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Responding to secularism

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editor@iirf.eu

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Babylon Burning – Grace Carol Bomer

A manipulated Ikea photograph of New York's Brooklyn Bridge is turned up-side-down. The Tower of Babel painted over the city of New York is a symbol for the "city of man." It is burning – a reference to the doom of Babylon found in Revelation 17-18. Babylon is portrayed as the Great Prostitute or The Harlot, who prostitutes her love for the true God. Those who follow the Beast will make Babylon, "desolate and naked and devour her flesh and burn her with fire." Babylon represents the secular city.

The other "city" of Scripture is the everlasting city, eternal in the heavens, a city that cannot be shaken," (Hebrews 11:13, 12: 27-29).

Grace Carol Bomer has kindly given us permission to use Babylon Burning.

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Editorial

Responding to secularism

We are pleased to address in this issue the important issue of how secularism impacts religion and religious adherents. Secularism arose in the West, largely through the influence of European philosophers and sociologists. Christians in the West have increasingly been marginalized in secular states. But secular intolerance has spread to other countries as well. The articles in this issue represent a wide range of current and historical issues across several countries. We trust that you will find them interesting and informative. Please note that this issue is being published in early 2022.

There are four opinion articles to start off this issue. The first opinion article is from a speech delivered by Thomas K. Johnson, theological advisor to the World Evangelical Alliance, to the Abrahamic Faiths Initiative. The speech encourages robust protection for freedom of religion or belief for all people of faith in the context of a post-secular world. The second opinion article, by Geert Lorein, looks at the role of law and religion in Belgium, where the government asks religious institutions to affirm that "religion does not stand above the law." The third opinion article is by Teresa Flores and Dennis P. Petri summarizing the main findings of a research project conducted by the Observatory of Religious Freedom in Latin America on self-censorship in Latin America. Dennis P. Petri and I contributed a fourth opinion article looking at the historical development of secularism and the definition of secular intolerance. It gives some context for the rest of the articles in this issue.

Dennis P. Petri and Ronald R. Boyd-MacMillan have contributed an interesting article on how Christian organizations have responded to secular intolerance, the results of interviews with Christian leaders. Following that comes an article from Italy, with an historical focus on the Waldensians at the time of the Risorgimento. This paper shows how having a secular government accompanied by religious freedom can facilitate spiritual awakening in a religious community.

There are several articles on laïcité in various countries. Mariëtta van der Tol writes on the historical and recent development of laïcité in France. Kristopher Kinsinger considers the manifestation of laïcité in Quebec with the recent Bill 21, which prohibits most government workers from wearing religious symbols. Marianna Molina focuses on laïcité in Mexico and the gap between the legal framework and existing realities. It is interesting to contrast how the secularist concept of laïcité has been implemented in three very different countries.

Two other articles address how secularism generally impacts Christians in particular countries. James Bultema focuses on secularism in Turkey and its impact on the

Protestant Church. Alex Deagon contrasts legal cases in the U.S. and Australia with regard to interpreting the "free exercise" clause.

Finally, two articles address more theoretical issues. Barry Bussey responds to arguments that certain religious perspectives should not be granted religious freedom protection. He particularly focuses on freedom of conscience related to same-sex marriage. Hans-Martien ten Napel laments that European courts do not recognize institutional religious freedom, paying specific attention to a ruling on ritual slaughter.

We hope that these articles elucidate the challenges facing religious adherents under secular governments and provide food for thought for those defending them. We also have included book reviews on an interesting selection of recent publications. The opinion pieces and articles are clear that a country that includes religious minorities flourishes and is stronger as a nation.

Yours for religious freedom,
Janet Epp Buckingham, executive editor

Religious communities as good neighbors in a post-secular global society

Thomas K. Johnson[1]

Abstract

This paper proposes four themes to inform how religious communities can be good neighbors. These are: (1) respect one another's religions and symbols; (2) avoid religious nationalism; (3) seek to distinguish universal ethical principles from particular religious beliefs; and (4) react peacefully to conversions to and from religions.

Keywords religious tolerance, post-secularism.

The religious communities of the Abrahamic traditions face several theological and ethical challenges as we try to become good neighbors in a global society that is, it seems, increasingly post-secular. Whereas a few decades ago many thought secularism would dominate the world through globalization, now secularism might be criticized as a tribal religion still found on universities in Europe and North America.

Globalization continues, whereas secularization seems to be in decline. In place of secularism, we find an astonishing array of religious activity, some of it profound and attractive, while some is terribly dysfunctional. Religious extremism is not the only example of dysfunctional religion, though it is highly visible and dangerous. This new situation imposes a newly perceived duty on responsible global religious communities, that of articulating the multi-religious moral foundations for common humane ways of life. This includes the relationships among different religious communities.

Among the most urgent ethical questions to be addressed are those closely related to religions, especially freedom of religion and religiously motivated violence. I will assume in this setting that it is well-known that economists and other social scientists have documented that practiced freedom of religion is one of the better indicators of the future societal health and economic growth in a country.

At least four themes should inform the public statements and actions of multi-religious bodies, such as AFI. Most are normative in character, while one is an historical observation.

[1] Dr Thomas K. Johnson is senior theological advisor to the World Evangelical Alliance, which represents and connects 600 million Christians in 140 countries. He has published extensively on issues of ethics and human rights. This is a revised version of a speech given for the Abrahamic Faiths Initiative (AFI) on 1 December 2020, hosted online by the US State Department. His email is: Johnson.Thomas.K@gmail.com.

1. Respect for human beings requires respect for their religions and religious symbols, without assuming agreement with particular religious beliefs or practices.

People are most fully human when they openly express their response to God or the mystery of the universe; their dignity is also extremely vulnerable in this response. Responsible religious communities should seek to protect others at this point of special vulnerability. This includes protecting holy sites and religious art, but also protecting the practice of prayer and other rituals.

People must not be compelled to say or do things contrary to their ultimate beliefs, unless the practice of their beliefs will quickly lead to harm to themselves or others. (The analogy I have in mind is that freedom of speech does not allow one to shout "Fire!" in a crowded situation, unless there really is a fire.) Even when we profoundly disagree with the religion of others, this disagreement should be communicated in a thoughtful and respectful manner. This is respect for the humanness of the other, as seen in respecting the practice of their religion.

2. The onset of globalization, approximately during World War I (1914-1918), prompted a widespread reconsideration of religion/state relations, starting in the 1920s.

Poorly structured relationships between religious bodies and nation states were a crucial component that made that war so vicious. In the words of Philip Jenkins, "The First World War was a thoroughly religious event, in the sense that overwhelmingly Christian nations fought each other in what many viewed as a holy war, a spiritual conflict."[2] The state authorities of all the primary nations on both sides in the war claimed that they were God's warriors fighting against the enemies of God, while similar views were common among the soldiers.

In many battles, the soldiers on both sides could have used the same scriptures, prayers, and creeds in church, yet they killed each other because government propaganda convinced many they had to protect their Christian countries against Godless enemies.

After the war, within Christianity there was a widespread rejection of the idea of a religiously defined country, such that Protestant Germany stood over against Catholic France. A similar process can be observed in Muslim-majority Indonesia, with the founding of the Nahdlatul Ulama in the 1920s and the writing of an officially multi-religious constitution in the 1940s. This process is not complete; all religious communities face an historical necessity of engaging this process to establish themselves as mature participants in global society.

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[2] Philip Jenkins, *The Great and Holy War: How World War I Became a Religious Crusade* (HarperCollins: Kindle Edition, 2014), 4-5.

3. Though it may be a habit that takes tremendous effort to develop, we can distinguish ethical principles from religious belief and ritual, even though most religious believers see all legitimate ethical principles as ultimately God-given.

Within Christianity the idea of a religiously defined country was rapidly replaced by two ethical ideas or principles, primarily in the decades following 1920: the idea of universal human dignity with resulting human rights, and the idea of a universal or natural moral law which places all people under an ethical demand, regardless of religion or nation.

The process of accepting this transition was more formal in Catholicism than in Protestantism, given the different organizational structures of these two branches of Christianity. Nevertheless, this transition was equally real on both sides of Western Christianity.

At the core of this transition within Christianity was the realization that there is a real difference between religious beliefs, such as normal Christian beliefs about the Trinity or the Deity of Christ, and ethical principles, such as not committing murder or theft. Of course, Christians see rules against murder and theft as God-given, but people may come to accept the authority of those rules in a way that is markedly different from coming to believe in the Trinity.

Even if this process of distinguishing religious beliefs from ethical principles is not perfect or complete in Christianity, this process should be promoted, and not only within Christianity. If Jews and Muslims can make similar distinctions (perhaps even with representatives of other religions participating), it can become more standard to talk about global moral standards that are taught by all responsible religions.

4. Globalization means that people are converting among religions in all directions in every country. Their religious transitions merit the respect that all true religion deserves.

One of the more recent dimensions of globalization is the way in which people all over the world are converting between religions. Among my personal circle of friends and acquaintances, I know several people who grew up as Christians and who are now Muslims, as well as many who grew up as Muslims and who are now Christians. As recently as 40 years ago, this would, I believe, have been very uncommon. As I have listened to such people, this transition or conversion had little or nothing to do with loyalty to their country. They did not see this change as having much to do with national identity. These people were all looking for better answers to the big questions of existence; it was a truly religious quest.

One of my challenges as a Christian pastor has been how to relate to people who have converted away from Christianity. This can be awkward socially, but one must not respond with harshness. The unique humanness of the people was evidenced in

their authentic response to the divine, in their search for answers to the big questions of life. This humanness demanded my respect and care, even if I disagreed sharply with the beliefs they embraced.

As difficult as it will be, mature religious communities simply must respond well, or they face the loss of their authenticity. This is truly a great test, to distinguish the claims of one's own religion and religious community from the claims of human dignity. Respect for human dignity means we must respect the person who chooses a system of belief other than our own.

Conclusion

We have to become good neighbors, because our history is filled with conflicts that have included too many religious dimensions, even in those cases when religion may not have been a primary cause. Globalization and the decline of secularism require us to make new efforts toward a different future. We cannot expect our different religions to be separated by national borders; and we cannot expect secularism to be a kind of referee among religions. Our religious communities face an historical imperative to learn how to become good neighbors.

In my opinion

We welcome articles, interviews or interviews that are non-academic but would be of interest to our readers. Send your submission for "In my opinion" to editor@iirf.eu for consideration.

"Religion never stands above the law"

The relation between the state and faith groups as illustrated in Belgium

Geert W. Lorein[1]

Abstract

Regularly, civil authorities in Europe ask religious communities to confirm that "religion never stands above the law." Some believers would like to respond that the law never stands above the Bible (or Tanakh or Qur'an). However, the relationship between religion and law is more complicated than either of these statements would suggest. This article tries to formulate the relationship in a language that is understandable for civil authorities, and with a content that reassures them of believers' peaceful intentions while not betraying religious convictions.

Keywords Belgium, human rights, European freedom of religion.

1. Problem definition

The representatives of religious groups in Belgium have been confronted more than once with the semi-obligation to approve – as allegedly behoves a "decent" religion – expressions such as 'religion never stands above the law.'[2] This happens because there is no absolute separation of church and state in Belgium, but rather a more complex relationship between civil authorities and recognized religions, in which the formal representative bodies of religious organizations play an important role.[3]

However, it is not easy to respond to this kind of request. Although we understand that religion and the rule of law can exist together, we feel a tension that is created by specific contexts but that seems to expand into a general circumscribing of religion's role in societal matters. This paper tries to formulate how both can exist together without any such restriction.

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[1] Dr Geert W. Lorein is president of the Federal Synod of Protestant and Evangelical Churches in Belgium and co-president of the Administrative Council of the Protestant and Evangelical Religion. This text does not represent the official position of either body. The paper was read at the conference of the Institute for the Study of the Freedom of Religion or Belief, held at the Evangelische Theologische Faculteit, Leuven, 6-7 May 2021. The author thanks the participants at that conference and the anonymous reviewer for their contribution. This article uses British spelling.

[2] For a general introduction to the Belgian situation, see J. Creemers, "We All Share the Same Values, Right? How Institutionalisation of Religions in Belgium Promotes Liberal Secular Values," in J. Creemers and H. Geybels (eds.), *Religion and State in Secular Europe Today* (Leuven: Peeters, 2019):137-150.

[3] See G. W. Lorein, *L'*episkopos *en tant que contrôleur ou en tant que protecteur*. 1 May 2021. Available at: https://bit.ly/3bqwHld.

2. The task of the state

Freedom of religion (institutional, collective and individual – *forum internum* and public practice) is protected by law (including the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the Belgian Constitution[4]). Our entire legal system is based on the fact that law can be changed through the legislative procedure or by popular referendum. Besides a strict democratic mechanism ('+50%'), the rule of law exists, serving to limit the possibilities of legislators and judges and guaranteeing fundamental rights.[5]

It is the government's task to protect and promote fundamental rights, including freedom of religion. Therefore, freedom of religion cannot be traced back to protecting a greatest common denominator and especially not a comprehensive secular philosophy.[6] Rather, an external pluralism must be allowed. This is at least the case according to the Anglo-Saxon Enlightenment,[7] which presupposes a certain neutrality or rather impartiality[8] of the state. In this way, people (particularly civil servants) can be prevented from being reduced to neutral robots.[9]

This Enlightenment amounts to acknowledging (a) the importance of knowing all arguments, (b) the importance of thinking for yourself[10] and (c) the under-

[4] The most specific articles in each text are ECHR Article 9, CFREU Article 10, and Constitution Article 19.

[5] In addition, one could think of "security" as a separate element, but one that can also be counted among fundamental rights. For the Roman Catholic doctrine about the relation between the two aspects, see M. van Stiphout, "De katholieke sociale leer over de relatie gelovige/burger, samenleving en seculiere staat," in *Tijdschrift voor Religie, Recht en Beleid* (2018), 9(3):51.

[6] O. Maingain and Véronique Caprasse, "Proposition de révision de la Constitution en vue d'insérer un nouvel article 7ter relatif à la laïcité de l'Etat," in *Actes du Colloque "Laïcité de l'Etat & Citoyenneté Partagée"* (Les Focus du CEG X; Brussels: Centre Georgin, 2015):63, referred to "[le] plus grand dénominateur commun de valeurs." J. Maclure and C. Taylor, *Laïcité et liberté de conscience* (Montréal: Boréal; Paris: La Découverte, 2010):22 (English translation by Jane Marie Todd, *Secularism and Freedom of Conscience*, (Cambridge, MA: Harvard University Press, 2011)):13, rightly remark that this would reduce believers to second-class citizens.

[7] P. Fox, *God versus de beschaving? Een pleidooi voor de-polarisering in een tijd van religieus geweld*, in *Soφie* (2015), 5(1):11-12.

[8] Whereas the state should be "neutral" or "impartial," individuals can never really be neutral. Cf. Prof. Jan Velaers in the Belgian Federal Parliament, 17 May 2016: the State must be neutral; the civil servant in State service must *act* neutrally (Belgian Federal Parliament, *Het karakter van de Staat en de fundamentele waarden van de samenleving*, 2018):144.

[9] I take the image from G. Vanheeswijck, "The Place of Religion in the Secular Society," in Creemers and Geybels, *Religion and State*, 28. Cf. Mariëtta D.C. van der Tol, "Politics of Religious Diversity: Toleration, Religious Freedom, and Visibility of Religion in Public Space" (Ph.D. thesis, Cambridge University, 2020):144: "Neutrality prohibits the state from instrumentalising a normative framework to the disadvantage of individuals and communities, particularly regarding social norms."

[10] Self-thinking (being authentic), but therefore not necessarily excluding every reference to the higher (being autonomous); see Vanheeswijck, "The Place of Religion":23.

standing that religion should never incite hatred or violence, because otherwise it disqualifies itself from being respected in the public square.[11]

However, there is not only Enlightenment, but also *Lumières.*[12] In the French Enlightenment, religion must be privatized because (a) religious arguments are unreliable, (b) religious people are dependent and (c) religions are dangerous.[13]

These *Lumières* can be found in one of the two variants of the doctrine of *laïcité*. The first variant teaches a *neutrality* of the State (so interpreted by many in France[14]); the second emphasizes the state's *opposition* to religion(s) and advocates certain anti-religious views (as interpreted by some in France and by the *laïcs* in Belgium).[15]

This second Belgian form of *laïcité* wants the state to control everything[16] in order to protect not only the state and public services but also the playing field of politicians and private individuals from religions.[17] This idea was expressed in a recent proposal to amend the Constitution. According to two members of the Belgian Federal Parliament, it is the task of the government "to protect its public services

[11] Bundespräsident Frank-Walter Steinmeier, "Eröffnung der 10. Weltversammlung von Religions for Peace", lecture at Lindau am Bodensee, 20 August 2019: "Inzwischen haben wir hoffentlich alle gelernt, dass sich jede Religion, die ihre Überzeugung mit Unterdrückung, Gewalt oder Terror behaupten will, schon selbst diskreditiert hat." Available at: https://bit.ly/3w21Dlq.

[12] I am aware that historically this distinction must be nuanced or even avoided, but for this article the distinction should work.

[13] Cf. Steinmeier, "Eröffnung": "'Imagine there's no heaven / above us only sky / … Nothing to kill or die for / and no religion too.' Eine religionslose Welt wird geradezu als die Grundvoraussetzung für eine friedliche Welt angesehen." Violence has also been used without religious foundations. W. de Been, *Monotheïsme kan uw staat ernstige schade toebrengen. Paul Cliteur,* The Secular Outlook & Het monotheïstisch dilemma, in *Rechtsfilosofie & Rechtstheorie* (2011) 40:144, refers to anarchist terrorism, the Holocaust, the Gulag, the Cultural Revolution, and the Killing Fields of Cambodia.

[14] Cf. the *Conseil constitutionnel* in France with its decision 2012-297, §5: "Le principe de laïcité impose notamment le respect de toutes les croyances, l'égalité de tous les citoyens devant la loi sans distinction de religion et que la République garantisse le libre exercice des cultes" (official translation: "The principle of secularism requires in particular that all beliefs be respected, the equality of all citizens before the law without distinction based on religion also be respected, and that the Republic guarantee the free exercise of religion").

[15] On the basis of A. M. Baggio, "The Cultural-Historical Roots and the Conceptual Construction of Laicity," in Creemers and Geybels, *Religion and State*:42; the second variant appears to be the original. See also X. Delgrange (ed.), *Les débats autour de l'inscription de la laïcité politique dans la constitution belge* (Les Cahiers du CIRC 4; Brussels: Université Saint-Louis, 2020).

[16] Contra Maingain and Caprasse, "Proposition de révision":65-66 ("pour l'Etat un droit de contrôle"). More recently expressed by F. De Smet and Sophie Rohonyi, "Proposition de révision de l'article 7bis de la Constitution en vue d'y consacrer la laïcité de l'État," Belgian Federal Parliament, 9 November 2020:6: "Ce devoir de protéger les libertés entraîne pour l'État un droit de contrôle: il doit veiller à ce que la liberté des uns n'empiète pas sur celle des autres."

[17] Maingain and Caprasse, "Proposition de révision":67: "protéger les services publics, le champ politique et les individus contre d'éventuelles tentatives de mainmise religieuse"; roughly the same words appear on p. 70.

and its citizens against the religious claims to interfere in the public space."[18] As a new group of lepers, believers must remain outside society. This status would then be anchored by monitoring access to eligibility.[19] Strangely enough, secularist humanism is not mentioned in the same breath as religions, even though in Belgium it is also a recognized worldview.[20]

Such an audit is *not* the state's task, and the state should not wish to lead the citizens to a specific project.[21] That would be "a form of paternalism."[22] The state cannot have a truth claim either, at least not as far as ultimate values are concerned.[23] Otherwise, we still would have a state religion, in which the state determines both the content and the coordination of this religion.

The same members of Parliament also want to promote this project in education.[24] However, education is not primarily the task of the government, although it must create frameworks and fill gaps; rather, education originates with the parents,[25] not with the state, and it is therefore also a question whether education should in any case ensure that "social choices such as the theory of evolution, the promotion of human rights, the preservation of the memory of the resistance, values such as equality and emancipation and so on"[26] are taught.

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[18] De Smet and Rohonyi, "Proposition de révision":7: "de protéger ses services publics et ses citoyens contre les revendications religieuses d'interférer dans la sphère publique."

[19] Maingain and Caprasse, "Proposition de révision":68-69; De Smet and Rohonyi, "Proposition de révision":11, 13.

[20] In that way the proposition is in conflict with the requirement of J. Habermas, *Zwischen Naturalismus und Religion. Philosophische Aufsätze* (Frankfurt: Suhrkamp, 2005):127 (English translation by J. Gaines, "Religion in the Public Sphere," *European Journal of Philosophy* 14 [2006]:5), that in a neutral state political decisions can be considered legitimate only when they are justified in the same way vis-à-vis both religious and non-religious citizens.

[21] Van der Tol, "Politics of Religious Diversity":148: "The state has no right to 'conversion' or the 'conformity' of minorities."

[22] Guido Vanheeswijck, "De plaats van religie in de publieke ruimte," lecture at Antwerp, 30 November 2016; ("een vorm van paternalisme"). Cf. De Been, *Monotheïsme kan uw staat*:141, 145.

[23] J.-P. Willaime, "L'expression des religions, une chance pour la démocratie," *Projet* 342 (2014):13: "L'État, en démocratie, n'est pas et ne doit pas être une Église. Il doit pouvoir autoriser et garantir la diversité des convictions religieuses et philosophiques des uns et des autres, mais aussi, dans certaines limites, les diverses façons de concevoir et de vivre une vie digne et bonne." Of course, the state creates truth in Court, but that is a judicial truth, not less, not more.

[24] Maingain and Caprasse, "Proposition de révision":67, want to base education on a critical emancipation idea in relation to religious dogmas. Jules Ferry in 1885 wanted to take the message even further: "Il faut dire ouvertement qu'en effet, les races supérieures ont un droit vis-à-vis des races inférieures" (Baggio, "The Cultural-Historical Roots":48). Of course, we must place the comment in its original context, but it still indicates the missionary content of the *laïcité*.

[25] Cf. Article 14, Charter of Fundamental Rights of the European Union (CFR): "The right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected."

[26] De Smet and Rohonyi, "Proposition de révision":12: "Des choix nets de société sont enseignés à

3. The task of faith groups

Faith is not a loose facet of our being that we can put aside, but is identity-defining. Mia Doornaert sees here a distinction between the Western world, where religion is a private belief, and the Muslim world, where religion is an essential part of identity.[27] She is right to the extent that the Christian faith involves a personal choice and not an inherited characteristic, but she underestimates the importance of faith with this formulation, for individuals[28] as well as for institutions.[29]

As Christians, the Bible calls us to commit ourselves to civil government and to society (Jeremiah 29:7; Romans 13:1-7; Titus 3:1-2; I Peter 2).[30]

Where we are offered all kinds of freedoms, our faith gives direction to what we can do with that freedom in a concrete personal case.[31]

The quality of public debate can be improved if those who hold different convictions would put forward their views and arguments in generally intelligible terms.[32] Solid information, as a counterpart to the sophistic reasoning seen on today's social media platforms that is not obliged to observe consistency, would prevent the population from swinging too easily from one point of view to another and thereby causing the opposite point of view to become obscured.[33]

4. A dilemma?

As a religious community, we are positive towards the government and want to express our support for the state in working out what is true, good and beautiful.[34] We believe

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l'école avec la théorie évolutionniste, la promotion des droits de l'homme, la mémoire de la résistance, des valeurs comme l'égalité et l'émancipation." Of course, one should doubt whether theories and memories are social choices: see e.g. Habermas, "Religion in the Public Sphere":16.

27 Mia Doornaert, "Degenen die de brandklok luiden," *De Standaard*, 28 October 2020.

28 See J. Van den Brink, "Subsidie aan levensbeschouwelijke organisaties is ook van deze tijd," *Nederlands juristenblad* 94, no. 39 (2019): 29531: "De religie of levensbeschouwing is in veler leven geen strikt persoonlijke 'kers op de taart', maar een essentieel aspect dat al onze activiteiten doortrekt." Also Willaime, "L'expression":12.

29 See van der Tol, "Politics of Religious Diversity":153: "The idea that religion is a private affair overlooks the social relevance of religious organisations in and beyond places of worship, as well as the interconnectedness and intersection of identities and the making of meaning in society."

30 See further A. de Bruijne, "Living with Scripture, Living in a Democracy," *European Journal of Theology* 28 (2019):127; S. DuToit, "Negotiating Hostility through Beneficial Deeds," *Tyndale Bulletin* 70 (2019):221-243.

31 Archbishop Jozef De Kesel, "Foi et religion dans une société moderne," lecture at Brussels, 16 November 2016. See also the lines cited by R. L. Wilken, *Liberty in the Things of God: The Christian Origins of Religious Freedom* (New Haven, CT: Yale University Press, 2019):vi: "wilt thou let thy Soul be tied / To man's laws, by which she shall not be tried / At the last day?"

32 Cf. Habermas, "Religion in the Public Sphere":10-16.

33 Cf. Van Stiphout, "De katholieke sociale leer":52.

34 For the problem of defining this (esp. the "common good"), see Van der Tol, "Politics of Religious Diversity":148-49, 161, where she mentions the risk that after all this will be defined by the majority of the day.

in the Kingdom of God, but that does not mean that we should act as competitors of the Kingdom of Belgium. The Kingdom of God is not of this world (John 18:36).[35]

At the same time, we want to safeguard our own position and remind the state of its limitations. In a state that respects fundamental rights, religious communities can never be asked to commit to a stricter adherence to fundamental rights than other communities.[36]

Reference is often made to John Rawls,[37] who would limit the consensus about the common good to a consensus about policy-making procedures reached on rational grounds. He concludes, "Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason."[38] This seems to offer a way out, but (a) it might be too optimistic that such a goal can be reached and (b) the appeal to reason might be necessary, but it can also be exclusive,[39] favouring those who only work with reason (i.e. atheists)[40] and leaving undefined what is 'unreasonable.' After all, Rawls seems to engage in circular reasoning when he argues, "Central to the idea of public reason is that it neither criticizes or attacks any comprehensive doctrine … except insofar as that doctrine is incompatible with the essentials of public reason."[41]

According to Habermas, the state cannot expect citizens to justify their political statements without using religious convictions.[42] Indeed, the obligation for religious people to present their arguments in a rationalist way would place on them an extra burden not applied to non-religious citizens.[43] Van der Tol remarks that after agreement is reached on a rational basis, another narrative can still be added.[44]

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[35] Keep in mind that "the world" (Greek *kosmos*) has different aspects: it has been created by God (cf. Eph. 1:4), is fallen into sin (cf. Rom. 12:2; Jas 1:27; 4:4; I Jn 2:15) and is still loved by Him (cf. Jn 3:16-17; 6:33, 51; 12:47; I Jn 2:2; 4:9, 14). Cf. G. W. Lorein, "מלכותא in the Targum of the Prophets," *Aramaic Studies* 3 (2005):15-42.

[36] See note 21.

[37] John Rawls, *Political Liberalism*, 3rd ed. (New York: Columbia University Press, 2005).

[38] Rawls, *Political Liberalism*:137.

[39] See e.g., Rawls, *Political Liberalism*:140 ("not unreasonable") and also 441, n. 3: "How far unreasonable doctrines are active and tolerated is to be determined by the principles of justice." The idea of "tolerance" is a step backwards.

[40] As Maclure and Taylor, *Secularism and Freedom*:31, also remark.

[41] Rawls, *Political Liberalism*:441.

[42] Habermas, "Religion in the Public Sphere":8-11. The English translation especially raises the question whether all politicians hold a public office, also in states where they represent only their electorate and not the whole of their district. See also Rawls, *Political Liberalism*:443, who wants to exclude judges, officials, legislators and candidates for public office who do not agree with his premises – again seeming logical, but also exclusive in a certain way.

[43] Habermas, "Religion in the Public Sphere":13.

[44] Van der Tol, "Politics of Religious Diversity":152.

According to Maclure and Taylor, living together is possible when human dignity, human rights and popular sovereignty are observed, although even these values are not completely neutral.[45] The main principles are equality of respect and freedom of conscience;[46] other elements may be means to reach these goals, but should not be absolutized.[47]

Even the reduction of this core principle to "freedom of conscience" – presented as being more objective by Maclure and Taylor[48] – contains a risk for Christians. Freedom of *religion* should not be dropped as a fundamental right. It is historically one of the first fundamental rights,[49] and it is broader than a combination of freedom of expression and freedom of association, because it is also about public worship, the right to follow one's conscience because of religious beliefs and the right to have a truth claim. Especially in view of the persecution of my brothers and sisters in faith[50] in large parts of the world, I cannot consider the abolition of freedom of religion acceptable.[51]

Religions have internally a truth claim,[52] but contemporary Christian believers recognize that they cannot force fellow citizens to adopt their views, because they realize that coercion in matters of faith is impossible.[53] They understand also that fellow citizens with a different faith commitment will have truth claims too, though

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45 Maclure and Taylor, *Secularism and Freedom*:11.

46 Maclure and Taylor, *Secularism and Freedom*:20.

47 Maclure and Taylor, *Secularism and Freedom*:29.

48 Maclure and Taylor, *Secularism and Freedom*:90-91, and more generally 81-99.

49 Cf. Wilken, *Liberty in the Things of God*:110-11: since Jean Gerson (1363-1429), who recognised the right to fulfil God's law as a third "ius naturale," besides property and self-preservation (which we find already with Cicero, *Pro Milone* §10 (52 aCn): "Est igitur haec, iudices, non scripta, sed nata lex … ut, si vita nostra in aliquas insidias … incidisset, omnis honesta ratio esset expediendae salutis"). See already Sophocles, *Antigone* 450-457 (442 aCn), although there the fundamental right is an implication of an undoubtable duty.

50 And by extension those of other faiths and non-believers for the sake of their (un)belief.

51 Moreover, there is the lapidary argument in the form of a question: "And what is the next fundamental freedom that you wish to abolish?" (provided to me in a personal communication by Christel Lamère Ngnambi during the conference of the Conseil National des Évangéliques de France in Pontoise on 22 January 2015).

52 Steinmeier, "Eröffnung": "Jede Religion hat ja für sich den Anspruch, wahr zu sein. Es gehört sozusagen zum Begriff der Religion selbst, die Wahrheit über Himmel und Erde, über Gott und die Menschen zu kennen. Wenn sie ernst und glaubwürdig bleiben will, kann eine Religion darauf nicht verzichten." Cf. De Bruijne, "Living with Scripture":126.

53 A. Kuyper, *Het Calvinisme. Zes Stone-lezingen* (Amsterdam and Pretoria: Höverker & Wormser, 1899), lecture 4:132: "Gij kunt, ik zeg meer, gij moogt er zelfs niet aan denken, om aan wie uit een ander bewustzijn leeft de vrijheid van de gedachte, van het woord en van de drukpers te ontnemen." Cf. Van Stiphout, "De katholieke sociale leer":51, for a Roman Catholic parallel. For a general historical overview, see Wilken, *Liberty in the Things of God*:1, 11-18, who ascribes the idea of "choice instead of coercion" already to Tertullian (about 200), not just to the Enlightenment.

they will be different ones. Dialogue to understand the worldviews of other people[54] is useful to avoid conflicts and to avoid the risk of considering only ourselves as 'reasonable, enlightened and modern.'[55]

In a constitutional state, there is no dichotomy between law and religious principles.[56] Nevertheless, conflicts may arise between specific religious practices and specific laws in a specific context, but this must always be read through the lens of Article 9, section 2 of the ECHR: restrictions of freedom of religion must be formulated as a law (i.e. voted on by Parliament, not decided by an individual civil servant or judge), necessary and in order to protect others.

Professor Louis-Léon Christians has pointed out[57] that there is an "internormativity" of law and religion. Belgian law gives space to religion; the Bible speaks of obedience to the government. Under no circumstances are we expected to obey either the government or God in a robotic manner. In any situation, with its own facts, we must assume our responsibilities.

This statement is different from "religion is never above the law," but also something other than "the law is never above religion." The expression "separation of church and state" is often used to describe the situation; however, this expression must be understood correctly. Especially in Belgium, we speak about regular relations between government and individual religious convictions, according to which the state does not try to create a state church and the church does not try to achieve a churched state[58] (nor does secularist humanism attempt to have a secularist humanist state).

Obviously, freedom of religion is no free pass for criminality. But who decides what is a crime? The formal answer may seem easy (it is the result of a broad social consensus on rational grounds, à la Rawls[59]), but why are some acts regarded as criminal in Belgian law and not in another country (or even within a single country – ritual slaughter is permitted in the Brussels-Capital region, but not in Flanders or Wallonia)? Why is cutting off someone's hand according to the sharia not acceptable, whereas cutting off someone's foreskin according to the Torah is fundamental to freedom of religion? Probably because the one belongs to the core of its religion

[54] Cf. Habermas, "Religion in the Public Sphere," 4, who, however, suggests taking over (!) the perspectives (in the original German: "die Perspektiven ... zu übernehmen":126).

[55] Cf. C. Polanz, "Between Salafism and Secularism: The Contemporary Discourse of German Muslims on Freedom of Religion," lecture at Leuven, 7 May 2021.

[56] Cf. for Belgium S. Echallaoui, "Le respect de la Constitution belge n'implique nullement le reniement d'un principe transcendant," Communiqué Exécutif des Musulmans de Belgique, 8 March 2017.

[57] L.-L. Christians, "Les responsabilités du Déontologue confessionnel," lecture notes, 13 May 2020.

[58] Anon., *Christen-zijn in de Nederlandse samenleving* (The Hague: Boekencentrum, 1955):17. Cf. Willaime, "L'expression":13: "renoncement de l'État au pouvoir spirituel et le renoncement des autorités religieuses au pouvoir temporel."

[59] See note 34.

and does no permanent harm, whereas the other depends on the interpretation of schools and of concrete situations. These are difficult questions with no clear-cut answers, but they have to be asked anyhow.

Sometimes, legislation provides exceptions for religious believers, but on other occasions believers must accept punishment (such as going to prison as a conscientious objector). Should these exceptions be defined precisely? This would have been the result of the 2010 proposal to amend article 21 of the Belgian Constitution: "Subject to exceptions concerning conscience determined by the legislature, no convictional prescription may be invoked to evade a legal obligation."[60] This would mean that unless a specific reference to exceptions is stated, no exemption from the law's provisions would be available for any reason.

What kinds of cases are we talking about? Ritual slaughter, shaking hands (problem solved thanks to Corona virus ...), hiding one's face (idem), or refusal to cooperate or interact with people of the opposite sex come to the mind. This is not the place to solve such problems; I am simply pointing out a few of the many examples of conflicts between religion and the law.

In any case, a group that holds religious convictions has the right to seek a change in the law. By the way, such efforts have not been limited to Christians. In the recent past, secularist humanists have taken the lead in seeking legislative change, inspired by their convictions, on several occasions.

It should also be possible to protest against the violation of fundamental rights by a government.[61] Doing so would, of course, be difficult if the law always comes first.

5. A proposed resolution

In spite of all the problems and unanswered questions, religious leaders need to be able to say something when confronted with the mantra "religion never stands

[60] "Behoudens uitzonderingen inzake geweten die door de wetgever zijn bepaald, kan geen enkel levensbeschouwelijk voorschrift worden ingeroepen om zich te onttrekken aan een wettelijke verplichting." M. Magits and L.-L. Christians (eds.), *Hervorming van de wetgeving met betrekking tot levensbeschouwingen en niet-confessionele levensbeschouwingen* (s.l. 2010):99. In an even more restrictive variant: "Niemand kan zich op grond van religieuze of levensbeschouwelijke motieven onttrekken aan de geldende rechtsregels of de rechten en vrijheden van anderen beperken" ("No one can evade the applicable legal rules or restrict the rights and freedoms of others on the basis of religious or convictional reasons"; proposal by Vuye and Wouters, Belgian Federal Parliament, *Het karakter van de Staat*):177. A positive point is that these proposals use the word "conviction", instead of limiting it to "religions".

[61] E.g. by going to Court or by public action. See Thomas K. Johnson, *Human Rights. A Christian Primer*, 2nd ed. (WEA Global Issues Series I; Bonn: Kultur und Wissenschaft, 2016):91: "To say a government or military force has abused human rights is to say that a public organization has committed a serious act of injustice which will require thoughtful people to consider public protests and civil disobedience." It must be fundamental rights, because if one interprets human rights too extensively, everything is watered down (Johnson:88-90).

above the law." Following is a brief proposal that tries to take into account all the rules and counterarguments mentioned earlier.

While various worldviews guide the thinking and actions of their adherents, including their social actions, the actions of citizens of different worldviews and the actions of the government towards all citizens should be consistent with rules agreed to in an impartial state (democracy, fundamental rights, security). In other words, the state should not be based on a single worldview.

We request support for the freedom of religion (conviction as well as worship), the freedom to invoke exemptions for religious reasons, the freedom to propose legislative changes and rules of life and the right to have a truth claim, which, however, does not mean that believers can restrict others in those freedoms or impose their truth claim on others. Respect for the state, which cannot and should not have a truth claim, and fundamental rights must be at the heart of this.

It is dangerous if faith groups question the rule of law; or if the state questions freedoms such as freedom of religion, conscience, expression and association.

Self-censorship in Latin America

Empirical evidence from Mexico and Colombia

Teresa Flores and Dennis P. Petri[1]

Abstract

The trend of secular intolerance in Latin America has impacted the expression of the Christian faith, manifestations of faith-based views, and even the behavior of Christians. Based on 40 interviews we conducted with Christian members and representatives of the political sector, media, education and church, in Colombia and Mexico, we show that at least a subset of the Christian population self-censors in order not to be affected by legal sanctions or a hostile environment. This self-censorship is the result of a "chilling effect" whereby Christians tend to conform to dominant rules or norms for fear of being sanctioned or criticized.

Keywords self-censorship, chilling effect, freedom of expression, religious freedom, Christians, Mexico, Colombia, Latin America.

The French political scientist Alain Rouquié (1987) described Latin America as the "Extreme West" because he viewed it as a continent that in many ways resembled Western Europe, but one where political and social developments seemed to take place in a much more intense (and often violent) way and where many European political phenomena seemed to repeat themselves on a much larger scale. This perspective has been criticized as a caricature, but it nevertheless contains many general traits that characterize the continent as a whole. In his work, Rouquié refers specifically to trends such as populism, authoritarianism and militarism that Latin American states seem to have copied from Europe.

Another trait that Latin America seems to have borrowed from Europe is secular intolerance, a concept defined elsewhere in this journal issue. As Peeters (2012) and others have shown, this trend has spread well beyond the Global North. In 2021, empirical research by the Observatory of Religious Freedom in Latin America demonstrated that the widespread concerns about secular intolerance in the West also apply to Latin America.

[1] Teresa Flores is a Peruvian lawyer, with experience in the research and study of religious freedom in the region, and currently director of the Observatory of Religious Freedom in Latin America - OLIRE. Email: tflores@olire.org. Dr Dennis P. Petri is international director of the International Institute for Religious Freedom; founder and scholar-at-large at the Observatory of Religious Freedom in Latin America; lecturer at The Hague University of Applied Sciences, the Universidad Latinoamericana de Ciencia y Tecnología and the Latin American Faculty of Social Sciences (UNESCO); and director of the Foundation Platform for Social Transformation. Email: dp.petri@gmail.com.

In this region, Christians are often accused of discrimination (REDLAD and Otros Cruces 2021). Although this accusation may be true in some cases, there also seems to be an increasing number of attempts to restrict Christians' freedom of expression. Indeed, notwithstanding the international and national recognition of religious freedom, norms that limit or jeopardize the freedom to express one's convictions are increasingly common, especially when the content contradicts or criticizes prevailing views on such issues as abortion, sexual diversity, gender identity and same-sex marriage, among others.

Here are a few examples. A 2017 Advisory Opinion issued by the Inter-American Court on Human Rights affirmed that "religious or philosophical convictions" are "inappropriate" and should therefore not be considered in court cases (IACHR 2017). On 7 June 2020, the National Institute against Discrimination, Xenophobia and Racism (INADI) of Argentina filed a complaint against a faith-based educational organization because of its allegedly discriminatory curriculum (INADI 2020). On 9 July 2020, Colombia's president Iván Duque's personal tweet in which he expressed his personal devotion to the Virgin of Chiquinquirá caused much outrage. Although, after a brief judicial process, the Supreme Court of Justice revoked a lower court's order to delete the tweet, it warned the President that he must be careful with his personal accounts so as to maintain the religious neutrality of the government role he occupies, avoiding allusions to matters that could be interpreted as an official position (Asuntos Legales 2021). In Mexico, legislators expressing their Christian views or advocating against abortion or same-sex marriage, as well as those who defend parents' right to educate their children, have been accused of discrimination and hate speech (El Universal Querétaro 2019).

The proliferation of such cases was the starting point for our research. In this research, we do not take any position regarding controversial issues such as abortion, gender identity or same-sex marriage or adoption. Rather, we seek to identify to what extent and in what spheres of society Christians do or do not feel completely free to express their opinion or their religious convictions on these issues.

We set out to understand the impact of these cases, and more broadly the cultural environment, on Christians' freedom to live out their faith. We adopted an exploratory research design and conducted approximately 40 open-ended interviews with Christian members and representatives of the political, media, education and church sectors in Mexico and Colombia.[2]

We decided to focus on these countries because they have seen various attempts by legislative and jurisdictional bodies, along with frequent social sanctions, aiming to limit and punish the expression of the Christian faith or the manifestation of

[2] The country case studies were developed by Marcelo Bartolini (Mexico) and Marcela Bordón (Colombia).

faith-based viewpoints. This phenomenon, however, should be analyzed in other countries of the region where similar trends can be observed.

As a consequence of these attacks, a kind of fear or paralyzing effect arises, which we refer to as a "chilling effect." It leads in turn to the growing practice of self-censorship, whereby Christians censor their own convictions and actions if they contradict the views of the prevailing culture. This chilling effect can be translated not only into limitations on the exercise of religion or on the right to manifest one's convictions, but also into violations of the right to religious freedom and the eventual decline of religion in a given context.

The picture that emerges from the study we conducted in Mexico and Colombia can be summarized by the following points. Those who still felt able to openly express their own religious beliefs and their position on issues related to life, marriage, family and sexual morality – especially when they dissented from the predominant culture or were linked to the positions of LGBT groups, some feminist groups, or political parties and sectors of society that sympathize with these groups – did so recognizing that there was "a price to pay." Although this price varies in intensity and frequency according to the role or position of each person in their sector of society, the immediate discrediting or stigmatization of Christians who openly share their convictions and the use of labels such as "outmoded," "discriminatory," "intolerant" or "incompetent" to refer to them was recognized as a cross-cutting consequence. In some other cases, instances of defamation, loss of employment, academic suspension or alleged discrimination were mentioned.

Although most of the interviewees recognized limits on their freedom to express their convictions in different areas of society, very few identified this situation as a process of self-censorship. The interviewees used terms such as "self-regulation," "prudence," "use of democratic language," "strategy," "saying what is politically correct" or "Christian charity" to explain why they considered it necessary not to express their convictions fully, or to use neutral language so as not to be shunned or suffer social or institutional consequences.

One of the most salient findings of this research was that the higher the level of educational instruction or Christian education, the lower the degree of self-censorship. In many cases, those who said they did not feel self-censored had completed a specific training process on how to deal with sensitive issues from a faith perspective. Christian legislators, student activists, priests, pastors and academics said such training had enabled them to feel more confident and less inclined to self-censor.

Another finding was that, among our interviewees, Catholics tend to self-censor more than Christians belonging to other denominations. Apparently, the biblical training received by Evangelicals is more profound and influences its members' capacity to speak without fear about the Christian faith or about topics related to

life, marriage and family from a Christian perspective. At the same time, although the Protestant Christians are generally more educated about their faith, this does not mean that they are prepared to communicate their message effectively to a secular audience. As a result, they sometimes choose not to do so at all or, if they do speak up, do so in a confrontational and intolerant manner, which has cost them credibility and opportunities to be heard in debates on issues relevant to society.

As for the priests and pastors interviewed, some of them recognized that despite their position as church leaders, they feel that they do not know how to respond in certain contexts. Some said that their seminary training did not equip them to deal with sensitive issues. This factor also leads to self-censorship.

Another factor influencing Christian self-censorship is the level of subordination at which one is located, whether in government, at school, at work or in the church itself. The lower in the hierarchy one is, the greater the possibility of falling into self-censorship.

In addition, social networks seem to be the main environment of hostility. A recurring theme during the research was the function of social media as places for attacks on expressions of faith or opinions on life, marriage, family, recreational use of marijuana, euthanasia or sexual morality articulated by people known to be Christians or elaborated using religious arguments. Even when the arguments were not religious, just the fact that they were presented by Christians sufficed to make them targets of criticism and insults. Among male respondents, an increased fear of expressing opinions on feminist-related issues was noted, especially in the university environment. The consequences of articulating such views included not only damage to their image but also (often unfounded) accusations of violence against women.

Throughout the research, a hostile environment, especially motivated by pressure groups or organizations related to sexual minorities and radical feminist groups, as well as by political parties and sectors of society that are sympathetic to these groups, was cited as the main reason for self-censorship. One of the interviewees pointed out that, in protests, marches or massive events, Christians believe they have been monitored and photographed by hooded people; another participant pointed out that his sister, a pro-life activist, received a photograph of her house from radical feminist groups, as a clear sign of intimidation.

In Mexico, the anti-clerical legislation and the markedly secular education system insert the notion in the minds of the general population that religion should be relegated to the private sphere, without the option of manifesting itself in the public sphere. In this case, not talking about religion or one's own convictions is part of a normalized cultural pattern that few recognize as self-censorship. The following comment provides a representative illustration:

> I had planned for the whole family to go to Mass on Wednesday of Holy Week in the morning before school. But my children told me that they could not go to Mass before school because if they arrived with the ash cross on their foreheads, they would not be allowed to enter the school, because the exteriorization of any religious symbol is prohibited. It would be a violation of the regulations.

Another interviewee observed, "Who said that religion is private, or that it does not fit in the public sphere? In the cultural environment, that norm starts at school, in the family itself ... at the dinner table we do not talk about religion because we are going to end up fighting." A third Mexican interviewee stated:

> We are led to believe that religion is something private. You can talk about religion when you leave the public sphere and you are alone with another person. But it is forbidden to say it in public. So, it is a kind of truth that only works like that, in private. We are conditioned to believe that. I remember that since elementary school I have heard that education should be secular, free and compulsory. More emphasis is placed on secularism. When I was about 17, I started to question this. There are many people who do not question it; it is a principle accepted by all, and therefore something unquestionable.

Considering the aforementioned, from the interview responses, we can differentiate certain dynamics related to Christians, chilling effects and self-censorship: (1) some Christians do not self-censor and accept the consequences, convinced that their faith is worth the risk; (2) some self-censor due to fear of legal and/or social sanctions; (3) there are also those who, due to constant self-censorship and almost non-existent accompaniment in the faith by a religious community or other Christians, are losing their faith or gradually cease to view the reality of self-censorship as a problem. The second group seems to be the largest of the sample.

We must bear in mind that self-censorship is not present only when people – in the present study, Christians – refrain from openly manifesting their Christian faith, convictions or beliefs. It also refers to situations in which Christians believe they cannot safely express their views on sensitive issues such as abortion or same-sex marriage or adoption. Based on the comments made in the interviews, most Christians avoid this type of debate so as not to face social denunciations or sanctions.

Although the term "chilling effect" is commonly related to state action or omission, in the form of norms or laws that can indirectly motivate the non-exercise of a right due to fear of the consequences, the present research reveals that beyond the possible legal sanctions, social pressure or sanctions are a very influential factor pushing Christians into self-censorship.

Overall, a significant portion of the Christians interviewed self-censor in order not to be affected by this hostile environment; that is, they avoid expressing or manifesting their convictions and beliefs, or if they do express them, they qualify the words or phrases used as well as the content. This pattern provides evidence of the chilling effect whereby Christians tend to conform to dominant rules or norms for fear of being sanctioned or criticized.

This research marks a first attempt to approach the phenomenon of Christian self-censorship. The generalizability of its conclusions is limited, because of the small number of interviews conducted. We do not propose that our conclusions should be interpreted as definitive for all Christians, but only as a starting point.

We hope that our findings will motivate further research efforts, with a larger and more representative sample, encompassing more sectors of society and various countries of the region. In this way, we can delve deeper into this phenomenon and learn about its possible causes and consequences, so that we can more vigorously preserve the personal and collective dimensions of Christians' right to religious freedom.

The full report (in Spanish) can be downloaded at: https://bit.ly/3zNf76t.

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Origins of and responses to secular intolerance

Dennis P. Petri and Janet Epp Buckingham[1]

Abstract

Secular intolerance occurs when secular governments or societies marginalize religious faith and practice. Religion is forced out of the public sphere and is limited to the private sphere. Civic space is denied to those with religious perspectives that diverge from those promoted by those who are non-religious. This paper traces the philosophical roots of secular intolerance starting with the Enlightenment. It concludes with suggestions on counteracting secular intolerance.

Keywords secular intolerance, postmodernism, freedom of religion or belief.

1. Defining secular intolerance

There is much confusion around the Western sociological phenomenon we refer to as 'secular intolerance.' In other publications, it has also been referred to as simply 'secularism,' 'radical secularism,' 'aggressive secularism,' 'secular humanism,' 'marginalization of Christians,' 'intolerance and discrimination against Christians,' or 'Christianophobia.' In this paper, we seek to do justice to the heartfelt concerns of the Christian community in the West (but also outside of it), recognizing that many Christians feel marginalized because of their faith.

1.1 What secular intolerance is not

Secular intolerance is not the same thing as secularization, which describes the ongoing demographic trend in the West towards fewer people identifying as believers or engaging in meaningful forms of religious practice. It is also not the same as the adoption of legislation and policies that are considered 'liberal' and 'progressive' such as same-sex marriage, assisted suicide or abortion, though many conservative Christians, and other religious adherents, are deeply concerned about trends in those three areas. Progressive policy making and secular intolerance may mutually reinforce each other, as we will explain later, but it is important not to confuse them.

[1] Dennis P. Petri is international director of the International Institute for Religious Freedom; founder and scholar-at-large at the Observatory of Religious Freedom in Latin America; lecturer at The Hague University of Applied Sciences, the Universidad Latinoamericana de Ciencia y Tecnología and the Latin American Faculty of Social Sciences (UNESCO); and director of the Foundation Platform for Social Transformation. Email: dp.petri@gmail.com. Janet Epp Buckingham is director of Global Advocacy for the World Evangelical Alliance; Professor of Political Studies at Trinity Western University; and Executive Editor of the *International Journal for Religious Freedom.* Email: janet.epp-buckingham@twu.ca.

1.2 What secular intolerance is

To understand secular intolerance, we must first understand what 'secular' itself means. Considerable analysis of this subject has come from philosophers, sociologists, political scientists, theologians and legal experts in recent years.

The original meaning of 'secular' meant simply unconnected to a religious order. For Christians, it referred to things 'of this world' as opposed to matters of the Church. Philosopher Charles Taylor (2007) identifies three understandings of secular: (1) institutional secularism, in which the state is separate from religion; (2) ceremonial secularism, where public spaces are stripped of religious symbols; and (3) a view that belief in God is one choice among many.

Former Archbishop of Canterbury Rowan Williams, in *Faith in the Public Square* (2012), made a useful distinction between what he called "procedural" and "programmatic" secularism. We should not worry about and should even embrace the former, but the latter is a real reason for concern. Williams defines procedural secularism as a public policy that does not give any advantage or preference to any religion, in which the state acts as a neutral moderator enabling all religious or non-religious voices to express themselves in the public sphere. The historical origin of procedural secularism dates back to the Enlightenment. This view led to the understanding that the church and the state should be separated, but it does not necessarily imply any hostility toward religion. By contrast, programmatic secularism contends that the state should not be clouded by any private (religious) convictions and that any reference to religion should be excluded from the public sphere.

Williams' distinction, although helpful, is a simplification, because similar political arrangements can be more or less intolerant towards religion depending on the context. Jonathan Fox (2013) differentiates between four categories of political secularism: (1) laicism, (2) absolute secularism, (3) neutral political concern and (4) exclusion of ideals. These perspectives encompass a range from a radical separation of religion and state to less extreme separation policies. The key factor here is not whether a state has a formal separation between church and state or even an official religion, but whether its policies are hostile to religion, particularly whether they favor one religion or discriminate against minority religions. For example, both the United States and France do not have an official religion, but in the former, religious expression in public debate is frequent,[2] whereas in the latter, it is not deemed acceptable. By contrast, the United Kingdom has an official religion, but even though this status gives the Church of England privileges in some areas

[2] We recognize that what is referred to as the "wall of separation between church and state" is not a constitutional separation but rather Thomas Jefferson's interpretation of the First Amendment in the letter to the Danbury Baptist Association. The "wall of separation" language is used when politicians or courts wish to maintain a strict separation in their interpretation of the disestablishment clause.

(which some may criticize), it does not result in any noteworthy discrimination against minority religions.

These distinctions are important because political secularism, as a political ideology, is not monolithic, and not all forms of secularism are necessarily undesirable. A neutral state in which all religious voices can freely express themselves and all religions are respected is preferable to an undemocratic but theocratic form of government in which the clergy of a particular religion wield temporal power. But a society in which religious voices in the public sphere are silenced in the name of secular neutrality can hardly be considered pluralistic and open to democratic debate, because it discriminates between political convictions that are based on religious worldviews and those that are not (see Wilson 2017).

Following Williams' understanding of programmatic secularism, secular intolerance can thus be conceived as a radical expression of secularism that seeks to exclude religion not only from the public domain but also from various private spheres.[3] It is based on the indifference to, rejection or exclusion of religion and religious considerations based on the conviction that religion should not have a visible influence on society, particularly on education and politics (Petri and Visscher 2015).

1.3 Distilling the two dimensions of secular intolerance

We can take secular intolerance as an umbrella term to describe two interrelated things: the intolerant dimension of political secularism that Williams calls programmatic secularism – *modernism* – and the intolerant dimension of the gender, sexual and racial diversity agenda – *postmodernism* – both of which marginalize religion. The connection between the two, as Roger Trigg explained in a personal interview in 2018, is that in the former, religion is ruled out based on the belief that only rational (i.e., scientific) arguments should be considered in public debate, whereas in the latter religious arguments are viewed as having meaning only at a subjective level (religion can't claim truth) and can therefore not be a basis for political positions. In both cases, religious arguments are readily discarded.

The definition used by the World Watch List of Open Doors International integrates both aspects. The World Watch Research Unit describes secular intolerance as follows:

[3] Some examples include a private Christian university in Canada, Trinity Western University, which applied for approval of a law school but was denied on the basis of its code of conduct prohibiting homosexual intimacy. A Christian hospice in Canada, the Irene Thomas Hospice, was closed down because it refused to provide medical aid in dying (euthanasia) even though it was willing to transfer patients to another facility that would. The US Supreme Court overruled the City of Philadelphia, which cancelled a contract with Catholic Social Services, an adoption agency, because it refused to place children with same-sex couples.

the situation where Christian faith is being forced out of the public domain, if possible even out of the hearts of people. Its drivers seek to transform societies into the shape of a new, radically secularist ethic. This new ethic is (partly) related to a radically new sexual agenda, with norms and values about sexuality, marriage and related issues that are alien to, and resisted by the Christian worldview. When Christian individuals or institutions try to resist this new ethic, they are opposed by (i) non-discrimination legislation, (ii) attacks on parental rights in the area of education, (iii) the censorship of the Cross and other religious symbols from the public square, (iv) the use of hate-speech laws to limit the freedom of expression, and (v) Church registration laws. Most of this is not violent, although arrests of pastors and other Christians have taken place. An example of this engine is compulsory sexual education based on secularist gender ideology in nursery and primary schools in some countries, and the serious threat against parents who want to withdraw their young children from these lessons.

1.4 Secular intolerance as persecution

A final problem is whether secular intolerance should be considered as persecution. The answer to this question depends on how one defines persecution. If persecution is defined on a scale, as the World Watch List methodology does, then indeed secular intolerance should be considered persecution, albeit of a lower intensity than the persecution that takes place in the top 50 countries of the World Watch List. We tend to agree with Paul Marshall (2018) that some evangelical organizations are too quick to say secular intolerance is not persecution because they have an implicit understanding of this concept that reserves the term persecution for the most physically violent incidents.

The key issue to consider is to what extent secular intolerance effectively restricts the freedom of Christians in the West in various spheres of life. The articles in this issue of our journal describe some of the types of restrictions Christians have faced. These include, for example, government requirements that religious institutions must adhere to secular norms or be excluded from government benefits. Individual believers have also been required to adhere to secular norms of diversity and inclusion or face government sanction, loss of employment or closure of a business. States can also impose general restrictions on all religious believers, such as laws prohibiting wearing religious symbols or dress, that have an impact on Christians. Conservative Christian perspectives on certain issues are often excluded from public debate. Clearly, these impacts lie on a spectrum of severity, but Christians and Christian organizations are often experiencing marginalization because of secular intolerance.

2. Origins of secular intolerance

Secular intolerance is the result of a series of parallel and complementary philosophical and ideological trends, some of which started more than a century ago and

whose consequences we can now observe, both in how they have shaped Western culture and in how they inspire legislation and public policy. We will briefly describe some of these trends here.

2.1 From the Enlightenment

The Enlightenment promoted the institutionalization of the principle of separation between church and state, implying that the church should not interfere in government and that the state should not meddle in the internal affairs of religious institutions – "procedural secularism", to use Rowan Williams' concept. This correction of the unhealthy symbiotic relation between church and state that had developed ever since Constantine's embrace of Christianity was a good thing. But some Enlightenment actors went further. In France, an extreme form of separation between church and state was adopted in 1905, known as *laïcité*, which in practice is anti-religious, outlawing any form of religious expression in the public sphere.

Even though other European nations have milder models of separation, a growing discomfort with public expressions of religion has been observed throughout the twentieth and at the beginning of the twenty-first century – Rowan Williams' "programmatic secularism." More and more often, the principle of separation between church and state is mistakenly understood to require a separation between faith and politics, with the result that it is becoming less and less acceptable to base one's political positions on religious convictions. The Dutch historian and legal scholar Guillaume Groen van Prinsterer, in his seminal collection of lectures *Unbelief and Revolution* (1847), compellingly argues how absurd this is, because neutrality in politics (and in life in general) is impossible. In his view, everyone bases their political positions on something, whether it is an ideology or a set of religious beliefs.

2.2 Secularization

Secularization and secular intolerance seem to be two mutually reinforcing trends. The opening up of the religious market as a result of the Enlightenment allowed many persecuted religious groups to worship freely, but it also opened the door to a steady process of secularization, with ever larger numbers of people abandoning Christianity altogether. Of course, secularization is a complex sociological phenomenon that deserves a more thorough analysis, but it is indisputable that the regime of religious toleration created the legal possibility – and a culturally accepted personal option – for people to abandon the church, a point Charles Taylor makes in *A Secular Age* (2007).[4]

[4] Weakening the significance of secularization theory, Philip Jenkins (2007) argues that the penetration of Christianity in Europe during the Middle Ages was not as deep as is commonly thought.

Groen van Prinsterer goes even further by arguing that the Enlightenment did not lead to secularization; rather, in his view this revolutionary wave was itself the result of "unbelief" in society (1847). This is a controversial point, because, of course, people cannot be forced to believe in God. In any case, the end result of the process set in motion by the Enlightenment is that the demographic size of Christianity in Western countries is now much smaller than it used to be.[5]

Secularization has also led to growing religious illiteracy in Western society, i.e. an increasingly misinformed understanding of what religion entails, with the corollary that public policies and legislation reckon less fully with religious sensitivities. And once certain laws have been adopted, they influence what people believe, which in turn leads to increasing intolerance of opposing positions. For example, now that same-sex marriage has been approved in most Western countries, it has become increasingly unacceptable for people to express opposing points of view.

2.3 Modernism and Postmodernism

The eras of modernism in the 17th century and postmodernism in the 20th century have proved to be antithetical to a religious worldview. Both developed in the West and both contributed to the advance of secularism.

The rise of Modernism was characterized by two approaches. Rene Descartes' "I think therefore I am" is emblematic of rationalism. John Locke and Francis Bacon, meanwhile, focused on the empirical approach according to which reality must be measured and proven. Both of these approaches negate the value of faith. The Bible was subjected to scientific scrutiny and fell short, even though it was never intended to be a scientific treatise; believers value it as the Word of God. Because the biblical narrative could not be proven scientifically, the rise of empiricism led to widespread doubt as to its veracity.

In 1781, Immanuel Kant published the *Critique of Pure Reason*, which signaled a seismic shift away from classic Aristotelian philosophy and schools of theological thought (such as Thomism) which built upon this foundation. In this work he developed his "Copernican revolution" which is based on the assumption that there is no objective truth and morality. His views are commonly considered as a precursor of postmodernism and proved to be a major influence on the works of such culture-shaping philosophers as Hegel and Marx. It has been criticized by many thinkers throughout the years, including C. S. Lewis and Roger Trigg, because of the problems implied by the invalidation of any objective claim to truth. Such a stance not only rules out religion as a valid narrative to base one's life on, but it also

[5] This assessment raises a thought-provoking question: Does this mean that more religious freedom ultimately weakens religion?

leads to a society in which everything is relative and subjective and in which anyone should be free to determine their own fate. This means there is no basis to define such essential concepts as justice or security. Because of its societal implications, this is more than just a philosophical discussion.

Postmodern French philosophers such as Jean-Francois Lyotard, Jacques Derrida and Michel Foucault were foundational in the movement towards deconstructionism, questioning the very foundations of Western values and ideals. Lyotard defines Postmodernism as "incredulity toward metanarrative." Since Christianity is founded on a metanarrative found in the Bible, it is subject to this incredulity. Derrida argues that language is a construct with oppressive tendencies; Foucault argues that language is about power. Christians believe that God created humanity with innate characteristics and that he orders society for the public good. Postmodernism thus undercuts the foundational beliefs of Christianity.

This movement views political structures, law and language as oppressive and therefore calls for their deconstruction (Balkin 1987). We have seen an example of how this philosophy works in the movement to defund US police forces as a result of racist practices by some American police. Christians and religious institutions that posit that there are foundational principles in society that should be followed are viewed as oppressive. Similarly, when Christians publicly argue in favor of a right to life for the unborn or in favor of traditional marriage, they are characterized as intolerant and oppressive. This is where we see secular intolerance at its height.

2.4 The rise of anti-religious sentiment

Nussbaum (2013), while almost exclusively referring to cases of intolerance against Muslims, has analyzed the sharp rise of anti-religious sentiment in the Western world, especially since the terrorist attacks of 11 September 2001. In essence, the terrorist attacks confirmed many in their belief that religions are inherently violent, and that therefore any religious engagement in politics is to be avoided. This view is a caricature, yet it is held to differing degrees in wide portions of the media and academia. The recent abuse scandals in the Catholic Church have been widely interpreted as a confirmation of this prejudice against religion. Both Islamic terrorism and sexual abuse, and perhaps also other issues such as the extreme punishment of apostates in some Muslim communities, warrant intervention by the state, but can also lead to pressures for the state to broaden its regulation of religion. The resulting increase in state power therefore constitutes an obvious danger for religious freedom.

3. Addressing secular intolerance

Now that we have identified the roots of secular intolerance and some of its foundational beliefs, we can see the challenge Christians face in responding to it. If Chris-

tians are, by definition, characterized as oppressive, it is hard to respond with any effective counter arguments, since all objections will be viewed as further oppression. Pro-life arguments are characterized as oppressive to women. Pro-traditional marriage arguments are characterized as oppressive. Despite all Christians may think they and their predecessors have done to make the world a better place, including the provision of healthcare, education and democracy, in many countries that were subject to colonialism these activities are seen as colonial legacies.

As Western countries have become increasingly diverse due to immigration, a plurality of religions is present in most Western countries. Although some Christians have had difficulty accepting the demise of a Christian Europe or a Christian America, it is more compelling to argue in public for robust and flourishing freedom of religion or belief for all than for a privileged place for Christianity. Christians should therefore argue for true pluralism, including state neutrality towards religion.

Charles Taylor co-chaired a commission on reasonable accommodation of religion and culture in the Canadian province of Québec in 2007-2008. The Bouchard-Taylor Commission called on Québec to adopt what it termed "open secularism" (Bouchard and Taylor 2008:45). It identified four principles of open secularism (Bouchard and Taylor 2008:46):

1. The moral equality of persons;
2. Freedom of conscience and religion;
3. The separation of church and state; and
4. The neutrality of the state with respect to religions and deep-seated secular convictions.

Although these principles focus mainly on individual rights, the Commission strongly affirmed that the state must respect religions and religious convictions. Unfortunately, the government of Québec has not followed this counsel, but it is an approach that upholds freedom of religion or belief and that religious adherents can support. Given that one of the world's leading philosophers on secularism was one of the authors of this report, it can, perhaps form the basis for a framework that can be supported by a broad array of religious leaders and states alike.

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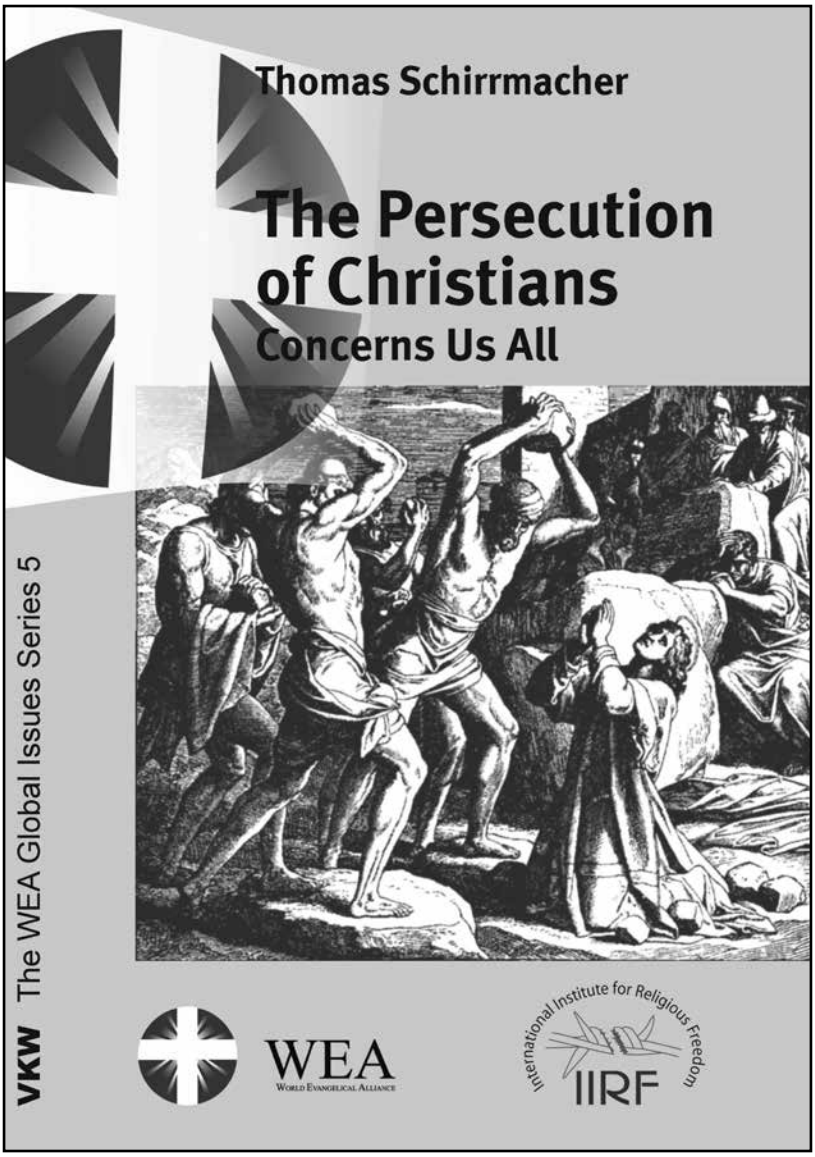

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Death by a thousand cuts

Perceptions of the nature and intensity of secular intolerance in Western Europe

Dennis P. Petri and Ronald R. Boyd-MacMillan[1]

Abstract

In this study, we systematize the main areas of concern related to secular intolerance, based on interviews conducted in fall 2018 with representatives of more than 20 faith-based organizations in Western Europe. We conclude that although some Christian advocacy organizations exaggerate the intensity of secular intolerance in the West, the phenomenon is indeed widespread and getting worse. We discuss practical responses to secular intolerance in the fields of research, advocacy, religious literacy training and raising awareness within the church. Some of the trends that we categorize under secular intolerance are reversible, but most seem more difficult to reverse.

Keywords secular intolerance, perceptions, religious freedom, persecution, Christians, Western world.

Secular intolerance is a sweeping concept that goes by many names. There is no consensus on its definition or on how to assess its intensity. The opinion article by Petri and Buckingham in this issue examines existing literature on the subject of secular intolerance and provides an overview of both the causes and the consequences of this phenomenon. That article identifies the main historical and philosophical sources and the primary drivers of secular intolerance, discussing how it is manifested through the placement of legal restrictions on the free religious expression of committed Christians. The paper also interprets secular intolerance within the broader analytical framework of religious freedom and the persecution of Christians.

This study builds on Petri and Buckingham's article and has two purposes. First, we show that secular intolerance is not just a concern for a few activists but is broadly shared among leading Christian ministers as well as non-Christian intellec-

[1] Dennis P. Petri is international director of the International Institute for Religious Freedom; founder and scholar-at-large at the Observatory of Religious Freedom in Latin America; lecturer at The Hague University of Applied Sciences, the Universidad Latinoamericana de Ciencia y Tecnología and the Latin American Faculty of Social Sciences (UNESCO); and director of the Foundation Platform for Social Transformation. Email: dp.petri@gmail.com. Ronald R. Boyd-McMillan has been teaching and learning from persecuted communities around the world for forty years. He is Visiting Professor of Practical Theology with Persecution Studies, Lahore College of Theology, Pakistan; and Adjunct Professor, School of Intercultural Studies, Fuller Theological Seminary, Pasadena, CA. Email: rbmwafts@gmail.com. This article uses American English. Article received 4 February 2021; accepted 1 November 2021.

tuals. We do this by presenting statements and publications by well-known figures, academics and multilateral organizations, as well as opinion surveys (section 1).

Second, we describe how the phenomenon of secular intolerance is perceived by Christian leaders and faith-based advocacy organizations, so as to gain a deeper understanding of its impact on the church. To this end, we discuss and systematize the findings of interviews conducted in fall 2018 with representatives of more than 20 faith-based advocacy organizations in Western Europe (with a primary focus on the United Kingdom). We begin by highlighting the main areas of concern identified (section 2) and then consider how the intensity of the phenomenon can be assessed (section 3). After that we discuss whether the identified trends are reversible (section 4) and possible responses to secular intolerance (section 5).

Our interviewees were selected from our own personal and professional networks, following a purposive sampling method (enhanced by snowball sampling). We deliberately chose to focus on the perceptions of Christians who feel directly targeted by secular intolerance; we do not describe the views of their opponents. In line with the exploratory nature of this research, we adopted an inductive and open-ended approach to our interviews, to give our interviewees the possibility to elaborate freely on how they understand the phenomenon without influencing them by our own pre-conceived notions.

This seemed the most strategic approach considering the subtle nature of secular intolerance, which generally is not physically violent and is often difficult to observe. We have no doubt that secular intolerance is a genuine phenomenon, as many have confirmed before us (including other contributors to this issue), but how bad is it? What is the impact of the legal reforms, incidents and court cases that many faith-based organizations have been tracking? When considered individually, incidents categorized as secular intolerance can seem insignificant and not very harmful. Moreover, a number of court cases concerning conservative Christians' freedom of expression have successfully achieved redress. Yet our intuition is that these many small or insignificant impositions together add up to "death by a thousand cuts." A few cuts do not kill you, nor do they even hurt. But continuous small blows and strikes have an unmistakable impact. Does the accumulation of seemingly insignificant incidents create an environment in which Christians no longer feel fully able to live out their faith freely?

Because of the sensitive nature of this research and to protect our sources, who for the most part expressed themselves transparently in the interviews, we have chosen not to disclose their names and affiliations. The interviews were conducted in an environment of trust and confidentiality and were not recorded. As we shall see, in an age of "cancel culture," many Christian leaders feel a requirement to self-censor, yet are still anxious to share about this new feeling of exclusion.

Accordingly, we do not quote from the interviews, but instead we describe the general patterns that emerged. These patterns can and should be subjected to further scrutiny. We recognize the methodological limitations related to inferring generalizations from a relatively small, non-representative sample of interviews. However, this data helps us improve our qualitative understanding of how the secular intolerance phenomenon is perceived, identify some of its nuances and manifestations, recognize patterns and formulate hypotheses for follow-up research.

1. A widely shared concern

Before we delve into specific areas of concern regarding secular intolerance, it is useful to depict in broad terms the generalized level of concern among influential Christian leaders. Pope Benedict XVI, perhaps the most visible Christian leader until his retirement, publicly raised the issue of hostility and prejudice resulting from creeping secularism in the West (Pullella 2010).[2] Within the Anglican Church, Archbishop Rowan Williams (2012) and Bishop Michael Nazir-Ali (2016), albeit from different starting points (the former focusing on the intolerance of Christian expression in the public sphere and the latter discussing, among other things, the lack of accommodation for conscience in non-discrimination legislation), also gave the issue high-level attention in widely circulated books.[3] The objections raised by these well-known figures are by themselves significant enough to justify taking the issue of secular intolerance seriously.

There also exist entire Christian organizations whose primary objective is to combat secular intolerance through various means. These include the Observatory on Intolerance and Discrimination against Christians in Europe, Alliance Defending Freedom, the Family Research Council, the American Center for Law and Justice, the European Center for Law and Justice, CARE for Europe, the Christian Institute, and Christian Concern. It is also a priority for Evangelical Alliances of various European countries. Although aspects of the work of these organizations might be criticized at various levels, their very existence is significant because it reflects the widespread concern about the issue and the constituencies and donors they represent. Within the leading anti-religious persecution organization Open Doors, World Watch Research has in recent years given more attention to the empirical observation of secular intolerance, through the application of World Watch List (WWL) questionnaires in Western countries and its partnership with the aforementioned Observatory.

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[2] Reports about Benedict's message referred to it as a denunciation of "Christianophobia," a less than elegant term it must be admitted.

[3] Indeed, Nazir-Ali announced his reception into the Roman Catholic Church as a way of protesting the Anglican Church's lack of courage in dealing with secularism.

Christian leaders and organizations are not alone in expressing concern about secular intolerance; ordinary Christians frequently feel the same way. A 2015 survey by the Equality and Human Rights Commission in the United Kingdom revealed that Christians:

> [R]eported being mocked for their beliefs at work, being passed over for promotion and feeling under pressure to keep their faith quiet at work. Other responses included parents saying their children are ridiculed for their faith at school, and business owners feeling 'in turmoil' about behaving in ways that might breach equality laws. Around half of those surveyed thought better legislation is needed to provide adequate protection for those with religious beliefs. (The Christian Institute 2015)

Also in the UK, a ComRes survey in 2017 found that 3 percent of workers, or around a million people, have experienced bullying, harassment or discrimination because of their religious beliefs (The Christian Institute 2017). Ditch the Label, an anti-bullying campaign, reported that 4 percent of the people it surveyed perceive attitudes toward religion as a motive for being bullied;[4] this percentage is quite significant since fewer than 5 percent of people in the United Kingdom are regular church attenders (2012). Surveys in the United States paint a similar picture (Ethos Institute 2017; Grossman 2016).

Leading academics too, both Christian and especially non-Christian – and the involvement of non-Christians is important in signaling that growing awareness of secular intolerance extends beyond the Christian "bubble" – have dedicated entire publications to this topic. Scholars such as Roger Trigg (2007; 2012), Paul Marshall (2018), Stephen L. Carter (2001), Steven D. Smith (2014), and José Casanova (2004) stand out, but many more could be mentioned. Some of these scholars are practicing Christians while others are silent about their religious convictions, but all are generally considered to have high academic standards. One scholar has even argued that the dominance of secularism in academia constitutes a form of "ontological injustice," because it leads to the subordination and marginalization of non-secular visions of the world, contradicting secularism's own claims to neutrality and universality (Wilson 2017).

Secular opinion leaders have also expressed dismay regarding particular aspects of secular intolerance. For example, conservative intellectuals such as Paul Cliteur (2018) in the Netherlands, Jordan B. Peterson (2017) in Canada and Nicolás Márquez and Agustín Laje (2016) in South America, have denounced the nega-

[4] Perhaps even more significant, this percentage is equal to the 4 percent who indicated that they are being bullied because of attitudes toward sexuality.

tive effects of identity politics. The French left-wing philosopher Bernard Henri-Lévy has depicted the self-contradictory stance of liberal thinkers and activists who embrace liberal values and therefore take intolerant positions against Christians, but who seem undisturbed by illiberal practices in Muslim communities (2008).

Finally, outside academia, secular intolerance has been flagged as an issue by international institutions such as the Organization for Security and Co-operation in Europe (2006) and the Parliamentary Assembly of the Council of Europe (2015). All this evidence taken together suggests that secular intolerance is a real thing – a "social fact," to use sociologist Émile Durkheim's methodological concept – that deserves to be studied, not just something a few backward Christians are whining about.

We will now look at the main concerns regarding secular intolerance, as identified in the interviews we conducted and a selection of secondary sources we reviewed.

2. Main areas of concern

Secular intolerance does not affect all Christians, but mainly conservative Christians. Christians who hold more liberal views – and recent Pew Research Center (2018a; 2018b) surveys suggest that this group is increasing in number – may often be in agreement with many developments that we classify by this label. We will therefore describe the main areas of concern for conservative Christians.

2.1 Generalized religious illiteracy

A key point mentioned in all our interviews, as well as in Rowan Williams' work, is the alarming level of religious illiteracy among policymakers, journalists, academics and judges, which reflects the advanced degree of secularization of Western society. This widespread religious illiteracy is of concern because it leads to considerable misunderstanding of religion (and especially how religion informs behavior), which translates into public policies and court rulings that fail to take into account matters of importance to religious people (Smith 2017).

The importance of religious literacy was recently highlighted in England, through the death by violence of Sir David Amess MP on 15 October 2021. During the two hours that he lay dying of wounds, the local police denied access to a Roman Catholic priest, who was nearby and who sought to give him the Last Sacraments, and to comfort him generally. This shows how public servants of all kinds, whether in police, prisons, immigration services, health service, etc. need to be aware of how religion and faith affect the needs and likely behavior of fellow citizens. We will give more concrete examples below, but in general, we can state that there appears to be less and less room for freedom of conscience in many spheres of life.

The principle of separation between church and state is also increasingly misinterpreted as a separation between faith and politics. This misunderstanding is ac-

companied by the erroneous idea that a secular state is automatically more neutral and that faith can be restricted to the private sphere (because religious freedom is understood only as ensuring freedom of worship). Together with the existing prejudices against religion, the advanced degree of religious illiteracy indirectly fosters intolerance of religious views.

2.2 Identity politics influencing public policy and court cases

Although religious illiteracy may lead to unconscious intolerance of religious views, interviewees also stressed their perception of conscious opposition. Specifically, they indicated their belief that various influential lobbies have a deliberate agenda (although not in the sense of a conspiracy orchestrated by an evil mastermind) to exclude or silence conservative religious views on certain topics because they are considered discriminatory. The most high-profile example of this in recent times has been the UK LGBT lobby group, Stonewall, which pushed an exclusionary agenda of seeking to define sex as gender. It was subsequently found to have exceeded the agreed legal understanding of the issue through its workplace diversity scheme.

Three general types of lobbies can be distinguished: (1) classic secularists who advocate for the exclusion of religion from the public sphere; (2) the feminist movement, which advocates for the social and political emancipation of women, including from religious dogmas and institutions; and (3) groups seeking identity and minority rights, such as LGBTQ groups pursuing the social and political recognition of different sexual minorities. Occasionally these groups collaborate around a shared agenda. In fact, even gender lobbies and Islamic organizations have joined forces to advocate against speakers perceived as discriminatory, such as in the coalition that has prevented so-called "hate speech preacher" Franklin Graham from gaining entry to the UK because of his comments on homosexuals and Muslims (Kuruvilla 2018).

The main focus of especially the latter two types of lobbies is to end discrimination against vulnerable minorities. This priority translates, among other things, into a push for equality legislation applicable to all spheres of society. Often this sort of legislation conflicts with freedom of religion and freedom of expression; the latter rights come under growing pressure because there is increasingly less acceptance of disagreement, respect for conscience, or willingness to grant reasonable accommodation. As Bishop Nazir-Ali has stated, "In this most recent spate of equality legislation, conscience has not been recognised" (2016:104). Indeed, there is growing concern among conservative Christians that, because of the adoption of such legislation and the multiplication of court cases, the rights of minorities are given precedence over other fundamental rights.

2.3 Self-censorship of Christians

As a result of both the implementation of legislation and policies that reduce freedom of religious expression and the "chilling effect" that arises from the various court cases – even when most court rulings are balanced and therefore favorable to Christians – Christians are resorting more frequently to self-censorship (which could explain why there appear to be fewer court cases now than some years ago).

Our interviewees indicated an increasing amount of pressure on Christians to conform to cultural norms, with socially conservative views being silenced as a result. Christians seem to have become accustomed to being silent about their views when they depart from the mainstream. In addition, almost all our interviewees complained about the generalized apathy of Western Christians who, for various reasons (as discussed in greater detail below), are not taking a stance against restrictions on their freedom of religion. This is true both for individual Christians and for the church as an institution. If there is no pushback, politicians more readily ignore the concerns of Christians.

2.4 Stealth moves

Secular intolerance progresses at different levels, occupying ground in more and more spaces by stealth. In our interviews, a general historical pattern emerged, starting with the trend of secularization of society and followed by the implementation of progressive legislation in an increasing number of fields, among which transgender rights represent the latest. As laws change attitudes, the existence of legislation can be perceived to translate into increasing intolerance of those who oppose such legislation.

This process is not automatic but is the result of the persistent lobbying of decision-makers and is often aided by judicial activism, as various advocates provoke the establishment of jurisprudence through specific cases. For example, in numerous cases street preachers have been accused of discrimination. Although, in most (if not all) cases, the street preachers were acquitted based on freedom of expression, new cases are constantly being filed as part of an ongoing effort to provoke a change in jurisprudence. Some interviewees believe that once a judge breaks with previous jurisprudence, the next area that will come under pressure is the sermons that pastors and priests deliver during church services, with the potential consequence of censorship of sermons and teaching messages given inside churches.

2.5 Restrictions in the church sphere

Usually, gender lobbies are not physically violent, but there are exceptions. The Observatory on Intolerance and Discrimination against Christians in Europe (OIDAC) has documented attacks on churches (which could be simple vandalism or deliber-

ate assaults by radical gender lobbies or Islamist groups) (Observatory 2019:22-23). The authorities generally act properly in response to instances of physical violence against churches, recognizing this activity as criminal. OIDAC has also noted increased registration requirements and taxation of religious organizations in some countries, all of which places unnecessary restrictions on the church sphere.

3. Gauging the intensity of secular intolerance

Having reviewed the evidence for secular intolerance as well as the main areas of concern, we will now consider how to determine the intensity of this phenomenon. The direction in which things are heading can hardly be viewed positively but is all the alarm warranted? What is the pace of the advance of secular intolerance? World Watch Research is currently undertaking an effort to score WWL questionnaires for Western countries, and this study should yield additional data. For now, we will make a few general comments.

First, secularization, or at least the "de-Christianization" of the West, is likely to continue. Insofar as secularization has led to an increase in (sometimes unintentional) intolerance of religion by policymakers, the level of secular intolerance is likely to increase. This process seems to have accelerated in recent years. This concern is exacerbated by the impression of the growing power of the state as a regulator, which enables it to interfere in more spheres of society.

The OIDAC data (Observatory 2018; 2019) also provides a valuable summary of recorded hate incidents against Christians, which range from relatively minor events such as church vandalism to court rulings and administrative decisions that uphold the dismissal of public servants for reasons of conscience, the dissolution of longstanding Christian charities (such as Catholic adoption agencies in the UK), and more broadly the exclusion of religious voices from the public sphere.

OIDAC documented an increase in reported cases of oppression on religious grounds, which cover both direct and brutal, and indirect and subtle tactics: 180 incidents in 2015, 250 in 2016, 275 in 2017, and 325 in 2018 (Observatory n.d.). The vast majority of these incidents involved vandalism against churches and Christian institutions, along with some acts of violence against Christian ministers, as well as mockery by media sources of the church as an institution. These acts are perpetrated by ordinary vandals, secular and gender activists and Islamic groups.

There have been numerous court cases involving conservative Christians and institutions, but systematic records of these cases are not kept by most organizations, so it is difficult to objectively assess their impact.[5] In one well-known case, the

[5] Noteworthy exceptions are The Christian Institute (https://www.christian.org.uk/case/) and Christian Concern (https://www.christianconcern.com/cases), which each reported having around 50 live cases and 20 to 30 prospective ones. Other organizations do not maintain publicly accessible records of

Ashers Baking Company in Northern Ireland faced popular condemnation for refusing in 2014, on the grounds of the owners' Christian faith, to prepare a wedding cake for a gay couple with the message "Support gay marriage." On 10 October 2018, Ashers won in the UK Supreme Court, ending a 4-year legal battle and overturning all previous judgments against it. The court held that Ashers acted lawfully and did not discriminate against the customer (Lee v. Ashers Baking Company 2018).

A similar case in Colorado was dismissed by the US Supreme Court (Masterpiece Cakeshop 2017). There have also been numerous cases involving marriage registrars who have suffered reprisals for refusing to perform same-sex unions (which have led to the dismissal of public servants in the Netherlands, the UK, and the United States); medical personnel and social workers who have gotten into trouble because of their beliefs; and street preachers who have had to defend themselves against accusations of homophobia, sometimes as a result of a setup (Stott 2013). The Lautsi case of 2011, concerning the public display of crucifixes in Italian schools, also received widespread attention (Puppinck 2012).

Although most courts have ruled in favor of the religious freedom of Christians, the very filing of such cases reflects and reinforces a societal mood that functions essentially as a form of squeeze against religious freedom. Moreover, even where jurisprudence protects religious freedom, every new incident that goes to court can result in a groundbreaking decision, which is why every court case is perceived by Christians as a battlefield. Also, the fact that fundamental rights have come under stress and are interfered with is by itself a concern.

An important distinction must be made between criminal and civil cases. Criminal cases, such as those involving restrictions of street preachers' freedom of expression, are usually won by the preachers and their legal counsels. The law is on the side of freedom of speech, and the judges' interpretations are generally favorable. (Of course, even when cases are won, entire careers are disrupted and good names slandered along the way.) In civil cases related to such matters as employment or education, however – especially when they allege discrimination based on (sexual) identity, which often involves subjective interpretations of (sometimes exaggerated or fabricated) circumstances – the defenders of religious freedom lose more often than they win, mainly because the judicial branch's interpretive role is much broader.

It would be wrong to assume that because several court cases are being won and because the number of court cases have diminished in some areas, the pace of secular intolerance is decreasing. Rather, the court cases have had a chilling effect on conservative Christians, who often resort to self-censorship, mainly to avoid go-

court cases. OIDAC includes some mentions of court cases, but they are mixed together with incidents of vandalism. It would be worthwhile to develop a jurisprudential compendium so as to better gauge the intensity of this phenomenon.

ing through the trouble and anxiety of a court case that lead in turn to the disruption of careers, advanced stress, bullying at work, and other negative experiences, as our interviewees indicated.

Moreover, our interviewees expressed the belief that many incidents go unreported, making it very difficult to determine the extent of this phenomenon. However, the logs of requests for advice received by Christian charities on matters such as how to respond to workplace harassment related to one's Christian views, or on how to deal with sexual minorities in the workplace or the classroom, indicate a steady increase in recent years. One charity reported receiving approximately 10 email inquiries each week along with another 10 to 15 telephone calls. Another reported fielding over 100 calls a year from parents and teachers who don't know how to respond to LGBT issues in their schools because they fear being accused of discrimination or hate speech.

Another sign of the intensity of secular intolerance is the observable influence in international institutions and forums of gender lobbies, which support UN-sponsored programs that promote abortion and family planning, as well as making development aid conditional upon the implementation of progressive policies (Peeters 2012).

Finally, legislation in this realm can be grouped into the following areas: non-discrimination legislation (which has been used to marginalize both Christian manifestations of belief and rights of Christian conscience in situations where competing claims to rights conflict); censorship of the cross and other religious symbols from the public square; the limiting of freedom of expression through various manifestations of hate-speech laws; equality legislation that affects the freedoms of Christian business owners; attacks on parental rights in education; attacks on conscience rights for medical professionals; and registration and tax requirements for churches (Kiska 2012).

Again, although Christian advocacy institutions have had relative success in combating the most extreme secularist policy proposals; the fact that new proposals are introduced so frequently is noteworthy. It signals that the drivers of secular intolerance are determined to keep pushing their agenda. In other words, even if many attacks can be parried through advocacy campaigns, this does not mean there is no threat. Moreover, Christian advocacy groups report that it is becoming increasingly difficult to even express opposing points of view involving identity or minority rights (especially regarding sexual orientation) without fear of sanction.

4. Are the trends reversible?

Most of our interviewees indicated that the trends described above can be reversed only if the church speaks out against secular intolerance and resists the restrictions

imposed by political decision-makers and the broader culture. If the church fails to stand its ground, however, secular intolerance will progress unabated.

Of course, secular policies and laws can be repealed, but the secularized cultural context from which they emerged is much harder to change. Our interviewees recognized that since secularization is the root source of contemporary progressive policies and the consequent intolerance of opposing views, achieving cultural change will be very difficult. Moreover, the secularist worldview strongly dominates "establishment" sectors such as politics, the judicial branch, the media, and academia. Protest votes against this establishment, such as the votes for Brexit or for Trump, are unlikely to have much impact in the long run (and a progressive backlash could even be expected). Even though the general population seems more conservative than the establishment, cultural norms are gradually becoming more liberal, primarily because the adoption of progressive legislation has a normative impact on the wider culture.

We can already observe that some aspects of secular intolerance are more reversible than others. As already described, the law seems to be firmly on the side of freedom of speech in criminal cases. In this area, it appears possible to push back against secular trends, although concerns remain. In particular, the ever more frequent self-censorship practiced by many Christians is worrying.

There also is an expectation that hate-speech legislation might eventually try to reach inside churches, effectively censoring Christian preaching. Paul Coleman, in *Censored* (2012), anticipated an extension of the scope of hate speech (and a lowering of its threshold) in the near future, leading to a culture of censorship and the broadening of government monitoring.

In other areas, particularly cases involving sexual orientation, it seems nearly impossible to overturn existing policies, as any attempt to do so is immediately met with hostility and accusations of discrimination. Christian advocacy organizations said it is increasingly difficult to lobby against legislative proposals in this area, and administrative court challenges around matters of conscience are usually unsuccessful. In this realm, there seems to be a new hierarchy of rights, with equality trumping religious rights.

On the other hand, there remain some areas where political victories are possible. For example, the demands of the transgender lobby (such as the compulsory use of alternative pronouns to identify transgender people) seem so absurd to many people, including even feminists, that they are still met with vast societal resistance. In the case of the already mentioned Northern Ireland bakery, even prominent gay rights activists have defended the bakers' right to free speech (LifeSite News 2016).

Secular intolerance does not spread evenly throughout the Western world. Some aspects of this phenomenon are more advanced in certain countries than in others. In the

United States, for example, hate speech is not a criminal offense, but it is in Europe. The influence of European multilateral institutions must be recognized, although this area requires further research. Countries such as Poland and Hungary have more conservative policies, but are increasingly facing pressure for maintaining them.

Overall, although some aspects of secular intolerance can still be resisted, the battle lines are constantly moving. Secular intolerance is expanding into different spheres of society, and it can do so freely as long as there is no effective pushback.

Our interviewees were generally very pessimistic about the church's response to the threats posed by secular intolerance. In fact, many of them expressed frustration with the general lack of assertiveness by the overwhelming majority of Christians. The following reasons (some of which overlap) were cited for this behavior:

- A large part of the church is liberal and approves the progressive policies being implemented.
- Perhaps unconsciously, many Christians view dimensions of secularism as normal. Christians are generally ignorant regarding their rights and are surprised when they learn what rights they have.
- There is a sense of resignation among conservative Christians, who treat persecution as something to be expected. Others seem to have surrendered already.
- At times, the church is more preoccupied by internal (interdenominational) disagreements than by the need to form a united front against secular intolerance.
- Often, Christians prefer not to make a fuss about the harassment they encounter. They fear that speaking out would only make things worse for them.
- The more pietistic denominations hold a narrow view of the Great Commission. They believe that struggling against secular intolerance distracts from the gospel. They seem "more concerned with the flock than with the wolves," as one interviewee put it.
- Especially in rural areas, there is a benevolent view of the state. People think that government is neutral and that things really are not so bad.
- As a whole, Western Christians are complacent. They behave like a grumpy majority, instead of accepting the fact that they now are by all measures a minority.
- The vast majority of Christians are often too busy with their lives and have no time to worry about secular intolerance.

The message is clear: the Church needs to wake up if secular intolerance is to be stopped in its tracks. But this must be done with caution and strategic insight.

Before we turn to specific recommendations on how secular intolerance can be addressed, a final aspect deserves to be mentioned. Some interviewees expressed concern that the Christian organizations that do engage with secular intolerance do so from the wrong point of departure. Some Christian organizations combat secular intolerance by trying to use the state to impose conservative values upon society, just as progressives

seek to impose their views. One interviewee referred to this approach as "Christian authoritarianism" and characterized it as very dangerous. The solution should not be to try to impose a Christian worldview, not only because doing so would oppress the freedom of others, but also because this strategy could easily backfire as soon as progressive parties regain control of the state. Rather, we should advocate for a reduction of the state's role so that it cannot impose its values any longer, whether it is progressive or conservative, and so as to advocate for respect of the rights of the Christian minority.

5. Possible responses to secular intolerance

Based on our interviews and the literature we consulted, we propose the following possible responses to secular intolerance: research, advocacy, religious literacy training, and raising awareness with the church.

5.1 Research

Because the frontlines of secular intolerance are shifting rapidly, it is essential to keep tracking where this phenomenon is going. We have described a few recent evolutions (such as the current advances made by progressive advocates concerning sexual orientation, the results of criminal cases, and the shift in civil law), but we need to be capable of anticipating changes in other areas in the future, as well as understanding differences between countries. Solid research is especially important because we have the impression, with a few exceptions, that many Christian organizations opposing secular intolerance neglect research and, as a result, sometimes make outlandish claims that do more harm than good. Without proper research, it is impossible to inform adequate responses.

We can no longer focus only on the relationship between religion and politics. Instead, we should improve our understanding of the present-day drivers of secular intolerance and how different spheres of society are threatened by this phenomenon. The current battles seem to revolve around identity politics in education, employment, and medicine. More scholarly research on judicial activism and the real impact of court cases is needed. The role of multilateral political and judicial institutions such as the European Court of Human Rights deserves permanent monitoring. We also need to improve our understanding of the extent of self-censorship among Christians. More generally, we need more insight into both the intensity and the pace at which secular intolerance is progressing. We should be gathering information that will allow to objectively gauge the intensity of secular intolerance.

5.2 Advocacy

As the drivers of secular intolerance continue to push for more progressive policies and progressive rulings by law courts, an adequate response in the realm of

advocacy is imperative. We understand advocacy as including two dimensions: legal assistance and policy influencing. Legal assistance includes engaging in actual litigation and, more generally, providing legal counsel to Christians who become embroiled in court cases. Advocates must also lobby against laws and policies that could constrict the religious freedom of conservative Christians.

As legal assistance is a relatively straightforward intervention, the nature of which will depend on each specific case, we will focus here on the main priorities with regard to policy influencing, synthesizing the main recommendations of four authors: Paul Coleman (2012), Stephen Baskerville (2017), Paul Marshall (2018), and Steven D. Smith (2014). We focus primarily on addressing the ambiguity of hate speech and anti-discrimination legislation (also called equality legislation), as well as the imbalances between these rights and freedom of religion and expression. This must be done both through fact-based analyses and arguments and by enhancing the power of storytelling so as to win over people's hearts and minds.

These authors suggest starting with the reform of national hate-speech laws, an area where some efforts by Christian advocacy organizations have been successful. In addition, international law must be re-examined so as to restore the broad protections it provides for freedom of expression and freedom of religion. Finally, all advocacy efforts must be oriented toward creating the most robust free speech standard possible and hark at Milton Freedman's famous warning that "the society that puts equality before freedom will end up with neither." Some experts whom we consulted still hope to cultivate the political will to accommodate the rights of Christians.

5.3 Religious literacy training

There is an urgent need to educate policymakers, public servants (including the police) and judges about religion, to increase their religious literacy. We have seen that advanced levels of religious illiteracy lead to misunderstanding of how religion informs behavior in different spheres of society and of the legitimate role of religion in the public domain, thus encouraging practical intolerance of Christians. One might be very pessimistic about the impact of such efforts, considering the presumed anti-Christian bias of "establishment" sectors of society. But this undertaking is critical if we want to reverse secular intolerance. It is also essential to include a religious literacy component in any advocacy initiative (and in legal casework as well) for it to succeed.

Key messages to communicate include the following: religions are not necessarily violent; the separation of church and state is not violated by religious expression; and an open society must leave room for conscientious objection and reasonable accommodation of deeply held beliefs.

Although gaining access to train public servants has become increasingly difficult – whereas gender lobbies seem to have open doors to government officials – there are nevertheless some positive illustrations. For example, some Christian advocacy organizations informed us that training police officers in this field has led to a reduction in arrests of street preachers, because the police understood that the preachers were legitimately using their right to freedom of expression.

5.4 Raising awareness within the church

As noted above, even where legal cases can be won, the media storm and societal tension can be very intimidating and have a chilling effect, leading to self-censorship. For this reason, Christians should become educated about their rights and should be encouraged to remain active in responding to any restrictions they face for exercising their faith. Our interviewees believed that many Christians are relatively ignorant about their rights and are surprised to realize that their freedom of speech is broadly protected under the law.

The factors contributing to the church's general apathy must be properly understood and addressed. Awareness must be raised so that both denominational bodies and individual Christians may proactively resist the challenge to conform to the secular dominant worldview. Interviewees repeatedly stressed that if churches stand their ground, it might be possible to push back against aspects of secular intolerance.

Raising awareness within the Church must occur at two levels. The first level is to create awareness among Christians about what secular intolerance entails (since there is still considerable ignorance of the threats posed by this phenomenon) and why it constitutes a form of persecution. In addition, Christians need to be educated about their rights, as many seem to have internalized secular assumptions and are unaware of the existing protections of freedom of religion. In a way, this undertaking is about building religious literacy for Christians.

The second level is to encourage Christians to actively engage with secular intolerance. This must of course be done in a strategic and wise way, but many advocacy tools and channels are available in politics, education, and the media. This work essentially entails offering civic education to the church.

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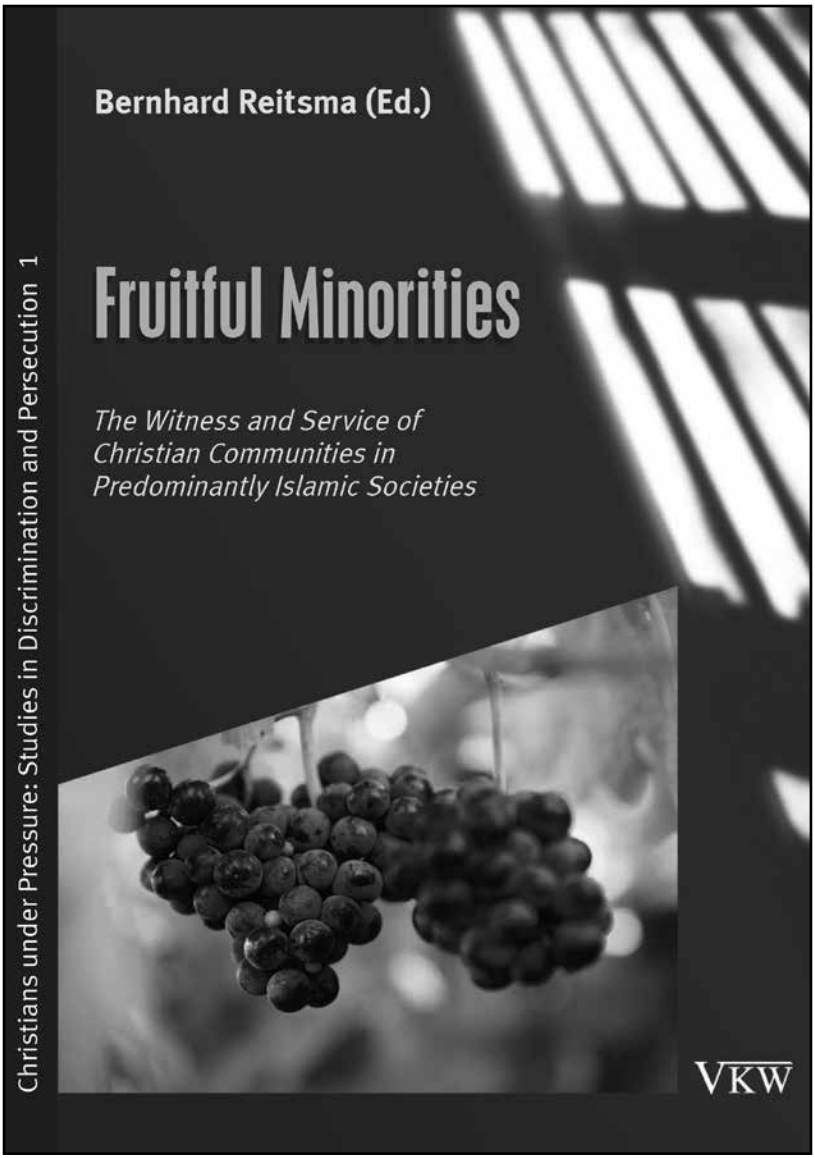

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The re-awakening of Waldensianism at the time of the Risorgimento

Ottavio Palombaro[1]

Abstract

Far from being just a secular project, the Italian Risorgimento had deep spiritual foundations. The project of "resurrection" of freedom of religion in modern Italy became an anti-clerical project though not necessarily anti-Christian. Radical Free Church Protestants generally supported the Republican ideals of Mazzini and Garibaldi, while Waldensians sided with the liberal Cavour. A spiritual awakening preceded the political awakening that led to the emancipation of the Waldensians, an event embodying the ideals of the Risorgimento. Indeed, Waldensians played a major role in the Risorgimento, contributing soldiers, parliamentary representatives, educators, writers, entrepreneurs, missionaries, and most of all, individuals who fought for religious freedom.

Keywords Catholicism, Italy, nationalism, Protestantism, réveil, Risorgimento, Waldensian.

The word 'Risorgimento' refers to the period in Italian history when Italy achieved its national unity. Formally, Italian unity was achieved on 17 March 1861, when the kingdom of Sardinia annexed the majority of the other kingdoms in the Italian peninsula. 'Risorgimento' literally means "resurgence", "re-birth", "regeneration", or "resurrection." In 1861, in many ways, Italy was an unhappy land, a "land of the dead" to use a common expression, a land whose people were oppressed by repressive powers both within and without. What made Italy's situation even worse was the fact that the Catholic Church, as Macchiavelli had diagnosed long before this era, worked hard to keep the land divided, effectively impeding the development of civil society by its demand that individual Catholics allow their consciences to be subjected to the church's spiritual authority. This strategy passed on over centuries in the Catholic Church. It kept the political tissue fragmented under the subjection to the spiritual authority of the Pope. This was a strategy inherited from the time of the counter-Reformation. It was symbolic under these circumstances to

[1] Dr Ottavio Palombaro is an Italian theologian, sociologist and cultural anthropologist. He studied at the University of Rome "La Sapienza" (B.A.), at the University of Turin (M.A.), at the University "Statale" of Milan (Ph.D.), at Tyndale Theological Seminary in Netherlands, at the Puritan Reformed Theological Seminary in Grand Rapids, Michigan U.S.A. (M.Div.) and at the Free University of Amsterdam (Th.D.). This paper uses American English. Article received: 27 July 2020; accepted: 5 July 2021. Email: ottaviopal@gmail.com.

give a political-national interpretation to the resurrection of Christ. The problem of religious freedom was therefore an essential aspect in the formation of the Italian nation whether through its liberal or democratic positions.[2]

While the Catholic Church by and large opposed the unification of Italy, the much smaller Protestant churches took a more democratic stand with many of their members joining dissident groups or secret societies or a more radical political party. They supported the establishment of a democracy that would replace the absolutist kingdoms into which the Italian peninsula was then divided.[3] This, for example, was the position of Mazzini who through his "Giovine Italia" pursued a more radical, revolutionary approach to unifying Italy.[4]

At the same time, other factions, even though their members were mostly Catholic, (we think here of "Giuseppinisti" or the "giurisdizionalisti"), took a more liberal and progressive approach. They recognized the right of the state to exercise civic power without interference from church authorities. Camillo Benso, the count of Cavour and the first prime minister of a united Italy was a supporter of the separation between church and state. Differently from Garibaldi and Mazzini, he still considered himself as Catholic and held to a more middle ground solution, trying to reach an agreement with the papacy. What is interesting is that the principle of "a free church in a free state" (*Ecclesia libera in libera patria*) was first suggested to Cavour by the Swiss Calvinist theologian Alexandre Vinet, who was himself an ardent supporter of freedom of conscience.

Vinet came to the understanding that freedom is necessary for the proper exercise of faith.[5] The state must recognize its essential inability to address religious matters and therefore avoid any restrictions on religious freedom.[6] Vinet believed that, by recognizing freedom of thought, all religious groups would be free to serve humanity in the best way they could, thereby setting off a virtuous cycle of competitiveness that would serve the wellbeing of all.[7] Vinet expressed his attitude toward religious freedom in vivid terms:

> A minister of the Gospel is strong solely on the base of moral authority… In a democratic country, where a state church is present, there is a contrast that will

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2 Bruno Di Porto, "Valdesi ed Ebrei, le Due Storiche Minoranze Religiose dal Risorgimento alla Repubblica." *La Rassegna Mensile di Israel* 64, no. 1 (April 1998), 7.

3 Filippo Ambrosini, *L'ombra della Restaurazione. Cospiratori, Riformisti e Reazionari in Piemonte e Liguria (1814-1831)* (Torino, IT: Editrice Il Punto, 2002), 73.

4 Istituto per La Storia del Risorgimento Italiano. *Mazzini e il Mazzinianesimo. Atti del XIV Congresso di Storia del Risorgimento Italiano (Genova, 24–28 settembre 1972*) (Roma, IT: ISRI, 1974), 200.

5 Maghenzani, Platone, *Riforma, Risorgimento e Risveglio*, 120-121.

6 Maghenzani, Platone, *Riforma, Risorgimento e Risveglio*, 129.

7 Simone Maghenzani, *Il Protestantesimo Italiano nel Risorgimento*, 98.

> necessarily frustrate a lot of people… It is our interest and duty in every occasion to solemnly declare and defend religious freedom and the rights of the dissident brothers repudiating religious monopoly... Woe to those who scatter minority religious assemblies pretending to follow the interests of the national church...[8]

Significantly, Vinet lived just before the advent of the Italian Risorgimento during the time of a spiritual awakening (Réveil) that took place among Reformed churches in Switzerland and the south of France as well as among Italian Waldensians.[9] That awakening brought spiritual fervor in the political battles that were to come.

There were significant differences between Waldensians and the other Protestant groups active in Italy at the time in their attitude toward the king of Savoy's role in reuniting Italy. While the contribution of other Protestant groups to the cause of Italian unity should not be minimized, the Waldensians were the only Protestant group that had been present in Italy and fighting for their religious freedom for many centuries.[10] (They had been present in the Piedmont as a little Calvinist *enclave*.) Moreover, in contrast to the so-called free churches ("Le Chiese Libere"), the Waldensians were better at making converts among the bourgeoisie. They were royalists, supporters of the political objectives of the Kingdom of Sardinia and its prime minister, the count of Cavour, and took an active part in the Risorgimento.[11]

Turin, the capital of the Kingdom of Piedmont-Sardinia, was in fact the center of political debates concerning the possibility of a unified Italy.[12] Cavour understood that the enthusiasm of foreign evangelicals for Italian Protestants could help advance his political goals.[13] Cavour also thought that the British model for the relationship between church and state could be a model for the church-state relationships that his own country might choose. In fact, Cavour had a long history of contacts with the Protestant world that was only strengthened by his agreement with Lord Shaftesbury on the necessity for freedom of worship for Protestants in Italy.[14] Cavour was able to utilize international public opinion without ever giving

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[8] A. Vinet, *Liberté Religieuse et Questions Ecclésiastiques* (Paris, FR: Chez les Editeurs, 1854), 371-374.

[9] Augusto Armand Hugon, *Storia dei Valdesi/2. Dal Sinodo di Chanforan all'Emancipazione* (Torino, IT: Claudiana, 1989), 277.

[10] For a detailed treatment on the history of the persecution of the Waldenses and their developments in the struggle for religious freedom see: Tourn, *The Waldensians: the First 800 Years*, Turin, Italy: Claudiana, 1980.

[11] Tourn, *Risorgimento e Chiese Cristiane*, 129.

[12] Spini, *Risorgimento e Protestanti*, 276.

[13] Fabbrini, *I Valdesi e l'Unità d'Italia,* 107.

[14] Francesca Sofia, "Stato Moderno e Minoranze Religiose in Italia." *La Rassegna Mensile di Israel* 64, no. 1 (April 1998), 42.

the impression that he was pursuing a pro-Protestant policy.[15] Cavour stated that, if the Protestants wanted to guarantee religious freedom to their co-religionists, they would need to support his liberal politics. While the Waldensians' support for Cavour and the King of Savoy could be written off as just an act of ***realpolitik***, that support nevertheless resulted in the Waldensians having an active voice in the Italian ruling class.[16]

It is significant that right at the time of the Italian Risorgimento, after so many centuries of segregation and open persecution, the Waldensian church received its first social recognition. This long journey had already started during the years right after the French revolution.[17] For a long time, Carlo Alberto, the king of Sardinia-Piedmont, afraid of disappointing the Holy See, opposed any effective concessions to the Waldensians. Later, however, in order to get the support of the European Protestant powers, he was forced to make some concessions. Six hundred political leaders in Piedmont, led by Roberto D'Azeglio, presented a petition to the king asking for the emancipation of the Waldensians. Around the same time, Roberto D'Azeglio gave a much-quoted speech demanding that the "Patria" (by which he meant the Kingdom of Sardinia-Piedmont) become a true mother and not just a stepmother by emancipating its Waldensian subjects. (To quote D'Azeglio: "Hurray for the emancipation of the Waldensians!")[18] His desire was "to be useful to the Patria and to let the Kingdom of God advance."[19]

D'Azeglio's second visit to the valleys west of Turin, in which many Waldensians lived with King Carlo Alberto, for the consecration of a Catholic church was also very interesting. The warm welcome from the king's Waldensian subjects transformed what would have been just a routine Catholic festivity into a memorable meeting between the king and the Waldensian community.[20]

Another central figure for the fate of the Waldensians was Luigi Amedeo Melegari who was elected to the subalpine parliament in 1848. Melegari had Protestant Reformed family members and like Cavour was profoundly influenced by the teaching of the Calvinist theologian Alexandre Vinet.[21]

The "Patent letters" signed by the King Carlo Alberto on 17 February 1848 were idealistically praised as a declaration of their long-hoped for freedom by the 20,000 Waldensians who for centuries had been confined and isolated in their Alpine val-

[15] Spini, *Risorgimento e Protestanti*, 288.
[16] Spini, *Risorgimento e Protestanti*, 283.
[17] Giorgio Spini, *Risorgimento e Protestanti* (Torino, IT: Claudiana, 2008), 48-49.
[18] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848–1998. I Valdesi nel Risorgimento*, 76.
[19] Simone Maghenzani, ed. *Il Protestantesimo Italiano nel Risorgimento. Influenze, Miti, Identità* (Torino, IT: Claudiana, 2012), 49.
[20] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848–1998. I Valdesi nel Risorgimento*, 46.
[21] Fabbrini, *I Valdesi e l'Unità d'Italia,* 97.

leys.[22] However, since Article 1 of King Carlo Alberto's new statute still affirmed the Roman Catholic Church as the one true legitimate religion of the state, its logical consequence was that other religious traditions could be tolerated only as personal opinions and not in their public expressions. On the other hand, some participation by Protestants in civic life was still possible since the right to vote was granted to all subjects independently from their religious identity. This compromise did not lead to any official recognition to Waldensian worship. In particular, proselytism by Waldensians and other Protestants was still a ground for legal charges. So, while the private exercise of religious beliefs other than Catholicism was allowed, the public exercise of non-Catholic religious beliefs was still subject to restrictions. Such ambiguity becomes more evident as one looks to the Article 28. While it says that "the press will be free" it also specifies that "the law will punish abuses of free expression. Bibles, catechisms, liturgical books, and prayer books will not be printed without prior authorization from the local bishop."[23] Nevertheless, the act of emancipation allowed for "more ample facilities" for the Waldensians.[24] The text of the Patent Letters in a major break from three centuries of open repression said:

> Taking into consideration the faithfulness and the good sentiments of the Waldensian people [...] we concede to our Waldensian subjects more opportunities to observe the tenets of their faith, and we have granted them frequent and important dispensations from the strict observance of our laws about religious observance. Now, given that the reasons for those restrictions are no longer valid, we have resolved to make them partakers of all the advantages that our laws provide for recognized religious groups... Accordingly, the Waldensians are hereby admitted to partake of all the civic and political rights of our subjects; to attend the schools inside and outside of the universities; and to receive academic degrees. Nothing, however, is hereby changed concerning the exercise of their worship and the schools directed by them.[25]

For the Waldensian people, this document meant an end of marginalization. The journal "Eco di Savonarola" saw this event as a sign that God was bringing a religious reformation to Italy.[26]

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[22] Giorgio Tourn, *I Valdesi. La Singolare Vicenda di Un Popolo-Chiesa* (Torino, IT: Claudiana, 1977), 184.

[23] Jean-Pierre Viallet, *Les Vaudois d'Italie de Giolitti a Mussolini (1911-1945)* (Thèse de Doctorat Faculté de Lettre et Sciences Humaines de l'Université d'Aix - Marseille, 1970), 40.

[24] Giovanni Luzzi, *1848-1898. The Waldensian Church and the Edict of Her Emancipation* (Torino, IT: Claudiana, 1998), 19.

[25] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 77.

[26] Spini, *Risorgimento e Protestanti*, 217.

Between 1843 and 1847, just before the Risorgimento, many intellectual and political figures defended the rights of the Waldensians. Cavour himself hoped this foment would open the road to religious freedom. As word of the issuing of the "Regie Patenti" began to spread, many Waldensians gathered in the house of the pastor in Turin to celebrate.

The next morning the first free public Protestant worship service in Italy was led by Pastor Bert at the chapel of the Prussian embassy in Turin. Afterwards the first national rally for religious freedom proceeded to the central square of the city (the Piazza Castello) as people shouted, "Hurray for the Waldensian brothers! Hurray for the emancipation of the Waldensians!"[27] Since then, every 17 February, the Waldensian community has celebrated its anniversary by lighting fires in their valleys, full of gratefulness for the freedom they received through the Risorgimento.[28]

In the same year, after the Patent Letters, the Waldensian synod met to reflect on the consequences of their recent liberation on society and evangelism.[29] In this new climate the missionary urgency was the first channel through which the Waldensians sought to contribute to the unification of Italy. At the Waldensian synod meeting Pastor Meille gave a missionary challenge:

> And now, gentlemen, consider the work with which we are charged. There's no need any more to preach to mountain men, to humble farmers. No, we are going to be launched in the great cities of Italy, in the breasts of a society among the most ignorant, if you will, from the religious point of view. But many of those we encounter will be highly educated, intellectually skeptical, many will be full of popish ideas which paradoxically they do not believe anymore... The wind blows, we must set sail. We must not stay in the mountains anymore. We must flow to the plains and encounter those millions of our fellow citizens… If events have a meaning, if Providence speaks of its dispensations, if history shows us its will, we will understand that our part is to bring Italy the flames of Truth.[30]

The preaching of Meille in Turin drew many eager hearers. One of them was G. Gajani, a member of the parliament of the Roman Republic who became a Protestant. Together with B. Malan, B. Tron, F. Gay, and Paolo Geymonat, Meille went to Florence with the goal of evangelizing people in that city.

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[27] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 77-79.

[28] Giovanni Rostagno, *I Valdesi Italiani. Le loro Lotte e la Loro Fede* (Torre Pellice, IT: Società di Studi Valdesi, 1938), 10.

[29] Giorgio Tourn, *Risorgimento e Chiese Cristiane* (Torino, IT: Claudiana, 2011), 86-87.

[30] Jean-Pierre Viallet, *Les Vaudois d'Italie de Giolitti a Mussolini (1911-1945)* (Thèse de Doctorat Faculté de Lettre et Sciences Humaines de l'Université d'Aix - Marseille, 1970), 38.

During the time of the Risorgimento, Waldensians also pursued education for the masses. Wherever a new church was planted, the Waldensians also sought to open a school.[31] With the help of Anglicans such as Stephen Gilly, the Waldensians founded a high school named the "Collegium Sanctae Trinitatis apud Valdenses." Gilly also re-started the financial assistance that British Christians had previously given to the Waldensians.[32] John Charles Beckwith, who was also an Anglican, found a book written by Gilly in the library of the Duke of Wellington. This book aroused his interest in the Waldensians. While gathering military and political intelligence for the British government, Beckwith came to the Waldensian valleys in 1827. Beckwith tried to provide sufficient funds to build elementary schools in each village in the Waldensian valleys. He created thereby an efficient school system and brought nearly universal literacy to the communities of the valleys. He also distributed Bibles and Christian literature in the valleys. Beckwith helped the Waldensians recognize the need for the social, political and religious emancipation that would come, partly with the Waldensian's help, in the Risorgimento. In his famous statement to the community he declared, "from now on you will either be missionaries or you will cease to exist!" He was aware that Italy was facing what might turn out to be an historical turning point and he believed that the Waldensians might soon play a crucial role in bringing about that change.[33] The valleys were not the only "Patria" of the Waldensians anymore. Instead, Italy as a whole would now be the Waldensians' homeland.[34]

Also, with funds coming from the Russian Tsar, Alexander I, a new hospital was built in Torre Pellice.[35] The construction of a Waldensian hospital was a way to avoid the often coercive pressure to convert to Catholicism that non-Catholics often experienced in Catholic hospitals. Beckwith's schools and the new Waldensian hospital worked together to increase the independence and sustainability of the Waldensian valleys.[36]

In trying to evangelize Italy, the Waldensians were not tempted to turn all Italians into Protestants. Rather they wanted to help their fellow citizens rediscover the Scripture, a book which had been effectively kept hidden by the official church.[37] Indeed,

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[31] Tourn, *Risorgimento e Chiese Cristiane*, 176.

[32] William S. F. Pickering, and Henry Appia. "La découverte des Vaudois de France par les Anglais au XIX e siècle." *Bulletin de la Société de l'Histoire du Protestantisme Français (1903-)* 139 (October 1993), 655.

[33] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 81.

[34] Simone Maghenzani, *Il Protestantesimo Italiano nel Risorgimento*, 61.

[35] Fabbrini, *I Valdesi e l'Unità d'Italia,* 126.

[36] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 28-29.

[37] Tourn, *Risorgimento e Chiese Cristiane*, 95.

for many years Italians were not allowed to read the sacred writings without first getting approval from the local Catholic priest.[38] Already, as a result of the second war of independence, the Waldensians were able to expand their witness throughout the whole of Italy. A new organization ("Il Comitato per l'Evangelizzazione") was established by the Waldensian Synod in 1860 and charged with facilitating and enhancing those missionary efforts.

The new emphasis on evangelism went side by side with political events.[39] Echoing the comments of liberal politicians, the Waldensian newspaper, the "Echo des Vallées" described the entrance of the Italian soldiers in Rome this way: "… the entrance of the Italian troops in Rome… is both putting an end to the temporal power of the popes and sealing our national unity..."[40]

The "Eco della Verità" gave a spiritual interpretation to the breaching of what had been the former papal stronghold of Rome:

> By crossing the pontifical border, our soldiers (sic!) are not engaging in a war of conquest but are executing a sentence that the entire world has already pronounced… The temporal power of the popes has fallen. This time there is reason to hope that its fall will be permanent and without appeal. Italians finally possess their own capital city; the unity and independence of the Patria are finally ours...[41]

At the same time, another Waldensian newspaper, the "Amico di Casa", with a less idealistic approach, said that the conquest of Rome was only the beginning of what would be a hard task; centuries of papal domination had made Rome a poor, ignorant and corrupted city.

When the pope returned to the Vatican after the fall of the Roman Republic in 1849, papal guards had confiscated 3,000 copies of the New Testament written in the common Italian language.[42] Another large shipment of Bibles and New Testaments in the Italian language that had been brought into Rome by the British and Foreign Bible Society after the breach of the Roman walls at Porta Pia was also confiscated.[43]

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[38] Wood J. Brown *An Italian Campaign; The Evangelical Movement in Italy. 1845-1887* (London, UK: Hodder and Stoughton, 1890), 21.

[39] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 122.

[40] Fiorella Massel, *Contributo alla Storia del Giornalismo Valdese (da Roma Capitale all'Età Giolittiana)*. (Torino, IT: Università degli Studi, Thesis, 1980), 169.

[41] Massel, *Contributo alla Storia del Giornalismo Valdese*, 170.

[42] Fabbrini, *I Valdesi e l'Unità d'Italia,* 22.

[43] Tourn, *Risorgimento e Chiese Cristiane*, 103.

The Waldensian minister Matteo Prochet was the first Protestant minister to preach in Rome right after the liberation of the city on 20 September 1848.[44]

The Waldensian pastor Alexis Muston described these events with a good deal of hope.[45] Another Waldensian, Michel Pellegrin, a man of patriotic ideals, took part in the battles of Milan and died.[46] The first Waldensian church outside the Waldensian valleys was built in Turin and consecrated on 15 December 1853, in the presence of official representatives from England, Switzerland, the United States, and Prussia.[47]

Between 1849 and 1859 Giuseppe Malan became the first Protestant member of the Italian Parliament. As a Waldensian, his political views were close to the moderate views of Cavour. He also supported, of course, the separation of Church and State.[48] Malan is remembered as a person of moral rigor who had a profound respect for freedom of conscience.[49] The voters in his district re-elected him repeatedly over a period of ten years. Due to the success of the "Destra storica" and to the fact that the Waldensian electorate kept a moderate political orientation, other Waldensian candidates were elected as members the Parliament.[50] Another political candidate was G. B. E. Geymet, a nephew of the Waldensian pastor Pierre Geymet who had taken part in the revolutionary governments between 1798 and 1800 and had been chosen sub-prefect of Pinerolo in 1802.[51] After Malan, in 1886, another Waldensian, Giulio Peyrot, a businessman from Turin was elected to parliament. Later, the Waldensian pastor Enrico Soulier served in parliament until 1913.[52]

As mentioned before, between 1825 and 1840, just before the Risorgimento, the Waldensian valleys experienced a religious awakening. The Réveil had started in Switzerland around 1815 as an attempt to bring the churches back to a lively spirituality.[53] Later on, this awakening spread to the Italian Waldensians.[54] The supporters of the Réveil wanted to awaken churches from their spiritual lethargy and were generally critical toward the rationalistic tendencies they believed they saw in the religious establishment. Proponents of the Réveil emphasized the need for a new birth and for a life of dedicated piety. These ideas spread to the Waldensian Valleys during a visit in 1825 by the Geneva evangelist, Felix Neff. As a result of his visit, Neff

[44] A. Muston, Bonnet G. and Meynier E. eds., *Riassunto Storico della Evangelizzazione Valdese durante I Primi Cinquant'Anni di Libertà. 1848-1898* (Pinerolo, IT: Tipografia Chiantore-Mascarelli, 1899), 15.
[45] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 75.
[46] Fabbrini, *I Valdesi e l'Unità d'Italia,* 122.
[47] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 85.
[48] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 86.
[49] Fabbrini, *I Valdesi e l'Unità d'Italia,* 99.
[50] Giorgio Spini, *Italia Liberale e Protestanti* (Torino, IT: Claudiana, 2002), 359.
[51] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 89.
[52] Fabbrini, *I Valdesi e l'Unità d'Italia,* 100.
[53] Spini, *Risorgimento e Protestanti*, 89.
[54] Maghenzani, Platone, *Riforma, Risorgimento e Risveglio*, 97.

reached a very negative judgment concerning the spiritual and religious conditions of the Waldensians at the time.[55] In fact, he believed that there was no true convert in the whole Waldensian church. Before visiting the Waldensians, Neff had already traveled through the south of France where he is reported as having ignited the Huguenot communities. There he met the Waldensian pastor Davide Mondon and decided to come to visit the Waldensian valleys as well. Some, like Antoine Blanc, were sympathetic to Neff's ideas of Neff and hosted his evangelistic meetings.[56]

As a result, an underground group of Waldensian dissidents, called the *Mômiers (*or 'masked ones'), began to meet to study the Scripture. Those "Protestant bigots," as they were labeled, were characterized by an austere and extremist Calvinistic approach. They focused their attention on spiritual exercises rather than on just following the forms of the Reformed liturgy. Personal testimony, the assurance of salvation, opposition to the official church, the priesthood of all believers, and a strong missionary concern were common features of this pre-Risorgimento awakening among the Waldensians. Many controversies swirled around the *Mômiers* as the official authorities suspected them of trying to subvert the public order and the Waldensian elected leadership reprimanded them. The *Mômiers* were, in fact, undermining several organizational aspects of the traditional Reformed Waldensian church structure.

Most of the new elite of the Waldensian church had been inculcated in this new religious sensibility, as they studied theology in Lausanne or Geneva, bringing back to the valleys the desire for the spiritual transformation of the Waldensian community.[57] Some say that the new wind brought by the spiritual awakening of the Waldensian church foreshadowed and perhaps even ignited the fire of the political, social, and spiritual struggles that were about to break out in the Risorgimento.[58]

The Waldensian Synod met just as Garibaldi was leading his military expedition for the unification of Italy. The floor opened with a sermon by Giorgio Appia, addressing the need for the Waldensian community to confront the religious indifference of the Italian nation.[59] In the meantime, many Waldensians volunteered as soldiers in the war for the independence. Appia was able to set a more spiritual example by moving to Sicily in order to start a mission post.[60] During the military

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[55] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 30-31.

[56] Maghenzani, Platone, *Riforma, Risorgimento e Risveglio*, 100.

[57] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 34-35.

[58] Spini, *Risorgimento e Protestanti*, 135.

[59] Tourn, *Risorgimento e Chiese Cristiane*, 140.

[60] Fabbrini, *I Valdesi e l'Unità d'Italia,* 58.

expedition in Sicily, Appia appointed many local evangelists while he transferred his activity to Naples.[61]

As the liberation of Italy proceeded, another Waldensian evangelist, Jean Daniel Turin, reached Milan while one of his co-workers took oversight of seventy Waldensian soldiers in Venice. Another contingent of one thousand Waldensian soldiers was sent in 1866 to take part in the Third War of Independence. Among them was the cavalry officer Enrico Gay, a son of a Waldensian pastor.[62]

Though being few in number, Italian Protestants, and Italian Waldensians in particular, had their influence in the era of the Risorgimento. If in 1848 the Waldensian Church counted only fifteen congregations, all of which were located in the Waldensian valleys, in the next fifty years almost fifty new congregations were established throughout Italy.[63] Qualitatively the Waldensians' participation in the events leading to the unification of Italy was greater than their still small membership would make seem likely. For the Waldensians, the Risorgimento was inseparable from their previous history.[64] Contrary to their Catholic neighbors, the Waldensians took the Risorgimento as an opportunity to become politically active.[65] The concept of freedom, a core value of the Risorgimento, found in the Waldensians a leading champion. In particular, the case of this religious minority forced Italy to embrace the modern concept of religious pluralism. To grant political rights to the Waldensians was a symbol intended to operate as a foundational agreement on the way the nation should deal with religious differences. This was in harmony with the Waldensian idea of covenant theology.[66] However, in the end, Italy did not come to see itself as a religiously pluralistic society and the Roman Catholic Church remained the state church and Italian Protestants continued to suffer many difficulties.

The end of the temporal power of the papacy in Italy did not result in all the changes hoped for.[67] Nevertheless, Waldensians, as well as other Protestants, contributed to the advancement of modern religious pluralism in the newborn Italian nation, even though after the unification, there was still tension inside the Italian Protestant community between ethnic Waldensians and converts from Catholicism.[68]

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[61] Pasquale Danzi, *Presenze Protestanti a Napoli Durante il Risorgimento* (Napoli, IT: Tullio Pironti Editore, 2013), 43.

[62] Fabbrini, *I Valdesi e l'Unità d'Italia,* 120.

[63] A. Muston, Bonnet G. and Meynier E. eds., *Riassunto Storico della Evangelizzazione Valdese durante I Primi Cinquant'Anni di Libertà. 1848-1898* (Pinerolo, IT: Tipografia Chiantore-Mascarelli, 1899), 18.

[64] Bellion, Cignoni, Romagnani, and Tron. *Dalle Valli all'Italia 1848-1998. I Valdesi nel Risorgimento*, 111.

[65] Giorgio Bouchard, *Una Minoranza Significativa* (Roma, IT: Cooperativa COM Nuovi Tempi, 1994), 178.

[66] Simone Maghenzani, *Il Protestantesimo Italiano nel Risorgimento*, 91.

[67] Spini, *Risorgimento e Protestanti*, 345.

[68] Simone Maghenzani, and Giuseppe Platone, eds. *Riforma, Risorgimento e Risveglio* (Torino, IT: Claudiana, 2011), 78.

It is important to note that a lay state did not imply a complete rejection of beliefs but rather the rejection of the claims of any specific religious group to having more of a right to state support than other religious groups. Through their political contributions, the Waldensians were one of the leading minorities involved in shaping a united nation of Italy. With its successes and failures, back then as well as today, Waldensianism teaches us that the strength of any country's national identity is inextricably linked with the ability of its religious minorities to feel at home in that country. In that sense, a profound religious and cultural change in the direction of pluralism is a prerequisite for a strong national identity. Further studies on the role of religious minorities in the birth of national modern states are necessary to understand better the link between tolerance for religious pluralism and the development of a strong national identity.

Laïcité as control

The French reforms of 2021 in historical perspective

Mariëtta D. C. van der Tol[1]

Abstract

This article argues that the 2021 legal reforms on laïcité in France signify a new development in the legal concept of laïcité. The new provisions move away from an emphasis on laïcité as an organisational principle of the state, the separation between church and state, and neutrality. Instead, the 2021 law pre-emptively casts suspicion on religious minorities as potential threats to public order, Frenchness and the principles of the Republic, and it attaches to this suspicion an assertion of control backed by the force of administrative and criminal law. This control is reminiscent of the Napoleonic motives for interfering with the Catholic Church as well as with Protestant and Jewish minorities.

Keywords laïcité, public order, religious associations, religious minorities.

1. Introduction

This article discusses the character of the legal concept of *laïcité* as expressed in the 2021 Law Concerning The Respect For the Principles of the Republic.[2] This law represents a comprehensive legal reform of the relationship between the state, religious institutions, individuals and public services. Although the text of the law avoids any specific references to Islam or France's Muslim minorities, references to radicalisation and respect for the principles of the Republic hardly conceal the political suspicion of Muslim minorities. The timing of the legislative proposal – shortly after the murder of teacher Samuel Paty – amplifies this generalised unease about radicalisation and pre-emptively projects it onto all religious institutions. The 2021 law provides a legal basis for structural state interference with the administrative operation of religious institutions, especially in the realm of foreign funding and oversight, and attaches to these restrictions relatively hefty administrative fines.

[1] Mariëtta D. C. van der Tol is Alfred Landecker Postdoctoral Research Fellow at the Blavatnik School of Government, University of Oxford; and non-stipendiary Junior Research Fellow at New College, Oxford. This article builds on Section 4.1 of her 2020 University of Cambrige thesis, "Politics of religious diversity: toleration, religious freedom and the visibility of religion in public space." Author wishes to express her gratitude for constructive comments by dr. Alexis Artaud-de la Ferrière. This article uses British English. Article received: 17 September 2021; accepted: 31 October 2021. Email: marietta.vandertol@bsg.ox.ac.uk.

[2] Loi no. 2021-1109 du 24 août 2021 confortant le respect des principes de la République (1). Available at: https://bit.ly/3EOu8q8.

With ample references to laïcité, the law combines respect for the principles of the Republic with the prevention and detection of radicalisation, oversight over foreign funding, and pre-emptive references to of the legal concept of public order.

I contend that the 2021 law represents a new development in the legal conceptualisation of laïcité. It is not merely an expression of strict secularism, of which France is often taken as a model. Neither does the new law simply reinforce the legal independence of religious and state institutions from each other as stated in the 1905 Separation Act. Rather, the 2021 law moves away from articulating laïcité as an organisational principle of the state, with primary reference to state neutrality and the institutional separation of churches and the state. Instead, it pre-emptively casts suspicion on religious minorities as potential threats to public order, Frenchness and the principles of the Republic, and it attaches to this suspicion an assertion of control backed by the force of administrative and criminal law. In this assertion of control, the 2021 law is reminiscent of the rationale of the oversight imposed by Napoleon Bonaparte on Catholic, Protestant and Jewish communities – a structure which remained in place for all of the nineteenth century and from which religious minorities were emancipated by means of the 1905 Separation Act. From this perspective, the development of laïcité in the 2021 law embodies an historical regression in the protection of religious minorities. I will attempt to make this regression apparent by reviewing the texts of the Napoleonic arrangements, the 1905 Separation Act and the 2021 law concerning the respect for the principles of the Republic.

2. A backstory to laïcité: Napoleonic arrangements with Catholic, Protestant and Jewish communities

The concept of *laïcité* dates back to the Act of 1905 concerning the separation of churches and the state, as well as subsequent laws.[3] Following a century of animosity and rapid regime changes, the 1905 Separation Act emerged as a new legal framework of coexistence, taking stock of "Frenchification" policies of the Third Republic (1870-1940). Contrary to what is often believed about French secularism, no clear constitutional or even legal concept of secularism emerged in the administrative frameworks that governed religious diversity in France for most of the nineteenth century. Secularism certainly was an important aspect of the revoluationary ideals of some, and in its extreme form during the brief Jacobine regime, secularism may have become associated with anti-clerical sentiment (Sperber 2017:92).

[3] Loi du 9 Décembre 1905 relative à la séparation de l'Églises et de l'État. Available at: https://bit.ly/3EHiT2T.

However, the legal frameworks that governed religious diversity were not necessarily anti-religious (Cohen-Almagor 2021:249).

The core of the laws and regulations concerning religious communities was imposed under Napoleon. These included the 1801 Concordat between Napoleon and Pope Pius VII, the Catholic Organic Laws and the *Articles organiques* concerning the Reformed and Lutheran churches, as affirmed in the *Loi relative à l'organisation des cultes* of 1802,[4] and lastly, the Imperial Decrees regarding the Jews of 1808.[5] The Napoleonic arrangements were not necessarily examples of religious liberty. They were significantly restrictive compared to some of the ideals initially expressed in the French Constitution of 1793 and in the Declaration of the Rights of Man and of the Citizen, such as the freedom of conscience and the free exercise of religion. Napoleon's strategy was to impose arrangements of control over religious communities whose identity did not coincide with that of the political community, chiefly in the name of common Frenchness as well as of public order (van der Tol 2020).

The concern over Frenchness and of public order included the priority of French citizenship over membership of particular (ethno-)religious communities, the limitation of foreign influence on religious communities, policies of political and administrative centralisation, and an interest in cultural convergence (Sagan 2001:302). Frenchness would not preclude religiosity, but neither was it grounded in the then-dominant Catholic faith. One way in which this concern for Frenchness found expression was the limitation of the number of Catholic holidays, accompanied by a requirement that certain holidays be celebrated on Sundays rather than on weekdays, although these rules and their application were somewhat relaxed after the fall of Napoleon (Shusterman 2007). Even so, this reorganisation of the relationship between Catholic liturgy and the use of public space replaced the early modern interdependence of these two components. Instead, uses of public space expressed the precedence of Frenchness over religion, which was recognized primarily as a source of personal morality, even if it remained relevant for a large part of the population.

The Concordat between Napoleon and Pope Pius VII recognised the importance of the Catholic tradition, yet it maintained a careful balance between those who remained loyal to the Pope and those who espoused a strong anti-clericalism (Hosack 2010:31). The acknowledgement of the importance of the Catholic faith in the preamble suggests that in striving for political stability, Napoleon could not afford

[4] Loi du 8 Avril 1802 relative à l'organisation des cultes, with subsections on Catholic and Protestant organic laws. Available at: http://www.legirel.cnrs.fr/spip.php?article527&lang=fr.

[5] The most important of the four imperial decrees is the "Décret impérial n° 3 237 du 17 mars 1808, qui prescrit des mesures pour l'exécution du Règlement du 10 décembre 1806 concernant les Juifs." Available at: https://bit.ly/3IAxRtN.

to sidestep the Catholic Church. The Concordat relied on language associated with the regulation of religious minorities under the *ancien régime*; for example, Article 1 stated that worship was free, but that all rights and privileges were conditional upon public order and peace. This particular reference to public order and peace derived from early modern practices of toleration, which designated religious minorities as safety threats (van der Tol 2020). The state monitored the church hierarchy and maintained oversight over instructional materials in exchange for paying the wages of bishops and priests (Article 14 of the Concordat, Articles 64-74 of the Catholic Organic Laws). The state nominated all bishops and granted final approval of lower appointments, and all clergy were expected to take an oath of loyalty to the state (Concordat: Articles 2, 5, 6 and 10). The state prescribed one liturgy and one catechism for all Catholic churches in an attempt to cause liturgical practices and culture to converge around the notion of Frenchness (Catholic Organic Laws: Article 39). New liturgical or educational material required governmental approval, and priests were expected to study in France, not outside the country (Catholic Organic Laws: Articles 39, 40, 50 and 63).

Napoleon took a similar approach in the *Articles organiques* of 1801, which he imposed on the Reformed and Lutheran churches. Interestingly, he referred to the Lutheran churches as churches of the Augsburg Confession, using a phrase that had been written into the legal texts of the Westphalian Peace Treaties of 1648. Articles 1 and 2 required the churches to organise themselves on the basis of France's territory and formally prohibited foreign influence over their institutions. For example, churches were not allowed to maintain relationships with foreign authorities, foreign pastors should not exercise liturgical functions, and pastors should have studied in either France or Geneva (Articles 12-13). All confessional and educational documents required governmental authorisation (Article 4). These provisions imposed significant limitations on Protestant churches, which had always had a transnational character. Lutheran churches would be inspected annually, reflecting Napoleon's strong geopolitical interest in the Alsace and its relation to the German lands (Article 35 ff.).

In 1808, Napoleon issued three decrees concerning Jewish communities, following a consultation with the Assembly of Jewish Notables and the Great Sanhedrin, an important representative body of Jewish minority groups. This included Decree no. 3 237, which detailed the obligation to organise Jewish life around recognised synagogues and rabbinical leadership (Article 1-6), as well as the imperative to follow the interpretations of the Great Sanhedrin (Article 12).[6] Decree no. 3 589 ordered Jews without fixed family names and surnames to register their formal

[6] "Décret impérial n° 3 237 du 17 mars 1808."

names (Article 1). These names could not refer to the Old Testament or indeed to names of biblical towns other than those approved by the State (Article 3).[7] The measures exhibited a tension between the conferral of citizenship on Jewish minorities, on one hand, and the significant social and economic restrictions imposed through Decree no. 3 210 on the other hand (Sepinwall 2007).[8] Jewish elites were still permitted to oversee religious education, poverty relief and religious discipline, but otherwise Napoleon expected Jewish communities to assimilate also, denouncing them as "a nation within a nation" (Schreier 2007:78, 81; Frankel 1992:11). However, this assimilation also implied what Sepinwall (2007:57) calls "regeneration." This concept referred to the racialisation of Jewishness as inferior and thus in need of improvement before assimilation would be possible. This idea coheres with contemporaneous philosophical and theological racialisations of Jewishness as described by J. K. Carter (2008). The explicit interference with Jewish culture, the regulation of marriage and family life, and allegations of economic immorality reflect this requirement of regeneration (Schreier 2007:80-82, 102-103).

The political balance that Napoleon sought to strike bears the semblance of historical toleration, but also of control as well as unease about the political significance of foreign religious authorities. As such, the regulations nuance the picture of a modern state turning away from practices of toleration in the name of enlightened governance. However, Napoleon also reconstructed the role of religion such that minorities could hold citizenship – conditional on their compliance with the law. This was certainly a step towards the inclusion of religious minorities in the French nation, but narratives of secularisation can obscure the tension between citizenship and toleration that existed in the Napoleonic arrangements. Insofar as secularisation is understood as transferring ecclesial responsibilities to the state (Shakman Hurd 2004:238), one could argue that Napoleon's policies indeed expressed a measure of secularity. Yet insofar as Frenchness ceased to depend on Catholic identity, one might argue that policies of Frenchification implied that secularisation was of secondary importance to Napoleon's realist orientation and his overriding concern for stability, unity, and political centralisation (Rayapen and Anderson 1991).

3. Laïcité as turning away from toleration

The Third Republic inherited this deep tension between citizenship and echoes of toleration. The tension was perhaps inadvertently articulated by the Ministry of Interior Affairs in 1880, when it argued that the Concordat of 1801 was an instance

[7] "Décret impérial n° 3 589 du 20 juillet 1808."
[8] "Décret impérial n° 3 210 du 17 mars 1808."

of "toleration" and that there was no warrant for the monetary "privileges" of the Catholic Church. Moreover, whereas the Concordat entertained the possibility of a dynamic public space that could serve as a "temporary space of worship," the Ministry clarified that the term "public" referred to public accessibility (d'Hollander 2004:186). More than a mere observation, this statement was part of a wider controversy about the role of the church in society, particularly with reference to the reassertion of public significance on behalf of the church and the role of the church in education (Kaiser 2003:75; Cohen-Almagor 2021; Chaitin 2009). It was in this context that "democratic values" were first invoked as a source of political morality over against those of the church (McMillan 2003:87-88). Similar controversies occurred in several emerging nation-states (Harrigan 2001) as political elites began to emphasise the importance of the political participation and autonomy of individual citizens, as well as the moral autonomy of the nation relative to religious authorities (Jansen 2006:476-477; Lehning 2001).

This controversy provided the context for the neologism of laïcité, which first appeared in Ferdinand Buisson's Dictionnaire de Pédagogie et d'Instruction Primaire (1887) and which concept came to signify the nation's autonomy vis-à-vis the Catholic Church (Daly 2012:583-584). The capstone of this development was the Separation Act of 1905, which legally underpinned the unfolding process of disestablishment. Although disestablishment is of course related to processes of cultural secularisation and anti-clerical sentiment, the language used in the original Separation Act referenced neither laïcité nor secularism. And whereas the act itself reorganised the relationship between the state and churches as institutions, the first article spoke only of the freedom of conscience and the free exercise of religion: "La République assure la liberté de conscience. Elle garantit le libre exercice des cultes sous les seules restrictions édictées ci-après dans l'intérêt de l'ordre public" (Article 1). Restriction of freedom of conscience would be justified only on the basis of preserving public order – not on principles of secularism, laïcité or the like. The article is followed by a stipulation regarding the non-recognition of any religion "La République ne reconnaît, ne salarie ni ne subventionne aucun culte" (Article 2).

This particular order suggests that the separation of churches and the state served individual freedom, albeit with particular reference to public space, as other parts of the Separation Act indicate. This concern over individual freedom and the separation of churches from the state does not signify a secularisation of the nation per se, but does seek the secularisation of the state and a definite turn away from the logic of toleration. This reading helps to explain the relatively broad support for the Separation Act, including from a range of religious minorities. The legislative process leading to the Separation Act evolved under the leadership of a broad

parliamentary committee whose chair, the Protestant liberal, and later Nobel Peace Prize laureate, Ferdinand Buisson, was committed to laicisation as a mechanism for peace and solidarity between religions in the national context (Hayat 2005). Other notable committee members were the radical liberal George Clemenceau, anti-clerical and pro-laïcité; the socialist Jean Jaurès, who had publicly supported Alfred Dreyfus and who campaigned for neutrality and equal rights for all citizens; Francis de Pressensé, a pastor's son and president of the *Ligue des droits de l'homme* (an association promoting human rights)*;* and Aristide Briand, a tolerant atheist who believed that laicisation would end the suppression of churches (Baubérot 2014:194).

4. Laïcité as secularism?

Although the 1905 Separation Act itself did not explicitly mention *laïcité*, its enactment certainly was a part of the legal process of laicisation in the Third Republic. Until 1958, any references to laïcité in constitutional documents were limited to the realm of education, such as in the Preamble to the Constitution of 1946.[9] Article 1 of the French Constitution of 1958 included a general reference to laïcité for the first time. The official renditions in French and English employ the adjectives "laïque" and "secular" synonymously: "La France est une République indivisible, *laïque*, démocratique et sociale" (France shall be an indivisible, *secular*, democratic, and social Republic).[10] The legal differences between the relatively well-defined laïcité in the Separation Act and the more ambiguous use of "secular" in English are quite significant, as the use of the word "secular" may lead to the assumption that France is a secular state. However, given the precedence of the French text over the English, perhaps it is more precise to speak of a "laicised state" in theorising the legal relationship between the state and religious institutions of civil society. Yet even the reference to "secular" in the English translation does not in itself justify an equation with secularism as a state ideology, despite the fact that the literature on secularism has enthusiastically subsumed laïcité within that discourse. This discursive equation may not be entirely unjustified since the decreasing significance of the French Catholic Church in social and political life was a part of wider processes of laicisation and secularisation.

The *Conseil Constitutionnel,* the highest constitutional council in France, clarified in 2013 that constitutional laïcité ensures the protection of individual rights and freedoms; that laïcité is an organisational principle of the state; and that laïcité de-

[9] "L'organisation de l'enseignement public gratuit et laïque à tous les degrés est un devoir de l'Etat," Article 13 of the Preamble of the Constitution of 1946. Available at: https://bit.ly/3lOOmsG.

[10] French Constitution of 1958, Article 1. Available in French at: https://bit.ly/306sdOK; available in English at: https://bit.ly/3pyDr7o.

mands that the state shows respect for all beliefs, specifically through guaranteeing the freedom of worship and the non-recognition of any religion by the state.[11] The phrase "organisational principle of the state" implies that laïcité (1) is concerned primarily with the organisation of state institutions and (2) operates as a constitutional principle without any mention of its being inherent to the state itself, as might be derived from its prominent position in the 1958 Constitution. In other words, laïcité is a governmental technique or tool before it may or may not express a character or an identity. The French Constitution of 1958 also refers to the equality of all citizens before the law, without distinction relative to one's origin, race or religion, and states that the Republic respects all beliefs *(croyances)*; therefore, laws and policies which interfere with one's religious liberty need a robust justification. This tells us that laïcité cannot be used to justify particularly disfavourable treatment of religious minorities or discrimination against members of any religious community.

One could argue that the legal focus on the freedoms of conscience and religion primarily protects the *forum internum,* which assumes that the natural domain of religion is the individual or private space. This focus might imply that secularisation entails privatisation (Luckmann 1967), perhaps leaning on a loosely defined public-private divide in which the state expresses the moderate unitary character of the French Republic (Weiss 2006:363-397). Although the privatisation of religion is potentially problematic from the perspective of the history of toleration (van der Tol 2020), this view was not expressed in either the Separation Act or in the 1958 Constitution. Legally, the law distinguishes two different realms, the realm of conscience and the realm of the public manifestation of religion, with the latter being subject to conditions pertaining to public order. Instead of making a normative assertion about the role of religion vis-à-vis public and private spaces, it makes a normative assertion about the state's role in regulating religion in public and private spaces, respectively. On this account, laïcité does not convincingly represent the normative privatisation of religion as an expression of secularism, at least not constitutionally.

Socio-political allusions to laïcité have nevertheless increased beyond the remit of the institutional separation of church and state. Many of the recent controversies over religious freedom have related to society in general, not to the state *per se*. This has been apparent in the restrictions on the full-face veil and the *jilbab* or burkini, as I have written elsewhere (van der Tol 2018, 2021), but it can also be observed in attempts to impose limits on ritual slaughter, discussions of the permissibility of nativity plays in municipal city halls, and controversies surrounding the removal of the *hijab* as an occupational requirement in the private sector. Strictly speaking, none of

[11] Conseil Constitutionnel, "Comment la Constitution protège-t-elle la laïcité?" Available at: https://bit.ly/33dNibl.

these topics fit the state-church binary; however, the currency of laïcité as a colloquial synonym of secularity shows that it has also come to signify the relationship between religion and society in the popular consciousness. This instrumentalization of laïcité as a culturally normative concept has been criticised by many scholars. For example, historian and sociologist Jean Baubérot (2012:39) argues that the new laïcité, which excludes religions from the common frames of culture and identity, is an illegitimate or false laicity. Yet his criticism is primarily cultural and not legal. New or cultural laïcité has not yet replaced the Separation Act, but its growing political significance raises questions about the protection of religious minorities in France, especially in the light of the 2021 Law Concerning the Respect for the Principles of the Republic.

The significance of laïcité has increased specifically in conjunction with the language of *vivre ensemble*, or living together, in particular. The concept of *vivre ensemble* originates in the utopian literature of the late twentieth century and was presented to a wide audience by Roland Barthes in 1977 as collected in the work *Comment vivre ensemble?* (2002). Like the concept of laïcité, *vivre ensemble* does not automatically assume secularism to be a normative good. However, it does facilitate the normative othering of religious minorities on the basis of democratic majoritarianism, which in France appears primarily in the form of policies that restrict the civic participation of Muslims. The Ministry of Culture adopted the concept as early as 2004 in its project *Mission Vivre Ensemble* (Bharat 2020:287; Kiwan 2020), but the idea did not attract international attention until the European Court of Human Rights ruled that the French prohibition of the public use of the face veil[12] did not contravene the European Convention of Human Rights (*S.A.S. v. France* 2014).[13] Much has been written about this case, particularly about the absence of a sufficient legal basis (Hunter-Henin 2015), its adverse effects on Muslim women (Brems 2016) and its patronising effects on minorities (Yusuf 2014; Beaman 2016). From a political and sociological perspective, it is nevertheless appropriate to reflect on the meaning of the social normativity of secularism relative to the legal concept of laïcité.

5. Against separatism: The 2021 *Loi confortant le respect des principes de la République*

In August 2021, the French Parliament approved a new bill on laïcité: *Loi no. 2021-1109 du 24 août 2021 confortant le respect des principes de la République*.[14]

[12] Loi no. 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace publique; Art. 225-4-10 Code pénal; Décision No. 2010-613 DC Loi du 7 octobre 2010 interdisant la dissimulation du visage dans l'espace public; Exposé des Motifs Loi no. 2010-1192.

[13] ECHR 11 July 2014, 43835/11 *(S.A.S. v. France).*

[14] Loi no. 2021-1109 du 24 août 2021 confortant le respect des principes de la République (1). Available at: https://bit.ly/3EOu8q8.

This law amended the existing body of French law – criminal, civil and economic – including the 1905 Separation Act. This 2021 "Laicité Bill" underpins new forms of state interference with the operation of religious institutions and organisations through surveillance, registration of foreign gifts (Articles 21, 76 and 77), and a warning not to undertake activities that might disturb public order (Article 68). The new law also requires sports clubs and other societal associations to commit to the values of the republic and to the prevention of radicalisation (Article 65), thus making the potential radicalisation of Muslim citizens everyone's concern. The text of the law never mentions Islam or Muslims explicitly, but it is readily apparent that the political debate around the law was ignited by a fear of Islamic separatism (in contrast with *vivre ensemble*), and especially by political suspicion over funding from Saudi Arabia and the Gulf States for Muslim activities in France (Geisser 2021:9; Shakman Hurd and Marzouki 2021). Neither does the text of the law directly refer to secularism or *vivre ensemble*. The central concept of the law is laïcité. Accordingly, this is the first time that the concept of laïcité finds comprehensive expression across the body of French law.

Interestingly, Article 3 requires central and lower-level administrative bodies to appoint a laïcité consultant (*referent*), who is expected to advise on all things relating to laïcité. They must also organise a "Day of Laïcité" each year on 9 December – a nod to the Separation Act of 1905.

> **Article 3**
> Les administrations de l'Etat, les collectivités territoriales et les établissements publics mentionnés à l'article 2 désignent un référent laïcité.
>
> Le référent laïcité est chargé d'apporter tout conseil utile au respect du principe de laïcité à tout fonctionnaire ou chef de service qui le consulte. Il est chargé d'organiser une journée de la laïcité le 9 décembre de chaque année. Les fonctions de référent laïcité s'exercent sous réserve de la responsabilité et des prérogatives du chef de service.

This article legally amalgamates the separation of churches and the state with laïcité, not so much as an organisational principle of the state, as the *Conseil d'État* had clarified, but as a cultural liturgy. The cultural-liturgical reminder of laïcité blurs the distinction between constitutional and cultural dimensions of laïcité. It sits uncomfortably in the context of the revisions of criminal and administrative law, as is discussed below.

The law regulates religious institutions which primarily exist for the purpose of worship. These institutions must limit their activities to the exercise of worship ("*associations cultuelles ont exclusivement pour objet l'exercise d'un culte*,"

Article 69), must register the buildings in which worship takes place (Article 75) and are required not to attack public order either in their mission statement or in their activities (Article 68). However, it is unspecified how and under which conditions a mission statement might constitute an attack on public order. Moreover, a threat to public order ordinarily involves a concrete and tangible security issue (Mazeaud 2003; Vincent-Legoux 1996). Moreover, concern for public order usually functions as a legitimation for potential state interference once a breach has actually occurred. The law thus imposes a higher expectation regarding respect for public order on religious institutions than on other entities. This is problematic from the perspective of equal citizenship. Moreover, Article 69 prescribes that such religious institutions must be registered at a departmental level, subject to contestation (*droit d'opposition*) on behalf of the registering office. In the absence of this contestation – note the complementary logic – the institution will be accorded the status of *association cultuelle* for a period of five years, after which it can be renewed. In comparison, the 1905 law operated on the basis of a one-time declaration. In the meantime, the registering entity can set out certain conditions that the religious institution must fulfil and, under specific circumstances, can retract the status.

The law is particularly suspicious of foreign influence. Article 68 prescribes that *associations cultuelles* must be led by a minimum of seven adults, each of whom has either residence or domicile in the catchment area as defined in the statutes. Article 77 stipulates that religious institutions must declare direct or indirect benefits in cash or in kind (totalling tentatively €10,000 per accounting year) from a foreign state, a foreign trust or any foreign legal person who is not resident in France. Non-compliance can result in a fine of a minimum of €3,750, confiscation, prosecution under criminal law and a personal fine for trustees and administators of €9,000 each. Other organisations must maintain statements of any direct or indirect benefits in cash or in kind and are obliged to include this information in their annual accounts (Article 21). Again, non-compliance can result in a fine of a minimum of €3,750, as well as confiscation of alleged benefits. Individual officers, directors or trustees can be punished with a fine of €9,000. At this point, the law does not prohibit the reception of foreign funds, but the obligation to declare the origin of these funds allows the state to collect data on major gifts from abroad. It is problematic that the law does not distinguish between large and small religious institutions or organisations, and the administrative burden placed on small entities is significant.

The limited time of transition, as laid down in Article 88, raises further questions about the feasibility of compliance, especially as numerous regulatory instructions remain to be issued by *the Conseil d'État*. Time will tell how many institutions and

organisations will face repercussions as a result. Surprisingly, the law does not contain any references to the possibility of administrative appeal of an unfavourable decision, nor does it indicate what happens to an organisation's *association cultuelle* status during an appeal. Yet even if more transition time was granted, issues might arise over the calculation of in-kind as well as indirect benefits, and over the administrative skills and training that religious institutions must have available or have access to. Another unresolved issue concerns discrimination between different kinds of religious communities. Although the law targets religious institutions and organisations generally, the requirement of a minimum of seven locally resident adults to constitute an *association cultuelle* makes further assumptions about modes of organisation. This requirement might possibly interfere with freedom of association as well as the right to be recognised as a religious institution, and it leaves small communities, such as church plants and network-based communities, in an uncertain situation.

6. Concluding reflection: Laïcité as control

Laïcité as expressed in the 1905 Separation Act and the 2021 law makes surprisingly few references to secularism or secularisation. The 2021 law is similarly concerned about religious institutions and organisations, but it imposes a greater measure of control than the 1905 law. The focus of the 2021 law on security, public order, Frenchness and transparency over foreign influence echoes the concerns of the Napoleonic arrangements of control that the original 1905 Separation Act replaced. In doing so, the new law once again seems to classify religious minorities as security threats. This is consistent with the language used in the restriction of the full face veil and associated liberties taken in the legal reliance on social norms and the concept of *vivre ensemble* in defining public order (van der Tol 2021). The framing of these issues in the context of respect for the principles of the Republic – as the formal name of the law indicates – shows that the concern over security is attached to cultural norms, to Frenchness, to the expectation of conformity. With that, the 2021 law signifies a legal turn in the meaning of laïcité: it institutionalises and constitutionalises social norms to the detriment of religious minorities. In the context of this law, laïcité ceases to be just an organisational principle of the state. Laïcité has become a tool of state control, used generally, pre-emptively and (most importantly) irrespective of the absence or presence of any real, concrete and tangible threat to public order within a specific context of space and time. The 2021 changes thus create a dangerous precedent for legal control over religious minorities, taking liberties beyond the confines of constitutional logic and thus eroding the protection of the freedom of religion in France.

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Quebec's Bill 21 and the secular conceit of religious neutrality

Kristopher E. G. Kinsinger[1]

Abstract

Quebec's Bill 21, An Act respecting the laicity of the State, prohibits many categories of civil servants from wearing religious symbols while on duty. Although popular in Quebec, the legislation has been denounced elsewhere as an intrusion into matters that fall outside state authority. In this article, I survey the history of Bill 21 and situate its conception of religious neutrality within the spectrum of Canadian perspectives on this issue. Specifically, I juxtapose Bill 21's restrictive understanding of this principle with a more inclusive vision of religious neutrality that creates meaningful space for the participation of religious minorities in public life.

Keywords Canada, secularism, laicity, religious freedom, liberalism.

Bill 21 marks a reckoning in the public role of religion in Quebec. The legislation, titled "An Act respecting the laicity of the State," prohibits many of the province's civil servants from donning any kind of religious clothing or symbols while on duty.[2] The banned items range from hijabs and turbans to kirpans and crucifixes. Affected public employees include police officers, teachers, judges and lawyers, among others.[3]

The Quebec government has repeatedly insisted that Bill 21 is necessary to promote the secular ideal of *laïcité*, under which state authority must be exercised without reliance on or reference to religious conviction.[4] The law notably amends the Quebec Charter of Human Rights and Freedoms (a quasi-constitutional document with which all of the province's laws must comply, and which itself is sub-

[1] Kristopher E. G. Kinsinger, National Director of the Runnymede Society; of the Ontario Bar. This article incorporates and expands on select passages from an earlier essay I wrote for the *Double Aspect* blog, reproduced here with permission: Kristopher Kinsinger, "Bill 21 and the Search for True Religious Neutrality," 16 January 2020. Available at: https://bit.ly/2ZDU0pH. This article uses British English. Article received: 6 February 2021; accepted: 31 August 2021. Email: kristopherkinsinger@outlook.com.

[2] "An Act respecting the laicity of the State," SQ 2019, c 12 (hereafter "Bill 21").

[3] Canadian Civil Liberties Association, "Bill 21: The Law against Religious Freedom." Available at: https://ccla.org/bill-21/.

[4] François Legault, "Enfin un projet de loi sur la laïcité de l'État!" (English translation: "Finally, a Bill on the Secularism of the State!"), 31 March 2019. Available at: https://fb.watch/3pQE4paFSX/. See also Morgan Lowrie, "Legault Defends Quebec's Religious-Symbols Bill, Calls Notwithstanding Clause 'Legitimate Tool,'" *The Globe and Mail*, 31 March 2019. Available at: https://tgam.ca/3GDKWlf; Jason Magder, "Legault Defends Bill 21: 'Think of What's Best for Our Children,'" *Montreal Gazette*, 6 April 2019. Available at: https://bit.ly/3muv2S2.

ject only to the Canadian constitution) by inserting a declaratory preamble on the "fundamental importance" of this principle.[5] According to its proponents, Bill 21 entrenches four principles in Quebec law: the religious neutrality of the state, the separation of religion and the state, the equality of all citizens, and freedom of conscience and religion.[6]

In this article, I consider Bill 21 and its secular conception of the state's duty of religious neutrality. My analysis contains five parts. The first part recounts the recent history of religious accommodation in Quebec, leading up to the passage of Bill 21. The second part reviews the public response to Bill 21, including the current status of litigation seeking to constitutionally invalidate the law. The third part situates Bill 21 within a spectrum of contested visions on what religious neutrality entails, and the fourth part briefly surveys how religious neutrality has been applied within Canadian constitutional jurisprudence. The fifth part demonstrates why, in my view, Bill 21 is inconsistent with an inclusive conception of religious neutrality that makes room for the participation of visible religious minorities in public life.

1. Religious accommodation in Quebec

The passage of Bill 21 did not arise in a vacuum. Religion has been a source of public tension in Quebec since the Quiet Revolution of the 1960s. This anxiety has been felt in recent debates over the extent to which religious minorities should be accommodated in Quebec society. In 2006, the Supreme Court released its decision in *Multani v Commission scolaire Marguerite-Bourgeoys*, in which it ruled that a Quebec school board had unjustifiably limited the religious freedom of a Sikh student by not accommodating his request to wear his kirpan (a type of ceremonial dagger) to school.[7] The ruling proved contentious in Quebec and was soon followed by similar controversies regarding the accommodation of other religious minorities such as Muslims and Orthodox Jews.[8] In response to mounting political pressure, Liberal Premier Jean Charest established a commission in 2007, chaired by Gérard Bouchard and Charles Taylor, to recommend how religious minorities should be accommodated in light of "Quebec's values as a pluralistic, democratic, egalitarian society."[9]

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5 Bill 21, preamble.

6 Bill 21, article 2.

7 *Multani v Commission scolaire Marguerite-Bourgeoys,* 2006 SCC 6.

8 Celine Cooper, "Bouchard-Taylor-Commission on Reasonable Accommodation in Quebec (2007-2008)," *The Canadian Encyclopedia*, 3 June 2020. Available at: https://bit.ly/3by8qtu.

9 Gérard Bouchard and Charles Taylor, *Building the Future: A Time for Reconciliation* (Québec: Consultation Commission on Accommodation Practices Related to Cultural Differences, 2008), 17.

The 2008 report of the Bouchard-Taylor Commission concluded that, contrary to public perception, there had been no "striking or sudden increase in the adjustments or accommodation that public institutions allow," nor any indication that "the normal operation of our institutions would have been disrupted by such requests." Nevertheless, the authors conceded that there was a growing "feeling of discontent … among Quebecers" toward accommodation, particularly as "members of [Quebec's] ethnocultural majority" – themselves a minority within Canada – "are afraid of being swamped by fragile minorities that are worried about their future."[10]

Such discontent was particularly evident with regard to the issue of secularism. The report held that all secular systems must seek to balance the principles of equality, freedom of conscience and religion, separation between church and state, and "[s]tate neutrality in respect of religious and deep-seated secular convictions."[11] While noting that countries such as France had adopted restrictive laws on the wearing of religious symbols in public schools, Bouchard and Taylor concluded that such policies would be inappropriate in Quebec. Notably, they held that "emancipatory mission[s] directed against religion [are] not compatible with the principle of State neutrality in respect of religion and non-religion," advocating instead for an "open secularism" that avoids "relegating [religious] identities to the background."[12] Such a stance, they concluded, is less "a constitutional principle" or "identity marker to be defended" than "an institutional arrangement … aimed at protecting rights and freedoms," under which citizens are entitled to "express their religious convictions inasmuch as this expression does not infringe other people's rights and freedoms."[13]

Notwithstanding the findings of the Bouchard-Taylor Commission, accommodation of religious and cultural minorities remained a live issue in Quebec throughout the 2010s. In 2013, the minority Parti Québécois government introduced Bill 60, the so-called Charter of Quebec Values.[14] The legislation sought to reform the law of religious accommodation in Quebec; among other things, it would have prohibited public employees from wearing religious symbols while on duty (as Bill 21 does) and would have further required that anyone providing or receiving public services

[10] Bouchard and Taylor, *Building the Future*, 18.

[11] Bouchard and Taylor, *Building the Future*, 18.

[12] Bouchard and Taylor, *Building the Future*, 20.

[13] Bouchard and Taylor, *Building the Future*, 141. See also Lori G. Beaman, "Battles over Symbols: The 'Religion' of the Minority Versus the 'Culture' of the Majority," *Journal of Law and Religion* 28(1):67 (2012-2013):75.

[14] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 1st Sess., 40th Leg., Quebec, 2013.

remove any kind of face covering, religious or otherwise.[15] An election was called in 2014 before Bill 60 could be passed, resulting in the Liberal Party returning to power under the leadership of Premier Philippe Couillard.[16]

In 2015, the majority Liberal government introduced Bill 62, "An Act to foster adherence to State religious neutrality."[17] Like its Parti Québécois predecessor, Bill 62 prohibited persons from providing or receiving public services if their face was covered, but it also provided a framework for accommodation requests on religious grounds.[18] Shortly following its passage, litigation was filed seeking to invalidate Bill 62's face covering ban as an unreasonable limitation on the constitutional guarantee of religious freedom.[19] In a 2018 order, the Quebec Superior Court stayed the application of the prohibition pending a full constitutional analysis on judicial review.[20] The Liberal government lost power in a general election to the Coalition Avenir Québec later that year, after which Premier François Legault introduced the aforementioned Bill 21, eventually passed by the National Assembly of Québec in 2019.

2. The response to Bill 21

Polls following Bill 21's passage confirmed the law's popularity among a majority of Quebec voters.[21] Outside the province, however, the legislation has been widely denounced as an unjustified restriction of freedom of religion and the right not to be discriminated against on the basis of religion, both of which are guaranteed by sections 2(a) and 15, respectively, of the Canadian Charter of Rights and Freedoms.[22] Litigation challenging the constitutionality of Bill 21 began mere

[15] Bill 60, articles 5-7.

[16] Editorial Board, "Coulliard Should Bury the Charter of Values," *The Globe and Mail*, 20 April 2014. Available at: https://tgam.ca/3GEzTZ2

[17] Bill 62, "An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies," 1st Sess., 41st Leg., Quebec, 2015 (assented to 19 October 2017) SQ 2017, c 19.

[18] Bill 62, articles 9, 11.

[19] See *National Council of Canadian Muslims (NCCM) v. Quebec (Attorney General),* 2017 QCCS 5459, para. 38, in which the Court stayed the application of the face covering ban until Bill 62's accommodation criteria came into effect.

[20] *National Council of Canadian Muslims (NCCM) v. Quebec (Attorney General)*, 2018 QCCS 2766, paras. 26, 83.

[21] Philip Authier, "Bill 21: Legault Says the Government Listened to the Majority and Acted," *Montreal Gazette*, 19 June 2019. Available at: https://bit.ly/3jVGapA.

[22] Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss 2(a), 15 (hereafter Charter). The Canadian Civil Liberties Association, one of Canada's most prominent civil liberties organizations, has argued that Bill 21 effectively imposes the government's "beliefs" on Quebeckers by "dictating to individuals what they can and cannot wear"; see "The Law against Religious Freedom." The National Council of Canadian Muslims claims that the legislation will "enforce second class citizenship based on an individual's

hours following its passage.[23] Other constitutional challenges soon followed. In December 2019, the Quebec Superior Court ordered that all of these cases would be heard together.[24] The Court upheld the legislation as constitutionally valid in a 2021 decision.[25] Leave to appeal has been granted by the Quebec Court of Appeal, though most observers expect that the litigation will inevitably work its way up to the Supreme Court of Canada in view of the fundamental constitutional questions it poses.

The result of the challenge to Bill 21 is anything but certain. Under normal circumstances, Canadian courts would unquestionably invalidate a law which blatantly seeks to prevent openly religious individuals from participating in the civil service. Enter section 33 of the Charter. Anticipating that Bill 21 would be heavily litigated, the Quebec government pre-emptively invoked this so-called "notwithstanding clause," a peculiar provision of the Canadian Constitution that allows governments to derogate from certain Charter guarantees.[26] So far, this strategy has proven successful. Although the Quebec Superior Court found that Bill 21 sends an "explicit message" to religious minorities "that their faith and the way they practice it do not matter and that their faith does not carry the same dignity or require the same protection from the State," it held that it could not invalidate the legislation due to the invocation of the notwithstanding clause.[27]

This broadly accepted description of section 33 as permitting derogations from the Charter is inconsistent with how this concept is usually understood in international human rights law. Under Article 4 of the International Covenant on Civil and Political Rights, a United Nations treaty to which Canada is a party, derogations from rights and freedoms can be permitted only in times of public emergency (the exist-

identity and religion" by legalizing "systemic discrimination against minorities"; see National Council of Canadian Muslims, "Defeat Bill 21." Available at: https://www.nccm.ca/defeatbill21/. Christian Legal Fellowship, the largest association of Christian lawyers, legal scholars and law students in Canada, has said that the bill "violates a foundational right of any free and democratic society: the right to openly and publicly identify as religious." See Christian Legal Fellowship, "Quebec's Bill 21 and the Ban of Religious Symbols." Available at: https://www.christianlegalfellowship.org/bill21.

[23] Christopher Curtis, "Bill 21 Challenged in Court by the Lawyer Who Faced Down Bill 62," *Montreal Gazette*, 18 June 2019. Available at: https://bit.ly/3GBUMEf.

[24] Jonathan Montpetit, "One Law, Many Challenges: How Lawyers Are Trying to Overturn Quebec's Religious Symbols Ban," CBC News, 12 December 2019. Available at: https://bit.ly/3buoFrC; Jonathan Montpetit, "As Trial over Quebec Religious Symbols Ban Wraps Up, Minority Rights Hang in the Balance," CBC News, 21 December 2020. Available at: https://bit.ly/3pTY4fX.

[25] *Hak c Procureur general due Québec*, 2021 QCCS 1466.

[26] Bill 21, article 34; Charter, section 33. Note that invocations of section 33 are subject to renewal by the enacting legislature every five years, effectively forcing governments that resort to this clause to receive a fresh democratic mandate to continue using it.

[27] *Hak*, para. 70; unofficial English translation provided at "Bill 21 Ruling," Christian Legal Fellowship, 23 April 2021. Available at: https://bit.ly/3jRHedO.

ence of which must be declared in advance) and protections such as freedom of thought, conscience and religion can never be subject to derogation.[28] Not only can section 33 be invoked to derogate from many of these same guarantees, but governments are not required to provide any sort of rationale to justify its use. Further investigation of this inconsistency lies beyond the scope of the present article, but this observation may help to explain why Bill 21 has proven to be so controversial outside Quebec.

3. The religious neutrality spectrum

The Canadian principle of religious neutrality has been subject to conflicting scholarly and judicial visions of the state's constitutional obligations vis-à-vis religion. These conceptions of religious neutrality tend to fall along a spectrum. At one end of this continuum is what I call "inclusive" religious neutrality.[29] Under this conception, the purpose of religious neutrality is to circumscribe the state's theological authority by preventing it from adopting laws that either dictate religious belief or otherwise compel people to change their religion. In some circumstances, the state is permitted and even encouraged to preserve and create positive public space for religious adherents (for example, by subsidizing charitable religious activities that pursue a common or public good), as long as it does so in an even-handed manner and does not privilege one religion to the exclusion of others. At the other end of this spectrum are "closed" conceptions of religious neutrality, to borrow the terminology that Janet Epp Buckingham uses to describe expressions of secularism in which "[t]he state inhibits religion and perceives it to be a threat to society."[30] In its most extreme forms, this type of neutrality seeks to purge any and all expressions of religious conviction from the public square; only irreligious worldviews can contribute to public discourse, and the state is prevented from even indirectly facilitating religious expression.

In some respects, it is difficult to map Bouchard and Taylor's vision of "open secularism" onto the spectrum of religious neutrality I propose here.[31] Although liberal democracies such as Canada are often perceived as offering robust guarantees of religious freedom, liberal visions of neutrality frequently strip religion of any meaningful public role. Richard Moon represents this disposition as one in which

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[28] International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976), article 4. See also Frédéric Mégret, "Nature of Obligations," in Daniel Moeckli et al. (eds.), *International Human Rights Law*, 3rd ed. (Oxford: Oxford University Press, 2017), 103-104.

[29] See Kristopher E. G. Kinsinger, "Inclusive Religious Neutrality: Rearticulating the Relationship Between Sections 2(a) and 15 of the Charter," *SCLR* (2d) 91 (2019), 237-239.

[30] Janet Epp Buckingham, "The Role of the Secular State Vis-à-Vis Religion," *SCLR* (2d) 91 (2019), 191.

[31] Bouchard and Taylor, *Building the Future*, 134-137.

"neutrality is possible only if religion can be treated as simply a private matter – separable from the civic concerns addressed by the state."[32] Such an outlook, as Benjamin Berger further explains, has arisen in large part out of liberalism's insistence on banishing "interest and preference from the realm of public debate, which is instead consecrated to reason."[33]

The liberal assertion that religion exists outside the realm of rational public discourse is, unsurprisingly, contested by religious scholars. Jonathan Leeman, for example, describes such views as "modern, Western construction[s] devised for the purpose of creating the religion/politics divide, thereby legitimating certain practices, delegitimating others and yielding the liberals' preferred political configuration."[34]

Importing liberal secularism into Quebec's distinct society is especially challenging, as key terms of reference are often subject to conflicting definitions. Bouchard and Taylor, for example, define laicization as "the process through which the State asserts its independence in relation to religion," in contrast to secularization, which "refers to the erosion of religion's influence in social mores and the conduct of individual life."[35] Lori G. Beaman notes that, in "[distancing] this version of secularism from the French version," Bouchard and Taylor sought to propose "a homemade" vision of *laïcité* which "[takes] into account Québec's unique history."[36] Other Quebec scholars, however, emphasize the inherent tensions embedded within liberal conceptions of secularism. Shauna Van Praagh, for example, suggests that "while today's liberal cosmopolitan state must think hard about the justification for sending messages or making rules that are meant to reflect shared norms of all members of society, it inevitably insists on trying to define limits to explicitly religious participation in public life."[37] Dia Dabby echoes these comments in her

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[32] Richard Moon, "Freedom of Religion under the Charter of Rights: The Limits of State Neutrality," *UBC Law Review* 45 (2012):501.

[33] Benjamin L. Berger, *Law's Religion: Religious Difference and the Claims of Constitutionalism* (Toronto: University of Toronto Press, 2015):91.

[34] Jonathan Leeman, *Political Church: The Local Assembly as Embassy of Christ's Rule* (Downers Grove, IL: InterVarsity Press, 2016), 77, citing William T. Cavanaugh, "What is Religion?" in Michael C. Desch and Daniel Philpott (eds.), *Religion and International Relations: A Primer for Research. Report of the Working Group on International Relations and Religion of the Mellon Initiative on Religion Across the Disciplines* (Notre Dame, Indiana: University of Notre Dame, 2013) 63, 65. Note that Leeman is "sympathetic to [Cavanaugh's] general project" but holds that his constructivist perspective need not be viewed as being mutually exclusive with a substantivist or functionalist approach to defining religion: Leeman, *Political Church*, 76-77.

[35] Bouchard and Taylor, *Building the Future*, 135.

[36] Beaman, "Battle over Symbols," 75.

[37] Shauna Van Praagh, "'Inside Out / Outside In': Coexistence and Cross-Pollination of Religion and State," in René Provost, ed., *Mapping the Legal Boundaries of Belonging: Religion and Multiculturalism from Israel to Canada* (Oxford: Oxford University Press, 2014), 123.

analysis of Bill 60, one of Bill 21's spiritual predecessors. Secularism, she contends, is a "societal project," one that "appropriates religion" by "defining, shaping and even transforming it."[38] In this regard, Bill 60 represented an attempt "to alter the place that religion occupies in Quebec society."[39]

The points along the religious neutrality spectrum I briefly outline here represent far more than divergent applications of guarantees such as religious freedom of religious equality. At its core, one's conception of religious neutrality determines how religion is defined. Inclusive and closed approaches to religious neutrality are informed by assumptions about the extent to which explicitly religious identities and beliefs ought to infuse public life. Indeed, as Van Praagh argues, "When religious claims compete with liberalism as alternative, comprehensive ways to order private and public life, then both religion and state engage in constant negotiation of the everyday ways in which they can coexist in a mode of respect if not deference."[40] The settlements arrived at following such negotiation determine whether visibly religious minorities are granted the benefits of full citizenship in liberal societies, an issue to which I return in section 5 below.

4. Religious neutrality in Canadian public law

Although there is a growing body of Canadian case law on religious neutrality, the Supreme Court has struggled at times to apply this principle to cases where litigants seek to preserve their religious identity within public institutions.[41] This is unsurprising. Litigation concerning the state's duty of religious neutrality will engage multiple constitutional principles, forcing jurists to interrogate disputed assumptions about the boundaries between public and private life. "When a belief is accompanied by conduct," Berger contends, "its presence as an expression in the world pushes it closer to – or into – the public and, in doing so, threatens the introduction of interest and preference in the realm of reason."[42] Beaman similarly concedes that "the institutional sanctioning of religious symbols" is more than a mere "theoretical [issue] for those who have a religious commitment that calls them to wear or protect religious symbols that resonate for them."[43]

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[38] Dia Dabby, "Constitutional (Mis)Adventures: Revisiting Quebec's Proposed Charter of Values," *SCLR* 71 (2015), 356, quoting Elizabeth Shakman Hurd, "International Politics after Secularism," *Rev Int'l Stud* 38 (2012), 955.

[39] Dabby, "Constitutional (Mis)Adventures," 356-357.

[40] Van Praagh, "'Inside Out / Outside In,'" 138.

[41] Kinsinger, "Inclusive Religious Neutrality," 231-232, 238-239. See, e.g., *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32.

[42] Berger, *Law's Religion*, 93.

[43] Beaman, "Battle over Symbols," 13.

Still, despite its occasional diffidence, the Supreme Court has been gradually trending toward an inclusive conception of religious neutrality since the adoption of the Charter.[44] The 1985 decision in *R. v Big M Drug Mart Ltd.* marks the Court's first major Charter-era ruling on religious freedom.[45] Chief Justice Dickson's majority reasoning was notably reinforced by an unstated commitment to religious equality. While the Chief Justice recognized that the guarantee of freedom of religion is grounded in principles of individual liberty, his reasoning also highlighted why explicitly religious laws (in that specific case, legislation requiring businesses to observe the Christian Sabbath) will run afoul of the Charter, noting that the "theological content of … legislation remains as a subtle and constant reminder to religious minorities within the country of their differences with, and alienation from, the dominant religious culture."[46] In other words, the Charter prevents majoritarian religions from excluding minority religious groups from public life.

In the decades since the *Big M* ruling, the Supreme Court has articulated with increasing precision what the state's duty of religious neutrality entails. The court's 2012 majority ruling in *S. L. v Commission scolaire des Chênes* is particularly instructive. In this case, Justice Deschamps found that neutrality is realized when "the state neither favours nor disfavours any particular religious belief, that is, when it shows respect for all postures toward religion, including that of having no religious beliefs whatsoever."[47] Justice Gascon's majority reasoning in the Supreme Court's subsequent 2015 ruling in *Mouvement laïque québécois v Saguenay (City)* took Justice Deschamps' observations from *S. L.* even further.[48] A truly neutral public space, Justice Gascon noted, "does not mean the homogenization of private players in that space" since "[n]eutrality is required of institutions and the state, not individuals." Under this view, religious neutrality protects the "freedom and dignity" of believers and non-believers alike.[49]

5. Dismantling secularism's private-public divide

Closed visions of religious neutrality, in my view, ultimately fail to recognize that even secular governments will be forced to invariably take positions on issues that affect or relate to religious belief. In this regard, Bill 21 is a quintessential example of how a closed approach to religious neutrality excludes religious minorities from

[44] For a more thorough examination of this line of jurisprudence, see Kinsinger, "Inclusive Religious Neutrality," 223-231.

[45] *R. v Big M Drug Mart*, [1985] 1 SCR 295.

[46] *R. v Big M Drug Mart*, para. 97.

[47] *S. L. v Commission scolaire des Chênes*, 2012 SCC 7, para. 32.

[48] *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16.

[49] *Mouvement laïque québécois v Saguenay (City)*, para. 74.

the full benefits of public citizenship, contrary to Justice Gascon's vision of "a neutral public space that is free of discrimination and in which true freedom to believe or not believe is enjoyed by everyone equally."[50] Although the Quebec government insists that Bill 21 is grounded in the constitutional principle of religious neutrality, the law is fundamentally inconsistent with the trajectory of religious neutrality in Canadian jurisprudence.[51] Bill 21 does not preserve a religiously neutral public space, but instead forces front-line public employees to give the appearance of irreligiosity if they want to keep their jobs. The Quebec government's decree that these employees must hide their faith-based identities while undertaking their public duties constitutes an insistence that they must adopt alien religious identities in order to participate fully in public life. Such a policy is anathema to an inclusive conception of religious neutrality.

The type of "secular" society envisioned by Bill 21 is further premised on the myth that it is somehow possible for the state to be truly neutral toward religion. An inclusive understanding of religious neutrality, in contrast, does not seek to prevent governments from enacting laws that have religious implications. Insisting otherwise would prevent the state from pursuing policies on any number of important issues. As Berger explains, "the character of religion itself unsettles and frustrates the ideal of state neutrality in a … foundational way."[52] The public-private divide that dominates liberal political theory breaks down when one seeks to apply it to matters of religion. "If one understands religion as a normative and cultural system that produces claims about ethics, has implications for conduct, and advances a vision of a good society," Berger observes, then "religion will have much to say about matters of broad public policy import."[53] Moon concurs, noting, "Because religious beliefs sometimes address civic concerns," they "are often difficult to distinguish from non-religious beliefs" and therefore "cannot be fully excluded or insulated from political decision making."[54]

Bruce Ryder has written at length about how the Canadian constitutional commitment to substantive equality intersects with the right of religious adherents to participate in public life as equal citizens.[55] Ryder explains:

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[50] *Mouvement laïque québécois v Saguenay (City)*, para. 74.

[51] See Kristopher Kinsinger, "Quebec's Bill 21 Misapplies Religious Neutrality Principle," *Policy Options*, 7 May 201. Available at: https://bit.ly/3pT7JU8.

[52] Benjamin L. Berger, "Freedom of Religion," in Peter Oliver, Patrick Macklem and Nathalie Des Rosiers (eds.), *The Oxford Handbook of the Canadian Constitution* (New York: Oxford University Press, 2017), 772.

[53] Berger, "Freedom of Religion," 772.

[54] Moon, "The Limits of State Neutrality," 501.

[55] Bruce Ryder, "The Canadian Conception of Equality Religious Citizenship," in Richard Moon, ed., *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008), 87.

> [T]he Canadian conception of equal religious citizenship is not confined to a private or religious sphere of belief, worship and practice. Instead, a religious person's faith is understood as a fundamental aspect of his or her identity that pervades all aspects of life. … They have a right to participate equally in the various dimensions of public life without abandoning the beliefs and practices their faith requires them to observe. In contrast, some other liberal democracies are more likely to insist that citizens participate in public institutions on terms that conform to the state promotion of secularism. On this view, equal religious citizenship is confined to the private sphere, and must give way to the secular requirements of public citizenship.[56]

The vision of religious neutrality I articulate here is inextricably linked to Ryder's conception of equal religious citizenship. Inclusive religious neutrality presumes that religion is no more or less immutable than the other grounds of discrimination. If we grant that religion is "constructively immutable," then it is just as impermissible for the state to discriminate against people because of their religious beliefs or identity as it is to discriminate based on immutable grounds such as race or gender.[57] Religious belief cannot be readily detached from a person's core identity, as proponents of Bill 21 seem to imagine.

In this way, inclusive religious neutrality prevents the state from arbitrating religious disputes, even where these debates have public implications. This principle is subject to the obvious caveat that the state will always have a vested interest in curbing or discouraging objectively harmful religious practices. But beyond this otherwise narrow exception, it is rarely appropriate for the state to act in a way that has the effect of promoting or stigmatizing certain religious beliefs or practices. As such, inclusive religious neutrality is reinforced by equality-enhancing values and a recognition that in favouring certain beliefs, the state would be suggesting that those who do not adhere to these beliefs are less deserving of public citizenship.

When viewed from an inclusive perspective, religious neutrality thus affirms that the state has not been endowed with any sort of "secularizing mission," but quite the opposite.[58] Secularism is built on assumptions about divinity, society and what it means to be human. In other words, secularism is functionally religious. This point may seem counterintuitive. However, religion, functionally defined, does not require faith in a higher deity or even the supernatural. As Leeman contends, "Any and every position that a person might adopt in the political sphere relies upon a certain conception of human beings, their rights and their obligations toward one

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[56] Ryder, "The Canadian Conception," 88.

[57] See *Corbiere v Canada (Minister of Indian and Northern Affair*s), [1999] 2 SCR 203, at para. 13.

[58] See *Trinity Western University v Nova Scotia Barristers' Society*, 2015 NSSC 25, at para. 91.

another, creation and God." In this sense, Leeman goes on to explain, religion "determines … the worldview lens through which we come to hold our political commitments."[59] Accordingly, everyone is, to some degree, religious.[60] This is why an inclusive approach to religious neutrality seeks to ensure that the state does not directly or indirectly support irreligious worldviews over religious ones. If irreligiosity is just another form of religion, then state support for irreligion will favour some religious adherents (namely secularists, atheists and agnostics) over others.

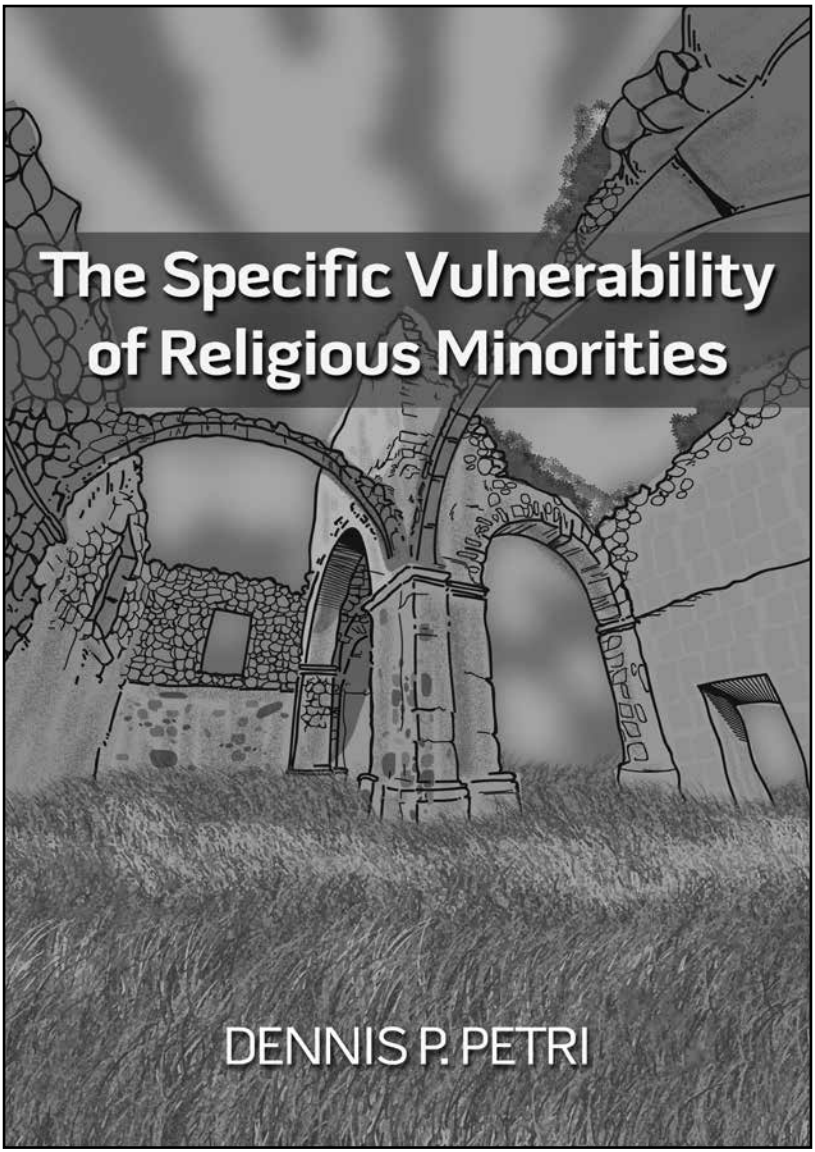
The contention that a religiously neutral state is still "gonna have to serve somebody" – to borrow Bob Dylan's refrain – is one that even non-religious theorists have accepted.[61] The late Ronald Dworkin, an avowed atheist, recognized as much in his contention that religion is "a deep, distinct, and comprehensive worldview … [that] holds that inherent, objective value permeates everything, that the universe and its creatures are awe-inspiring, that human life has purpose and the universe order."[62] Based on this definition, atheists and secularists ought to recognize that "belief in a god is only one possible manifestation or consequence of that deeper worldview."[63] As Dworkin contended, political disputes arise between theists and atheists because "they hate each other's gods."[64] Leeman uses a similar metaphor to describe religion's role in public life. "If all of life is religious," he explains, then "[t]he public square is nothing more or less than a battleground of gods, each vying to push the levers of power in its favour." Consequently, Leeman concludes, "there are no truly secular states, only pluralistic ones."[65]

6. Conclusion

The principle of religious neutrality is, as I have sought to demonstrate here, a conceit. Yet this does not mean that the conceit lacks insight, even as debates over the meaning of secularism expose fundamental disagreements over what the state's duty of religious neutrality entails. An inclusive vision of this duty holds that governments should refrain from adopting laws and policies that pursue ecclesiastical or explicitly theological objectives. This does not, however, confine religion to the private sphere – far from it. Religious neutrality ought not to remove religion from the realm of public policy (as many proponents of liberal secularism hold) but should instead recognize that the state is only one of numerous actors that occupy

[59] Leeman, *Political Church*, 81.
[60] See Iain T. Benson, "Seeing Through the Secular Illusion," *NGTT* 54(4) (2013), 13-16.
[61] Bob Dylan, *The Lyrics: 1961-2012* (New York: Simon and Schuster, 2016), 401.
[62] Ronald Dworkin, *Religion Without God* (Cambridge: Harvard University Press, 2013), 1.
[63] Dworkin, *Religion without God*, 1, 4-5.
[64] Dworkin, *Religion without God*, 7, 8-9. See also Leeman's analysis on this point in *Political Church*, 78.
[65] Leeman, *Political Church*, 82.

the public square. The state has no more jurisdiction to keep religious perspectives out of public life than it does to bar advocates of any other "nonreligious" cause. Bill 21 denies this reality by demanding that religious civil servants publicly convert to the state religion of *laïcité* – or at least give the appearance that they have done so – as a condition of their employment. Such a policy is inconsistent with the general trend of Canadian constitutional jurisprudence toward inclusive religious neutrality. Whether the Supreme Court will acknowledge this inconsistency remains to be seen.



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The need to overcome Catholic-centered anticlericalism

Rethinking *laïcité* in Mexico

Mariana Guadalupe Molina Fuentes[1]

Abstract

Laicity and secularity refer to the role of religion in the public sphere. Since they both relate to religious phenomena, these concepts are commonly confused. However, they result from separate processes and imply different consequences. This paper explains the development of both laicity and secularity in Mexico and discusses why the former should be reformulated to attain diversity in the Mexican contemporary social system. The paper emphasizes the gap between the existing legal framework and prevailing social practices in Mexico's ever-changing religious scenario.

Keywords laicity, secularism, religion, diversity, Mexico.

1. Introduction

Religion is undoubtedly one of the most important sources of human socialization. Durkheim (2014) and his successors defined it as an integrated group of beliefs and practices by which people are enabled to distinguish the sacred from the secular. Religion also creates identity, significance, and frames of meaning. In other words, people who belong to a particular religious group are likely to share ideas about the world, human nature, and social order.

As many sociologists have pointed out, traditional societies can be described as religious-based or integrist[2] (Tschannen 1991). This means that religion influenced every social space; for instance, architecture, education, health, and politics were highly interrelated with religious beliefs. Also importantly, those earlier communities were mostly homogeneous; since religion was the only referent for social mean-

[1] Mariana Molina coordinates the Extraordinary Chair "Benito Juárez" on laïcité at the National University of Mexico (UNAM). She is co-founder of the Interinstitutional Workshop on Secularization, laïcité, and its effects on Human Rights, of the same university. She is also part of the National Research System in Mexico. Article received 8 March 2021; accepted 4 August 2021. Email: mariana.mf@gmail.com.

[2] In this paper, religious-based societies are also referred as *integrist*. This concept is not to be understood as pejorative; rather, it is intended to distinguish between two social models: *integrism*, in which religion is the main axis of social organization, and *secularism*, in which it is not. I use *integrist* instead of *religious-based* to show that religious beliefs, values, or affiliations do not necessarily lead to the notion that religion should define every social sphere.

ing, its inhabitants shared beliefs, morality, and identity. Those who did not adjust to religious standards were punished or somehow excluded from the community. However, as societies moved toward modernization, they became increasingly complex and diverse. Religious pluralism eventually led to different ways of understanding society and government.

This paper explains the process by which those new ways of understanding were institutionalized in Mexico. This case is particularly interesting, not only because laicity[3] (*laicidad* in Spanish) is constitutionally recognized, but also because of the contradictions between the existing legal framework and prevailing social practices. In this sense, Mexico exhibits the analytical distinctions between two concepts that are frequently used as synonyms: *laicity* and *secularity*.

The next section of the paper provides a conceptual framework, emphasizing distinctions between analytical categories that are related to the social role of religion. After that, I explain the process by which Mexico adopted laicity as one of its main political principles, along with intertwined social phenomena that can be analyzed by using the concepts exposited in the preceding section. The final part of the paper provides a glimpse into Mexican laicity today, discussing its advantages and limitations in an increasingly diverse society. It also highlights the importance of conceptual clarity and analytical pertinence, not only for academic purposes but also for the political agenda.

2. Laïcité or secularity? The role of religion in contemporary societies

As stated in the introduction, the importance of religion is not only theological but social. This paper focuses on religion's role as a facilitator of social organization. Since it involves beliefs and practices, religion is closely related to collective identity and cultural meaning that crystallize in interpretive frameworks – that is, in ordered groups of ideas by which people understand the world (Berger 1969; Ozorak 1989; Weber 2013).

Religious beliefs also provide criteria for identifying good and evil. Thus, creeds lead to moral codes by which believers can classify personal and social behavior. Habits, traditions, and practices that seem consistent with religious prescriptions are considered good, appropriate, or correct, whereas those which challenge them are understood as evil, inappropriate, or incorrect. This premise is particularly relevant for the problem to be discussed here. Believers are not passive entities, nor do they think and act equally. Nevertheless, religions stem from a desire for

[3] *Laicity* is referred to as *secularism* or *secularity* in most Anglophone countries. However, as discussed in this paper, the former term is more accurate for analytical purposes.

certainty and a sense of belonging; in this sense, the members of a religious group usually share substantial ideas about morality.

As classic sociologists and anthropologists have observed, religion is the main source of cohesion in traditional societies, providing shared insights into the world and promoting well-being by regulating social relations. In addition, these societies are characterized by relatively limited diversity and dynamism. Each person has a social role to accomplish and is aware of his or her condition. Those roles contribute to social reproduction and hence to collective survival. Since the society's members share a single religion, its ideals and codes of conduct are rarely questioned.[4]

Religion played a predominant role in social organization for centuries (Berger 1969; Hervieu-Léger and Champion 1986; Casanova 1994; Dobbelaere 1994; Inglehart and Norris 2004; Baubérot and Milot 2011; Weber 2013; Durkheim 2014). Religious beliefs defined political power, economic behavior, artistic production, and family dynamics, among many other areas of social life. This logic was later modified by *secularization*, a widely used but commonly misunderstood concept.[5]

As established by José Casanova (1994) and Roberto Blancarte (2012), secularization consists of the process by which religion loses its centrality in social organization, and therefore its capacity to define other social spheres.[6] Contrary to the first academic approaches to this process, it is now generally accepted that secularization is not linear, progressive, or irreversible.[7] In fact, the observance of religious phenomena in contexts other than Europe and the United States has allowed us to rethink secularization as a complex process with varied consequences in each social sphere.

For the discussion presented here, three ideas that have emerged from the new approaches to secularization are worth noting.

2.1 Secularity and secularization are not synonyms

Secularity refers to a condition, secularization to a process. This distinction may appear obvious or insignificant, but it is indeed relevant. The word *secularity* leads to the idea that a society can be classified according to the importance given to religion as a social factor. However, there is no empirical case of a contemporary society that can be considered either entirely secular or entirely integrist. Rather,

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[4] This does not mean that traditional societies are free of conflict; however, the conflicts are less complex than in other models of social organization.

[5] For historical reasons, in some countries, such as Mexico and France, the word *secular* is frequently used as a synonym for *irreligious*, *antireligious*, or *anticlerical* (Gaytán 2018).

[6] Since this definition is not normative but descriptive, I embrace it to discuss the concept and its relation to other social processes and phenomena.

[7] This premise was central for pioneering studies by such authors as Luckmann (1967), Berger (1969), and Martin (1979).

both impulses coexist; while some social groups operate by a secular logic, others follow an integrist one.

The process of secularization must not be understood as progressive or teleological; empirical cases[8] prove that religion can recover its social centrality. Thus, secularization refers to a heterogeneous, complex, and multilevel set of possible pathways without a defined endpoint, rather than to a static and general condition. This argument has been deeply explored by scholars such as Wohlrab-Sahr and Burchardt (2012), who have noted that different societies experience different types of secularization. Nevertheless, all such processes share one basic characteristic – namely, religion's loss of centrality in social organization.

2.2 Laicity and laicization are not synonyms

Generally, laicity refers to the legal situation in which a state is defined as autonomous from any dogmatic beliefs, norms, authorities, and institutions (Blancarte 2008). This includes, though it is not limited to, religious dogma. On the other hand, laicization refers to the process by which the state attains that autonomy. Like the two concepts discussed in the prior subsection, laicity describes a condition (in this case, one recognized by the legal framework) whereas laicization describes a dynamic path.

There is no preset guideline for this transition; it has developed in varied ways, depending on the particular socio-political context and, thus, on situated historical needs. For instance, Mexico and France exemplify laicity as the result of a fierce struggle between the state and the Catholic Church, which had historically controlled the public space. By contrast, in countries such as Germany, Belgium, or the United States, laicity was formulated as the result of religious diversity, which presented the need to create the conditions for peaceful coexistence (Tschannen 1991).

Laicization, like secularization, is not progressive, irreversible, or homogeneous. Mexico is a good example of this argument: although its Constitution recognizes laicity as a principle of its legal framework, some local laws are still guided by dogmatic precepts. We will discuss this relationship in section 3 below.

2.3 Secularity and laicity refer to different conditions

As Blancarte (2008) has extensively argued, the historical differences in the transit to secularization have led to a conceptual misunderstanding. In French- and Spanish-speaking countries, the term *secular* refers to the loss of religion's social

[8] Since the Islamic Revolution of 1979, Iran has been a confessional state. Islam has recovered its influence not only in the Iranian political sphere, but also in other social spaces.

centrality, whereas *lay* (*laico* in Spanish) is used to designate the separation between state and dogma. This word is not usually found in Anglophone scientific approaches, which describe both phenomena as *secular*.

In this paper, laicity is defined as a legal attribute by which the state attains its autonomy from dogmatism. Secularity, in contrast, refers to the condition in which religion loses its social centrality. However, as mentioned above, no contemporary society can be classified as completely and homogeneously secular.

Another way to think about differences between the two concepts is by considering the processes that foster each condition. Though it may foment political conflict, laicization can be planned since it involves the creation of a legal framework. On the other hand, secularization is a social process that entails beliefs, and it cannot be planned or controlled.[9] Moreover, as mentioned earlier, it is also possible to observe the coexistence of secular and integrist groups in a single society.

The linkage between laicity and secularity is also of interest. It is generally assumed that a state that defines itself as lay will rule over a secular society. Nevertheless, empirical observation shows this connection is not necessarily true. Laws represent the materialization of certain ideals that are expected to regulate or somehow influence social relations (Conte 1994). Unfortunately for jurists and social scientists, the existence of a legal framework does not guarantee that people will respect its dispositions. After all, social practices such as homicide, robbery, and kidnap have not disappeared, even though they are categorized as crimes. In a similar way, and with the additional difficulty of being much more complex, the fact that a state is legally defined as lay does not mean that its inhabitants think or act with a secular logic. In fact, there are lay states with a population that is scarcely secularized.[10] The existence of confessional states with mostly secularized inhabitants is also possible.[11]

3. Mexican laicity: The long and winding road

In this section, I explain the historical processes that resulted in the laicity of the Mexican state. The discussion will emphasize the gap between laicization and secularization.

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[9] History provides some examples of forced secularization, such as Maoist China and the Soviet Union. Most religious organizations were forbidden in these countries, but this does not necessarily mean that the population renounced religions. In any case, secularization cannot be planned in a diverse society, and no democratic regime would allow a state-guided promotion of this or any other social process.

[10] Nineteenth-century Mexico would be an example. The separation between church and state was officially established at a time when most of the population still understood the public space according to Catholic morality.

[11] England is a good example. Although the state recognizes Anglicanism as the only official religion, social positions regarding public policies are mostly devoid of religious morality.

Before the Renaissance, European nations were habituated to the union of political and religious power. The latter was considered a source of legitimacy and morality. It was also a basis for national identity, guiding political practices within the state and its relations with others[12] (Pérez 2014). This model was exported to the colonized territories of America, Asia, and Africa.[13]

Although I will not comprehensively review the processes by which America was conquered, it is important to recognize that the Spanish Empire, as it extended its territory, transformed the political, social, and religious organization of its new subjects. The Viceroyalty of New Spain, for instance, was organized under the precepts of Catholicism due to its position as subject to the Spanish monarchs. The Catholic Church was therefore in charge not only of catechism and religious rituals, but also of such social aspects as education, health, and the registration of births, marriages, and deaths (Vázquez 2008). In spite of its diversity and the emergence of social phenomena such as syncretism, New Spain can be classified as a confessional state with an integrist society.

In 1821, when Mexico became an independent country with an imperial regime, church and state remained unified. The emperor, Agustín de Iturbide, had belonged to the Spanish royal army but eventually decided to embrace the independence cause.[14] He defended three basic principles: religion, independence, and union (Vázquez 2008). In fact, these ideals were strictly intertwined. Union was necessary to maintain political autonomy. But how could one create union in a country with such deep ethnic, linguistic, social, economic, historical, and geographic differences? Since Catholicism was virtually the only conviction shared among Mexicans, it remained as a source of identity. Therefore, even after independence, the Mexican state was confessional and ruled over a mostly integrist society.

The Empire fell quickly; a federal republic replaced it through the Constitution of 1824. This document preserved the Catholic religion's official status and explicitly forbade other beliefs (Galante 2006). Its first paragraph stated, "The Congress of the Mexican Nation performs its duties in the name of God Almighty, author and supreme legislator of the society" (Cámara de Diputados, H. Congreso de la Unión

[12] The royal families in Europe were viewed as chosen by God. This belief guided the political practices within a confessional state, in which the crown and the Catholic Church were strictly united. In fact, the continuous conflict with the Ottoman Empire can be explained by political interests but also by religious beliefs. Muslims were defined as unfaithful, and therefore the wars against them were seen as legitimate.

[13] The European political model was not easily accepted, because (a) non-European populations were far from homogeneous due to ethnic, linguistic, and cultural distinctions, and because most of them espoused religious practices and worldviews that were not consistent with monotheism.

[14] This decision led to an alliance with Vicente Guerrero, one of the main leaders of the independence war.

1824). Clearly, during its first years as a nation, Mexico was neither lay nor secular. Catholicism defined the state's decisions, remained the center of social organization, and influenced collective perceptions about social order and well-being.

The period from 1820 to 1860 saw multiple political transformations due to the struggle between opposing groups, which can be classified by three criteria: monarchists versus republicans, centralists versus federalists, and conservatives versus liberals. Here, we will focus only on the third division. Conservatives defended the social centrality of the Catholic Church and its importance as a state ally; liberals argued that the state should be above any other institution and must be autonomous from all churches (Vázquez 1997). Embracing a secular logic, the liberals wanted to establish a lay state. Conservatives, on the other hand, embraced an integrist logic and wanted to maintain a confessional state.

The complexity of both secularization and laicization increased in the following years. Laicity in public education was proclaimed in 1857, under the rule of the Liberal Party. This decision was a direct threat to the Catholic Church. Education is essential for the formation of citizenship. Hence, the loss of Catholic control of education implied that citizens need not be educated within the precepts of Catholicism; that is, people could embrace a secular logic.

In the same year, President Ignacio Comonfort organized a Constituent Congress with a clear majority of liberal representatives. The resulting constitution is a milestone in Mexican history, since it established the bases for laicity; it affirmed the state's supremacy, recognized freedom of belief, and eliminated the clergy's legal privileges. The state took control over health and education, created the civil register, and expropriated the Catholic Church's properties. To prevent integrism in education, the Constitution declared that it must be free from dogma (Cámara de Diputados, H. Congreso de la Unión 1857). Supported by the Roman Curia,[15] Mexican clergy and the integrist believers interpreted these changes as a threat to Catholicism, and thus to morality and social order. The Liberal Party's radicalism during those years is undoubtedly the main reason why laicity is frequently confused with anticlericalism in Mexico.

The irreconcilable differences between liberals and conservatives led to a civil war that extended until 1861. It also precipitated two additional problems: the French intervention and the establishment of the Second Mexican Empire, headed by Maximilian Habsburg (Vázquez 2008). These processes show the gap between laicization and secularization. Liberals acted by a secular logic and planned the transition from a confessional to a lay state. Even though the state was officially

[15] Pope Pius IX publicly criticized the state's autonomy from the Catholic Church in Mexico. He also excommunicated presidents and legislators who promoted it.

declared autonomous from the church(es), the coexistence of secular and integrist social groups produced several armed conflicts.

Although the political system remained divided between conservatives and liberals, the latter preserved their predominance in the following decades. Laicity remained a central principle of Mexican politics, even if it was not always respected. Porfirio Díaz, who was President for two periods (1877-1880 and 1884-1911), asked the Catholic Church for help in raising literacy rates. Diaz acknowledged that the state was incapable of satisfying education needs by itself, but Díaz did not modify the Constitution and clearly defended the state's autonomy (Greaves 2011). In any case, he was able to maintain a close relationship with the Catholic clergy without diminishing his authority.

The Porfirian administration ended with a violent outbreak involving several revolutionary groups with heterogeneous ideologies. However, the state's supremacy and its separation from the Catholic Church survived. State autonomy remains present in the Constitution of 1917,[16] proclaimed under President Carranza's rule to establish the basis of the post-revolutionary state (Garciadiego 2008). This document was severely criticized by conservative integrist groups, mainly because of its vindication of laicity in public education.

The political instability extended through the 1920s, and by the end of that decade Mexico experienced another civil war. Like the struggles of the previous century, the "Guerra Cristera" was a conflict between those who defended the dominant (liberal) political model and those who wanted to restore the bond between state and church. In 1929, the state attained a clear victory; the *cristero* revolutionaries and the clergy were forced to accept the Constitution, and laicity remained a main principle of the Mexican political system (Larin 1968). Once again, this conflict's violence shows that defining the state as free from church control did not make Mexican society completely or homogeneously secularized.

From 1930 to 1990, state and church went through phases of both confrontation and negotiation. For example, the contents of the public education program were continuously criticized by the Catholic clergy beginning in 1956[17] (Díaz 2013). However, the church allied with State authorities to oppose communism in the 1960s and 1970s (Pacheco 2002). With a clear intention to hold a friendly relationship in which the state should maintain its supremacy, Mexico received Pope

[16] Although the Constitution has been reformed many times, it is still valid. Moreover, its liberal principles still shape the legal framework.

[17] That year was characterized by the creation of the Free Textbooks, edited by the state. Using these books is mandatory for every school, regardless of whether it belongs to the public or the private sector. Since then, the contents of the books regarding biology and sex education have been a source of debate.

John Paul II in 1979 and on four other occasions[18] after that. These visits carried a strong symbolism, indicating that conflict was over and that negotiation between the two institutions was possible. Ironically, the Catholic Church's recognition of state laicity was the best way for it to push for better political conditions.

By 1991, President Carlos Salinas established diplomatic relations with the Vatican. He also promoted the reform of four constitutional articles: Article 3, to allow religious education in private schools; Article 5, to forbid the surveillance of religious and monastic orders; Article 24, to ban the government from enacting laws that established or prohibited any religion; and Article 130, to bestow on registered churches a legal personality and hence the rights guaranteed by the Constitution (Gil Villegas 1996). These reforms profoundly changed the Mexican political system, and some people interpreted them as a direct threat to state laicity (Araujo 2011).

I do not share this interpretation, since the reforms maintained state supremacy and even contributed to regulating religious organizations' registration. Nevertheless, they did make possible the Catholic Church's extended presence in the public space. In any case, by this point the religious scenario in Mexico had changed considerably. The Catholic population has declined substantially since 1950; besides, since 2000 other Christian variants have grown significantly and become visible in the public space. As will be discussed in the next section, this condition has pushed for reconsideration of the Mexican lay regime.

The Constitution was reformed in 2012. Now, Article 40 defines Mexico as a representative, democratic, lay, and federal republic. Unlike in the 19th century, this principle is applied not only to a hegemonic church but to multiple religious organizations, in an increasingly complex society with varied identities, heterogeneous moral convictions, and different degrees of secularization. Considering laicity as a constitutional principle is a huge step for recognizing human rights, since it concerns state autonomy to legislate and create inclusive public policies. It also accomplishes the purpose of extending the concept of laicity beyond the separation of state and church(es). However, many other challenges are involved in achieving an inclusive regime that is respectful of every person's human rights.

4. The challenges of laicity in the 21st century

As argued in the previous section, Mexican laicity was built under specific historical circumstances and responded to particular political needs. Primarily, it was an

[18] The visits took place in 1979, under the presidency of Luis Echeverría; in 1990 and 1993, while Carlos Salinas was president; in 1999, during the rule of Ernesto Zedillo; and in 2002, during the rule of Vicente Fox. The Partido Revolucionario Institucional (PRI), which consolidated as the official party since 1929, ruled Mexico until 2000. This transition led to the rule of Vicente Fox, who belonged to the Partido Acción Nacional (PAN), a right-wing party strongly related to Catholic tradition.

instrument to attain state autonomy in a period in which the state was still struggling to consolidate its authority. Furthermore, laicity became a legal reality in a non-secular society; although the Liberal Party included people who approached the public space with a secular logic, most of the population held an integrist logic. The various civil wars that occurred in the 19th and 20th centuries reinforce this point.

Mexico has experienced deep changes since then: the political system is now ruled by a democratic regime; religious diversity is growing;[19] no church is in position to defeat the state's autonomy;[20] social identities are much more complex than before; and secularization has influenced various social groups to different degrees. Nevertheless, laicity is still mostly understood as the separation of state and church and implemented institutionally through the assumptions of 19th-century liberalism.

This paper proposes that laicity should be considered differently, attending to the political, social, and religious particularities in contemporary Mexico.

4.1 Laicity should attend to religious diversity

Although religious pluralization has grown since 1950, the public visibility of non-Catholic groups is relatively recent (Garma 2007, 2018). This may be the reason why Mexican legislation is still focused on Catholic logic. For instance, the Constitution forbids the nomination of persons exclusively dedicated to religious activities for popularly elected positions. This prohibition was designed for Catholic priests, but is not adequate for other religious groups whose ministers are not dedicated full-time to religious practice. In fact, that legal loophole has allowed the participation of evangelical pastors in politics. I am not arguing here for a position for or against pastors in politics; I am simply pointing out that the existing form of Mexican laicity does not apply consistently to all religious groups and should thus be reformulated with a non-Catholic logic.

The current legal logic also affects the analytical perspective taken toward religious groups. The Mexican lay regime seems to think of Catholicism (and, hence, religion generally) as a homogeneous phenomenon. This is not the case; the Catholic Church has internal divisions, and not every religion is organized hierarchically. In fact, we can identify both conservative and progressive movements within

[19] As proved by De la Torre and Gutiérrez (2008), Catholicism started losing its hegemony in the 1950s. This change led to the proliferation of other Christian religions, but also to new ways of experiencing spirituality among non-affiliated believers. The census of 2020 shows that 77.7% of the Mexican population identify themselves as Catholic.

[20] Although some religious leaders express their opinion upon political matters, and even their will to have a more active role in the public sphere, none of them challenges the separation between State and Church(es). In fact, Catholic Bishops have constantly declared it is necessary in order to attain a respectful and peaceful public debate.

a single religious group (Garma 2007; Mazariegos 2020). Thus, reformulating laicity should absolutely consider pluralism within religious groups. This step also requires overcoming a binary logic – namely, the false but common premise that every religious group is conservative, integrist, and politically motivated to restore the confessional state.

4.2 Public and private spheres are not clearly divided

Nineteenth-century liberalism assumed that the public and private sectors were two separate spheres of social action, and that religion belonged to the latter. This logic implied that authorities can ignore their religious convictions when making decisions that concern the public. However, this is not always the case in actual experience. Since secularization is not a homogeneous, irreversible, or completed process, some people will operate with an integrist logic no matter what their position is. This fact may explain why certain authorities, public servers, and legislators defend public policies that are based on moral values and dogmas.

In 2020, two political parties promoted a policy that would allow parents to withhold their children from certain educational contents, based on the argument that public education may contradict moral values. Such a policy proposal raises important questions. Are these legislators acting according to an integrist logic, or simply seeking to expand their political support base? Since education has public consequences, should a lay state respect parents' decisions over controversial matters, such as evolution or sex education? And, in any case, is a lay state responsible for creating a lay political culture?

The artificial division between public and the private tends to simplify reality, obscuring the fact that the two are intertwined in everyday life. Persons may learn moral or ethical values at home, at school, and in religious communities. All those social spaces belong to the private sphere, but individuals may reproduce those values in their social action – that is, in the public sphere. Since the Mexican Constitution recognizes freedom of religion, belief, and conscience, the state cannot and should not intervene in the private sphere. Therefore, it is not able to promote secularization. In other words, state laicity may be a reality in terms of its legal framework, but it is still not viewed as an acceptable or sufficient condition by integrist social groups, which cannot be regulated.

The fact that certain social groups hold an integrist logic is not problematic by itself. However, this logic cannot be transferred to laws, institutions, or public policies, or to all public servants and representatives. There are some cases of authorities who refer to God, Jesus Christ, and the Virgin Mary in official acts; this does not affect public policy, but it certainly violates laicity (Barranco and Blancarte 2019). Perhaps the most famous example is the current Mexican president, Andrés Manuel

López Obrador, who constantly refers to Jesus as an example of good conduct. In March 2020, he declared that the COVID-19 pandemic could be fought with honesty and goodwill. He also referred to the protective power of religious symbols and good-luck charms (Animal Político 2020). This is especially problematic; besides promoting non-scientific solutions to an international health issue, it promotes a non-lay political culture.

4.3 Religion is not a private or individual phenomenon

Nineteenth-century liberalism assumed not only that religion is a private matter, but also that it is individual in nature. This assumption is certainly far from reality, as religion is by definition a collective phenomenon (Durkheim 2014). In fact, the religious sense of belonging does not depend only on beliefs and rituals, but on sharing them with other people. This is one reason why evangelization is a priority for most religious groups. But sharing one's faith is also associated with trying to improve social well-being. By doing so, religions are inevitably related to the public sphere.

Some authors argue that a democratic regime should guarantee equal political participation conditions for every citizen, including religious persons and groups (Samuel, Stepan, and Duffy 2012). This consideration is pertinent; however, it should be evaluated carefully in the particular case of Mexico. Allowing religious organizations to participate in politics entails the responsibility of legally defining how they may participate. Mexicans should never forget the civil wars that resulted from the struggle between state and church over their roles in the public space.

4.4 Laicity is still designed to limit religious organizations, but not other political actors

In Mexico, the presence of a hegemonic church in the public space led to the construction of an anticlerical laicity which explicitly limited religious organizations' activities. The institutions and laws that derived from that concept of laicity were designed to curtail the political influence of the Catholic Church. As the religious scenario became more pluralistic, this regime was extended to other confessional organizations.

Since the state needed to guarantee its supremacy by restraining religion to the private sphere, the clergy experienced several limitations: they could not vote or be voted for, mobilize believers for political purposes, or express their opinions on political matters (Gaytá 2018). Their freedom of speech was not totally obliterated, but when the Catholic clergy expressed their opposition to political decisions, it was certainly not well received by the authorities. Besides, the celebration of religious rituals in state facilities is forbidden, and the ministers who participate in them can be subject to sanctions. All these measures are designed to protect laicity, assuming

that the church(es) would try to regain control of the state. But what if laicity is threatened precisely by those who are supposed to protect it?

This phenomenon has always been present but has become much more visible in recent years. Political leaders and authorities constantly refer to religious characters and beliefs. This can be interpreted as a sincere and true demonstration of faith, or as a political strategy to attract popular support. In both cases, this practice is utterly averse to laicity. The first motivation violates the state's autonomy; the second could be disrespectful to religious believers since it introduces the possibility of faith becoming instrumentalized.

Even more relevant, some political leaders and authorities rule according to their dogmatic convictions due to holding an integrist logic. For example, legislation concerning diversity of marriage and family structure, abortion, or euthanasia is generally discussed using non-religious terms, but it often includes a dogmatic logic that is not based on publicly accessible argument and therefore hinders consensus.

5. Conclusions

This paper has argued that Mexican laicity should be reformulated to consider the elements described above. All of these factors pose relevant challenges for the lay state, since they show the loopholes that prevail in a legal framework that does not match the country's contemporary socio-political conditions. Furthermore, the gap between laws and social practices is undeniable in this regard due to the complexity of both laicization and secularization processes. As noted above, although both laicization and secularization refer to the role of religion in the public sphere, they are not synonymous and certainly do not develop in tandem.

Laicity is not just an abstract ideal with no practical consequences; rather it enables the construction of a state that recognizes human rights through the principle of non-discrimination. This means that laicity must not be understood as an anticlerical or anti-religious political conviction. In fact, the peaceful coexistence of diverse religious believers and non-believers depends on laicity. But the lay regime should be rethought in order to address contemporary needs. To do so, we must recognize the collective and public character of religion, understanding that spirituality is much more than Catholicism. We must also realize that laicity goes far beyond keeping state and church(es) separate.

Legal instruments alone cannot generate respect for the precepts contained in them. This is especially true for the case analyzed in this paper. It is possible to legislate the state's character, but one cannot legislate social processes. Hence, the gap between laicization and secularization results in the coexistence of practices that involve both secular and integrist logics, which occur independently from the legal framework (Capdevielle and Molina 2018). In this sense, I argue that the

state should promote a lay political culture through the political and educational systems. It is not possible to accelerate secularization, but the state can encourage support for the civic principles embodied in the Constitution.

Introducing laicity as a constitutional principle is a transcendent necessity and the first step toward changing institutional structures, and eventually toward the reconfiguration of political and social relations. We must remember that all law is essentially about enabling us to live together in harmony.

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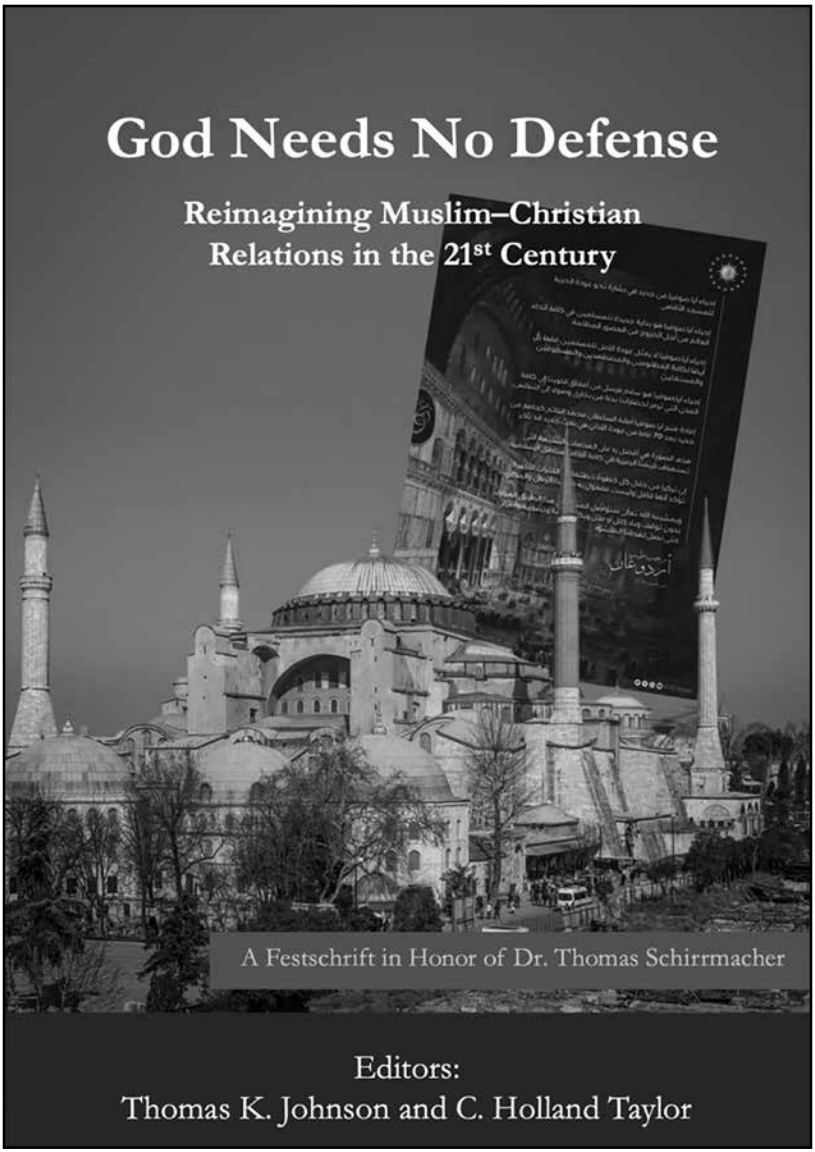

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An unwanted child

Secularism, religious freedom, and the Turkish Protestant Church

James Bultema[1]

Abstract

Turkey's secularism and the extent of religious freedom in the country are affected by enduring Ottoman influences. These influences have not only hindered the integration of secularism into all levels of state and society but have obscured evidence of a synergy between secularism, religious freedom, and the Turkish Protestant Church (TPC). Although intertwined with Sunni Islam, secularism has provided a context in which well-protected religious freedom, granted in the 1961 Constitution, could catalyze the TPC's emergence. Moreover, the TPC has helped the state and society to manifest and nurture its commitment to religious freedom, so that it has proven to be more than the arbitrary religious tolerance of Ottoman times.

Keywords secularism, Islam, religious freedom, Turkey, Turkish Protestant Church.

1. Introduction

In 2008, as part of my doctoral research, I interviewed a 31-year-old Turkish Christian named Marko Kiroglu.[2] He had been a Christian for seven years, and Tilmann Geske, who was later martyred with two Turkish Christians in Malatya, Turkey, co-baptized Marko in 2002. In 2006, in the city of Adana, Marko suffered what, in hindsight, amounted to a portent of the 2007 Malatya martyrdoms when five young men attacked him after a worship service. With fists and feet, iron bars, and a butcher knife, they tortured him, demanding that he deny his Christian faith. Instead, he declared his faith. Even when bloody and verbally threatened with death, Marko responded unequivocally, "Jesus is God."[3]

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[1] The Rev. James Bultema is a PhD candidate in Theology and Religious Studies at the Evangelische Theologische Faculteit in Leuven, Belgium. Since 1990, he and his wife have resided in Turkey, where they raised their three children. James first served as interim and then as associate pastor at the Union Church of Istanbul before moving to Antalya. There, James led the way in founding the St. Paul Cultural Center (www.spccturkey.com) and the St. Paul Union Church, which he served as pastor for 19 years. He is currently leading an effort to establish the Mozaik Cultural Center (www.mozaikantalya.com/). This article uses American English. Article received: 1 August 2020; accepted: 9 May 2021. Email: jamesbultema@spccturkey.com.

[2] Marko Kiroglu is the interviewee's recently adopted name. Marko now lives in South Africa, where he is the founding director of Countdown to Christ Ministries.

[3] Marko's interview transcript will be made public, along with my other interview transcripts, after my

Marko explained in our interview that he had been an unwanted child. In his infancy, his birth mother abandoned him and his father, and he remembers only apathy and aversion from his stepmother. When he was seventeen years old, the stepmother told him, with tacit approval from his father, "We don't want you in this family anymore. You're actually not part of the family. You are the son of a very evil woman." As a sobering summary of his early years, Marko said that he had "no happy childhood memory."

Marko's rejection became for me a metaphor for the Turkish Protestant Church (TPC). I propose that the interplay of secularism and religious freedom in Turkey has helped to make possible the largely unwanted TPC. Of course, the story of the TPC's emergence is far more complex than my metaphor-motivated suggestion. However, in this essay I will argue that secularism and religious freedom have helped to facilitate the rise of the TPC and that the TPC in turn has helped to functionalize religious freedom in Turkey.[4]

This argument is not meant to disregard or detract from the various struggles that have marked the TPC's history. Like absent parents, the lack of consistent secularism and religious freedom in Turkey has contributed to menaces and martyrdoms for the TPC, as in the aforementioned cases. Nevertheless, to properly understand the governmental, societal, and legal struggles that the TPC faces, one must first appreciate the Ottoman era's influence on secularism and freedom of religion. These concepts have protracted and contested histories in Turkey, and the resulting forms do not entirely match common meanings.

1.1 Turkish secularism and Ottoman-Islamic sway

The formation of Turkish secularism had been in process long before the founding of the Turkish Republic on 29 October 1923. According to Erik Jan Zürcher, secular trends in the Ottoman Empire were evident in decrees of sultans as early as the eighteenth century (Zürcher 2004:9-10). Secularization gained momentum in the nineteenth and twentieth centuries, particularly during the *Tanzimat* (reforms), Young Turk, and Democratic eras (Zürcher 2004:50-70, 93-337).

However, despite centuries of secularizing efforts and advances, the pervasive influence of ancestral Islam has kept secularism in check. Accordingly, Carter Vaughn Findley (2005:57-66) asserts that no transformation has been more profound in its consequences for Turks than Islamization. Indeed, Turkish secularism has Islamic strings attached to it. This reality has led Taha Parla and Andrew

doctoral dissertation is published.

[4] Although, because of my data, I focus only on the functionalization of religious freedom, one could also argue that the TPC has contributed, to some degree, to the functionalization or furtherance of Turkish secularism.

Davison (2008:58-73) to argue that, in Turkey, Kemalist laicism serves as an obstacle to, rather than an impetus toward, the development of genuine and extensive secularism.

As an adjective, the term "Kemalist" refers to the ideology of Mustafa Kemal Atatürk, the first president and founding father of Turkey. Most writers on the subject equate, or use interchangeably, laicism (which calls for non-clerical control of a society and its institutions) and secularism (which entails fully non-religious, irreligious, or even anti-religious control of a society and its institutions). However, unlike secularism, laicism can be pro-religion, as is the case with Sunni Islam – exclusively – in Turkey.[5]

1.2 Turkish tolerance and religious freedom

Like secularism, religious freedom has Ottoman roots. Embryonic expressions of religious freedom can be gleaned already in Osman Ghazi's (n.d.) fourteenth-century testament to his son Orhan, in which he commanded unqualified extension of tolerance, kindness, justice, and virtue to the subjects. Bruce Masters (2004:16-40) explains that throughout subsequent generations, the level of religious tolerance in the empire fluctuated, due not only to sultans and their decrees, but also to the influence of Islamic judges and foreign powers. In the realm of religion, however, Islam dominated.

Actual freedom of religion reached an apparent peak in the Turkish Republic, when it was elucidated as a basic human right in the 1961 Constitution.[6] However, as Mine Yıldırım (2017:133-134) makes clear, that same fundamental law constitutionalized the Presidency of Religious Affairs, which, since its establishment as an institution in 1924, has consistently supported and perpetuated Sunni Islam. Accordingly, religious freedom in Turkey, although constitutionally established and protected, has often seemed little different from the oft-shifting religious tolerance of Ottoman times.[7]

1.3 Overlooked links between secularism, religious freedom, and the TPC

Literature on the TPC reflects the above considerations. Soner Cagaptay (2006:1) claims that Turkish converts to Christianity brought the TPC into existence, but he

[5] Tarla and Davison (2008:60) explain regarding laicism and secularism, "The two terms are not two different names for the same phenomenon. Laicism is distinct from secularism, … and Kemalist laicism is a particular kind of laicism. Interchanging the two occludes an understanding of the distinct character of Kemalist laicism, which is not only something significantly less than secularism but also … more limited than other forms of laicism."

[6] An English-language translation of the 1961 Turkist Constitution can be found at http://www.anayasa.gen.tr/1961constitution-text.pdf. See especially Article 19.

[7] Peter Pikkert (2008:86) describes it as "a haphazard pattern of freedom and persecution."

neither gives a timeframe nor cites constitutional religious freedom as a contributing factor. Esra Özyürek (2009:403) attributes the rise of the Turkish Protestants to a renewed opportunity for mission work in the 1980s and 1990s, without mentioning religious freedom. Numan Malkoç (2006:92-105) connects the 1960s with the reinvigoration of the Protestant missionary movement in Turkey, but he neither explains this reinvigoration nor connects it to freedom of religion. Despite detailing significant TPC growth and development since the late 1970s, Pikkert (2008:166-168, 182-185) concludes that the presence of religious freedom "on paper" has had minimal practical effect.

With a focus on Turkey's ancient Christian traditions, Abdullah Kiran (2013:52-54) links the introduction of religious freedom with the 1924 Constitution, even though it also declared that the "Religion of the State is Islam". Kiran makes only brief mention of the improvements of the right of religious freedom in later constitutions.[8] Wolfgang Häde (2012:87-100; 2013:65-84) provides illuminating research on various perceptions of Christians in the country, as well as on the impact of persecution on Christian identity, but he addresses the origin of neither the Turkish Christians nor religious freedom in the land.[9]

Thus, not only does the TPC remain an under-studied religious movement after nearly six decades,[10] but relevant literature does not adequately connect the interplay of Turkish secularism and constitutional religious freedom with the TPC's emergence, nor does it recognize the TPC's functionalizing influence upon religious freedom. Therefore, I address the following two questions in this article: how have secularism and religious freedom interacted to facilitate the rise of the TPC, and how have the TPC and its members helped to functionalize religious freedom in the country? My primary data source is the transcripts of interviews I conducted as part of my doctoral research from 2007 to 2014, as the TPC movement marked 50 years in existence.[11]

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[8] Kiran gives a more detailed account of Christians during the Ottoman era and the impact that the empire-to-republic transition had upon them. He argues similarly that the burdensome restrictions on religious freedom for Christians in present-day Turkey are deeply rooted in the Ottoman era.

[9] In his published doctoral dissertation, Häde (2017) briefly covers the origin of the TPC, but the origin of the TPC and religious freedom in Turkey were not within the scope of his doctoral research.

[10] My drafted but as yet unfinished Ph.D. dissertation on the TPC will offer an interpretation of its emergence.

[11] For this article, I used twenty-four transcripts that addressed the topics of secularism and religious freedom – topics that arose spontaneously in the interviews due to my use of open-ended questions. The interviewees included Protestant missionaries, TPC converts, and an observer of the movement. Because of the unavoidable human tendency to reconstruct our autobiographies, these transcripts should be understood as containing narrative truth rather than historical facts. However, the discernible overlap between interviews confirms that the transcripts yield valuable data regarding the research topic and the questions at hand.

2. Findings

This section identifies and illustrates three thematized findings from my analysis of the transcripts. Although the transcripts represent the views of a relatively small number of Protestant missionaries to Turkey and Turkish Protestant converts, I had more than enough informants to attain theoretical saturation, as described by Anna Davidsson Bremborg (2014:313-314). It should also be noted that my findings are inferential and not necessarily broadly generalizable, since none of the interviewees had experience with the TPC dating back to its origin and because personal experiences in different parts of the country can vary greatly.

2.1 Secularism as a context for mission and conversion

Turkish secularism provided a suitable context for mission work and for conversions from Islam. Nearly all interviewees viewed secularism, compared with Islamism, as a source of greater societal openness toward Christians, their faith, and the possibility of religious conversion.[12] A German missionary who has been in Turkey since 1987, speaking of this openness, said that he expected the TPC to continue growing, especially by attracting secular Turks.[13]

A 29-year-old convert described his family as, paradoxically, "secular Turks" who are "quite committed to Islam." Although this young man himself was open-minded enough to attend a Christian worship service with some friends in the mid-1990s, and then to convert to the Christian faith a few years later, his parents were incensed when they discovered his conversion to Christianity. The parents' indignation toward their son, to the point of cutting off communication with him, suggests that deeper than their alleged secularism is their core belief that "real" Turks are Muslim. Markus Dressler explains that this widespread Turkish belief is a core element of Turkish nationalism (2015:16).

Several interviewees indicated that secular academia and media helped raise general awareness of the presence of Christian missionaries in the country and of the possibility of religious conversion. One veteran US missionary recalled watching, in the 1990s, a "secular TV talk show" in which someone asked whether there were missionaries in Turkey. After several ambivalent responses, one participant exclaimed, "Of course! They've been here for centuries." According to the missionary

[12] Interestingly, the one exception to the stated view came from a convert to Protestantism from an Assyrian Christian background. In his 2014 interview with me, he stated, "Even though the [current Turkish] government is Islamic, they did a great thing for the Christians: the most freedom is in their time. ... They like the Christians, and they give them freedom, more than any other government."

[13] This missionary's stated aim is to evangelize and disciple not secular and modern Turks but traditional and Islamist ones.

interviewee, the subsequent discussion promoted a common understanding that missionaries are indeed working among the people of Turkey.

Another missionary remembered taking a university philosophy class in the early 1980s. One day, the Turkish professor asked the approximately 200 students, "Is it theoretically possible for you to be a non-Muslim?" Two thirds of the students answered no – they were born Muslims, and that could not be changed. However, one-third of the students, with other students joining them as the discussion progressed, acknowledged that they could change their faith if they wanted to do so.[14]

Interviewees also credited Turkish secularism with the provision of legal protections, the facilitation of church planting, and the institutionalization of the TPC through the Law on Associations, passed in 2004 as part of the EU harmonization process.[15]

2.2 Religious freedom as a catalyst for mission and conversion

Religious freedom, as enumerated and elaborated in the 1961 Constitution, served as an effective catalyst for missionary work and conversions from Islam.[16] After the 1960 coup d'état and the subsequent Westernized constitution, which provided religious freedom for all, mission-minded Christians serving elsewhere quickly became interested in Turkey. Just three months after the constitution was ratified, the first pair of Protestant missionaries arrived in Istanbul. Since then, a multitude of others have followed, from six continents and at least three dozen countries.

The missionaries' backgrounds were diverse, but they all shared a sense of divine calling to serve in Turkey. Evangelizing, discipling, church planting, distributing literature, and Bible teaching made up their main activities and constituted the pattern for how the mission work developed. A prototypical Swiss missionary arrived in 1962 to do "low-key evangelism." He recounted, "When I reported … that I was interested in going, one of the strategists said, 'Good, we can send him as a guinea pig'" (i.e., an experimental missionary).

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[14] However, widespread popular distaste for and occasional popular backlash against the presence of foreign missionaries and their work on Turkish soil continues. For more on these phenomena, see Häde (2015:181-187).

[15] "Institutionalization" is my interpretive word, based on the interviewee's statements. He claimed that, although the situation is not ideal, TPC congregations' ability to organize as legal associations has been a "great improvement." This ability, granted in 2004, was part of Turkey's process of harmonization with the EU.

[16] Kiran is correct that religious freedom was listed in the 1924 Constitution (Kiran 2013:52-54). However, that document also contained antithetical statements that rendered exercising that freedom all but futile. The statement of religious freedom in the 1961 Constitution, with elaboration, protective clauses, and a judicial system of review, was more compelling, user-friendly, and ultimately effective in enabling the TPC to thrive. See Özbudun (2011:41-43).

The secular nature of the 1961 Constitution and its religious-freedom provisions caused missionaries and mission agencies to recognize an opening in Turkey. Since then, their interest in Turkey has waxed more than waned, and it has borne the fruit of thousands of regularly congregating converts from Islam. Perhaps the oldest of those converts is Abdullah. Born in 1926, he remembers being in his fifth and final year of schooling when Atatürk died. After studying the New Testament in 2001, Abdullah converted to Christianity. A quotation from his interview encapsulates what I call the interplay of secularism and religious freedom that has facilitated the rise of the TPC: "If there weren't secularism, they would kill me [for apostasy]. But we are free."

2.3 The TPC as a contributor to the functionalizing of religious freedom

Time and again during its history, the TPC or TPC actors have helped to functionalize religious freedom in Turkish society. On one level, this has occurred through personal interaction. The Swiss missionary cited above recounted an argument between him and a Turkish police officer in which each man was trying to persuade the other of his interpretation of religious freedom. Another missionary from the 1960s recalled his team leader giving him and his co-workers pocket-sized copies of the 1961 Constitution, with the articles regarding religious freedom highlighted. The missionaries were told to show the articles to anyone who questioned them about their activities, or to the police if they were arrested. In other words, the missionaries were equipped and advised to educate Turks regarding Turkish religious freedom.

This functionalizing of religious freedom has also taken judicial, advocacy, and diplomatic forms. Kraig Meyer told of the first court case against a TPC missionary, in 1963.[17] The public prosecutor sought the death penalty for the alleged crime of Christian propaganda. However, the defense attorney argued that, according to the constitution, Christian evangelism was not illegal. The judge found the missionary innocent and he was released (Meyer 1986:69).

In 1985, a veteran missionary "felt a very strong call … to go back to Turkey and seek to establish a framework for legalizing new churches."[18] After a five-year effort, involving the advocative abstract of a Turkish law professor and a diplomatic visit by Sir Fred Catherwood, the Vice President of the European Parliament,

[17] I interviewed Kraig and his wife Susan, but he also wrote a historical account in which the following story is told. Referring to "more than one hundred" arrests during a twelve-year time frame, he wrote, "In every case Turkish judges have upheld constitutional law" (Meyer 1986:69).

[18] He had done literature distribution in Turkey in the 1960s but had suffered the same fate as many early missionaries: the police deported him, not on the grounds of illegal activity, but rather simply as a *persona non grata* (Meyer 1986:69).

the Turkish government provided a practical ad hoc solution but stopped short of producing a written document for general use. However, later that year, Nurver Nureş of Turkey's Ministry of Foreign Affairs sent a follow-up letter to Catherwood, informing him that the Turkish Parliament had established a Human Rights Inquiry Commission "to ensure respect for human rights in Turkey in line with the norms of International Law in this field" (Catherwood 1990).

Not only missionaries but also TPC converts have helped to further the functionalization of Turkey's religious freedom, with regard to both the TPC and other religious minority groups.[19] As one result of Turkish church leaders' meeting with Catherwood in 1990, they organized into a representative committee called Temsilciler Kurulu (TEK).[20] Despite its initial extralegal status, TEK engaged in advocacy on behalf of Turkish Protestant churches in the country.[21] In 2009, this committee gained legal status as the Association of Protestant Churches, and legal advocacy for member Protestant churches has been one of its main purposes and activities.[22]

3. Conclusion

In this paper, I have highlighted and sought to explain an unexplored synergy involving the TPC. Part of this synergy has been between Turkish secularism and freedom of religion, as stated and elucidated in the 1961 Constitution and reaffirmed in the 1982 Constitution.[23] Secularism provided a context in which religious freedom could function as an effective catalyst encouraging the arrival and activity of Protestant missionaries, the conversion of Turkish Muslims to the Christian faith, and the establishment of Turkish churches. However, the TPC also has had a role in this synergy. Those associated with the TPC movement have acted in various ways to improve the functioning of religious freedom in Turkish society. In short, the interplay of secularism and religious freedom has helped to facilitate the rise of the TPC, and the TPC has helped to functionalize religious freedom in the land.

This interpretation can serve to enrich the understanding of other researchers of the TPC movement. The movement's origin need not be simply assumed or presented imprecisely. Researchers can better appreciate the vital importance of the generous provision and timely promulgation of religious freedom in the 1961 Con-

[19] With regard to other religious minority groups, see Çınar and Yıldırım (2014); Yıldırım (2017).

[20] Board of Representatives.

[21] This advocacy work by TEK began in 2000, after the first of several church closures in 1999.

[22] For more details, see the Association of Protestant Churches' "Reports" web page. Available at: http://www.protestankiliseler.org/eng/?page_id=638.

[23] The 1982 Constitution, while reaffirming religious freedom as stated in the 1961 Constitution, did also contain more restrictive clauses on its exercise (Özbudun 2011:51-52). This constitution remains in effect today.

stitution.[24] Without Turkish secularism, imperfect though it may be – and without religious freedom, restricted though it may be – the TPC would not be the substantial, "unstoppable" movement it is today, if it would exist at all.[25]

As for further research, my argument could be tested on other minority religious groups in Turkey. For instance, a 2020 *Hürriyet Daily News* article ("Turkey Violated" 2020) reported on a European Court of Human Rights decision that Turkey had violated the religious rights of Jehovah's Witnesses. Did the interplay of secularism and religious freedom since 1961 also help to facilitate the emergence of the Jehovah's Witnesses in Turkey? The article suggests that the Jehovah's Witnesses are also helping Turkey to better functionalize its religious freedom.

Finally, in this article I have spoken quite positively of Turkish secularism and religious freedom, at the expense of giving voice to those Christians, both Turkish and foreign, who have suffered or are suffering due to actions or policies of the current Islamist-nationalist alliance or due to practical restrictions of religious freedom. Tilmann Geske, his two co-workers, and Marko Kiroglu have certainly not been the only Christian victims of persecution in Turkey. As one of my interviewees stated regarding "the unofficial state attitude" toward Christians, "They're using social warfare to pressure us out of society." This warfare, which takes place at many levels of state and society, has ebbed and flowed up to the present day. An article on 5 July 2020 carried the title, "Turkey Deporting Protestant Christians" (Bulut 2020). What Meyer (1986:69) reported regarding the 1960s and 1970s – the deportation of Christians not as guilty of any crime, but rather as *personae non gratae* – is happening still today.[26]

Nevertheless, ongoing harassment and persecution must not blind adherents of the TPC to how far they have come. In just six decades, the TPC has grown from nothing to nearly 10,000 members in 180 churches throughout Turkey, reflecting an average annual growth rate far greater than that of the early church.[27] The synergy of secularism and religious freedom has smiled on the TPC movement, and, thanks in part to the TPC, the Turkish state and society have progressed in

[24] I owe the use of the word "generous" in this context to Hans-Martien ten Napel, whose phrase "generous protection of religious freedom" has stuck with me as a general aspiration and petition (Ten Napel 2017:161).

[25] One of my interviewees used the term "unstoppable" in 2013 to describe the TPC movement.

[26] Those discouraged or threatened by these deportations or by related realities may be encouraged by reading Christof Sauer and Dwi Maria Handayani's (2015:47-57) article, especially the section "Hope as Strength to Endure" (55).

[27] My research reveals that the TPC's average annual growth rate has been 14 to 14.5 percent, projecting roughly 8,800 TPC adherents in 2021 and 10,000 in 2022. Detailing this research is beyond the scope of this article. Rodney Stark (1997:6) estimates that the early church's average annual growth rate was 3.42 percent, although Stark's method of quantification is not accepted by all scholars (see Dreyer 2012:1).

their manifestation of constitutional religious freedom. However, the TPC must be patient, understanding that it is extremely difficult for a state and society to adopt a teachable attitude – especially toward an unwanted child.

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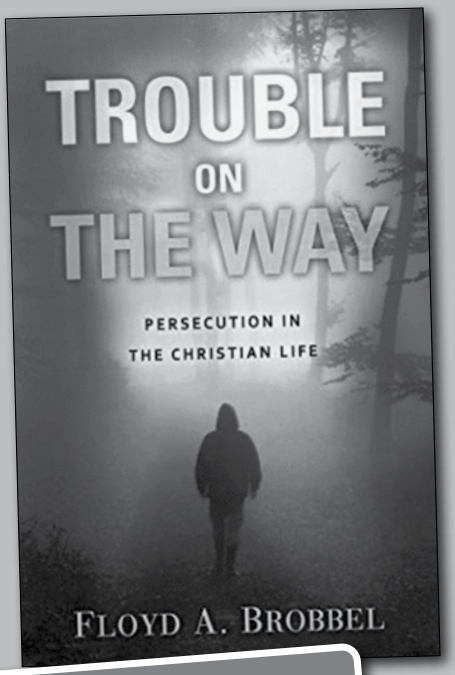

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The influence of secularism in free exercise jurisprudence

Contrasting US and Australian interpretations

Alex Deagon[1]

Abstract

The free exercise clauses in the First Amendment of the US Constitution and Section 116 of the Australian Constitution are almost identical textually. However, they have been interpreted very differently, with the United States providing broad protection for religious freedom and Australia very narrow protection. I suggest that secularism has influenced First Amendment jurisprudence to some extent but Section 116 jurisprudence more significantly, and that this influence may explain the difference in interpretations. Hence, more secularist approaches to the free exercise clauses appear to contribute to narrower interpretations that undermine religious freedom.

Keywords secularism, free exercise, religious freedom, United States, Australia.

1. Introduction

The constitutions of the United States and Australia both contain provisions protecting the free exercise of religion. The First Amendment to the US Constitution states in part that "Congress shall make no law … prohibiting the free exercise [of religion]." Section 116 of the Australian Constitution states, 'The Commonwealth shall not make any law for … prohibiting the free exercise of any religion." These provisions use quite similar language but have been interpreted in divergent fashions. On one hand, the First Amendment's free exercise clause has a long history of litigation that includes many wins for advocates of religious freedom. In the last decade, the US Supreme Court has consistently decided in favor of religious practice, including the exemption of ministers employed by religious institutions from the application of employment discrimination law.[2] However, Section 116 has been interpreted very narrowly in the few cases that have come before the High Court of Australia, and no religious freedom claims under this section have been successful.[3]

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[1] Dr Alex Deagon is Senior Lecturer in the School of Law, Queensland University of Technology. He has published extensively in the area of religious freedom, and his work has been cited extensively in Australian Commonwealth Parliament proceedings and committees. This article uses American English. Article submitted on 15 January 2021; accepted on 24 April 2021. Email: alex.deagon@qut.edu.au.

[2] John Witte, "Historical Foundations and Enduring Fundamentals of American Religious Freedom" (2020) 33 *Journal of the Society of Christian Ethics* 156-167.

[3] See Alex Deagon, "Liberal Assumptions in Section 116 Cases and Implications for Religious Freedom" (2018) 46(1) *Federal Law Review* 113-136.

This stark contrast in outcomes might seem surprising. Some differences may result from the constitutional context. The United States has a greater emphasis on individual rights (dating back to the inclusion of its Bill of Rights in the Constitution), which requires balancing of rights and enforcement through the judiciary to protect citizens.[4] However, Australia has little emphasis on individual rights and instead relies on the democratic and parliamentary process to protect individual citizens.[5] One possible effect of this difference is that the US has adopted a more expansive interpretation of the First Amendment to protect citizens from government, whereas Australia has a more narrow interpretation of freedom of religion that tends to defer to government.

However, this article proposes that secularism may also have had a significant influence on the respective interpretations of the free exercise clauses in the United States and Australia. I suggest that Section 116 jurisprudence may be undergirded by secular, liberal assumptions that are often unfriendly to or ignorant of religion, contributing to narrow interpretations of religious freedom.[6] First Amendment jurisprudence is more mixed in this regard, and the variation in the results of free exercise cases may depend on the varying influence of secular assumptions in those cases. As Torfs notes, "A more narrow definition of religious freedom … leads to a weaker protection of religious freedom, without suppressing or even questioning the principle of protection as such."[7] Thus, secular approaches to free exercise clauses that entail more narrow interpretations of free exercise (used here as a proxy for religious freedom) may produce results that fail to protect religious freedom in particular circumstances.

The next section of this article defines secularism as a viewpoint that treats religion as private in nature and assumes that it should not influence the public sphere. The third section examines free exercise jurisprudence under the First Amendment, observing that the second half of the twentieth century saw a narrowing of religious freedom protection due to the impact of secularist assumptions. However, more recently the scope of religious freedom has been expanding as the US Supreme Court has adopted interpretations of free exercise that reject secularist assumptions and are friendlier to religion. Section 4 identifies a contrasting phenomenon in Australian free exercise jurisprudence, indicating that members of the High Court

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4 See, e.g., Jeffrey Rosen, *The Most Democratic Branch: How the Courts Serve America* (Oxford University Press, 2006).

5 Carolyn Evans, "Religion as Politics Not Law: The Religion Clauses in the Australian Constitution" (2008) 36(3) *Religion, State and Society* 283, 284.

6 Deagon, "Liberal Assumptions" (n 3).

7 Rik Torfs, "The Internal Crisis of Religious Freedom" (2011) 4(2) *International Journal for Religious Freedom* 17, 18.

have adopted secular, liberal assumptions about religion, thereby contributing to a narrow interpretation of free exercise. Hence, I conclude that more secularist approaches to free exercise may facilitate narrower interpretations that undermine religious freedom.

2. Defining secularism

Many varieties of secularism exist across the world, and there is continuing contestation and change regarding the "secular."[8] The word is "notoriously shifty, sometimes used descriptively, sometimes predictively, sometimes prescriptively, sometimes ideologically, sometimes implying hostility to religion, sometimes carrying a neutral or positive connotation."[9] Hurd notes that "secularism refers to a public resettlement of the relationship between politics and religion" and that "the secular refers to the epistemic space carved out by the ideas and practices associated with such settlements."[10] Specifically, Norris and Inglehart consider secularism as entailing the "systematic erosion of religious practices, values and beliefs."[11] It includes the division of church and state in the form of the "modern secular democratic society."[12] Benson agrees, stating that the term "secular" has come to mean a realm that is "neutral" or "religion-free" and that "banishes religion from any practical place in culture."[13]

The traditional narrative of secularist theories in modern liberal Western democracies envisions a formal separation of church and state, whereby the secular identifies a sphere known as religious and distinguishes that (private) sphere from public institutions such as the state, politics, and law.[14] One version of this is the French "laicism," a separationist narrative that seeks to expel religion from politics.[15] The objective of laicism is to create a "neutral" public space in which religious beliefs and institutions lose their political significance and their voice in political debate, or exist purely in the private sphere. In this conception, "The mix-

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[8] Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations* (Princeton, 2007) 12.

[9] Daniel Philpott, "Has the Study of Global Politics found Religion?" (2009) 12 *Annual Review of Political Science* 183, 185.

[10] Hurd (n 8) 12-13.

[11] Pippa Norris and Ronald Inglehart, *Sacred and Secular: Religion and Politics Worldwide* (Cambridge, 2011) 5.

[12] Ibid 8, 10.

[13] Iain Benson, "Notes Towards a (Re)Definition of the 'Secular'" (2000) 33(3) *University of British Columbia Law Review* 519, 520.

[14] Hurd (n 8) 13-14; Carl Hallencreutz and David Westerlund, "Anti-Secularist Policies of Religion," in *Questioning the Secular State: The Worldwide Resurgence of Religion in Politics*, ed. David Westerlund (C. Hurst and Co, 1996), 3. See the account in Alex Deagon, "Secularism as a Religion? Questioning the Future of the 'Secular State'" (2017) 8 *Western Australian Jurist* 31, 46-49.

[15] Hurd (n 8) 5.

ing of religion and politics is regarded as irrational and dangerous."[16] This position entails two related assumptions: that religion is purely private in nature and that religion should be kept private and not have any influence in the public sphere.

For example, Thornton and Luker assert that religious belief is concerned only with interior life, "paradigmatically private and subjective," as opposed to law, which is "concerned only with the outward manifestation of a belief or prejudice."[17] Starting from these premises, Thornton and Luker lament, "Religious organisations have long held a relationship to the public sphere *qua* government through assertion of moral authority over issues of social significance."[18] Similarly, Audi contends that "just as we separate church and state institutionally, we should, in certain aspects of our thinking and public conduct, separate religion from law and public policy matters."[19]

This secular-liberal view involves, first, a strict distinction between the public and private realms. Second, and more importantly, if religion is separated from law and *public* policy, this by definition relegates religion solely to the *private* sphere. Sadurski explicitly adopts this conclusion, claiming that the "secular liberal state" should regard religion "as essentially a private matter."[20] Furthermore, "religious faith … can [only] coexist with a liberal order when kept in a private dimension of social interaction."[21]

Thus, the modern liberal state assumes that religion should be restricted to private belief and practice. The state should be secular in the sense that religion should not influence, support, or control public state power because religion is intrinsically private, thereby "separating the religious from the sphere of government action."[22] This claim reveals the limits on religious freedom that result from a secular approach. Under the liberal paradigm, religions are not free to advance their political views. An expanding regulatory state seeking to implement its vision of the good, combined with the assumption that religion is private or at least subservient to state interests, will lead to increasing state interference with religious belief or practice that conflicts with the state vision.[23] Steven Smith categorizes this narrow

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[16] Ibid.

[17] Margaret Thornton and Trish Luker, "The Spectral Ground: Religious Belief Discrimination" (2009) 9 *Macquarie Law Journal* 71, 72-73.

[18] Ibid 73.

[19] Robert Audi, "The Place of Religious Argument in a Free and Democratic Society" (1993) 30 *San Diego Law Review* 677, 691.

[20] Wojciech Sadurski, "Neutrality of Law Towards Religion" (1990) 12 *Sydney Law Review* 420, 421.

[21] Ibid 441-442.

[22] Reid Mortensen, "The Establishment Clause: A Search for Meaning" (2014) 33 *University of Queensland Law Journal* 109, 124; Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press, 2013 2nd ed) 17-18.

[23] This type of state interference already occurs; see Joshua J. Craddock, "The Case for Complicity-Based

view of religious freedom as private and subservient to the state as operating within a secular framework.[24]

This kind of liberal ideology also has implications for how courts interpret constitutional and legislative provisions concerning freedom of religion. For example, when interpreting the free exercise clause in Section 116 of the Australian Constitution, the High Court has unwittingly or uncritically adopted secularist assumptions that religion is merely private and cannot be protected in a public context. This stance has had the effect of expanding government power in relation to religion and virtually eliminating the capacity of Section 116 to protect religious freedom. As mentioned earlier, Section 116 has never been successfully litigated.[25] Conversely, free exercise jurisprudence in the US has granted many victories to religious freedom advocates. This contrast raises the question of the extent to which secularist principles have informed each country's jurisprudence.

3. Secularism and free exercise jurisprudence in the United States

The free exercise clause of the First Amendment applies to the US Congress, as well as states and to executive action.[26] Early jurisprudence took a strict approach under which religious autonomy was protected, but this did not prevent the passage of neutral laws that incidentally impacted religious practice.[27] This scope of protection of religion expanded in *Sherbert v. Verner*, in which the Supreme Court adopted the "strict scrutiny" test. The court stated that religious conduct must be accommodated except where government can show a compelling interest and no less burdensome means to achieve that interest.[28] For example, a member of the Seventh-Day Adventist Church could not be denied employment benefits after she was sacked for refusing to work Saturdays against the dictates of her conscience, when the employer could have easily accommodated her religious practice.

However, the Court narrowed this view again in *Employment Division v. Smith*, upholding a law against the use of peyote despite its importance as part of

Religious Accommodations" (2018) 12 *Tennessee Journal of Law and Public Policy* 233, 266.

[24] Steven Smith, "The Rise and Fall of Religious Freedom in Constitutional Discourse" (1991) 140(1) *University of Pennsylvania Law Review* 149, 149-150; Steven Smith, *Foreordained Failure: The Quest for a Constitutional Principle of Religious Freedom* (Oxford University Press, 1995) 36.

[25] See Deagon, "Liberal Assumptions" (n 3). Of course, Section 116 may have had an impact on legislators' development of subsequent laws, or even on how government programs have been administered. This is difficult to prove, but similar factors do not seem to have impacted the US jurisprudence.

[26] *Cantwell v. Connecticut* 20.310 U.S. 296, 303-304, 310 (1940); *Everson v. Board of Education* 21.330 U.S. 1, 16 (1947).

[27] See Ian Huyett, "How to Overturn Employment Division v. Smith: A Historical Approach" (2020) 32 *Regent University Law Review* 295, 298-312.

[28] 374 U.S. 398 (1963).

a religious ritual.[29] Leading up to this seminal case, the Court had already started demonstrating a tendency to use secularism to privatize religion protection in the First Amendment.[30] For example, Bradley argued prior to *Smith* that the Court was committed to articulating and enforcing a normative scheme that uses secularism to privatize religion.[31] After *Smith*, Gedicks affirmed, "The privileging of secular knowledge in public life as objective and the marginalizing of religious belief in private life as subjective has [sic] been a foundational premise of American jurisprudence under the Religion Clause of the First Amendment. Most of the Supreme Court's Religion Clause decisions reflect this elevation of the objective/secular over the subjective/religious."[32]

In *Employment Division v. Smith*, the Court concluded that a neutral law of general applicability cannot be invalidated by the free exercise clause, although the Court was clear that the government cannot discriminate specifically on the basis of religion or otherwise be hostile toward religion.[33] Individuals' religious beliefs do not excuse them from compliance with such a "neutral" law. The Court acknowledged that "leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in," but this is the "unavoidable consequence of democratic government" and "must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs."[34] The Court went even further, characterizing strict scrutiny of laws that constrain religious freedom as a "luxury" and refusing even to consider whether the prohibited conduct was central to the individual's religion in the context of assessing a compelling interest.[35] Hence, *Smith* "effectively announced the complete nullification of substantive free exercise rights," because as long as a law does not

[29] 494 U.S. 872 (1990).

[30] See Augusto Zimmermann and Daniel Weinberger, "Secularization by Law? The Establishment Clauses and Religion in the Public Square in Australia and the United States" (2012) 10 *International Journal of Constitutional Law* 208; Richard S. Myers, "The Supreme Court and the Privatization of Religion" (1991) 41 *Catholic University Law Review* 19.

[31] Gerard V. Bradley, "Dogmatomachy: A 'Privatization' Theory of the Religion Clause Cases" (1986) 30 *St Louis University Law Journal* 275, 276-277.

[32] Frederick Mark Gedicks, "Public Life and Hostility to Religion" (1992) 78 *Virginia Law Review* 671, 681-682.

[33] 494 U.S. 872 (1990).

[34] 110 S.Ct. 1600, 1606 (1990). See Michael McConnell, "Free Exercise Revisionism and the *Smith* Decision" (1990) 57 *University of Chicago Law Review* 1109, 1110.

[35] 110 S.Ct. 1604-1606 (1990). This was in the face of strong dissent by Justices O'Connor and Blackmun, who argued that religious liberty was an essential element of a free and pluralistic society rather than a "luxury."

specifically target a religious group, the free exercise clause places no restriction on what the government can do.[36]

The reasoning undergirding *Smith* was influenced by secular assumptions that religion is a purely private matter and not appropriate for protection in a public context. For example, Justice Scalia argued that the idea of religious liberty protects only "belief and opinions," i.e., private thoughts, rather than external practices.[37] The refusal to assess religious claims on their merits or to consider that they might justify an exemption to a public law also indicates an assumption that religion is purely private and subjective.[38] The *Smith* jurisprudence therefore creates an assumption of a stark contrast between private religion and public secularity that simply does not exist for many religious people.[39] This decision demonstrably resulted in a narrowing of religious freedom, most significantly because the state no longer needed to give reasons or demonstrate a compelling interest to justify a substantial burden.[40]

The Court has been expanding the doctrine again since *Smith*. In fact, since 2011, the last ten Supreme Court cases on religious freedom have been wins for religion.[41] For example, in *Trinity Lutheran* the Court held that there must be a compelling state interest to discriminate on the basis of religious status in the granting of generally available funding. Therefore, a state program that provided funding to secular schools for playground resurfacing but not to religious schools violated the clause.[42]

By stating that the denial of generally available benefits to religious entities on the basis of their religious character violates the free exercise clause, the Supreme Court has "eroded the liberal strict separation of church and state … and replaced it with greater tolerance for church-state cooperation."[43] This was a movement

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[36] Huyett (n 27) 295-296.

[37] *Smith*, 494 U.S. 872, 879 (1990); Huyett (n 27), 300.

[38] McConnell, "Free Exercise Revisionism" (n 34) 1110-1111. See also Alex Deagon, "The 'Religious Questions' Doctrine: Addressing (Secular) Judicial Incompetence" (2021) 47(1) *Monash University Law Review* (forthcoming), arguing that this secular "hands-off" approach can actually burden religious freedom.

[39] Angela Carmella, "A Theological Critique of Free Exercise Jurisprudence" (1992) 60 *George Washington Law Review* 782, 794-798.

[40] Ibid 782-783. This situation was ameliorated by the Religious Freedom Restoration Act, passed in response to *Smith* so as to restore the old *Sherbert* standard: Caroline Corbin, "US Religion Clause Jurisprudence" in Phil Zuckerman and John Shook, *The Oxford Handbook of Secularism* (Oxford University Press, 2017) 470.

[41] Witte (n 2) 156, 165. Witte counted eight cases at the time of his writing, and my number includes two more recent decisions, *Espinoza v. Montana Department of Revenue*, 140 S.Ct. 2246 (2020) and *Our Lady of Guadalupe School v. Agnes Morrissey-Berru*, 140 S.Ct. 2049 (2020).

[42] *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017).

[43] Angela Carmella, "Progressive Religion and Free Exercise Exemptions" (2020) 68 *Kansas Law Review* 535, 565-566.

from the secular "wall of separation" doctrine to a more religion-friendly "equal treatment" doctrine.[44] Similarly, a state scholarship program that provides public funds to allow students to attend private schools cannot discriminate against religious schools.[45] In other words, whereas a secularist approach to free exercise narrows religious freedom, a less secularist, more religion-friendly approach has the effect of expanding religious freedom in particular circumstances.

Furthermore, First Amendment protection for religious freedom is also significantly enhanced by the "ministerial exception." As explained by Carmella and Laycock, the ministerial exception provides a "sphere of autonomy" to protect religious decisions relating to ministers, doctrine, and management of institutions.[46] *Hosanna-Tabor* directly addressed the question of whether employment discrimination laws may constitutionally be applied to the employment of ministers.[47] The Court held that they could not, effectively granting decisions on ministerial employment an immunity or exception from the application of anti-discrimination laws:

> We agree that there is such a ministerial exception. The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.[48]

The establishment clause prevents the government from appointing ministers, and the free exercise clause prevents the government from interfering with the freedom of religious groups to select their own leaders.[49] Specifically, in *Hosanna-Tabor*, a church fired an employee for pursuing a legal claim against that church in contravention of 1 Corinthians 6, which prohibits Christians from pursuing secular legal action against one another. The church's decision to terminate the employee violated a law against

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[44] Richard Garnett and Jackson Blais, "Religious Freedom and Recycled Tires: The Meaning and Implications of Trinity Lutheran" (2016) *Cato Supreme Court Review* 105, 107.

[45] *Espinoza v. Montana Department of Revenue*, 140 S.Ct. 2246 (2020).

[46] Carmella, "Theological Critique" (n 39) 804. See also Douglas Laycock, "Towards a General Theory of the Religion Clauses: The Case of Church-Labor Relations and the Right to Church Autonomy" (1981) 81 *Columbia Law Review* 1373 (1981); Helen Alvare, "Beyond Moralism: A Critique and a Proposal for Catholic Institutional Religious Freedom" (2019) 19(1) *Connecticut Public Interest Law Journal* 149-198.

[47] *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S.Ct. 694 (2012). See Michael McConnell, "Reflections on *Hosanna-Tabor*" (2012) 35 *Harvard Journal of Law and Public Policy* 821, 822.

[48] *Hosanna-Tabor* at 705-706.

[49] Huyett (n 27), 332.

firing an employee for pursuing a legal action. Hence, this law was neutral and generally applicable, and yet the Court held that it violated the free exercise clause and so was invalid. "*Hosanna-Tabor* is therefore … direct in its contravention of *Smith*."[50]

Hosanna-Tabor demonstrates religion-friendly assumptions that are contrary to the secular assumptions in *Smith* in two senses. First, the Court considered the internal actions of churches to be not merely outward physical acts, but decisions essential to the faith and mission of the church, and thus part of free exercise and beyond challenge by supposedly neutral laws such as those governing employment discrimination. Second, in doing so, the Court engaged deeply with the theological implications of church governance, resulting in a broad interpretation of actions that are essential to the free exercise of religion for religious institutions.[51] McConnell finds in this decision a shift in free exercise jurisprudence from a focus on individual believers to an emphasis on the autonomy of organized religious institutions. Rather than a restrictive secular-liberal (private) view of religion as "essentially a matter between individuals and their God," *Hosanna-Tabor* endorsed "the idea that religious exercise must be rooted in the teachings of a faith community."[52] This move adopts a broadly community-focused and associational view of religion, accepting the substantive theological view that the religious group itself, not the state, should determine who is a minister and the scope of that role.[53]

Hence, the most recent decision on the ministerial exception affirmed the doctrine and clarified that the determination of a minister must be based on an evaluation of the religious function the position serves in the organization as explained by the organization, a question of fact rather than the application of strict rules.[54] As a result of these religion-friendly assumptions undergirding free exercise jurisprudence, the Court has endorsed a broad and generous protection of religious freedom, rather than the narrower protection of religious freedom that resulted from the secular assumptions undergirding the *Smith*-era decisions.

4. Secularism and free exercise jurisprudence in Australia

However, the free exercise clause in Section 116 of the Australian Constitution has been interpreted narrowly on a consistent basis. Section 116 is subject to a number of intrinsic limitations.[55] First, it applies only to laws rather than to general execu-

[50] Ibid 329.

[51] Ibid 332-333, 340; McConnell, "Reflections" (n 47) 834; Alvare (n 46) 192. See also generally Douglas Laycock, "*Hosanna-Tabor* and the Ministerial Exception" (2012) 35 *Harvard Journal of Law and Public Policy* 839.

[52] McConnell, "Reflections" (n 47) 836-837.

[53] See Alvare (n 46).

[54] *Our Lady of Guadalupe School v. Agnes Morrissey-Berru*, 140 S.Ct. 2049 (2020).

[55] See Nicholas Aroney, "Freedom of Religion as an Associational Right" (2014) 33 *University of Queens-*

tive or personal action.[56] This means that Section 116 is not an individual right but a limit on legislative power.[57] Second, it governs only Commonwealth laws and does not apply to the states.[58] Finally, the High Court of Australia has interpreted Section 116 in a very strict and limited manner. Its definition of the scope of religious freedom has been very narrow, as documented in a number of cases involving Section 116.[59] This narrow interpretation is undergirded by a stark distinction between private religious practice, which is seen as free exercise of religion, and public practice, which is not considered as falling within the free exercise of religion. This distinction is based on the liberal assumption that religion is a purely personal matter belonging in the private sphere.[60]

Notably, the High Court has not consistently adopted such secular-liberal assumptions in other contexts. For example, it has held that the establishment clause does not prevent public funding of religious schools, and that Section 116 does not prevent the public funding of school chaplains.[61] The High Court has also held that

land Law Journal 153, 155-156.

[56] *Minister for Immigration and Ethnic Affairs v Lebanese Moslem Association* (1987) 17 FCR 373.

[57] *Attorney-General (Vic); Ex rel Black v Commonwealth (DOGS Case)* (1981) 146 CLR 559, 605 (Stephen J).

[58] *Grace Bible Church v Reedman* (1984) 36 SASR 376.

[59] For the case law, see in particular *Krygger v Williams* (1912) 15 CLR 366, 369; *Adelaide Company of Jehovah's Witnesses Inc v Commonwealth* (1943) 67 CLR 116, 149-150; *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120, 135-136. See also Carolyn Evans, "Religion as Politics not Law: the Religion Clauses in the Australian Constitution" (2008) 36(3) *Religion, State and Society* 283, 284; Reid Mortensen, "The Unfinished Experiment: A Report on Religious Freedom in Australia" (2007) 21 *Emory International Law Review* 167, 170-171; Alex Deagon, "Defining the Interface of Freedom and Discrimination: Exercising Religion, Democracy and Same-Sex Marriage" (2017) 20 *International Trade and Business Law Review* 239; Paul Babie, "National Security and the Free Exercise Guarantee of Section 116: Time for a Judicial Interpretive Update" (2017) 45(3) *Federal Law Review* 351; Renae Barker, *State and Religion: The Australian Story* (Routledge, 2018); Luke Beck, *Religious Freedom and the Australian Constitution: Origins and Future* (Routledge, 2018); Alex Deagon and Benjamin Saunders, "Principles, Pragmatism and Power: Another Look at the Historical Context of Section 116" (2020) 43(3) *Melbourne University Law Review* 1033; Nicholas Aroney and Paul Taylor, "The Politics of Freedom of Religion in Australia: Can International Human Rights Standards Point the Way Forward?" (2020) 47(1) *UWA Law Review* 42, 45; Neil Foster, "Protection of Religious Freedom under Australia's Amended Marriage Law: Constitutional and Other Issues," in Brett Scharffs, Paul Babie and Neville Rochow (eds.), *Freedom of Religion or Belief: Creating the Constitutional Space for Fundamental Freedoms* (Edward Elgar, 2020).

[60] See Deagon, "Liberal Assumptions" (n 3).

[61] See *Attorney-General (Vic); Ex rel Black v Commonwealth* (1981) 146 CLR 559 ('*DOGS*'); *Williams v Commonwealth (No. 1)* (2012) 248 CLR 156. In *DOGS*, Justice Murphy (in dissent) would have given both the free exercise and establishment clauses broad interpretations in line with US First Amendment jurisprudence (see 622-632). Elsewhere, I show how Justice Murphy's interpretation is still grounded in secular-liberal assumptions and suggest that it could facilitate a more expansive state that regulates public religion more aggressively, actually undermining religious freedom. See Deagon, "Liberal Assumptions" (n 3) 133-135.

religious speech can be political communication in some contexts.[62] However, this article merely proposes a theory in relation to the free exercise clause specifically. Comprehensive examination of the applicability of this theory more broadly, incorporating a detailed analysis of judicial attitudes and what the High Court has done in these different religion-related areas, is a larger project beyond the scope of this short article. I will turn, then, to the substance of my theory.

In the first case considering the free exercise clause, the High Court glibly dismissed a claim that Commonwealth legislation infringed upon free exercise of religion by compelling a person who was a pacifist for religious reasons to engage in military training. According to Chief Justice Griffith in the 1912 case of *Krygger v Williams*, Section 116 protects religious opinion or the private holding of faith, and it also protects "the practice of religion – the doing of acts which are done in the practice of religion."[63] However, "to require a man to do a thing which has nothing at all to do with religion is not prohibiting him from a free exercise of religion."[64] On this view, Section 116 protects private, overtly religious conduct such as prayer or attending church, but not the performance of or abstention from public and political acts that are ostensibly separate from religious beliefs. Chief Justice Griffith effectively assumed that publicly expressed action based on religious belief has "nothing at all to do with religion," thereby enforcing a divide between the public and private realms. Religion in his view falls strictly within the private realm, and where the public manifestation of religion conflicts with Commonwealth law, it is not protected by Section 116.[65]

In *Jehovah's Witnesses*, Chief Justice Latham stated that since the free exercise of religion is protected, this includes but extends beyond the mere holding of religious opinion; the protection "from the operation of any Commonwealth laws" covers "acts which are done in the exercise of religion" or "acts done in pursuance of religious belief as part of religion."[66] This view, at least, acknowledges that the free exercise of religion is not restricted to belief, but also includes some external action. A potential corollary would be a broader interpretation of free exercise

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[62] See, e.g., *Attorney-General (SA) v Corporation of the City of Adelaide* (2013) 249 CLR 1, 20-25 (French CJ).

[63] (1912) 15 CLR 366, 369.

[64] *Krygger* (1912) 15 CLR 366, 369.

[65] See also Joshua Puls, "The Wall of Separation: Section 116, the First Amendment and Constitutional Religious Guarantees" (1998) 26 *Federal Law Review* 139, 142: "Religion began and ended at the church door."

[66] *Adelaide Company of Jehovah's Witnesses v Commonwealth* (1943) 67 CLR 116, 124-125 (Latham CJ). For further discussion and questions regarding the current applicability of this "action-belief dichotomy," see Gabriel Moens, "Action-Belief Dichotomy and Freedom of Religion" (1989) 12 *Sydney Law Review* 195.

according to which, if a law has the effect of restricting external religious action (even if it does not directly target such action), the law could breach the clause.[67] However, the interpretation was clarified by Acting Chief Justice Mason and Justice Brennan in *Church of the New Faith v Commissioner of Pay-Roll Tax*, where they approvingly quoted from Justice McTiernan in *Jehovah's Witnesses*: "The word religion extends to faith and worship, to the teaching and propagation of religion, and to the practices and observances of religion."[68] This includes conduct which is or is the equivalent of worship, prayer, church attendance and proselytization. They cautioned that such conduct must occur in the context of "giving effect" to a person's "particular faith in the supernatural" (it must have a religious motivation), and that such conduct is not unrestricted (it will not be protected if it offends against "neutral" laws, or ordinary laws that do not discriminate against religion). This assumes a narrow definition that restricts free exercise to those acts or conduct that are overtly religious and normally considered private in nature, such as prayer and church attendance. As noted above, if this conduct is public and conflicts with ordinary Commonwealth law, it will not be protected by Section 116.[69]

For example, in *Jehovah's Witnesses*, although Chief Justice Latham acknowledged that religion and politics can and do interact (which could in principle form the basis for an interpretation of free exercise that would extend to the protection of public and political acts), he observed that "Section 116 … is based upon the principle that religion should, for political purposes, be regarded as irrelevant" to matters of public policy.[70] This apparent separation between politics and religion mirrors the liberal idea that religion is a purely private matter. Indeed, Mortensen contends that this specific statement by Chief Justice Latham "reflects, of course, the central idea of a secular commonwealth" and that Latham was "deeply influenced by liberal political philosophy."[71] Blackshield agrees, stating that Latham's decision in *Jehovah's Witnesses* was "a reflection of the curious personal characteristics which had shaped his political career: a combination of intellectual liberalism with political authoritarianism."[72] In *Jehovah's Witnesses*, on the basis of Section 116 alone, even though the group's right to meet was recognized, the organization

[67] See, e.g., Luke Beck, "The Case against Improper Purpose as the Touchstone for Invalidity under Section 116 of the Australian Constitution" (2016) 44(3) *Federal Law Review* 505-529; Deagon, "Defining the Interface" (n 59); Deagon, "Liberal Assumptions" (n 3).

[68] (1983) 154 CLR 120, 135-136.

[69] Deagon, "Defining the Interface" (n 59) 246.

[70] *Jehovah's Witnesses* (1943) 67 CLR 116, 126.

[71] Reid Mortensen, *The Secular Commonwealth: Constitutional Government, Law and Religion* (PhD Thesis, University of Queensland, 1995) 194.

[72] Tony Blackshield, "Religion and Australian Constitutional Law" in Peter Radan et al. (eds), *Law and Religion* (Routledge, 2005) 89.

would still have been dissolved and its meetings prevented because the organization and its doctrines were viewed as subversive, according to the determination of the Commonwealth government. Though the factual circumstances of the case are fairly extreme (alleged subversion of the war effort during a world war), the principle underlying the decision is that religious freedom may be limited to preserve social order, and that furthermore the government is entitled to determine what is required to preserve social order.[73] The decision therefore evinces a narrow approach based on assumptions that prioritize the public Commonwealth agenda over the private exercise of religion, particularly if that exercise spills over to the public domain and is deemed to be in some way subversive of the authority of the state. The approach clearly expresses a narrow interpretation of religion with a preference for permitting only domesticated or "civil" religion that remains strictly within the control of the state.[74] Thus, Chief Justice Latham's adherence to secular-liberal assumptions that separate religion from politics (in conjunction with the concomitant, politically liberal, authoritarian view that religion is a private matter subject to state restriction) may have influenced his decision that the regulations did not breach the free exercise clause.

The last time the High Court considered the free exercise clause was the 1997 case of *Kruger v Commonwealth*.[75] In *Kruger*, the plaintiffs argued that a Northern Territory ordinance that authorized the forced removal of Indigenous children from their tribal culture and heritage was invalid because this law prohibited the free exercise of religion. The majority held that the impugned law did not mention the term "religion" and was not for the purpose of prohibiting the free exercise of religion, so the law was upheld. Only laws could breach Section 116, not the administration of laws. Chief Justice Brennan and Justices Gummow and McHugh (in separate majority judgments) reinforced the prevailing narrow approach, stating that to be invalid under Section 116 the impugned law "must have the purpose of achieving an object which s 116 forbids," and upholding the law on the basis that "no conduct of a religious nature was proscribed or sought to be regulated in any way."[76]

Thus, according to the High Court, legislation that in effect prevented Indigenous Australians from practicing the culture and values related to their religion did not violate Section 116.[77] Only Justice Gaudron was prepared to grant that the empowering

[73] See Deagon, Liberal Assumptions (n 3) 118-119.
[74] Ahdar and Leigh, (n 22) 17-18.
[75] (1997) 190 CLR 1.
[76] *Kruger* (1997) 190 CLR 1, 40, 161.
[77] Valerie Kerruish, "Responding to *Kruger*: The Constitutionality of Genocide" (1998) 11(1) *Australian Feminist Law Journal* 65, 67-68.

legislation "prevented certain people from freely exercising their aboriginal religious practices in association with other members of their community."[78] The majority rejected this claim on the basis that the legislation did not explicitly or purposefully target the free exercise of religion, even if they acknowledged (as Justice Gummow did) that a potential effect of the legislation was to deny "instruction in the religious beliefs of their community."[79] The law did not address the explicit infringement of religion in the private realm, but rather was an incidental outcome of public policy. More precisely, in the majority's view, because the law did not specifically target the private practice of religion and any restriction on religious freedom was instead an effect of a religiously neutral public policy, the law by its nature could not infringe the free exercise clause. This view assumes the earlier public-private divide adopted by Chief Justice Griffith, according to which free exercise is protected only in the private realm and any conflict between free exercise and Commonwealth public policy is resolved in favour of the Commonwealth. In essence, the High Court has posited a sharp distinction between private activity that is religious in nature and public exercise (which is never religious in nature), and this assumption may have informed their interpretation of the cases considering the free exercise clause. Section 116 only protects private exercise, not public acts in conflict with Commonwealth policy.

In *Church of the New Faith*, Justices Mason and Brennan stated that "general laws to preserve and protect society are not defeated by a plea of religious obligation to breach them."[80] That is, religiously neutral laws that pursue a public policy to preserve the community will not be subject to the free exercise clause, even though they might restrict religious freedom. Based on these liberal assumptions, the current High Court position is that the enforcement of generally applicable laws intended for the maintenance of society cannot be blocked by the free exercise clause unless the laws have the specific objective of restricting the free exercise of religion in the private realm. This approach has resulted in a narrow view of free exercise and substantial restriction of religious freedom.

5. Conclusion: Secularism and religious freedom in free exercise jurisprudence

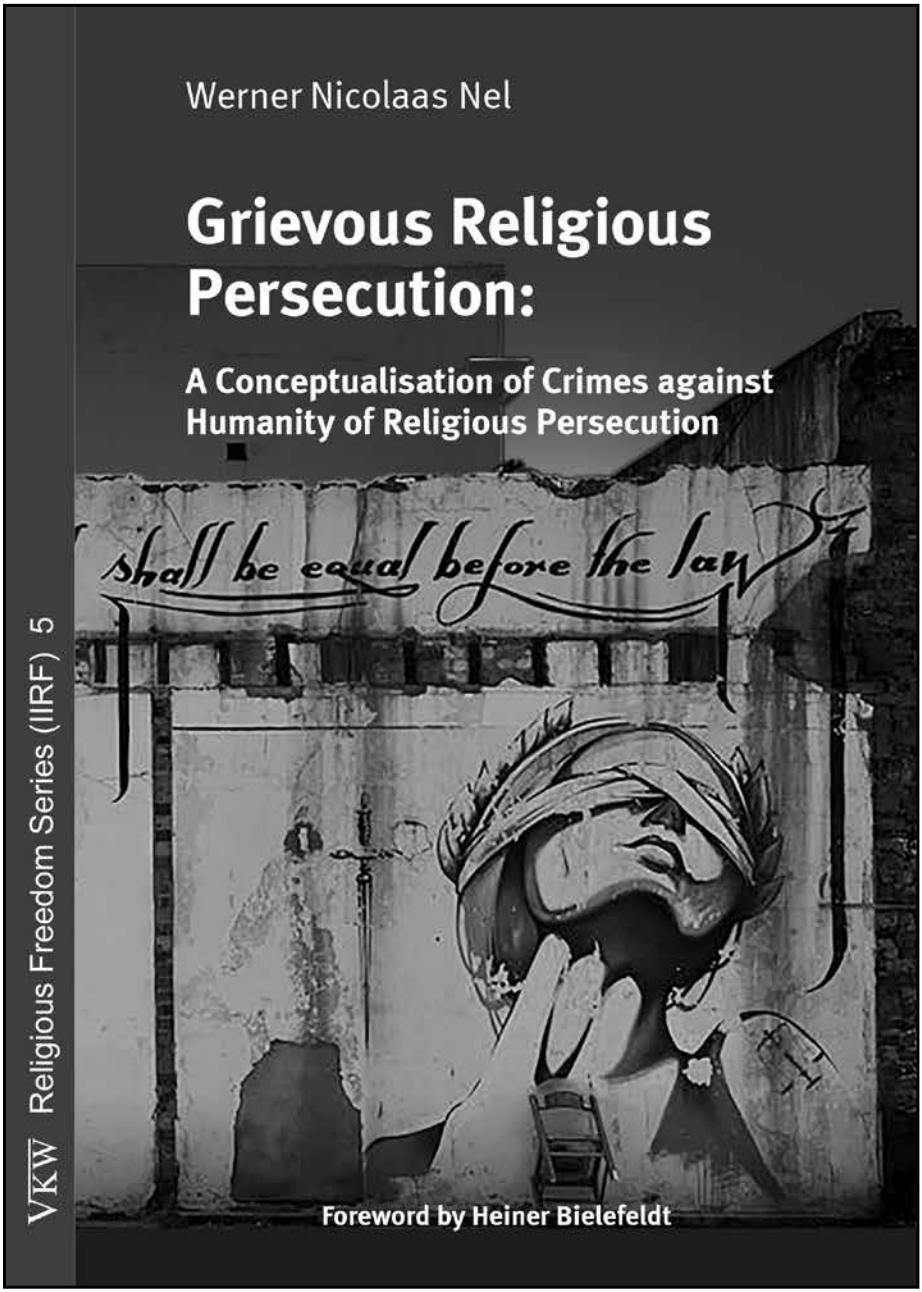
This article has proposed that secularism has influenced free exercise jurisprudence in different ways in the United States and Australia. In particular, where a

[78] Sarah Joseph, "*Kruger v Commonwealth*: Constitutional Rights and Stolen Generations" (1998) 24 *Monash University Law Review* 486, 496.

[79] *Kruger* (1997) 190 CLR 1, 161.

[80] *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120, 136. Though it should be noted that this case was not centrally concerned with the free exercise clause and the remarks were *obiter*.

strict secularist approach that views religion as private in nature and separate from the public sphere has prevailed, the scope of free exercise has been interpreted narrowly. As a result, religious freedom has been significantly limited in particular circumstances. This consequence is apparent in Australia, where a narrow approach to free exercise is relevant to the fact that the clause has never been successfully litigated, and was seen in the United States during the *Smith* era, when a law was valid as long as it did not specifically target religion, even if its effect imposed a substantial burden on religion. Conversely, free exercise decisions in the United States during the past decade have relied on assumptions more amenable to religion, resulting in consistent success for religious freedom advocates. Therefore, more secularist approaches to the free exercise clauses may contribute to narrower interpretations that undermine religious freedom, whereas more religion-friendly approaches may lead to broader interpretations which bolster religious freedom. Advocates for religious freedom may wish to concentrate on persuading courts to reject secularist approaches that categorize religion as merely private and instead to support a broader approach to free exercise that recognizes the public and holistic nature of religion.



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A response to the political argument against religious conscience

Barry W. Bussey[1]

Abstract

In response to scholars who argue that religious conscience should not be accommodated if it is deemed "political," this paper argues that individuals who seek accommodation are in fact adopting a personal, deeply moral stance rather than a political one. To reject the conscientiously held positions of individuals such as civil marriage commissioners is to run counter to what we have long understood liberal democracy to affirm with regard to accommodating conscientious objectors. Such a rejection excludes these persons from full participation and represents a failure to treat them as dignified citizens with equal value in society.

Keywords accommodation, marriage commissioners, religious freedom, secularization.

1. Introduction

Taking a stance that is emblematic of modern secularized societies, Richard Moon (2018) argues that accommodation of conscience or religious belief ought not to extend to accommodating those practices which, in his view, call into question the law and the civil rights of others. Rather than characterizing such practices as conscientious, he describes them as political in nature and therefore not worthy of accommodation. However, if the secular state can determine which conscientious beliefs are "political," it can undermine the ability of religious adherents to follow their consciences. Rather, religious adherents should be able to determine their own beliefs and practices.

Moon uses the example of the conscientious objections claim made by marriage commissioners who decline to perform same-sex marriages. Moon characterizes their claim as a political statement against the newly acquired civil right of same-sex partners to be married, and not as a matter of personal conviction. Rejecting the nexus with deeply held religious or conscientious beliefs in this case allows Moon to argue that such a claim is not worthy of accommodation.

[1] Barry W. Bussey (1965) is President and CEO, First Freedoms Foundation and Adjunct Associate Professor at the University of Notre Dame Australia (Sydney). He thanks Amy Ross for her assistance in revising this paper for publication. This paper uses American spelling. Article received: 3 February 2021; accepted: 10 September 2021. Email: bbussey@firstfreedoms.ca. Follow his author's page: https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1667202.

This paper explains why I disagree with Moon's characterization and why it poses a significant threat to the exercise of religious conscience. Although Moon has sought to justify his argument in superficially liberal terms, I contend that his position is ultimately illiberal and undemocratic and violates freedom of religion or belief.

Moon's arguments are paradigmatic of a new orthodoxy in the secular West. In the area of sexual ethics, he dismisses conscientious objections to the newly acquired civil right to same-sex marriage on the basis of the presumed moral rightness of the law. His argument rests on two underlying assumptions: (a) upon the passage of a law in a liberal democracy, there can be no further challenge to the law; and (b) a free and democratic society cannot ever be said to have made an immoral law. In other words, if something is legal, it is moral and unassailable. Those two propositions are not persuasive, and they certainly do not preclude accommodation of conscientious objectors.

Moon's position is superficially attractive because of his use of liberal democratic terms, including individual freedom. The pursuit of individual freedom is the identifiable marker of democracy. Herein lies the genius of the modern nation-state that rejects the whimsical execution of power by authoritarian regimes. Rule of law, popular sovereignty, and representative government are all indicators of the emphasis on individual freedom that has made modern democracies the freest jurisdictions of the world.

At first glance, Moon's position appears to advance this ideal of democratic liberty, yet his argument is unsustainable upon closer examination. To reject the conscientiously held positions of individuals who hold minority religious views and often belong to minority religious groups is to run counter to what we have long understood liberal democracy to affirm. Liberal democracies, in their most "liberal" manifestation of freedom, support the right of people to live in accordance with their conscientiously held beliefs. Nevertheless, Moon presupposes that same-sex marriage is fundamentally an issue of equality that is morally unassailable and that no conscientious position to the contrary is worthy of accommodation. His is the current normative position in Canada.

In short, the normative moral presuppositions on same-sex marriage are at the heart of this debate. Could it be that marriage commissioners who object to performing same-sex marriages are not carrying out a political act but are simply adhering to a different moral perspective than those who support the liberalization of the concept of marriage? Is it not the liberal tradition to allow room for reasonable people to disagree on this and other moral issues?

2. The essence of conscientious objection

For the purposes of this paper, the term "conscientious objector" refers to a person who strives to maintain faith with her or his personal convictions. This conception

reflects a philosophical and historical understanding of conscience that has come to inform our notion of freedom within a liberal society.

Every human being must wrestle with four fundamental questions: Where did I come from? Where am I going? Why am I here? What must I do to fulfill my purpose? The answers to these probing questions – whether they involve or reject the transcendent – can be reached only through a process of deep reflection on what it means to be human. Observing that similar questions on the nature and purpose of life can be found in a variety of cultures and religious traditions, Pope John Paul II (1998) noted that these fundamental questions "have their common source in the quest for meaning which has always compelled the human heart. In fact, the answer given to these questions decides the direction which people seek to give to their lives."

Historically, free and democratic countries, through much trial and error, have concluded that society is best served when each citizen has the liberty to determine the answers to these fundamental questions and the ability to live accordingly.[2] The individual – not the state – determines how best to live a fulfilling life. As former Chief Justice Brian Dickson of the Supreme Court of Canada pointed out, "An emphasis on individual conscience and individual judgment also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government" (*R. v. Big M Drug Mart* 1985: para. 122).

The very core of individual conscience, then, entails living one's life in congruence with the truth of those personal decisions made regardless of majority opinion. Failure to do so can be costly. As Brian Bird (2019:14) argues, conscience "enables individuals to lead lives that are coherent narratives – and the stakes can be high when that freedom is jeopardized." He further explains, "A person who violates her conscience injures her integrity and identity, and suffers harm. The experience of betraying our moral commitments … can cause psychological harm, erode one's sense of self-worth, and injure dignity" (18).

According to Martin van Creveld (2015:7), "Conscience should not be confused with morality: that is, the ability to distinguish between good and evil. Rather, it is that part of the human soul, built-in or acquired, that makes us behave and act on the basis of that distinction." Creveld's definition presumes that the individual has a clear understanding of what is morally appropriate. The individual's internal compass, the conscience, then directs him or her to pursue the right course. Failure to carry out this internal directive has huge costs that often outweigh the violation of the conscience, even where the external repercussions for dissent are likewise costly.

[2] See, e.g., Article 18 of the *International Covenant on Civil and Political Rights* (1966).

Paul Strohm (2011:1) observes, "Conscience lives in time and its most prepossessing trait is a capacity for constant self-modification and adaption to new circumstances, a limitless responsiveness to new and urgent conditions of relevance." Each generation presents new problems for citizens as they navigate the moral context, from worshipping the Roman emperor to taking up arms. For some, these do not even register as dilemmas; for others, these issues may provoke an intense personal conflict between social pressures and spiritual imperatives.

2.1 Conscience before modernity

The idea of conscience was discussed extensively by the ancient Greeks and Romans.[3] The word itself is rooted in the Latin *conscientia* – that is, knowledge (scientia) held together with (con) or in common with others (Strom 2011:10). Rome's great politician, Cicero, ascribed to Epicurus the idea that conscience causes us to be watched, thereby averting wrongdoing and directing us to do right (Sorabji 2014:24).

Later, St. Augustine of Hippo developed the Apostle Paul's teaching in Romans 2:14-16 that God's law is written on human hearts. In his *Confessions*, Augustine warned his friend Maximin not to fear the censure or power of "any man," but to recognize that what is deemed an honour in this world will ultimately be assessed at the judgment seat of Christ (Schaff 2004:243). Ancient authority, therefore, holds firm the proposition that a person convicted by conscience is not swayed by majority opinion.

Although the medieval Church attempted to dictate the consciences of adherents, some contended for the right of individuals to make decisions based on their own search for truth as found in the Scriptures. For instance, John Wyclif in the fourteenth century argued that individual Christians should be free to determine their own consciences independent of the Church, "[f]or each one shall bear his own load" (Galatians 6:5, NKJV; see Strohm 2011:16).

Martin Luther epitomized this shift. He believed that conscience, tempered by Scripture and the Holy Spirit speaking to the heart, directed the individual. When summoned to the Diet of Worms in 1521 and ordered to recant his criticisms of the Church, Luther insisted, "My conscience is bound in the word of God: I can not and will not recant any thing, since it is unsafe and dangerous to do any thing against the conscience" (Schaff 1995 [1910]:304-305).

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[3] Sorabji (2014:36) identifies eight attributes of moral conscience that have "remained comparatively stable" for two thousand years. They include personal self-awareness, retrospective and prospective functions, secular as well as religious dimensions, and a conception of conscience as "very much concerned with what was or would be wrong for the *particular* individual in a *particular* context."

Erasmus, in opposition to Luther, saw conscience as "an inborn faculty of rational choice among competing alternatives" (Strom 2011:25). By contrast, Luther's individualistic view of conscience had the Holy Spirit writing on the human heart "not doubts or mere opinions" but "assertions more sure and certain than life itself and all experience" (Strom 2011:25). It was Luther's individual conscience, so guided by the Holy Spirit, that undergirded the political and social developments of the Reformation. However, a conscience determined solely by the individual, whether innate, as Erasmus supposed, or guided by the Holy Spirit, as Luther argued, could nevertheless be manipulated to side with sinful self-interest of the individual rather than truth.

2.2 Bonhoeffer and conscience

Continuing this line of thought in the twentieth century, Dietrich Bonhoeffer, a Lutheran pastor in Germany, was driven by his conscience to resist the Nazi regime during World War II. While imprisoned in 1944, he wrote his well-known poem "Stations on the Way to Freedom" (2009:512-513). In the second stanza, he urged readers to "boldly reach for the real," since "in action alone is found freedom." Bonhoeffer's internal compass required disciplined action in "seeking the right thing." He "[d]ared to quit anxious faltering and enter the storm of events" by standing firm in his faith (2009:512-513). Today, many would say that Bonhoeffer was on the right side of history for courageously opposing the atrocities of Nazi Germany. However, that was not his perspective or goal. Rather, he was true to his conscientious conviction that he must follow "God's good commandments, / then true freedom will come and embrace your spirit, rejoicing" (2009:512-513).

Bonhoeffer (2009:40) stated, "The man of conscience has no one but himself when resisting the superior might of predicaments that demand a decision." He realized that more than conscience is required to enable a person to do the right thing. The prerequisite is to know right from wrong; as van Creveld noted, conscience is distinct from morality. The person who stands firm, said Bonhoeffer, is the one who is prepared to sacrifice everything else "when, in faith and in relationship to God alone, he is called to obedient and responsible action. Such a person is the responsible one, whose life is to be nothing but a response to God's question and call" (40).

Bonhoeffer presupposes that the conscientious objector is concerned with his or her own personal conscience, not the opinions of others. The objector is committed to doing the right thing *despite* the political climate and outcome. No amount of political manipulation changes the resolve of such people. It is a matter of being faithful to the truth they live by. They do not seek to align their consciences with the ideological perspective of the majority but, rather, to live in accordance with their principles.

2.3 Civil servants and conscientious objection

The image of civil servants who stand their moral ground in the face of government infringement of their consciences is not a new or foreign concept (Mueller 2019:462-463). Religious conscience continues to play an important role in giving the civil servant the strength to stand firm. For example, when Jesselyn Radack, a lawyer at the U.S. Department of Justice advising on ethics and professional responsibility, observed malfeasance within the department and spoke out against it, she was vilified by the government. However, she remembered her bat mitzvah at age 13, at which she heard the admonition, "*Lo ti'eh aharay rabim*" ("Thou shalt not follow a multitude to do evil"). Tom Mueller (2019:488) recounts:

> This verse warns not to follow the majority of the people blindly for evil purposes, especially to disrupt justice," she had told the congregation that day. "I hope that I will always be able to make the right decisions about my actions." Seventeen years later, she decided to live by these words. "Jewish teachings were always there in the deep recesses of my mind," she says today. "I'm not sure how much they guided my choices, and how much they simply affirmed what I had already decided to do.

This determination to make the right decisions – which may be admired or berated depending on how the dissenting position lines up with current secular opinions – reveals the strength of conscience, which takes precedence over every external pressure to conform.

3. Moon's argument

Moon suggests a methodology to be used in evaluating whether to accommodate a particular claim of conscientious objection. This involves evaluating "the proximity of the act … which the conscientious objector refuses to perform, to the act … which he/she believes is immoral in itself" (2018:275). According to Moon, "The more remote the act (required of the objector) is from the necessarily 'immoral act' the more likely it is that the courts will view the objector's refusal as a statement about how others should act or the morality of the law (that recognises same-sex marriage), rather than simply as an expression of personal conscience" (2018:275).

Moon argues that the state cannot be neutral on civic matters such as homelessness, same-sex marriage, and reproductive rights. Religious beliefs on these issues can be neither excluded nor insulated from political decision-making. In Moon's assessment, "If the state prohibits discrimination against gays [and] lesbians in the provision of public or market services (rejecting the view that same-sex relationships are immoral), an individual who disagrees with the law has no constitutional right to be exempted from the prohibition" (2018:276).

The state is neutral, says Moon, regarding beliefs or practices that are "spiritual" – that is, "personal to the individual or internal to the spiritual community" (2018:276). However, beliefs that play a role in political decision making qualify as civic or public and can be restricted by law (2018:276). This distinction between personal or spiritual views on one hand and public or civic views on the other raises the question "whether the objection should be viewed as an expression of personal conscience or instead as a position on a civic issue (on the morality of the actions of others)" (2018:276).

Moon therefore posits that the conscientious objections of marriage commissioners to performing same-sex civil marriages should not be accommodated because these objections "rest on a belief not about how the claimant should live his/her personal life but instead on how others in the community should act and what the law should say" (2018:276). Persons holding such positions are "legally required to facilitate the 'immoral' act of another only because they occupy a particular civic position or exercise a form of public power. In their private lives, they may decide whether or not they wish to enter or support a same-sex marriage or relationship; but in their civic role they must act in accordance with their public duties" (2018:276).

Moon observes that Canadian courts have accommodated spiritual practices concerning dress, diet, and holidays "if this can be done without significant costs to public policy or to the interests of others" (2018:279). These accommodations are due to the pragmatic concern that minority religions not be marginalized. The justification is to prevent social conflict when adherents of minority religions express their cultural identity. But such accommodation "can never be more than minor or marginal" since it does not have large civic interests at stake (2018:279).

Moon argues that courts "have not, and should not" accommodate beliefs and practices that "address civic concerns – the rights and interests of others in the community" (2018:280). Though religious, these beliefs are "political positions that are subject to the give-and-take of ordinary democratic decision-making" (2018:280). Courts require states to make minor compromises at the margins of the law but do not exempt a belief or practice contrary to public norms. Hence, there is no "constitutional claim [for a marriage commissioner] to be exempted from his/her public duties under non-discrimination law" (2018:282).

Therefore, Moon understands the courts' role to be to determine whether the individual's objection to performing an act is an expression of personal conscience with only a minimal impact on public policy. If it is, then it should be accommodated. But if the court finds that the objection is a political or civic position about the actions of others or the merits of the law, then "that falls outside the scope of religious freedom" (2018:282) and should not be accommodated.

4. Objections to Moon's assessment of conscience

Moon's astute and careful scholarship in law and religion is comprehensive and has had a profound impact in the development of Canadian law, as evidenced by the citations of his work by the courts, including the Supreme Court of Canada (SCC).[4] His scholarship has closely followed and favoured the advancement of human rights in relation to sexual orientation and gender identity. He, along with others, advocated for an expanded definition of marriage and a curtailment of the perceived bias in the law toward traditional marriage in favor of a more progressive view of marriage. Given his focus on human rights, it is inexplicable that Moon argues so strenuously against freedom of conscience and religion.

4.1 Failure to appreciate the current context

The definition of marriage was changed in Canada through a series of court cases between 2000 and 2005. In 2005, the Canadian Parliament passed the Civil Marriage Act, changing the definition of marriage from "between a man and a woman" to "between two persons." The Act includes several protections for religious freedom: a preamble stating that holding diverse views on marriage is "not against the public interest," a statement that clergy are not required to solemnize a marriage contrary to their religious beliefs, and a guarantee that federal government benefits will not be withdrawn on the basis of diverse views of marriage.

Despite the protections contained in the Civil Marriage Act, the expanded definition of marriage has made it increasingly difficult for religious individuals and organizations who maintain traditional views of marriage and sexuality to practice their beliefs as societal disapproval grows. In other words, their conscientiously held beliefs on marriage are now subject to intense secular scrutiny. This trend is evident in both political and legal settings. For instance, the federal government denied Canada Summer Jobs grants to religious organizations that held the traditional definition of marriage (Bussey 2019a; see also *Redeemer University College v. Canada (Employment, Workforce Development and Labour)* 2021). Similarly, Trinity Western University was denied approval to establish a law school because the SCC held that the law societies were entitled to impose their own moral view of marriage on TWU. The court issued this decision despite the fact that, as a private religious university, TWU was exempt from human rights law (in other words, provincial legislation accommodated its religious practices) and even though TWU had won a similar case dealing with its education degree program seventeen years

[4] See, e.g., *S. L. v. Commission scolaire des Chênes* 2012: para. 30; *Mouvement laïque québécois v. Saguenay (City)* 2015: paras. 73 and 131.

before. The Court thereby ignored TWU's rights, under the Canadian Charter of Rights and Freedoms (hereafter the Charter), to religious freedom.[5]

Indeed, the Supreme Court of Canada went so far as to call TWU's admissions policy – which required students to abide by a "Community Covenant" that defined marriage in traditional terms – "degrading and disrespectful" (*Law Society of British Columbia v. Trinity Western University* 2018: para. 101). The Court characterized TWU as requiring its students to "behave contrary to [their] sexual identity" (para. 101). This, said the Court, "offends the public perception that freedom of religion includes freedom from religion" (para. 101). Meanwhile, the Court gave limited consideration to religious identity, instead suggesting that the impact on the evangelical community was of "minor significance" (para. 104). The majority did not acknowledge that, by deferring to the law societies in their interpretation of the public interest, the Court sanctioned the imposition of a secular morality on TWU.

The accommodation of religious freedom and conscience in Canada was once seen as a cornerstone of liberal democratic thought (see *Saumur v. City of Quebec* 1953: 329; *R. v. Big M Drug Mart* 1985: para. 122). However, that perception has changed within the legal academy, the legal profession, and the media (Bussey 2019b). The growing antipathy toward the Christian community has been evidenced by the relative silence toward, or even the actual support of, the burning and vandalism of 45 Christian churches (many of them community centers or historic landmarks) throughout Canada in June and July 2021.[6] Ostensibly, the violence was in response to the injustice and suffering caused by the Indigenous residential school system in the nineteenth and twentieth centuries. However, such aggression must be seen within the context of a Canadian elite that has grown increasingly hostile in its rhetoric against conservative Christian communities. Conscientious claims based on religious beliefs are now seen as claims to maintain a "right to discriminate" and

[5] Given the tenor of submissions, editorials, and academic papers published during and after the litigation, it is likely that Moon, and most of the legal establishment, would dispute my characterization of the TWU law school cases, which I have outlined in numerous published pieces. I remain undeterred in my view of the TWU matter. The Supreme Court of Canada's TWU decisions were a miscarriage of justice and have laid the groundwork for increased religious tension in Canada that will take generations to resolve.

[6] See the discussion regarding Harsha Walia's tweet urging "Burn it all down" in response to the arson attacks on Christian churches (Bramham 2021). After fierce opposition, Walia claimed her comment was not meant literally, despite the clear reference to the burning of churches. She subsequently resigned her position with the BC Civil Liberties Association. Prime Minister Trudeau waited a week to respond before describing the burnings as understandable given the abuses at residential schools that had been sponsored in part by the federal government, working with churches in the nineteenth and twentieth centuries. Heidi Matthews (2021), Harvard Law School doctoral candidate and an assistant professor of law at Osgoode Hall Law School, tweeted that the arson reflected "a right of resistance to extreme and systemic injustice."

"oppress" within colonial systems of racism. To question this normative view in any way risks civil and social wrath.[7]

Within this milieu, Moon argues against the rights of a very small number of marriage commissioners who refuse to solemnize same-sex marriages that would violate their consciences.

4.2 Law should be made through democratic process, not judicial fiat

Moon's position implies that once civil rights are granted by law in a liberal democracy, then all public debate on those rights must stop. Not only must debate cease, but individuals (especially those who perform public functions) must comply by carrying out their duties regardless of personal convictions about what they consider an unconscionable public act. In other words, there is no margin for any incongruence or deviation from the accepted public narrative by any public official. Nor, for that matter, is there space for private individuals to claim an accommodation that violates or interferes with the accepted public narrative.

To understand why Moon's position is itself incongruent with the notion of a free and democratic society, we must examine more closely what we mean by "free and democratic." Although my position is at odds with "Canada's progressive legal monoculture,"[8] I maintain that a free and democratic society is always open for debate and discussion. No legislative act, no constitution, and certainly no law declared from a judicial bench is exempt from critical discussion, analysis, and advocacy to change or remove a provision by lawful means, regardless of the subject matter.

Canada's Supreme Court observed that "a functioning democracy requires a continuous process of discussion" (*Reference re Secession of Quebec* 1998: para. 68). Our democratic institutions rest "ultimately on public opinion reached by discussion and the interplay of ideas" (*Saumur v. City of Quebec* 1953: para. 330) that:

> necessitates compromise, negotiation, and deliberation. No one has a monopoly on truth, and our system is predicated on the faith that in the marketplace of ideas, the best solutions to public problems will rise to the top. Inevitably, there will be dissenting voices. A democratic system of government is committed to considering those dissenting voices, and seeking to acknowledge and address those voices in the laws by which all in the community must live. (*Reference re Secession of Quebec* 1998: para. 68)

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[7] Consider the treatment of Canadian Senator Lynn Beyak (see Tasker 2021).

[8] Sean Speer (2021) used this term in his observation regarding Justice Russell Brown being at odds with the current normative views of the legal profession.

Just because a law has been made, just because a constitution has been ratified, just because a court has issued an order, this does not mean discussion stops. In a healthy democracy, it continues. To be free, we must have the right to speak our minds about matters that lie at the heart of who we are. And we have the right to seek change – if we can convince the appropriate powers that change is necessary. This is why laws are debated and amended or repealed, court judgments are appealed, or a legislative override may be declared.

Moon would have us accept the judicial rulings as final and non-negotiable. Only legislation that carried out the judicial fiat would be deemed appropriate, as was the Civil Marriage Act, which implemented the judicial revolution of marriage (Larocque 2006). To say that the redefinition of marriage was "democratic," meaning that it resulted from representative democracy at work in Parliament, is only a partial truth.

Parliament has, since the advent of the Charter, responded to an active judiciary. As Donald Savoie noted, "Since the Charter's introduction, we have witnessed a remarkable transfer of power to the courts 'from Parliament, Cabinet and the government.' They can tell Parliament or provincial legislative assemblies to act and then specify how long they have to act" (2019:309, quoting Macfarlane 2013:12). Judges have become "high-profile political actors" (Savoie 2019:309).

Further, I believe that the current norm described by Moon, though politically correct in the contemporary context, is not sustainable in the long term. Indeed, the speed and ferocity with which the judiciary has rejected conservative[9] legal principles is bound to jam the wheels of democratic governance, simply because the Supreme Court of Canada (and other courts) is jettisoning the legal framework that has provided stability, without regard for the long-term implications.

Current Chief Justice Richard Wagner of the Supreme Court of Canada favors a progressive approach to the law, whereby the courts are empowered to interpret the Canadian constitution in light of current social conditions. He observes:

> I don't think that we should have a strict interpretation of the meaning of words that were written say 150 years ago but we need to look at those texts [as] they're evolving with society. They are evolving with the moral values and expectations of society. So, the context at the time that the court makes its [decision] really is very important. (CPAC 2018)

[9] I use "conservative" not in reference to a political party but in reference to a traditional legal interpretation that limits the interposition of the judge's subjective view in interpreting the law. I acknowledge the objection by critical theorists that there was never a time of non-subjective judging. However, I suggest that there was previously a general aspiration toward being a non-biased judge. Today, many in the legal profession and in the judiciary reject any such conservative notion and openly accept judge-made law as if the courts are quasi-legislators.

How the court is to ascertain the "expectations of society" has not been spelled out. For example, the court is unelected and does not conduct public opinion surveys. Chief Justice Wagner sees the law as malleable according to a judge's subjective view of what society's values and expectations may be at the time.[10]

This approach will not work in the long term, for it leads to an ever-increasing dissonance between the Constitution and judicial reinterpretation. The constant revision of the law by judicial fiat makes it increasingly difficult for average citizens to voice their concerns or opinions before the law is implemented, as Moon suggests ought to be done by conscientious objectors. Judge-made law does not permit public debate as is required in legislatures before laws are passed. For that reason alone, the judiciary should allow the Constitution to be amended only in accordance with the amending formula.[11]

4.3 The fallacy of the secularization thesis

One source of the disregard for religiously motivated conscience may be found in the secularization thesis. Recognizing the overall failure of the theory – which postulated the diminution of religion as education increased in liberal democracies – sociologist Peter Berger nevertheless maintained that certain segments of society still hold to the secularization theory and act accordingly. Describing the humanities and social sciences, Berger (1999:34) wrote:

> This subculture is the principal '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.

Therefore, it is not surprising that both the judiciary and legal scholars such as Moon have a diminished view of conscience. From the secularized view, there is nothing to be gained by accommodating religious conscience on these matters, and everything to be gained by supporting an expanding recognition of civil rights. This explains why, from Moon's perspective, the objections are deemed political and not religious. Public officials are expected to comply with secular demands regardless

[10] Of course, judges would not say that their position is "subjective." Perhaps Chief Justice Wagner would be more likely to accept the wording of Justice Robert J. Sharpe, who stated that when Parliament adopted the Charter the judiciary was merely accepting the invitation to "meet the expectations of justice, deeply felt by the Canadian public" (2018:234). However, Justice Sharpe also believes that judges should be responsible for "applying the Charter in a generous spirit … with a judicious sense of restraint and deference to legislative choices" (236).

[11] See "Procedure for Amending Constitution of Canada," Part V, ss 38-49 of The Constitution Act, 1982.

of their conscientious beliefs; when a public official does not perform a marriage ceremony because of conscience, it is taken as a great offense.

The secular perspective overlooks the fact that the conscientious objection does not take away from the civil right. Accommodating the objecting marriage commissioner does not mean that a couple cannot be married. It simply means the marriage commissioner is not coerced into acting against her or his conscience. However, the secularization of the courts and the legal academy has now reached a point of hypersensitivity to any opposing view. The mere existence of a public official who cannot perform a marriage due to conscience is itself seen as a source of dignitary harm. This is said to be so even if the government implements a system where there is no identification – or even mention – of an objecting marriage commissioner. According to Justice Khaladkar in a decision ruling against accommodation of a conscientious marriage commissioner (*Dichmont Estate v. Newfoundland and Labrador (Government Services and Lands)* 2021: para. 44), a "single point of entry" system burdens the province "to hide" discrimination and subjects minorities to "rejection", even if they are completely unaware of the accommodation.

4.4 The harm of violating conscience rights

When the focus moves from the state's effort to ensure that a couple can be married to attempting to force a particular marriage commissioner to perform the marriage, then energy is wasted and harm is done to the body politic. At this point, the state apparatus shifts to coercion of the marriage commissioner's conscience. Such an idea is, as Bird (2021) points out, "a risky path to follow." Although Bird was addressing the state's actions to impose its views on healthcare workers, his argument is equally applicable to any public official. Appropriating his warning for the present context, I would suggest that divorcing public officials from ethical considerations "should alarm all of us. Finalizing this divorce will lead to disastrous consequences for individuals and society alike" (Bird 2021).

Have we not learned from myriad historical examples that state imposition on individual conscience is dangerous? At the risk of triggering Godwin's law, we cannot help but recognize that state compulsion of personal conscience is reminiscent of the devastating abuses of state power in the mid-twentieth century. While some might resist this analogy by arguing that, unlike the atrocities ordered by totalitarian regimes, the law in question is indisputably good and any dissent must be wrong, this objection reveals a misunderstanding of the problems that arise whenever the state claims sovereignty over the moral decisions of individuals. Whether or not the state is allegedly on the right side of history, we should be very reluctant to allow politicians or judges to dictate which beliefs are acceptable and which are not. The idea that a state official must ignore personal conscience is anathema to liberal

democratic ideals. The fact that the state disagrees with the conscientious objector's stance is immaterial. No one should be compelled by the state, through the threat of employment dismissal or other repercussions, to act against their conscience.

The rebuttal to this position is that the couple is entitled to be married. Indeed, that is true. This is why the emphasis should be on the state providing that service and not on the conscientious objector. The issue at hand is not the individual conscience of the public official but whether the couple can be married. Under current law, they are so entitled. But they are not entitled, in my view, to impose on any public individual the requirement to carry out the service against conscience. Such an imposition violates the respect due to conscience. After all, if freedom of religion precludes imposing certain religious beliefs on non-adherents, then conversely "[it] is therefore not open to the state to impose values that it deems to be 'shared' upon those who, for religious reasons, take a contrary view. The Charter protects the rights of religious adherents, among others, to participate in Canadian public life in a way that is consistent with *their own* values" (*Law Society of British Columbia v. Trinity Western University* 2018: para. 331, italics in original).

Iain Benson (2008:750) observes:

> When a person seeks a same-sex marriage, the right *is to be married* – not to be married by *any particular citizen* acting as a marriage commissioner. The rights of freedom of conscience and religion exist in the citizen who exercises those rights. The right to have a same-sex marriage is not attached by way of countervailing obligation to any particular citizen for its fulfillment, whether or not the citizen occupies a public office.

The conscience of all citizens is not to be subsumed to one standard. Central to our beliefs about human dignity and democracy are "the rights associated with freedom of individual conscience," which, as former Chief Justice Dickson noted, are the fundamental "*sine qua non* of the political tradition underlying the Charter" (*Big M Drug Mart* 1985: para. 122).

Therefore, "The values that underlie our political and philosophic traditions," said Dickson, "demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own" (*Big M Drug Mart* 1985: para. 123). Accommodating the conscientious objector does not injure any neighbour's parallel rights. They get the same rights as the objector not only to hold and express beliefs and opinions – including opinions that go against those of the conscientious objector – but also the legal right to marry whomever they desire.

4.5 Rejection of traditional approach to conscience and religion

Moon's argument that accommodation "can never be more than minor or marginal" (2018:279) gives an incomplete assessment of the law on conscience and religion. Moon appears to suggest that religious minorities cannot be given much beyond relatively superficial accommodations such as those involving Sabbath observance or religious attire. While these cases may be deeply meaningful to the individuals who seek accommodation in these areas, this approach leaves many serious and complex questions – from abortion to marriage to end-of-life decisions – off the table. Anything beyond "dress, diet, and holidays" (2018:279) is apparently asking too much.

Moon's position does not harmonize with the historical treatment given to conscience and religion throughout Canadian history. Indeed, in the Constitution Act, 1867, religion was referred to multiple times concerning such areas as education. Not only was the new country to have laws similar in principle to that of the United Kingdom, which tolerated religious diversity (Bussey 2020), but it was to provide special privileges to religious schools. In other words, religious education was to be accommodated. Although that guarantee has been refined or even removed in some provinces since Confederation,[12] the fact remains that religion was granted meaningful protection that extends beyond holy days and dress.

Further, Moon's position diminishes religious and conscience rights to a limited form of tolerance rather than recognizing the much richer understanding that these freedoms were, in fact, "original freedoms" that exist *a priori* the state (*Saumur v. City of Quebec* 1953: 330).

In an earlier essay, I observed that "the redefinition of marriage has led to an intolerance of religious institutions that maintain the belief and practice of traditional marriage," because such beliefs are deemed "wrong" (Bussey 2016-2017:200). This paper has explored the pressure on religious individuals, who are now just as likely to face contemptuous treatment as religious institutions. Such contempt is further evidence of a legal revolution against the accommodation of conscience, especially in matters of sexuality. In the secular West, sexual equality claims are asymmetrically eclipsing all other rights.

5. Conclusion

In this paper, I have refuted the claim that civil marriage commissioners in Canada who refuse to perform same-sex marriages in their civil role are engaged in a political act. Critics argue that these commissioners believe such marriages should not be recognized by the state, and are thereby engaged in "a form of opposition to the law's protection

[12] The founding of Canada in 1867.

of sexual orientation equality, and not simply a private or personal act of conscience" (Moon 2018:293).

However, conscientious objection to the redefinition of marriage is not a political statement but a personal conviction. It reflects a moral duty to witness to the truth. That this truth may not be acceptable to the majority is the whole reason for accommodation. If a conscientious objector is dismissed as "political," such a judgment reveals more about the opinions of the zeitgeist than the supposed politics of the objector. Wisdom urges us to take heed when we encounter an individual who refuses to bend the knee to the current moral tempest.

Upon leaving the Soviet Union for exile, Aleksandr Solzhenitsyn (2004 [1973]) called on his compatriots to "live not by lies." "There are no loopholes for anybody who wants to be honest," Solzhenitsyn observed. "Either truth or falsehood: Toward spiritual independence or toward spiritual servitude" (206-207). The suffering that came from rejecting state-sponsored lies could not weaken his commitment to speak truth. "It's dangerous," he admitted, "[b]ut let us refuse to say that which we do not think" (204).

Secular society, the government, and the courts in Canada are compelling religious conscientious objectors to adopt secular values. Treating civil marriage commissioners as unworthy to hold office because of their religious conscience is tantamount to denying their religious identity. It excludes them from full participation and represents a failure to treat them as dignified citizens with equal value in society. This paper has focused on marriage commissioners, but its paradigm is applicable to other religious adherents who object to participating in abortion, medical aid in dying, and other so-called progressive secular policies. Although the issues may be political, those who conscientiously object often do so on the basis of deeply held religious beliefs.

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Why Europe needs a more post-liberal theory of religious liberty

Examining a European court ruling on ritual slaughter

Hans-Martien ten Napel[1]

Abstract

What is the attitude of European courts toward institutional religious autonomy? Their case law shows a mixed picture, with the right to freedom of thought, conscience, and religion sometimes weighing less heavily than other interests. One illustrative example is the recent ruling of the Court of Justice of the European Union on ritual slaughter. The decision reflects the liberal-egalitarian approach that arguably characterizes European case law. That approach can be traced to a firm belief in ongoing secularization, which can lead to intolerance of religious convictions. The future of institutional religious autonomy in Europe is therefore uncertain.

Keywords Court of Justice of the European Union, institutional religious autonomy, freedom of religion, ritual slaughter, liberal egalitarianism, secularization, intolerance.

1. Introduction

On 17 December 2020, the Court of Justice of the European Union (CJEU) issued its ruling in a preliminary ruling procedure initiated by the Constitutional Court of Belgium.[2] According to the verdict, Flanders did not exceed its margin of discretion in applying EU law when it banned ritual slaughter, even though this practice is related to how many Jews and Muslims manifest their faith. Since the ruling also concerns the method used to slaughter the animals, institutional religious autonomy is at stake. Accordingly, the question of how the CJEU arrived at this decision is significant to religious freedom advocates. In this article, I seek to clarify the basis for the CJEU's judgment, combining insights from multiple bodies of literature. My explanation will demonstrate that secularization, albeit indirectly, played an important role in the ruling.

[1] Dr Hans-Martien ten Napel (1963) is Associate Professor of Constitutional and Administrative Law at Leiden University in the Netherlands. He is author of *Constitutionalism, Democracy and Religious Freedom. To Be Fully Human* (Routledge, 2017). This article uses American English. Article received: 15 February 2021; accepted: 28 August 2021. Contact: Leiden Law School, Institute of Public Law, P.O. Box 9520, 2300 RA Leiden, the Netherlands. Email: h.m.t.d.tennapel@law.leidenuniv.nl.

[2] ECLI:EU:C:2020:1031. The case in question is *Centraal Israëlitisch Consistorie van België and Others* v. *Vlaamse Regering*.

According to Article 52, paragraph 3 of the EU Charter of Fundamental Rights, the CJEU is supposed to follow the case law of the European Court of Human Rights (ECtHR) when interpreting corresponding freedoms contained in the Charter. The latter court publishes overviews of its jurisprudence on various human rights issues. In 2020, one such guidance statement discussed the right to thought, conscience, and religion as enshrined in Article 9 of the European Convention on Human Rights.[3] As the guidance document indicates, the ECtHR recognizes the existence of a collective dimension of religious freedom. That is important for institutional religious autonomy. Nevertheless, the guide does not provide a sharp picture of the Court's general approach in this area of its jurisprudence. As a result, it cannot fully explain the reason for the CJEU's decision.

This article starts by discussing the constitutional or fundamental rights model in general, as it has taken shape in practice in Europe during the last few decades (section 2). This model provides a clear contrast to American thinking on constitutional rights, as I demonstrate by reference to the work of legal scholar Kai Möller. I then consider whether and, if so, to what extent this model is also more specifically applicable to the issue of religious institutional autonomy (section 3). To do so, I draw on Joel Harrison's book *Post-Liberal Religious Liberty*. Harrison does not address Möller's book directly; however, the global constitutional rights model fits with the liberal-egalitarian approach to fundamental rights that he criticizes. Harrison shows, in turn, how a strong belief in ongoing secularization underpins this approach. That feature gives it, paradoxically, a theological component.

The CJEU's ruling with regard to the ban on ritual slaughter in the Flanders region of Belgium illustrates the fragile balance in Europe regarding constitutional support for institutional religious autonomy (section 4). However, it is not self-evident that continuing secularization, or a belief in it, leads to increasing intolerance. After all, the prevailing thinking attributes such intolerance to those with strong religious views. Since secularization is widely viewed as inevitable, its supporters should expect tolerance to increase. Nevertheless, recent research demonstrates that both these assumptions – growing secularization and the consequence of increasing tolerance – are not necessarily correct. That makes the nature of the belief in secularization, as described by Harrison, even more relevant in explaining how the Court of Justice's ruling on ritual slaughter should be interpreted (section 5). Section 6 provides concluding thoughts.

[3] Guide on Article 9 of the European Convention on Human Rights: Freedom of Thought, Conscience and Religion, updated 30 April 2021. Available at: https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf.

2. The European model of constitutional rights in general

In *The Global Model of Constitutional Rights*, Kai Möller (2012: ch. 1) paints a fascinating picture of the evolution of constitutional rights protection in the postwar period. First, the scope of these rights has been inflated. The word "inflated" was initially used in a critical sense, but Möller, in contrast, uses it neutrally to describe the high rate of increase in the number of constitutional rights. Second, these rights have acquired a horizontal effect; thus, they apply not only to the vertical relationship between government and citizens but also to associations among citizens and their organizations. Third, it has been recognized that human rights can also entail positive obligations for states, which are obliged to guarantee these rights actively. Increasingly, this includes socio-economic rights. Fourth and finally, the doctrines of balancing and proportionality have gained weight. After all, as more and more rights have come into being and their scope has widened, a balancing act between these rights and other interests increasingly must occur. The principle of proportionality, or reasonableness as usually called in common law countries, can serve us well in this respect.

Why does Möller speak of a global model? The above developments started in Europe, notably at the German Constitutional Court and the ECtHR. From there, they have spread to Central and Eastern European countries, Canada, and South Africa. Globally, the United States is the exception that, as always, confirms the rule. That country has thus far retained the characteristics of what might be called the philosophical model of constitutional rights. This model was dominant until the protection of constitutional rights became internationally codified in the postwar period. According to this traditional model, only particular "natural rights" qualify as constitutional rights. These rights apply exclusively to the relationship between government and citizens and predominantly lead to negative obligations for the state – i.e., indications of what the state may not do. Finally, as a rule, they have an elevated status over other, "ordinary" interests, so there is no need to address questions of balancing weighing and proportionality, or at least less so.

Unlike the philosophical model of constitutional rights, the contemporary model was not designed on the drawing board. Möller distills it, as it were, from established constitutional practice. He explains his observation – namely, that constitutional rights have developed into a general justification for government intervention in citizens' sphere of freedom – without criticism.[4] According to Möller, a theoretical and moral underpinning is needed for this development of constitutional rights into a general justification for government intervention. After all, it has implications for both democracy and the separation of powers. It will increase the courts' role in

[4] For such critiques (both recent and less recent), see Glendon (1993) and Biggar (2020).

the constitutional order. Apart from the fact that such a tendency may lead to concerns about "juristocracy" (Hirschl 2004), a "culture of justification" ultimately leads to the question of whether constitutional rights should exist as a separate category of interests (Kumm 2007).

This last observation indicates how far-reaching the development of the European model of constitutional rights has been. It can be appropriately characterized using the notion of "conceptual overreach" (Tasioulas 2021). First, the category of human rights is stretched to the point of encompassing almost every conceivable moral and legal interest. Next, the weight of the interests protected initially by human rights diminishes so much that they enjoy hardly any additional protection relative to other legitimate interests. As a result, citizens become entirely dependent on the balancing of interests, in which officials and judges engage while seeking to protect the people's constitutional rights. In this respect, the only consolation is that academic lawyers can help to determine how this balancing of interests can best be carried out based on the proportionality principle.

3. Religious institutional autonomy in Europe

To Möller's credit, in his book (ch. 4), he attempts to formulate such a theoretical and moral underpinning of the European model of constitutional rights as he believes is required. This underpinning has clear liberal and egalitarian traits. The liberal element emerges in that a strong emphasis is placed on freedom and individual autonomy. The egalitarian feature is evident because it emphasizes citizens' equality and the consequent need for the state's neutrality. Mainly when applied to religious institutional autonomy, such a liberal-egalitarian approach paradoxically quickly acquires a theological character.

As Joel Harrison argues in *Post-Liberal Religious Liberty* (2020), liberal egalitarianism is anything but neutral. Rather, it is rooted in a distinct secularization vision.[5] Harrison proposes a post-liberal alternative to the liberal-egalitarian approach to religious institutional autonomy. I will come back to that topic later in this article. For our present purposes, his perspective on the extent to which European jurisprudence reflects the liberal-egalitarian approach is relevant. This case law shows a mixed picture, which somewhat nuances Möller's general thesis.

On one hand, the theological slant of the liberal-egalitarian approach observed by Harrison can also be observed in the case law of the ECtHR. For instance, he notes, in such a way as to confirm the European model of constitutional rights,

[5] According to Harrison, this secularization vision breaks down into the following components, among others: "differentiation between a religious and political sphere; casting politics as directed towards self-respect or the pursuit of authenticity; a view on what religion is; and an understanding of the relationship between the individual and the group, and the group and political authority" (2020:54).

"When faced with conflicts between individuals claiming a liberty interest against the religious group, the European Court has considered that states must 'balance' the various interests at stake" (Harrison 2020:49). In this balancing, individual claims may prevail, partly due to the proportionality test.

On the other hand, the same court has "at times adopted a more institutional focus for religious liberty" (87) and "strongly emphasized the autonomy of the religious group" (50). Harrison believes that "European law also contains significant recognition of religious groups" and "points implicitly towards a vision of group or social pluralism as fundamental to civil society" (174). His implicit message is that the deeper motivation of this stream of case law remains unclear.

Harrison's mixed picture of European jurisprudence regarding religious institutional autonomy is consistent with a conclusion I reached in my latest book. I argue that the West's cup of collective religious freedom is half full or half empty, depending on how one wants to see it (Ten Napel 2017: ch. 1; see also Rivers 2010). This finding is not a trivial one. It would be a bit of a stretch to argue that the future of constitutional support for religious institutional autonomy lies in Europe; on the contrary, the collective dimension of religious freedom still appears to receive more protection in the American than in the European context.[6] The prejudicial 2020 CJEU ruling on ritual slaughter in Flanders is an illustration of this tendency.

Obviously, the concept of institutional religious autonomy concerns many subjects other than ritual slaughter. In my book, for example, I address the issue of faith-based schools, demonstrating the root of liberalism's problems with religious organizations and practices. Liberalism thinks in terms of the state and the autonomous individual. All citizen organizations situated between the individual and the state detract from the emancipatory influence that liberalism wishes to exert over individual citizens. Of course, in doing so, it is initially not as inclined as socialism to exercise that influence through the state.

Nevertheless, liberalism does not shy away from using the state for this purpose if necessary, especially now that it increasingly wishes to achieve radical equality. Education offers an example of this. Few matters are, understandably, as crucial to liberalism as the education of citizens. That is why liberalism considers public education preferable to private or faith-based education. Where such schools or universities exist, liberalism will not rest until it has increased its control over these institutions with the state's help, e.g., requiring Christian schools to admit non-Christian applicants or pursuing extensive control of curriculum.

[6] Witte and Pin (2021:659) point out that the CJEU appears to be adopting the controversial Smith doctrine of the US Supreme Court at a time when the US court appears to be abandoning it. According to this doctrine, dating back to 1990, neutral and general laws do not violate religious freedom since they do not discriminate against religious practices specifically.

4. The recent ruling on ritual slaughter

On 17 December 2020, the Grand Chamber of the CJEU issued a judgment in a preliminary ruling procedure initiated by the Belgian Constitutional Court. In the portion of the judgment that is relevant to this article, the court ruled that it was permissible for the Flemish legislature to adopt a decree banning ritual slaughter without exceeding the margin of appreciation (i.e., range of autonomy) granted to EU member states by EU law (paras. 74, 79). The Flemish decree, which entered into force on 1 January 2019, ended the exception to the ban on slaughter without prior stunning as part of religious rites.

Previously, the Advocate General had advised that the decree was contrary to EU law.[7] This EU law stipulates on one hand that, from an animal welfare point of view, it is mandatory to stun animals before slaughter, but on the other hand it also allows member states to impose further technical requirements on unstunned slaughter. By prohibiting the latter entirely, or at most by allowing it only in an alternative way that could not meet with the Jewish and Muslim communities' approval, Flanders had (in the Advocate General's view) acted contrary to the compromise between religious freedom and animal welfare that the EU legislature had reached. This compromise was in the interest of a tolerant, pluralistic society, in which it is necessary for people to learn to live with differences (para. 57).

There is much more to be said about this judgment than I can cover in this brief article. Here I will limit myself to the observation that religious groups' freedom to arrange their affairs as they see fit is the core issue. In the case law of the ECtHR, to which the CJEU has historically attributed "special significance,"[8] ritual slaughter is included under the freedom "to manifest [one's] religion or belief, in … practice and observance." Accordingly, this matter also touches on institutional religious freedom.[9]

Nevertheless, traditional, unstunned ritual slaughter is prohibited in Belgium, Denmark, Germany, Norway, Iceland, Sweden, and Switzerland. Moreover, the CJEU ruling could revive the debate in other countries. For example, in the Netherlands, a legislative initiative aiming to remove a statutory exception to the ban on unstunned slaughter was adopted in the Lower House but failed in the Senate (Vellenga 2015). Meanwhile, the Party for the Animals has brought forward a new initiative bill, even though Jewish and Muslim organizations have committed themselves by covenant to paying extra attention to animal welfare.

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7 ECLI:EU:C:2020:695.

8 European Parliament, Briefing: EU accession to the European Convention on Human Rights, July 2017. Available at: https://bit.ly/3mHqiJu, p. 3.

9 According to W. Cole Durham Jr., a scholar on law and religion, this has three dimensions, the first of which is substantive, which applies here (cited in Shah 2020:30).

The CJEU ruling can be understood against the background provided in the two previous sections. The applicability of the European model of constitutional rights is evident from the fact that religious institutional autonomy is placed on a par with the importance of animal welfare. In the context of the necessary "balancing," as part of its dynamic interpretation of EU law, the court gives the latter interest greater weight than previously, partly due to its use of the proportionality test.[10] The picture worsens further when we consider that the CJEU seems more reticent about granting religious institutional autonomy than the ECtHR. This, whereas the latter court tends to issue "soft law," the CJEU jurisprudence represents "hard law" (Witte and Pin 2021:590, 592).

However, it would not be correct to look exclusively to the highest European courts. As this article was written, the Belgian Constitutional Court decision, taking into account the preliminary ruling of the CJEU, was still awaited. It is understandable and desirable that the CJEU grants the member states a broad margin of appreciation concerning church-state relations, on which opinions across Europe diverge considerably. Also, the decree in question originated with a regional legislature. This fact reminds us that constitutional support for religious institutional autonomy cannot and should not come only from the courts, European or national, but should also emanate from the European and member states' representative bodies.

Although, as indicated above, the ban on unstunned ritual slaughter is not the only example of the curtailment of institutional religious autonomy and probably not the most important one, it clearly illustrates that Christianity is not the only faith whose institutional autonomy is at risk. Judaism and Islam are also affected. There is no distinction between religions in liberalism's difficulty with citizen organizations that stand between the individual and state. Alternatively, and stated more positively, in the struggle against ideological liberalism that wants to go beyond simply managing diversity in society and exert greater control over religious worldviews, Christianity, Judaism, and Islam stand side by side.

Liberalism began as a state conception that assumed that religious truth existed, but also that it was not up to the state to determine exactly what that religious truth consisted of. Subsequently, the notion of religious truth weakened, but the notion of tolerance has remained. Now tolerance is also coming under pressure, and the state may even consider the opposite position – namely, that religious truth does not exist – to be a new orthodoxy (cf. Paulsen 2013).

[10] In two earlier, recent cases on ritual slaughter, the court reached similar outcomes. These cases were ECLI:EU:C:2018:335 (*Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW and Others* v. *Vlaams Gewest*, 29 May 2018) and ECLI:EU:C:2019:137 (*Oeuvre d'assistance aux bêtes d'abattoirs [OABA]* v. *Ministre de l'Agriculture et de l'Alimentation, Bionoor SARL, Ecocert France SAS, Institut national de l'origine et de la qualité (INAO)*, 26 February 2019. See Pin and Witte (2021).

5. Secularization and tolerance

The preceding discussion should provoke some wonder. Traditionally, the idea has prevailed that calls for tolerance arose in the early modern era. Religious disputes characterized this period. Therefore, at first, the concern was to achieve greater tolerance between religions. Also, at that time, the need for tolerance was primarily between different streams within Christianity – mainly between Catholics and Protestants. However, there were also disputes between more liberal and more precise forms of Protestantism. The source from which tolerance would arise was primarily external. The ideas of the Enlightenment were the main sources of tolerance. If reason prevailed, however religiously inspired, social peace was within reach.

When secularization set in, however, a new variant of this theory emerged. Now the idea was that, from the perspective of tolerance, secularization could not progress fast enough. After all, if people began to use their secular reason, tolerance would become even stronger. The consequence of this way of thinking is that the noose around religion's neck keeps tightening. For example, although Christianity has become significantly weakened in Europe, Islam now looms as a new threat to Western tolerance. The state is just called on to avert this danger as well. However, as required by the principle of equality, measures against Islam must also apply to Christianity and other faiths. The result is a government that acts repressively against all religions – in the name of tolerance!

This may seem to be a caricature, but it is not. The central thesis of a recently published book (Karpov and Svensson 2020: ch. 1) is that the theory that if people began to use their secular reason, tolerance would become even stronger does not hold. Taking a position against this still-dominant theory is then done in two ways. First, the secularization process that supposedly set in around 1900 is relativized. I consider this first step sufficiently well known that it does not need to be explained further here. The second step is more interesting than the first one. After all, if secularization is not an inevitable, linear development, then there can be no automatic relationship with increasing tolerance either. In combination, both steps lead to a more open, unbiased view of the relationship between secularization and tolerance. To the extent that tolerance is deemed desirable, it is essential to look for sources within secularity and the various religions.

In this light, the case law on religious groups and ritual slaughter becomes significant. Insofar as it stems from a liberal-egalitarian framework of thought, which is in turn grounded in an expectation of ongoing secularization, it appears that such a secular belief does not necessarily lead to greater tolerance. Admittedly, ritual slaughter is not a simple, black-and-white issue. Animal welfare is also a genuine concern, as EU law rightly recognizes. Still, from the perspective of tolerance, it appears evident that ending Jews' and Muslims' religious accommodation with regard to unstunned slaughter for a central ritual is an unfavorable development.

However, it is necessary to go one step further. As Harrison argues, egalitarian liberalism itself has certain theological traits. This same observation has been made within the Roman Catholic variant of post-liberalism, namely integralism (Foccroulle Menard and Su 2021).[11] In combination, both currents provide a clear picture of how liberalism has constrained religion. Modern humans may still practice religion in the private sphere, but they must conform to the idea that God is irrelevant in the public sphere.

A post-liberal alternative to this way of thinking begins by recognizing that although ecclesiastical and secular authority exist side by side, both are in the service of man's eternal salvation. Therefore, the secular authority will align itself with ecclesiastical authority on the most fundamental points in practice. This does not imply that religious freedom cannot exist, but it does mean that religious freedom will also be at the service of this higher goal. That this goal also has collective elements is beyond dispute, as Harrison recognizes; indeed, the subtitle of his book is *Forming Communities of Charity*. Therefore, in sharp contrast to liberalism, institutional religious autonomy is the central element of religious freedom. Viewed against this backdrop, it seems unlikely that ritual slaughter could be banned entirely in post-liberalism, though the more integralist variant may in turn also pose a threat.

6. Conclusion

We can conclude that the attitude taken toward religious groups by European courts reveals a mixed picture. On one hand, the ECtHR recognizes the importance of religious groups to democracy in principle. On the other hand, the CJEU turns a blind eye to a ban on unstunned ritual slaughter in a member state. I have argued here that this ruling can be interpreted against the background of the European model of constitutional rights, as it can be observed in practice. This model is undergirded by liberal-egalitarian thinking, which has theological features related to a strong belief in ongoing secularization. The analysis thus concludes that a belief in secularization does not necessarily lead to increased tolerance.

Does this finding call into question the claim that veritable freedom of thought, conscience, and belief exists under liberalism? That is a crucial issue. On one hand, we can deduce that the CJEU could rule as it did in the ritual slaughter case because of the particular variant of egalitarian liberalism that has recently taken hold. Post-liberals will tend to assume that egalitarian liberalism is an inevitable outcome of the evolution of liberalism – and even more so as secularization increases. However, because of the emergence of a substantively robust alternative, it is also conceivable that liberalism will retrace its steps.

[11] For a definition of integralism in three sentences, see Waldstein 2016.

Even if that does not happen, it is to the credit of post-liberal schools of thought that they challenge the conventional wisdom that liberalism automatically guarantees religious freedom. Just as secularization does not necessarily lead to greater tolerance, under liberalism the freedom of thought, conscience, and religion is not automatically guaranteed. From a scholarly perspective, it is fascinating to note that modern constitutionalism is again coming under thorough scrutiny 250 years after its inception.

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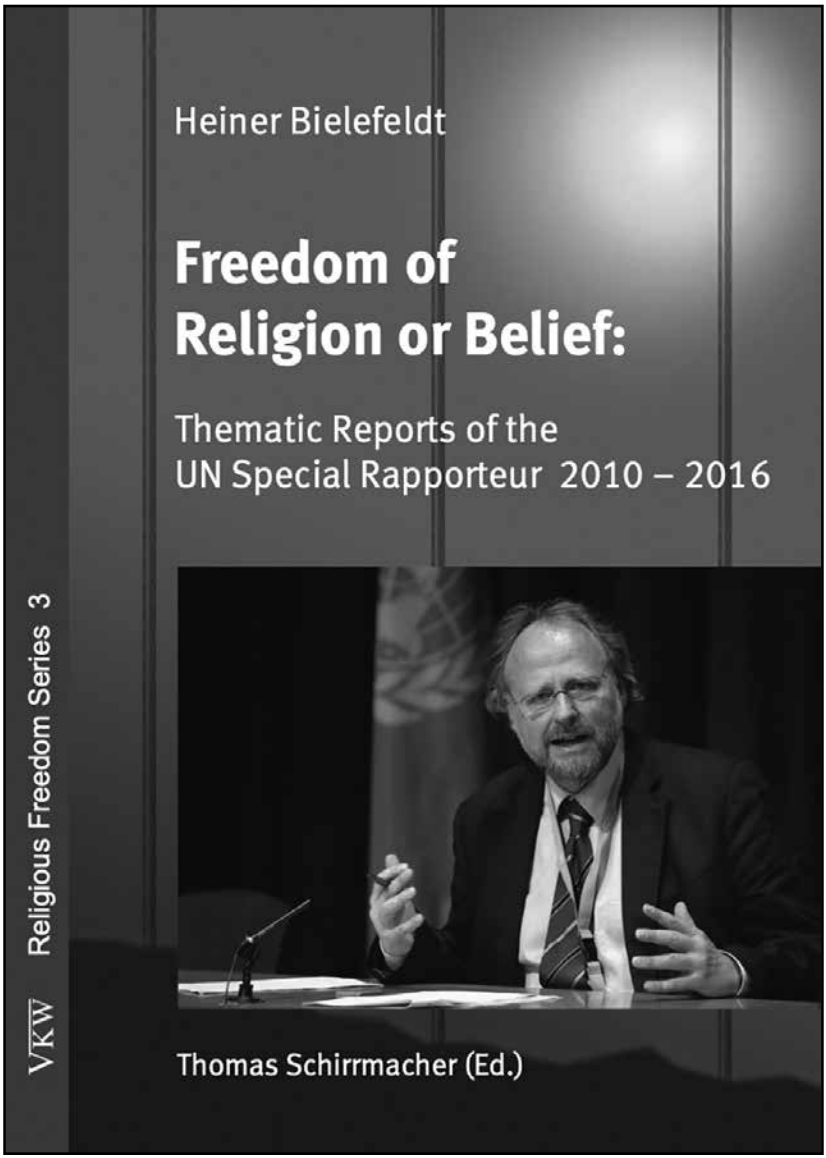


Religious Freedom Series 3, 2nd edition, VKW: Bonn 2017, 364 pp,
ISBN: 978-3-86269-117-3, € 20 **Free online at: www.iirf.global**

Noteworthy

The noteworthy items are structured in three groups: annual reports and global surveys, regional and country reports, and specific issues. 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 produced by Janet Epp Buckingham.

ANNUAL REPORTS AND GLOBAL SURVEYS

Report of the Special Rapporteur on Freedom of Religion or Belief
United Nations General Assembly, 12 October 2020

https://undocs.org/A/75/385
The Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, highlights the importance of safeguarding freedom of religion or belief for all for the successful implementation of the 2030 Agenda for Sustainable Development.

United Nations Universal Periodic Review
United Nations Human Rights Council, January-November 2020

https://www.ohchr.org/EN/HRBodies/UPR/Pages/CyclesUPR.aspx
The 35th and 36th sessions of the Universal Periodic Review for Human Rights took place during 2020, reviewing the human rights situation in 28 countries.

2019 Report on International Religious Freedom
US Department of State, Office of International Religious Freedom, June 2020

https://bit.ly/3q8HnNY
The US Department of State looks to NGOs, religious groups, media, academic reports, and other sources of information to compile an overview report on international religious freedom.

2020 Annual Report
United States Commission on International Religious Freedom, April 2020

https://bit.ly/3bKfsvr
This report documents the violations and progress in religious freedom violations and designates 14 Countries of Particular Concern and 15 countries for the State Department's Special Watch List.

The Federal Government's Second Report on the Global Status of Freedom of Religion

Republic of Germany, Federal Foreign Office, October 2020

https://bit.ly/2Zx7Rxp

This report documents freedom of religion or belief around the world for the reporting period 2018-2019.

In 2018, government restrictions on religion reach highest level globally in more than a decade

Pew Forum, 10 November 2020

https://pewrsr.ch/3ldrgwh

This annual report on global religious freedom documents violations from 2018.

Freedom in the World 2020

Freedom House, November 2020

https://bit.ly/3m7rWSJ

The aim of Freedom House is to provide a comprehensive annual report assessing the state of political rights and civil liberties around the world.

World Report

Human Rights Watch, 2020

https://www.hrw.org/world-report/2020

Human Rights Watch, whose aim is to defend the rights of all people, publishes an annual report examining and investigating the abuses of human rights and justice across 90 different countries. The 2020 annual report examines the major events relating to human rights that occurred in 2019.

World Watch List 2020 Compilation

Open Doors International/World Watch Research, 15 January 2020

https://bit.ly/3ifyde4 (password: freedom)

This is a compilation of the main documents published by World Watch Research, excluding country dossiers. These reports include the ranking of countries with regard to the persecution of Christians worldwide, press releases, and statements regarding trends in religious persecution.

REGIONAL AND COUNTRY REPORTS

China: China's urban house churches amid the pandemic

Christian Solidarity Worldwide, 21 September 2020

https://www.csw.org.uk/2020/09/21/report/4811/article.htm

The pandemic did not ease China's strict control over house churches in China.

China: Repressed, Removed, Re-educated: The stranglehold on religious life in China
Christian Solidarity Worldwide, 30 March 2020

https://www.csw.org.uk/2020-china-report
This report notes a downward trend in religious freedom in China, paralleling the increasing human rights abuses under Xi Jinping.

China: Ultimate Control: Lessons from China on the impact of technology on freedom of religion or belief
Christian Solidarity Worldwide, 2 November 2020

https://www.csw.org.uk/2020/11/02/report/4861/article.htm
This report documents how surveillance technology is being used in China to violate freedom of religion or belief.

Cuba: Freedom of religion or belief in Cuba
Christian Solidarity Worldwide, 13 January 2020

https://www.csw.org.uk/2020/01/13/report/4519/article.htm
This report documents 260 reports of religious freedom violations in Cuba in 2019.

Hong Kong: The new national security law in Hong Kong and its potential impact on freedom of religion or belief
Christian Solidarity Worldwide, 3 September 2020

https://www.csw.org.uk/2020/09/03/report/4783/article.htm
This briefing examines the potential impact of the new national security law imposed by China in Hong Kong on 30 June 2020.

India: Hate and targeted violence against Christians in India (2019 Report)
Evangelical Fellowship of India, 15 March 2020

https://bit.ly/2YaZWph
This report documents targeted violence and other forms of persecution against Christians in India. It also raises concerns with government proposals to levy hefty fines against persons deemed to be violating anti-conversion laws.

India: Behind closed doors – Hidden abuse of Christian women in India
Open Doors International/World Watch Research, November 2020

https://bit.ly/3m3uzoo
This report examines sexual violence, including forced marriage and rape of women and girls in India.

Latin America: Bi-annual report July – December 2020
Observatory of Religious Freedom in Latin America, 12 February 2021

https://bit.ly/3G8JFl6
This report documents violent incidents on the basis of religion in the Latin American region. The impact of COVID-19 placed already vulnerable people in the worst scenario. This is the first report from OLIRE available in English.

Mozambique: Islamist insurgency – In-depth analysis of Ahl al-Sunnah wa al-Jama'ah (ASWJ)
Open Doors International/World Watch Research, July 2020

https://bit.ly/2ZCb7Yl (password: freedom)
This report analyzes political, economic, religious and social triggers that have left Mozambique exposed to acts of violence carried out by Islamic groups such as Ahl al-Sunnah wa al-Jama'ah (ASWJ) and their impact on Christians.

Iraq: Fact-finding mission report
Christian Solidarity Worldwide, 18 June 2020

https://www.csw.org.uk/2020/06/18/report/4697/article.htm
This is a report of a fact-finding mission to northern Iraq in December 2019, investigating the plight of religious minorities.

Mexico: A culture of impunity: religious discrimination in Mexico
Christian Solidarity Worldwide, 17 April 2020

https://www.csw.org.uk/2020-mexico-report
This report finds that despite constitutional guarantees, FoRB violations are common and widespread in certain regions of Mexico.

Nigeria: Abduction and forced conversion
Christian Solidarity Worldwide, 17 June 2020

https://www.csw.org.uk/2020/06/17/report/4693/article.htm
This report documents the abduction and forced conversion of schoolgirls in Nigeria.

Nigeria: This genocide is loading
Jubilee Campaign, 18 November 2020

https://bit.ly/3F3wbHr
This is a report to the International Criminal Court documenting violence against Christians in Nigeria.

Nigeria: Nigeria – Unfolding genocide?

All-Party Parliamentary Group for International Freedom of Religion or Belief, June 2020

https://bit.ly/3CRAQKK

This report documents violence against Christians by Fulani herdsmen in the Middle Belt region of Nigeria and urges governments to take action to prevent genocide.

Pakistan: Abduction, conversion and child marriage of religious minority girls in Pakistan

Jubilee Campaign, 19 November 2020

https://bit.ly/2WpH3hB

This report provides an overview of several common factors involved in such cases of forced conversion and abduction.

Tunisia: Religious Freedom Report, Tunisia 2020

ATTLAKI Association Religious Freedom Committee, 29 January 2021

https://bit.ly/3kR6rGc

This report was written by the Commission for Religious Freedom of the association (composed of university professors of constitutional law, public law, and sociology). The report is considered the first in Tunisia to address the issues faced by religious minorities with great precision. It expresses a warning regarding the current situation of these vulnerable groups.

SPECIFIC ISSUES

Analysis: The worrying impact of COVID-19 on religious minorities around the world

World Evangelical Alliance Religious Liberty Commission, 18 June 2020

https://bit.ly/3CYhoME

This analysis documents the impact of COVID-19 restrictions on religious freedom around the world.

COVID-19 Update

Christian Solidarity Worldwide, 19 October 2020

https://www.csw.org.uk/2020/10/19/report/4851/article.htm

The report identifies how the pandemic has been and is being weaponized by governments and individuals in several of CSW's countries of focus to advance political agendas, to cement an invasive control over society and to justify an increase in repression and discrimination targeting specific religious and/or ethnic communities.

#Faith4Rights Toolkit
UN High Commissioner for Human Rights, 2020

https://bit.ly/3zTb2vO
This online resource, launched in 2020, contains 18 peer-to-peer learning modules to enhance the skills of faith actors to manage religious diversity in real-life situations.

Statements of Concern
Ministerial to Advance Freedom of Religion or Belief 2020, 16-17 November 2020

https://www.gov.pl/web/diplomacy/statements-of-concern
The Ministerial to Advance Freedom of Religion or Belief was held in Poland and issued eight Statements of Concern.

WWL 2020 Gender-Specific Religious Persecution
Open Doors International, February 2020

https://bit.ly/3usegW3
This second annual WWL report examines global trends regarding gender-specific religious persecution.

Gender-based violence and discrimination in the name of freedom of religion or belief
UN Special Rapporteur on Freedom of Religion or Belief, August 2020

https://undocs.org/A/HRC/43/48
The UN Special Rapporteur on freedom of religion or belief addresses situations where religious precepts underlie laws and state-sanctioned practices that violate the right to non-discrimination against women, girls and LGBTQ+ persons on the basis of sexual orientation.

Book reviews

Inside the Church of Almighty God: The most persecuted religious movement in China

Massimo Introvigne

New York: Oxford University Press, 2020, 149 + xi pp., ISBN 978-0190089092, £ 21.99

Since the 1990s, reports about the activities of a Chinese religious movement called The Church of Almighty God (CAG, also known as "Eastern Lightning") have been circulating. In 2014, the movement attracted wider attention when it was named by international media in connection with a brutal murder at a McDonald's restaurant in the Chinese province of Shandong. Intense persecution led to an increasing number of CAG refugees seeking asylum in other countries. This scenario provides the background for Introvigne's investigation.

Introvigne is an Italian sociologist specializing in new religious movements and religious pluralism. Besides being the managing director of the Center for Studies on New Religions in Turin, Italy, he has served with various international bodies dealing with religious freedom. In 2017, he was among a group of Western scholars invited by Chinese anti-cult organizations to attend two conferences on combatting CAG. This visit gave him some detailed insights which have been incorporated into his monograph, originally published in German in 2019. The English-language edition adds an introduction and an epilogue that places the investigation in the broader context of the development of policies on religion in China from 1949 to the present.

Introvigne's thorough evidence collection is based on interviews conducted in 2017-2019 with CAG members outside China and conversations with Chinese police, officials and scholars engaged in anti-CAG campaigns (x-xi). He documents the severity of abuses of CAG members (chapter 1), investigates the basis for their criminal conviction (chapter 2), and elaborates on CAG's teachings, developments and organization (chapters 3-5). In doing so, he refutes allegations that the movement's rapid growth is due to manipulative techniques such as brainwashing and alienation from family.

The CAG believes that Jesus Christ has returned in the shape of a Chinese woman who is "identified by the CAG as Almighty God" and whose utterances are considered to have the same authority as the Bible (29). Starting in 1995, large groups of Christians from different Christian denominations (particularly house churches) converted to CAG (37-38). Its rapid growth alarmed the Chinese Communist Party (CCP), which regards CAG as "a threat more dangerous and massive than Falun Gong" (xi).

Chapter 2 explains the rationale underlying the criminalization of CAG and other so-called *xie jiao* ("evil cults") in China. Introvigne provides a very helpful in-

troduction to the concepts of sinicization and *xie jiao*, which are of general relevance for understanding the CCP's approach to religious freedom. Both concepts have their roots in Chinese history. In the Middle Ages, to "sinicize" referred to the adoption of "Chinese culture, language, and customs" required of ethnic minorities (16-17). Since the CCP regards itself as representing the Chinese people, to be sinicized today means "to be fully integrated into in the CCP-dominated Chinese system" (17). Only "fully sinicized religions … are allowed to operate publicly under the control of and with leaders appointed by the CCP" (17), and constitutionally guaranteed freedom of religion applies only to this kind of religious organizations.

Whereas most "non-sinicized" churches (such as the many house churches) manage to exist in the "gray market," some of them are persecuted by the government as *xie jiao*. This term "was rooted in a century-old tradition of Chinese millenarian movements trying to take over the government" and later became the CCP's favorite term for condemning the alleged danger of Falun Gong. Following the centuries-old custom of Chinese emperors, the CCP in 1995 published a list of *xie jiao*, and CAG was on it (19-20). In 1997 "'using' a *xie jiao*" was included as a crime in the Chinese Criminal Code, "punishable with jail sentences from three to seven years" (21). Thus, all members of religious movements listed as *xie jiao* are criminalized and subject to persecution by branches of the Chinese Anti-Cult Association.

In chapters 6 and 7, Introvigne discusses in detail the aforementioned murder of a customer in a McDonald restaurant in 2014 and an alleged kidnapping (in 2017) of Christian leaders during theological training programs conducted by CAG members who had hidden their connection to the organization. The author demonstrates the purposeful construction and dissemination by Chinese media of fake news about crimes committed by CAG members, so as to justify the harsh persecution CAG had experienced since the early 2000s and so as to counter international criticism (81-83, 102-3). Based on his thorough research, Introvigne dismisses both allegations. One shocking detail is that many Western media uncritically reproduced the allegations of Chinese state media, thereby contributing to the careless criminalization of CAG members (82).

The author's quest to defend CAG causes him to make some unnecessarily biased statements about the credibility of the narratives of Christian leaders affected by the "kidnapping," even implying that some pastors fabricated alleged CAG material to support the accusations because they were annoyed about "sheep stealing" (115).

The book culminates with the concise description of the fate of CAG refugees who have been denied asylum because of persisting prejudices against CAG (chapter 8). Introvigne introduces the six main objections to CAG asylum seekers and dismisses each of them, referring to the facts presented in the previous chapters.

Besides serving the cause of CAG refugees, Introvigne provides well-informed insight regarding the anti-cult policy of the CCP. Beyond this, the book shows us

how easily discourses on heterodox religious movements can be instrumentalized by authoritarian regimes.

Meiken Buchholz, Associate professor, Freie Theologische Hochschule, Giessen (Germany), Fjellhaug International University College, Oslo (Norway)

Freedom of religion or belief: Creating the constitutional space for fundamental freedoms

Paul T. Babie, Neville G. Rochow and Brett G. Scharffs (eds.)

Cheltenham, UK: Edward Elgar, 2020, 416 pp., ISBN: 978-1788977791, US $170.00

This book is a collection of papers delivered at two 2018 consultations in Australia that focused on creating constitutional space "for people and communities to work out their deeper moral and religious ways of living their lives" (10). That year marked the 70th anniversary of the Universal Declaration of Human Rights (UDHR), Article 18 of which guarantees religious freedom. Article 29 of the UDHR recognizes the need for mechanisms to guarantee rights. As Australia does not have a constitutional bill of rights, one theme explored at the conference was whether such a bill of rights would provide stronger protection for religious freedom.

The book is divided into two parts, likely reflecting the two conferences. The first part contains a strong set of papers on what it means to create constitutional space for religious freedom; the second part explores a variety of comparative jurisdictions.

Opening part one, Carolyn Evans and Cate Read review the history of a constitutional bill of rights in Australia, noting that when it was proposed, religious organizations opposed it. Now that same-sex marriage has been legalized, religious institutions are seeking legislation to protect religious freedom. Evans and Read argue that constitutional protection would provide the best protection for them.

The Australian Constitution contains some protection of religious freedom in section 116. Renae Barker and Joshua Forrester's articles consider how the Australian courts have interpreted freedom of religion. Neil Foster addresses the specific tensions created for religious adherents when same-sex marriage was legalized.

Five articles address various aspects of religious freedom protection more generally. Joel Harrison argues against the Western conception of religious liberty as tied to individual autonomy; he would prefer to see governments facilitating communities of virtue that pursue God. Mark Fowler calls on the state to create space for faith-based institutions. Alex Deagon addresses the challenging task of defining religion and religious freedom. Jeremy Patrick identifies the challenge of religious freedom in the current religious climate, in which believers can choose among a smorgasbord of religious beliefs and practices. Finally, Brett Scharffs provides

a conceptual framework concerning reasonable accommodation. His three paradigms are very useful as states deal with the complexities of religious adherents seeking to live consistently with their faith.

Part two, which looks at constitutional frameworks and interpretation in Croatia, Iraq, India, China and Malaysia, will be of general interest to religious freedom advocates. Mark Hill contributes a helpful chapter on religious freedom and employment cases in Europe. The selection of countries is not clear, as most have little in common with Australia. However, the country profiles are very well written and informative, providing current analyses of how the state understands and applies religious freedom. Two of the profiles stand out. The chapter on Iraq contains a helpful review of religious freedom in Islamic human rights documents. This is important as many Islamic countries do not respect religious freedom for minority religions in their countries. The chapter on China is also helpful in interpreting the nature and scope of the crackdown on religions there since 2018.

In addition to the country profiles, Paul Taylor, in an article on the International Covenant on Civil and Political Rights, notes that Australia's current protections of associational and expressive rights do not meet the covenant's requirements.

This book focuses heavily on constitutional law and practice. It will appeal to the many legal advocates worldwide who address religious freedom. It also offers a very helpful comparative analysis of countries where religious freedom is constitutionally protected but not protected in practice.

As a Canadian with long experience in both domestic and international religious freedom, I found much of interest in this book. As with many books of this type – edited compilations of conference papers – some chapters will be of more interest than others to any given reader. Few people will read all of them. The papers do not build on one another; they are entirely discrete and distinct.

No doubt, Australians will find the chapters on their country to be of great interest. Many of the issues Australia is experiencing are common amongst Western countries, particularly those where same-sex marriage has been legalized.

Several of the conceptual chapters are helpful for those who work on religious freedom issues and wish to strengthen their philosophical underpinnings. I found Brett Scharffs' article on reasonable accommodation to be one of the most helpful analyses I have seen on this troublesome issue. I also admire Alex Deagon for taking on the challenging issue of defining religion.

This book is a very interesting and useful contribution to the literature on constitutional protection of religious freedom.

Janet Epp Buckingham, Professor of Political Science and History, Trinity Western University, Ottawa, Canada

Constitutions and religion

Susanna Mancini (ed.)

Cheltenham, UK, Edward Elgar, 2020, 464 pp., ISBN 978-1786439284, £48.00

Constitutions and religion is a welcome and ambitious publication on law and religion from a comparative constitutional law perspective. The book mainly investigates the place and impact of religion in constitutional frameworks across the globe, as well as the resulting problems that arise. In addition, it incorporates a reverse emphasis on the impact of state structures on religion and religious freedom. Within these broad frameworks, a variety of highly relevant and relating concepts are discussed, including religious nationalism, social integration, immigration, different claims to modernism, the rejection of Western secular modernism, reasonable accommodation, education, marriage, euthanasia, feminism and the divide between the *forum internum* and *forum externum*. Methodologically, the book embraces an interdisciplinary approach to law, political theory, history, and regional and international legal systems.

The introductory chapter sets the stage with a vivid and concise overview of the legacy and present-day challenges of the Enlightenment project as it relates to religion within various constitutional frameworks. Amongst these challenges, the re-politicization of religion (where the neat separation between faith and reason is challenged), resulting religious nationalism, religious populism and recent religious-based claims to conscientious objections are highlighted.

The first of the book's five parts discusses the theoretical concepts and historical background relevant to and necessary for a discussion of constitutional frameworks and religion. These concepts include secularism and the West, the theoretical framework of Islamic constitutionalism and the modern contours of religious freedom rights. Chapter 3 (by Ratna Kapur) discusses how secularism can surprisingly be used in both the West (France) and non-West (India) to reinforce religiosity and majoritarianism.

Part two presents different models of religion and state across the globe by grouping countries according to either regional criteria (Western Europe, North America, Latin America, Africa) or functional criteria (Islamic constitutions, constitutionalism in the Buddhist tradition and constitutionalism in Jewish democratic states). There are also specific chapters on the unique situations in Russia and India. Chapter 6 (by Silvio Ferrari) posits the interesting, challenging and possibly controversial premise that the European regulation of freedom of religion as the right of every individual (regardless of the religion or belief being professed) cannot be reconciled with some religions or practices (such as Islam), because these religions or practices are not reconcilable with Europe's Christian and secular tradition.

Part three discusses religion as an active catalyst in constitutional law-making and its effects on and involvement in politics. This part is especially insightful in light of the current resurgence in (religious) nationalism and populism. Chapter 15 (Francesco Biagi) reveals the extensive engagement of religion in the constitution-making process in various countries. This is surprising since the role of religion in constitutional law-making is seldom considered (and possibly underestimated).

Part four offers a regional perspective on the position of religion and religious freedom rights by focusing specifically on the complex, rich and diverse jurisprudence found within the European Court of Human Rights and the European Union.

The last part, most relevantly and incisively, discusses the current challenges (sometimes within specific geographic frameworks) that arise from religious freedom rights, including gender justice, religious-based conscientious objection, the integration of Islam in Europe and blasphemy and pluralism in India. Chapter 20 (Susanna Mancini and Elena L. Cohen) puts the spotlight on the complex issue of balancing religious minority rights and women's rights, asking whether it is possible for the two to co-exist. Chapter 20 also indicates how arguments designed to undergird "living together" and "social integration" (especially in the headscarf cases at the European Court of Human Rights) can violate women's rights and perpetuate patriarchy.

It would have been interesting to see some focus on the position of new religious movements (not only religious minorities) within constitutional frameworks. Furthermore, given the substantial emphasis on the European regional frameworks, greater coverage of other regional frameworks, such as the Inter-American Commission on Human Rights and Courts (mentioned sporadically), could have been useful. But in general, this book is a welcome publication as there are few interdisciplinary volumes that focus on law and religion from a comparative constitutional law perspective.

Georgia Alida du Plessis, research fellow at the University of Antwerp (Belgium), Evangelische Theologische Faculteit, and the University of the Free State (South Africa)

Influence with respect

Carsten Hjorth Pedersen

Oregon: Resource Publications/Wipf and Stock, 2020, 100 pp., ISBN 978-1725256606, US $17.00

Pedersen aims to lift the fog of misunderstandings around "worldview neutrality" in Western societies that has left many parents, educators and leaders in fear of being stigmatized if they express their convictions. Its basic tenet is that every en-

counter between two individuals involves influencing. Therefore, the question is not *whether* we influence, but *how.*

Secularized Western societies have increasingly reproached religious groups for exerting a bad influence on their children by indoctrinating and radicalizing them. This perception has been triggered primarily by violent groups of Muslims, but Christians have been painted with the same brush. As a result, many Christians have become intimidated. On the other hand, consumerism has become the mainstream religion, if not itself an oppressive one, and is blind to its own indoctrination.

The author has been the director of the Danish Christian Institute for Education since 1999 and is also the father of three grown children and a teacher and preacher. He reminds us that in education we have a responsibility to influence those entrusted to us – whether they are children, youths or adults – towards a fruitful, responsible "good" life. In a democratic and pluralistic society such as ours, there must be room and respect for a diversity of views as to what a good life means. "Since we all have certain convictions – even if we are not aware of them – it is not the conviction itself that is problematic. It can be false or untrue, but that is not the issue. But the *manner* in which we pass on that conviction can be more or less positive, appropriate or legitimate" (4).

Pedersen points out that there can be "too much" or "too little" influence: "I concluded that things go wrong when the person who carries the pedagogical responsibility either comes too close or remains too distant" (p. 15). To find the right balance, he presents a very helpful analytical guide composed of the following categories:

Too much or too strong an influence: Pederson calls this *intimization,* or violating the sphere of intimacy which protects every individual.

Too little or too weak an influence (*desertion*): neglecting the responsibility of pedagogical influence and leaving the individual abandoned in the storm of worldviews.

The right amount and approach of influence: this encompasses two components. *Confrontation* entails giving guidance, including passing on one's own convictions and worldview, while respecting the individual's boundaries and avoiding indoctrination (which does not allow questions and contradiction). *Withdrawal* is the necessary counterpart to confrontation; it allows space for the individuals being influenced to develop their own independence.

As intricate relationships do not involve simple recipes, the book provides many examples from different contexts, in an easy-to-understand English style translated from the original Danish.

Although the book seeks primarily to encourage intimidated or assimilated Christians in secularized Denmark, I think it is equally important for secularists

and people of any religious belief in Western society. "It is naive to believe that the agnosticism and religious relativism of mainstream culture are neutral positions which automatically eliminate the risk of indoctrination, social control, and force" (69). This statement is absolutely true, and accordingly I regret that the book does not offer more examples from atheist or secular contexts.

In chapter 6, Pedersen discusses how educators and leaders can learn the skills of influencing with respect. These skills can be categorized under the two dimensions of *empathy* and *maturity*. "Empathy is the ability to put yourself in someone else's shoes without giving up your own position. … It is a skill that can be actively developed" (77). Referring to Ulla Holm's book *Empathy for Professionals*, he identifies the factors underlying development of empathy as a secure identity, the ability to assess emotional expressions and to manage one's own emotions, and the ability to tolerate and to embrace other people's emotions.

Maturity does not come automatically with age but is the result of discipline in developing in such areas as accepting responsibility, collaborating with people of a different mindset, recognizing our dependence on others, prioritizing long-term over short-term goals, admitting our own dark sides, and accepting both the wonderful and the difficult sides of life.

Chapter 7 points out that the receiving person in the process of influencing also carries a responsibility – obviously less so with smaller children and more so with increasing maturity. Children can best be equipped to counteract transgressive influence if their parents and educators model respectful methods of influence, thus building in them a secure identity. But "I also believe it is possible and important that we dare to speak to children, young adults, and grown-ups about positive and negative forms of influence" (88).

The final chapter, entitled "Love Requires Nearness and Distance," places the book's subject in the universal perspective of the relationship between God and mankind: "Jesus' respect for us is so strong it includes the freedom to reject him" (100).

I hope that this book will serve as a beacon of light in the darkness of misconceptions about neutrality in education – for educators, administrators and politicians alike. Its well-built structure and its clever theory seem well suited for this purpose. I equally hope that it will be read by people of all faiths and none, and that they will adapt its insights to their own circumstances, forgiving the book's narrower emphasis on people of Christian backgrounds.

Matt Kaegi, Board member and former chairperson of EurECA (European Educators Christian Association), a network of the European Evangelical Alliance

Why religious freedom matters for democracy: Comparative reflections from Britain and France for a democratic "vivre ensemble"

Myriam Hunter-Henin

Oxford: Hart Publishing, 2020, 202 pp., ISBN: 978-1509904747, £50

In this book, Myriam Hunter-Henin offers a novel perspective on law and religion, along with a methodical demonstration that religious freedom is valuable not only for believers but also for democracy and our shared desire to live well together (*vivre ensemble*).

The author explores the connections between religious freedom and democracy – comparing French *laïcité* and British church establishment, assessing recent case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) in the spheres of employment and provision of services, and adding some perspectives on US case law. Hunter-Henin proposes conceptual guidelines to resolve religious controversies in a consistent way in today's diverse societies.

The virtuous cycle of "properly construed" religious freedom, healthy pluralism and invigorated democracy is thoroughly explained so as to show how connections between them can create the desired *vivre ensemble* as suggested by John Rawls. According to the author, religious freedom is both a positive freedom, enabling the expression of a plurality of worldviews and ways of life in a common framework of equality and respect, and a negative and defensive liberty, in particular against the power of the state.

Drawing from contextual analyses in France and Britain, Hunter-Henin examines the reasons for the currently broken *vivre ensemble* in both countries. In her opinion, both French *laïcité* and British church establishment exhibit the required features for a secularism amenable to pluralism. Both have gone beyond the stage of "militant secularism" (imposing common national values upon all, with an assimilationist approach unsuitable for multi-religious and multicultural societies) and "separatist secularism" (embodied in negative constitutionalism, based on a strict dividing line between non-institutional spheres with no interference by the state and an institutional sphere where citizens accept the restriction of their liberties). However, both fail to achieve "inclusive secularism," based on positive constitutionalism, under which "religious freedoms are not only protected against state interference but valued as a positive good, capable of enriching political debate and contributing to society." French secularism tends to relegate religion to the private sphere, with an assertion of national common values in the public sphere. Across the Channel, social divisions, inequality for certain minority groups, a strong narrative on fundamental British values,

and fear of terrorism have undermined religious freedom. In both contexts, national values seem to serve as a refuge against the fear of religious (in particular Islamic) radicalization and terrorism, thus prompting certain illiberal and exclusionary trends.

As a remedy to such worrying trends, the "liberal democratic *vivre ensemble*" offers a positive conceptual framework. Indeed, religious freedom matters for all citizens. To eliminate the concept of religious freedom, considering that secular interests are equivalent, would undermine the importance of religious identity, commitments and views in our democracy and would be costly to all citizens, even non-believers. Additionally, the liberal democratic framework matters for the protection of religious freedom as a principle of non-interference and as a guarantee of pluralism. Finally, the *vivre ensemble* may be attained only if, in return, religious citizens endorse the idea of liberal reciprocity, thus accepting legitimate constraints. Hence, "inclusive secularism" stems from a form of membership of citizens in a political community, where religious freedom can be both restricted in matters pertaining to public reason and protected and promoted, so as to achieve equality and reciprocity.

Based on studies of recent ECtHR and CJEU case law in the workplace and commercial sectors, Hunter-Henin suggests useful guidelines for judges that could enable a "mended *vivre ensemble*" in the field of religious controversies. Her proposed method is grounded in three principles: avoidance, which guarantees the state's neutrality towards comprehensive religious doctrines; inclusion, which guarantees equality and fair terms of cooperation between religious and non-religious citizens; and revision, which guarantees that the terms of legitimate diversity are subject to constant review.

The author offers a solid and detailed case law analysis relating to religious discrimination at work, in particular concerning the wearing of religious symbols, religious employers and the extent of their legitimate requirements towards employees, providers of service, and employees refusing to perform certain services for religious reasons. Hunter-Henin recommends that courts adjudicating religious freedom cases rely on the claimant's subjective assessment of religious belief or practice, and she says they should avoid delegating the power of decision to the assessment of the tensions of the employers or conferring unfettered discretion upon the Member States through the margin of appreciation or the imposition of national values. She proposes that courts should use the proportionality test without flawed interpretation in conducting a fair judicial review in conjunction with the principle of inclusion.

This book should contribute to solving contemporary controversies over religious claims while fostering an inclusive, tolerant and vibrant *vivre ensemble*, especially for our Western liberal democracies.

Nancy Lefevre, Legal Counsel, National Council of Evangelicals of France

Anti-Christian violence in India

Chad M. Bauman

Ithaca, NY: Cornell University Press, 2020, 302 pp., ISBN 978-1501750687, US $34.95

The persecution of Christians in the Middle East and some parts of Africa has captured the attention of many observers over the past two decades, but the plight of Indian Christians commonly remains on the sidelines. One reason for this oversight is that Indian Christians reside in a democracy that at least putatively guarantees their rights to religious freedom. The Hindu nationalist movement targeting Christians for harassment and violence has spiked only during the last decade. Incidents involving Indian Christians affect a small proportion of the country's almost 1.5 billion residents. And their daily suffering is not usually as severe as that endured by Christians fleeing the Islamic State or Boko Haram.

The dramatic events that took place in India's Kandhamal district in 2008 are the exception to this last rule. In this book, Chad Bauman explains how the rioting and murder of several Christians, credible reports of rape, the destruction of homes and churches, and the displacement of thousands of people relate to broader anti-Christian agitation. He argues that violence and intimidation against Christians are routine in India, and that the violence in Kandhamal arose out of fertile fields of animosity.

As an academic, Bauman wishes to fashion a theoretical explanation for anti-Christian violence in India that will appeal to a wide variety of disciplines. He argues that although economic and instrumentalist explanations for such violence are helpful, they should be combined with a constructivist attentiveness to how worldviews or "cosmologies" contribute to the framing of interreligious relations. Bauman lays out a lengthy "prehistory" of Hindu-Christian relations to provide context for the layperson. While "Indian Christian communities were relatively well integrated within Indian society" in antiquity (67), the colonial era upset relations between indigenous Hindus and Christians. The introduction of the Inquisition under Portuguese colonizers in Goa in 1560 contributed to the perception of Christianity as a "predatory, imperialistic religion" (71). Western Christian missions gradually began to win converts in the 1800s, particularly in the wake of dramatic famines, during which Christian missionaries fed lower-caste communities and took in large numbers of orphaned children (91). But the growing number of Christians under Western imperial rule exacerbated tensions between the communities.

In response, Hindus formed a religious nationalist movement now known as Hindutva ("Indianness"). Bauman argues that Hindutva arose largely during the early 1900s as a reaction to the secular modernity epitomized by Christian mission endeavours. Although Christians were not presenting a secular gospel, "the advance of Christianity cannot be disentangled from the advance of Western secular modernities. They

represent an amalgamated threat; resistance to one is tantamount to resistance to the other" (55). Christianity required Indians to accept a worldview in which religion stood as a universal concept detached from ethnicity. In response, Hindutva represented a defence of Hinduism from the cultural imperialism of Europeans and identified Christian evangelism as an existential threat to the preservation of Indianness.

The agent of Hindutva that arose in the twentieth century was the Sangh Parivar (family of organizations). These include the pre-independence Hindu Mahasabha and the Rashtriya Swayamsevak Sangh (RSS, or National Volunteers Organization), along with a variety of newer local and national offshoots such as the Bajrang Dal youth league, the Rashtriya Sevika Samiti, and the Vishva Hindu Parishad. Today, Hindutva has become the dominant perspective of the Indian government, represented by the Bharatiya Janata Party (BJP). At independence, these groups formed a minority opposition to the ruling Indian National Congress and argued for including a ban on conversion in the 1950 constitution (97). Such a clause was not included at that time, but several states have since instituted anti-conversion acts known paradoxically as "religious freedom" ordinances. The Indian Supreme Court has deemed such laws constitutional, presuming that the right to propagate one's religion extends only to the transmission of the tenets of one's religion, not to conversion.

Activities leading to conversions from Hinduism to Christianity have become central focal points in anti-Christian violence. In the wake of an anti-Christian riot in the Dangs, Gujarat, in 1998, BJP Prime Minister Atal Behari Vajpayee called for a national dialogue on conversion, as if conversionary activities justified the violence (116). Twelve days later, Graham Staines, a Christian missionary, was immolated together with his two young children.

The activities of an organization linked to the Sangh Parivar were at the heart of the riots that engulfed Kandhamal in 2007-2008. Multiple layers of identity and politics lay behind the violence, including caste, indigeneity, religion, ideology, and socio-economic rivalries. Two indigenous communities, the Kandhas and the Panas, as well as an upper-caste group known as the Oriyas, were involved. The Panas are a lower-caste community, most of whom have embraced Christianity, and made up the majority of the victims of the violence. The riots were triggered by the murder of Swami Lakshmananda, a Hindutva activist, at the hands of the Maoist Naxalite militia on 23 August 2008. Sangh activists and many within the Kandha and Oriya communities presumed that Christians widely sympathized with the Naxalite movement and blamed them for the murder. This unleashed a massive pogrom against the Pana Christian communities.

Before presenting the details of the Kandhamal case, Bauman provides an overview of anti-Christian agitation in India using data from the Evangelical Fellowship of India, the media, and other sources. He notes that anti-Christian attacks typically follow three "discrete scripts" undertaken by religious nationalist vigilantes: attacks on evangelists

or Christian leaders engaging in evangelism, targeting of churches and other Christian organizations suspected of engaging in conversion activities, and harassment, mocking, or beating of female converts (118-126). Anti-Christian activities are most common in a particular group of states and in suburban and rural areas. Notably, these states and communities lie not in the central heartland of Hindutva activism but in regions where the BJP and its allies continue to vie for power with rival organizations, and where the greatest numerical growth of Christianity has occurred (138).

Throughout this book, Bauman takes seriously the various interrelated factors that contribute to anti-Christian violence in India. He demonstrates that the violence is intertwined with economic competition between various groups, the politics of caste, the legacy of colonialism, and the strategic choices made by the national leadership of the governing parties and courts. Nevertheless, he also acknowledges the impact of the ideological dispute between the universalizing understanding of religion propounded by global Christianity and the nativist sentiments of Hindutva.

Bauman urges Western readers to take seriously Hindutva's opposition to what it perceives to be an imperialistic urge in Christian demands for religious freedom. However, there is a danger that taking such arguments at face value does not hold the BJP and the Sangh Parivar to account for the essential contradiction at the heart of contemporary Hindutva. India's BJP rhetorically embraces globalization. Its program seeks to open India to the world through market competition, improved productivity, and investment growth. The country has made significant efforts to deregulate the Indian market. Yet while "many members of Sangh organizations … seek the potential benefits of economic globalization, they continue to resent the loss of sovereignty that taking advantage of those benefits requires" (226). The BJP and its allies will ultimately need to make a choice between prosperity and a defensive reaction to modernity. Their consistent choice in favour of the latter only endangers their pursuit of the former.

Paul S. Rowe, Professor of Political and International Studies, Trinity Western University, Langley, Canada

The disappearing people: The tragic fate of Christians in the Middle East

Stephen Rasche

New York: Bombardier Books, 2020, 176 pp., ISBN 978-1642932034, US $27.00

Many scholars and activists have lamented the dramatic decline of Christians in the Middle East over the past decade, but few have the sort of front-line experience that fills the pages of this book. Rasche describes the tragedy that has befallen the last

communities of Christians remaining in Iraq since 2003 after the chaos of the US occupation, the rise of majoritarian politics, and the war against the Islamic State.

An American lawyer, Rasche worked with the Chaldean archdiocese in Erbil to respond to the challenge of the 2014 refugee crisis and its aftermath. Despite the apparently broader geographic scope expressed in the title, the book's focus is on Iraq. It reads as a series of vignettes from the author's work in northern Iraq and lacks either an academic focus or a chronological structure.

Rasche's introduction is sobering. He says he is writing primarily because "the sand has nearly run out in the hourglass that is Christianity in Iraq" (xix). Christians were forced to flee the city of Mosul and the surrounding Nineveh Plain in summer 2014. Most of them went first to Ankawa, on the outskirts of the city of Erbil, within the area ruled by the Kurdish Regional Government (KRG). Three years later, those few who remained were encouraged to return to their homes in the towns of the plain. Rasche explains how the effort to restore these refugees' lives has been difficult and, in many cases, futile.

Although the KRG provided a safe haven for the refugees, it was up to the churches to provide for their day-to-day needs. As a result, "the Chaldean Catholic Archdiocese[, and] the Syriac Catholic and Orthodox churches of Mosul and Nineveh, became full-time humanitarian aid workers" (48). Christians were unwilling to go to UN-sponsored camps, because they feared marginalization and even persecution at the hands of local workers, invariably hired from the majority population. Instead, they trusted the churches, which shouldered the herculean task of feeding and sheltering them for three years.

Rasche recounts how Christians returning to the Nineveh Plain in the wake of the defeat of the Islamic State faced similar challenges, since relief workers and the Iraqi state were now in the hands of unsympathetic non-Christians. He describes how UN agencies such as UNICEF claimed to be restoring mostly Christian towns like Telkayf, to which virtually no Christians had returned for fear of local Muslim fundamentalists. At the same time, the agencies would boast of the reconstruction of schools, which took "the form of one thin coat of painting on the exterior surface walls, with freshly stenciled UNICEF logos every 30 feet," but which were useless and full of rubble on the inside (87). Liberation of the Nineveh Plain had been completed by the Kurdish *peshmerga* and the Iraqi *hashd al-shaabi* (popular militias); many in the latter had ties to the Iranian government. One group, the 30th Shabak brigade (the Shabak are a minority ethnoreligious sect), took over the town of Bartella and made it an unwelcoming space for Christians (105).

Elsewhere, Christians managed to re-establish their communities in towns such as Teleskof, with help from the churches, but their numbers were in steep decline. The town of Baghdade (popularly known as Qaraqosh) was the largest Christian

city in the region prior to 2014; as of the book's publication a Christian militia provides security to the town, but only about 26,000 of a prewar population around 50,000 have returned (136).

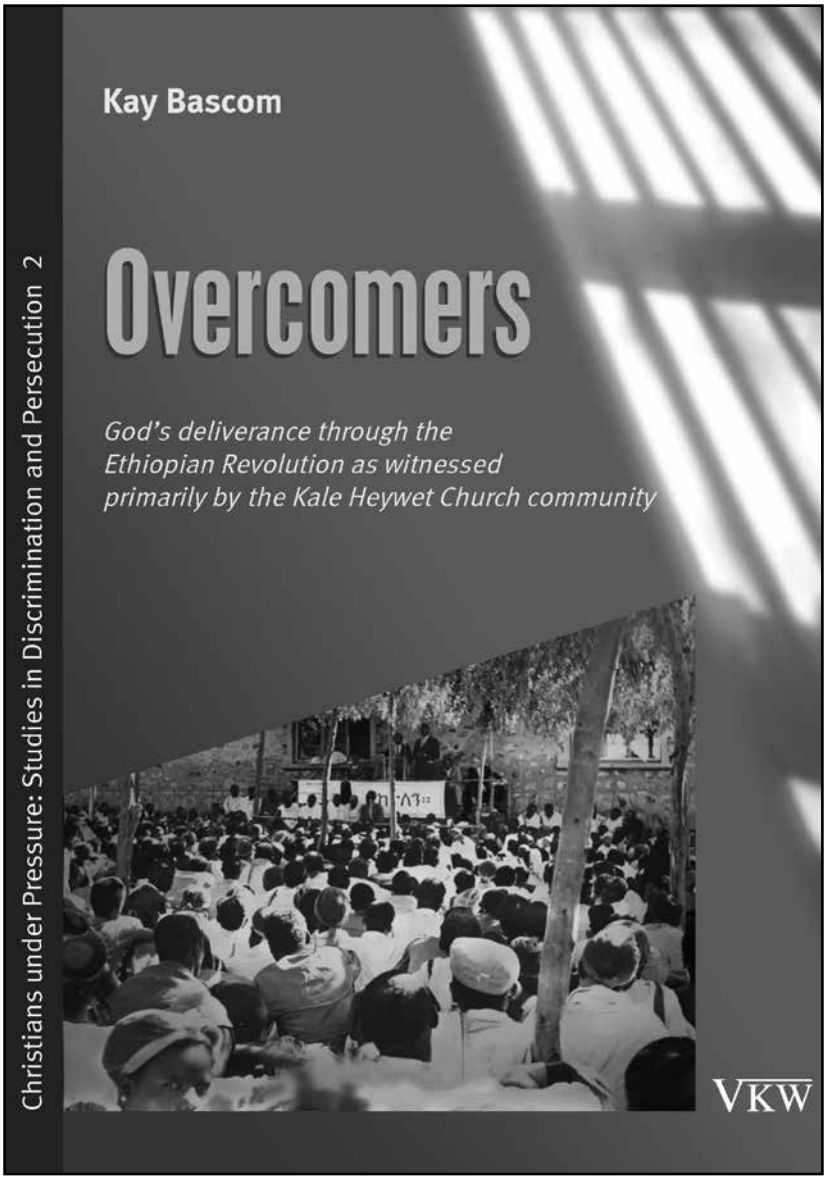
Rasche saves his greatest ire for what he calls a duplicitous and often incompetent US government response to the crisis. From the beginning, he finds that State Department representatives in northern Iraq were woefully unaware of what was going on in Ankawa a "mile and a half away from the US consulate and the UN compound" (58). Furthermore, State Department officials seemed bent on subverting US support for the churches' work in the region; one official even informed Rasche that financing extended by an act of Congress with bipartisan support was "unconstitutional" (68). When Christian and Yazidi groups cooperated to submit two proposed projects to USAID in April 2018, both submissions were rejected, and "the only groups to have received approval notices were three large, US-based professional aid organizations, all of them well-established within the existing USAID/UN funding pipeline" (144). This happened despite Vice President Mike Pence's public promise to see funding reach the Christian minorities. Rasche goes on to wonder if the State Department deliberately sought to undermine the Trump administration's commitment based on its own institutional priorities or just defaulted to an easy strategy that it knew well.

International actors' determination to avoid supporting the minority religious communities made it virtually impossible for Christians to receive help, since "the only meaningful help that they had received throughout the displacement came from the Church" (156). Rasche lauds these efforts but states clearly that they would be insufficient without external support from the Iraqi government and the international community.

The book highlights the limitations of official efforts to address minority religious populations under threat. Despite an international campaign to eliminate the Islamic State and to publicize the plight of Iraqi Christians, their extinction seems inevitable given the long-term incentives of the Kurdish and Iraqi authorities.

The book could have benefited from a more clearly chronological structure linking one chapter to the next. It could also have provided a bird's-eye view of the various Christian towns that were evacuated and restored after the conflict with the Islamic State so as to orient the reader. Nevertheless, it supplies invaluable eyewitness information to practitioners and scholars alike, who will read it as a cautionary tale and, hopefully, as a call to action.

Paul S. Rowe, Professor of Political and International Studies, Trinity Western University, Langley, Canada



Christians under Pressure: Studies in Discrimination and Persecution. Vol. 2. Bonn, 2018. 384 pp. ISBN 978-3-86269-162-3, € 23

Guidelines for authors

Version 2021-1 (February 2021)

This document combines essential elements of the editorial policy and the house style of IJRF which can be viewed on www.iirf.global.

Aims of the journal

The IJRF aims to provide a platform for scholarly discourse on religious freedom in general and the persecution of Christians in particular. The term persecution is understood broadly and inclusively by the editors. The IJRF is an interdisciplinary, international, peer reviewed journal, serving the dissemination of new research on religious freedom and is envisaged to become a premier publishing location for research articles, documentation, book reviews, academic news and other relevant items on the issue.

Editorial policy

The editors welcome the submission of any contribution to the journal. All manuscripts submitted for publication are assessed by a panel of referees and the decision to publish is dependent on their reports. The IJRF subscribes to the Code of Best Practice in Scholarly Journal Publishing, Editing and Peer Review of 2018 (https://sites.google.com/view/assaf-nsef-best-practice) as well as the National Code of Best Practice in Editorial Discretion and Peer Review for South African Scholarly Journals (http://tinyurl.com/NCBP-2008) and the supplementary Guidelines for Best Practice of the Forum of Editors of Academic Law Journals in South Africa. As IJRF is listed on the South African Department of Higher Education and Training (DoHET) "Approved list of South African journals", authors linked to South African universities can claim subsidies and are therefore charged page fees.

Submission adresses

- Book reviews or suggestion of books for review: bookreviews@iirf.eu
- Noteworthy items and academic news: noteworthy@iirf.eu
- All other contributions: research or review articles, opinion pieces, documentation, event reports, letters, reader's response, etc.:
  editor@iirf.eu
  IJRF, POBox 1336, Sun Valley 7985, Rep South Africa

Selection criteria

All research articles are expected to conform to the following requirements, which authors should use as a checklist before submission:

- **Focus:** Does the article have a clear focus on religious freedom / religious persecution / suffering because of religious persecution? These terms are understood broadly and inclusively by the editors of IJRF, but these terms clearly do not include everything.

- **Scholarly standard:** Is the scholarly standard of a research article acceptable? Does it contribute something substantially new to the debate?
- **Clarity of argument:** Is it well structured, including subheadings where appropriate?
- **Language usage:** Does it have the international reader, specialists and non-specialists in mind and avoid bias and parochialism?
- **Substantiation/Literature consulted:** Does the author consult sufficient and most current literature? Are claims thoroughly substantiated throughout and reference to sources and documentation made?

Submission procedure

1. Submissions must be complete (see no.6), conform to the formal criteria (see no. 8-10) and must be accompanied by a cover letter (see no.3-4).
2. The standard deadlines for the submission of academic articles are 1 February and 1 August respectively for the next issue and a month later for smaller items such as book reviews, noteworthy items, event reports, etc.
3. A statement whether an item is being submitted elsewhere or has been previously published must accompany the article.
4. Research articles will be sent to up to three independent referees. Authors are encouraged to submit the contact details of 4 potential referees with whom they have not recently co-published. The choice of referees is at the discretion of the editors. The referee process is a double blind process. This means that you should not consult with or inform your referees at any point in the process. Your paper will be anonymized so that the referee does not know that you are the author. Upon receiving the reports from the referees, authors will be notified of the decision of the editorial committee, which may include a statement indicating changes or improvements that are required before publication. You will not be informed which referees were consulted and any feedback from them will be anonymized.
5. Should the article be accepted for publication, the author will be expected to submit a finalized electronic version of the article.
6. Include the following:

- An abstract of no more than 100 words.
- Between 3 and 10 keywords that express the key concepts used in the article.
- Brief biographical details of the author in the first footnote, linked to the name of the author, indicating, among others, year of birth, the institutional affiliation, special connection to the topic, choice of UK or American spelling, date of submission, full contact details including e-mail address.

7. Authors are encouraged to also engage with prior relevant articles in IJRF, the Religious Freedom Series, and IIRF Reports (www.iirf.eu) to an appropriate degree. So check for relevant articles.

8. Articles should be spell-checked before submission, by using the spellchecker on the computer. Authors may choose either 'UK English' or 'American English' but must be consistent. Indicate your choice in the first footnote.
9. Number your headings (including introduction) and give them a hierarchical structure. Delete all double spaces and blank lines. Use as little formatting as possible and definitely no "hard formatting" such as extra spaces, tabs. Please do not use a template. All entries in the references and all footnotes end with a full stop. No blank spaces before a line break.
10. Research articles should have an ideal length of 4 000 words and a maximum of 6 000 words. Articles longer than that are not normally accepted, but may be published if, in the views of the referees, it makes an exceptionally important contribution to religious freedom.
11. Research articles are honoured with one complimentary printed copy.
12. For research articles by members of the editorial team or their relatives, the full editorial discretion is delegated to a non-partisan editor and they are submitted to the same peer review process as all other articles.

Style requirements

1. IJRF prefers the widely accepted 'name-date' method (or Harvard system) for citations in the text. Other reference methods are permissible if they are fully consistent.
2. A publication is cited or referred to in the text by inserting the author's last name, year and page number(s) in parentheses, for example (Mbiti 1986:67-83). More detailed examples can be found on: www.iirf.eu > journal > instructions for contributors.
3. Graphics and Tables: These must be attached as separate files. Indicate in red where they should go in the text. Every effort will be made to place them in that spot. **Image Quality:** minimum width must be 10.5 cm at 220dpi or simply 1000 pixels. The width of the image always goes over the entire width of the type area (10.5cm), but is flexible in hight. Please send the image in its own file (e.g. JPG, TIF, EPS ...), not in a Word document. **Tables and "simple" diagrams:** These will likely be redesigned by our layout expert. Please attach them in a separate file.
4. Footnotes should be reserved for content notes only. Bibliographical information is cited in the text according to the Harvard method (see 2 above). Full citations should appear in the References at the end of the article (see below).
5. References should be listed in alphabetical order of authors under the heading "References" at the end of the text. Do not include a complete bibliography of all works consulted, only a list of references actually used in the text.
6. Always give full first names of authors in the list of references, as this simplifies the retrieval of entries in databases. Keep publisher names short.

Subscriptions (for print version only!) 2020

Please note that the IJRF is *freely available on the web* a few weeks after publication at: www.iirf.global and you can register for an email alert.

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- All books are published by Verlag für Kultur und Wissenschaft / Culture and Science Publishers www.vkwonline.com
- There are North American editions by Wipf & Stock of select books www.wipfandstock.com

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