, in 2012, religious hostilities increased in all major regions of the world except the Americas, with the most drastic increases occurring in the Middle East and North Africa.

Pew Research: Arab Spring Adds to Global Restrictions on Religious Freedom

Pew Research Center: Washington, D.C. 20 June 2013, full report 106 p., summary of findings, 15 p., <http://tinyurl.com/PRC-Arab-Spring-findings>. A new study released by the Pew Research Center found that in 2011, religious freedom restrictions in Middle East areas involved in the Arab Spring movement increased, contrary to many expectations that the uprisings would contribute to greater human rights and freedom. The study found that the overall level of restriction, whether due to government policy or social hostility, continued to grow and were higher in the Middle East/North Africa region than anywhere else on earth.

UN: 2013 report of the UN Special Rapporteur on Freedom of Religion or Belief (A/HRC/25/58)

Prof. Dr. Heiner Bielefeldt, Geneva, December 2013, 21 p. <http://tinyurl.com/rapporteur-report2013>. This report provides an overview of the Rapporteur's activities since the submission of his previous report, focuses on "the root causes of religious hatred and aggravating political factors," and recommends trust-building efforts for preventing and coping with religious hatred.

UN Special Rapporteur: Elimination of All Forms of Religious Intolerance

United Nations General Assembly: New York City, 7 August 2013, 22 p., <http://tinyurl.com/UN-Religion-and-Equality>. Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, released a report for on the interplay of freedom of religion and the equality of men and women. The report is intended to clarify the complementary nature of equality and freedom of religion because there is a widespread notion that human rights norms and religious freedom are two contradictory norms. It lays out a typological framework for the intersection of religion and equality. It also identifies how governments should provide equalizing abilities in school programs, religious institutions, and family law.

USCIRF: 2013 Annual Report

U.S. Commission on International Religious Freedom: Washington, D.C., 30 April 2013, 374 p., <http://tinyurl.com/USCIRF-2013report>. The USCIRF released its annual report on the status of religious freedom all over the world, highlighting the worst violators. The 2013 report recommends that the Secretary of State redesignate the following eight nations as "countries of particular concern" (CPCs): Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan. These 8 countries are in addition to the 7 that already met the CPC threshold: Egypt, Iraq, Nigeria, Pakistan Tajikistan, Turkmenistan, and Vietnam.

Regional and Country Reports**Eritrea: Report of the Special Rapporteur on the situation of human rights in Eritrea**

United Nation Human Rights Council: Geneva, 28 May 2013, 21 p., <http://tinyurl.com/Special-Rapporteur-Eritrea>. A special report prepared for the twenty-third session of the Human Rights Council details the initial observations of the Special Rapporteur on the situation in Eritrea. The report draws on interviews during field mission to neighboring countries from April 30 to May 9. It details cases of extrajudicial killing, enforced disappearances, incommunicado detentions, arbitrary arrests and detentions,

torture, inhumane prison conditions, indefinite national service, and lack of freedoms of expression, assembly, association, religious beliefs and movements.

European Union: EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief

Council of the European Union: Foreign Affairs Council, Luxembourg, 24 June 2013, 18 p., <http://tinyurl.com/EU-FAC-guidelines>. The Foreign Affairs Council recently released its conclusions as a set of guidelines addressing freedom of religion or belief (FoRB). These guidelines clarify the EU's official position on and commitment to religious liberty, and address the necessity of an official EU religious freedom policy in the midst of growing religious persecution, including in Europe. The document outlines the EU's operational guidelines for action and lists its priority areas of focus, as well as the tools at its disposal to take action, including financial tools such as control of aid to member or non-member countries.

Indonesia: The rise of religious intolerance across the archipelago

Christian Solidarity Worldwide, United Kingdom, February 2014, 100 p. www.csw.org.uk/2014-indonesia-report. CSW's report, which draws on more than fifteen years of work in Indonesia, reveals that religious intolerance has spread throughout the Indonesian archipelago and affects many religious groups, including Christians, Ahmadis, Shi'a Muslims, Sufi Muslims, Confucians, Buddhists, Hindus, Baha'is, Jews, traditional indigenous believers, and atheists.

Iran: The Cost of Faith

International Campaign for Human Rights in Iran, New York. 16 January 2013, 75 p., <http://tinyurl.com/Iran-costoffaith>. The ICHRI has released "The Cost of Faith: Persecution of Christian Protestant Converts in Iran." The report is drawn from interviews with 31 Iranian Christians, conducted between April 2011 and July 2012, and details the religious freedom violations against citizens. The ICHRI calls for the Iranian government to end their violations, as dictated by international law.

Mexico: Freedom of religion or belief

Christian Solidarity Worldwide: London, December 2013, 21 p., <http://tinyurl.com/Mexico-Religious-Freedom>. The Country Report on Mexico found that protection of religious freedom in Mexico has deteriorated significantly in recent years. The report details the poor resources and lack of commitment on the part of the Mexican government to combatting the rise in violence and subsequent abuses of religious adherents. It documents state-wide abuses of religious freedom and how the governments policies are inhibiting the protection of religious liberties throughout Mexico.

North Korea: Report on human rights violations in the Democratic People's Republic of Korea (A/HRC/25/CRP.1)

Human Rights Council, Geneva, February 2014, 372 p. <http://tinyurl.com/DPRK2014>. The Commission of Inquiry's investigation reveals grave human rights violations committed by the Democratic People's Republic of Korea. Religious freedom violations are mentioned along with other human rights abuses, and brief sections of the report focus on historical and current religious persecution.

Pakistan: A History of Violence

U.S. Commission on International Religious Freedom: Washington, D.C.. July 2013, 40 p., <http://tinyurl.com/uscirf-pakistan>. The Pakistan Religious Violence Project, conducted by the USCIRF, has released its findings in a report after 18 months of tracking publicly-reported religiously-motivated attacks in Pakistan. The research indicated 203 incidents of sectarian violence, with over 1800 casualties, more than 700 of which were deaths, with Pakistan's Shi'a community bearing the brunt of the violence.

Syria: Protecting and Promoting Religious Freedom in Syria

U.S. Commission on International Religious Freedom: Washington, D.C.. 22 April 2013, 14 p., <http://tinyurl.com/USCIRFreport-Syria>. The USCIRF has released a report on the increasingly sectarian nature of the conflict in Syria, summarizes its impact on human rights and religious freedom violations. The report also recommends that the U.S. government prioritize human rights in its interaction with Syria, especially if the country transitions to democratic rule.

Turkey: Religious Freedom Survey 2014

Mine Yildirim, Oslo, Norway, January 2014, 12 p. <http://tinyurl.com/turkeyrfs2014>. Forum 18's religious freedom survey notes that Turkey has failed to fulfill its international obligations to defend freedom of religion and belief, citing such violations as obstructing religious communities from obtaining legal status and preventing the use or possession of places of worship.

Specific Issues**Freedom of Religion or Belief: Why, What and How**

Stefanus Alliance International: Oslo, Norway, 2012, 11 p., <http://tinyurl.com/FoR-WhatWhyHow>. This publication provides a succinct, user-friendly summary of religious freedom, including core documents, eight core values of religious freedom, phases of persecution, and illegitimate limitations, among others.

What religious freedom involves and when it can be limited

Swedish Mission Council: Sundbyberg, Sweden. 2010, 20 p., <http://tinyurl.com/SMCquickguidetoRfreedom>. This report from the SMC provides a general overview of international and Swedish religious freedom laws, including the limitations of such laws and criteria used to assess the legitimacy of religious freedom claims.

UK: Article 18: An Orphaned Right

The All-Party Parliamentary Group (APPG) on International Religious Freedom, London: United Kingdom. 26 June 2013, 72 p., <http://anorphanedright.net>. The APPG on IRE, formed in July 2012, has released its first report. It examines the concept of religious freedom as proscribed by Article 18 of the UN's Universal Declaration of Human Rights. The report includes ten recommendations, several of which focus on Britain's cooperation with the UN to advance religious freedom internationally.

USA: International Religious Freedom Act: State Department and Commission Are Implementing Responsibilities but Need to Improve Interaction

U.S. Government Accountability Office: Washington, D.C., 71 p., <http://tinyurl.com/GAO-freedomrecommendations>. This report examines the implementation of the 1998 International Religious Freedom Act by the Department of State and U.S. Commission on International Religious Freedom, and the role of NGOs. The report recommends deepened cooperation and interaction between the DoS and the USCIRF in the future.

Journals and Articles**The Review of Faith & International Affairs: In Search Of The Bottom Line On Religious Freedom**

RFIA, Arlington, Virginia. December 2013, 76 p., <http://tinyurl.com/RFIA-2013>. Published by the Center on Faith & International Affairs at the Institute for Global Engagement, is edited by Dennis Hoover and Thomas Farr, and some articles are freely accessible. This issue focuses on the Protestant Work Ethic and the influence of religious freedoms and economic development.

The Review of Faith & International Affairs: Religious Freedom in the Study and Practice of U.S. Foreign Policy

RFIA, Arlington, Virginia. March 2012, 90 p., <http://tinyurl.com/RFIA-2012>. This 10th anniversary edition, published by the Center on Faith & International Affairs at the Institute for Global Engagement, is guest-edited by Chris Seiple, and most articles are freely accessible.

Book reviews

Religion in public spaces: A European perspective

Silvio Ferrari & Sabrina Pastorelli (eds.)

Burlington, VT: Ashgate, 2012, 408 p., ISBN 978-1409450580, £ 63.00.

This book is part of the Religare-project (www.religareproject.eu), which describes itself as following: “The RELIGARE project is a three-year European research project funded by the European Commission Directorate General Research - Unit L Science, Economy and Society. It comprises 13 universities and research centres from across the European Union and Turkey.” “The RELIGARE project is about religions, belonging, beliefs and secularism in Europe. It examines the legal rules protecting or limiting (constraining) the experiences of religious or other belief-based communities.”

The Series “Cultural Diversity and Law in Association with RELIGARE” already contains “A Test of Faith? Religious Diversity and Accommodation in the European Workplace” (2012), and “The Burqa Affair Across Europe” (2013). The books are very expensive and thus only of interest to libraries and researchers.

This book rightfully claims to discuss „the much debated and controversial subject of the presence of religion in the public sphere. Covering a range of very different European countries including Turkey, the UK, Italy and Bulgaria, this book uses comparative case studies to illustrate how practice varies significantly even within Europe.” It is edited by Silvio Ferrari and Sabrina Pastorelli, both teaching at The University of Milan, Italy. Silvio Ferrari is Professor of Canon Law, University of Milan and President, International Consortium for Law and Religion Studies, Italy and is widely published in the areas of church and state in Europe and comparative law of religions. He is an elder statesman in the area of religious freedom research. His younger colleague Sabrina Pastorelli is research fellow at the Institute of International Law – section of Ecclesiastical and Canon Law – University of Milan. She is also a member of the Groupe Sociétés, Religions, Laïcités at École Pratique des Hautes Études-Sorbonne and teaching assistant at the Catholic University of Paris – Faculty of Social and Economic Sciences. She has similar interests as Ferrari, but views them more from the point of view of the sociology of religion. The authors come from universities across Europe, eg., in Belgium, the Netherlands, Bulgaria, Sweden, Turkey, Great Britain, Denmark, and France. Three come from Canada and the USA.

The book is divided in three parts. The first part is a more theoretical one with contributions by lawyers, philosophers and sociologists on the question of “Religions and Public/Private Divide”. The second and third part discuss 1. concrete topics, 2.

religious dress codes in the public and 3. places of worship. Especially these two latter parts discuss some of the most controversial recent cases from around Europe.

It would be too lengthy to list and discuss all contributions. But taken all contributions together, I agree with German law professor Gerhard Robbers, University of Trier, who writes: "This is a highly important book in a remarkable controversy. Silvio Ferrari and Sabrina Pastorelli present a rich volume full of information, thought, and insight – presenting masterpieces of interdisciplinary research and political guidance. The book is a most valuable contribution to freedom and equality throughout Europe."

Here are my two favourite articles:

1. Alessandro Ferrari presents a brilliant article "Religious Freedom and the Public-Private Divide: A Broken Promise in Europe?" (pp. 71-91). Ferrari is right in criticising (p. 80-81) to define religious freedom according to a majority/minority scheme and based on "social cohesion risks", as they see the problems not as diverse as they are and tend to freeze problems for the future.

2. A great and well researched article is "'Stopp Minarett'? The Controversy over the Building of Minarets in Switzerland: Religious Freedom versus Collective Identity" (pp. 337 -352) by Vincenzo Pacillo.

Now to critical remark on some articles. In "Religion in the European Public Spaces: A Legal Overview" (pp. 139-156) the editor Silvio Ferrari sees "Three European Patterns of relation between States and Religions", 1. where the traditional majority religion still plays a central role (especially in some Catholic and Orthodox countries, 2. the opposite approach, where politics is in the main clearly divided from the former majority religion, and 3. multicultural and multireligious situations, where the second and third largest religions are rather great.

Even though Ferrari states, that there are no pure forms (p. 143). But there are major countries, which do not fit here or which have two approaches in the same country. Germany does not really fit here, because it mixes all three approaches, France follows the 2nd group, but in the former German area Elsass-Lothringen still has one of the strictest examples of the first category, while Greece follows group 1, but in the areas of Thracia following the treaty of Lausanne of 1923, Muslim leaders are paid out of the general taxes.

In the introduction (pp. 1-23) Marie-Claire Foblets states, that you find in the book "two principal scientific approaches drawn upon for the project: legal enquiry and sociological survey" (p. 4). That meanwhile should be standard in religious freedom research. Even though every author has his professional emphasis, I have to admit, that I found some articles mixing the two approaches and at the same time not distinguishing them clearly from the authors personal opinion. Sometimes the legal situation is not described based on original documents and court decisions, but following press releases or opinion pieces, probably because they were

available in English vs. other European languages of a given country. But those reports often mix legal description with opinion of the public or different actors.

As an example “Comparing Burqa Debates in Europe: Sartorial Styles, Religious Prescriptions and Political Ideologies” (pp. 275-294) by Sara Silvestri is not as convincing as Pacillo’s contribution. It only studies the Burqa and headscarf bans only in France and United Kingdom, and much too briefly in “other European countries”.

Too much informations stem from media reports or English reports about non-English-speaking countries. Eg the author speaks about a “headscarf ban” in “certain länders (states)” of Germany (p. 286). There is no headscarf ban in Germany, only some regulations concerning teachers in state schools. Private companies in Germany have to employ women with headscarfs, as several courts have decided. The complicated situation in Germany, diverse in the different states (“Länder”), and in flux due to a decision by the constitutional court, is not adequately described. There seems to be no original research.

On page 288 Sara Silvestri gives a very personal opinion in favour of the burqa and against any ban, and utters the generalisation that people who are against the burqa have not met Muslim women and do not see them as persons (p. 288), unfortunately without giving any proof for this judgement.

She reports that there are Muslim organisations and representatives in Germany that are against Muslims fighting for veils and burqas in public service. That is true of other countries too, and proves, that this is not just a black and white-issue, but often a very complicated matter with a wide range of opinions among people and legislators, and that many of them do not see a good compromise on the market.

Prof. Dr. Thomas Schirrmacher, Director, International Institute for Religious Freedom, Professor of the Sociology of Religion, Chair of the Theological Commission of World Evangelical Alliance

The Lautsi Papers: Multidisciplinary reflections on religious symbols in the public school classroom

Jeroen Temperman (ed.)

Leiden & Boston: Martinus Nijhoff Publishers, 2012, 443 p., ISBN 978-9004222502, US \$ 206.00.

In 2009 the Chamber of the European Court of Human Rights (ECtHR) in the case of *Lautsi v. Italy* ruled that the compulsory display of a crucifix in the classrooms of Italian public schools violated the children’s right to believe or not to believe, and the right of parents to educate their children in accordance with their own

religious beliefs. However, the Grand Chamber overruled the Chamber's judgment and held that there was not adequate evidence before the Court proving that the display of a crucifix on a classroom wall might have an adverse effect on pupils; and that, in the final analysis, perpetuating such a majority tradition falls within the margin of appreciation of the state. As expected, these judgments (especially the Grand Chamber's) attracted substantial commentary in scholarly circles. This book (Lautsi Papers) provides an informed and critical multidisciplinary commentary on the Lautsi judgments. In the Lautsi Papers the focus is on religious symbols and judges, education and proselytism as well as on comparative perspectives on religious symbols and education. This is followed by specific comments pertaining to Lautsi covering areas such as 'neutrality', 'hate speech' and the 're-thinking of adjudication under the European Convention'.

More specifically, in Part I, the Lautsi Papers present informed findings from a quantitative analysis of the ECtHR cases concerning Article 9 (freedom of thought, conscience and religion) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention of Human Rights – ECHR). There is also commentary on the interpretation of the meaning of religious symbols by the judiciary in the context of the pressures and perils that secular courts face when they attempt to give authoritative meaning to religious symbols. Part I concludes with an argument supporting a modest approach to be taken by the ECtHR with regard to matters about which there is a plurality of legitimate options and no consensus amongst States which are members of the Council of Europe. This also qualifies opposition to radical state neutrality as well as the preservation of cultural heritage and collective identity.

In Part II, matters related to symbols, education, indoctrination and proselytism are investigated in the context of the Lautsi judgments. This part begins by criticising the Grand Chamber's denial of any evidence of influence that the display of the crucifix may have on pupils. It is commented that the ECtHR had missed an opportunity to set out and discuss the scope of the standards of Article 2 of Protocol I (which deals with 'every person's right to education' and that 'the State shall respect the right of parents to ensure such teaching in conformity with their own religions and philosophical convictions') as they should apply to cases dealing with the influence of the display of religious symbols by the state. Following on this is a lengthy piece calling for the ECtHR to follow a path of 'open neutrality' (which requires the inclusion of all religions and beliefs in public life) as opposed to 'closed neutrality' (which requires the absence of religion from public life). How this relates to the protection of minority rights also makes for an interesting analysis. In the last chapter of Part II a critical analysis is made of the importance to be accorded to 'moral orthodoxy as represented by the majority' versus 'individual rights as represented

by the minority'. The Grand Chamber in *Lautsi* is also criticised from various angles. An example in this regard is the question of whether parental liberties are to be given more weight than the rights of children. The ECtHR's exclusion of any citation of authority for its conclusion that certain symbols such as crucifixes in classrooms are 'passive' is also emphasised.

Part III focuses on religious symbols in the context of neutrality. In this part, the idea of exclusive neutrality is opposed, adding that 'thick conceptions of the good' in public spaces should be avoided. This entails that the separation of church and state should not be understood as a principle that safeguards the public space from any infection of the religious beliefs of its citizens, but as a principle that requires that 'the religious and secular be prevented in exactly the same way from achieving anything like total victory'. Here the value of a 'default choice model' is emphasised. Following on this is a call to go beyond inclusive and exclusive ideas of neutrality. It is argued that constitutional values such as pluralism also have an integral role to play in the analysis of whether crucifixes should be displayed in public school classrooms. The Grand Chamber in *Lautsi*, by arguing only along Catholic persuasive lines, is said to have violated this value of pluralism. Part III ends with an examination of how neutrality is conceived within the ECtHR context generally. Divergent ways in which states have grappled with neutrality, specifically regarding the displaying of religious symbols by state teachers, is also investigated. From this arise the complexities of the concept of neutrality which make for multiple approaches being possible in assessing religious symbols. It would be good to read the first chapter of Part V together with this part where added insights are provided regarding the neutrality argument.

Part IV's theme is 'comparative perspectives on religious symbols and education'. This part begins with a summary of the Canadian jurisprudential approach to this topic, comparing this to approaches taken by the ECtHR. Interesting observations follow regarding the Canadian courts and the ECtHR pertaining to the separation between religion and politics. Following on this is an explanation as to why *Lautsi* serves as a useful guide to the ways in which the display of religious symbols in Romanian state schools violates the religious rights enshrined in the ECHR. The last chapter of this part argues that the crucifix is a religious symbol and its compulsory display in public schools is a state intervention in the sphere of religious freedom which does not qualify the ECtHR to call upon the 'margin of appreciation' doctrine.

In Part V it is the chapter on 'Fundamental Questions' of *Lautsi* that especially presents illuminating postulations in support of the Grand Chamber judgment in *Lautsi* as well as lucid opposition to the general trend of criticism in the *Lautsi Papers*. In this regard one finds credible scrutinisation of radical secularism and good

argumentation in support of tradition and history. This is followed by a chapter supporting the discriminatory effects of religious symbols in the public sphere adding that this may constitute hate speech towards vulnerable groups. The concluding chapter in this part proposes that it is time for the ECtHR to develop a new mode of adjudication which will make it possible to act as a counter-majoritarian institution and set a European standard, without infringing upon state sovereignty.

The plethora of chapters (by an array of scholars from various disciplines) in the Lautsi Papers provides for many important (and contentious) insights pertaining to religious rights and related matters. This work is of the utmost value for those interested in the display of religious symbols (and religious expression) in the public sphere and its inextricable implications for insights related to understanding the ECHR's approach to: the protection of human rights; proselytism; indoctrination; minority and majority rights protection; the parameters of a supranational judiciary; neutrality and the public sphere; children's rights; parental rights; pluralism; the nature of religious symbols; and a general understanding of the mind of the ECtHR (and related complexities) in matters related to religious rights and freedoms. The overwhelming part of the Lautsi Papers reflects a negative view towards the Grand Chamber's judgment in Lautsi, although those chapters in support of the said judgment present convincing argumentation so as to compensate for this imbalance.

Shaun de Freitas, Associate Professor, Department of Constitutional Law and Philosophy of Law, University of the Free State, Bloemfontein, South Africa

The Routledge handbook of religion and security

Chris Seiple, Dennis R. Hoover & Pauletta Otis (eds.)

New York: Routledge, 2012, 282 p., ISBN 978-0415667449, US\$ 225.

The book is divided into three sections. In part one, nine religious traditions such as Judaism, Eastern Orthodoxy, Roman Catholicism, Protestantism, Shi'a Islam, Sunni Islam, Hinduism, Sikhism and Buddhism were reviewed. In these chapters there is the point that the term 'security' is ambiguous and could not fall in line with religious strategy. Other discussions identify efforts of the Catholic Church in peace missions as it assists security worldwide. The passage shows that Protestantism's diversity and dynamism in relationship to security is difficult to assess because the religious tradition so heavily influenced the development of the contemporary world order. A line of demarcation can be seen here. A sharp difference in faith practices between Shi'a Islam and the adherents of Sunni Islam in regard to terrorist action is also identified. The passage shows that Sunni scholars are against violence and regard the sanctity

of life highly. The three Asian religious tenets considered here (Hinduism, Buddhism and Sikhism) are very indifferent with regards to security. The implication of this is a looming security challenge that may be experienced in Asia.

In the second part, explorations of religious benefits over against the prevalence violence are keenly emphasized. From feminist perspectives, Muslim-majority countries encouraged women's empowerment which helped in societal reform and thus assisted security. The writer in this passage sees a mediating role in conflict resolution as a way forward in issues that can lead to security problem. Other contributors identify the important impact of agency, institutions and group on security and these can serve as harbingers of peace in issues relating to religion and security.

In part three, religion and security challenges in some particular countries are analysed. The countries discussed are Nigeria, India, Israel, Yugoslavia and Iraq. The religious situation there is identified as sensitive and thus determine crises that pose security threats.

This book is a very timely publication. It covers several ethnoreligious crises as they affect governance, development, politics and security of different countries and becomes global challenges. The authors' views are scholarly and germane to world peace. However, the major criticism about the work is that nearly all the scholars are foreign to the crisis areas and no African scholar is represented. The implication is that when it comes to the discussion of African issues, the information that could be relied upon will simply be secondary. Apart from this, the work is an adequate publication for religion and security.

Oladosu Olusegun Adebolu, African Religions and Comparative Studies, Department of Religious Studies, Obafemi Awolowo University, Ile-Ife, Nigeria

The Young Turk legacy and nation building: From the Ottoman Empire to Atatürk's Turkey

Erik J. Zürcher

London, New York: I. B. Tauris, 2010, 358 p., ISBN 978-1848852723, US\$ 32.00.

Erik-Jan Zürcher is a Dutch Professor of Turkish Studies at the University of Leiden in the Netherlands. His special interest is in the years from 1880 to 1950 with the transition from the Ottoman Empire to the Turkish Republic. Zürcher's "Turkey – A Modern History" (1st ed. 2004) is one of the standard works about the recent past of today's Turkey.

"The Young Turk Legacy" is a collection of very diverse articles. Some of them offer very valuable insights to a better understanding of the perception of Christians in Turkey today. They may help to find answers on the puzzle of how the most secular state in the

Muslim world has been pursuing policies that practically yielded the result of almost extinguishing the once numerous Christian population. For this purpose the reader may focus mainly on the articles “The Young Turk Mindset” (pp. 110-123), “Young Turks, Ottoman Muslims and Turkish Nationalists: Identity Politics 1908-38” (pp. 213-235) and “Islam in the Service of the Caliphate and the Secular State” (pp. 271-284).

In a shrinking empire with Christian peoples (like Greek or Serbians) seceding and Muslims from new Christian states fleeing back to Anatolia, for the Ottoman ruler Abdhülhamit II (ruled 1878 – 1909) “it made sense to ground this new basis of solidarity in the shared religious heritage of the Muslim solidarity” (p. 274). Abdülhamit’s policy aggravated the tensions with the Christians and finally led to massacres amongst Christians (1894 – 96).

About the movement of the Young Turks, a group of Ottoman officers starting a constitutional revolution in 1908. Zürcher analyzes: “Their collective identity was certainly formed in opposition to non-Muslims” (p. 111). Most of them personally had experienced how large parts of the Empire were lost, culminating in the Balkan Wars of 1912/13. More than this: “With half of the Young Turk leaders hailing from areas lost to the empire in 1911-13” (p. 118) many of them must have had a very personal feeling of being homeless as Ottoman Muslims. So the “new interest in Anatolia” (p. 120) led to a focus to keep this heartland of the Ottomans for the Muslims. Christians within and outside the Empire were perceived as the enemies.

Zürcher challenges the thesis that after a failed common multi-religious Ottoman identity and different from a (pan-) Islamism the Young Turks and especially Atatürk chose a nationalistic Turkism. He states instead that “the Unionists were motivated by a peculiar brand of Ottoman-Muslim nationalism, which was to a very high degree reactive” (p. 230), i.e. reactive to the secessions of Christians and the advance of Christian powers. Though later Mustafa Kemal in fact created a Turkish national state, “the predominance of Muslim nationalism in the formative phase of modern Turkey” (p. 231) seems to be of high importance to understand the very negative perceptions of Christians in Turkey until today.

The Young Turk’s and Mustafa Kemal’s main goal was not to create a pluralistic Western democracy, but to strengthen their state with an inseparable Turkish and Islamic identity. That helps to understand why secular people in Turkey are not necessarily defenders of the rights of Christians.

I recommend the book to every reader who wants to understand the difficult role of Christians in today’s Turkey and is willing to dig a bit deeper.

Wolfgang Haede, Turkey, author of “Faithful Until Death: The Story of Necati Aydın, a Turkish Martyr for Christ”, Living Sacrifice Books, 2012

The Ethics of Evangelism: A philosophical defence of proselytizing and persuasion

Elmer John Thiessen

London: Paternoster; Downers Grove, IL: IVP Academic, 2011, 285 p., ISBN 978-1842277249, US\$ 17.42.

In a multi-cultural world evangelism is often under attack, with those seeking to evangelise sometimes being branded arrogant, ignorant, hypocritical and meddlesome. Against such a backdrop this unique book asks what sort of evangelism is ethical in a liberal, post-Christian society. Thiessen discusses the immoral practices and attitudes that are sometimes associated with evangelism and then turns his insightful attention to a better way of approaching the subject. Should we try to bring people to Christ or not? He engages in a timely, relevant cultural debate about religion in public and social life. He examines cultural and intellectual objections to evangelism accurately and fairly and provides a thorough philosophical defense for public Christian practice. But the book is no lobbyism. It contains a lot of self criticism and takes it seriously, that unethical evangelism is plain wrong.

Christian witness is no zone free of ethics. Mission needs an ethical framework, if Christians want really to do the will of Jesus. This is the goal of the book: Not to defend proselytizing as such, but only to defend ethical proselytizing: “my overall aim is to provide a philosophical defence of proselytizing, showing that an ethical form of proselytizing is indeed possible” (p. 21).

This is a timely study, as the first ecumenical code of ethics for Christian witness discussed between the Vatican, the World Council of Churches and the World Evangelical Alliance has been recently published. Evangelism and ethics belong together and may not be separated. The same applies to legal and human rights questions related to any propagation of faith and values. Never before has this been studied so much in depth as by Thiesen, who discusses the topic both as an inner-Christian theological question as well as a general legal question with regard to all religions. This most extensive ethical analysis of evangelism to date is an invaluable service to the church as well as to anybody interested in a peaceful society.

Thiessen from Canada gained a Ph.D. from University of Waterloo taught philosophy and religious studies at Medicine Hat College in Alberta for over 35 years and is now Research Professor of Education at Tyndale University College in Toronto. He has written two other books with a similar depth of arguments, ‘Teaching for Commitment: Liberal education, indoctrination, and Christian nurture’ (1993) and ‘In Defence of Religious Schools and Colleges 2001’, in which he proves, that religious education is possible and should be without indoctrination.

He writes from a Christian perspective and defends Christian mission. But his arguments are directed to secular readers as well as adherents of other religions. And his general principles are valid for all kind of spreading a religion or worldview and thus the book is a major contribution to the course of religious freedom.

I think it is vital to understand Thiessen's argument, that proselytizing has a lot in common with many other kinds of advertising and marketing (p. 25). You cannot allow a free society to propagate more or less anything, and then single religions out. I would add: Proselytizing is very closely connected to the human rights of freedom of conscience, freedom of speech, freedom of press and others. As long as we insist, that Amnesty and Greenpeace, political parties of any kind, schools and universities, and many more, must be free to reach out to members of a free society, why in the world should religions or the Christian religion be an exception here?

Prof. Dr. Thomas Schirrmacher, Director, International Institute for Religious Freedom, Professor of the Sociology of Religion, Chair of the Theological Commission of World Evangelical Alliance

Durch Leiden geprägt

Ekkehard Graf

Münster: LIT Verlag, 2012, 343 p., ISBN 978-3643115959, €29.90.

Fortunately, the plight of persecuted Christians in many countries worldwide has finally become recognized as a tragic fact in the world of German academics. Whereas Christians in contact with the fellow believers around the world have been painfully aware of the sufferings millions of Christians are subjected to in certain countries and geographical areas, most of the established churches and theological faculties have either ignored or not recognized the problem. Since 1999 the Religious Liberty Commission of the German Evangelical Alliance has been publishing both items of news interest as well as scholarly research on the subject in the German language, and making a broader public more aware of the suffering so many Christians have to bear.

In 2011 I was privileged to advise Ekkehard Graff as the chairman of the German Religious Liberty Commission and the International Institute for Religious Freedom on his doctoral dissertation dealing with the history of suffering of the young Nethanya Church located in the Indian states of Andhra Pradesh and Orissa.

Graf tells the story of how this indigenous church grew from nothing to more than 200,000 believers with more than 1000 full-time workers amidst all kinds of adversity, hatred and persecution. Leading up to this he gives insights into his sources, forms of Hinduism pertinent to the situation in Andhra Pradesh and Orissa, India's political, economic and sociological situation, in particular in view of the education system, the

caste system, the oppression of women, the tribal religions and the radical communist Naxalite Movement which all play a role in the suffering of the Nethanya church.

The rapid growth of the Nethanya Church was accompanied from the outset by adversity from various quarters. In a series of case studies Graf describes the various forms of difficulties and persecution the church has had to face throughout the last four decades. He describes the dynamic of being cast out or persecuted by one's family and society through ostracism, material loss and physical abuse even to the extent of being martyred. He points out the oppression originating in the Hindu religion and culture including the particularly vulnerable status of women. He also points out that believers from a tribal background were also persecuted by their coreligionists and by the Naxalite insurgents.

The major analytical contribution Graf has made in this thesis is his assessment of how persecution and suffering influenced the development, the growth, and the strengthening of the Nethanya Church. At the end of his treatise he compares the experience and suffering that the Nethanya Church has made with the suffering for Christ depicted in the New Testament especially in the Pauline letters.

All in all Ekkehard Graf has presented a thorough study of how one church in the modern Indian context is growing by leaps and bounds in spite of – or perhaps because of – severe adversity.

Dr. Paul Murdoch, Tübingen, Germany, Director of Studies in Missiology, Albrecht-Bengel-Haus, Tübingen and Board Member of IIRF

Martyrdom – A very short introduction

Jolyon Mitchell

Oxford: Oxford University Press, 2012, 141 p., ISBN 978-0199585236, US\$ 9.42.

Jolyon Mitchell's addition to the Very Short Introductions series is a surprisingly comprehensive primer to the topic of martyrdom. The perspective that Mitchell takes, as is common these days, is not specific to one religious tradition. Rather, he traces the phenomena of martyrdom in different faiths and across history. Mitchell's stated goal is not to provide a particular theology or philosophy of martyrdom, but rather to 'draw on a wide range of examples to raise questions about martyrdom and to illuminate the different origins, kinds and uses of martyrdom' (p. 4). Mitchell certainly fulfills that aim, but this means that his book is largely descriptive on the one hand, and teasingly provocative on the other without ever really resolving anything. Taken from this perspective, martyrdom is always going to be a way of thinking about particular deaths that is contested and challenged, as different groups seek to legitimize themselves by means of martyr-stories. We learn, certainly, that martyrdom is a

powerful concept for religious and non-religious communities even today, and that it is part of the spiral of religious violence which is such a blight on our world. Mitchell is able to show how martyrdom is sometimes more of a pathology than anything else. The sanctification of war by reading the deaths of those who die in battle in terms of martyrdom is, as Mitchell amply illustrates, deeply problematic.

My question, however, is whether 'martyrdom', in fact a Christian concept patterned on the death of Jesus Christ, is the right descriptor for the broad collection of phenomena under Mitchell's scrutiny. As with many aspects of the (secular liberal) study of religion, the use of a Christianised terminology and criteria leads to the grouping together of many things that are outwardly similar but in such a way as to obscure profound differences. To group together the suicide bomber and an Oscar Romero, for example, makes one wonder whether the concept that provides the connection between the two is really well enough defined. Secular liberalism enjoys a kind of willful blindness to the difference between the two. To be fair to Mitchell, he certainly raises the sort of question, but without attempting to offer us a way forward.

The book is made more attractive by the addition of numerous illustrations and by Mitchell's excellent engagement with artistic and dramatic depictions of martyrdom. Mitchell's writing is both easy and perceptive, and his list of further reading is extensive.

Dr. Michael P. Jensen, Lecturer in Theology, Moore College, Sydney, Australia

Racism: With an essay on caste in India

Thomas Schirrmacher (author), Richard Howell (contributor)

Bonn: Verlag für Kultur und Wissenschaft, 2012, 120 p., ISBN 978-3862690350.

In "Racism" Thomas Schirrmacher sets about the task of discerning the roots of racism and the theological / ideological constructs that underpin it. Further, Schirrmacher uses science and Biblical material, to destroy the case for racism.

With regard to science, Schirrmacher digs into the literature and scholarship on both sides of the race debate, concluding that the category of race is genetically unsustainable and nonsensical. These are categories based less on biology than on prejudice.

Having traced the history of racism from antiquity to modern times, Schirrmacher gives a panoramic view of racial experiments around the world.

In addressing Israel's Zionism and South Africa's Apartheid, Schirrmacher falls short. With regard to Israel's Zionism and Palestinian responses to it, Schirrmacher does not deal with the atrocities of the state of Israel against Palestinians, both Christians and Muslims. The Palestinian struggle for freedom is unfairly presented as a form of anti-Semitism.

Similarly, his treatment of South African racism and the struggle to end it betrays a Euro centrality that tends to be less harsh in assessing the shortcomings of centuries of democratic practice in Europe, than it is with South Africa in the short time of its democratic journey

To the global picture of racism, Richard Howell adds a further thread to the story in his treatment of the caste system in his home country of India. As in the other versions of racism, religion is mobilised to prop up the idea that the world is divided between the damned and the blessed. Hindu sacred text affirm that: "When a Brahman is born, he springs to light above the world: he is the chief of all creatures, entitled by eminence of birth to the wealth of the world" (2012:95).

Howell traces the religious foundations of the caste system, its symbiotic relations with Indian culture, its survival through the democratisation of India and its persistence in spite of the many struggles waged to end it.

In spite of the fact that the caste mindset exists even within the church in India, Howell affirms that the gospel holds the key to dismantle the caste system.

Both Howell and Schirrmacher make the point that in spite of the persistence of racism in society today, Christianity holds an important antidote in its insistence that in Christ all are equal.

Rev. Moss Ntlha, General Secretary of the Evangelical Alliance of South Africa

The world's religions in figures: An introduction to international religious demography

Chicester, UK; Malden, MA: Wiley-Blackwell, 2013, 376 p., ISBN 978-0470674543. US\$104.95.

Todd M. Johnson & Brian J. Grim

This book is a comprehensive introduction to religious demography, both by way of method and by way of data and results. The first of the three sections offers an introduction to the discipline by describing the religious composition of the world in 1910 and 2010, by trying to rank religious diversity in countries, and by projecting of religious populations from 2010 to 2050. This section is of prime interest for those who want to study the major result, statistics and tables.

The second section provides a discussion of the methodology both for the data of the 'World Religions Database' (WRD) and for the results drawn from it. It includes discussion of terms like 'religion' or 'religious identity', discussion of the sources for the data and also the dynamics of change in existing religious populations.

The third section is made up by "case studies", even though most topics are so broad, that the term seems to be an understatement. The largest 'case study' is the

counting of the global Muslim population, the changes of those in recent history, the future change rates, as well the possible reasons for those changes and the rise of the number of Muslims.

China's religious populations and the situation of the two Sudan's are much shorter 'case studies'. This last section ends with an extended discussion of migration of religious minorities and the resulting religious diasporas in the world.

As we know it from other books and studies of both authors, the book abounds in well done statistical charts, tables, graphs, and figures, always with concise, but clear comments going with them.

Let me give you some of the results, which I found interesting, as samples:

If it were not for Asia, Christianity would be by far the largest religion, from 48.3% in Africa to 92.3% in Latin America. But in Asia with its 4,164 billions only 8.2% of the population are Christians (p. 13).

Muslims otherwise range from 0.3% in Latin America, 1.6% in North America and 5.6% in Europe to 25.9% in Asia and 41.7% in Africa (p. 19).

Hindus instead virtually live all in one region, that is South-central Asia, where they make up 52.9% of the population (p. 24).

Of the 13,7 mio. spiritists worldwide, 9,4 mio. live in Brazil, the rest more or less in the South of Latin America and the Caribbean (pp. 54-55).

Orthodox Christians fell from 7.1% in 1910 to 4% in 2010 (p. 16) and are further declining in numbers and percentage.

In China there are 67 mio. Protestants and 9 mio. Catholics.

Islam and Christianity did grow both in Africa at the expense of animists and folk religions, rarely at the expense of each other (pp. 113, 243-246). There is one exception: In Uganda, one third of those saying they were raised as a Muslim, describe themselves as Christians (pp. 211-212).

Muslims grow twice as fast as the world's population (pp. 233-285), even though the growth is slowing down and will slow down further till 2050. But the growth is only due to the fertility rate, not due to conversions (pp. 113, 277-278), and happens mainly in Africa, not in other continents (p. 113). By 2050, two thirds of Muslims will live in the Asia-Pacific region, with Pakistan as the largest and Indonesia as the second largest Muslim countries (pp. 113, 119-121).

Agnostics will decline from 9.8% in 2010 to 7.3% in 2050, atheists from 2.0% in 2010 to 1.4% in 2050, mainly due to a decrease in East Asia (pp. 122-124).

If one wants to discuss the data undergirding the whole book, one would have to review the 'World Religion Database' (WRD, see pp. 198-204). Even though the books explain a lot about this database and its methodology, the WRD itself is only accessible in the Internet for a price only affordable for institutions.

There are many researchers that back the numbers, there are those that use them because often no others are available, and there are those (like Philip Jenkins) who criticize them in principle and do not use them. Everyone easily will find figures, where he wonders, how they were researched, especially when one knows the specific topic or country well, e.g. if I look at my native country Germany: How is it possible to know that there were 44.100 atheists in Germany in 1910 (p. 43)?

A comprehensive review by a top researcher not connected to WRD in any way, has not been done by anyone, as far as I know, even though Robert D. Woodberry ("World Religion Database: Impressive – but Improvable", *International Bulletin for Missionary Research* 34 [2010] 1: 21-22) did a great job already. (Jennifer Dekker, "World Religion Database", *The Charleston Archives* January 11 (2009) 3. pp. 57-60, <http://eprints.rclis.org/16890/>, concentrates not so much on the validity of the data, but on weaknesses of the website, e.g. search functions. She also lists alternative databases.) This desideratum cannot be filled by my review.

I just would want to make one remark concerning a very specialized topic that leads into the middle of an unsolved debate: The authors count 285,479,000 Evangelicals for 2010, because they do not consider the 583,371,000 Pentecostals and Charismatics to be part of them (pp. 16-17). There might be reasons for distinguishing non-Charismatic Evangelicals and Pentecostal/Charismatic Evangelicals. But in reality it is increasingly impossible to distinguish both, as the Pentecostals/Charismatics are more and more in line with a traditional Evangelical theology, while at the same time non-Charismatic Evangelicals take over style, music and ideas from the other camp. But even more importantly: Both camps more and more work closely together and are in the main represented by the bodies, the national alliances, the regional alliance and the World Evangelical Alliance, that speaks for approximately 600 mio. Christians, thus having the same size as the World Council of Churches. At the Global Christian Forum, the Pentecostal World Fellowship and other Pentecostal associations were asked, to which confessional meeting they would like to go, the Evangelical or an own Pentecostal one. Without any hesitation, they voted for a common meeting with the Evangelicals, seeing themselves as Evangelicals. At the leadership level of national, regional alliances and the WEA, it is no longer possible to distinguish between both camps and most leaders would no longer say, that they belong to either or, but that they just have a certain leaning to the one or the other side.

Prof. Dr. Thomas Schirrmacher, Director, International Institute for Religious Freedom, Professor of the Sociology of Religion, Chair of the Theological Commission of World Evangelical Alliance



Books received [review pending]

- **Dissident for Life: Alexander Ogorodnikov and the struggle for religious freedom in Russia**, by Koenraad De Wolf, Grand Rapids, MI, USA: Wm. B. Eerdmans, 2013, 347 p., ISBN 978-0802867438, US\$ 19.65.
- **God's Adventurer: The story of Stuart Windsor and the persecuted church**, by Stuart Windsor, Oxford, UK: Monarch, 2011, 288 p., ISBN 978-1854249999, US\$ 12.78.
- **Islam and the Secular State: Negotiating the future of Shari'a**, by Abdul-lahi Ahmed An-Na'im, Cambridge, MA, USA: Harvard University Press, 2008, 336 p., ISBN 978-0674034563, US\$ 16.03.
- **Martyrdom and Identity: The self on trial**, by Michael P. Jensen, New York, NY, USA: T & T Clark International, 2010, 224 p., ISBN 978-0567526281, US\$ 130.00.
- **Models of Religious Freedom: Switzerland, the United States, and Syria** by analytical, methodological, and eclectic representation, by Marcel Stüssi, Berlin, Germany: Lit Verlag, 2012, 536 p., ISBN 978-3643801180, EUR 62.90.
- **Perfect Martyr: The stoning of Stephen and the construction of Christian identity**, by Shelly Matthews, New York, USA: Oxford University Press, 2010, 240 p., ISBN 978-0195393323, US\$ 65.00.
- **Persecution in 1 Peter: Differentiating and contextualizing early Christian suffering**, by Travis B. Williams, Boston, MA, USA: Brill, 2012, 483 p., ISBN 978-9004241893, US\$ 192.98.
- **Politics in a Religious World: Building a religiously literate U.S. foreign policy**, by Eric Patterson, New York, USA: Continuum, 2011, 176 p., ISBN 978-1441108654, US\$ 27.89.
- **Religion and International Relations Theory**, by Jack Snyder, New York, USA: Columbia University Press, 2011, 232 p., ISBN 978-0231153393, US\$ 27.50.
- **Resisting Violence and Victimisation: Christian faith and solidarity in East Timor**, by Joel Hodge, Farnham, Surrey, UK: Ashgate, 2012, 224 p., ISBN 978-1409445876, US\$ 99.95.
- **The Encyclopedia of Christian Civilization, ed.**, by George Thomas Kurian, (4 Volume Set), Chichester, West Sussex, UK: Wiley-Blackwell, 2011, 2790 p., ISBN 978-1405157629, US\$ 530.00.
- **The Not-Very-Persecuted Church: Paul at the intersection of church and culture**, by Laura Hunt, Eugene, OR, USA: Resource, 2011, 124 p., ISBN 978-1610976060, US\$ 13.00.
- **The Protection for Religious Rights: Law and practice**, by James Dingemans, Can Yeginsu, Tom Cross & Hafsa Masood, Oxford, UK: Oxford University Press, 2013, 472 p., ISBN 978-0199660964, US\$ 172.48.
- **These Are the Generations**, by Mr. and Mrs. Bae, as told to the Eric Foley, Colorado Springs, CO, USA: W Publishing, 2012, 120 p., ISBN 978-0615678351, US\$ 9.95.

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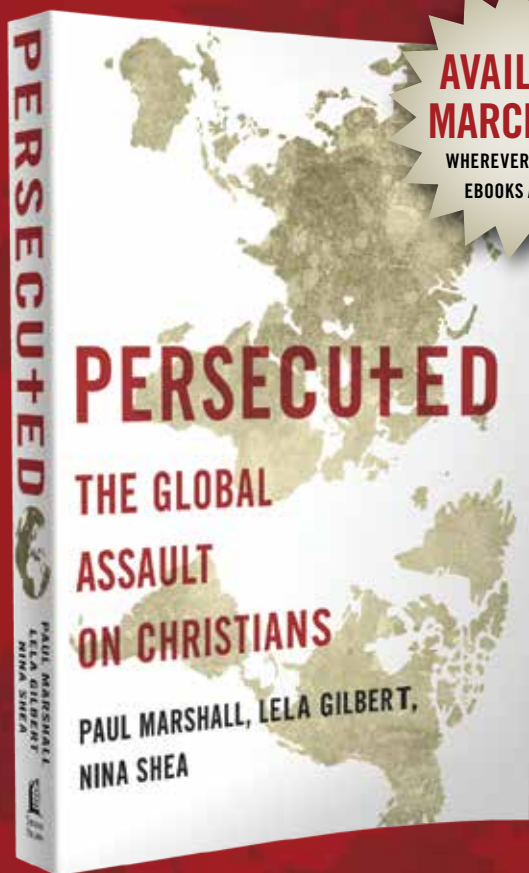
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