

Conceptual issues in contemporary religious freedom research

Paul Marshall¹

Abstract

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

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

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

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

1. Religious and secular

1.1 What is religion?

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

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

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

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

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

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

Article 18 of the Universal Declaration of Human Rights reads: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

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

1.2 What is secular?

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

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

2. Who is a religious adherent?

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

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

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

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

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

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

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

3. What is religious freedom?

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

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

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

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

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

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

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

4. When is persecution religious?

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

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

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

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

5. Church and state

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Conclusion

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

References

- Fox, Jonathan 2008. *A world survey of religion and the state*. New York: Cambridge University Press.
- Fox, Jonathan 2011. Separation of religion and state and secularism in theory and in practice, *Religion State and Society*, 39 (4), 384-401.
- Leiter, Brian 2012. *Why tolerate religion?* Princeton: Princeton University Press.
- Marshall, Paul 2007. *Religious freedom in the world*. Lanham, MD.: Rowman and Littlefield.
- Marshall, Paul and Shea, Nina 2011. *Silenced: How apostasy and blasphemy codes are choking freedom worldwide*. New York: Oxford University Press.
- Marshall, Paul, Shea, Nina and Gilbert, Lela 2013. *Persecuted: The global assault on Christians*. Nashville: Thomas Nelson.
- Schwartzman, Micah 2013. What if religion is not special? *University of Chicago Law Review*, Vol. 79, No. 4.
- Taylor, Charles 2007. *A secular age*. Cambridge, MA: Harvard University Press.
- United States Commission on International Religious Freedom, 2012. *The religion-state relationship and the right to freedom of religion or belief: A comparative textual analysis of the constitutions of majority Muslim countries and other OIC members*, August 3.
- USCIRF 2005. The religion-state relationship and the right to freedom of religion or belief: A comparative textual analysis of the constitutions of predominantly Muslim countries.”
- Voegelin, Eric (author) and Henningsen, Manfred (editor) 1999. *Modernity without restraint: The political religions, the new science of politics, and science, politics, and gnosticism (Collected Works of Eric Voegelin, Volume 5)*. Columbia, MO.: University of Missouri Press.
- Yuksel, Edip 1999. Cannibal democracies, theocratic secularism: The Turkish version, 7 *Cardozo Journal of International and Comparative Law*, 423-493.