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Challenges of religious communities in European secular states and beyond



INTERNATIONAL JOURNAL FOR RELIGIOUS FREEDOM

Journal of the International Institute for Religious Freedom

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

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OF THE WORLD EVANGELICAL ALLIANCE



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The Ascension of Our Lord Jesus Christ

This photograph shows damage to a fresco at The Holy Mountains Lavra of the Holy Dormition in Svyatohirsk, Ukraine. It is one of the five holiest sites of the Russian Orthodox Church. The damage is from the Russian invasion of Ukraine. War is one of the ways holy sites are damaged and destroyed. The Russian invasion has caused massive damage to Ukrainian holy sites along with other violations to religious freedom.

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Editorial

Challenges of religious communities in European secular states and beyond

The theme of secularism and its impact on religious freedom is an important one. This issue builds on our previous issue on secularism from 2020, “Responding to secularism,” vol 13(1/2). This issue explores the challenges of secularism from legal, political and statistical perspectives. This provides a rich array of perspectives.

We are pleased to welcome two guest editors from the Evangelische Theologische Faculteit (ETF) in Leuven, Belgium for this issue. Prof Dr Jelle Creemers is Academic Dean of ETF Leuven and Professor in the Department of Religious Studies and Missiology. Dr Tatiana Kopaleishvili is an Affiliated Researcher in the same department. Together they coordinate the Institute for the Study of Freedom of Religion or Belief (ISFORB). As they explain below, the papers in this special issue come from their annual conferences addressing religious freedom issues. As a journal dedicated to religious freedom, we are grateful for the work of the ETF in Leuven!

As usual, we have a good variety of book reviews and our regular Noteworthy section highlighting current reports on religious freedom from around the world.

Yours for religious freedom,

Prof Dr Janet Epp Buckingham

Executive Editor

Of Dreams and Nightmares...

When Christof Sauer first became a guest professor at the Evangelische Theologische Faculteit (ETF) in Leuven, Belgium in 2014, he had a dream. His dream was that at ETF Leuven a research institute be set up which focuses on the very topic of this journal: Freedom of Religion or Belief (FORB). While dreams often evaporate as time passes, Christof Sauer worked tirelessly to turn his dream into reality. In 2020, this dream has materialized with the establishment of the *Institute for the Study of Freedom of Religion or Belief*.

ETF Leuven’s *Institute for the Study of Freedom of Religion or Belief* (ISFORB) focuses its research on the interplay of societal developments, human rights discourses and religion/faith on local and global levels, with attention to religious persecution. As a multidisciplinary research team, ISFORB is involved in scholarly work on religious freedom and the broader field of religion-state relations from a variety of angles. By combining expertises, the institute is well equipped to engage in contemporary academic discussions on the place of religion in secular society. Research and publishing are at the heart of its activities. ISFORB purposefully seeks interaction with other research centres on related topics in Europe and beyond.

Both at ETF Leuven and in other academic contexts, ISFORB organizes and participates in research projects, conferences, symposia, expert meetings, etc. ISFORB currently consists of an international team of ten junior and senior researchers and is coordinated by Jelle Creemers and Tatiana Kopaleishvili.

Since 2021, ISFORB has organized annually a two-day academic conference in Leuven on a topic related to FORB. These conferences bring together scholars and interested practitioners from a wide variety of expertise and backgrounds. These two days are packed with activities. Plenary papers and panel papers are presented and reflected on. We inform one another of our work and of current FORB-related challenges. And we take time to get to know one another better. The ISFORB conferences seek to give primary attention to the European continent both topically and in participation. Notwithstanding, participants in the past three years have come from all inhabited continents (except for Oceania) and presentations have drawn attention to FORB matters far outside of the purview of the Council of Europe. To date, about 100 researchers and practitioners have participated in ISFORB conferences and many have become returning friends.

This special IJRF issue consists mostly of contributions from the 2022 and 2023 ISFORB conferences. The 2022 conference focused on the theme “Freedom for Us or for All? (Non-)Religious Communities and FORB Rights.” In 2023, the conference focused on the theme “Secular States Struggling with Religious Freedom.” The selection brought together in this issue concentrates largely on the current challenges of (non-)religious communities in Europe (and beyond). The authors come from different academic disciplines such as law, history, theology and sociology. Their articles draw attention to specific communities in particular countries or regions today, that strive and deserve to be accepted and respected in their (non-)religious particularity. Most articles contain stories and facts that often have turned and still turn (non-)religious community lives into nightmares. Each of these concrete situations, in which (non-)religious communities are confronted with limitations of their rights, challenges to their existence, and physical or social abuse, deserves to be described, analyzed, and brought to public acknowledgement. While very diverse in content, methodologies and style, the combined articles are a strong appeal to (non-)religious communities, scholars, and actors in advocacy and public administration to remain vigilant and to keep an eye on one another, also on the European continent.

One may wonder: but is religious freedom in secular Europe not firmly established? This myth of a ‘secular’ Europe that is ‘religiously free’ is debunked in the article by Jonathan Fox (Bar-Ilan University, Ramat Gan). For his article, he analyzed the data from his Religion and State (RAS) database for 43 European states (the members of the Council of Europe as well as Russia and Belarus). Fox shows that these European states engage in substantial levels of support for religion; regulation, re-

striction and control of the majority religion; and government-based discrimination against religious minorities. This is true of both countries in Europe with official religions and those which declare separation of religion and state in their constitutions. Fox argues for a distinctly European pattern of state-religion relations that is influenced in no small part by anti-religious forms of secularism.

This European reality has implications for communities that seek autonomy, e.g., to organize themselves and to educate their members, without government interference. Arie De Pater and Dennis Petri (International Institute for Religious Freedom) argue in their opinion article for the importance of religious autonomy and justify it using a transactional lens, a traditional FoRB lens, and a minorities lens. They argue that if people are free to join and leave the community, religious autonomy should prevail and that authorities should have compelling reasons to interfere in religious communities. After these lenses are explored, European Court of Human Rights cases illustrate the tension between religious autonomy of a faith or belief community and the principle of non-discrimination.

Notably, not just religious, but also non-religious communities can struggle for societal recognition. Adelaide Madera (University of Messina) approaches from a legal perspective the place of non-religion in Italian society. In the introduction of her article, she points out that a robust architecture in policies, legislation and jurisdiction to protect and give space to non-religion exists at the European level. In Italy, however, legal protection of an atheistic life-stance has taken decades to be developed even at basic level. The current lack of a decent law on religious freedom and the strictness of the historical bilateralist approaches to state recognition impedes atheists even more than members of minority religions in their attempt to self-organize and take up a positive role in Italian society.

In their article on “criminotheology” in Putin’s Russia, Tatiana Vagramenko (University College Cork) and Francisco Arqueros (University of Almeria) draw attention to the fate of Jehovah’s Witnesses. They demonstrate that the trials against them and the creation of an institution of legal religious experts who persecute them are grounded in late-Soviet anti-sectarian models and narratives. The collapse of the Soviet Union gave Jehovah’s Witnesses some relief in the early 1990s, but thereafter Russian law returned to labelling communities as “non-traditional religions” and later “religious extremists.” This has quickly led to new repressive policies that are fueled by Russian Orthodox hierarchs. The Witnesses are among the chief victims of this legal and societal injustice up to this day.

Russian repression of religious life is, however, not limited to the Russian Federation. Oleksandra Kovalenko became ISFORB visiting scholar at ETF Leuven in early 2022, shortly after Russian tanks began to cross the borders with Ukraine, heading for Kyiv. The current Russian occupation of Ukrainian Eastern territo-

ries started, however, much earlier – in 2014. In her opinion article, Kovalenko gives a sobering account of violations of Freedom of Religion and Belief rights in Ukraine since that year, in occupied Crimea and on the occupied territories of the Donetsk and Luhansk regions. Particular attention goes to violence against religious life since the full-scale aggression of the Russian Federation in Ukraine in February of 2022, including the destruction of religious sites, killings of priests and persecutions of various religious groups.

Two contributions enrich this volume by adding input from outside of the European continent. Varughese John (South Asia Advanced Christian Studies, Bangalore) brings us to the challenges of new Christians in Hindu-dominated India. He explores how converts to Christianity tend to navigate a complex social landscape by occupying hybridized sites seeking to remain Hindu while following Christ. This strategy is especially visible in Krista Bhakta (Christ followers) movement, the upper caste groups who see a cultural continuity with the Hindu traditions. Using “hybridity”, a concept that Homi Bhabha popularized to capture the mixing of Eastern and Western cultures in postcolonial literature, John explores how this subversive tool within political and cultural spheres can be adopted and applied in the religious sphere.

Dennis Petri (International Institute for Religious Freedom) introduces us to complexities *within* religious minorities, taking us to the Nasa Indigenous territories in the southwestern highlands of Colombia. He draws attention to violations of religious freedom that tend to be obscured by the general positive appreciation in legal scholarship of Indigenous autonomy. Based on original empirical field research (2010-2017), he gives attention to the fate of converts away from the traditional religion. On that basis, he discusses the challenge of balancing the right to self-determination of Indigenous Peoples and the individual human rights of people living in Indigenous territories, particularly religious minorities – and shows the implications for the analysis of “minority in the minority” situations beyond the context of Latin America.

As guest editors of this volume, we are grateful to IJRF’s Executive Editor, Janet Epp Buckingham, and her team for the possibility of this special issue and their professional assistance. As these contributions are being published now, we look ahead again to what is to come. For ISFORB, the next important event is the 2024 conference, which will take place on 2-3 May at ETF Leuven. The topic for this academic gathering will be “Propagation and (de)conversion: Conflict of Individual and Group Rights?” The call for papers is published on p. x of this issue. We would be honored to see you there!

Prof Dr Jelle Creemers and Dr Tatiana Kopaleishvili

Institute for the Study of Freedom of Religion or Belief, ETF Leuven

Guest Editors



15 years of IJRF

Christof Sauer

When the International Institute for Religious Freedom (IJRF) was founded around 2006 to promote the study of religious freedom in academia and to provide reliable data on religious persecution to courts and parliaments, we realized that an academic journal solely dedicated to this topic was missing.

Thus, we decided to develop such a journal from scratch as a flagship publication of the IJRF. We wanted to provide a dedicated publishing platform to scholars studying the topic from the angles of their various disciplines. Besides peer reviewed academic articles, we provided space for opinion pieces, conference reports, documentation, noteworthy news, and book reviews.

As one of the directors of IJRF was based in Cape Town, South Africa, we decided to adhere to the standards set in that country for journals accredited by the Department of Higher Education and Training through assessment by the South African Academy of Sciences. A pilot issue was published in the second half of 2008. After a few years of continuous, twice annual publication and leaps of growth in diversity and quality we gained the desired accreditation.

I am delighted that the journal continues to be a sought-after publication channel and is widely read around the globe among those interested in and advocating for freedom of religion or belief. And that despite the tragic deaths of both the first managing editor as well as of its publisher in the early years. I am most grateful to all those who contributed to the continuation and success of the journal over the years, and particularly to the current executive editor who has revived the journal and brought it up to date again after a difficult period. Regularly, it also produces special issues on specific topics, some edited by guest editors and some emanating from conferences.

As far as I know, the International Journal for Religious Freedom still remains the only academic peer reviewed journal solely dedicated to freedom of religion or belief.

While the journal was always disseminated freely in an electronic form, its more recent presentation on an Open Journal platform makes it more visible and accessible. It is also available on the electronic journal platform SABINET via

subscribing libraries and individual printed copies can be bought from Culture and Science Publisher (VKW, Germany) and Wipf & Stock (USA).

The recognition of IJRF by the Norwegian Register for Scientific Journals, Series and Publishers constitutes another milestone, aptly marking the 15-year history of IJRF. May it serve its purpose for many more years to come!

Prof Dr Christof Sauer

founding editor together (with Prof Dr Dr Thomas Schirrmacher)

Call for Papers

“Propagation and (de)conversion: Conflict of individual and group rights?”

ISFORB Conference, 2-3 May 2024 – ETF Leuven, Belgium

The right to freedom of thought, conscience and religion is a fundamental human right that protects the individual's freedom to not only have a personal worldview, but to also share their convictions with others, either in a challenging or inviting way. Such propagation can lead to a change of beliefs, commonly known as conversion or, in case of a move to atheism, deconversion. In some contexts, however, (non-)religious propagation is considered an undesirable intrusion into people's personal spheres. Also, some (ethno-)religious communities consider conversion from their worldview inadmissible and not a right intrinsic to FORB. In addition, for some communities, hegemonic (non-)religious discourses are considered life-threatening for their minority group identities.

The twin rights to (non-)religious propagation and to (de)conversion are the most sensitive aspects of FORB. They exemplify a vivid instance of the tension between individual and group rights in human rights discourses. This fourth international conference, organized by the Institute for the Study of Freedom of Religion or Belief (ISFORB), focuses on this topic. Particular attention goes to members of minority worldviews and their rights and experiences.

This multi-disciplinary Call for Papers warmly welcomes you to our conversations, giving attention to these themes at the local, national or European level. Contributions can come from a legal, sociological, historical, theological, or other disciplinary viewpoint. Attention can go to theoretical considerations and to practical implications, related to topics such as:

- a) different understandings of propagation and (de)conversion in human rights and (non-)religious paradigms;
- b) local or regional legal provisions and religious practices that foreground socio-cultural and historical situatedness;
- c) philosophical, ethical and theological considerations on conversion and mission/evangelism/proselytism/dawah.



Please send your abstract (200-300 words) for a 20min paper to isforb@etf.edu before 1 February 2024.

You will be notified of acceptance before 15 February 2024.

We aim to bring quality papers of the conference together in an appropriate academic publication afterwards.



Religious freedom and war

Ukrainian realities

*Oleksandra Kovalenko*¹

Abstract

The ongoing war in Ukraine creates many challenges for religious communities in Ukraine, as armed conflict provokes the violation of human rights in any country. The article focuses on violations of Freedom of Religion and Belief in Ukraine since 2014 – in the occupied Crimea and on the occupied territories of the Donetsk and Luhansk regions as well as during the first two months after the full-scale aggression of Russian Federation in Ukraine in February 2022, including the destruction of the religious sites, killings of the priests and persecution of various religious groups.

Keywords

Freedom of religion or belief, human rights, war, religious persecution, Ukraine, Russian invasion.

1. Introduction

On 24 February 2022, at 5 am, Russia started a full-scale military invasion of Ukraine, with multiple cities all over the country, including the capital, Kyiv, hit by missile strikes. Russian troops attacked simultaneously from every possible direction, crossing the Ukrainian border from the territories of Russia, Belarus, and the occupied Crimea. In just a few hours the Russian troops reached the suburbs of Kyiv but faced a strong response from the Ukrainian side. Nine months later the war continues, with successful counterattacks from the Ukrainian side, a few regions fully liberated, and heavy battles on numerous parts of the front-line, especially in the Eastern and Southern parts of the country. Starting from the atrocities and war crimes which were discovered after the withdrawal of the Russian troops from Kyiv region and continuing with the recent massive attacks

¹ Oleksandra Kovalenko (1995) is a religious studies scholar from Kyiv, Ukraine. She is a member of the Ukrainian Association of Religious Studies (UAR) and has previously worked at a State Service of Ukraine for Ethnic Affairs and Freedom of Conscience which monitors religious freedom and manages the church-state relations in Ukraine. This article uses British English. Email: olexandrakovalenko@gmail.com.

on civilian infrastructure, leaving millions of Ukrainians without electricity and heating in the late fall and winter, the attacks on civilian population with little respect to the international humanitarian law has proved to be one of the strategies of this war. Therefore, attacks on the religious freedom are also a part of this policy, including the deliberate shelling and destruction of religious sites, kidnappings, torture and killing of religious figures, burning religious literature, and stealing religious objects.

2. Religious life in Ukraine: general context

2.1. Religious representation

Ukraine has a broad and diverse religious map, with more than 37,000 religious organisations present in a country as of the end of the 2020 (excluding the temporarily occupied territories of Donetsk, Luhansk regions and Crimea), according to the Annual Statistical Report, published by the State Service of Ukraine for Ethnic Affairs and Freedom of Conscience.² The majority of the population are Christians, mostly Orthodox, but Catholics and Protestants are also well represented. The Ukrainian Greek Catholic Church (UGCC) plays a prominent role in spiritual life, being also widely recognised for its social and educational activities (one of the best private Universities in Ukraine, the Ukrainian Catholic University (UCU), was founded in Lviv by the UGCC with support from the Ukrainian diaspora). Ukraine historically has large Jewish and Muslim communities, and numerous other religious traditions, including Buddhism, Hinduism, paganism and native faith, and even Old Greek religion.

According to the sociological study “Specifics of Religious and Church Self-determination of Citizens of Ukraine: Trends 2000-2021,”³ conducted annually by the Razumkov Center, the majority of Ukrainians identify themselves as believers – 67.8 percent in 2021. People who waver between faith and non-belief are 13 percent, non-believers – 5.7 percent, convinced atheists 3.4 percent. The number of people who found it hard to answer the question or did not care about religion was 10 percent. The highest percentage of people who said that they were believers was in 2014, after the Revolution of Dignity, and the beginning of the war with Russia. We may expect that in 2022 the numbers will spike again, as many people come to churches for comfort and support.

It must be emphasized that the spread of misinformation regarding nationalism and antisemitism in Ukraine by Russian propaganda is also untrue and

2 State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, “Report on the network of religious organizations in Ukraine,” 1 January 2021. Available at: <https://dessa.gov.ua/statistics-rel/>.

3 Razumkov Centre, *Specifics of Religious and Church Self-determination of Citizens of Ukraine: Trends 2000-2021*, Kyiv, 2021. Available at: https://razumkov.org.ua/uploads/article/2021_Religiya_eng.pdf.

unjust. The Jewish community of Ukraine is very diverse and active, as stated by various Ukrainian Jewish leaders, including the Head Rabbi of Odesa Abraham Wolf: “Our city, and Ukraine in general, is the most loyal country for any nationality.”⁴ The number of reported crimes of antisemitism is really low compared to other countries – the number of acts of antisemitic vandalism is constantly decreasing: in 2020 only eight cases in total were reported, compared to 14 cases in 2019 and 12 cases in 2018, according to the Monitor Group for Ethnic Minorities’ Rights expert Viacheslav Lichachev.⁵

As of 2019, according to the data provided by regional and Kyiv city state administrations,⁶ there are five preschools in Ukraine with education in Hebrew. In general education institutions of Ukraine, in 58 classes 4665 students study Hebrew as a subject. Eighty amateur groups operating in most regions of Ukraine are promoting the cultural development of the Jewish national minority.

The library funds of Ukraine contain 4,000 units of Hebrew books. Twenty-two newspapers of Jewish public organizations with a circulation of 30,900 units/month were published in Ukraine in 2019. One hundred and fifty-eight national and cultural societies of the Jewish national minority are registered in Ukraine. The largest number of them was recorded in Vinnytsia, Kyiv, Poltava, Khmelnytsky and Cherkasy regions.⁷

2.2. Legislation

The legislation regarding freedom of religion or belief is very open and allows any type of religious activity and faith, as long as it is not violating the laws. Religious organisations can function freely without any registration, approval or surveillance from the state, but in order to be recognised as a legal entity they must be officially registered by the state. Ten people are enough to establish a parish. The procedure of registration as well as other questions regarding religious life and activities are regulated by the Law of Ukraine “On Freedom of Conscience and Religious Organisations.”⁸

4 UA News, “‘We don’t need to be liberated from anything,’ the clergy of Odesa appealed to the residents,” 16 March 2022. Available at: <http://uanews.odessa.ua/society/2022/03/16/288361.html>.

5 Elisaveta Socurenko, “Antisemitism in Ukraine: what’s really happening?” Zmina, 28 January 2021. Available at: <https://bit.ly/47e2CQY>.

6 State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, “Implementation of the rights of persons belonging to national minorities and indigenous peoples of Ukraine: a general overview.” Available at: <https://dcss.gov.ua/realising-rights-of-national-minorities-in-ukraine/>.

7 State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, *Report on the number of civic associations, the state of protection of the rights of national minorities and indigenous peoples in Ukraine*, 2020.

8 Law of Ukraine, On Freedom of Conscience and Religious Organisations. Available at: <https://zakon.rada.gov.ua/laws/show/987-12?lang=en#Text>.

According to the Ukrainian Constitution,⁹ every citizen of Ukraine is guaranteed the right to freedom of conscience. This right includes the freedom to have, adopt and change the religion or beliefs out of preference, and the freedom, whether individually or jointly with others, to profess or not to profess any religion, to practice religious cults, to freely manifest and share religious or atheistic beliefs.

The Church (religious organisations) in Ukraine is separated from the State. The State protects the rights and lawful interests of all religious organisations; promotes the establishment of mutual religious and ideological tolerance and respect between citizens, whether professing religion or not, between believers of different faiths and their religious organisations; takes into account and respects the traditions and internal guidance of religious organisations if they do not contradict current legislation.

The State does not interfere in the legitimate activities of religious organisations and does not finance the activities of any organisations established based on their attitude to religion. All religions, faiths and religious organisations are equal before the law. Any advantages or restrictions for one religion, faith or religious organisation compared to others are not allowed.

3. Religious freedom in the occupied territories since 2014

3.1. *Donetsk and Luhansk regions*

Back in 2014, in occupied Donetsk, illegal armed groups controlled by the Russian military declared the Orthodoxy of the Moscow Patriarchate as the main religion of the region and began deliberate persecution of religious minorities.¹⁰ Dozens of churches, prayer houses, and places of worship were illegally taken away from the religious communities. Abductions, torture, and extrajudicial executions of clergymen and believers of the Orthodox Church of Ukraine, the Ukrainian Greek Catholic Church, and several Protestant churches (Baptists, Pentecostals, Adventists, Ukrainian Christian Evangelical Church, etc.) were happening in the area for the past eight years. The Latter-day Saints Church (Mormons) and Jehovah's Witnesses were subjected to targeted harassment. As a result, in the Russian-occupied territories of the Donetsk and Luhansk regions, most religious communities have ceased to exist, believers are forced to pray privately or gather clandestinely, and freedom of thought, conscience, and religion has practically disappeared. According to the information which Ukrainian human rights de-

9 Constitution of Ukraine, article 35. Available at: <https://zakon.rada.gov.ua/laws/main/254K/96-BP?lang=en#Text>.

10 Institute for Religious Freedom, "Appeal of Euromaidan SOS and the Religious Freedom Roundtable in Ukraine regarding the attack on religious freedom during the armed aggression of Russia against Ukraine," 16 March 2022. Available at: <https://irf.in.ua/p/85>.

fenders were able to gain through private interviews with the believers who are continuing their religious activities undercover, private houses and apartments have become the primary places for worship. Believers implement specific security measures such as gathering irregularly and in different locations each time so that the occupational authorities are not able to distinguish a specific pattern and discover the religious group.

3.2. *Crimea*

The forced implementation of Russian legislation has significantly disrupted freedom of religion or belief in Crimea. Since the beginning of the Russian military intervention on the Crimean Peninsula in February 2014, Ukrainian churches and religious communities became targets for purposeful harassment of their activities. During the years of occupation, the number of parishes of the OCU decreased from 49 to five, according to the report based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU).¹¹ The occupation authorities of Crimea continue to persecute religious figures and individual believers, in particular Muslims from among the Crimean Tatars, the community of the Orthodox Church of Ukraine, evangelical Christians, and Jehovah's Witnesses. One of the methods of pressure is the deprivation of ownership of religious buildings of Ukrainian churches through physical seizures and decisions of the courts of the occupation authorities. One example is the case with the community in the name of the Immaculate Image of the Mother of God "The Unburned bush" of the Orthodox Church of Ukraine in Yevpatoria. In November 2019, the so-called "Yevpatoria City Court" in its decision has required the parish to demolish the wooden church, the construction of which has started even before the occupation of the peninsula by Russia. "*Oblige jointly and severally.. to release a municipal plot of land with a total area of 30.25 square meters by dismantling the building erected on it.*"¹² The representatives of the OCU in the occupied Crimea have refused to demolish the church building, which was followed by additional penalties and threats from the occupational authorities.

On 3 November 2020, Metropolitan Kliment of the OCU addressed the 75th session of the UN General Assembly in New York, where a thematic online event on the human rights situation in the temporarily occupied territory of the Republic of Crimea and the city of Sevastopol was held. In his video address, he spoke about the situation surrounding the Crimean Eparchy of the Orthodox Church

11 United Nations High Commissioner for Human Rights (OHCHR), Report on the human rights situation in Ukraine: 1 August 2020 - 31 January 2021. Available at: <https://bit.ly/3rjc27P>.

12 Religious Information Service of Ukraine, "Invaders fine the OCU's Parish in Yevpatoria and demand to demolish the church," 4 December 2020. Available at: <https://bit.ly/3ZINOHv>.

of Ukraine in Crimea. During the years of occupation, the number of parishes of the OCU decreased from 49 to five. According to the Metropolitan Kliment of the Orthodox Church of Ukraine, in 2019 all the church utensils of the diocesan administration were stolen from the Cathedral of Saint Volodymyr and Olga in Simferopol. In 2020 the Ukrainian Orthodox Church community was evicted from its principal cathedral in Simferopol for a debt of 2,95 UAH (0,09 euro).¹³ Many priests were forced to leave the peninsula because of the constant pressure, threats and persecutions from the side of the occupational authorities, leaving many believers without necessary spiritual assistance.

The Ukrainian Greek Catholic Church is also facing similar challenges as their priests are obliged to receive a special “permission for missionary activities” and can be in Crimea only with “migration cards”, which allow them to be in the territory of the peninsula only for 90 days at a time. This means that pastoral care is disrupted, and regular services are also under question. As of January 2016, there was only one priest of the UGCC in Crimea on a permanent basis. The Ukrainian Greek Catholic Church is also a subject of religious persecution, specifically for having a prominent Ukrainian identity. In Simferopol, an attack was carried out on a private house in which the chapel of the UGCC was arranged; the attackers committed a pogrom and left behind offensive inscriptions with aerosol paint calling on the “enemies of Orthodoxy” to leave Crimea. In Sevastopol, on 15 March 2014, the chaplain of the Naval Military Academy, Father Mykola Kvych was kidnapped from the church just after the service. Father Ihor Havryliv, who served as the dean of the Crimean deanery of the UGCC until the beginning of 2014, was pressured to transfer to the Ukrainian Orthodox Church of the Moscow Patriarchate. This specific kind of demand has a correlation with the events of 1946, after the Western Ukraine was included in the Soviet Union, the Ukrainian Greek Catholic Church was supposedly “re-united” with the Russian Orthodox Church, meaning that its priests had to either forceably change their religious identity or had to continue their activities undercover.

Some religious groups are facing even more extreme persecution. On 20 April 2017, the Supreme Court of the Russian Federation declared the Jehovah’s Witnesses an extremist organization and banned its activities on the territory of the Russian Federation. On 16 August 2017, the Ministry of Justice of the Russian Federation added the Crimean cells of Jehovah’s Witnesses to the list of extremist organizations. Since 2018, the persecution of Jehovah’s Witnesses also began in criminal cases. In 2020, the first sentences were handed down to members of the

¹³ Archbishop Clyment said there is no debt and has payment documents to prove the statement (see <https://bit.ly/3M34KTt>). The situation is an example of the occupation authorities using a formal reason to take the church from the parish.

Jehovah's Witness organization with imprisonment. Just recently two members of the religious community have been sentenced to six years in a general regime prison. 62-year-old Olexander Litvinyuk and 49-year-old Olexander Dubovenko have been under house arrest since August 2021, and on 3 December 2022 they have been found guilty of extremism. In addition to Dubovenko and Litvinyuk, 17 other Crimeans are being prosecuted for their religious beliefs. Four of them are in the colonies, and in early October 2022, the "court" in Sevastopol sent three more to prison.

Another widely persecuted religious group is the Muslims. Crimean Tatars who are recognised as Indigenous Peoples of the peninsula by the Ukrainian state are traditionally Muslims. Russian occupation authorities continue to subject Muslim Crimean Tatars to imprisonment and detention, especially if authorities suspect the individuals of involvement in Hizb ut-Tahrir, the Muslim political organization, which is banned in Russia but completely legal in Ukraine. The practice of mass raids on Tatar homes, mosques, media outlets, and schools is widespread all over Crimea.

Overall, the forced implementation of the Russian legislation has significantly worsened the situation of religious communities and associations in occupied Crimea, which was reported by the international human rights organisations, Ukrainian authorities and non-governmental organisations.

4. FORB violations after 24 February 2022

4.1. Destruction of religious sites

Since the beginning of the full-scale Russian invasion in Ukraine the violations of freedom of religion and belief have reached a new scale, not only by increasing numbers, but also with new forms of violations, which include the damage and destruction of the religious sites, kidnappings and killings of the priests, stealing of relics and sacred objects, damage to the cultural heritage and other forms of violent persecutions. According to the data provided by the State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, from 24 February to 20 September 2022, at least 270 religious buildings in at least 14 regions of Ukraine were completely destroyed or suffered damage of varying degrees: churches, mosques, synagogues, prayer houses, Kingdom Halls, educational and administrative buildings of religious communities of Ukraine.¹⁴ The data regarding the destruction of religious sites is being collected by the Workshop for the Academ-

¹⁴ State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, "Seven months of full-scale Russian invasion: the aggressor destroyed at least 270 buildings of religious communities in Ukraine," 21 September 2022. Available at: <https://dessa.gov.ua/ussia-ruined-at-least-270-religious-sites/>.

ic Study of Religion (WASR),¹⁵ the Institute for Religious Freedom and individual researchers. There is also an interactive map created by the State Service of Ukraine for Ethnic Affairs and Freedom of Conscience in cooperation with the WASR, which contains the information on the affected religious sites – affiliation, general information on the building, the level of destruction, etc.¹⁶

During the first two months after the invasion the average speed of the destruction peaked at almost two churches damaged each day. The largest number of religious buildings were destroyed in Donetsk (67) and Luhansk (58) regions. After them – Kyiv (43) and Kharkiv (35) regions saw the most religious buildings destroyed.

Out of 270 religious buildings damaged as a result of the Russian invasion, five are Muslim, five are Jewish, and the remaining 260 are Christian. Thirty belong to Protestant communities, 21 to the Orthodox Church of Ukraine, four to the Roman Catholic Church, three to the Ukrainian Greek Catholic Church and 66 belong to communities of Jehovah's Witnesses. Fifty-two percent (136 objects) of the 260 Christian buildings that were completely or partially destroyed belong to the Ukrainian Orthodox Church of the Moscow Patriarchate. This can be explained by the fact that this religious confession is dominant in the Eastern and Southern parts of Ukraine.

Some religious facilities were hit by indiscriminate bombardment, while others were deliberately destroyed with machine guns or artillery. There are published testimonies of eyewitnesses who saw the targeted shelling of a religious facility via large-calibre machine guns or other weapons.¹⁷

Some of the affected churches were historical monuments that survived two World Wars and a 70-year atheistic regime. The damage to the cultural heritage has been repeatedly reported by the Ministry of Culture and Information Policy. On 7 March, a 160-year-old wooden church in honour of the Holy Mother of God of the Ukrainian Orthodox Church of the Moscow Patriarchate in the village of Vyazzka, Zhytomyr region, was destroyed. On 7 March, St. George's Church, built in 1873, burned down in the village of Zavorichi, Brovar district, Kyiv region, as a result of shelling. It belonged to the Boryspil Diocese of the UOC MP. According to parishioners, the shelling was carried out by Russian troops.

15 Workshop for the Academic Study of Religion, "Religion on Fire: Documenting Russia's War Crimes against Religious Communities in Ukraine." Available at: <https://www.mar.in.ua/en/religion-on-fire/>.

16 State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, Workshop for the Academic Study of Religion, Google map of the damaged buildings of religious communities. Available at: <https://bit.ly/48VcZuG>.

17 Religion on Fire, *Report based on the results of monitoring the damage to religious buildings as a result of Russia's full-scale invasion of Ukraine (24 February - 24 August 2022)*. Available at: <https://bit.ly/3RO8Bau>.



Picture 1

The damage of the sacred places and sacred objects also includes the damage to the icons. Members of the Workshop for the Academic Study of Religion have reported that some icons were directly shot at by the military, and many more were affected as a result of shelling and debris.

In the Kyiv region, the Russian military destroyed and robbed the buildings of the Ukrainian Evangelical Theological Seminary. In Irpin, also Kyiv region, the occupiers burned Bibles and destroyed the building of the Christian mission “Eurasia”.



Picture 2

Moreover, in some places Russian military use religious sites and church buildings as their bases (probably, because they don't expect Ukrainian military using weapons against the church), not only residing there, but also turning it into places of torture and detention for prisoners (primarily civilians). For instance, Russians set up their headquarters in the Ascension Church (1913) in Lukashivka, Cherni-



hiv region. Cars with mortars and ammunition were placed around the temple. There were also boxes of shells inside the temple. A mobile crematorium was also brought here. In addition, a torture chamber was set up in the church, where civilians from the neighboring villages of Yagidny and Ivanivka were taken.

4.2. Attacks on clergy

Numerous killings of priests have been reported starting from the very first week of aggression – including Father Maxym Kozachyna, the priest of the Orthodox Church of Ukraine, who was wearing a soutane when he was shot dead by Russian soldiers in Kyiv region. The Russian military stopped the priest as he was trying to evacuate and took his car after killing him. On 27 February, a church servant of the Ukrainian Orthodox Church (Moscow Patriarchate), his wife Olena, the church choir regent, their three children and the church psalmist were killed by artillery fire. On 13 March, the military killed the OCU chaplain Platon Morgunov in Volnovakha, Donetsk region.

Some priests are in captivity. The story of the OCU priest father Vasyl Vyrozub is quite remarkable in this regard. He was a member of the Ukrainian border rescue mission on Zmiiny Island when the crew of the Sapphire Civil Rescue Ship was taken prisoner on the first day of the full-scale invasion. For two and a half months the priest and chaplain of the OCU has been in Russian captivity, suffering from moral and physical torture, which was later reported by other crew members.

In another case, priest Serhiy Chudinovich from Kherson was kidnapped from the church building and tortured until he agreed to cooperate with the occupiers. He reported:

On March 30, 2022, in Kherson, I was captured by representatives of the Russian Federation. I spent the whole day in their room. I was accused of participating in the activities of sabotage and reconnaissance groups of the Armed Forces of Ukraine and of being a member of the territorial defence. This is not the case, of course.¹⁸

On his Facebook page, he posted a video in which he told the story of his captivity.¹⁹ He shared that he was not allowed to drink or use the toilet, had been repeatedly beaten, suffocated, stripped naked, threatened to be raped, killed and other kinds of physical and psychological tortures for a few hours. He was later set free and left the occupied territories one week after the incident. He was known for his pro-Ukrainian position and was the one carrying out a memorial service for the perished members of the territorial defence of Kherson on 2 March. After Kherson was liberated in November, the priest returned to the city.

There are a few possible motivations for the persecution of priests from the side of the occupational authorities, such as:

- forcing the priest to cooperate with the occupied authorities;
- intimidating religious leaders who have previously expressed a pro-Ukrainian position in order to silence them;
- putting pressure on denominations whose activities are “undesirable” for the occupation regime; or
- blackmail in order to obtain a ransom or for the “exchange fund”.

It is important to emphasise that civilians in areas of armed conflict and occupied territories are protected by the 159 articles of the Fourth Geneva Convention. Civilians are to be protected from murder, torture, or brutality, and from discrimination on the basis of race, nationality, religion or political opinion.²⁰

5. Conclusions

The ongoing war in Ukraine creates many challenges for religious communities and religious freedom in Ukraine and as armed conflict continues, more and more religious groups suffer direct harassment and persecutions and indirect vi-

¹⁸ Institute for Religious Freedom, “Russian Attacks on Religious Freedom in Ukraine: Research, analytics, recommendations,” Kyiv, 2022. Available at: <https://bit.ly/46YvM6D>.

¹⁹ “The truth makes us free” – Facebook video by Serhiy Chudinovich. Available at: <https://bit.ly/3RKrFXi>.

²⁰ American Red Cross, “Summary of the Geneva Conventions of 1949 and Their Additional Protocols.” April 2011. Available at: <https://rdcrss.org/48HPPYw>.

olations of religious freedom, such as not being able to regularly gather in places of worship for safety reasons. Numerous instances of FORB violations have been reported to the international community by the local and international human rights watch organisations, religious studies scholars, and Ukrainian authorities.

The religious factor is also one of the crucial ideological aspects of this war, as the occupying authorities are trying to diminish religious diversity and establish strict surveillance and religious favouritism similar to the situation in Russia itself. Some religious communities are officially banned and persecuted for fictional reasons. Many people suffered torture and unjust treatment for their beliefs.

The situation with freedom of religion and belief on the occupied territories is of great concern and is getting worse after the full-scale Russian invasion started in February 2022. Ukrainian authorities and criminal justice professionals are collecting the evidence and working on investigating those crimes for later representation in the international court.

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Abrasive rights

The scope and limitations of religious autonomy

Arie de Pater and Dennis P. Petri¹

Abstract

Freedom of Religion or Belief, or FoRB, provides for autonomy of religious communities, including freedom to organise themselves, to train their leadership, and to educate their members, without government interference. Tensions between the tenets of the religious community and the wider society are inevitable. In this article, we justify religious autonomy through three lenses: transactional, traditional FoRB, and minorities. If people are free to join and leave the community, religious autonomy should prevail. We then analyse European cases that illustrate the tension between religious autonomy and non-discrimination.

Keywords

FoRB, religious autonomy, non-discrimination, religious minorities.

1. Introduction

Freedom of thought, conscience and religion is well established in international law, e.g. in article 18 of the Universal Declaration of Human Rights (United Nations 1948), in article 18 of the International Covenant on Civil and Political Rights (ICCPR) (UN General Assembly 1966), and in article 9 of the European Convention on Human Rights. (European Court of Human Rights, Council of Europe 1998). FoRB is a multidimensional right that includes an internal and an external dimension as well as a private and a public dimension. A key dimension of FoRB is religious autonomy, which refers to the freedom of religion and belief communi-

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ties to organise themselves, to train their leadership, and to educate their members, without government interference. The importance of religious autonomy is confirmed by the European Court for Human Rights (ECtHR), for example in paragraph 118 of its ruling in the case of the Metropolitan Church of Bessarabia and others v. Moldova: “The autonomous existence of religious communities is indispensable for pluralism in a democratic society” (Metropolitan Church of Bessarabia and Others v Moldova 2001). Even though human rights are individual and universal, most human rights are not absolute.

Notwithstanding the importance of religious autonomy, tensions may arise with other human rights. Recently, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity explored the tensions between FoRB and the right to non-discrimination of sexual minorities (UN Human Rights Council 2023). One of his conclusions was that FoRB is at times “instrumentalized to nurture, perpetuate or exacerbate violence and discrimination against lesbian, gay, bisexual, and trans and gender diverse persons.” Another example of such tensions is when FoRB is perceived as contradictory to the equality between men and women (UN General Assembly 2013).

It is well known that tensions between human rights are inevitable. Sometimes, human rights compete with one another, sometimes individual claims to one right compete with the right of someone else. Eventually, it could be up to the court to strike the right balance between these competing rights and claims.

In this article, which aims to be educational and informative, we explore the scope of religious autonomy. We first discuss religious autonomy through three different lenses: a transactional lens, a traditional FoRB lens, and a minorities lens. We then present European cases that illustrate the tensions between religious autonomy and the non-discrimination principle. We end with some concluding remarks.

2. Understanding religious autonomy

2.1. *The transactional lens*

Human rights are individual rights. Together, they guarantee each and every human being as a rights bearer their autonomy. Individual autonomy is an idea that is generally understood to refer to the capacity to be one’s own person, to live one’s life according to reasons and motives that are taken as one’s own and not the product of manipulative or distorting external forces, to be in this way independent (Christman 2020). But as we all know, human autonomy is never absolute. Whenever we enter into a relationship with another human being, we deliberately sacrifice some of our individual autonomy to accommodate the other.

That happens in friendships, love, or family, but also when joining a sports club or a more or less formally organised religion or belief community. Consciously or unconsciously, we weigh the autonomy costs against the (expected) gains. While handing over some of our individual autonomy to a collective, the collective starts to obtain some sort of autonomy of its own. In a relationship or a family, certain patterns evolve over time. A larger community formally or informally develops ways to organise themselves. When these patterns or structures go wrong, and they can go awfully wrong, the expected gains no longer outweigh the sacrifices and members of the collective review or break up the ties they regard no longer worthwhile or important. These might be difficult and painful decisions, but they should be possible. When we don't have the freedom to make these decisions any longer, individual autonomy no longer exists.

When people join a community of like-minded people,² they temporarily hand over some individual autonomy to the collective and decide to adhere to some set of rules set by the community of choice. Joining the community will cost them some autonomy but this will be offset by some (expected) gains. This also applies to groups sharing a religion or belief. Provided this is a free and individual decision, it should be respected as a clear manifestation of one's FoRB.

We might be stating the obvious but the freedom to choose does not mean that one can just join any community they like, assuming that the community will adjust their teachings and rules to accommodate any new member. It is the collective that jointly shapes the teachings and rules, not the individual.

We are well aware that leaving a group may have serious economic and social consequences, especially in community-oriented societies. It is not the responsibility of the community, however, to care for dissenters. It is the national authorities who are to honour their human rights commitments. This includes the freedom to leave a faith or belief community.

2.2. The FoRB lens

The ICCPR lists the following manifestations of the right to FoRB: worship, observance, practice, and teaching. For many religions or beliefs, this will require renting or establishing and maintaining a house of worship. This is also explicitly mentioned in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN General Assembly 1981; art. 6(1)).

² Whether people join a formal or informal community is of limited significance here as even informal communities will over time develop their own 'ways of doing things'.

The right to teaching of any religious or belief community includes “acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.” (UN Human Rights Committee 1993; art. 4)

The teachings of a religion or belief are not necessarily shared by those who chose not to join the community and even within the community there will be a variety of opinions. The interpretation and application of spiritual texts, often written in a different time and culture, is never straightforward and will inevitably lead to differences in and between groups, even though they might all self-identify as adherents of the same religion or belief. It should be remembered that religious communities are never homogenous blocks. There is a wide variety of opinions both between religious communities and within these communities. Therefore, the doctrine and teachings of religious communities are constantly evolving. The concept of religious autonomy creates a safe space for candid debates on the interpretation of foundational documents. Racism and slavery were once defended with reference to the interpretation of religious scripture. The same religious scriptures, however, motivated many to fight the abolition of these inhumane practices.

FoRB is an individual human right that can be enjoyed in community with others. This collective element of FoRB is not without its challenges, especially where practice and teaching of a religion or belief diverges from the dominant discourse in society. However, without the collective element, individuals would not be free to fully enjoy their individual right to FoRB.

Religious groups play an essential role in shaping the beliefs that individuals hold as they teach and transmit ideas from one generation to the next, and they are also the vehicles for the formation and development of religious doctrine (Brady 2004; Brady 2006).

Many religions or beliefs organise regular meetings for their own followers or adherents. Christians, Muslims, and Jews organise at least weekly meetings for worship, prayer, and preaching. Further, they organise certain rituals and festivals. These meetings, rituals and festivals are an inherent part of the spiritual tradition of the religion or belief and usually require participation of one or more other believers. Therefore, limiting these collective manifestations would seriously limit the individual’s right to FoRB. Often, these ceremonies are celebrated by designated officials and in designated places like churches, mosques, synagogues, temples, or pagodas. Appointing officials and establishing and maintaining sacred places require a minimal level of organisation. Therefore, without

religious institutions, it would not be possible to fully enjoy the individual freedom of religion or belief (Fox 2021).

Notwithstanding the “far-reaching and profound” nature to the right of freedom of religion, as stressed in General Comment 22, it is not absolute and can be restricted “if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others” (UN Human Rights Committee 1993). If these morals are exclusively and voluntarily applied to adherents only, there is no need for authorities to interfere unless these morals are in flagrant breach of the law of the country.

General Comment 22, article 8 warns that “freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition” (UN Human Rights Committee 1993). This article requires all states to treat all religions or beliefs equally and even though one religion or belief might be dominant in society, their morality cannot be forced upon others with a reference to any of the limitation grounds mentioned in article 18 ICCPR. This rule applies to confessional as well as non-confessional organisations.

The ECtHR, ruling in the case *Handyside v United Kingdom*, stresses the importance of freedom of expression in any democratic society. The protection thereof includes “those that offend, shock or disturb the State or any sector of the population” (*Handyside v United Kingdom* 1976: para 49). Both FoRB and freedom of expression are limited by the protection of morals. Morals are hard to define but as General Comment 22 stresses that morals cannot be derived from a single tradition, it is almost inevitable that ‘a sector of society’ might be offended, shocked, or disturbed by some manifestations of the right to FoRB. This, in itself, is no compelling reason to infringe religious autonomy.

ICCPR article 20(2) prohibits “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” This principle of non-discrimination is also clearly expressed in article 2 of the Universal Declaration of Human Rights:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (United Nations 1948)

The relationship between religious autonomy and individual members is not just a matter of religious liberty but a matter of freedom of expression (ECHR 1998: art. 10). As Judge De Gaetano stated:

Respect for the autonomy of religious communities implies, in particular, that the state should accept the right of such communities to react, in accordance with their own internal canons, rules and other interests, to any dissent or dissident movement, in much the same way as a member of any non-religious organisation or club will be dealt with according to the statutes of that organisation or club. (De Gaetano 2020)

Some religious communities exclude women and/or LGBTIQ+ persons from leadership positions in the community. That is no doubt disturbing to some both from inside and from outside faith communities. As a personal conviction, this is covered by freedom of thought, conscience, and religion. But should people and faith-based communities be allowed to practice it as a manifestation of their religion or belief? ICCPR article 18(3) stipulates that the right to manifest religion “may be 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 freedoms of others.” That brings the question down to whether forcing a faith or belief community to change their internal rules and regulations would be necessary to protect the fundamental rights and freedoms of others. We are not convinced. The limitation on leadership positions clearly applies to members of the community only. Based on FoRB, members are free to join or leave the group and thereby escape the rules and regulations they cannot accept. That would protect both the autonomy of the religious community and the fundamental rights and freedoms of its members.

The ECtHR, interpreting article 9 of the ECHR, emphasised, however:

[I]n cases of conflict with other Convention rights, a fair balance must be struck. Other Convention rights – including rights against discrimination – can justifiably be infringed in order to protect religious group autonomy, but only when the infringement is shown to be a proportional means of achieving the legitimate end of collective religious liberty. (Billingham 2019)

Critical questions about the religious doctrine should always be possible, both from inside and outside the religious community. No religious group or individual should be shielded against criticism. Or in the worlds of the ECtHR:

Those who choose to exercise the freedom to manifest their religion ... cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and

even the propagation by others of doctrines hostile to their faith. (Otto-Preminger-Institut v Austria 1994)

Based on ICCPR 20(2), criticism cannot include incitement to discrimination, hostility, or violence though.

In sum, although religious autonomy is an important element of FoRB, it is not without limits. The limitations provided for in article 18(3) ICCPR would still apply. Whenever the health of members of a faith or belief community is at stake, action by legal authorities is justified. Further, any community that limits the religious freedom of its members and denies them the right to leave the group, violates one of the core principles of FoRB and should be challenged in court. These groups are often called sects or cults. In these communities, a free and candid discussion about doctrine and teaching is seriously limited or no longer possible at all.

2.3. *The minority lens*

In several Western European countries, like The Netherlands and the United Kingdom, most people no longer regard themselves believers. As such, one could argue that people adhering to a religion or belief in countries where they are a minority, can claim minority rights as well as FoRB, (Ghanea 2012a), under article 27 of the ICCPR.

The ICCPR, nor General Comment 23 (UN Human Rights Committee 1994), nor the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly 1992) provide a clear definition of a minority. The UN Special Rapporteur on Minority Issues, Dr Fernand de Varennes, addresses the issue in a report to the General Assembly (UN General Assembly 1992). In paragraph 59 of this report, the Special Rapporteur suggests a very broad and general definition: “An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these.”

In his last interim report to the General Assembly, the UN Special Rapporteur on Freedom of Religion or Belief, Dr Ahmed Shaheed, zooms in on Indigenous Peoples (UN General Assembly 2022). This report, quoting from various contributions of organisations representing indigenous minorities, affirms the holistic nature of indigenous beliefs. Their spirituality is not limited to certain rituals. It is fully integrated in their way of life (e.g. para 12). To improve the protection of minorities, Shaheed supports the working definition of minorities in the context of article 27 ICCPR as proposed by De Varennes.

Minority rights are to be enjoyed in addition to existing rights (Ghanea 2012a). They provide an extra protection against discrimination. As Dr De Jong emphasises in his dissertation, article 27 does not provide an unlimited right to profess and practice one's own religion. According to the Third Committee on the elaboration of the ICCPR, "article 18 was of a general nature and applies to "everyone", minorities and majorities alike" (cited in De Jong 2000:255). Based on his research of the genesis of the ICCPR, De Jong concludes that article 27 protects the rights as a group "in a more direct and explicit manner than under the community aspect of the freedom of thought, conscience, and religion" (De Jong 2000:255-257).

Culture and religion are closely linked. Ghanea describes culture as:

An umbrella for a minority's literature, symbols, cumulative manifestation and practise of relevant rites, customs, observances – for example holidays, dietary codes, fasting, pilgrimage, worship and a separate calendar – ... especially when these differ from those of wider society and more particularly of a dominant majority. (Ghanea 2012b)

In paragraph 6(2), General Comment 23 on minorities presents the opportunity for positive measures by states to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with other members of the group (UN Human Rights Committee 1994).

Although article 27 ICCPR applies to persons belonging to religious minorities rather than to minorities as such, with the emphasis on religion, culture, and language, there is an obvious appreciation and burden of protection of the collective. Limiting this protection to indigenous peoples, living in remote rural areas, would severely undermine the universality, indivisibility, and interdependence of all human rights.

In light of the broad definition of a minority and its culture, religious communities in Western societies could claim protection under ICCPR article 2. One could even argue that there might come a time where these communities could be entitled to positive measures by states to protect their identity.

3. European cases illustrating the tension between religious autonomy and non-discrimination

Considering the various lenses through which religious autonomy can be understood, we now turn to the discussion of European cases that illustrate the tension between the religious autonomy of a faith or belief community and especially the principle of non-discrimination.

3.1. *Fernández Martínez v Spain*

Spanish citizen, José Antonio Fernández Martínez (1937), was ordained a Roman Catholic Priest in 1961 (Fernández Martínez v Spain 2014). In 1984, he applied to the Vatican for dispensation from the obligation of celibacy but did not get an answer. In 1985, Martínez was married in a civil ceremony. From October 1991 onwards, Martínez was employed as a teacher of Catholic religion and ethics in a State-run secondary school of the region of Murcia, Spain, under a renewable one-year contract. Candidates for this position are proposed by the diocese and appointed and paid for by the administrative authority.

In November 1996, Martínez was mentioned in an article in a local newspaper, covering a meeting of the Movement for Optional Celibacy for priests (MOCEOP). In the same article, MOCEOP advocated for responsible paternity and family planning and, in that context, did not rule out abortion.

On 15 September 1997, Martínez was notified that he was dispensed from celibacy and was no longer regarded a priest. The Pope left it to the discretion of the local Bishop whether Martínez could continue his work as a teacher. The Diocese of Cartagena subsequently informed the authorities that Martínez could no longer be a teacher of Catholic religion and ethics, and his contract was cancelled, effective 29 September 1997.

Martínez contested his dismissal which resulted in a series of court cases up to the Spanish Constitutional Court and then the European Court of Human Rights.

The Grand Chamber of the ECtHR weighed the rights of Martínez in article 8 of the European Convention on Human Rights (ECHR) (European Court of Human Rights 1998) against the rights of the Diocese in articles 9 and 11 of the ECHR. In para 126, the court emphasised the importance of religious autonomy. Further, it considered that the church as the (indirect) employer of Martínez, could expect him to honour the “special bond of trust that was necessary for the fulfilment of the tasks entrusted to him.” By joining MOCEOP and by explicitly or implicitly accepting the publication of a news article including a picture of him and his family, he lost the trust necessary to perform his job.

Martínez was totally free to express his dissenting views on contraception, abortion, and celibacy. The court observed however, “that does not mean that the Catholic Church was precluded from acting on them, in the enjoyment of its autonomy.” (Fernández Martínez v Spain 2014: para 139). Considering alternatives, the court concluded that “a less restrictive measure for the applicant would certainly not have had the same effectiveness in terms of preserving the credibility of the Church.” (Fernandez Martínez v Spain 2014: para 145).

The ruling of the ECtHR is important as it confirms the importance of religious autonomy resulting from articles 9 and 11 ECHR. Further, by considering the re-

sponsibility of the complainant, it supports the reasoning given under the socio-logical lens. The position as teacher of religion brings certain responsibilities, especially while teaching adolescents who might not fully grasp the difference between the private opinions of a teacher and the official position of the church the teacher represents in the classroom.

The court made it clear that the position and responsibility of the teacher, was an important factor in their final verdict. Adding to that the fact that the decision was only supported by the smallest majority possible, it is clear that religious autonomy is by no means without limits.

3.2. *Schüth v Germany*

The interest of the individual cannot be neglected. That is also illustrated by the case of *Schüth v Germany* (*Schüth v Germany* 2010). In this case, the ECtHR held that Bernhard Schüth, an organist in a Roman Catholic church, who, after a divorce begot a child with another woman, could not be dismissed. The Court took note of the claim by the church that an organist plays an important role in the Eucharist, which was the Roman Catholic Church's central act of liturgy (*Schüth v Germany* 2010: para. 52, 61). According to the court, however, as an organist, Schüth was not bound by heightened duties of loyalty. Finding a new position outside the church would not be easy, and a life of abstinence would be too high a price to pay after a divorce. Therefore, the impact of the annulment of the employment contract on the private life of Schüth would be too high. The court took into account that (in contrast to the case of *Martínez v Spain*) the applicant neither publicly nor privately opposed the teachings of the church even though he had not been able to obey them himself.

Even though, in the case of *Schüth v Germany*, both religious autonomy and the transactional lens would support the Roman Catholic church, the court weighed these against the personal interest of Schüth in favour of the latter.

3.3. *Civil parties v Jehovah's Witnesses*

In Belgium, 11 citizens and a foundation filed a court case against the Christian community of Jehovah's Witnesses (*Civil parties v Jehovah Witnesses* 2022). They all claimed discrimination on religious grounds, segregation, and/or incitement to hatred and violence. The claimants all left or were forced to leave the community of Jehovah's Witnesses. The community was publicly informed about the situation and was then strongly advised to distance themselves from these ex-members to protect the sanctity of the community.

The regional court claimed sufficient evidence and convicted the Jehovah's Witnesses. Both the Jehovah's Witnesses and the public prosecutor appealed to the Court of Appeal in Ghent.

As Jehovah's Witnesses are encouraged to limit their social interactions to members of the community, the impact of the practice of shunning former members is significant.

The Court of Appeal confirmed both the right to non-discrimination and the right to organise oneself based on a religion or belief. According to the verdict, the latter implicitly includes that the group can decide who belongs to the community of believers, and who does not (para 2.5).

With reference to e.g., *Handyside v United Kingdom* (*Handyside v United Kingdom* 1976), the court confirmed that pluralism and freedom of expression include expressions that might be irritating, painful or shocking. Therefore, non-discrimination cannot be interpreted as forcing a faith or belief community to organise and manifest themselves in a way that would make them invisible and would not touch the lives and opinions of others in society (para 2.6.4).

With reference to ECtHR Case of Jehovah's Witnesses of Moscow and others v Russia (*Jehovah's Witnesses of Moscow v. Russia* 2010), the Court accepted that one's adherence to a faith or belief community can impact the relations with family and friends. The Court further confirmed that religions set the doctrinal standards for their members, including their private lives.

With reference to ECtHR *Sindicatul 'Păstoral Cel Bun' v Romania* (*Sindicatul "Păstoral Cel Bun" v. Romania* 2013), the Court observed that the right to FoRB does not include the right to dissent. Dissenters can practice their right to FoRB by leaving the community (para 2.6.6).

Claimants argued that the isolation of former members of the community of Jehovah's Witnesses exerts such pressure on members that it limits their right to choose a religion or belief of their choice (para 2.7.1). The court observed that as all the claimants were ex-Jehovah's Witnesses, this argument could not be accepted.

According to the Court, the teachings of the community don't literally call for discrimination or violence. Further, the community does not interfere with ex-members establishing a new social network outside the community (para 2.12.3).

The Court accepted that based on rulings of the ECtHR, the margin of appreciation for getting involved in religious matters is limited. The Court concluded that the shunning practice of the Jehovah's Witnesses does not equal discrimination or incitement to hatred and therefore should be accepted as protected under article 9 ECHR. The Court of Appeal confirmed the religious autonomy of faith or

belief communities and stated that FoRB does not include a right to dissent other than a right to leave the community.

Further, with its emphasis on the freedom to choose and the right of the religion or belief community to set certain rules for its members, the Court of Appeal seems to confirm the transactional lens, the voluntary transaction of some individual autonomy to the collective. One could even argue that this ruling of the Ghent Court of Appeals protects the Jehovah's Witnesses as a minority, allowing them to set their own rules setting the community apart from others in society.

4. Concluding remarks

Community religious autonomy is an important element of FoRB. Over time, this has been supported by various rulings of the European Court of Human Rights. Faith or belief communities are allowed to set their own rules based on their doctrine and teaching. When people disagree, or no longer agree with these rules, they can exercise their religious freedom by leaving the community. That might have unpleasant consequences as illustrated by the case against the Jehovah's Witnesses, but these social consequences have been no reason to limit the religious autonomy of the community. When leaving or being expelled from the group also has financial consequences, the court will weigh these individual consequences against the interests of the faith or belief community. In these cases, the role and attitude of the individual towards the community that is his or her employer has been an important factor.

Although we are not yet aware of any cases of women or LGBTIQ+ persons against faith or belief communities, e.g., for not being eligible for leadership positions, based on the principle of religious autonomy and current jurisprudence of the ECtHR, we have no reason to believe the court would take a different approach. In these cases, at least in more individualistic societies, the right to FoRB would be exercised by leaving the community for another, which adheres to a different set of rules.

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How secular and religiously free are Europe's "secular" states?

*Jonathan Fox*¹

Abstract

This study uses data from the Religion and State (RAS) project to examine the extent to which 43 European states are, in fact, secular and religiously free. I find that these European states engage in substantial levels of support for religion, regulation, restriction, and control (RRC) of the majority religion, and government-based discrimination (GRD) against religious minorities. This is true of both countries in Europe with official religions and those which declare separation of religion and state (SRAS) in their constitutions. This demonstrates a distinctly European pattern of state-religion relations that is influenced in no small part by anti-religious forms of secularism.

Keywords

Religious freedom, secularism, Europe, discrimination, separation of religion and state.

1. Introduction

Freedom of religion or belief (FoRB) is a universal value which most states across the world declare in their constitutions and by signing international treaties. (Fox 2023) While there is a strong tradition which posits that secular liberal democratic states maintain religious freedom as a core value (eg. Stepan 2000), empirical studies show that many liberal democratic states, including many in Europe, do not live up to this ideal. (Fox 2016; 2020; Grim & Finke 2011)

This study uses empirical data to examine the extent to which 43 European states are, in fact, secular and religiously free using the Religion and State (RAS) dataset. More specifically it examines to what extent European states support religion, regulate, restrict, and control (RRC) the majority religion, and engage in

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discrimination against religious minorities. I find that all three of these types of behavior are common, even among states that declare separation of religion and state (SRAS) in their constitutions. More importantly, when comparing European states to the rest of the world, in many ways the government religion policies of European states are more similar to each other regardless of whether they declare SRAS or an official religion than they are to non-European states. Thus, there is arguably a European pattern where secular states do not have substantial levels of SRAS and are not among the world's best providers of FoRB. Rather, there are indications that Europe's secularism includes a substantial anti-religious element that is not conducive to FoRB.

2. What is secularism?

It is important to emphasize that secularism is a diverse family of ideologies rather than a monolithic ideology. Philpott (2009) for example, identifies nine uses of the term secular in the academic literature, all with different meanings but all of them identify the secular as something that is other than religion or anti-religious. (see also Calhoun et al. 2012) This is inherent in definitions of political secularism. Casanova (2009:1051) defines "secularism as a statecraft principle" as:

some principle of separation between religious and political authority, either for the sake of the neutrality of the state vis-a-vis each and all religions, or for the sake of protecting the freedom of conscience of each individual, or for the sake of facilitating the equal access of all citizens, religious as well as nonreligious, to democratic participation.

Fox (2015:28) defines political secularism as "an ideology or set of beliefs advocating that religion ought to be separate from all or some aspects of politics and/ or public life." Modood (2017:52) argues:

[T]he core idea of political secularism is the idea of political autonomy, namely that politics or the state has a *raison d'être* of its own and should not be subordinated to religious authority, religious purposes or religious reasons. Maintaining this separation requires some regulation of religion in the public sphere.

Fox (2018:171-176) identifies multiple forms of political secularism, each with different policy implications. Absolute secularism, a form of secularism identified with the United States, seeks to restrict any government involvement in religion either to support it or restrict it. Laicism, classically associated with France, seeks

to restrict religion from the public sphere. This view considers religion a private matter that should not intrude on the public so it not only allows restrictions on religion in public spaces, it mandates them. Neutralism demands that the government treat all religions equally. This means supporting or restricting religion is possible, but it must be done equally for all religions. This form of neutrality can be based on either the intent of government policy or its outcome. There is also a minimalist approach which deviates from secularism and simply asks what is the minimum level of SRAS necessary to maintain religious freedom?

This study does not differentiate across these types of policy empirically. However, it is important to keep them in mind as different approaches to political secularism have different implications for religious freedom.

3. A note on the data used in this study

This study focuses on the Religion and State (RAS) dataset which includes data on 183 countries worldwide. This study's European focus looks specifically at 43 states which include members of the Council of Europe as well as Russia and Belarus. In order to empirically address the issue of secular vs. non-secular states, I divide these countries into three categories:

- (1) States which declare official religions. In most cases this declaration is in their constitutions but some countries such as the United Kingdom declare an official religion in other manners.
- (2) States which declare SRAS in their constitutions. While looking at states which declare themselves specifically "secular" has theoretical import, among the 43 states included in this study only Azerbaijan, France and Turkey make such a declaration, which is too few for a separate category.
- (3) Countries which declare neither SRAS nor an official religion.

The distribution of states in each of these categories is presented in Figure 1.

I focus on three RAS variables measuring government religion policy, all of which are described in more detail in the analyses below: (1) government support for a religion; (2) the regulation, restriction, and control of the majority religion (RRC); and (3) government-based restrictions on minority religions (GRD). For more details on the RAS dataset including data collection methodology reliability tests, detailed discussions of the variables and their components, as well as the weighting of these components see Fox (2008; 2011; 2015; 2020; Fox et al. 2018) All statistics presented in this study unless otherwise noted are from 2014, the most recent year available.

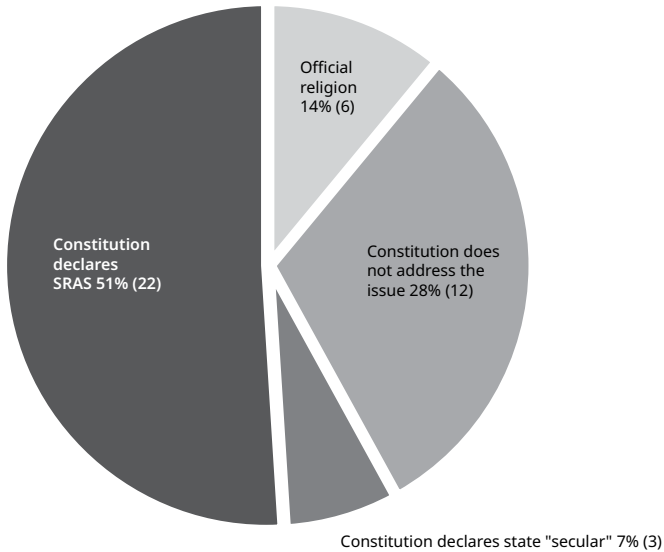


Figure 1: Distribution of government religion policies in Europe

4. Government support for religion

State support for a religion does not, in and of itself, violate FoRB. However, there are at least three reasons this government support for religion is relevant to FoRB. First, governments which are more closely connected to a single religion are more likely to restrict FoRB. Second, government support for religion is inexorably intertwined with government control over those religions it supports, particularly religious institutions. This can restrict FoRB. Third, governments which support religions, tend to support some religions more than others. This unequal treatment has implications for FoRB. I discuss each of these issues in more detail below.

4.1. Government support for religion is correlated with FoRB

Perhaps one of the most classic motivations for violating FoRB is religious belief. Rodney Stark (2003:32) explains that “those who believe there is only One True God are offended by worship directed toward other Gods.” That is, people who believe in one religion, particularly monotheistic religions, are often intolerant of those who follow the ‘wrong’ religion and even of members of their own religions who do not worship or believe ‘properly’. There is a tendency to want to restrict these ‘offensive’ practices. This applies to minority religions as well as

interpretations of the majority religion that are different from that supported by the state. In fact, Cesari (2014; 2018; 2021a; Cesari et al. 2016) argues that governments which support a single religion often support and enforce a single interpretation of that religion rather than allowing the natural diversity that tends to occur in long-standing religious traditions. As state support for religion can be a strong indicator that a state is strongly connected to a religion, it is often used as a measure for this factor. Studies examining the correlation between the two generally find that state support for religion predicts lower levels of FoRB and higher levels of GRD. (Fox 2016; 2020; Grim & Finke 2011)

This type of argument linking religions to exclusivity and intolerance is present across the social sciences. Jelen & Wilcox (1990:69) argue as political scientists that "religion is often thought to inhibit the development of the tolerance for unorthodox beliefs and practices.... Religion is accused of inculcating ultimate values in its adherents – values which do not lend themselves to compromise or accommodation." International relations theorists like Laustsen and Waever (2000:719) argue, focusing on international relations theory, that "religion deals with the constitution of being as such. Hence, one cannot be pragmatic on concerns challenging this being." Sociologists such as Grim and Finke (2011:46) argue:

exclusive religious beliefs provide motives for promoting the 'one true faith.' To the extent that religious beliefs are taken seriously and the dominant religion is held as true, all new religions are heretical at best. Thus, established religions will view the new religions as both dangerous and wrong.

Finally, psychologists such as Silberman (2005:649) argue that "once they are constructed, collective meaning systems tend to be viewed within a given group as basic undisputable truths. Accordingly, they are usually held with confidence, and their change or redirection can be very challenging."

Gill (2008) makes a different type of argument. He argues that governments which support religion do so because it is in their own interest. Governments seek to rule more efficiently and to stay in power. Supporting a state religion can, under some circumstances, accomplish both. It increases a government's legitimacy which reduces opposition and lowers the cost of ruling. It may also increase the morality of a population which reduces the costs for law enforcement. Others expand on Gill arguing that repression is expensive, and religions can provide community services such as welfare and healthcare to the population at a lower expense to the government. (Sarkissian 2015; Koesel 2014) Other benefits include increased social trust. (Fox et al. 2022)

How is this related to FoRB? In order to gain these benefits, Gill (2008) argues that a government must give the supported religion a monopoly, or put differently, exclusivity. Most theorists argue that it is necessary to repress minority religions in order to achieve a true religious monopoly. (Casanova 2009; Froese 2004:36; Gill 2008:45; Grim & Finke 2011:70; Stark & Finke 2000:199) A government-enforced religious monopoly is also generally among the demands of the supported religious institutions in return for their partnership with the government. (Gill 2008)

4.2. State support for religion is inexorably intertwined with control of religion

State support for religion is intimately connected with control over the religions which it supports. Why is this the case? Take, for example, government financing of religion. When a religious institution becomes dependent upon government financing this gives government officials who control the purse strings the ability to threaten withdrawal of this money unless the funded institutions comply with government demands. This lever of power is present even if it is not used and, in the long run, it is rare that no government official seeks to use it. Similarly, when a government allows religious classes in public education institutions or funds private religious education, this gives it the ability to influence the content of that education in favor of the government's preferred understanding of the religion in question. As I discuss in more detail in the next section, states which support a religion are more likely to have control over the state religion in matters such as appointing church leaders which gives them the power to choose leaders whose theologies are more convenient for the government. While, as UK King Henry II learned in the case of Thomas Beckett, this can backfire, it is still an important avenue of influence. For example, Kuhle (2011:211) notes that "a close relationship between state and church entails a risk of the state interfering with what some would regard as 'internal' religious questions." In fact, she documents that many of the Nordic states used this influence to force their state churches to change their doctrines on issues like same-sex marriage and female clergy.

These levers of power are difficult to resist or shed for at least two reasons. First, they tend to be institutionalized into the fabric of a country's culture and politics which makes them difficult to change. Second, even if change is possible, dependence on state funding, especially when this is a large part of a religious institution's budget, cannot be given up without serious short-term and long-term consequences. It can take decades or longer for these institutions to find new bases of support to replace the lost government support. This can threaten insti-

tutional survival and almost certainly requires substantial institutional change. (Toft et al. 2011)

Toft et al. (2011:34-35) document how the establishment of a religion, state influence over religious finances, and giving religion a part in the political process all undermine the independence of religious institutions. For these reasons, many argue that supporting a state religion is an excellent tactic to control that religion. Fox (2015:65) observes:

[W]hen a government supports a religion, that religion becomes to some degree dependent on the government and more susceptible to government control even if control was not the original motivation for the support...[Thus] a good tactic to control religion is to support it and make that support dependent on some element of control.

Demerath (2001:204) argues similarly:

[G]overnments frequently keep religion under control by 'volunteering' state offices and resources to 'assist' with important religious functions.... Even some of the most secular nations – for example, China and Turkey – have national ministries of religion for such purposes. These alliances between government and religion generally involve some form of co-optation, and religious groups sometimes prefer to remain outside of the state apparatus to preserve their potential for autonomous power.²

In addition, state support for religion, effectively, allows the state to determine which religions are legitimate and which are not. Even if a state allows complete FoRB for all religions including those it does not support, in funding a religion, states declare that this religion is considered by the state to be not just a legitimate religion, but one deserving of state support. Those left out of this regime are not only at a disadvantage financially, but they also have a legitimacy deficit. The results are similar for states which allow religious education in certain religions in public schools but not others. This effectively educates school children which religions are in and which are out.

From this perspective, government control over supported religions is a limitation on FoRB. True religious freedom requires the freedom for religions to determine their own paths and theology and this includes independence of religious

² See also Cosgel & Miceli (2009:403), and Grim & Finke (2011:207).

institutions from the state. It limits the freedom of religious institutions and in extreme cases can limit even the freedom of individuals to study and practice religion freely.

4.3. *Unequal support for religion causes inequality*

Roger Finke (2013; Stark & Finke 2000; Grim & Finke 2011), argues that religious equality is impossible without a “level playing field.” That is, unless a government supports all religions equally, there is no true equality. This is true even if the government does not restrict the non-supported religions in any way and simply gives some religions forms of support that it does not give others. This is because selectively supporting some religions can have the same result as restricting the non-supported religions. For example, selective financial support for religion gives an unfair advantage to the supported religion. Religion costs money. Funds are required to secure and maintain places of worship, pay clergy, and for a range of other religious activities. This makes government supported religions less expensive for their congregants. Congregants of non-supported religions must pay the full cost for these as well as the taxes which support the state supported religious institutions they do not attend. In contrast, the congregants of supported religions pay less or perhaps even nothing beyond taxes. Thus, this differential cost gives the supported religion or religions an unfair advantage in attracting congregants.

Others make similar arguments. Ciornei, Euchner & Yesil (2021:2) argue that “given that in Western Europe, the majority religion (Christianity) receives material and symbolic support from the state that leaves minority religions at a disadvantage.” Clitour & Elian (2022:111) argue that “state religions create inequality in the form of religious privileges for a specific part of the population, and this undermines the legitimacy of the state.” Mantilla (2016:235) argues that state accommodation of the Catholic Church in Latin America

...creates a tilted playing field in which the Catholic Church enjoys a discreet and largely informal, but nevertheless significant, advantage when seeking to promote its social, political and economic vision, while sidestepping potential conflicts over formal prerogatives and legal recognition.

4.4. *Levels of support for religion in Europe*

Figure 2 compares levels of state support for religion in Europe to Christian-majority countries outside of Europe as well as other countries outside of Europe. This is in order to take into account that patterns of government religion policy differ across religious traditions and world regions. (Fox 2016; 2020)

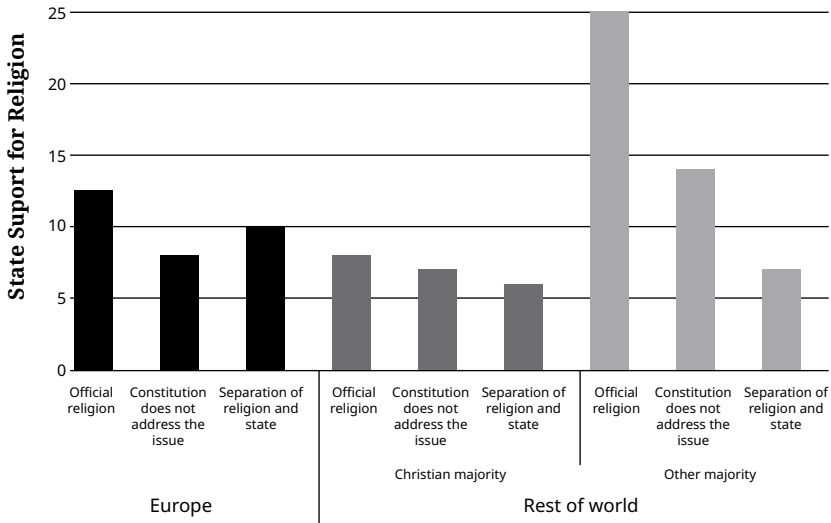


Figure 2: Mean levels of state support for religion

Based on all of the above, one would expect that states with official religions would more strongly support religion than states with SRAS. As shown in Figure 2, this is technically the case for both Europe and the rest of the world, but the results for Europe defy the spirit if not the technicalities of this expectation. The difference between states with official religions and those with SRAS is not large in Europe. This measure looks at how many among 52 types of support for religion measured by the RAS dataset are present in a country. (A listing of those present in Europe is presented in Table 1). While European states with official religions average 12.33 types, those with SRAS clauses average ten. This is not a large difference and quite high levels of support for states which claim SRAS as a constitutional principle. In addition, in European states which do not declare a policy, which one would expect to have a level of support at some point in between those with an official religion and those which declare SRAS, have the lowest levels of support at a mean of 8.25 types. Thus, those states whose constitutions address the issue of religion, either to declare an official religion or to declare SRAS, are more likely to support it. This also implies that the higher levels of support in states that declare SRAS may involve the motivation to control religion.

In contrast, the rest of the world has the expected distribution with a large gap between states with official religions and other states. This comparison between

	Official Religion	Constitution does not address the issue	Separation of religion and state
Marriage/divorce can only occur under religious auspices	0.0%	0.0%	4.0%
Automatic civil recognition for marriages performed by clergy	50.0%	25.0%	44.0%
Prohibitive restrictions on abortion	66.7%	8.3%	8.0%
Mandatory closing of some/all businesses during religious holidays/Sabbath	16.7%	25.0%	12.0%
Other restrictions during religious holidays/Sabbath	0.0%	25.0%	4.0%
Blasphemy laws/restrictions on speech about majority religion	66.7%	16.7%	24.0%
Censorship of press/publications for being anti-religious	33.3%	8.3%	8.0%
Religious courts, jurisdiction family law and inheritance	33.0%	0.0%	4.0%
Religious courts, jurisdiction matters other than family law/inheritance	16.7%	0.0%	0.0%
Funding: religious public schools / religious education in nonpublic schools	66.7%	83.3%	84.0%
Funding: seminary schools	33.3%	16.7%	44.0%
Funding: religious education in colleges or universities	50.0%	25.0%	28.0%
Funding: religious charitable organizations/hospitals	33.3%	41.7%	48.0%
Religious taxes	33.3%	25.0%	28.0%
Government positions/salaries/funding for clergy other than teachers	33.3%	58.3%	60.0%
Direct general grants to religious organizations	66.7%	41.7%	60.0%
Funding: building/maintaining/repairing religious sites	33.3%	66.7%	88.0%
Free air-time on television/radio for religious organizations	16.7%	25.0%	60.0%
Funding or other government support for religious pilgrimages	16.7%	0.0%	8.0%
Funding other than the types listed above	16.7%	8.3%	44.0%
Diplomatic status/passports/immunity from prosecution for rel. leaders	16.7%	8.3%	12.0%
Government department for religion	50.0%	26.0%	76.0%
Government officials given position in state religious institutions	50.0%	0.0%	0.0%
Religious leaders given government position	16.7%	8.3%	0.0%
Government officials must meet religious requirement to hold office	16.7%	8.3%	0.0%
Seats in legislature/Cabinet granted along religious lines	0.0%	8.3%	0.0%
Religious education in public schools	100.0%	91.7%	76.0%
Official prayer sessions in public schools	50.0%	16.7%	12.0%
Public schools segregated by religion / separate public schools by religion	0.0%	16.7%	8.0%
Religious symbols on the state's flag	83.3%	41.7%	16.0%
Religion listed on identity cards or other mandatory government documents	0.0%	0.0%	4.0%
Registration process for religious organizations different form other orgs.	50.0%	75.0%	80.0%
Burial controlled/overseen by religious organizations or laws	50.0%	16.7%	4.0%
Blasphemy laws protecting minority religions/religious figures	33.3%	8.3%	28.0%
Other religious prohibitions or practices that are mandatory	33.3%	8.3%	20.0%

17 Categories are not included on this table because no country in this study engages in these types of support

Table 1: Specific types of support for religion

Europe and the rest of the world seems to indicate that “Europeanness” has a greater impact on levels of support for religion than the presence of an official religion and constitutional declarations of SRAS. European states with official religions are far more similar in levels of support to European states with SRAS than they are to non-European states. Non-European Christian-majority states

engage in lower levels of support for religion in all categories. Non-Christian-majority non-European states have higher levels of support overall but among those states the ones which declare SRAS have lower levels of support for religion than do European states which declare SRAS. Only among European states are levels of support higher in states which declare SRAS than in states whose constitutions do not address the issues of official religion or SRAS.

This finding – that European states which declare SRAS nevertheless support religion and do so at levels higher than those outside of Europe and even more than European states whose constitutions do not address the issue of religion – requires more discussion. In Table 1, 11 of the 35 types of state support for religion found in European states (among 52 included in the RAS dataset) are most common in states which declare SRAS. Many of them involve funding religion including funding religious education, seminary schools, clergy, and religious buildings and sites. In fact, each of the 43 European states in this study regardless of its religion policy funds religion in some manner and the average European state with SRAS engages in 5.52 types as opposed to states with official religions which engaged in a mean of 4.00 types. Even if this was done equally for all religions, which is rarely the case (Fox 2015), this involves significant government funding of religion which gives these ‘secular’ governments a considerable amount of potential leverage over religion.

Other common types of government support for religion in states with SRAS could also be used for control. For example, 76 percent of such states have a religion department, office, or ministry as opposed to 50 percent of countries with official religion. Similarly, 80 percent of states with SRAS require religions to register as opposed to 50 percent of states with official religion.

All of this indicates at the very least a wariness of religion in European secular states. This wariness causes them to keep close to religion just as one might wish to keep one's enemies even closer than one's friends. Thus, from this perspective, this pattern of government religion policy can be described as secular but in the anti-religious meaning of the term. Clearly this is unlikely to be to the benefit of FoRB.

5. Government regulation, restriction and controls of the majority religion

While state support for religion is a relatively subtle and indirect form of control, there are many government policies which directly regulate, restrict and control (RRC) the majority religion. Interestingly both religious and secular states can have motives to engage in RRC, though there is considerable overlap between the two.

A primary motive that is unique to secular ideologies is the anti-religious element of secularism. As noted, secularism is by no means a unitary ideology and not all secular ideologies are anti-religious. But even non-anti-religious versions of secularism may wish to restrict religion in the public sphere.

That being said, the anti-religious forms of secularism tend to see religion as violent, dangerous, and irrational and the method to control this danger is to restrict religion. This type of secularism “presuppose[s] that religion is either an irrational force or a non-rational form of discourse that should be banished from the democratic public sphere.” (Casanova 2009:1052) This argument is rooted in a European perception of religion which evolved after the Treaty of Westphalia and the Thirty Years War that sees religion as a source of violence and conflict.” (Casanova 2012:79-80) This view aligns religion with “tradition, superstition, and supernaturalism and kindred categories, whereas secularity is aligned with modernity, rationality, and science.” (Gorski & Altinordu 2008:61) In fact, “religion is thought to be a regressive irrational and force and individuals would be better off if they left it behind entirely. If they insist on clinging to religiosity, then legally and culturally religion should be a strictly private matter cordoned off from public life.” (Hoover & Johnston 2012:2) This type of anti-religious secularism is particularly common in the West and used to silence and restrict members of “certain faiths.” (Cavanaugh 2007; See also Cesari 2021a; Farr 2008; Kettell & Djupe 2020; McAnulla et al. 2018; Pabst 2012:38; Stark & Finke 2000; Troy 2015)

However, it should be noted that Branas-Garza & Solano (2010:347) argue that in the West “the proportion of clearly religious-averse citizens is very small and never larger than 6%.” Thus, this phenomenon may be driven by a small number of partisans. (Buckley & Wilcox 2017:5)

A motivation common to religious and secular governments is the desire to harness, control, or limit religion’s political power. While governments often seek to benefit from the legitimacy religion can grant to governments (Gill 2008; Fox & Breslawski 2023) they often fear religion’s political power and seek to limit it. Demerath & Straight (1997:44) argue that “while religion is often an ally in the pursuit of power, once power has been secured, religion can become an unwelcome constraint in the quite different process of state administration.” Governments often seek to limit religion precisely because it can be a basis for political power that can challenge the government. Sarkissian (2015:16) argues along these lines:

[R]eligious groups hold the power to influence citizens’ perceptions of state or government legitimacy. By restricting the ability of religious groups to express themselves through public speech or publications or by restricting clergy or other religious individuals from participating in

the political process, politicians can prevent criticism from the religious sector from being made public.

Grzymala-Busse (2015) argues that this political motivation to avoid religious challenges to power is sufficiently strong that governments are more likely to accommodate religious demands when religious officials lobby them in private rather than challenge them in public.

This motivation remains present even among religious governments. Theocracies where clergy rule directly are rare worldwide and currently nonexistent in Europe. While politicians are often willing to support religious institutions and engage in partnerships with religious institutions, in the West the government has generally been the senior partner in this relationship for at least several centuries. (Toft et al. 2011) That is, the European tradition has the state regulating, restricting, and controlling religion far more than religion influences the state. Modood & Sealy (2022) argue that even European states which have official religions are secular in this sense because they tend to seek to use religion to serve government purposes rather than support religion for ideological reasons.

There also exist religious motives to regulate the majority religion. As noted, some governments support a specific interpretation of a religion. (Cesari 2014; 2018; 2021a) These governments often seek to maintain the theological purity of the supported religion by repressing other interpretations of their religion. This can involve actions like repressing alternative religious institutions and clergy whose theologues diverge from the government-supported orthodoxy.

5.1. Levels of RRC of religion in Europe

Given that there are both secular and religious motives to engage in RRC, it is not surprising that, as shown in Figure 3, in Europe both governments with official religions and those that declare SRAS have higher levels of RRC than governments whose constitutions do not address the issue. As was the case for support, RRC in European states is higher than in non-European Christian-majority states but lower than in other non-European states. This pattern indicates that higher levels of SRAS seem to be a Christian phenomenon, but one that is stronger outside of Europe than in Europe.

As shown in Table 2, the differing patterns of which types of RRC are present in states with official religions and SRAS in Europe also supports the contention that there are differing motives for RRC. States with official religions are more likely to engage in types of RRC that involve ideological purity including monitoring sermons by clergy and controlling the content of religious education. They are also more likely to seek to control religious institutions, which is an effective

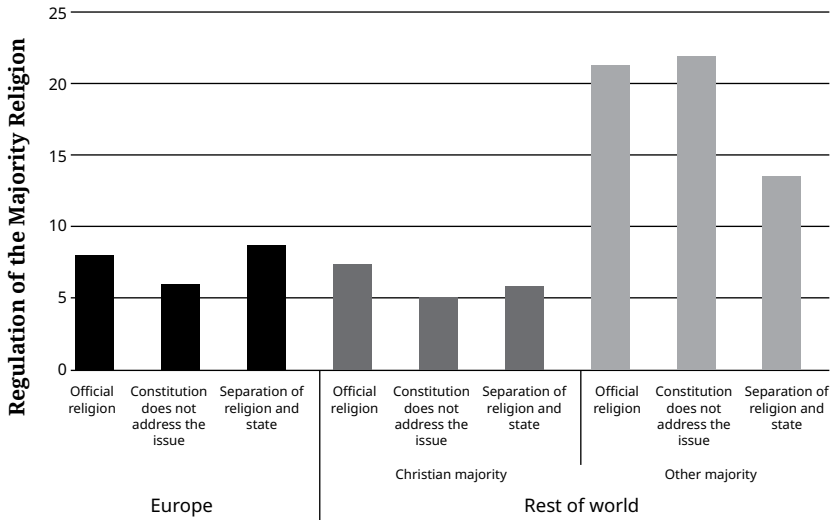


Figure 3: Mean levels of regulation, restriction and control of religion

method to influence official religious theology and present political challenges from religious institutions. This includes influencing clerical appointments, other aspects of religious institutions, and having a role in determining the content of official religious laws and theologies. It also includes banning religious organizations belonging to the majority religion that are outside the officially recognized institutions.

Governments with SRAS clauses in their constitutions are more likely to directly restrict religion's political role by banning religious political parties and trade or civil associations as well as political speech by clergy. In some cases, these tendencies are more overtly anti-religious or at least display a suspicion of religion. These include bans on the public observance of some types of religious activity. For example, in 2014 France's courts, applying the country's *laïcité* policy, ordered regional authorities to remove nativity scenes from public property such as city halls.³ Sometimes this control is more broad. For example, according to a 1995 law in Latvia, religious organizations must coordinate any public religious service with local municipalities.

³ (8 December 2014) France told to avoid 'secular war' after nativity scene ban sparks uproar *UK Telegraph*; Williams, T. (15 December 2014) In France overwhelming support for public nativity scenes *Breitbart News*.

HOW SECULAR AND RELIGIOUSLY FREE ARE EUROPE'S "SECULAR" STATES?

Restrictions on	Official Religion	Constitution does not address the issue	Separation of religion and state
Religious political parties	0.0%	8.3%	24.0%
Trade/civil associations being affiliated with religion	0.0%	0.0%	12.0%
Clergy holding political office	0.0%	8.3%	4.0%
Sermons by clergy	16.7%	0.0%	0.0%
Political speech/activity by clergy/religious organizations	0.0%	8.3%	12.0%
Restrictions/harassment of non-state sponsored/recognized religious format	16.7%	16.7%	12.0%
Formal religious organizations other than political parties	0.0%	0.0%	4.0%
Access to places of worship	0.0%	0.0%	16.0%
Foreign religious organizations required to have local sponsor or affiliation	0.0%	8.3%	0.0%
Heads of religious organizations must be citizens	0.0%	25.0%	8.0%
All practicing clergy must be citizens	0.0%	8.3%	0.0%
Government influences clerical appointments	50.0%	8.3%	8.0%
Other than appointments government influences religious organizations	33.0%	8.3%	8.0%
Government passes or approves laws governing state religion	33.3%	8.3%	4.0%
Public observance of religious practices	0.0%	0.0%	24.0%
Religious activities outside of recognized facilities	0.0%	8.3%	4.0%
Publication/dissemination of written religious material	0.0%	0.0%	4.0%
Religious public gatherings not placed on other public gatherings	0.0%	0.0%	8.0%
Public display by private persons/organizations of religious symbols	33.0%	8.3%	20.0%
Conscientious objectors not allowed alternative service and are prosecuted	0.0%	8.3%	8.0%
Arrest/detention/harassment of religious figures/officials/rel. party members	0.0%	0.0%	4.0%
Religious-based hate speech	100.0%	83.3%	84.0%
Govt. controls/influences instructors/content rel. education: public schools	33.3%	41.7%	8.0%
Govt. controls/influences instructors/content rel. education: in private	0.0%	16.7%	12.0%
Govt. controls/influences instructors/content rel. education: university level	0.0%	0.0%	4.0%
State ownership of some religious property or buildings	16.7%	33.3%	28.0%
Other religious restrictions	33.3%	33.3%	48.0%

Two categories are not included in this table because no country in this study engages in these types of regulation, restriction, and control.

Table 2: Specific types of religious regulation, restriction, and control of the majority religion or all religions by governments

6. Government-based religious discrimination (GRD)

There are numerous possible motivations for GRD. As discussed in the context of support for religion, there are considerable monopolistic and theological motivations for restricting the religious institutions and practices of minority religions. Yet, as most governments in Europe do not support an official religion it is important to examine other motivations, particularly secular motivations.

6.1. Secular motivations for GRD

There are multiple inter-related reasons secular ideologies and beliefs can be anti-religious. As discussed above, many interpretations of secularism see religion

as a primitive, violent, and dangerous phenomenon that is best left in the past. For example, Communist ideologies see it as a false consciousness which blinds people to their true interests and is used as a means of illegitimate state control of the population.

However, this begs the question of why would this lead to GRD? GRD is restrictions placed on minority religious practices and institutions that are not placed on the majority religion. If secularism is hostile to religion, shouldn't secularists seek to repress all religion and not just minority religions? I address several inter-related reasons secular ideologies, beliefs, and governments might engage in GRD.

Secularism can become a dominant ideology similar to a mandatory religious ideology where its supporters will advocate banning all practices that they see as violating this ideology. Put differently, some secular activists claim a veto over religious practices they see as abhorrent. These true believers in secularism see themselves as enforcing an enlightened and superior moral code which overrides irrational and primitive religious beliefs. Paradoxically, they see FoRB as a secular value, but they also believe that only manifestations of religion that are consistent with their secular beliefs are entitled to this FoRB. Thus, FoRB is not an absolute right. It is one that is contingent on compliance with a secular belief system. For this reason, when religious values and practices contradict secular values, secularists who subscribe to this type of manifestation of secularism believe that religious values and practices must be abandoned or altered in order to conform. (Sweetman 2015) That is, "secularism is not merely being defined by engagement with religion. Secularism also intellectually and politically redefines religion to suit secularist values and purposes." (Triansafyllidou & Modood 2017:53) From this perspective, secularism acts as a dominant totalitarian ideology in a manner similar to a religious state which imposes its values on non-believers. (Keane 2000; Fox 2020)

Again, why would this lead to restricting religious minorities and not religion in general? Because religious minorities are more likely to engage in practices that secularists see as abhorrent. The dominant religion has a stronger cultural presence in a country and for this reason, its practices are less likely to be seen as outside the pale. Fox (2016; 2020) argues that three religious practices common to Muslims and Jews – male infant circumcision, ritual slaughter of meat (Kosher and Halal slaughter) and female modest dress, particularly head coverings – are restricted for precisely this reason. Interestingly, each of these types of restriction is present most prominently in Western Europe. (Fox 2020) Each of these practices violates a specific secular belief. It is important to emphasize that secularism is by no means a monolithic ideology so I make no claim that these beliefs are shared by all who believe in secular ideologies. However, I do claim that these

beliefs are present and even prominent within the multifaceted and complex secular belief economy.

Seven Western European countries – Denmark, Germany, Iceland, Norway, Sweden, Switzerland, and as of 2019, Belgium – limit Kosher and Halal slaughter based on secular beliefs that this practice is cruel to the animals. These countries mandate that before slaughter, animals must be stunned. This stunning process makes ritual slaughter impossible. Yet it is this ritual slaughter that makes meat Kosher for Jews and Halal for Muslims. Many other countries, such as Austria, Cyprus, France, Luxembourg, the Netherlands, and Spain, have similar stunning laws but, given the importance they give to FoRB, they allow a religious exception for Kosher and Halal slaughter. Thus, for those countries which ban ritual slaughter, the secular animal rights ideology is given a veto over ‘abhorrent’ religious practices rather than prioritizing FoRB. This secular veto is an explicit public policy in some parts of Europe. For example, when discussing Denmark’s ban on ritual slaughter Danish minister for agriculture and food Dan Jørgensen stated in a 2014 TV interview that “animal rights come before religion.”⁴ Flanders minister for animal welfare similarly said “Unstunned slaughter is outdated...In a civilized society, it is our damn duty to avoid animal suffering.”⁵ These restrictions have been upheld by European courts. (Pin & Witte 2020)

There is a growing movement to ban male infant circumcision, a central ritual in both Judaism and Islam. While no countries currently ban the practice, many heavily regulate it to the extent practicing the ritual is more difficult. Sweden began regulating the practice in 2001. The ritual must be performed by a licensed doctor or in the presence of someone certified by the National Board of Health and Welfare (NBHW). The NBHW has certified mohels (persons who traditionally perform the Jewish ritual) to perform circumcisions, but only if an anesthesiologist or other medical doctor is present.⁶ Similar laws were passed in Denmark in 2005⁷ and Norway in 2014.⁸ These laws place a significant burden on performing the ritual. In practice, Jews and Muslims often must perform the ritual in medical clinics rather than in homes and places of worship, undermining the solemn-

4 “Denmark Bans Kosher and Halal Animal Slaughter” *Time*, 28 July 2015. Available at: <https://time.com/3974498/denmark-ban-kosher-halal/>.

5 “Belgian regions’ plan to ban ritual slaughter upsets religious minorities” *Reuters*, 30 March 2017. Available at: <https://reut.rs/3twdbQJ>.

6 Sweden restricts circumcision (1 October 2001) *BBC News*; Ritual circumcision ban recommended in Sweden and Denmark by medical associations (27 January 2014) *Huffington Post*; Deisher, J. (29 September 2013) Sweden children’s rights official calls for ban on infant male circumcision, *Jurist: University of Pittsburgh’s School of Law*. Available online: <https://bit.ly/48XwdQ2>; US Department of State *Human Rights Report Sweden 2013*.

7 Guidance on circumcision of boys. Available at: <https://bit.ly/3QjBF7x>.

8 Act No. 40 on ritual circumcision of boys of 20 June 2014. Available at: <https://lovdata.no/dokument/NL/lov/2014-06-20-40>.

ty of the ritual. Advocacy groups and politicians in Denmark, Finland, Norway, Sweden, and Iceland have sought, thus far unsuccessfully, to ban all male infant circumcision with no religious exception.

A 2012 case where a German court temporarily effectively banned all male infant circumcision in Germany, until it was overruled by Germany's legislature, demonstrates the secular reasoning behind this type of ban. The court ruled that the practice of male infant circumcision inflicts "grievous bodily harm" on young boys. The court ruled that "the fundamental right of the child to bodily integrity outweighed the fundamental rights of the parents" to perform this ritual. Thus, the court gave a secular interpretation of human rights priority over performance of a religious ritual that is central to two major religions. While, the ruling technically was limited to a single jurisdiction and applied to a single case, the ruling caused doctors and hospitals across Germany to suspend the procedure due to the uncertainty created by the ruling until it was overturned by Germany's legislature.⁹

Attempts to restrict female modesty, particularly head coverings, are common in Europe but, with the exception of France, are largely enacted by local and regional governments in limited locales such as courthouses and schools or are limited only to certain individuals such as government employees. (Fox 2016; 2020) The reasoning for these restrictions comes in two categories, both associated with secularism. First, many believe that they undermine women's equality and autonomy which is inconsistent with European liberal values. Second, particularly in France, they are considered an improper public display of religion. (Cesari 2021b:913; Kuru 2009:106-107) Though, both of these secular motivations likely tap into a deeper sentiment. For example, Cesari (2021b:914) argues:

Muslims are perceived as internal enemies because they seem to endanger the core liberal values of European societies and to contribute to social problems like unemployment and ghettoization of urban areas. ... [A]ny expression of Islamic identity or practice, from head covering to dietary rules, is seen as a political act and therefore deemed illegitimate.

Similarly, Fernandez-Reino, Si Stasio, & Veit (2022:2) argue:

The Muslim veil has been interpreted as a symbol of women's unwillingness to integrate into mainstream society and has raised concerns

9 Nicholas Kulush "German Ruling Against Circumcising Boys Draws Criticism," *New York Times*, 26 June 2012; Judy Dempsey "Germany, Jews and Muslims, and Circumcision," *New York Times*, 17 September 2012; Melissa Eddy "Germany Clarifies its Stance on Circumcision," *International Herald Tribune*, 13 December 2012.

about the role of religion in the public sphere [and]...the veil is commonly perceived as a symbol of women's oppression in Muslim communities, based on the argument that women do not wear it by choice but out of social pressure.

This type of restriction has been upheld by the European Court of Human Rights (Koev 2019) and the Court of Justice of the European Union with regard to restrictions by private companies in the workplace, as long as it is in the context of a neutral dress code. (Pin & Witte 2020) The secular quality of these restrictions is supported by studies which show that religious Europeans are more accepting of Muslim head coverings than secular Europeans (Helbling 2014; van der Noll et al. 2018)

These three prominent examples of how secular values can be given, in law, priority over religion demonstrate that there is a clash between religious values and the concept of human rights. For this reason, some call human rights a secular religion. (eg. Rogobete 2014; Malachuk 2012; Martin 2005:834; Joustra 2018) Freeman (2004), for example, documents that human rights advocates often present human rights as a principle that should be given priority over religion when the two are in contradiction. When this is applied religious groups, most often religious minorities, are required to abandon their religious principles or discontinue those religious practices which contradict this universal value system.

Fox (2020) argues that secularism can also have an indirect influence on levels of GRD. There are many motivations for discriminating against religious minorities, many of which have little to do with either religion or secularism. These include, among others, nationalism, the desire to protect indigenous culture from outside influences, the belief that some religions such as cults are inherently violent and dangerous, government perceptions that a minority poses a political or security threat and long-standing prejudices in society. When one of these motivations for discrimination is in play, anti-religious secular attitudes can exacerbate the levels of GRD.

6.2. Levels of GRD in Europe

As shown in Figure 4, governments with SRAS in Europe engage in 62 percent more GRD than their counterparts with official religions. In fact, European governments with SRAS clauses in their constitutions engage in more GRD than both Christian-majority and non-Christian-majority governments outside Europe which have SRAS clauses in their constitutions. Non-European Christian-majority states overall engage in lower levels of GRD with those whose constitution do not address the issues of SRAS and official religion engaging in the least. This is the pattern one would expect if both the most religious and most secular states have motives to engage in GRD. In contrast, in Europe this data indicates the secular

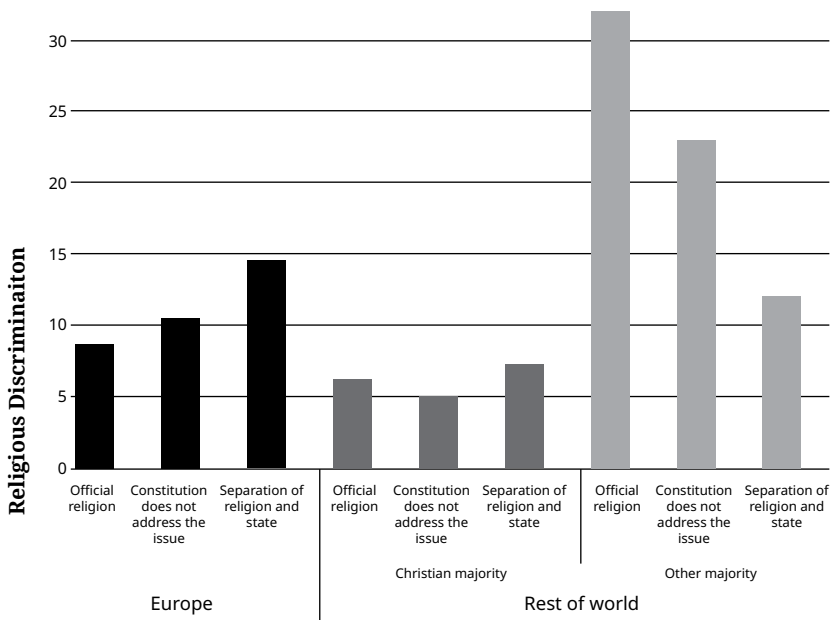


Figure 4: Mean levels of GRD

motive is a more powerful cause of GRD than religious motives. In non-Christian-majority states the religious motive seems to be more influential.

As shown in Table 3, 17 of the 33 types of GRD present in European states are most common in states with SRAS clauses in their constitutions. As noted above there are two theories as to why secular states might engage in GRD rather than restricting all religions: (1) objections to acts that contradict secular values and (2) anti-religious secular beliefs can exacerbate GRD caused by other motivations. These 17 types of acts which are most restricted by governments with SRAS in Europe are a closer fit to the latter explanation.

I make this assessment for two reasons. First, restrictions on the three types of religious acts that run explicitly against specific secular values – circumcisions, ritual slaughter, and modest female dress – are more common in states with official religions than in those with SRAS. Second, many of the types of restrictions that are more common in states with SRAS are basic restrictions of religious freedom that are not closely connected to any specific secular ideal other than perhaps a general anti-religious sentiment or suspicion of religion.

HOW SECULAR AND RELIGIOUSLY FREE ARE EUROPE'S "SECULAR" STATES?

	Official Religion	Constitution does not address the issue	Separation of religion and state
Public observance of religion	16.7%	16.7%	32.0%
Private observance of religion	0.0%	16.7%	16.0%
Forced observance: religious laws of another group.	0.0%	0.0%	4.0%
Make/obtain materials necessary for religious rites/customs/ceremonies	0.0%	0.0%	12.0%
Circumcisions or other rite of passage ceremonies	16.7%	16.7%	0.0%
Religious dietary laws	33.3%	16.7%	4.0%
Write/publish/disseminate religious publications	0.0%	0.0%	24.0%
Import religious publications	0.0%	0.0%	12.0%
Religious laws concerning marriage and divorce.	16.7%	0.0%	4.0%
Religious laws concerning burial	50.0%	25.0%	24.0%
Religious symbols or clothing	50.0%	25.0%	32.0%
Building/leasing/repairing/maintaining places of worship	66.7%	58.3%	84.0%
Access to existing places of worship	16.7%	33.3%	52.0%
Formal religious organizations	0.0%	16.7%	28.0%
Ordination of and/or access to clergy	50.0%	16.7%	16.0%
Minority religions (as opposed to all religions) must register	66.7%	83.3%	72.0%
Minority clergy access to jails.	33.3%	33.3%	56.0%
Minority clergy access to military bases	16.7%	33.3%	60.0%
Minority clergy access to hospitals & other public facilities	16.7%	33.3%	56.0%
Efforts/campaigns to convert members of minority religion (no force)	0.0%	0.0%	4.0%
Proselytizing by permanent residents to members of the majority religion	16.7%	0.0%	36.0%
Proselytizing by permanent residents to members of minority religions	16.7%	0.0%	32.0%
Proselytizing by foreign clergy/missionaries	50.0%	33.3%	48.0%
Religious schools/education	16.7%	33.3%	28.0%
Mandatory education in the majority religion	16.7%	8.3%	20.0%
Arrest/detention/harassment for activities other than proselytizing	33.3%	41.7%	32.0%
Failure to protect rel. minorities against violence or punish perpetrators	16.7%	25.0%	24.0%
State surveillance of religious activities	16.7%	50.0%	36.0%
Child custody granted on basis of religion	0.0%	0.0%	4.0%
Declaration of some minority religions dangerous or extremist sects	0.0%	16.7%	44.0%
Anti-religious propaganda in official/semi-official gvt. publications	16.7%	25.0%	36.0%
Other forms of governmental religious discrimination	0.0%	41.7%	28.0%

Three categories are not included in this table because no country in this study engages in these types of GRD.

Table 3: Specific types of religious discrimination

Hungary's Act CCVI *On the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities*¹⁰ (from here called the *2011 Religion Act*) provides a good example of this phenomenon. This law, which replaces a 1990 law covering the same topic, reiterates the rights to freedom of religious belief and practice in private and in public that is also

¹⁰ Act CCVI *On the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities*, Religion and Law Consortium. Available at: <https://bit.ly/48YQLrt>.

found in the country's constitution, and it prohibits the state from controlling or monitoring churches. However, it significantly restructured the registration process for religions. It differentiates between three tiers of religions, two tiers for "recognized churches" and one for "religious associations." Churches receive significantly greater rights and support. More importantly, the law recognizes 14 "Churches," deregistered all other religions, and gave Hungary's Parliament control over the registration process. Hundreds of small religious groups which had been registered as churches under the 1990 legislation were de-registered, many of which were unable to re-register. Included among the deregulated groups were Jewish communities (Alliance of Hungarian Reformed Jewish Communities and *Sim Shalom Progressive Jewish Congregation*), Protestant groups (Hungarian Christian Mennonite Church, Evangelical Szolnok Congregation Church, Hungarian Evangelical Fellowship, "The Bible Talks" Church of Hungary) and some non-traditional religions.¹¹

A survey conducted among groups which had been deregistered by the 2011 *Religion Act* found that as a result of losing their previous status, some had property liquidated, rental leases terminated, and were forced to shut down schools, charitable programs and other ministry activities. While these groups could register as civil associations, civil associations in Hungary do not enjoy complete internal autonomy. Some groups had to change their organizational structure as a result of the change in status. Some groups which re-registered as civil associations found that the required organizational structure, such as having a president, conflicted with their doctrine and beliefs; some had to change their name, their official teachings or their worship services in order to gain status as civil organizations. For example, Reformed and Lutheran Churches would have to eliminate their presbyteries and legislative synods in order to receive this status. A Buddhist organization lost its status as a church and therefore had to follow different guidelines in running the school it operated for Roma children. Unable to meet the new requirements, the group lost its funding and had to close the school. A Methodist group which lost its status had to close its schools and homeless shelters because it was re-registered as a civic organization, not a non-profit organization. The law also allows only clergy from registered religions and associations access to government institutions including the military, prisons and hospitals.¹²

11 *Magyar Keresztény Mennonita Egyház and others v. Hungary*, Religion and Law Consortium. Available at: <https://bit.ly/3FILNrb>.

12 Baer, D. (18 March 2013) *Testimony Concerning the Condition of Religious Freedom in Hungary, Submitted to the U.S. Commission on Security and Cooperation in Europe* (The Helsinki Commission); Baer, D. (2014) "Let Us Make Them In Our Image:" How Hungary's Law on Religion Seeks to Reshape the Religious Landscape. Available at: <https://bit.ly/46OSM70>; Baer, D. (2012) Report on Hungary's deregistered churches, *Occasional papers on Religion in Eastern Europe*, 32(4).

Other benefits that recognized groups get include government funding for a wide range of activities. The financial benefits for "Churches" are more substantial. Hungarian taxpayers may designate one percent of their personal income taxes to a recognized "Church" or a registered non-government organization. Churches may receive funding equivalent to that given to state and local institutions performing similar civic services; this support includes payment of the salaries of employees of church institutions. Salaried employees of recognized Churches are exempt from paying income tax. Recognized churches receive tax benefits.¹³

For these reasons, among others on 8 April 2014, the European Court of Human Rights found the *2011 Religion Act* in breach of article 9 (protecting freedom of religion) and article 11 (protecting freedom of association) of the European Convention. According to the court, the broad reference to "rules of law" enables the government to restrict religious activities. Further, the court considered the obligation to obtain recognition by the Hungarian Parliament as a condition to establish a Church, and the limited status granted to Religious Associations, a restriction of freedom of religion.¹⁴

The debate in Hungary's Parliament over this law does not show clear secular intent for the law and focused more on several motives for the law. First, a fear that individuals and groups could abuse the ability of religious groups to gain government funding and tax-exempt status. Second, the debate demonstrated that "the Hungarian parliament regards the recognition of churches not as a question concerning freedom of religion but as a matter reserved for the discretion of the sovereign." (Uitz 2012:948) Third, the legislators considered the number of currently registered religions to be "unacceptably high." (Uitz 2012:949) Fourth "the parliamentary debate in December 2011 was heavily underscored by the need to tailor church registration in a manner which reflects Hungarian identity, understood as a means of responding to 'real social needs.'" (Uitz 2012:951) That is, the 14 Churches recognized by the law represent most of Hungary's population, so it was felt that there is no real social need for many of the smaller organizations.

It is difficult to reconcile this type of use of parliamentary power to limit the religious freedom of small religious groups with the concept of SRAS. These expressed motivations can certainly be seen as suspicious of at least some religious entities and reflecting a desire to exercise some control over religious institutions.

¹³ Act CCVI *On the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities* (ch. IV section 19.4); US Department of State *Religious Freedom Report Hungary 2013*.

¹⁴ *Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities*, (19 March 2012) European Commission for Democracy through Law. Available at: <https://bit.ly/46UIRNY>; Baer, D. (18 March 2013) *Testimony Concerning the Condition of Religious Freedom in Hungary, Submitted to the U.S. Commission on Security and Cooperation in Europe* (The Helsinki Commission). Available at: <https://bit.ly/48UxokV>.

It is difficult to draw a direct line between secular ideals and these restrictions on some religious minorities and this policy can be described as a move away from secularism and toward identitarian politics. (Vekony et al. 2022) However, it is also consistent with secularist motivations under the surface exacerbating more visible causes for restriction religious minorities. Fox (2020) argues that nationalism and the protection of indigenous culture is a common motive for GRD in former Soviet bloc countries which can combine with their history of communism's anti-religious bias to increase levels of GRD.

7. Conclusions

This study demonstrates that SRAS in practice (rather than in theory) and full FoRB are the exception rather than the rule in Europe. It is likely that the two are linked. This study shows a pattern that states that declare SRAS tend to be inclined to restrict religion. It is likely that anti-religious secular ideologies are among the reasons for this but it is unlikely that this is the only motivation. However, it is likely that secularism's role combines direct influences on restrictions on FoRB along with a tendency to exacerbate restrictions caused by other motivations.

European states which declare SRAS in their constitutions show a strong tendency to support religion, but in a manner that allows them to control it. They both directly regulate their majority religions and engage in GRD more than other European states. Thus, it is fair to conclude that secular states in Europe are a more direct threat to FoRB than European states with official religions. This implies that, in Europe, secularism is a greater threat to FoRB than religion. Thus, in Europe during the period covered by this study the secular Gods are less tolerant than the Christian God.

Even more interestingly, Europe shows a distinct pattern of being less involved in religion than non-Christian-majority countries but engaging in far more support for religion, RRD, and GRD than non-European Christian-majority states. There are an additional four aspects of European states' religion policies that are distinct to Europe. First, there is little difference in levels of support for religion between countries with official religions and those that declare SRAS in their constitutions. Second, states with SRAS tend to engage in forms of support that give them control over religious organizations. Third, European states which declare SRAS tend to regulate religion's role in politics. Fourth, European secular states engage in more GRD than other European states as well as more than other non-European states which declare SRAS.

This overall pattern is unique to Europe. It is one that is linked to European ideas about religion, that are certainly influenced by its Christian past but different from Christianity's influence on state-religion relations in the rest of the

world. This implies that this pattern is at least in part a result of Europe's unique historical experience, especially those parts which are distinct from Christianity outside of Europe.

I posit that part of this distinctiveness is driven by the influence of European secularism, even in those countries which do not declare SRAS, including countries with official religions. This influence can be seen in that the three Muslim and Jewish religious practices seen as objectionable to some manifestations of secular ideology are more likely to be restricted in states with official religions than in states with SRAS. It can also be seen in the tendency of states with official religions to regulate, restrict, and control their majority religion. Yet it is secular European states which are most likely to engage in GRD suggesting that in Europe, those who are connected to a religion are more likely to be tolerant of other religions. This tendency is also found in polls on Europe which show that religious Europeans are more likely to be tolerant of Muslim religious practices such as head coverings. (Helbling 2014; van der Noll et al. 2018) Given that restricting religious minorities can have violent consequences, (Basedeau et al. 2023; Deitch 2022) it is ironic that secularism may be a potential cause of future religious violence in Europe.

Thus, secular European states are truly struggling with FoRB. Dealing with this issue will require tackling complex issues including nationalism the desire to insulate European culture from perceived foreign influences and identity politics. However, it will also require a deeper reckoning with Europe's anti-religious secular elements.

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Christine Schirrmacher

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Atheism in judicial discourse

An analysis of the Italian constitutional scenario

*Adelaide Madera*¹

Abstract

Starting from an analysis of the Italian model of church-state relationships, the present paper focuses on the status of atheistic convictions in Italy. Since the 1990s, where the Union of Atheist and Rationalist Agnostics claimed its right to start negotiations to enter into an agreement with the State, Italian courts have faced the crucial issue of the legal definition of a religious denomination. The decision of the Constitutional Court no. 52/2016 has been the final result of a lengthy and troubled process. The paper will explore the coherence of the decision with the Italian Constitutional framework, with the ECHR and with article 17 of the Treaty on the Functioning of the European Union (TFEU). Finally, the paper will investigate on the option of enforcing an updated law regulating religious freedom and its predictable impact on non-religious communities.

Keywords

Nonreligion, Italy, ECHR, Article 17 TFEU, Atheism.

1. Is Atheism a religion in the Italian legal scenario?

In a recent paper, an Italian scholar raised a thought-provoking question: whether Atheism can be considered as a “religious minority” in the Italian context (Baldassarre 2021:67). The issue is extremely relevant as in Italy the number of non-believers has dramatically increased over the last ten years (Garelli 2020:10). I start by saying that providing a definition of nonreligion is a tricky issue, as it is even more difficult than establishing the boundaries of religion. Indeed, Western legal systems are not equipped to provide a legal definition of religion and have often charged courts with this difficult task (Consorti 2017:4).

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The non-monolithic nature of nonreligion and the difficulty of reducing it to a mere opposition to religion and to an exclusively individual dimension render more difficult the identification of its proper regulation. On the issue scholars have provided multiple definitions: ‘nonbelievers’, ‘disaffiliated’, ‘nones’ (Årsheim et al. 2022:1-10). Indeed, scholars have identified “nonreligion” in terms of “difference from religion” and as an “umbrella term” including multiple identities (Stemlins and Beaman 2014:4). Furthermore, there is not a perfect overlapping between non-religion and Atheism as various types of disbelief have been identified. However, scholars include it within a “growing religious diversity” (Årsheim et al. 2022:1), and its legal treatment in modern democratic systems is strongly connected with the domestic regulation of religion. (Stemlins and Beaman 2014:11). According to Margiotta Broglio, the issue of Atheism has to be considered as a “stress test” which has destabilized the Italian constitutional framework founded on “religious neutrality, social cohesion, and living together” (Margiotta Broglio 2020:121).

Although some scholars have theorized the “decline of religious influence” (Boucher 2013) in civil society, modern democratic post-secular systems are facing a “resurgence of religion”, (Thomas 2005:21) religions are regaining a public role and new religious minorities are raising claims of reasonable accommodation of their specific demands. On one hand, in the European landscape traditional Christian values are undergoing a gradual dismantlement, giving rise to fierce litigation concerning the public visibility of religious symbolism, bioethical issues, and nondiscrimination rights. On the other hand, in modern legal societies the religious landscape has been deeply altered, due to the proliferation of new nontraditional faith communities, the disaffection from mainstream religions, the rise of nonreligious convictions and idiosyncratic beliefs (Beaman 2022:16), the emerging issues of believing without belonging (Davie 1990:455) and belonging without believing (Hervieu-Léger 2000:70-72). As setting the boundaries between religion and nonreligion is becoming increasingly problematic (Ferrari 1995:21), the key issue is whether a special legal treatment should be extended to guarantee a comparable protection to nonreligious beliefs, convictions and practices or whether an equalization should be achieved through the withdrawal of any “exemptionist” regime (Boucher 2014:159).

2. The protection of nonreligion in the ECHR framework and in the TFEU

An investigation of the issue of Atheism cannot avoid an analysis of its legal status in the European Union (EU) legal framework. Article 9.1 of the European Convention on Human Rights (ECHR) states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his/her religion or belief and free-

dom, either alone or in community with others and in public or private, to manifest his/her religion or belief, in worship, teaching practice and observance.

Such a broad definition incorporates also the negative dimension of religion. Not only does the ECHR language (“religion or belief”) include religious sets of values but also secular and philosophical convictions. The European Court of Human Rights (ECtHR) case law gave a significant contribution to build such a broad notion of religion. In *Kokkinakis v. Greece*, the ECtHR found that “freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. So it clarified that it is a precious asset, not only for those who have a religious worldview, but also for atheists, agnostics, sceptics, and unconcerned people.² In *Arrowsmith v. the United Kingdom* the ECtHR acknowledged that pacifism fits within freedom of conscience and thought.³ In *Buscarini et al. v. San Marino* the ECtHR reiterated that freedom of religion includes liberty to have or not to have religious beliefs, to practice or not to practice religion.⁴

However, religious protection under article 9 does not cover any kind of opinion or idea: the ECtHR emphasized that convictions should have a certain level of cogency, seriousness, cohesion and importance in order to fit within article 9 ECHR umbrella.⁵ In *Eweida v. the United Kingdom*, the majority reiterated the standards of “seriousness, cohesion, cogency and importance”, and emphasized that “provided this is satisfied, the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed”.⁶ In any case, although a religious system attains the required level of cogency and importance, “it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a ‘manifestation’ of the belief”.⁷ Furthermore, in *Eweida*, Judges Vučinić and De Gaetano provided an expansive definition of freedom of conscience.⁸

2 *Kokkinakis v. Greece* (app. 14307/88), 25 May 1993, § 28.

3 *Arrowsmith v. the United Kingdom* (app. 7050/75), 12 October 1978.

4 *Buscarini and Others v. San Marino* (app. no. 24645/94), 18 February 1999.

5 *Campbell and Cosans v. the United Kingdom* (app. nos. 7511/76 and 7743/76) 25 February 1982, § 36; *Bayatyan v. Armenia* (app. no. 23459/03), 7 July 2011.

6 *Eweida and Others v. United Kingdom* (app. nos. 48420/10, 59842/10, 51671/10 and 36516/10); 27 May 2013, § 81.

7 *Ibid.*

8 *Eweida and Others v. United Kingdom* (app. nos. 48420/10, 59842/10, 51671/10 and 36516/10); 27 May 2013, Joint Partly Dissenting Opinion of Judges Vučinić and De Gaetano, § 2 “[...] no one should be forced to act against one’s conscience or be penalised for refusing to act against one’s conscience. Although freedom of religion and freedom of conscience are dealt with under the same Article of the Convention, there is a fundamental difference between the two [...]. In essence [conscience] is a judgment of reason whereby a physical person recognises the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. This rational judgment on what is good and what is evil, although it may be nurtured by religious beliefs, is not necessarily so, and people with no particular religious beliefs or affiliations make such judgments constantly in their daily lives.”

Recently, the EctHR clarified that, although states cannot interpret the definition of religious denomination so strictly as to deprive nontraditional religious groups of religious protection, the achievement of a certain level of cogency and importance is an essential requirement to enjoy the religious status.⁹ So the Court avoided interfering with a controversial subjective assessment of the sincerity of claimants (*Brzozowski* 2021:491) and relied on “important thresholds” guaranteeing an objective review (*Wolff* 2023:2). In any case, the Court clearly stated that the assessment of cogency, seriousness, cohesion and importance can apply to conscientious claims based on secular belief systems, whose protection is grounded in article 9 ECHR, provided that “they are worthy of ‘respect “in a democratic society”’, and are not incompatible with human dignity”.¹⁰

Furthermore, article 17 of the Treaty on the Functioning of the European Union represents an important step towards the recognition of the “identity and the specific contribution” of nonreligious actors, as it solicits the opening of a “clear, transparent and regular dialogue” between the EU and non-religious organizations, and it commits itself to respect the status that philosophical and non-religious organizations enjoy in national laws. In this way a solution of compromise is achieved between the unity which should shape the EU and the preservation of the diversity of national identities (*Baldassarre* 2020:77-78). Another controversial issue is the lack of clear guidelines concerning the scope, the limits and the social actors who should participate in such a dialogue (*Margiotta-Broglio* 2020:121-138)

The key issue is whether the Italian legal framework is coherent with such a robust architecture protecting religion and whether and to what extent European language affected the legal framing of Atheism in Italy.

3. Religious protection in the constitutional text

An investigation focused on the Italian way of managing religious diversity (*Ventura* 2013), which incorporates nonreligion, leads us to analyze an alternative reconstruction of the Italian constitutional approach to the issue of religion and its legal protection. LeDrew noticed that in different legal contexts Atheist discourse fluctuated between a “confrontational position” toward mainstream religion and “accommodation” with a view to searching for cooperation on matters of common interest (*LeDrew* 2014:53). Indeed, Atheist judicial mobilization gave a significant contribution to promote the evolution of the Italian legal system with

⁹ *Hermína Geertruida de Wilde v. the Netherlands* (app. No. 9476/19), 9 November 2021. See also *Alm v Austria* [2022] (app. no. 20921/21); *Sager and Others v Austria* [2022] (app. no. 61827/19).

¹⁰ *Lautsi v. Italy* (app. no. 30814/06), 18 March 2011, § 5. See recently *Vavříčka and Others v. Czech Republic* (app. nos. 47621/13 and 5 others), 8 April 2021.

a view to implementing constitutional values of equal treatment, religious neutrality and religious pluralism (Alicino 2022:85).

The religious issue was forcefully debated in the Constituent Assembly. Although some progressive voices proposed a broad definition of religious freedom, with a view to covering secular convictions, the expression “nonreligion” is not used in the constitutional language. In addition to article 3 of the Constitution, which states the principle of equality without distinction founded on religion, article 19 of the Italian Constitution guarantees that everyone has a right to freely profess his/her religious faith in any form, individual or associated, to promote it and to worship in private or in public, provided that religious rites are not contrary to morality. Such a provision must be interpreted in conjunction with article 21 which guarantees freedom of expression in speech, writing and any form of dissemination.

The Italian constitutional framework, like other European systems, emphasizes the importance of the corporate dimension of religion. So, the protection of religious freedom is founded on a complex interplay between the principles of secularism, equal freedom of all faith communities (art. 8.1 Constitution), and church-state cooperation (art. 7.2 and 8.3 of the Constitution). Here the constitutional language gains a significant weight. The term “religious denomination” underlines a distinction between the predominant “Church” (the Catholic Church) (article 7) and faith communities ‘different’ from the mainstream religion (namely, religious minorities) (article 8) (Casuscelli 1998:89; Madera 2019:328). However, the expression “religious denomination” distances itself from the mere toleration approach adopted in the 1929 legislation (“admitted faiths”). The collective dimension of religious freedom is recognized as having a special nature compared to other kinds of association (Berlingò 2000:3). Indeed, nowadays the status of religious “minority” seems no longer connected with a quantitative element (the number of adherents to religious communities) but rather with a qualitatively defective response: an asymmetric system of protection which still places religious communities in a kind of hierarchical order (Casuscelli 1974:151).

The dichotomy between equal freedom and religious diversity is not limited to the Catholic Church and ‘other’ religious groups. Although the key principle of the Italian constitutional approach to institutional religious freedom is the acknowledgement of equal freedom to all religious denominations (article 8.1) the effective beneficiaries of the further levels of protection guaranteed by article 8.2 (self-governance) and article 8.3 (bilateralism) are more narrowly tailored (Rossi 2014:1-35; Madera 2019:329). Such a multilevel system of protection of religious freedom provides a privileged legal regime to religious groups which have entered into agreements with the state. As a matter of fact, only 10 percent of non-Catholics enjoy such a privileged status

(Naso 2023). Indeed, bilateralism has traditionally shaped church-state relations in Italy and has had a significant impact on its evolution. Since 1929 (the Fascist era) such a method has distinguished state relations with the Catholic Church. In 1929 the Italian State and the Catholic Church stipulated the Lateran Pacts to regulate matters of common interest in order to mutually reinforce each other through cooperation. In 1984 the Pacts were revised to make them consistent with the Constitutional text, with a view to preserving the specific identity of certain aspects of the Catholic Church and to pursuing the shared goal of the good of the person. Despite this change of paradigm, a full transition to religious pluralism has not yet been carried out (Alicino 2021:25). The Constitutional Charter merely “extended” the bilateral method to other religious communities. However, the content of the “*intesa*” (i.e. agreements) between the state and religious communities different from the Catholic one is quite similar: so, the *intesa* failed to achieve their main aim to safeguard the identity of the specific religious groups concerned, and resulted in a kind of ‘common legislation’ which is far from establishing a general regulation, as its application is limited to those faith communities which signed them (Alicino 2022:83).

Moreover, a shortsighted interpretation of the constitutional framework which strongly connects the protection of collective religious freedom with the notion of “religious denomination” (and leaves open the question on whether a denomination can be atheistic) (Rossi 2014:1-35), has led to reducing the scope of a complex constitutional framework (articles 3, 7,8, 9, 19 and 20 of the Constitution) which could potentially provide coverage to a broader range of (religious, philosophical, ethical) associations (Berlingò 2000:3; Madera 2019:330).

4. Early case law on Atheism

In the wake of the establishment of the Republican regime, the constitutional text was given a short-sighted theistic interpretation. Religion was deemed as a legal good to be preserved (Cardia 1996:173), to the detriment of anti-religious views in the world. According to many influential scholars, nonreligion could not be included under the umbrella of the protection of religious freedom (article 19), and its constitutional protection was merely offered by article 21 (freedom of expression). Case law shows the prevalence of this approach. In 1948 a court entrusted child custody to the “very religious mother” rather than to the father, who was referred to as “a perfect Atheist”. Although the infamous decision was reformed in 1950, courts continued to adopt a skeptical approach toward Atheists in cases concerning child custody.¹¹ Other cases concerned nonreligious witnesses who

¹¹ The Court of Appeals of Bologna reformed the ruling of the lower court stating that Atheism was an “irrevocable conquest of our Fathers” and that the lower court exceeded its jurisdiction.

refused to swear during trials as the oath (“under God”), claiming a violation of their conscience. They were subject to criminal sanctions because of their refusal. Furthermore, we cannot forget two preliminary orders of the court of Rovigo in 1952 (where the court considered as “relevant” the father’s Atheism in a case of child custody) and the milestone case of two cohabitant partners of Prato (Bottoni and Cianitto 2022:48-69).¹²

The courts, however, played a key role in the evolution of the Italian legal approach to nonreligion. Indeed, this conservative approach was fully reversed in 1979, when the Constitutional Court held that “the prevailing opinion includes freedom of conscience of nonreligious individuals within the broad protection of religious freedom guaranteed by article 19 of the Constitution”.¹³ Aligning with the ECtHR’s approach, the Constitutional Court held that the provision of the Criminal Code to require the oath on God infringed the constitutional text and found that not only did Atheism find constitutional coverage under article 21 (freedom of expression) but also under article 19 (freedom of religion). Such a judicial turn was the outcome of the troubled Italian evolution toward a full social, legal and political secularization, which resulted in a growing decline of Catholic influence on public policies. The new judicial approach mirrored important legislative changes (introduction of divorce in 1970, regulation of abortion in 1978) showing the increasing weakening of Catholic impact on democratic processes.¹⁴

5. Transition from the protection of the individual Atheist to its collective dimension

There remain many aspects of nonreligion which still do not receive full protection. In particular, the Italian legal system problematized the transition from the protection of an individual dimension to a corporate dimension of Atheism, emphasizing a disparate protection of religion and nonreligion.

A key question is, which communities can enjoy “religious” status, which, in the Italian constitutional framework (as occurs in many other European and extra-European legal systems) is a distinctive and special legal qualification which cannot be “assimilated” to other associative entities (Movsesian 2023:567). Such a status results in a more favorable regime (i.e. tax-exemptions, access to indirect public funding) compared to that of secular entities, giving rise to the state need

¹² In 1958, a bishop was condemned for defamation, as he defined as “public sinners” two partners who celebrated a civil marriage without a religious ceremony in a parish journal. Court of Florence, 1 March 1958. However, the Bishop was acquitted by the Court of Appeal of Florence on 25 October 1958.

¹³ Constitutional Court. no. 117, 10 October 1979. Available at: <https://giurcost.org/decisioni/1979/0117s-79.html>.

¹⁴ As a further example, only in 1975 did law no. 354 eliminate the predominant role of the Catholic religion in prisons as a source of rehabilitation. Available at: <https://bit.ly/470Bmpu>.

to monitor and limit the range of legal actors enjoying it. There is little doubt that a legal system is not equipped to give a legal definition of religion. On this point, academics have been far from reaching a shared approach, and provisions relating to the issue are narrowly tailored to regulate specific legal areas (Pacillo 2007:69).¹⁵ The only significant step ahead is that the Italian legal system has gradually abandoned the approach focused on theo-centrism (i.e. it stipulated an agreement with the Buddhist community).

Given the legislative reluctance to provide a legal definition of “religious denomination”, courts were left with the task of assessing the religious nature of ‘new’ faith communities and they have challenged the boundaries of various approaches. What weight has to be given to a self-referential approach? How can a fair balance be achieved between the importance given to spiritual elements and that of material elements? Indeed, courts have navigated the double risk of an excessively trustful approach and of a “structural skepticism” (Torfs 1999:37). They have faced the issue with specific regard to the case of new movements whose religious status has been the object of fierce debate (i.e. Scientology) (Carobene 2014:1 ff.). Judicial boards have struggled to find a fair balance between the double risk of a blanket and deregulated self-referential approach, and excessive administrative discretion, trying to avoid interference in church matters, which are not within a secular court’s province (Madera 2019:331). So, they have set some basic standards (public acknowledgement, bylaws, common view) (Pacillo 2007:66-69). In any case, they have established a point of no return; a group can be qualified as religious regardless of the circumstance of the enjoyment of an agreement with the state (Madera 2018:568).

6. Lack of an updated law regulating individual and collective religious freedom

An unresolved issue of the Italian legal framework is the lack of an updated law regulating individual and collective religious freedom, which should guarantee a basic level of protection to multiple religious, philosophical and ethical sets of values (Berlingò 2014:1-23). As such a basic law is lacking, new religious communities increasingly claim their right to an agreement with the State, with a view to enjoying a basic level of protection of religious freedom. Furthermore, the hesitancy of the lawmaker to enforce a law providing a basic level of protection

¹⁵ Regarding legislative attempts to define religion, we can refer to the Legislative Decree no. 251 of 2007, art. 8, which developed a broad definition of religion incorporating the “theistic, non-theistic and atheistic” beliefs, as well as the “participation in or abstaining from, rituals of worship celebrated in private or in public, both individually and in community, other religious acts or professions of faith, as well as forms of personal or social behavior based on a religious belief or prescribed by it”; however, this definition has a limited scope: the identification of those who can qualify for refugee status. Such an approach aligns with that adopted in the Recommendation of the European Parliament of 13 June 2013, concerning the promotion and protection of freedom of religion and opinion.

to religious freedom has resulted in a paradoxical alteration of the nature and the scope of church-state agreements (Domianello 2022:611-620). They regulate matters which should be under the jurisdiction of the lawmaker, and they are increasingly considered by faith communities as the only source available to have a legal response to their needs and the only legal protection available against discrimination (Colaiani 2014:15; Madera 2019:340).

Such a defective legal framework has crystallized the regime of religious denominations which are placed in a kind of hierarchical structure. The Catholic Church has been traditionally given preferential treatment. Article 7 of the Constitution establishes that the State and the Catholic Church are independent and sovereign, each within its own ambit of jurisdiction, with a view to acknowledging an international dimension of the Catholic Church. Its relationships with the State are ruled through agreements. Amendments of the agreements, when bilaterally negotiated, do not require a procedure of constitutional revision. Currently, such a relationship is regulated through the 1984 Agreements. A similar treatment has been extended to religious groups which signed an *intesa* with the State. The legal treatment of other religious minorities is provided by law (law no. 1159/1929). Under such an updated law, religious minorities struggle to enjoy places of worship (as the issue is entrusted to controversial regional laws), the recognition of the status of their religious ministers is recognized through a cumbersome procedure and they have no access to indirect public funding. The fact that such a law is still in force and provides a legal regulation of “admitted cults” mirrors legislative reluctance to deal with an increasingly pluralistic society. Furthermore, if faith communities do not have the requirements to enjoy the ‘institutional recognition’ provided by the above-mentioned law, they are subject to the civil law regime (Pacillo 2007:69).

In such a hierarchical system, the key question is: what is the status of Atheism? As a matter of fact, in the Italian context, the collective dimension of “freedom of religion” without an agreement seems a right emptied of its substance. Such a situation gives rise to a further issue: is there a ‘right’ for religious communities to an agreement with the State? Can the Italian state freely choose certain religious partners, excluding others? (Ruggeri 2016:9).

7. Nonreligion’s claim for an agreement

Alicino emphasized that over time Atheism “has moved from a purely individual dimension to a rampant militant activism with a view to promoting a new interpretation of the constitutional text” (Alicino 2021:29), consistent with emerging social expectations for a full equalization of the legal treatment of religious and nonreligious communities.

For this reason, the Union of Italian Atheists and Agnostics (UAAR)¹⁶ has raised a challenge to obtain an agreement with the State, which is the only effective legal tool to participate in a complex system of indirect state funding and enjoy a reasonable adjustment of generally applicable provisions in compliance with religious obligations. Indeed, for many years, Atheist judicial mobilization has emerged as a strategy aimed at challenging the government's choices, which opposed giving Atheism a legal treatment comparable to that of religious communities. Italian courts adopted divergent approaches to the assimilation of Atheism to religion and focused on a crucial argument: is the government free to select its religious partners or should its decisions be subject to judicial review? The Administrative Court of Lazio found that the challenge raised by the UAAR, against the decision of the Presidency of the Council of Ministers, was not acceptable, and held that religion needs to be: "a fact of faith addressed to a divine entity, lived in common between several people, who make it manifest in society through its own particular institutional structure".¹⁷ So, the administrative court adopted a restrictive turn compared with earlier case law of the upper courts¹⁸ which was reformed by the Council of State¹⁹ (Madera 2019:335-338).

As the President of the Council of Ministers appealed to the Civil Court of Cassation, the Civil Court of Cassation held that the decision of the government to deny religious status to Atheism should be subject to judicial review, in order to prevent a government from exercising absolute discretion, which could give rise to discrimination. Furthermore, a government's assessment on the nature of Atheism would be an undue exercise of technical discretion, as the boundaries of the spaces of political discretion are set by constitutional and legal principles. According to the Court of Cassation, not only should the government not be recognized as exercising blanket discretion in its decision to start negotiations with religious groups

16 The UAAR self-defines as the "Union of Rationalist Atheists and Agnostics, is a social promotion association that represents the reasons of atheist and agnostic citizens and defends the secularity of the State. It promotes a secular view of the world and is completely independent of parties". Available at: <https://www.uaar.it/>.

17 In 2008, the UAAR filed a lawsuit and asked the Administrative Court of Lazio to reverse a decision of the Council of Ministers, which refused to start negotiations with the Union, as Atheism could not be considered as a religion. The Administrative Court of Lazio affirmed its lack of jurisdiction on the issue, as the decision of the Council of Ministers was a political act (Administrative Court of Lazio, no. 12539/2008).

18 Criminal Court of Cassation, Sixth Section, 22 October 1997, no. 1329, *Quad. Dir. Pol. Eccl.*, no. 3 (1998), 836 ff.

19 Council of State, Fourth Section, 18 November 2011, no. 6083, 135 *Foro It.* (2012), 635-63. The Council of State Fourth Section reformed the administrative judgment decision of the Council of Ministers, which cannot be considered as a political act, as in this way it would be immunized from judicial second-guessing. Otherwise, the government would enjoy uncontrolled discretion and could introduce discriminations among religious groups. Moreover, an assessment of the religious nature of a group is a pre-requisite to have access to an agreement. According to the Court, there are two conflicting interests concerned: the interest of the association to ask for an agreement and the state interest to limit the religious actors who can enjoy religious status. So, judicial review is necessary to supervise the government's action and the government has a duty to start negotiations with a religious community, even though it finally retains the discretionary power to decline to enter into an agreement.

but also that the reluctance of the government cannot be justified by the difficulty to provide a legal definition of religion.²⁰ If significant legal effects come from the legal status of religion, the lawmaker should be charged with the task of identifying clear standards, in order to avoid an arbitrary recognition or denial of the advantages coming from the enjoyment of the status (Madera 2018:161).

Finally, the Constitutional Court held that Atheism has no right to enter into an agreement with the State, as the government enjoys broad discretion to determine whether to start negotiations with an applicant group. In this way it upheld a political decision of rejection of the establishment of an agreement between the State and an Atheist organization.²¹

8. The limits of the Constitutional Court's judgment

Such a judgment shows a short-sighted view of the principle of religious pluralism grounded on article 8§1 of the Constitution, which should imply equal freedom of all religious denominations. In its reasoning, the Constitutional Court extended the range of political acts, which are immunized from judicial review. However, the recognition of the government of an uncontrolled power to identify and select religious actors with a view to opening negotiations has a devastating impact on religious pluralism, as it results in undermining their equal protection under the constitutional text. On this point, Casuscelli underlined that our constitutional framework risks a threatening transition from the idea of an “open pluralism” to a pluralism whose limits are defined by the government and the political parties supporting it (Casuscelli 2018:29).

Furthermore, it shows a shortsighted approach to the method of bilateralism. In this view, bilateralism is completely dissociated from article 19, which covers a broad range of faith-based entities. Indeed, if the decision to open negotiations has a political nature and is not subject to judicial second-guessing, the paradoxical result is that the government is given the privilege to “select its religious partners” (Ruggeri 2016:9; Madera 2019:339). So, the decision to open negotiations with a religious group will be subject to fluctuating political trends, giving rise to a high risk of discrimination of unwelcome faith communities (Ruggeri 2016:3). In this view, Alicino underlined that “the changing and unpredictable situation of international and national political relations” could have an impact on the government’s decisions (Alicino 2022:86).

Finally, the Constitutional Court argues that its decision will not have an impact on the legal treatment of Atheism as a religious organization in other settings. As

20 Court of Cassation 28 June 2013, United Sections, no. 16305/2013. Available at: <https://bit.ly/48FY7jy>.

21 Constitutional Court no. 52, 27 January 2016. Available at: <https://bit.ly/3F7PFfv>.

a matter of fact, the denial of an agreement could indeed result in further implications for the UAAR, as it could be denied further advantages connected with a religious status, given the defective legal framework on the issue, which does not guarantee effective alternative techniques to gain legal protection of its claims (Licastro 2016:1-34; Madera 2018:560).

The decision contradicts the earlier decision of the Court of Cassation which emphasized that the procedure pursuant to article 8§13 of the Constitution is currently the only legal defense faith communities can enjoy against disparate treatment (Colaiani 2014:15). Indeed, given the lack of a general law regulating religious freedom, at the moment the implementation of the principles of secularism and religious pluralism is “filtered” through the method of bilateralism” (Poggi 2016:10; Madera 2018:559). A full implementation of bilateralism should imply the legal definition objective and transparent standards religious actors have to comply with (Rossi 2014). As religious denominations should enjoy an equal treatment ex article 8§1, the enjoyment of an agreement cannot be changed into a privilege depending on the government’s mere discretion (Pin 2016:7).

9. The issue of Atheism in the framework of the politicization of religion

Such a “narrative of exclusion” of minorities (Beaman et al. 2018:44) mirrors the rise of an increasingly conservative approach to religious freedom (Casuscelli 2017:1-26). Indeed, the judicial outcome providing an inadequate or even improper implementation of religious pluralism falls within a broader trend toward a politicization of religious freedom, to the detriment of minorities. Such a politicization has taken advantage of various factors which has altered the Italian religious landscape and has favored the rise of a conservative approach to religion: 1) an increasing cultural and religious “deep diversity” (Alidadi-Foblets 2012:389), perceived as a threat for democratic values and generating a “religious gap” (Cesari 2023); 2) the rise of international terrorism, which has exacerbated an “alarmed” state reaction (Ferrari 2016:10-11) resulting in the securitization of religious freedom, making it increasingly entangled with public safety;²² 3) the increase of immigration, which during the last 20 years various political forc-

22 In Italy, the lack of an updated law on religious freedom has facilitated the enforcement of regional laws, in contradiction with the constitutional principle of religious pluralism. As an example, some regions, in an attempt to protect safety and public order, have adopted town-planning regulations which have seriously limited the religious exercise of religious minorities, emphasizing the pre-existent disparate treatment among faith communities (i.e. their right to enjoy places of worship). So, the Constitutional Court has had to find a difficult balance between religious freedom and the legitimacy of its restrictions and has held that such a fundamental freedom cannot be restricted for a mere need of state control. (Marchei 2020:65). The Constitutional Court (no. 254, 20 November 2019. Available at: <https://bit.ly/3tqAhhbi>) found that the Regions exceeded their jurisdiction, as they introduced restrictions to the access to places of worship which were disproportionate and not necessary to the public interest pursued, and unduly restricted a fundamental aspect of religious freedom.

es (right and left wing populist parties, such as the League and the M5S) have used as a common ground to enhance a xenophobic approach toward Islam, the “securitization” of the immigration issue, a restrictive view of citizenship, and strict immigration policies (Caiani 2019). This connection between immigration, terrorism and Islam has been emphasized, thus promoting an exclusive view of “the people” (Caiani 2019). So, the rise of new populist parties, such as new right-wing and left-wing “populist identities” has provoked a “silent revolution”, where the increasing distrust of the Italian democratic system and the financial crisis (which emphasized the “crisis of social solidarity”) have played a significant role (Caiani 2019; Casuscelli 2018:10). Indeed, the increasing financial crisis has weakened the pattern of the welfare state, and has made it more difficult to accommodate the basic religious needs of faith minorities, emphasizing bias and prejudices against Muslim immigrants and giving rise to a key issue: can the exercise of fundamental rights be conditioned by financial sustainability?²³ (Casuscelli 2017:1-26).

Religious politicization has enhanced the public role of religion, underlining the historical element which unduly favors mainstream religions and has an exclusive impact on nontraditional idiosyncratic groups, as the social-political environment is not permeated with their values, ideas and practices.

Moreover, in order to gain majoritarian consent, populist parties have enhanced the need for protection of a Catholic national identity, to the detriment of “the other”, which implied a revitalization of Catholic privilege and intolerance of religious minorities. This approach has emphasized symbolic borders between “us” and “them” (Forlenza and Turner 2019:6-7) and the rhetoric of a common “Christian heritage” (Forlenza and Turner 2019:8; Ferlan and Ventura 2021:665-680).

Indeed, a conservative approach has been judicially adopted whenever the public visibility of the Catholic religion is concerned, giving priority to the historical element as a filter to assess the acceptability of religious displays in public space. Such an approach has had an exclusive impact on minorities which have struggled to demonstrate that they were offended by such an exposure.

In various legal contexts, Atheist claims have very often challenged religious displays and practices in public settings, with a view to promoting a neutralization of public spaces through the removal of religious symbolism and “prayer policies” (Beaman 2014:39). Such challenges have given rise to conservative judicial responses. Indeed, such challenges show the difficulty of Western democracies to move

23 On this point populist parties have claimed for a need to give priority to the Italian people (i.e. the slogan “prima gli Italiani”), opposing the idea of welfare programs including non-citizens. Indeed, such a view would be in contradiction with the constitutional framework, as a positive view of religious freedom should imply fair access to resources and services which are necessary to guarantee full implementation of fundamental rights.

away from “Christian cosmologies” and “imagine alternatives” (Beaman 2014:41). Scholars have underlined that in mirroring such a difficulty, courts have re-built Christian religion as giving rise to “universal values” permeating the human condition, whose religious meaning has a mere accidental relevance (Sullivan 2009:2-11; Beaman 2014:41). An emblematic case was the war of crucifixes which culminated before the ECtHR (the *Lautsi* case).²⁴ Where the mandatory display of the crucifix in classrooms was challenged, the Administrative Court held:

In the current social reality, the crucifix must be considered not only as a symbol of historical and cultural evolution, and therefore of the identity of our people, but also as a symbol of a system of values of freedom, equality, human dignity and tolerance religious and therefore also of the secular nature of the State, these principles which innervate our Constitutional Charter.²⁵

The question of whether freedom of religion implies also a right to be free from the display of religious symbols in the public spaces is far from being settled. A recent decision of the Court of Cassation revitalized the issue of the consistency of the display of the crucifix in the classroom with freedom of conscience and religion of students, analyzing it through an antidiscrimination lens.²⁶ Indeed, the Court of Cassation followed a controversial reasoning to justify the preservation of an outdated legal framework (art. 118 del r.d. 30 April 1924, n. 965) concerning the display of the crucifix and predating the enforcement of the constitutional text. Although the clash between a compulsory display of the crucifix and the values of religious freedom and secularism has been acknowledged, the court held that the educational community can freely take a decision to maintain such a display through an assessment respecting multiple beliefs and convictions of the educational community (Toscano 2011:57).

The Court searched for a compromise that would take into account multiple opinions and convictions taking advantage of the common law doctrine of “reasonable accommodation”. This doctrine implies providing an adjustment of generally applicable provisions with a view to mitigating their impact on minorities, through a legal framework which regulates the scope and the limits of the application of ac-

²⁴ *Lautsi v. Italy* (app. no. 30814/06), 18 March 2011.

²⁵ Administrative Court of Lazio, Third Section, 12-22 March 2005, no. 1110.

²⁶ Civil Cassation, 9 September 2021, no. 24414/2021. The case involved a secondary school teacher who removed the crucifix on the wall of a classroom during his lessons, against the directives of his dean, because it violated his convictions. As he was subject to a disciplinary action, he claimed indirect discrimination. The Court held that the display did not result in indirect discrimination as it does not imply a religious nexus between teaching and Christian value; so the discomfort the teacher experienced was not sufficient to give rise to a disadvantaged situation.

commodation, and which sets the standards to assess its reasonableness. Here, the idea of reasonable accommodation is subject to a paradoxical change into an additional argument justifying the preservation of majoritarian symbolism. Indeed, the doctrine of reasonable accommodation is paradoxically adopted in conjunction with the reiteration of the idea of the double meaning of the crucifix, which is not only a religious symbol but also an expression of the Italian cultural heritage history and tradition. In the judicial discourse the boundary between religion and culture, religion and “civic feelings” is increasingly blurred, to the detriment of religious minorities and freedom of nonreligion (Pasquali Cerioli 2020:50). In this way, the historical-cultural argument acts as a filter impacting on symbolism and messages whose display is considered acceptable in a public space. Minorities are perceived as ‘intolerant’ voices in such a narrative (Beaman 2014:44). Furthermore, majority views are enhanced through the logics of accommodation, resulting in paradoxical outcome: mainstream religion tyrannically “speaking” both “as a majority” and “as a minority” (NeJaime and Siegel 2015:1216). Given the lack of legal regulation, reasonable accommodation will hardly become a tool to govern the conflict between various identities. Indeed, there is no public authority playing a “role of mediation” and counterbalancing the “inequality of bargaining powers” (Toscano 2011:42). Furthermore, reasonable accommodation should imply the search for a balance between clashing interests of private parties with a view to negotiating differences through mutual gains and sacrifices (Cartabia 2018:677). Instead, entrusting to parties’ negotiation the principle of state neutrality seems more controversial (Toscano 2011:1-45).

The key question is whether and to what extent public visibility is equally guaranteed to less traditional sets of values which give rise to more “alarmed” social reactions (Ferrari 2016:10-11). If it were not, a disparate treatment which is not justified though an objective and reasonable reason would give rise to discrimination. The milestone 1979 ruling should have represented a complete change of paradigm, granting equal status to religion and nonreligion. However, the abandonment of a contextual approach to the constitutional text, which endorses positive religion (Pasquali Cerioli 2020:51) has recently been the object of seven years’ fierce litigation. In 2020 the Italian Court of Cassation had to reiterate that a right to self-promotion has to be given to religious convictions and atheist convictions are on an equal footing in public space.²⁷

27 Appeal Court of Rome, no. 1869 2018, reversed by Civil Cassation, Court of Cassation, decree no. 7893, 17 April 2020. Such a decision reversed an earlier judgment of the Court of Appeals of Rome. The case concerned the legitimacy of an Atheist campaign on buses, using the slogan “10 million Italians live very well without G.” (which stays for God). According to the Court of Appeals, the right to manifest Atheist convictions cannot offend religious beliefs. Moreover, the principle of “laicità” does not imply indifference toward religion, but rather promotion of religious freedom.

10. The inconsistency of the Italian approach to Atheism with European standards

Although the Constitutional Court decision no. 52/2016 relied on standards identified by earlier case law (insufficiency of a mere self-referential approach, reliance on earlier recognitions, statutes and common consideration) and on standards used in juridical experience to distinguish religious denominations from other social organizations, it finally adopted a deferential approach toward the government, giving little significance to European guidelines, which are moving toward an equalization between religious and nonreligious deeply held convictions, if they are provided with the standards of seriousness, coherence, cogency and importance. The approach of the Constitutional Court emphasized a “gap of protection” of nonreligion in its collective dimension (Baldassarre 2020:138) in contradiction with that of the ECtHR.

In earlier case law, the ECtHR accorded a broad margin of appreciation to states where church-state relations are concerned. In this view, it found that “the conclusion of agreements between the State and a particular religious community establishing a special regime in favour of the latter, does not, in principle, contravene the requirements of Articles 9 and 14 of the Convention”.²⁸ However, the court draws a line when the principle of non-discrimination is violated. In various decisions it has emphasized that where a State provides various faith communities with a multi-level system of protection and offers “additional rights to some religious communities,” such a regime will be subject to rigorous ECtHR scrutiny under article 9, in conjunction with article 14 ECHR. A judicial analysis grounded in article 14 enhances the protection of the religious freedom of minorities as it adjudicates domestic models of church-state relations through the lens of the standard of nondiscrimination. Although States can adopt different ways of managing religious pluralism, even implying differences in treatment among religious groups, the ECtHR will scrutinize whether such differences in treatment have an objective and reasonable justification, whether they pursue a legitimate aim and whether they are proportionate to the aim pursued, in order to prevent differences between the various groups relating to the enjoyment of material advantages which give rise to unjustified discrimination²⁹ (Toscano 2008:1-29).

States have a basic duty to be neutral organizers of religious pluralism. If a preferential status is given to certain religious groups, other religious communities

²⁸ ECtHR, First Section, 9 December 2010 (app. no. 7798/08), *Savez Crkava v. Croatia*.

²⁹ ECtHR, First Section, 12 March 2009 (app. no. 42697/98), *Löffelmann v. Austria*; ECtHR, First Section, 31 July 2008 (app. no. 40825/98), *Religionsgemeinschaft der Zugen Jehovas et alii v. Austria*; ECtHR, First Section, 9 December 2010 (App. No. 7798/08), *Savez Crkava Riječ Života e altri v. Croatia*; ECtHR, Second Section, 8 April 2014, (app. nos. 70945/11, 23611/12, 26098/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12, 56851/12), *Magyar Keresztény Mennonita Egyház and Others v. Hungary*.

must be guaranteed an equal opportunity to have access to a comparable status on the basis of nondiscriminatory standards, in order to avoid preferential status resulting in odious religious privilege. On this point the court has taken into serious account that “the advantage obtained by religious societies is substantial and this special treatment undoubtedly facilitates a religious society’s pursuance of its religious aims.”³⁰ The nondiscrimination standard might extend the protection guaranteed by article 9 to nonreligious actors, as it avoids the debate about the definition of the notion of religion, removing it from the equation, and allows the court to focus on the actual interests concerned; it allows equal treatment to be guaranteed to both religious and secular sets of beliefs, without the need for an undue expansion of the traditional paradigm of religion (Movsesian 2014:1-16). In this way, the problematic issue of the definition of the boundaries on religion is side-stepped, and the principle of non-discrimination allows the obstacles which prevent the extension of religious protection beyond the boundaries of the traditional notion of religion to be removed, with a view to affording equal treatment to other comparable sets of values. Such an approach would imply a revisitation of the idea of religious neutrality to meet new conscientious claims and prevent every form of discrimination among various faiths, beliefs and convictions (Colombo 2020:49).

Furthermore, we cannot underestimate that article 17 TFEU, according to which although the Union “respects the status enjoyed, by virtue of national law, by philosophical and non-confessional organizations,” encourages the recognition of their “identity and specific contribution” and also the preservation of “a dialogue open, transparent and regular” with these organizations (Croce 2014:2182). Following this perspective, various European States have equalized the treatment of religious and philosophical organizations (Belgium), entered into agreements with Atheist organizations (Germany), and granted them access to public funding (Netherlands, Belgium) (Baldassarre 2020:78). In the near future the right of the UAAR to have access to an agreement with the State will be adjudicated by the ECtHR through the human rights lens. The key issue is whether and to what extent the ECtHR will accord a margin of appreciation to the Italian model of secularism.

11. The problematic implementation of the principle of non-discrimination in Italy

The Italian Court of Cassation has recently adopted a promising new approach, as it gives weight to “indirect discrimination”, where a public agency provides a

³⁰ ECtHR, First Section, 31 July 2008 (app. no. 40825/98), *Religionsgemeinschaft der Zugen Jehovas et alii v. Austria*.

nonbeliever with a disparate treatment, compared to members of mainstream religions. In this way, it aligns with recent approaches of the CJEU (Berlingò and Casuscelli 2020:280).

Full implementation of the principle of nondiscrimination is, however, hindered by the hesitancy of democratic processes to take up the task of managing religious diversity, to the detriment of minorities. The lack of an updated law granting basic protection to all convictions and beliefs and preventing generally applicable laws from generating a discriminatory impact on religious minorities, gives rise to an overexpansion of claims for agreements between single religious denominations and the state (Colaïanni 2013:15). This perpetuates a regime of privileges and side-steps key issues concerning basic religious freedom (religious education in public schools, religious symbols, religious marriage, places of worship) (Consorti and Fiorita 2016). Other European legal systems have enforced a system of registration with a view to providing religious organizations with a specific status and regime (Ervas 2017:869-893). In this way an organization's access to religious status and its related regime is connected with compliance with clear standards, with a view to preventing uncontrolled political discretion (Casuscelli 2018:27). Courts can adopt a more interventionist approach where they are charged with the task of assessing whether the implementation of a detailed legal framework has given rise to a disparate treatment of similarly situated groups. Given the lack of an updated law regulating religious freedom, the Italian Constitutional Court adopted a more deferential approach toward the government in 2016. Judicial scrutiny suffered from the legislative failure to provide a comparator to adjudicate whether there are objective and clear reasons which justify the lack of uniform treatment of comparable communities. So, notwithstanding that the Court of Cassation has upheld the equality of all convictions without discrimination, the achievement of neutral treatment is far from being reached.

The key question is whether the new government will adopt a progressive approach and promote the enforcement of a new updated legal regulation of religious freedom. Currently a right-wing party, influenced by a populist ideology has gained the majority political consent. So, there is a significant risk that the increasing politicization of religion, which was the core of the ruling no. 52 of 2016, (Pasquali Cerioli 2021:182) will be affected by an even more conservative rhetoric. Currently, the narrative emphasizing the nexus between history, culture and religion has resulted in regressive religious privileges of mainstream religions to the detriment of groups less rooted in a given social-political scenario.

12. The future for religious protection in Italy: an unresolved issue

So, at the moment, the following questions are still open: what is the future for religious protection in Italy? Should religious protection occur *ex ante* or *ex post*

(“political law” v. “judicial law” (Ruggeri 2013:27)?) Who should the recipients of religious protection be? Is there still space for an intervention of the lawmaker on the issue or should the content of the agreements be “extended” to all religious groups, providing a sort of new “ordinary law”? (Alicino 2022:71-92) We cannot underestimate that during the COVID-19 pandemic the Presidency of the Council of Ministers entered into a series of protocols with various faith communities, in order to define the resumption of the places of worship. Although the protocols have an administrative nature (Casuscelli 2021:15), the negotiation of the protocols demonstrates a promising state attempt to pursue the path of cooperation with religious actors, which is the result of a fruitful dialogue developing between public and religious actors, promoted with the effective support of an academic group (DIRESOM 2020). That such cooperation was extended to faith communities that did not have an *intesa* with the State during the pandemic is significant, and shows the increasing urge to go beyond the constraints imposed by a “vertical” bilateralism with a view to setting up a forum open to multiple views and convictions (Lo Giacco 2020:109; Consorti 2020:11).

Enforcing a general updated law aimed at protecting the freedom of thought and religion of all religious groups (including philosophical organizations) represents a preliminary and essential requirement for the regulation of equal freedom for all convictions and beliefs, with a view to preventing a deregulated proliferation of church-state agreements with an uncontrolled number of new “religious” actors. The lack of full implementation of constitutional religious pluralism, inclusive of nonreligious and unconventional beliefs, cannot be permanently ignored, if not at the price of undermining the “quality” of a democratic system (Naso 2023). A general law would give full implementation to the constitutional text and draw a basic legal framework aimed at regulating freedom of thought, conscience and religion, even in its collective dimension. Such a regulation should prevent disparate treatment of various religious, philosophical and ethical sets of values, and guarantee basic freedom of organization and action to them, introducing basic standards and procedures which organizations have to comply with, in order to enjoy the “religious” status and the advantages associated with it (Ferrari 2019:57-102). Although a secular system is not equipped to define religion, it should provide clear standards that groups must comply with so as to gain access to such a preferential status (Rosi 2014). In my view, although democratic processes are the most appropriate forum where cultural and religious differences can be negotiated, they should incorporate the opening of “channels of communication” (Martínez-Torrón 2020:30-32) with all social actors involved, with a view to promoting a constructive dialogue with all components of civil society who are a significant part

of the Italian cultural and social landscape and guaranteeing the inclusion of multiple views, convictions and beliefs (Madera 2018:572).

13. Concluding remarks

In modern democratic societies the approach to Atheist claims mirrors the inadequacies of their ways to implement effective pluralism. Such claims have a significant role in dismantling a narrative of religious privileges with a view to adopting a more progressive approach to religious pluralism, and an alternative interpretation of the constitutional text, respecting new social expectations. In Italy, the legal protection of Atheism is not consistent with the constitutional text. Furthermore, the judicial interpretation of the Charter has facilitated the implementation of an intolerant political approach towards unwelcome minorities, which has crystallized a regime of structural inequality in the long term. The key question is whether and to what extent a single interpretation of the Constitution which reduces the scope of religious pluralism, to the detriment of non-traditional and secular convictions, can be promoted. There is an increasing urge to provide new legal responses in order to prevent disparate treatment between religious organizations and philosophical-ethical sets of values and at the same time to satisfy new claims of inclusion and participation in civil society (Domianello 2022:611-620). Recent judicial decisions are increasingly taking into account new social expectations, which urge the recognition of equal dignity to all conscientious claims based on deeply held beliefs and convictions (Court of Bologna, no. 2089/2019). However, the Italian legal system is at the crossroads between the strictness of bilateralism and the marginalization of the lawmaker who is hesitant to manage conflicting interests, to the detriment of minorities. Indeed, the Italian regulation has not completely implemented the constitutional system (namely, arts. 19-20 of the Constitution) and has not complied with European standards, which strongly urge for an elimination of disparate treatment between religion and secular-philosophical convictions, where such disparate treatment is not founded on reasonable and objective reasons.

Such a standard urges for the recognition of a comparable protection to religious, philosophical and ethical sets of values. In this way, new social actors are not required to equate themselves to religious entities. The cross-cutting standard of non-discrimination can facilitate religious and philosophical sets of values, allowing them to enjoy comparable treatment and equalization of legal protection. An interpretation of the principle of non-discrimination in conjunction with that of religious neutrality should lead Italian future legislative choices, in order to eradicate unequal treatment between mainstream religions and the conscience claims which cannot be strictly included within the paradigm of traditional faith.

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Criminotheology

Persecution of Jehovah's Witnesses in Putin's Russia

Tatiana Vagramenko and Francisco Arqueros¹

Abstract

Following their ban in 2017, the state targeted Jehovah's Witnesses as harmful sectarians in the context of a 'conservative twist' in Russian politics grounded in late-Soviet anti-sectarian models and narratives. The active use of religious instruments in the political setup has led to a growing securitization of religion in Russia, where 'non-traditional' religiosity and religious non-conformism have been criminalised and blended with terrorism and extremism. The article focuses on forensic expertise in religion used in trials against believers and discusses how the forensic analysis of religious teachings for criminal evidence (criminotheology) have construed Jehovah's Witnesses as dangerous extremists.

Keywords

Jehovah's Witnesses, Russia, religious persecution, forensic expertise, religious extremism.

1. Introduction

The Watch Tower Bible and Tract Society (the official name of the Jehovah's Witnesses organization) has perhaps the most ambiguous and complicated historical experience of any religious movement. Many countries across the globe consider them unwelcome or illegal, and yet Jehovah's Witnesses are among the fastest growing Christian denominations in the world. Few other religious groups have experienced a similar scale of state-sponsored repressions, whole-scale terror,

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and discrimination as have the Witnesses. This historical background, however, has reinforced their readiness to defend their faith.

In Soviet Russia, the Witnesses were targeted by the state as harmful and deceitful sectarians; as outlaws, they were forced to function underground. A short-lived period of relative religious freedom followed the dissolution of the USSR in 1991, but within the same decade, the new regime adopted a series of anti-cult regulations in the context of a conservative, anti-liberal turn and the rise of the Russian Orthodox Church as a new political power wedded to Putin's regime. State-sponsored advocacy for and protection of 'traditional values' from the 'decadent West' drew a firm line between traditional religions (conventionally understood as Orthodox Christianity, but formally including also Islam and Buddhism) and non-traditional religions (i.e., all religious minorities, particularly those of Western origin). This trend was not new; it followed the pattern of the Soviet Union's religious politics regarding control and intimidation of religious minorities, particularly Khrushchev's anti-sectarian discourse and conspiracy rhetoric, which culminated with the banning of the Watchtower society in 2017.

This article tells the story of state-sponsored persecution of Witnesses in Russia after their ban in 2017: how forensic experts in religion (*religiovedcheskaia ekspertiza*) and 'criminotheology' – the analysis of religious teachings for criminal evidence and extremism – have construed believers as dangerous extremists. We argue that Putin's trials against Jehovah's Witnesses and the creation of an institution of forensic religious experts are grounded in late-Soviet anti-sectarian models and narratives. As Emily Baran (2019:105) points out, "the early post-Soviet period was an anomaly in its relative religious toleration, and the shifting climate since the early 2000s a return to the norm."

First, we summarize the Soviet (the post-war period and particularly during Khrushchev's anti-religious campaign) and post-Soviet policies towards the Witnesses, including the adoption of anti-cult and anti-extremist laws and the ban of the Watchtower Society in Putin's era. Next, we proceed to the analysis of discourses in official documents, interviews, and workshops of leading forensic experts on Jehovah's Witnesses. As we argue, the understanding of state-sponsored expertise on religious extremism is linked to a 'conservative twist' in Russian politics and state-sponsored nationalism in late-Putinist Russia (Kolstø & Blakkisrud 2017) in which the Russian Orthodox Church has cemented national identity.

2. The Soviet period: Fanatical sectarians and secret emissaries

Jehovah's Witnesses were persecuted by both the right-wing and left-wing regimes in twentieth-century Europe. The countries of the socialist bloc – the Soviet Union, Romania, Poland, Czechoslovakia, Hungary, and Romania – considered

the Witnesses a hostile organization with American roots that maintained close ties to its Brooklyn headquarters, rejected civic duties (including military service, based on their teachings of non-violence), espoused apocalyptic beliefs, and engaged in door-to-door proselytizing (Knox 2018; Chryssides 2016). Denied legal recognition, they became one of the largest categories of political prisoners.

In the Soviet Union, the Witnesses had no legal rights to practice and preach their faith. As outlaws, they were kept under close surveillance and subjected to harassment: home raids, confiscations, mass arrests, and long-term imprisonment in labour camps. Two major deportations in 1949 and 1951 exiled over 10,000 Witnesses and their families (including children and the elderly) to 'special settlements' in Siberia and Transbaikal (Odintsov 2002; Tsarevskaja-Diakina 2004; Golko 2007). It was the largest mass exile of a religious community in the Soviet Union (Baran 2014:59-69). Despite state persecution, Witnesses ran one of the most complex secret underground operations in the Soviet Union. Their network of close-knit communities, their system of bunkers, hideouts, and underground printing presses, their smuggling operations, their couriers with coded communication, and other secretive practices distinguished them from other religious organizations functioning in the Soviet Union.

Only the unregistered Baptist movement can be compared with the Witnesses' underground network in the Soviet Union. The so-called Council of Churches of the Evangelical Christian Baptists (or simply the Baptist Brethren) had a similar network of underground and dissident activities (the second largest underground printing press in the Soviet Union belonged to them) from the 1960s to the 1980s. What distinguished the Jehovah's Witnesses from the Baptist Brethren was that the Witnesses never intended to move their dissident activities into a public space or engage human rights activism; on the contrary, they invested all their efforts in cultivating their clandestine practices. Unlike the Jehovah's Witnesses, unregistered Baptists established clandestine communications with human rights activists and organizations abroad, founded the Council of Prisoners' Relatives known as *Female intercession*, organized protest actions during court sessions and petition campaigns to support their imprisoned fellow believers, and sent masses of letters to higher state authorities (the so-called 'letters to power') with open complaints about the growing cases of religious persecution (Vagramenko 2018).²

Unlike other religious organizations, Witnesses had no church structure. They represented themselves as a lay society or corporation and were able to devel-

² More visual and archival materials on the Baptist Brethren movement can be found at the Digital Exhibition *The Underground*. Available at: hiddengalleries.eu/underground/.

op a highly organized hierarchical network of local congregations, regional districts, and country branches. Their structure was transnational; Soviet Witnesses were subordinated to the Polish branch, and the headquarters of the Watch Tower Society was located in the United States. Throughout the Cold War, Soviet Witnesses maintained their contacts with their superior branch offices abroad, sending monthly missionary reports and receiving the Watch Tower literature (Vagramenko 2021a, 2021b; Berezhko & Slupina 2011). Soviet authorities, obsessed with conspiracy theories, represented Witnesses as stooges of American imperialism, even though they were largely criticized as un-American and unpatriotic in the United States (Knox 2013). Hence, Jehovah's Witnesses became the primary target of the Soviet secret police. Apart from mass arrests and two deportations, the secret police attempted to infiltrate the Witnesses' organization. In the last years of Stalin's reign, straightforward coercive measures were slowly giving way to more sophisticated and veiled ways of control and surveillance. "Jailing is not allowed, education is needed" (*sazhat' nel'zia, nuzhno vospityvat'*) was a frequent motto that echoed a turn in the Soviet police state away from the brute force of mass political repression, but there was no change in its underlying coercive principles toward religious minorities branded as sects.³ This meant putting the underground organization under totalizing control. But not only that – it also meant heading it. From the mid-1950s until at least the late 1970s, the KGB infiltrated the Witnesses' country committee (the main governing body of the Soviet Witnesses) and brought it under its control (Vagramenko 2021a).

The period of destalinization, which started in the mid-1950s, brought some relief to Soviet society. Many people who had been repressed for political reasons received amnesty and returned home from the Gulag; among them were many pastors, priests, and other religious activists. These changes gave rise to renewal amongst Protestant movements in Ukraine and across the Soviet Union. However, along with the first attempts to criticize the repressions and the Great Terror of the 1930s, Khrushchev soon initiated a massive anti-religious campaign, which was to be based on a strong commitment to scientific atheist principles. Hence, the new wave of religious persecutions and arrests of religious activists that began in the late 1950s was accompanied by numerous anti-religious propaganda films, public lectures, articles, books, exhibitions, and public events specifically targeting the so-called 'sectarians' (all Protestants in Ukraine fell under this definition), depicting them as fanatical, deceitful, and socially harmful people. This propaganda contrasted the backwardness of the sectarian worldview with the scientific progress and development achieved by the Soviet people. Jehovah's

3 SBU Archive f. 2, op. 1, spr. 2431, ark. 253.

Witnesses became one of the main targets of this new policy, and multiple publications, films, newsreels, and public trials attacked them as harmful fanatics and imperialist spies. As we argue, Putin's regime in many aspects inherited the logic and patterns of Khrushchevian and late-Soviet anti-sectarian discourse, with the exception that this time it was grounded not on atheist principles but on conservative and traditionalist premises and close state-church relations, with the Russian Orthodox Church emerging as a powerful force for cultural, social, and political conservatism (Stoeckl 2016).

3. The post-Soviet period: From non-traditional religions to totalitarian sects

Despite attempts by the Soviet state to eliminate the unwelcome religion or to put it under control, Jehovah's Witness congregations mushroomed all over the USSR, becoming one of the fastest growing religious organizations in the Soviet Union. Their membership increased twenty-fold between 1939 and 1991. By the end of the Soviet Union, when religion re-emerged in the public sphere and became very important in the everyday life of many Russians, Witnesses already had branched networks of congregations across the former Soviet republics.

The dissolution of the Soviet Union marked a significant, although in many ways chaotic, relaxation in the politics of religion. In 1991, a short-lived period of religious freedom and pluralism began in Russia. That same year, Jehovah's Witnesses were officially registered for the first time in Russia as a religious organization. It was a time of intensive evangelical missionary activities and new opportunities for cross-cultural interaction that revealed a global religious marketplace (Wanner 2007; Elliott & Corrado 1997; Vagramenko 2018). In the first post-Soviet summer of 1992, six conventions gathered nearly 100,000 participants, and thousands were baptized. By 2004, there were over 138,000 Witnesses in Russia with 407 registered local organizations (in comparison with 105 organizations registered in 1995). Jehovah's Witnesses gathered thousands in stadiums, built new Kingdom Halls (houses of worship) and Bethels (branch offices), and became visible in the public space as a significant part of the post-Soviet religious landscape. In 2000, the Jehovah's Witnesses Memorial of Christ's death (their main religious event) gathered over 270,000 participants.

By the mid-1990s, Russian politics on religious pluralism started to shift. As early as 1996, courts and some government bodies began to question the need for religious freedom (Urazmetov & Benin 2018). The 1997 Federal Law "On Freedom of Conscience and Religious Associations" introduced the notions of traditional and non-traditional faiths. The distinction rested upon the Soviet legacy, as the law privileged religious organizations that were registered in the Soviet period.

Minority religious groups not legalized in the Soviet Union (Jehovah's Witnesses among them) fell under the category of 'non-traditional', thus making them vulnerable to discrimination. A chain reaction brought about more regulations restricting religious diversity and religious freedom in Russia, reinstating the post-Stalinist Soviet model of state-religion relations, in which coexistence between the state and religious institutions was based on totalizing state control and interference.

In the context of the social construction of and discrimination against 'non-traditional' religiosity, the notions of 'totalitarian sects' and 'destructive cults' appeared with long-term effects. Destructive sects were defined as a counterculture and a 'protest against the existing system of values, the world order, religious traditions, and official churches' (Abdulganeev 2012). To put it simply, Russian law labelled non-traditional religions as dangerous and destructive, with the Jehovah's Witnesses at the top of the list in public media accounts.

The Russian public narrative on destructive cults, like its European counterpart, was that they "posed an increasing threat to social and individual safety, as well as a menace to human rights" (Urazmetov & Benin 2018). However, while European anti-cult narratives were part of social and political secularization trends, the anti-cult discourse in Russia took a different trajectory, as it was lobbied for and reinforced by an emerging powerful force: namely, the Russian Orthodox Church. As early as 1993, the St. Irenaeus Centre for Religious Studies was established with the blessing of Patriarch Alexei II of Moscow and All Russia "to deal with the problems of new religious movements, sects and cults."⁴ A new discipline called *sectology* (*sektovedenie*), introduced by the Orthodox anti-cult activist Aleksandr Dvorkin and the Orthodox protopriest Alexander Novopashin, ferociously attacked minority religions, particularly those without Russian origins. Dvorkin and Novopashin, particularly during the late 1990s and early 2000s provided all sorts of consultations for policy makers as they published and lectured extensively. Jehovah's Witnesses soon became the target of their attacks. They called the Watch Tower Society a "pseudo-Christian Arian apocalyptic millenarist totalitarian sect" and a "quasi-communist ideology with pagan elements concealed by some Christian images and concepts" (Dvorkin 1999).

The Bishops' Council of the Russian Orthodox Church in 1994 defined sects as those who "purposefully undermine centuries-old traditions and foundations of the peoples and come into conflict with social institutions."⁵ As ambiguous as it was, the definition nevertheless set the foundation for legal mechanisms to

4 St. Irenaeus Centre for Religious Studies website: <https://iriney.ru/>.

5 Russian Orthodox Church, Moscow Patriarchate, "Definition "On pseudo-Christian sects, neo-paganism and occultism". Available at: <http://www.patriarchia.ru/db/text/530422.html>.

delegalize and criminalize minority religious movements, that is, the ecclesiastic-based notions of traditional vs. destructive religiosity initially formulated by Russian Orthodox Church hierarchs and activists became further developed in the legislative sphere. Subsequently, many publications on religious extremism authored by legal scholars oftentimes uncritically replicated the official Russian Orthodox standpoint. For instance, two legal scholars with PhDs in legal studies wrote in an academic journal:

Contemporary Russian society has a single cultural (civilizational) code... And it was thanks to the Orthodox priesthood that this cultural (civilizational) code has been preserved throughout the history of our state... The Orthodox clergy pointed out that false religions destroy the traditional foundations of life formed under the influence of the Orthodox church, a single spiritual and moral ideal for us. (Bobrova & Merkuriev 2022:109)

They continued by arguing that the ‘unfriendly countries’ (a list of countries that “commit unfriendly actions against Russia” has been published by the Russian government and includes 49 states, including the entire European Union) also admit this and therefore have invaded Russia with “harmful beliefs” and “various religious organizations of foreign origins and non-traditional for Russia confessions” in order to destabilize the country (Bobrova & Merkuriev 2022:109). The article stated the need to define the notion of “destructive religious sects” (as elaborated by the Orthodox clergy) as a legal term. In this study, the Jehovah’s Witnesses – along with nearly all other neo-Protestant denominations – appeared as an example of a totalitarian pseudo-Christian Arian apocalyptic sect (Bobrova & Merkuriev 2022:110).

Thus, by the early 2000s, the Orthodox-inspired discourse on non-traditional religiosity entered the legal field and became a basis for further legal restrictions of religious freedom in Russia. A further step was to allow open persecution. In a changing political atmosphere with an increasing phobia of terrorism, Russian politics towards religious minorities was moving in that direction.

4. Securitization of religion: From totalitarian sects to religious extremists

The active use of religious instruments in the post-Soviet political setup has led to a growing securitization of religion in Russia. Religion started to be seen either as pledge of or a threat to national security, an idea inflated by the global fear of terrorism that affected not only the life of Muslim communities, but many other

non-Orthodox denominations in Russia. The previously formulated notion of destructive religiosity soon became associated with extremism and terrorism. “The wish to gain power and control over society is implemented through destructive religiosity with its aggressiveness, violence, and superiority. In contrast to traditional beliefs, non-traditional religions are prone to extremism and terrorism,” a criminology major writes in his PhD thesis on religious extremism (Abdulganeev 2013). The new terminology on religious extremism has been legally settled by several federal laws and decrees, such as the 2002 Federal Law “On Combatting Extremist Activity” (amended in July 2022); the 2006 Federal Law “On Counteraction against Terrorism”; and the 2009 order of the Federal Ministry of Justice “On State Religious Expertise.” Combatting religious extremism as one of the main threats to the national and military security of Russia has been elevated to the rank of a priority area in the Presidential Decree “On the National Security Strategy of the Russian Federation,” published in 2015, and in the “Military Doctrine of the Russian Federation” as of 2010.

Under the guise of the protection of the state and society from extremism and terrorism, the government rationalized and securitized limitations of religious freedoms and re-established the post-Stalinist and late-Soviet model of total control over religious life. In addition, criminal legislation stipulated measures for “protection of religious feelings” of the Russian people, which allowed the possibility for creative use of the law against undesirable religious organizations and movements. It is noteworthy that the article regarding “protection of religious feelings” was introduced into the criminal code after the Pussy Riot case, in which the Russian Orthodox Church promoted persecution of the three women on trial. This unfolded against the background of the nationalist and fundamentalist currents inside the mainstream Russian Orthodox Church that have become increasingly important over the past two decades (Kostiuk 2000; Mitrofanova 2002). The new religious strain was linked with the revised and militarised ‘Russian world’ ideology. Although the ‘Russian world’ is a theological concept that has long historical roots linked with the explicitly religious concept of ‘Holy Rus’, it re-entered political discourse and obtained its new practical meaning during the years of the Putin presidency, engendering new forms of geo-political imagination. In Putin’s Russia, the ‘Russian world’ presents a careful blend of religious and nationalistic narratives with neo-colonial and anti-liberal aspirations that are used to justify domestic authoritarian power and messianic policies abroad (Surzhko Harned 2022; Suslov 2014). In this context, the strengthened state-church connection has allowed for the further securitization of religion in Russia.

The ‘conservative twist’ (Shnirelman 2019) in Russian politics since the late 2000s prioritised the Russian Orthodox Church as the main defender of ‘tradi-

tional values' and the sacred border of the 'Russian world' at the national and international levels (Suslov & Uzlaner 2019). It is noteworthy that, in spite of the diversity of Russia's religious landscape (with a significant Muslim community) and fact that the law "On Freedom of Conscience" states that Christianity, Islam, and Judaism are historically established religions on the territory of Russia, neither Islam nor Judaism nor other minority religions enjoy the state support and prioritization on the federal level that the Russian Orthodox Church does.

The 2002 Federal Law "On Combatting Extremist Activity" provided the first serious legal ground for religious discrimination, including the subsequent ban of the Jehovah's Witnesses in 2017. As Shterein and Dubrovsky argue (2019:223-224), although the law provided a general list of loosely defined acts of extremism, including those committed on religious grounds, it did not, however, deploy "religious extremism" as a legal term. While vaguely defining extremist activity, the law replicated the ideas of "traditional religions" and "Russian spirituality" as guarantors of national security and well-being, thus, in this context, implying that 'foreign' and 'non-traditional' religions were acting as potential threats (Shterin & Dubrovsky 2019:224).

Since the adoption of the 2002 law, Jehovah's Witnesses became one of the primary targets, with more and more trials labelling the Watch Tower literature as extremist. The trial against Jehovah's Witnesses in Taganrog in 2009 became the largest criminal case against believers since the Soviet period and before the official ban in 2017 (Corley 2012). The Taganrog court forcibly liquidated a local Witnesses organization in the Rostov region, accusing 15 members (the youngest was 17 years old) of extremist activity. A list of 34 publications, including the magazines *The Watchtower* (intrinsic to the practice of faith, what Witnesses called 'spiritual food', second only to Bible) and *Awake!* along with many book titles published by the Watch Tower Bible and Tract Society, were confiscated and labelled as extremist for the first time.

In 2008, President Putin created the Department for Combating Extremism of the Ministry of Internal Affairs – later renamed as Centre E – which soon became the main state actor in collecting criminal evidence and enforcing compliance by religious groups with the new anti-terrorist law. Centre E in fact acted as the secret police and, similar to the KGB Fifth Department, it soon became responsible for controlling and combatting ideological dissent in the Russian Federation. As in the Soviet Union, control over religious non-conformism and religious and ethnic minority movements fell under the jurisdiction of the secret police in post-Soviet Russia.

The 2010s were reminiscent of Khrushchev's anti-religious campaigns with the exception that, this time, the state favoured the mainstream Russian Orthodox

Church, which regained its political weight in the country. House searches, confiscations, and show trials, followed by a wave of ‘anti-sectarian’ and sensationalist TV programmes, publications, and films mushroomed in Putin’s Russia. Reminiscent of the Soviet anti-sectarian discourse, the Witnesses were represented in mass media as a dangerous and conspirative sect, foes hidden behind a religious mask who were secretly collecting strategic information for foreign intelligence, or who were treacherous spongers and manipulators. It is noteworthy that it was both criminal investigators and Orthodox priests who frequently appeared in contemporary anti-sectarian shows and publications as the main authorities in religious questions. For instance, in the documentary “Sects: Hunters of Human Souls,” released in 2022 on the Rossiia 24 federal channel, eight officials from the Investigative Committee of Russia, regional Criminology Departments, and regional Departments of Investigation of Particularly Important Cases appeared along with two Orthodox archpriests as major experts in what was called the ‘sects’, including the Jehovah’s Witnesses.

A seven-minute newsreel, *Jehovah’s Witnesses Headquarters found in Zaporozhie oblast*, released on Rossiia-24 in 2022, showed a raided local Jehovah’s Witnesses Kingdom Hall turned into a Centre for Patriotic Education on the newly occupied territory in the Zaporizzhia region of Ukraine. An official representative of the Department of Religious Organizations of the occupation authorities, Andrei Zinchenko, stated the following in his interview for the state-owned news channel Rossiia-24:

Adherents of the Jehovah’s Witnesses religious organization are in fact agents of influence of Western intelligence services... [who] pass necessary information to the United States... [Their] preachers are professional agents of [Western] intelligence services who conducted their recruitment on the territory of the former Ukraine.⁶

What is striking is the similarity of the visual aesthetic and narratives of these films and publications to the Soviet anti-sectarian imagery. Similar to Soviet propaganda films, like *Clouds Over Borsk*, or the documentaries *It Worries Everyone* and *The Spider*, a dark, ignorant, and dangerous religious underground is contrasted to a happy and safe life of patriotic (in Soviet times) or Orthodox traditional (in Putin’s Russia) society (Vagramenko 2021b:51).

The new anti-sectarian imagery was part of the so-called prophylactic of extremism and terrorism and echoed the Soviet prophylactic (*profilaktika*) of

⁶ Shtab “Svidetelei legovy” obnaruzhili v Zaporozhskoi oblasti – Rossiia-24, 27 October 2022. Available at: <https://bit.ly/3PVrdDo>.

dissent. Since the late-1950s, this prophylactic became a form of surveillance, control, and intimidation of the domestic population, a “tactic that combined traditional secret police coercion and surveillance with ideologically inspired efforts at re-education and moral reform” (Cohn 2017). Back then, the prophylactic included a complex of measures with the help of Party and Soviet organizations, and the KGB; it also brought in mass media, the film industry, and engaged public attention. All events and publications were organized and orchestrated by the KGB. While revoking the ghosts of the Soviet past, Putin’s regime has rested heavily upon Khrushchev’s post-Stalinist legacy of domestic control and repression of dissent. The reproduction of Soviet-style anti-sectarian measures allow us to assume that Putin’s secret police were behind these actions in a like manner.

5. The 2017 ban

On 20 April 2017, the Russian Supreme Court declared the Jehovah’s Witnesses an “extremist” organization and banned all its activities. By the time of the liquidation, there were 395 local Jehovah’s Witnesses organizations in Russia with over 175,000 active members and 120,000 non-member attendants. All local organizations and the Russian headquarters were closed, and all property seized. Under the ruling, distributing the Watchtower literature, discussing Jehovah’s Witness beliefs in public, and communal prayer gatherings became a crime.

Accusations of extremism were certainly more dangerous than a label of “totalitarian sect” or “destructive cult” and had more legal weight, as it closely coupled the religious movement with the fear of terrorism, which had been growing since early 2000s, and conflated believers with radical politics, terror, and anti-state violence. As Baran (2019:126) observes, the notion ‘extremist’ as applied to Jehovah’s Witnesses has no western precedent, unlike ‘cult’ and ‘sectarian’, which are quite popular in the West. In the following years, trials and media propaganda publications targeted Jehovah’s Witnesses and attempted to demonstrate how a pacifist religious group bore commonalities with international terrorist groups.

The state’s counter actions were immediate and swift. Starting from 2017, arrests, house searches, police raids by fully armed *operativniki* (FSB officers), confiscations and destruction of literature, deportations, and prison terms again became a reality for Russian Witnesses. As of December 2022, 665 Jehovah’s Witnesses believers were subject to criminal prosecution; 362 were detained, with 88 receiving prison terms (up to eight years); and 454 believers appeared on the list of extremists.⁷ The Federal Security Service keeps believers under surveillance

7 Official data of the Watchtower Society. Available at: jw-russia.org/.

using hidden cameras, sending infiltrating agents, tracing money transfers, interrogating former believers, etc. Multiple anti-religious publications, news reports, and films were released in recent years with sensational discoveries of yet another “extremist organization cell.” All these further marginalized Witnesses.

As some believers shared with us in personal conversations, they had to adapt to a new reality, increasing secrecy practices and developing new survival strategies. Their Soviet historical legacy has been revived. Watchtower publications and reports were encrypted and went online, while believers met online or secretly in private homes. For safety reasons, the Watch Tower Society stopped publishing statistics about their members in Russia, as all of them began to function underground. The Russian law enforcement agencies, however, created their own statistics on the new religious underground based on their surveillance. Larger prayer or Bible study meetings were easier to expose. For instance, as the judicial expert Igor Ivanishko reported, the police managed to trace large gatherings of Witnesses when they rented large spaces or rural cottages under the pretence of organizing training seminars (Ivanishko 2022). The state authorities, Ivanishko continues, acknowledge the high level of secrecy of believers and can only roughly estimate the number of believers and the extent of their religious activity in Russia. Many believers migrated to Ukraine, the Baltic countries, and Finland (authors’ research data; there are no official statistics on how many believers emigrated from Russia after the ban), while keeping strong ties with their co-religionists back in Russia. Another form of survival was internal migration. As observed by Sergei Ivanishko, different federal regions applied the extremism law differently. In some areas, local authorities actively searched and hunted for believers, while in other regions the authorities were less proactive; hence, Witnesses tended to move to those regions where they felt safer (Ivanishko 2022).

6. Criminology

During the trial against Jehovah’s Witness Anatoly Vilitkevich (Ufa 2021), the court received many hours of video-recordings made by a hidden camera installed at Vilitkevich’s home by the security service. The video showed home gatherings of believers, where they were preaching, praying, and reading the Bible. In order to find out whether this material contained elements of extremism, the prosecution invited a well-known expert, the religious studies scholar Marina Bignova, who is Lead Analyst at the People’s Friendship University and a member of the Prophylactic Centre (discussed below). Bignova came to the conclusion that the material demonstrated the extremist attitudes of the believers (Kucherenko 2021:8).

Both late-Soviet and post-Soviet judicial practices relied heavily on so-called scientific expertise in their persecution of religious groups and organizations.

In many KGB penal files against certain religious groups, one can find expert evaluations from linguists and scholars of religion (who were normally staff at Scientific Atheism departments by that time). Likewise, in contemporary criminal investigations against Jehovah's Witnesses, the trials rely heavily on sociological expertise and on experts who claim to be specialists in religion (*religiovedy*). They have become a vocal force in the Putinist repressions of minority believers. This is a limited group of scholars that appear as judicial experts on trials against Jehovah's Witnesses across Russia. Only a handful of them have a specialised education in the study of religion; many have a non-profile background (pedagogy, psychology, political science, legal science, and even fields as far as removed mathematics). Their examinations and reports are directly used by the prosecution in courts, thereby determining the fate of believers on trial.

A growing sector of experts on religious extremism come from legal studies, including a new section in criminology called *Criminotheology* (*kriminoteologiya*) or *judicial sectology*. As the textbook in Criminotheology posits, the post-Soviet law on religious freedom and the lack of state control over religious life allowed for the avalanche-like growth of various religious organizations, which is seen as detrimental for Russian society. Acknowledging a lack of legal terminology for religious crime in the Russian penal code, the creators of Criminotheology have introduced this novel section of criminology to "study religious criminality or crimes committed based on any kind of religious beliefs" (Starkov & Bashkatov 2013).

Forensic expertise became a commercialised service due to a high demand from numerous trials across the country. Forensic religious expertise also was widely applied during divorce and child custody proceedings when one of the parents was a Witnesses believer (such cases particularly increased after the 2017 ban). These formally and mechanically produced evaluation reports that unambiguously sided with a non-believing parent who normally got full child custody (Ivanishko 2022). A number of centres and companies were established with the aim to provide 'expert service' in the 'sociocultural sphere' (art, linguistic, psychological, religious expertise, etc.) at the request of the law-enforcement and judicial authorities. The Centre for Sociocultural Expertise (CSE), for instance, issued a series of expertise reports that were used in courts, like the process against Pussy Riot's performance in Moscow's Cathedral of Christ the Saviour and the political processes against the dissident historian Yuri Dmitriev and the politician Alexei Navalny, and the liquidation of Russia's International Memorial Society (Dubrovskiy 2019; 2022). In their work, the CSE closely collaborated with the FSB Centre E. In 2017, the CSE issued an expert report on the New World Bible translation used by the Watch Tower Society (Kotel'nikov et al. 2017). The document was authored by three CSE experts, none of whom had a degree in Bible

studies, nor in the study of religion: V. Kotelnikov, who has a higher degree in political science; N. Kriukova, a mathematics schoolteacher; and A. Tarasov, a language schoolteacher. As we discuss below, the expert evaluation claimed that the New World Bible translation was an extremist publication and recommended its prohibition. The Moscow Centre for Prophylactic measures against Religious and Ethnic Extremism in Educational Institutions (Prophylactic Centre) also provided expert reports that were crucial in the courts and in legislation against Jehovah's Witnesses. Based on official documents, academic publications, workshops, trainings, and media outputs by some of the experts from the above-mentioned centres, we discuss below the main speculative trends and techniques elaborated by forensic experts to communicate the idea of the danger and extremism that Jehovah's Witnesses pose to Russian society. The section does not aim at providing a comprehensive analysis of the Centre's activities, but rather delves into the role of Putinist scientific-religious expertise in the creation of knowledge on religious extremism.

7. Experts for the prosecution

"Faith can be different. People believe in different and very strange things, and we have to understand that Jehovah's Witnesses have a faith that makes them distinct from all other religions," reported Larisa Astakhova, sociologist, forensic expert, Head of the Study of Religions Department at Kazan University, and a member of the Prophylactic Centre, at the seminar "Humanities forensic expertise: Challenges and solutions."⁸ Astakhova is widely known for her expertise in court cases against Scientology and the Church of the Last Testament, which led to the liquidation of the both groups in Russia (Dubrovskiy forthcoming; Elbakian 2015), and she has organized a seminar series for forensic experts in religion. Among other participants in the seminar was Marina Bignova, historian, forensic expert, Lead Analyst at the People's Friendship University, and member of the Prophylactic Centre, who also shared her experience in court expertise. "When Jehovah's Witnesses say that they are Christian, they do not mean the Christianity we are accustomed to... They are not Christians, because they do not recognize the Nicene-Constantinople creed," she noted.⁹

Legal definitions of non-traditional (i.e., minority) faiths in Putin's Russia are constructed as a dichotomy of *religious normality* vs. *religious otherness*. Normality (a model of the 'good religion') in turn is firmly linked to the Russian

8 The seminar series were held as part of the "Faith & Fiction" project organized by the Centre for Ethno-religious research Faith & Fiction Project, 10 July 2020. Available at: youtube.com/watch?v=ZkNoitA7rWA&t=23s.

9 The ecclesiastic statement by the First Council of Constantinople in 381 A.D., recognized by both the Orthodox and Catholic Churches, but not by all Protestants.

Orthodox Church, which serves as an ideological blueprint, a background of normality against which other religious communities are defined and judged. This dichotomy reflects the conservative turn in Russian politics since the late 2000s that has prioritised the Russian Orthodox Church as the main defender of ‘traditional values.’ The model of the ‘good religion’ dwells upon a primordialist understanding of religiosity, according to which Russians (or those who reside on the ‘canonical territory’ of the ‘Russian world’) are born into Orthodoxy, a phenomenon described as ‘ethnodoxy’ (Karpov et al. 2013). In this context, Jehovah’s Witnesses are seen as bringing destruction “to patriotic education and to questions of national identity. The teaching of the Jehovah’s Witnesses breaks away from history, culture, and the Russian traditions,” argues Igor Ivanishko, forensic religious expert at Russian State University of Justice and a member of the Prophylactic Centre, in his interview for the criminal news section of the REN TV, a Russian federal television network.¹⁰ This stance has had important societal implications. For instance, the study of how police officers in Russia (who deal with local religious organizations) understand what destructive religion means has shown that 23 percent of policemen believe that any non-traditional religion should be defined as destructive, with 12 percent considering that any non-Orthodox religion should be defined as destructive (Latov 2010).

The New World Bible translation forensic expertise took a similar approach, providing an analysis of the Jehovah’s Witnesses Bible translation against the background of ‘normal’ religion, meaning Orthodoxy, and the ‘normal’ Bible translation, meaning the Synodal Bible translation (considered the only authentic Bible translation) used by the Russian Orthodox Church:

The nonreligious (from a Christian point of view) discourse of Jehovah’s Witnesses contains commandments similar to those of the *traditional church (Orthodox)* that have basic religious notions of sin, salvations, God’s plan, etc... This discourse, however, has a fundamental divergence from *traditional Christian church theology* (emphasis added). (Center for Sociocultural Expertise 2017)

The expertise goes as far as accusing Witnesses of denying the basic Orthodox principle of the sacrament of the Eucharist (not recognized by most Protestant confessions). The experts argue that the New World Bible translation provides a “flawed [*ushcherbnaia*] interpretation” of the sacrament that is central “for

¹⁰ V SK raskryli podrobnosti o zaderzhanii chlenov ‘Svidetelei Iegovy’, 10 February 2021. Available at: bit.ly/3Rv17Zy.

the traditional Christian (Orthodox) church.” Other differences between the New World Bible translation and the Synodal Bible are interpreted as a sign of extremism. The experts conclude with the observation: “The main attention is given to symbolic and prophetic interpretation of the text that is not typical for Christianity in general (not to mention for Orthodoxy).” (Center for Sociocultural Expertise 2017)

Likewise, the active evangelism and door-to-door ministry of Jehovah’s Witnesses are interpreted as a “propaganda of superiority” that presents a potential social threat to traditional Russian society (the logic can be potentially extended to all proselytizing faiths). In an article with the eloquent title “They create a type of person ready for a terrorist attack: Why Jehovah’s Witnesses have been banned,” forensic expert Larisa Astakhova (2017) argues:

Extremism is not only the justification of violence and terrorism, but it can be also the instigation of religious hatred or the propaganda of superiority of one religion over another. All these ideas can trigger action – for example, the desire to destroy sacred objects of other religions, for example Christian [i.e., Orthodox] icons...The Russian Orthodox Church does not support aggressive proselytizing or the conversion of adherents of other traditional religions to its own faith...

8. Religion as extremism

Both civil and criminal law systems in Russia rely upon forensic expertise in trials. With the increasing dependency of the justice system on the authoritarian political regime, experts find themselves involved in politically motivated cases where they are expected to be attuned to certain political demands. This is particularly the case of court processes against the so-called ‘non-traditional religions’ or religious minority groups (such as Jehovah’s Witnesses, Scientologists, Church of the Last Testament, etc.), where accusations follow common patterns and biases with the simple aim of extending the notion of extremism towards the faith groups on trial (Dubrovskiy forthcoming). Astakhova, for instance, argues that although Jehovah’s Witnesses are not terrorists per se, they do, however, attract a type of person “who can become a terrorist, who can be very attractive for radical groups... This person can be ready for anything, including a terrorist attack” (Astakhova 2017). The reason, she goes on, is that Witnesses teach the superiority of religious values over individual and social values and believe in the righteousness of their faith – an idea, in fact, paramount to all religious movements. In this context, however, proclaiming the superiority of one faith over another becomes a criminal offense solely on qualitative grounds. Jehovah’s Witnesses talk about it

more often than other religious believers, according to Bignova, who shared her statistical analysis at the methodological seminar for forensic religious experts.¹¹ Within this framework, the use of texts of the Old Testament that speak of violence and vengeance can be easily interpreted as a sign of extremism. From an interview with Larisa Astakhova published in *Life.ru*:

Astakhova: [Jehovah's Witnesses] approve of the Old Testament wars in which the Israelites destroyed entire nations of pagans.

Interviewer: What a dangerous tendency! (Astakhova 2017).

Another accusation of extremism derives from the Jehovah's Witnesses doctrine of political neutrality, the principle of non-involvement in social and political life, and their refusal to endorse any government. "This neutrality implies the idea that the current state is the kingdom of Satan, while they are waiting for the arrival of the Kingdom of God. This means that all secular states are from Satan and not from God," Bignova observed while discussing the neutrality of Jehovah's Witnesses at the seminar for forensic experts. Astakhova agreed with her:

They respect the state and comply with the law, but this is an enforced respect (*vynuzhdennoe uvazhenie*) and an enforced obedience. If the state is not from God, they develop a negative image of the state... They pay taxes but they do not sacralise them... They obey the laws because they are forced to do it in order not to be banned by the state.¹²

Astakhova concludes, "Our initiatives should end up where the categorical, imperative requirement of the state begins ... Jehovah's Witnesses are against all states. They do not worship [*pokloniatsia*] any state."¹³ Thus, political neutrality becomes a form of extremism in Putin's Russia with its growing state-sponsored political nationalism, the reification and sacralisation of statehood. On the one side, the idea reflects the strong connection between the Russian Orthodox Church and the Russian state, rooted in the Orthodox doctrine of symphony between the two powers, secular and ecclesiastic, according to which both powers are sacralised. On the other side, the rejection of political neutrality comes from the Soviet model of state control over religion. In post-war repressions against Witnesses and later during Khrushchev's anti-religious campaign, Witnesses'

11 Oral presentation at the methodological seminar "Humanities forensic expertise: Challenges and solutions," "Faith & Fiction" project, 10 July 2020. Available at: [youtube.com/watch?v=ZkNoitA7rWA&t=23s](https://www.youtube.com/watch?v=ZkNoitA7rWA&t=23s).

12 Ibid.

13 Ibid.

political non-involvement had direct political implications. Their theocratic doctrine established that worldly governments could not bring about justice and peace because they were corrupted by Satan, soon to be destroyed by God in the imminent Apocalypse. Witnesses refused to serve in the Red Army; participate in elections; join the Communist Party, state collective farms, or state organizations like the Komsomol; salute the national flag; or obtain a passport – let alone collaborate with the police. They openly challenged the Soviet order and, in their house-to-house ministry, preached the establishment of a theocratic government during the millennial rule of Christ (Vagramenko 2021a). As Emily Baran argues, it “became increasingly clear to Witnesses in Eastern Europe and the Soviet Union [that] neutrality was inherently political” (Baran 2014:21).

9. Conclusion

The history of Jehovah’s Witnesses in Soviet and post-Soviet Russia offers insight into the complicated relationship between non-conformist, non-traditional religious groups and the non-democratic state. The increasing state control over religious diversity in Putin’s Russia has triggered new and old responses from political and religious actors. Putin’s politics of religion rest upon the late-Soviet legacy of surveillance and control over religious life, constraining religious diversity, and using the mainstream churches for its political ends. Outlawed believers, in turn, are again forced to go underground, going back to old Soviet-era survival strategies.

This study shows how state-sponsored anti-sectarian discourses and the securitization of religion are an outcome of the growing political power of the Russian Orthodox Church, and how they serve as an ideological blueprint of religious ‘normality’ against ‘deviant’ non-traditional religion. In Putin’s Russia, religious and nationalist narratives have merged in a convoluted way with the goal of showing the messianic roles of Russia and the Russian Orthodox Church as saviours. This highly eclectic narrative constitutes the foundation of the anti-liberal and conservative turn led by Putin’s regime in the last decade. The politicization and securitization of religion in Russia are features of the ideology of the ‘Russian world’, according to which Russia is destined to lead, politically and spiritually, the eastern Slavic world. This ideology is also deeply rooted in the Soviet past, a time when the Russian Orthodox Church was under the close control of the Soviet secret police and was instrumentally used in Soviet foreign policy.

Securitization in the religious sphere – when religion is regarded as an issue of national security, or as a threat to it – has hit minority faiths in particular. ‘Non-traditional’ religiosity and religious non-conformism have been criminalised and blended with terrorism and extremism, a contemporary world-wide fear. Even though ‘religious extremism’ is not a conventional, internationally

recognized term, it has been legally introduced in several laws and regulations that facilitate the open persecution of minority religious groups. As legal experts argue nowadays, “non-traditional religious groups are the first step towards crime.”¹⁴ Putinist trials against minority believers play a decisive role in the criminalization of religious opposition, which can be seen as a step towards the criminalization of all opposition to the state.

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¹⁴ Ibid.

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The Specific Vulnerability of Religious Minorities

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Religious freedom and the subversive adaptation of Christian converts from Hinduism

Aruthuckal Varughese John¹

Abstract

This paper explores how converts to Christianity tend to navigate a complex social landscape by occupying hybridized sites seeking to remain Hindu while following Christ. This strategy is especially visible in *Krista Bhakta* (Christ followers) movement, the upper caste groups who see a cultural continuity with the Hindu traditions. Using “hybridity”, a concept that Homi Bhabha popularized to capture the mixing of Eastern and Western cultures in postcolonial literature, this essay explores how it can be applied in the religious sphere that adopts this subversive tool within political and cultural spheres.

Keywords

Religious freedom, hybridity, Christ followers, Hindu converts, India, *Krista Bhakta*.

1. Introduction

In the Indian subcontinent, Freedom of Religion or Belief (FORB) is increasingly becoming constricted by majoritarian politics that specifically targets Muslims and Christians. Building on an injured social psyche about its colonial past, the nationalist agenda tends to alienate the minorities by tying their identities to the foreign oppressors: Muslims with the Moghul invasion and Christians with the British Raj. Consequently, religious converts feel that they have to prove their loyalty to the nation in the light of accusations of betrayal.

Building on my earlier work on the issues pertaining to the problematization of religious conversion (John 2021a; John 2021b), this paper examines how the nationalist Hindu identity builds on a colonial calculus to erase plural identities.

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Following that, the paper uses a postcolonial framework to identify the hybridized adaptations in the *Krista Bhaktas*.

2. An independent nation and a continuing colonial calculus

Understanding the phenomenon of religious conversion involves decoding the ways religious conversion manifests itself in the lives of converts. Why do some break with tradition while others seek continuity with it? These varied responses indicate that the experience of conversion is mediated by sociological and political factors, including the way modern religious nationalists use colonial strategies and tactics in an attempt to marginalize minorities and create a religiously unified nation-state.

Religious strife on the subcontinent has led to genuine security crises, including terrorist attacks, but government officials tend to exaggerate these dangers for political gain. One could argue that religious nationalists learned this strategy from the colonial rulers who had mastered this art. The British, it is argued, “took advantage of local conflicts to control Gujarat much like a Mafia boss intimidating shopkeepers to extort protection money.” Similarly, nationalist movements in post-independence India use “fear and protection” to advance their cause (Hebden 2011:24).

One such fear, cultivated even against expert opinion, is that Hindus will become a minority in India due to high birth rates among Muslims and an increasing number of conversions to Christianity (Salam 2021). This fear of shifts in religious demography reflects a fear of losing traditional Hindu culture. These alleged threats are used to portray religious minorities as enemies who are at once foreign and yet within the gates. Setting up this imminent threat enables religious nationalists to assume the role as protectors of the nation’s religion and culture.

This role gives nationalist politicians the opportunity to consolidate greater powers, justified by the perceived danger. Such consolidation requires the identification of something singular that unites the nation. Thus, the nationalist movement’s slogan, “Hindi – Hindu – Hindustan,” (*The Times of India* 2017) envisages a strong monolithic state with one language and one religion, which ironically “is not a call to return to a true and ancient religion of India, but to a modern version of the Brahminic faith that assimilates or marginalizes castes and communities for political ends” (Hebden 2011:27).

This modernized, politicized Hindu identity introduces additional cross-pressures for those whose lives are circumscribed by the calculus of an embedded universe.² For instance, festivals that honour local deities have increasingly given

2 An embedded cosmos is one where the individual is nested within the community, and the community within a cosmos also inhabited by gods, goddesses, and the spirits.

way to pan-Indian celebrations. The idea of one God who unites all the people of the land indicates a movement towards a form of monotheism. The Dalitbahujan intellectual Kancha Ilaiah records his autobiographical journey from devotion to the familiar gods of his childhood, such as “Pochamma who delivers from smallpox, Kattamaisamma who grants rain, or Potaraju who protects crops from thieves,” to encountering “unfamiliar Hindu gods like Vishnu or Durga” (Basu 2020:2). Shifting allegiance from the former gods and goddesses to newer ones affects the perception of the embedded universe within Dalitbahujan communities. Ilaiah speaks of such shifts as a form of coercion “into joining a national majoritarian community that he, and people like him, never belonged to, in terms of piety or way of life . . . The question that Ilaiah, in effect, poses is whether the whole thing is simply a Brahminical minority’s historical masquerade as a Hindu majority” (Basu 2020:2).

Religious nationalism aims to realign the social fabric and its polarities. In the former social order, communities were organized along caste hierarchy, whereas the new order defines them in terms of religion. Ilaiah describes the cross-pressures that a Dalitbahujan faces in this political environment:

[N]ot only I, but all of us, the Dalitbahujans of India, have never heard the word ‘Hindu,’ not as a word, nor as the name of a culture, nor as the name of a religion in our early childhood days. We heard about Turukoollu (Muslims), we heard about Kirastanapoollu (Christians), we heard about Baapanoollu (Brahmins) and Koomatoollu (Baniyas) spoken of as people different from us. Among these four categories, the most different were the Baapanoollu and the Koomatoollu. There are at least some aspects of life common to us and the Turukoollu and the Kirastanapoollu. We all eat meat, we all touch each other. With the Turukoollu we shared several other cultural relations. We both celebrated the Peerila festival. Many Turukoollu came with us to the fields. The only people with whom we had no relations, whatsoever, were the Baapanoollu and the Koomatoollu (cited in Basu 2020:1).

One of the implications of this realignment is the greater alienation of religious minorities through their integration into the category “Hindu”. Uniting the nation under common gods and religious narratives, rather than returning to the diversity and complexity of the pre-independence social fabric, serves the interests of religious nationalists. This results in the erasure of older cultures and practices. Religious nationalism cultivates a political theology that involves:

compacting a pantheon of 330 million gods into axiomatic Hindu icons like Rama or Krishna, absorbing errant, syncretic pieties, and picturing a singular Hindu telos. Finally the project had to make this Hindu template politically indistinguishable from an ‘Indian’ one (Basu 2020:4).

In this paradoxical situation, religious nationalism borrows tactics and ideas from the modern West in order to assimilate minority cultures under the banner of the ancient faith.

The demolition of the Babri Masjid, a mosque in Ayodhya, and subsequent construction of the Ram Temple in its place symbolizes not only the iron hand with which minority religions are managed but also how Hinduism can be used in an effort to unite the nation. Nationalists coopt the process of “sanskritization” (Srinivas 1956:481-496)³ in a similar way. Hebden describes this process of forming a homogenous culture:

VHP co-opt communities and synthesise their values and culture. Co-opted Dalits build temples instead of visiting their established shrines. Temples are far more impressive structures. Slowly, loyalty is transferred to deities with Vedic names while Dalit pantheons are subsumed or made to be synonymous with Vedic Gods. Solidarity between different Dalit groups is thus replaced with loyalty to the successful dominant caste religion. This is always at the expense of the rights and culture of the Dalits who, in willingness to be represented by Hinduism fail to be represented within Hinduism (Hebden 2011:28).

The process of homogenizing cultures is carried out by the other-ing of those who do not easily fit the nationalist agenda. Religious, linguistic, and tribal minorities are required to “either accept Hindu culture and language . . . or stay in the country wholly subordinate to the Hindu nation deserving no privileges, far less preferential treatment, not even citizenship rights” (Hebden 2011:26). Given this precarious situation, religious conversion of the Dalits has to fit one of two streams in terms of political adaptation:

[E]ither they embrace Hindutva or the Dalit Bahujan’s solidarity with the Dalit movement. Just as many converts to Christianity will Chris-

3 Writing in 1952 in the context of Coorgs in South India, M. N. Srinivas observes, “A low caste was able, in a generation or two to rise to a higher position in the hierarchy by adopting vegetarianism and teetotalism, and by Sanskritizing its ritual and pantheon. In short, it took over, as far as possible, the customs, rites, and beliefs of the Brahmins, and the adoption of the Brahminic way of life by a low caste seems to have been frequent, though theoretically forbidden” (Srinivas 1952:30).

tianise their names so some Dalits will Brahminise their names to conceal their low status. What is attracting Dalits and Adivasis to both Christianity and more compellingly to Hinduism is the politically and theologically potent monotheisms now key to both religions. Because monotheism and political centralism are alien concepts to indigenous religion Dalits struggle to find the resources to repel them (Hebden 2011:27).

This nationalist vision builds on the centralizing efforts of the Raj. Before the colonial presence, neither the idea of a nation-state nor its omnipotence was conceivable. Rather, “life was entirely organized on the local level in India. There was no such thing as the nation state and no such thing as patriotism, nationalism, or Mother India. The British, with maps, surveys and railways, reined this in” (Hebden 2011:24). This centralizing of control over the population was made possible by the detailed demographic enumeration that the British government carried out in 1881; contemporary nationalists now use the census to generate fear over the slightest variations in the proportions of religious adherents (Gill 2007:241-249). More specifically, the “enumerative policies of political representation” is seen to have directly led to the “rising prominence of what we would now call ‘communalism’” (Bauman 2015:176). In this sense, the colonial political calculus continues to dominate India.

The assimilative tendencies of religious nationalism create its own cross-pressures as local gods and rituals are eclipsed by the new national creed. In short, if “Hinduism” as an epistemological category originates within the colonial framework, “Hindutva” as a political category largely continues the colonial calculus, even though it is ostensibly at cross-purposes with it.

3. Postcolonial framework and hybridized identity of converts

It is “impossible and implausible to understand the present without grappling with the deep abiding legacies of colonialism” (Dormor 2021:331). In other words, the reality of colonial imperialism lives on, embodied in new avatars. The power dynamics of religious nationalism and the adaptive mechanisms of religious minorities, therefore, can be better understood through the prism of postcolonial discourse. The concept of hybridity, initially developed in the field of postcolonial literary criticism by Homi Bhabha, has been appropriated in a wide range of fields, including cultural interpretation. Borrowed from the field of genetics, it refers to the process of crossbreeding of plant or animal species to accentuate traits that are desirable. In postcolonial studies, this idea is extended “to identify a blending of . . . racial, linguistic, literary, cultural, and religious” categories

resulting in a new breed where “entities came together in previously undefined ways to create something different, something heretofore unknown, something unexpected” (Shaw 2018:8).

Bhabha’s hybridity locates the minority within a liminal space that is constantly hyphenated, occupying no clearly defined location. This is neither a betrayal of one’s own identity nor a task undertaken in ignorance. The minority has to survive and hopes to thrive. Therefore, while the domination of the majority continues, the minority does not seek to confront the majority directly; rather, “by initially withholding its objective” the minority uses the “supplementary strategy,”⁴ thwarting and “antagonize[ing] the implicit power to generalize, to produce the sociological solidity” (Bhabha 1994:155). This ambivalence is generally practiced where suppressed communities try to make space for themselves without offending the dominant communities. The minority communities adapt to these challenging contexts using strategies akin to the camouflage of animals. Rather than outright falsehood, it is a disguise.

Christians, in particular, have had to address the meaning of being simultaneously Indian and Christian. Given its linguistic, ethnic, and religious plurality, being Indian is itself a complex idea and might involve various hybrid permutations. Christians, likewise, have always needed to adapt to their local cultures, holding onto their essential beliefs while also being shaped by what they face from without. The accusations of foreignness or cultural betrayal that confront minorities in general and converts to Christianity in particular bring to the surface these complexities and the ambivalence of Christian identity. The accusation is double pronged. When Christians adopt the local culture, they may be accused of sneaking Christianity into the subcontinent through acculturation; when they adopt a more global culture, they are accused of Westernization. Further, the association of Christianity with the lower castes shapes the unique adaptations of converts from the upper-caste communities.

These adaptive mechanisms are exercised for multiple reasons. First, the subcontinent presents social and cultural spaces that are by default plural and cross-pollinated. It is not strange, for example, to find people visiting holy sites belonging to a variety of religions, regardless of their own religious background (see Naqvi). Likewise, festivals like Diwali, Christmas, and Eid are celebrated by all communities on the subcontinent. This creates a multicultural social matrix in which religious communities retain their particularities while sharing the prac-

4 The “supplementary strategy,” Bhabha remarks, is extracted from “what British parliamentary procedure recognizes as a supplementary question,” which enjoys the “advantage of carrying a sense of ‘secondariness’” and therefore, as a strategy, this “adding ‘to’ need not ‘add up’ but may disturb the calculation” (Bhabha 1994:155).

tices of other religious and cultural traditions. Where communities occupy such hybridized sites, it creates fluidity in the social matrix, and a form of hybridity develops simply by virtue of sharing such socio-religious spaces over an extended period of time.

Second, a more subversive deployment of hybridity may be observed in a group referred to as “crypto-Christians.” Due to the perception of danger, these Christians learn to speak not manipulatively but in “a tongue that is forked” (Bhabha 1984:126). This contrasts with the Dalit Christian who openly belong to the institutional church, aspiring to a new identity that breaks with their former one. The term “crypto-Christians” describes those who identify themselves as “Hindus in the public domain, and on official records, while privately profess faithfulness to Jesus Christ” (Dayal 2014). Even as the debate on extending the affirmative reservation benefits to Christian and Islamic converts from Dalit backgrounds continues (see Godbole 2021), “crypto-Christians” hide their identity because of the potential loss of economic privileges for which the members of the scheduled caste are otherwise eligible. Dalit conversion to Christianity, is “a matter of considerable controversy, but a scholarly consensus seems to be emerging that the impetus behind conversion was the desire for enhanced social status, for a greater sense of personal dignity, and for freedom from bondage to oppressive landlords” (Webster 2002:28). Consequently, religious conversions from Dalit background continues to be seen as a form of deception, especially by those opposed to religious conversion.

Third, another group that helps us understand hybrid adaptation is those converts from higher caste backgrounds who call themselves *Krista Bhaktas*. They tend to “retain the caste affiliations and structures that beset Hindu society” and are “indistinguishable in culture, and often in dress and food habits, from their Hindu neighbours” (Dayal 2014). As one study reveals, many of the Christ devotees from Varanasi, one of the holy cities in India, “identify themselves as Hindus either to their own community members or to outsiders, even though their belief in Christ is not clandestine” (John 2020:168).

This third group raises questions for several stakeholders: a) The state has problems gathering accurate data about religious affiliation given that the *Krista Bhaktas* embrace a dynamic dual identity and choose not to belong to the “institutional church and Christian community” (John 2020:67). The traditional method of enumerating the population into neatly compartmentalized groups, inherited from the British Raj, does not provide a framework that accounts for multiple identities. Instead, the census tends to homogenize the population, limiting the options from which to choose (Markam 2019). b) Christian leaders hesitate to accept such converts as Christians because they do not belong to the institutional

church. According to another study, “A large percentage of interviewees (read, pastors/Christian leaders) have difficulties in accepting the followers of Christ outside the church as fellow Christians, as most of them feel that one can only be a Christian if one is a member of the church” (Jeyaraj 2010:411). Therefore, the hybrid identity of the *Krista Bhaktas* affects their relationship with the Christian community. c) Since the *Krista Bhaktas* continue to belong primarily to their local communities and not to the institutionalized church, they tend to experience little resistance from local communities. Many in this group do not receive baptism, which is often associated with the institutional church and signifies a break with Hinduism, an initiation into a new identity. Instead, the *Matri Dham Ashram* (meaning, “Abode of Mother”), one of the influential Christian ashrams in Varanasi functions more “in line with the Hindu temples, the Ashram does not keep a membership roll or a visitor register” (John 2020:103).

For these reasons, the *Krista Bhakta* movement raises questions about the cultural appropriation of Christianity, especially in the context of the cross-pressures that mark social spaces on the subcontinent.

4. Conversions and Hindu-Christian identity

To address *Krista Bhakta's* hybrid identity, one may take a cue from Balaganadhara's view that Hinduism is a culture rather than a religion. He argues that the idea of “religion” is a uniquely European Christian construct invented as “an explanatorily intelligible account of the Cosmos and itself” (Balaganadhara 1994:354). This entails that “Hinduism as a religion” is also a European formulation. If “religion has brought forth one configuration of learning; other things have brought forth other configurations of learning as well” (Balaganadhara 1994:446). He further asserts that in the Asian context, “Ritual, just like religion, brings about a culturally specific way of going-about in the world. In a configuration of learning generated by it, performative learning dominates” (Balaganadhara 1994:415).

Balaganadhara's distinction between religion and tradition can provide a legitimate way to address the possibility of a Hindu-Christian identity. If the concept of religion is marked by beliefs, especially propositionally structured beliefs, this may explain the appeal of certain churches in India that shaped their liturgical and ritual practice through close attention to both local traditions and the traditions of the church. This does not entail the absence of propositionally held beliefs but instead an emphasis on ritual practices that help Indian Christians negotiate their identity.

From this perspective, “religious conversion” is not a change of religion, since Hinduism does not prescribe a set creed. If Hinduism is a culture, then one can

be at once a Hindu and a Christ follower like Dayanand Bharati and many others who have chosen to identify themselves as “*Hindu Christ Bhaktas*” (Bharati 2004:xvi). Yet the term “Christian” may create unnecessary complications due to its association with Western culture. Therefore, some believers have preferred to call themselves “Hindu followers of Christ”, which seems to be another way of identifying Christ-followers on the subcontinent, similar to terms like “Chinese Christians” or “Korean Christians” that incorporate believers’ cultural background into their Christian identity.

Kali Charan Banerjee articulated this view in the first issue of *The Bengal Christian Herald*. “In having become Christians,” he asserted, “we have not ceased to be Hindus. We are Hindu-Christians, as thoroughly Hindu as Christian. We have embraced Christianity, but we have not discarded our nationality. We are intensely national as any of our brethren of the native press can be” (Baagø 1967:67). Today, the term “Hindu-Christian” (signifying accent on the *religio*) is more aptly described as the *Hindu Krista Bhakta* (signifying accent on the *traditio*), where one retains the Hindu culture and tradition as a follower of Christ. On the one hand, this entails challenges to problematic traditions such as caste discrimination that have confronted the life of the church; on the other, it initiates a way for the gospel to refine the culture not merely through its impact on the Indian Renaissance but also through the continuing Christian engagement via education and health work.

Unlike the Ghent school’s portrayal of Christianity as a religion that views Hinduism a rival (See John 2021a), the growing *Krista Bhakta* movement envisages a socio-religious identity where being a Hindu and being a Christ-follower are coterminous and converging. Raghav Krishna describes the cultural continuity observed in diet, worship, baptism, communion, and other rituals (Krishna 2007:173-177). Viewed from certain angles, such attempts at continuity risk syncretism, but the *Krista Bhaktas* believe that breaking with Hindu culture risks importing Western cultural baggage with the essential beliefs of Christianity.

The *Krista Bhaktas* establish this continuity in part by using existing cultural terms for Christian concepts, distinguishing between the *sense and reference* (originally articulated by the German philosopher Gottlob Frege (1892:25-50)) of these terms and their meanings. In other words, they adopt cultural concepts, redefining the sense to converge with an intended reference. For instance, *Krista Bhaktas* use the pre-existing local term *Muktinath* (literally meaning, “God who saves/liberates”) for Jesus. *Muktinath* as the referent comes loaded with meaning, but it does not have a singular meaning and can generically and etymologically mean “God who saves”. Further, the meaning of ‘God saves’ is redefined to refer to the nature of Christ’s work that brings salvation to those who believe in Him. In this sense, the Hindu followers of Christ practice contextual appropriation by using existing terminologies

with defined meaning and clarifying their distinct Christian usage through constant articulation of the character of Jesus Christ. As Krishna argues, a *Krista Bhakta*:

identifies himself/herself as part of the Hindu community, all festivals are celebrated with the community . . . This is not to say that this celebration is without boundaries, however. A *Krista Bhakta* will not go against his or her convictions concerning God in matters involving things like bowing to deities, etc., and sometimes may pass on being included in certain festival activities. This is acceptable in Hindu tradition, however, as followers of certain Hindu gods refuse to bow before idols of other gods (Krishna 2007:176).

The suspicion and problematizing of *Krista Bhakta* identity within traditional Indian Christianity often betrays a non-recognition of the complexities of human identity formation, which for Christians inevitably combines socio-cultural characteristics with the act of following Christ.

5. Conclusion

The hybridized identities of the *Krista Bhaktas* suggest one way of answering what it means to be an Indian and a Christian. Yet this manner of hybridization hardly serves converts from a Dalit background. Each community responds in the manner it finds appropriate.

More importantly, the cultural continuity with the Hindu traditions that the *Krista Bhakta* movement endorses does not view Hinduism as a rival. Rather, it envisages continuity by recognizing the fulfilment of certain Hindu aspirations in the person of Jesus Christ. Further, if there are no specific creedal beliefs that essentially makes one a Hindu, then one's devotion to Christ need not exclude a Christ devotee for that reason from being *Hindu-Krista Bhakta*. This message is pivotal in the context of alienating rhetoric within Indian society that seeks to vilify religious conversions as a form of betrayal.

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Challenges to individual religious freedom in the Indigenous communities of Latin America

The case of the Nasa (Colombia)

*Dennis P. Petri*¹

Abstract

Whilst Indigenous autonomy is generally regarded as something positive, the existence of human rights abuses inside Indigenous communities has received relatively little attention in legal scholarship. Human rights abuses include severe violations of religious freedom, particularly of converts away from the traditional religion. Based on original empirical field research conducted in the Nasa Indigenous territories in the southwestern highlands of Colombia (2010-2017), I discuss the challenge of balancing the right to self-determination of Indigenous Peoples and the individual human rights of people living in Indigenous territories, particularly religious minorities. I show this has implications for the analysis of “minority in the minority” situations beyond the context of Latin America.

Keywords

Cultural rights, Indigenous communities, individual religious freedom, Colombia, Latin America, Nasa.

1. Introduction

During the last decades of the twentieth century, Indigenous movements emerged throughout Latin America. The demands of these movements went beyond the social inclusion of Indigenous communities in the economic system. They demanded the recognition of group rights and ethnic determination. This unprecedented mobilization of Indigenous groups, often referred to as *indigenismo*, had major political consequences. An important step for the Indigenous movement

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was the adoption in 1989 of the International Labor Organization's (ILO) "Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries," which formally recognized the right to self-determination of Indigenous Peoples, among other things. As a result, countries such as Colombia and Mexico granted Indigenous communities far-reaching self-determination rights. In 2016, the Organization of American States adopted the American Declaration on the Rights of Indigenous Peoples.

Whilst Indigenous autonomy is generally regarded as something positive, the existence of human rights abuses inside Indigenous communities has received relatively little attention in legal scholarship. (Alves 2020a; Alves 2020b; Petri et al. 2023) Human rights abuses include severe violations of religious freedom, particularly of converts away from the traditional religion. Indeed, when Indigenous Christians refuse to obey the orders of the Indigenous leaders, they suffer human security threats including imprisonment, forced displacement, denial of access to water, healthcare and education, confiscation of homes and farmland, torture, and even death. Whilst Christians in these communities claim they have a right to religious freedom, Christianity is considered by community leaders as a threat to the preservation of the Indigenous culture and of social cohesion.

This paper is based on a case study of an intra-ethnic (minority-within-the-minority) conflict. Specifically, this case study is about the vulnerability of converts from the majority religion in an Indigenous context, which I refer to as 'cultural dissidents' among the Nasa ethnic group living in the *resguardos indígenas* [Indigenous reserves] of the southwestern highlands of Colombia (Cauca and neighboring departments).

To provide some context to my case study, I first introduce the cultural dissidents with the Nasa ethnic group, followed by a description of the legal insecurity and religious tensions in the Nasa *resguardos*. I then present the data collection methods I followed, before presenting the empirical evidence of the human security threats committed against cultural dissidents among the Nasa. I end with some concluding remarks and policy recommendations to address minority-within-the-minority conflicts.

2. The religious agenda of cultural dissidents within the Nasa ethnic group

With around 138,501 members (as of 2007, Departamento Nacional de Planeación de Colombia, DNP [National Planning Department of Colombia]), the Nasa ethnic group, also known as Páez, is the second largest Indigenous group in terms of size of Colombia. The Nasa live in 72 *resguardos* and 34 other types of Indigenous communities, located in the southwestern highlands of Colombia in an area known as Tierradentro.

The belief system of the Nasa is built around a syncretic mix of Catholic and Indigenous traditions and symbols, such as K'apish – thunder (Rappaport 2004; DNP 2007). Although the mainstream religious beliefs of the Nasa include elements of Catholicism, the religion of the Nasa can more accurately be described as “a form of pre-Columbian religiosity with Catholic influences.” When a member of the Nasa converts to Evangelical Christianity, this thus constitutes a very radical change.

Although the presence of Christianity in the Nasa territories has increased over time, it never reached the same proportions as at the national level of Colombia. The Joshua Project, a Christian organization that compiles religious data from various sources, estimates the total Christian population within the Nasa at 65 percent, with the remaining 35 percent adhering to “ethnic religions.” (2016) According to the same source, the Christian population among the Nasa includes an Evangelical segment of 38 percent. It is likely that the majority of this group belongs to the Iglesia Cristiana Evangélica Nasa, ICEN [Christian Evangelical Nasa Church], which is the largest non-Catholic Christian organization in the Nasa territories. Other non-Catholic groups that have a presence in the Nasa territory are Asociación Alianza Cristiana Indígena Páez Colombiana [Christian Indigenous Colombian Páez Alliance], Iglesia Pentecostal Unida de Colombia [United Pentecostal Church of Colombia] and Movimiento Misionero Mundial en Colombia [Worldwide Missionary Movement in Colombia]. Some of these groups eventually merged into ICEN.

Regardless of the exact percentage of Christians among the Nasa, which is objectively difficult to determine, there is an important distinction to be made between the Nasa that take part in the cultural and religious traditions of the community and those who do not. The former may or may not self-identify as Christians but have in common that they follow Indigenous religious traditions, generally mixed with Catholic syncretism. The latter expressly reject these traditions, often after they convert to some branch of Evangelical Christianity. This minority group, which I identify in this article as cultural dissidents, is the focus of this case study. I argue that this group possesses a specific vulnerability to suffer human rights abuses.

I chose to identify this minority as cultural dissidents, because they involve Christians who, often after a conversion experience, decide to reject some tenets of the cultural and religious traditions of their community, but expressly declare they continue to identify as Nasa and as Indigenous. Their dissent focuses almost exclusively on aspects of Nasa culture that they disagree with, but they effectively continue to share the same holistic worldview that characterizes their community and do not reject other elements of their Indigenous heritage.

For most cultural dissidents, the behavioral response ‘exit’ is not an option, as is often the case in tribal contexts as Albert Hirschman explains:

exit is ordinarily unthinkable, though not always wholly impossible, from such primordial human groupings as family, tribe, church, and state. The principal way for the individual member to register his dissatisfaction with the way things are going in these organizations is normally to make his voice heard in some fashion. (1970:76).

In other words, because of their feeling of loyalty to their ethnic group, the only recourse for these cultural dissidents is ‘voice.’

The majority of cultural dissidents join ICEN, a movement that follows the basic tenets of Evangelical Christianity. Its teachings include an explicit rejection of what is referred to as ‘pagan’ religious practices.² The ICEN is a recognized religious association, as records of the Colombian Ministry of the Interior confirm, but these records do not contain statistics of its membership.

Although a large part of the beliefs of ICEN agree with Western expressions of Evangelical Christianity, ICEN members continue to be greatly influenced by the Nasa culture and worldview, in the sense that they do not segregate between the private and the collective, nor between the political and the religious, as is characteristic in Indigenous culture (Pancho 2007). In fact, ICEN members are proud of their Nasa identity and continue to consider themselves as members of the Nasa ethnic group. What they complain about is that the majority of the Nasa infer that their conversion to Evangelical Christianity implies a departure from their Indigenous identity. “We don’t understand why we can’t be Indigenous and Christians at the same time,” said one of their leaders.³

The view that all members of the Indigenous community need to adhere to its worldview and follow its traditions can be qualified, to use Govert Buijs’s categorization, as an expression of a “unitarian” political conception (2013). “The danger of unity” in this case is evident through the violent repression of religious minorities. It is also a case of “assumption of singular affiliation” (Sen 2006) and a manipulation of identity that narrows it to the adherence to the same religion and culture (Schlee 2008). In a way, the cultural dissidents advocate for “pluralism,” i.e. the conception that in a society there should be room for different perspectives, although their logic also has unitarian features, such as their sometimes aggressive approach to missionary activity as I describe in the threat assessment.

² Interviews CO01, CO02 and CO03 (2015).

³ Interview with CO04 (2015).

An alternative proxy for the number of cultural dissidents in the Nasa community is membership of the OPIC, Organización Pluricultural de los Pueblos Indígenas de Colombia, OPIC [Pluricultural Organization of the Indigenous Peoples of Colombia]. According to a public statement of the OPIC issued in 2009, the organization has 24,693 members (OPIC 2009), which would represent around 17.8 percent of the total Nasa population. This number could not be independently confirmed, but it seems reasonable considering newspaper reports that counted “close to 10,000”⁴ and “more than 6,000”⁵ members of the OPIC who participated in a protest march in August 2012.

The cultural dissidents can easily be identified based on their self-identification as Christians, their expressed rejection of certain cultural traditions of the Nasa, and, for a majority of them, their militancy within the OPIC. They do not constitute a distinct ethnic group but are part of the Nasa Indigenous family.

3. Legal insecurity and religious tensions in the Nasa resguardos

3.1. *The political autonomy of the resguardos indígenas*

The Colombian Constitution recognizes “Indigenous territories” as a distinct type of territorial entity, alongside municipalities and departments (art. 286). (The majority of resguardos indígenas have acquired the status of Indigenous territory in order to benefit from the legal prerogatives this implies.) The Colombian Constitution is not very specific about the government system of the Indigenous territorial entities. It simply mentions that the Indigenous authorities “may exercise jurisdictional functions within their territorial scope, in accordance with their own rules and procedures” (art. 246), that they are “governed by councils formed and regulated according to the uses and customs of their communities” (art. 330) and that they can be beneficiaries of public funds granted by the national government (art. 356).

The competencies of the Indigenous governments include the adoption and enforcement of legislative acts, economic policy, budget (including the faculty to raise taxes), management of public resources (including for education) and public order (through a *guardia indígena* [Indigenous guard]). In addition, they have the faculty to implement their own justice system. This *fuero especial indígena* [special Indigenous jurisdiction] includes the possibility to order punishments according to their own usos y costumbres [customs and habits].

Most Colombian resguardos, including the Nasa resguardos, are governed by a *cabildo*,⁶ which is a collegiate form of government that is comparable both to a

4 “Indígenas del Cauca, en contravía,” *El Espectador*, 03/08/2012.

5 “Indígenas de la OPIC marchan en Popayán,” *Semana*, 02/08/2012.

council of elders and a municipal council, and is selected by the members of the resguardo. The cabildo combines executive, legislative and judicial power, but some legislative and judicial prerogatives are exercised by the ‘general assembly’ of all the inhabitants of the resguardo. Sometimes, the cabildo is presided over by a ‘governor’ but more often all members of a cabildo are referred to as governors.

The Nasa cabildos that are located within the Department of Cauca are organized within a regional network called the Consejo Regional Indígena del Cauca, CRIC [Regional Indigenous Council of Cauca], which also has members who represent other Indigenous communities. This association, created in 1971, is essentially a lobby organization for the social and cultural rights of the Indigenous communities of the department and serves as an interlocutor to the Colombian government.

Indigenous autonomy is far-reaching, but not absolute. The constitutional limitations on Indigenous autonomy include the respect for the right to life, the prohibition of torture, cruel and inhuman treatment, slavery but also the principles of due process and legality in criminal matters, as well as the prohibition of forced displacement or confiscation of private goods or land – in sum, anything that goes against human rights and the Constitution.

3.2. Human rights abuses in the resguardos indígenas

In the Nasa community, there are records of human rights violations that were perpetrated by the Indigenous authorities, not only against cultural dissidents, but against ordinary citizens in general. For example, a person who had an extramarital affair was reportedly flogged as punishment,⁶ a person who had endorsed the ‘wrong’ presidential candidate was tortured,⁷ collaborators with the FARC were whipped, including minors,⁸ and a Christian leader was reportedly poisoned.⁹

The existence of the resguardos indígenas alongside the national government level could be interpreted as a particular case of “regime juxtaposition,” to use the concept developed by Edward Gibson (2005). Indeed, the resguardos and the national government are not only two levels of government that have jurisdiction over the same territory; they also operate under very distinct legal regimes: the former is based on Indigenous customary law, the latter is based on western positive law. According to legal scholar Marcela Zegarra-Ballón (2015), this situation of “legal pluralism,” raises questions concerning “the legitimacy of Indigenous self-government decisions and, in particular, the adequacy of their

6 “Colombian tribe whips cheating lovers,” Reuters, 04/06/2000.

7 *Idem*.

8 “La justicia indígena que unió a los colombianos,” *Semana*, 12/11/2012.

9 “Indigenous Pastor Poisoned. Abuses against Christians Continue in Colombia,” *Visión Agape*, 16/03/2011.

systems of administration of justice and the punishment of misconduct inside their communities.

Although in this case study I focus on the Nasa, freedom of religion is a generalized issue in Indigenous communities in Colombia. A review of relevant jurisprudence of the Colombian Constitutional Court and the Inter-American Court of Human Rights reveals that religious freedom is systematically used as an argument to protect the religious traditions of the dominant religion in Indigenous communities, linking it to other fundamental rights such as the right to culture and the right to property (Arlettaz 2011). In all cases, the fundamental right to cultural identity has taken precedence over the religious freedom of minority groups inside the Indigenous communities (Nieto Martínez 2005; Lopera Mesa 2009).

For example, sentence T-659/2013 confirms the legitimacy of the decision of the authorities of a Nasa resguardo to expel Christian converts from their homes citing three reasons: the Indigenous autonomy, the Indigenous conception of “the transcendence of the Indigenous territory for the members of these ethnic groups” and the sociological fact that Indigenous territories are viewed as collective property.

4. Data collection methods

During a trip to Bogotá in 2010, I was first exposed to the situation of Christian converts in the Nasa community and have monitored and gathered information about this group in the following eight years. Applying a flexible and inductive research design, I collected all available qualitative and quantitative data about human security threats against the vulnerable religious minority that I identified as cultural dissidents.

In addition to desk research, I carried out four field trips to Colombia between 2010 and 2017 in which I interviewed over 40 people. During a trip to Huila and Meta, I visited a settlement of Nasa who were displaced for religious reasons, a safe house for people who had fled various Nasa resguardos, and a boarding school for children from various ‘persecution backgrounds,’ including children who had fled Nasa resguardos.

The interviewees can be categorized in two groups: people that were selected based on their knowledge of the situation of the Nasa resguardos – a sample of government representatives, development workers, church leaders, academics and lawyers – and people belonging to the Nasa ethnic group and who can be identified as cultural dissidents.

The interviews conducted during these trips are the primary sources for the case study. I also relied on internal reports of a number of Colombian charities

including Visión Agape (a Colombian partner organization of Open Doors International, that has implemented projects among Nasa Christians since 2001), the Colombian Evangelical Council [Consejo Evangélico de Colombia, CEDECOL], Corporación Dios es Amor, CDA Colombia [Foundation God is Love] and the Christian Mennonite Association for Justice, Peace and Non-Violent Action [Asociación Cristiana Menonita para Justicia, Paz y Acción Noviolenta, JUSTAPAZ].

I have also used some interviews and trip reports by Lía Salomé Sánchez, who was a researcher for Visión Agape between 2012 and 2014, with her permission (I have marked them with an asterisk in the footnotes), specifically interviews she conducted in resguardos in the Department of Cauca. An important source for the threat assessment was the information provided by the OPIC. I interviewed Ana Silvia Secué and Rogelio Yonda, the two most prominent leaders of the OPIC, at length in 2010 and 2012, and have followed the reports of the OPIC since 2010.

5. Human security threats against cultural dissidents

In this section I argue that cultural dissidents in Nasa resguardos, as defined above, possess a demonstrable vulnerability to suffer human rights abuses. In total, I identified ten distinct threats to which cultural dissidents are vulnerable.

Threat 1: Aggression as a result of conversion

Conversion to Christianity – understood as the conscious decision to abandon traditional Indigenous religious practices, often after joining an Evangelical denomination – is a major cause of human rights abuses in the Nasa resguardos. Indeed, *indígenas* who convert to Christianity and abandon their ancestral beliefs face aggressive opposition. As Lía Salomé Sánchez, a researcher, explains: “In many Indigenous communities, including the Arhuaca, Kogui and Nasa communities, converts to Christianity who subsequently reject their ancestral traditions are isolated, displaced, uprooted, threatened, punished and their fundamental rights are violated.”¹⁰

Numerous examples of hostilities against Christians can be given, including cases of denial of health services, forced displacement and physical mistreatment.¹¹ In one case, a group of 139 Indigenous Christians were required by Indigenous leaders to sign a document renouncing their beliefs. If they refused, they

¹⁰ Interview with Lía Salomé Sánchez (2014).

¹¹ “Julio Cuspian and family displaced by Indigenous local authorities,” Violent Incidents Database (www.violentincidents.com); “127 displaced Indigenous forced to leave the territory where they were,” Violent Incidents Database (www.violentincidents.com); Visión Agape internal report, September 2010; Visión Agape internal report, October 2010; Visión Agape internal report, February 2011; “Indigenous Pastor Poisoned; Abuses against Christians Continue in Colombia,” Visión Agape, 16/03/2011; “Colombia: Here one feels safe...!” Visión Agape, 21/11/2011; Trip report by CO10, Visión Agape staff, 8-11 July 2014.

would face violent consequences, including torture and exclusion of access to agricultural lands, a point I return to in Threat 3. Overwhelmed by these threats, these Indigenous Christians decided to sign the document, but some of them later decided to remove their names from it. In April 2013 they were forced to flee the resguardo and now live in makeshift tents in a village called El Pital made of wood and plastic on a piece of land where the owner of a farm lets them live temporarily. (I visited this refugee camp in January 2015 and spoke with the Indigenous Christians living there.)

Threat 2: Recruitment of youths into criminal organizations

During the armed conflict between the FARC and the Colombian government, the cabildos were in a complicated and delicate position. Several sources report that FARC guerrillas with some frequency entered Indigenous resguardos to provision themselves and to find new recruits, including children. Because of the poverty and high levels of unemployment, many youths were persuaded to join the guerrillas.¹²

At times, some cabildos may have actively collaborated with the FARC, granting them access to the resguardos or participating in drug trafficking activities, in return for benefits,¹³ but the Nasa cabildos have also voiced their opposition to the recruitment of youths (HRW 2013:215). For example, they petitioned both the Colombian Constitutional Court and the Inter-American Commission on Human Rights to request the assistance of the state to protect their community and their leaders against the threat of the internal armed conflict.¹⁴ The Nasa have also sentenced the guerrillas in its own justice system.¹⁵

Threat 3: Exclusion of access to agricultural lands

According to article 329 of the Colombian Constitution, land in the Indigenous territories is collectively owned and subject to decisions of its authorities. Access to agricultural land is granted by the cabildos, who administer community resources. Exclusion of access to agricultural lands is a major human security threat that cultural dissidents face, because it implies they can no longer provide for their livelihood. Because of its severity, I discuss it as a separate threat, although it is normally a consequence of religious identity (conversion), semiactive (church attendance) or active behavior (missionary activity and membership of the OPIC).

¹² Interview with CO06 (2012).

¹³ Interview with Lía Salomé Sánchez (2013).

¹⁴ T-025/2004, Corte Constitucional de Colombia; T-030/2016, Corte Constitucional de Colombia.

¹⁵ “La justicia indígena que unió a los colombianos,” *Semana*, 12/11/2012.

A high-profile case is the one of Jaime Tenorio Eudil who was convicted under false charges including an attempted murder – false, according to my interviewees – in April 2010 and sentenced by the Indigenous council of Mosoco Páez Belalcázar, a resguardo in the Department of Cauca, to 20 years in prison. After a few months in a traditional prison, he was transferred to a jail in Popayán, leaving a large family behind with virtually no income after his land was also confiscated.¹⁶

Threat 4: Violent assaults against church attenders

Although conversion away from traditional religion is an important cause of many of the hostilities experienced by cultural dissidents as argued in Threat 1, regular church attendance is a specific threat that puts Indigenous Christians at risk of violent assaults. I have collected evidence that church services in the Nasa resguardos have been violently disturbed and explicitly targeted. Semi-active religious behavior has also led to severe consequences, including beatings and forced displacement.¹⁷

Anecdotal evidence suggests there is a pattern of systematic attacks on properties that are used to hold church services by community leaders, who visibly oppose church services from being held. This pattern has also been confirmed by many interviews I conducted. In an interview with María Teresa Mesa, who was evicted from her community and now runs a safe house for persecuted Nasa Christians in a nearby town, said that “the only possibility to reach an agreement with the cabildos is for us to stop holding church services.”¹⁸

Threat 5: Reprisals for rejecting traditional Indigenous education

One of the main changes in the behavior of Nasa converts to Christianity is their almost systematic rejection of what they refer to as ‘traditional Indigenous education,’ which they equate to ‘witchcraft’ and consider ‘pagan.’ Most converts express their conviction that traditional Indigenous education is contradictory to and incompatible with the Christian faith. It is here that the description ‘cultural dissidents’ is particularly relevant, as the conversion implies an explicit condemnation of one of the core elements of the cultural identity of the Nasa, which is very dear to Nasa leadership as it is one of the instruments they use to preserve the Nasa cultural identity, as explained above.

¹⁶ “The Gospel keeps me free in jail: Jaime Tenorio,” *Visión Agape*, 06/11/2013; “Jaime Tenorio Sends Thanks From Jail,” *Visión Agape*, 04/02/2014; “Quisiera irme de aquí”: Marleny de Tenorio,” *Visión Agape*, N/D.

¹⁷ Interview with Lía Salomé Sánchez (2015); “Indigenous Believers Continue to be Threatened by the Authorities,” *Visión Agape*, 09/10/2014; Trip report by CO10, *Visión Agape* staff, 8-11 July 2014; “Indigenous authorities continue threatening believers in Huila,” *Violent Incidents Database* (www.violentincidents.com).

¹⁸ Interview with María Teresa Mesa (2014).

Molina-Betancur argues that Indigenous autonomy in the field of education is very advanced, yet still insufficient, particularly with regard to the administration of resources (2012). Cultural dissidents, however, regard the political autonomy of the *resguardos* as a limitation of the freedom of education. Specifically, Nasa converts complain there is no possibility to opt out of the mandatory Indigenous curriculum, in which ‘pagan’ elements are included.¹⁹

Jaime Tenorio Eudil, the community leader mentioned before, started opposing the religious education curriculum and corruption within his Nasa Indigenous group after his conversion, which had severe consequences, according to a press report:

Nasa schools teach children magic rituals and deny state benefits to tribal Christians, offering Indigenous identity only to those who worship traditional gods. Jaime’s [colleagues in the *cabildo*]’s response: accusing him of murder and sentencing him to 20 years in prison without possibility of appeal.²⁰

Threat 6: Reprisals for refusing to participate in traditional Indigenous rituals

Cultural dissidents who reject traditional Indigenous education generally also refuse to take part in traditional Indigenous rituals (including traditional medicine), which they deem incompatible with their newly adopted Christian faith. A female Indigenous leader of a small Christian church, explained:

We are being persecuted for being members of the OPIC, because the *cabildos* force us to take part in rituals and witchcraft; not only do they take away from us what we are entitled to by the state, but they also want us to go to the traditional doctors and do things that are against the Bible.²¹

This concern is shared also by Christian converts who did not join the OPIC, like Pastor Hermes Pete, who has tried to dialogue with the *cabildos*. He also denounced the pressure the Indigenous leaders put on Christians who no longer wish to participate in the traditional rituals.²²

The violence suffered by Jaime Tenorio and his family, described above, is also a direct consequence of his refusal to participate in traditional Indigenous rituals.²³ This report was confirmed to me by Ferney Tenorio, Jaime Tenorio’s son,

¹⁹ Interviews with CO08 and Hermes Pete* (2013).

²⁰ “Indigenous Christians falsely accused for their faith remain hopeful,” *World Watch Monitor*, 02/04/2013.

²¹ Interview with CO22 (2013).

²² Interview with Hermes Pete* (2013).

²³ “Colombia’s Indigenous believers denounce abuses in Open Doors Forum,” *Visión Agape*, 17/12/2012.

whom I interviewed in 2015, as well as by Visión Agape staff who visited him in prison.²⁴ Jaime Tenorio's punishment for refusing to take part in traditional religious activities might seem very extreme – it could also involve other factors that were not revealed to me – but the opposition to cultural dissidents in this realm is a pattern in other interviews as well.

Threat 7: Restriction of initiatives to establish Christian education

In fact, any form of non-traditional education, including Christian education, is opposed by Nasa leaders who require all Indigenous children to be educated in pre-Columbian customs and traditions. Those who engage in such initiatives, whether they belong to the OPIC, ICEN or operate independently, are vulnerable to severe human security threats. There are numerous cases in which the people that create or serve in Christian educational institutions are denied access to water and health services, physically attacked, imprisoned, tortured, displaced and sometimes killed as punishment. School buildings are subject to arson attacks.²⁵

In the Nasa community, confessional education also seems to be a symbolic issue. As was indicated earlier, the separation between the government and church (religious) spheres is not part of the Nasa Indigenous worldview. This means that setting up a confessional school goes beyond the school itself. The school becomes a cultural center, is used to organize church services and the land around the school is used as agricultural land. As such a confessional school very easily becomes a symbol of subversion against the authority of the cabildos.²⁶

Threat 8: Violent assaults against people engaging in missionary activity

The conducted interviews suggest that missionary activity causes Christians to be threatened and assaulted in most Indigenous communities, including in Nasa resguardos.²⁷ Sentence SU-510/98, indicates that some religious rights may, under specific circumstances, be restricted if this is necessary to preserve and protect the traditions of the Indigenous community. This is a reality in most Indigenous communities of Colombia, including in Nasa resguardos. Reports by Visión Agape

²⁴ Interviews with CO10, Ferney Tenorio and CO23 (2015).

²⁵ Interviews with Ana Silvia Secué (2012), CO18, CO09, CO19, CO20 (2013) and with several children who used to go to schools that were destroyed by Indigenous authorities (2015); "Indigenous Pastor Poisoned; Abuses against Christians Continue in Colombia," Visión Agape, 16/03/2011; "Colombia: Indigenous authorities capture Christians in Cauca," World Watch Monitor, 15/04/2013; "The Hope School under Arrest," Visión Agape, 06/09/2016.

²⁶ Interview with José Refugio Arellano Sánchez (2016).

²⁷ Interviews with CO17, Pedro Santiago Posada* (2013), Lía Salomé Sánchez, María Teresa Mesa and Evangelista Quebrada (2014); "Indigenous Pastor the Victim of Witchcraft in Cauca," Visión Agape, 10/07/2014; "A missionary translator of the Bible is threatened," Violent Incidents Database (www.violentincidents.com).

confirm that missionary activity “constitutes a risk” that “frequently occurs in the Arhuaca, Nasa and Kogui communities.”²⁸

According to statements of the cabildos in court cases, they consider missionary activity as an affront to Indigenous traditions, and they therefore see it as legitimate to restrict this activity, and to punish whoever engages in it. The fact that missionary activity – simply presenting the Christian faith – is not the same thing as forcing religious conversion, does not seem to make any difference. A pattern thus emerges: missionary activity is not desired by Indigenous leaders in Nasa resguardos, and can lead to violent reprisals, including physical violence and forced displacement.

Threat 9: Intimidation of members of interest groups

In the Nasa resguardos, the main interest group cultural dissidents are part of is the OPIC. This association was formally founded in 2009 by Ana Silvia Secué and Rogelio Yonda, both Evangelical Christians belonging to the Nasa ethnic group, in opposition to the CRIC, which federates the cabildos of the resguardos of the Nasa and other ethnic groups in the Department of Cauca. The members of the OPIC are mostly Evangelical Christians who reject the authority of the cabildos. The OPIC openly denounces and rejects the policies of the CRIC, particularly the restrictions it places on missionary activity, alternative confessional education and participation in traditional religious celebrations.²⁹ The OPIC describes itself as a “cry of independence [from the CRIC]” representing “thousands of Indigenous people who disagree with the CRIC and refuse to submit to its philosophy and parameters.” (OPIC 2009)

As can be expected, the relationship between the CRIC and the OPIC is hostile.³⁰ The CRIC has sued the OPIC for violating Indigenous autonomy, accusing it of constituting a threat to the Indigenous culture. The mere existence of the OPIC is contested by the CRIC. In the legal complaint the CRIC filed against the OPIC, the former argues that the latter is disrespectful “of the fundamental rights of ethnic, cultural and social diversity, of autonomy and selfgovernment, of education that respects and develops the cultural identity, physical and cultural survival that belongs to a proper or special Indigenous jurisdiction.”³¹

²⁸ Visión Agape internal report, September 2015.

²⁹ Interview with Leonardo Rondón (2010).

³⁰ “Prensa promueve sentimientos de racismo, segregación e intransigencia ciudadana en el Departamento del Cauca,” Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo, 19/07/2012.

³¹ Demanda de Eduardo Camayo, representante legal del Consejo Regional Indígena del Cauca (CRIC), ante el Tribunal Administrativo del Cauca, Popayán, 30/10/2014.

In fact, in all court cases involving human rights abuses related to freedom of religion, the cabildos consistently refer to their constitutional prerogatives, making the point that anything that happens inside their resguardos occurs within the framework of Indigenous autonomy, and that therefore the decisions of the cabildos are legitimate. This is also the case in the Sentence T-659/2013, where the Colombian Constitutional Court confirms the decision of the cabildos to expel families who had joined the OPIC from their land in virtue of the Indigenous autonomy, but not without observing the following:

It does not escape the attention of the Court that in some cases, the exclusion of some members of Indigenous communities may be unjustified and unconstitutional, as when a member of a resguardo is forced to leave the collective territory for reasons beyond his control, such as physical coercion, displacement or threats. These cases must be considered by the Indigenous authorities and duly analyzed by the corresponding [Indigenous] judges (para 7.4.6).

This statement comes almost at the end of the sentence and has no legal consequences but seems to indicate that the Constitutional Court does have concerns about human rights violations in Indigenous resguardos but cannot do anything about it because it does not entertain jurisdiction over these matters in virtue of the Indigenous autonomy.

Threat 10: Intimidation to prevent political participation

A number of cultural dissidents have participated in politics, standing for local or national offices. Ana Silvia Secué, one of the leaders of the OPIC ran for a senatorial seat in 2014. Pastor Hermes Pete, who is not affiliated to the OPIC, created the Proyecto Social Cristiano [Christian Social Project] to participate in a municipal election in the municipality of Belalcázar, in which Indigenous and mestizo (persons of mixed race) candidates were fielded. These political bids were unsuccessful.

In all cases in which Christians attempted to participate in politics, they were vehemently opposed by the cabildos. Cultural dissidents who have decided to stand for election or to get involved in political parties have been intimidated to desist from these projects. In the best case, the political activity of Hermes Pete “created trouble for us with the cabildo.”³² Ana Silvia Secué’s senatorial campaign, which revolved around her demands for freedom of education, led her to

³² Interview with Hermes Pete* (2013).

be threatened with torture on several occasions by the Indigenous authorities. In addition to this, her participation in politics has brought persecution to other leaders such as Rogelio Yonda, who reported he received a death threat: “The authorities have had a meeting and they agreed to kill you because you are participating in politics. As you have bodyguards, we will send assassins.”³³

6. Concluding remarks

The threats discussed in this paper reveal a clear pattern. When Indigenous Christians refuse to obey the orders of the Indigenous leaders, and display deviant religious behavior, they suffer human security threats including imprisonment, forced displacement, denial of access to water, healthcare and education, confiscation of homes and farmland, torture, and even death.

To summarize, I have made the case that cultural dissidents are indeed vulnerable to suffer human rights abuses, both because of their religious identity (conversion) and because of their behavior (social activism and missionary activity). This being said, it cannot be denied that the attitude of the cultural dissidents is often perceived as a provocation by the cabildos. Provocation is by no means a justification for any human rights abuse, but it should invite a self-reflection by cultural dissidents about their statements and actions.

Claiming the right to religious freedom will not provide the solution as long as it is not recognized that the conflict opposing the cultural dissidents and the cabildos is not only religious or cultural, but also political and material, a distinction that has little relevance anyway in the holistic Indigenous worldview in which politics and religion blend together. In other words, the animosity between the cabildos and the cultural dissidents can be considered as both grievance-based and greed-based. Indeed, many forms of religious behavior of Indigenous Christians are not limited to following Christian traditions or to presenting the Christian faith.

In many cases, it also implies an invitation to leave the CRIC and to join the OPIC and is therefore seen as political subversion. For example, Jaime Tenorio’s imprisonment, allegedly because of made up charges, could be interpreted as a reprisal for preaching the Gospel, but it was also a punishment for his invitation to join the political opposition to the Indigenous leaders and to reject traditional Indigenous education.³⁴ Similarly, a Christian school is not just a teaching facility but also a new Christian society, outside the influence of the cabildos. Refusing to take part in Indigenous rituals is more than just believers exercising their right to freedom

33 Interview with Rogelio Yonda (2015); “Participation in Politics Increases Persecution of Indigenous Believers,” *Visión Agape*, 26/02/2014.

34 Interview with Ferney Tenorio (2012).

of religious expression, or freedom of worship. Both are political statements that signal that cultural dissidents no longer submit to the authority of the cabildos.

7. Policy recommendations to address minority-within-the-minority conflicts

Based on my case study on the cultural dissidents in the southwestern highlands of Colombia, in this section I give a few policy recommendations that can be used to address similar minority-within-the-minority conflicts.

A central finding was that the far-reaching Indigenous self-government rights, although positive on paper, lead to the risk of human rights abuses, including violations of religious freedom. Research by Nazila Ghanea and Alexandra Xanthaki (2005), Will Kymlicka (1996), Anat Scolnicov (2011) and Meital Pinto (2015) suggests that the issues posed by the imbalance between individual and collective rights in Indigenous communities are widespread, affecting not only religious minorities but also other types of minorities such as gender, sexual and political minorities. Yet, minority-within-the-minority or intra-ethnic conflicts receive relatively little attention in legal scholarship and in conflict studies. Further research into how to solve the puzzle of imbalanced rights that is respectful of collective cultural rights and minority rights is therefore highly relevant. Cases that come to mind are other Latin American countries (other Indigenous territories in Colombia, Mexico, Guatemala, Bolivia, Peru and Brazil) (Nieto Martinez 2005; Kovic 2007; Lopera Mesa 2009; Duarte 2009; Scolnicov 2011; Zegarra-Ballón 2015; Freston 2018) and worldwide (Canada, United States, Israel, Australia, South Asian countries, New Zealand). Examples of discussions of minority-within-the-minority cases are Kymlicka (1996) (Canada and United States), Leighton McDonald (1998) (Australia and Canada), Joanna Pfaff-Czarnecka (2010) (South Asia), Yuval Jobani and Nahshon Perez (2014) (Israel) and Pinto (2015) (Israel and Canada). Findings could further be generalized to religious conflicts within diaspora communities.

A priori, there is no necessary conflict between external protections of Indigenous communities and individual rights of group members as Kymlicka (1996; 2001) and McDonald (1998) assert, but such conflicts are to some degree inevitable “in the real world,” as the Nasa resguardos illustrate. In *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1996), Kymlicka advocates for the broadest possible endorsement of “group-differentiated rights” for ethnic minorities but cites two limitations to this endorsement: (a) restrictions of the basic civic and political rights of its members and (b) rights that enable one group to oppress or exploit other groups. In other words, Kymlicka is favorable to maximize tolerance of all facets of minority culture as long as it does not contradict the non-negotiable principle of internal autonomy.

Kymlicka's normative stance seems reasonable, but its application is challenging. Imposing it by coercion is obviously problematic. Recognizing this challenge, he explores some possible solutions. The first is to seek a negotiated agreement on fundamental principles. The government, or in its default, civil society organizations, should facilitate serious mediation efforts between Indigenous leaders and cultural dissidents, although this is evidently easier said than done. In the Nasa resguardos there is evidently a lot of incomprehension between the different parties that could perhaps be amended through conflict resolution. In order for this to happen, however, there needs to be political will on both sides to dialogue, and a broadly shared recognition that the principle of self-determination also has an internal dimension, which cannot be used to commit any human rights abuses (Jones 1999).

The rejection of religious freedom, or of any other human right for that matter, by appealing to traditional culture is nonsensical, as Martha Nussbaum stresses. In *Women and Human Development: The Capabilities Approach* (2000), she confronts the frequently heard charge that the language of justice and human rights is a form of Western and colonial imposition that is incompatible with the norms of traditional cultures. Referring to the matter of discrimination of women, her reflection can also be useful to address minority-within-the-minority conflicts in general. Among other things, Nussbaum argues that using the notion of tradition to resist human rights is not only self-serving but also too simplistic, because it foregoes the fact that cultures are dynamic and are “scenes of debate and contestation,” which include dominant voices but also voices of women (and, by extension, any vulnerable group) “which have not always been heard.” In other words, if one wishes to appeal to tradition, one must also be willing to listen to the non-dominant voices that are also part of tradition (2000:225). In a similar vein, Toft argues that because “the human rights regime has undergone a systematic diffusion across the world” it is not only incorrect to present it as a Western imposition but also is a “denial of agency” of vulnerable communities (2016).

Any negotiated agreement or legal solution to the complex issue of minority rights faces the challenge of its enforcement, above all in contexts where there is no political will or state capacity to apply the rule of law, such as in remote rural areas of Colombia. An international tribunal, for example, can order the rights of religious minorities to be respected, but this will be meaningless if the orders are not enforced, as frequently occurs with such rulings in rural Mexico (Dabène 2008; Petri 2019). I have personally witnessed this in religious conflicts in Indigenous communities in the states of Oaxaca, Chiapas and Jalisco (Mexico). Negotiated agreements were not enforced, in part due to the remoteness of these communities.

The second solution Kymlicka proposes is for the state to offer incentives for liberal reforms inside Indigenous communities. There are antecedents of success-

ful progressive lobbies in other Indigenous communities that could be a source of inspiration. Cleary's research on changes in women's political rights in Indigenous communities in the state of Oaxaca in Mexico revealed that the formalization of Indigenous autonomy, which was previously used to restrict the right of women to vote and to stand for election, created space for liberal activists to expand female political participation (2017). This example is interesting not only because it shows it is possible to advance human rights in Indigenous communities without renouncing Indigenous self-determination, but also because it hints at a path that cultural dissidents could follow, namely to lobby for the formalization (turning into positive law) of the Indigenous self-government institutions which are now largely based on customary and oral legislation. This would reduce the large degree of arbitrariness in which core legal principles such as due process risk being disregarded, a point that is repeatedly stressed by the human rights commissions at the state level in Mexico.³⁵

For this solution to be effective, however, members of Indigenous communities who disagree with their authorities must not feel encouraged to leave, because otherwise the incentive for internal democratization weakens. As Hirschman observes, "the greater the opportunities for exit, the easier it appears to be for organizations to resist, evade, and postpone the introduction of internal democracy even though they function in a democratic environment." (1970:84).

The third solution is to strengthen international mechanisms for protecting human rights. Kymlicka argues that Indigenous groups are generally more willing to submit to the judicial review of international tribunals than to constitutional courts which enforce the constitution of their conquerors. The paradoxical situation in the case of Colombia is that the Constitutional Court has categorically defended the autonomy of the *resguardos indígenas*, at the expense of the individual (religious) rights of its members. The obvious international mechanism cultural dissidents would turn to is the Inter-American Commission on Human Rights (IACHR), but it would remain to be seen how this institution would address the conflict between individual and collective rights, or whether it would confirm the jurisprudence of the Colombian Constitutional Court. Based on a review of jurisprudence, I found that the IACHR has never directly addressed the issue of minority rights (including rights of religious minorities) in Indigenous communities. So far, it has only received cases that were related to the external dimension of self-determination (2015). Also, it is noteworthy that it has a rapporteur on Indigenous rights but not one on religious freedom, as I already mentioned.

Whether through the IACHR or some other institutional arrangement, the present imbalance of the Colombian legal system needs to be addressed. As stated

³⁵ Interview with Eduardo Sosa Márquez (2016).

earlier, the right to self-determination of Indigenous groups needs to be balanced with the protection of the human rights of minorities, including religious minorities, living in the *resguardos indígenas*. To paraphrase Kymlicka, the respect of the cultural rights of Indigenous groups are only acceptable if they protect the freedom of individuals within the group (2001:20-23). This calls for active lobbying at both national and multicultural institutions in order to ensure the full enforcement of art. 8-2 of ILO Convention 169 on Indigenous and Tribal Peoples (1989), namely the principle that the preservation of Indigenous customs and institutions cannot contradict fundamental rights, and that conflict resolution procedures must be established to solve any unbalance between them. Art. 8-2 reads:

These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

A related point concerns the exploration of models for the accommodation of differences in polities with deep societal cleavages (Gurr 1993; Kymlicka 1996; Lijphart 2004; Vargas & Petri 2009; Achterhuis & Koning 2017), as is evidently the case in the Nasa community, and the legal precedent of “reasonable accommodation” which “acknowledges that there are plural thoughts on [...] issues and should be accommodated when reasonable” (Du Plessis 2014:105). A possible solution to the religious conflict I described in my case study could be that cultural dissidents accept the political authority of the Indigenous leaders, but that they are given the possibility to opt out of those social activities they cannot take part in because of their religion, like the mandatory religion classes in Indigenous schools.

A solution in the field of education could be to implement a system in which traditional Indigenous education and confessional education are both funded by the Colombian state, inspired by the Dutch educational system since 1917 which came into being as a solution to the *schoolstrijd* [*school struggle*] in The Netherlands (1848-1917). Initially, the conflict revolved around freedom of education, with confessional groups demanding the legal possibility to create private confessional schools, a right that was included in the 1848 Constitution. Considering the high costs for establishing and maintaining confessional schools, anti-revolutionary politicians Guillaume Groen van Prinsterer (2008 [1847]) and Abraham Kuyper (1880, 1898) then advocated for the public financing of confessional education, which was granted after a long struggle, through a series of political reforms referred to as ‘the Pacification’ that were adopted in 1917. This led to a

unique system in which the state funds all schools equally, both secular and confessional, with some degree of autonomy to establish policies regarding curriculum and teacher appointments (Hooker 2009), while the state maintains general educational standards applicable to all (Du Plessis 2014).

The Dutch model in which religious schools are publicly funded remains controversial and continues to be opposed on ideological grounds by various (secular) political parties. Interestingly, most religious freedom datasets view the Dutch educational system as a form of state favoritism of religion, which is ironic, because most religious groups view it as a major advance in terms of religious freedom. Buijs specifically cites the Dutch educational system as an expression of pluralism (2013), with the caveat that it should not lead to “religious segregation” but “provide a platform for encountering other religions and cultures” (Buijs et al. 2013:12-13). At any rate, this model allowed to peacefully accommodate major political differences of religious and non-religious groups. It could be interesting to explore a similar solution for the cultural dissidents in the Nasa community.

Kymlicka accepts that “intervention is justified in the case of gross and systematic violation of human rights, such as slavery or genocide or mass torture and expulsions” (2001:170). Based on the evidence presented above, one could argue some form of intervention could already be justified, but the Colombian Constitutional Court has systematically ruled otherwise or declared not to entertain jurisdiction over cases involving Indigenous peoples.

McDonald (1998) warns against searching for a general theory to solve conflicts between rights. In his view, such conflicts are way too complex for a one-size-fits-all solution. Instead, he recommends a contextualized approach that takes the identification of the interests that underpin the conflicting collective and individual rights as its starting point. Such an approach could for example take into consideration elements that are important to the cabildos such as the money transfers of the Colombian government to the resguardos and the (legitimate) concerns for the preservation of their culture as well as elements that are important to the cultural dissidents such as the possibility to hold church services and to opt-out of the aspects of the Indigenous traditional education they consider as witchcraft. A contextualized approach may provide an alternative solution to accommodate conflicting interests than the current jurisprudence regarding Indigenous resguardos that only offers two options for cultural dissidents; either they accept the political authority and the rulings of the cabildos, or they leave the resguardo.

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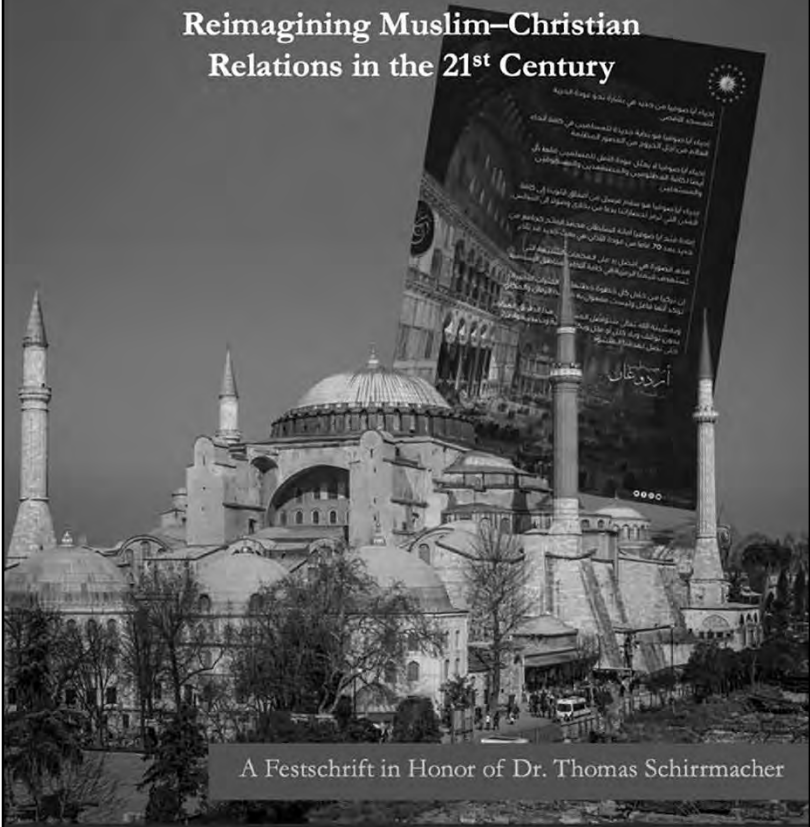
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God Needs No Defense

Reimagining Muslim–Christian
Relations in the 21st Century



A Festschrift in Honor of Dr. Thomas Schirmacher

Editors:

Thomas K. Johnson and C. Holland Taylor

Institute for Humanitarian Islam, Center for Shared Civilizational Values,
and World Evangelical Alliance Theological Commission.
CPI Books: Ulm, 2021. 228 pp. ISBN 978-3-86269-223-1.
Free download: <https://bit.ly/3HKLOV9>.

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

2022 Report on international religious freedom

US Office of International Religious Freedom Religious Freedom, 15 May 2023
<https://bit.ly/46YBENk>

This annual survey of the state of religious freedom around the world was produced under the direction of Ambassador-at-Large for International Religious Freedom Rashad Hussain.

2023 Nairobi Declaration on Freedom of Religion or Belief

IPPFORB, 3 May 2023
<https://bit.ly/46oxYKn>

Statement from the fourth International Parliamentarians' Conference, "Leave No one Behind: The Role of Freedom of Religion or Belief in Advancing Human Flourishing and Just Societies," held on 2-3 May 2023 in Nairobi, Kenya.

Advancing freedom of religion or belief: The impact of IPPFORB's network in 2022

IPPFORB, 9 August 2023
<https://bit.ly/3QUJS48>

This article details the activities carried out in 2022 by IPPFORB, its partners, and individual parliamentarians who have been instrumental in driving positive change.

Landscape of freedom of religion or belief

UN Special Rapporteur on Religious Freedom, 30 January 2023
<https://bit.ly/3OJtG2O>

This first report by newly appointed UN Special Rapporteur for freedom of religion or belief Nazila Ghanea provides an overview of FoRB in the world. It was submitted to the UN Human Rights Council.

Statement on the Persecution of Christians

IRFBA, 17 May 2023

<https://www.state.gov/irfba-statement-on-christians/>

Statement expressing concern about persecution of Christians around the world.

Regional and Country Reports

Europe: Status of freedom of religion or belief in the European Union

USCIRF, 24 July 2023

<https://bit.ly/45SkWOo>

This document presents an overview of the topic. The EU and many of its member states are active in promoting religious freedom abroad, yet some EU countries have nonetheless maintained or implemented laws and policies that restrict the rights of religious minority groups or impact them in a discriminatory manner.

India: Violence in Manipur, north-east India

IRFBA, 21 June 2023

<https://bit.ly/3qj0UHx>

This report details grave abuses against human rights, human dignity and disruption of peaceful relations between people groups seven weeks after communal violence broke out in Manipur, north-east India.

Iran: Rights violations against Christians in Iran

Article 18, Open Doors, MEC, CSW, 19 February 2023

<https://bit.ly/47MAd5t>

This joint report outlines ongoing violations of the rights of the Christian minority in Iran, including churches being closed to Persian-speaking believers. Christians have also faced criminal charges for supporting protests against the death of Mahsa Amini.

Iraq: 2002-2023. The Challenges facing Iraqi Christians: Finding a way forward

Stand with Iraqi Christians and others, May 2023

<https://bit.ly/45GTOCl>

This report is a compilation of articles authored by different institutions and journalists analyzing the history of Iraqi Christians and the current situation.

Iraq: Christians in post-2003 Iraq: Fragmentation dynamics, ethnic and sectarian fault lines

CRFI, 11 August 2023

<https://bit.ly/45HtqYV>

The report examines the aftermath of the US-led war in Iraq and the precipitous drop in the Christian population.

Iraq: Country overview

Religious Freedom Institute, March 2023

<https://religiousfreedominstitute.org/country-overview-iraq/>

An RFI report on Iraq with the goal of understanding issues and recommending policy on religious freedom.

Latin America: Bi-annual report, January-July 2023

Observatory of Religious Freedom in Latin America, 15 August 2023

<https://bit.ly/3LIzsJn>

This report documents violent incidents on the basis of religion in the Latin American region.

Latin America: Religious freedom for Indigenous communities in Latin America

USCIRE, June 2023

<https://bit.ly/3YQ8IUx>

This report provides detailed information about recent religious freedom violations against Indigenous communities and individuals; analyzes the international mechanisms intended to protect Indigenous peoples' religious freedom, and assesses domestic legal measures related to the protection of Indigenous peoples' right to manifest their religion.

Mozambique: Escalating military violence impacting peace and stability

Open Doors Canada, 29 June 2023

<https://bit.ly/3QVOx5E>

This report examines the impact of military violence on Mozambican Christians and makes policy recommendations to protect believers.

Nepal country update

USCIRE, 17 August 2023

<https://bit.ly/3spxHlz>

This report provides an overview of religious freedom conditions in Nepal, examining how the country's criminalization of proselytism, blasphemy, and cow slaughter violates protections of the right to freedom of religion or belief under international human rights law.

Nigeria: Unfolding genocide?

APPG FoRB (UK), July 2023

<https://bit.ly/3QWbTbI>

A report by the UK All-Party Parliamentary Group for International Freedom of Religion or Belief on violence against Christians in Nigeria, following hearings on the topic.

Nigeria: Killings and abductions in Nigeria (10/2019-9/22)

Observatory for Religious Freedom in Africa, 24 February 2023

<https://bit.ly/3QGioyC>

This report documents killings and abductions by region of Nigeria and by type of attack.

Tunisia: Annual report: Religious freedom Tunisia 2022

Attalaki, May 2023

<https://bit.ly/47GfoZD>

This is the annual religious freedom report of the Attalaki Organization's Committee for Religious Freedom, a Tunisian youth organization.

Yemen: Religious freedom in Houthi-controlled areas of Yemen

USCIRF, May 2023

<https://bit.ly/3Ebx7uk>

This factsheet explains how Houthi governance justified on religious grounds is putting severe pressure on religious minorities in Yemen, including Christians, Baha'is, Jews, and non-religious persons.

Specific Issues

Coptic Identity: Recognizing the Coptic Indigenous population status for protection from state-sponsored discrimination

Coptic Solidarity, May 2023

<https://bit.ly/47MyEV9>

This report outlines the history and current status of Coptic Christians in Egypt and the Middle East.

Gender-specific persecution: A web of forces

Open Doors International, March 2023

<https://bit.ly/45qjiEg>

Open Doors' third annual report on gender-specific persecution.

Refugees: Report on Zomi-Myanmar refugees in Malaysia and India

Mission of Hope, June 2023

<http://zomirefugee.org/mission-of-hope-report-on-zomi-refugees/>

This report by a fact-finding mission to Malaysia and India seeks to show how Zomi inside and outside Burma have been persecuted.

Sanctions: Assessing the impact of sanctions on humanitarian work

Geneva Graduate Institute, WCC, WEA, CI and ACT Alliance, March 2023

<https://bit.ly/3P8sjfw>

A systematic overview of the challenges that sanctions pose to the humanitarian work of churches, exploring pathways for addressing these challenges.

Violent militancy

Open Doors, May 2023

<https://bit.ly/45FhLKj>

An Open Doors Canada brief on Nigeria, Burkina Faso and Cameroon.

Book reviews

Publishers: Do you have a new book published? We have expert reviewers.

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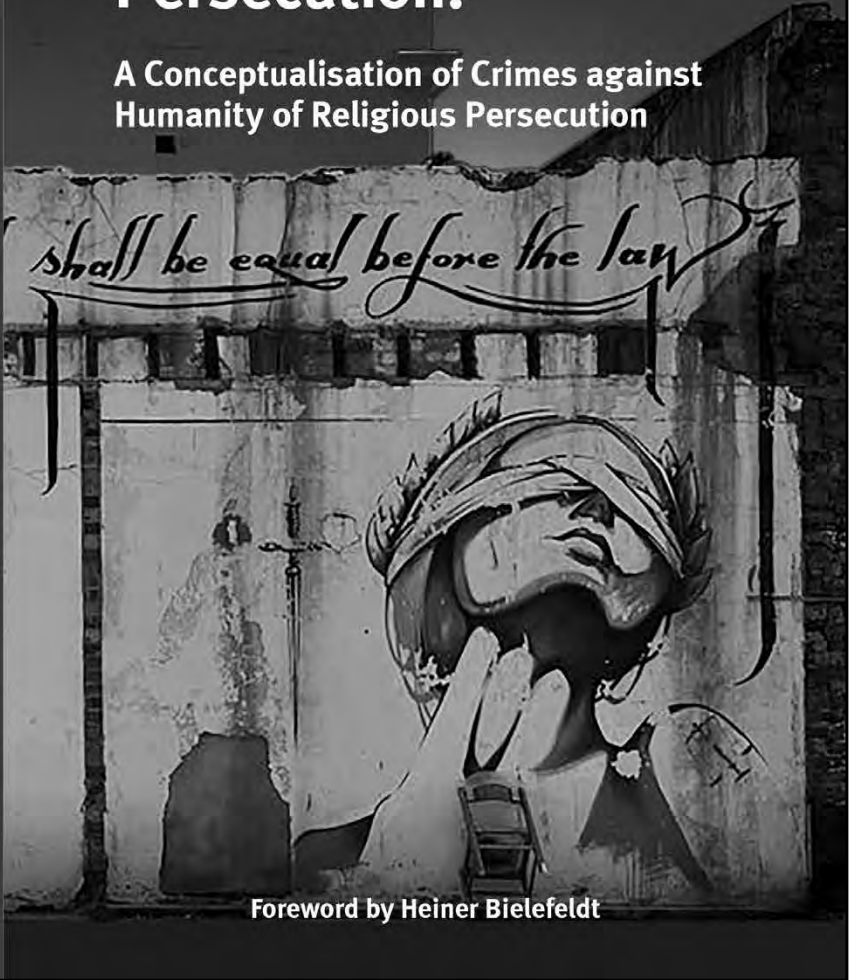
Contact: bookreviews@iirf.global

Werner Nicolaas Nel

Grievous Religious Persecution:

A Conceptualisation of Crimes against
Humanity of Religious Persecution

VKW Religious Freedom Series (IIRF) 5



Foreword by Heiner Bielefeldt

Religious Freedom Series 5, VKW: Bonn, 2021, 496 pp, ISBN 978-3862692040, €34

Free download: www.iirf.global

Book reviews

Grievous religious persecution: A conceptualisation of crimes against humanity of religious persecution

Werner Nicolaas Nel

VKW: Bonn, 2021. 496 pp. ISBN 978-3862692040, €34 or free download from iurf.global

Two frustrations strike those who study the international laws intended to protect human beings from “barbarous acts” and “unimaginable atrocities.” The first is a perceived (and often real) divide between theory and practice; the second is the lack of enforceability of the promise of human rights in modern international treaties. States can and do ignore judgments of human rights tribunals. Individuals may (and do) escape prosecution due to the International Criminal Court’s relatively narrow jurisdiction. And although the Rome Statute of the ICC does have the teeth needed for enforceable decisions and penalties, anyone who reads the Preamble’s lofty language and considers contemporary global conflict situations will conclude that the frustrations are real and persistent, and that more must be done. This book seeks to resolve both frustrations, in the realm of religious persecution.

Though the notion of “grievous persecution” is recognized almost universally today, it nonetheless lacks meaningful coherence in the context of international criminal justice. The Rome Statute, which applies to “the most serious crimes of international concern,” itself mentions only “persecution” – defined as “the intentional and severe deprivation of fundamental rights . . . by reason of the identity of the group or collectivity.” Thus, one ambiguity is how *severe* the deprivation must be to be termed and prosecuted as “grievous” persecution. The nature of a group’s “identity” is likewise an obstacle to concrete legal description. As a consequence, Werner Nel posits that “legal uncertainty and judicial unease” may well account for “the international criminal justice systems’ perceived reluctance to enforce prosecution measures based on ‘grievous persecution’” (179).

Nel’s book aims primarily to provide clarity on this topic by proposing a comprehensive yet workable and justifiable approach to investigating and prosecuting grievous religious persecution. The approach, an extensively developed taxonomy, seeks to convincingly resolve the ambiguities surrounding this category of crime. To do so, the taxonomy lays out the legal preconditions for establishing the ICC’s subject-matter jurisdiction over conduct constituting crimes against humanity in the category of religious persecution.

Nel conceives of “grievous persecution” as a *mass discriminatory crime resulting in severe deprivations of fundamental human rights*. As a result, the persecutor

must have acted with a conscious and preconceived discriminatory mindset to target a person by reason of his or her identity. Religion is one of several criminalized grounds of persecution under the Rome Statute, and Nel therefore focuses attention on the significance of *religious* identity. He carefully explains that the definitive factor is not whether the victims belong to a specific, objectively identifiable group, but rather how the persecutors subjectively perceive the identity of that group. Thus, it is vital to assess the role of the victim's religious identity, along with the persecutor's discriminatory intent. In this regard, Nel displays a thorough understanding of the context of persecution – for example, by considering the experiences of those persecuted versus the perceptions of the persecutors and their attempt to justify their conduct.

This focus on identity in the context of religious persecution is crucial. Nel recognizes that religion, arguably more than any other freedom, fundamentally constitutes and orders human identity. It grounds a person's conception of life and produces "profound, identity-shaping convictions and conviction-based practices" (109). Individuals and groups throughout the world not only manifest their religion in worship, teaching, practice, and observance but are also continually persecuted on the basis of their religious identity.

But how ought *religion* to be defined in order to determine who qualifies for legal protection? Nel meticulously works through the characteristics and provides a prudent conclusion: religion must be conceived in its broadest sense to avoid excluding some people from protection. "Regardless of their nature, all deep existential views are equally and non-discriminately protected grounds of religious freedom" (114). Doctrinal specificity here gives way to definitional generality – an expansive concept of religion gives us a broad concept of religious persecution – in order to provide the greatest scope of protection.

Nel is careful to highlight potential misunderstandings, such as the need to distinguish the motive or reason for committing persecution from the "discriminatory intent to target victims based on their religious identity, regardless of the reason or motive" (116). This particular distinction may lose some readers, although likely not those legally astute readers who are well-versed in this particular field and who constitute Nel's primary audience. Crucially, the book provides evidence of both motive and intent coming together, such as in the violent attacks by Da'esh against certain religious groups, inspired and motivated by religious ideology.

A notable highlight of the book is the appendix (one of three, all lengthy and helpfully detailed) that uses the proposed taxonomy to assess the evidence of contemporary religious persecution by Da'esh in Iraq and Syria. This case study provides an excellent model for future investigations and prosecutions. Da'esh is an interesting

choice for the case study, given the current improbability of prosecution: because neither Iraq nor Syria is a party to the Rome Statute, the ICC lacks jurisdiction to prosecute most Da'esh fighters, domestic prosecutions are unlikely, and attempts to establish an ad hoc international criminal tribunal face severe obstacles. Nel acknowledges that his case study is “premised on the presumption that the ICC has jurisdiction” (466). And his choice of case study is by no means a weakness in the taxonomy itself; on the contrary, it provides a thorough demonstration of how a case may be made against Da'esh (or other groups, such as the Tatmadaw in Myanmar) regarding grievous religious persecution, should the ICC acquire jurisdiction.

The framework proposed in this book, if adopted by the ICC, would almost certainly have a trickle-down effect on the prosecution of grievous religious persecution in domestic courts. Although the overall academic approach will appeal more to theorists and practitioners, all readers – and, with any luck, courts – will benefit from the lucid and exhaustive analysis, which is much needed in the fight to protect human rights and end impunity for religious persecution.

Andrew R. DeLoach, Director, Center for Human Rights, Trinity Law School

Liberty for all: Defending everyone's religious freedom in a pluralistic world

Andrew T. Walker

Grand Rapids: Brazos Press, 2021, xii + 258 pp., ISBN: 978-1587434495, \$19.99 paperback

Andrew T. Walker, associate professor of ethics at Southern Baptist Theological Seminary and executive director of the Carl F. H. Henry Institute for Evangelical Engagement, presents a compelling case for supporting and defending religious liberty for people of any (or no) religion.

As a movement with a history of being persecuted, Baptists have long emphasized religious liberty (although they have also failed to live up to that distinctive at times). Walker's work should be interpreted in the context of a larger Baptist historiography and theological tradition. Christians in the West in general, and the United States in particular (the intended audience of the book), are facing a move to the margins, away from the power they once held. Walker's book is a very helpful and timely resource for thinking about religious liberty in the midst of such changes. Walker seeks to cast a cohesive vision for his Baptist (and other evangelical) compatriots who are at a loss when facing vexing contemporary social and political changes.

The limits on state authority over the consciences of citizens have been frequently addressed, in the New Testament (see Acts 5:29) and by many writers on

political theology since then. What makes Walker's argument so interesting and compelling is that he bases his case primarily on biblical theology. He recognizes the value of pragmatic, legal, or philosophical arguments for religious liberty, but his main concern is to formulate a robust biblical case for religious liberty. In particular, Walker argues that the biblical narratives on eschatology, anthropology, and missiology all compel support for religious liberty. The chapters of the book are divided under those three headings, and the construction of the arguments is often quite innovative.

First, Walker describes "inaugurated eschatology" as an "essential foundation for religious liberty" due to how it shapes the Christian understanding of how God's purposes and rule are unfolding (25). In our present penultimate age, when God's Kingdom has been inaugurated but not consummated, God allows truth and error to co-exist, and there is no earthly institution – church or state or other – established by God to punish or coerce those who err in matters of metaphysics. That fact requires religious liberty for all. That religious liberty will not last forever, because at his future coming, Jesus will bring God's judgment and put an end to error, but for now, it must be sustained.

Drawing heavily from the work of Jonathan Leeman and David VanDrunen as well as the Noahic covenant, Walker argues for what he coins a "Christian secularism." He makes a compelling case that religious liberty must be a "social practice irrespective of whether the recipients of such liberty are Christians" (49). He does not advocate for a Christian retreat from the public square, or for the supposed neutrality of secularism over against religious views; rather, he endorses embracing this present period of "contestability" when competing and differing views will be up for grabs. I especially appreciate his comments on the dangers and failures of utopias (whether religious or secular).

As for anthropology, our status as created in the image of God (*imago Dei*) also shapes our view of religious liberty. Although all humanity has been impacted by the Fall, we retain an inherent dignity and a precious conscience that must be protected from misguided and meanspirited attacks by people or the state on all matters, including religious ones. In other words, Walker argues, the presence of the *imago Dei* compels just and kind treatment of all people, whatever their religious persuasion.

As for missiology, Walker contends that as the church spreads the Kingdom of God through missions, church planting, and discipleship, engaging the public square (where appropriate and possible) should be part of its mission works. Debate and discussion are part and parcel of the Christian mandate, but the church in its current penultimate stage must reflect the non-coercive nature of the Kingdom of God as modelled by Jesus. Christians may work to create a social milieu

that is conducive to the work of the church, but they must eschew any coercion, by either church or state, of those who choose a different (or no) religion.

The book is written primarily with a US audience in mind. It would have been helpful had Walker aimed at a more global readership. In fact, while the United States moves away from its historic Christian identity and all that that means for Christian engagement with the state, many nations in sub-Saharan Africa are on a trajectory towards being the Next Christendoms (Philip Jenkins's expression). Walker's perspective could help these countries avoid some of the egregious mistakes of Western Christendom.

It would also have been helpful had Walker addressed, even in a perfunctory manner, how other Christian traditions, past and present, understand the biblical narrative as endorsing notions of godly rulers supporting the work of the church in some manner (such as Calvin's view of a holy commonwealth). And an index would have been helpful, especially in keeping track of the host of authors Walker references. I hope the omission of an index is not becoming a trend among publishers.

This well-written and accessible work provides a detailed, thoughtful, and innovative approach to one of the most pressing and vexing questions facing Christians today. I happily recommend it to scholars, pastors, activists, and students in theological education.

Gordon L. Heath, professor of Christian history, McMaster Divinity College, Hamilton, Ontario

Faith in courts: Human rights advocacy and the transnational regulation of religion

Lisa Harms

Hart Publishing, 2022, 236 pp., ISBN 978-1509945047, US\$137.64

Lisa Harms presents an interesting exploration of the complex dynamics between religion, human rights and transnational legal frameworks. Harms aptly identifies the obstacles, power dynamics and ideological differences that affect legal mobilisation to defend religious freedom. Harms makes an important contribution to academic discourse, as little has been written on the role that religious actors and advocacy groups play in the process of the transnational judicialization of religious freedom conflicts.

The book is an adaptation of the author's PhD dissertation and forms part of the Hart Monographs in Transnational and International Law series. The objective of this series is to publish high-quality scholarship focused on public and private international law.

Harms aims to explore religious freedom as a transnational social field where competition between secular and religious actors is rife. These actors, including human rights lawyers and activists, religious communities, and politicians, compete for the authoritative interpretation of religious freedom. Harms seeks to understand how these actors frame their interventions during the judicial process and how they explain the legal outcomes. Her primary focus is on the jurisprudence of the European Court of Human Rights (ECtHR).

The book comprises five substantive chapters. Chapter 1 identifies the theoretical sociolegal basis for transnational legal mobilisation in view of religious freedom advocacy. It introduces a conceptual and methodological framework and explains the rationale behind the selection of cases that are discussed in subsequent chapters. Chapter 2 focuses on transatlantic religious networks and the emergence of a transnational legal field in religious freedom litigation, and it recognises Jehovah's Witnesses and Evangelicals as the "early pioneers of religious freedom litigation." Chapter 3 addresses legal mobilisation in light of diaspora politics, with a particular focus on Muslim and Sikh minorities who have asserted the right to wear religious symbols or attire in public. Chapter 4 elucidates the crucial role well-connected Christian NGOs play in carrying out successful religious freedom litigation. Chapter 5 centres on recursive mobilisation and on how litigants adjust their strategies and move towards new avenues of activism.

In delineating the parameters of freedom of religion on a transnational scale, Harms examines significant legal cases, international treaties, and the evolving ECtHR jurisprudence surrounding religious freedom and conscientious objection. The book sheds light on the complexities and challenges that arise in the process of navigating the tension between the exercise of religious beliefs and the promotion of human rights in a diverse and interconnected world. It also emphasises the invaluable contribution that religious organisations, human rights activists and lawyers, and civil society organisations in general play in helping individuals and groups to assert their religious rights throughout the judicial process.

Although *Faith in Courts* offers a comprehensive examination of the transnational regulation of religion, its in-depth exploration of legal systems is largely limited to Europe. Given the global relevance of the topic, and taking into consideration the book's title, readers may expect a broader analysis of jurisprudence and developments in other parts of the world, including other regional courts such as the African Court on Human and Peoples' Rights or the Inter-American Court of Human Rights. Additionally, more attention to the perspectives of religious communities from non-Abrahamic faiths would have further enriched the book's inclusivity and depth.

The book focuses primarily on the *who*, *why* and *how* of transnational litigation, rather than on a legal analysis of the jurisprudence relating to religious rights and freedoms. One of its most notable strengths lies in Harms's comprehensive examination of the various actors involved in the adjudication of religious freedom and the social dynamics that shape the discourse on the topic. From human rights organisations and religious communities to state institutions and supranational bodies, Harms demonstrates how these actors engage in dialogue, advocacy and legal strategies to shape and influence the trajectory of cases concerning religious freedom. The book effectively highlights the challenges faced by human rights advocates and religious communities in navigating the often conflicting demands of religious freedom and other fundamental rights.

The book's narrative style is engaging, and Harms skilfully blends legal theory with a compelling account of individuals whose lives have been affected by clashes between their religious convictions and the law. *Faith in Courts* is an enlightening work that navigates the intricate terrain of religion and litigation. Through her analysis, Harms invites readers to engage in a deeper exploration of the complexities surrounding the intersection of religion and justice, and she makes an important contribution to understanding the evolving relationship between religion and the courts at a transnational level.

Marieke Roos, Senior Policy Advisor, European Parliament

Religion and world politics: Connecting theory with practice

Erin K. Wilson

London and New York: Routledge, 2022, 148 pp., ISBN: 978-036747866, \$59.95 US (hardcover). Open access version available at www.taylorfrancis.com

In this short book, Erin Wilson establishes both the importance and the complexity of religion in global politics. She seeks to show how even the way in which governments and policy makers define religion limits their understanding of religion's impact in a particular situation. As the subtitle suggests, she wants to give practical assistance to practitioners. But she also seeks to counter the dominant secular narrative of the West.

Since 9/11, global policy makers have been seeking to understand how and why religion matters in a variety of contexts, including internal and external conflicts, international development and human rights. Many books and articles have examined this issue from a variety of standpoints. Wilson critically analyses the leading literature and identifies the shortcomings.

Wilson dismisses some academic objections but explains others. For example, she dismisses the argument that the Universal Declaration of Human Rights is

neo-colonialist, commenting that it provides a widely agreed upon set of norms for human rights. She spends several pages explaining why Americans use the term “religious freedom” while Europe and Canada prefer “FoRB.” The former has the connotation of protecting religions while the latter often suggests freedom *from* religion. However, the attempts by Western powers to promote religious freedom and FoRB are often viewed elsewhere as attempts to protect Christianity and its expansion.

The West understands religion in a particular way because it does so through the lens of Christianity, which is based on individual decisions to follow Christ. In other parts of the world, what the West identifies as “religion” is part of cultural communal identity. An individual’s conversion to another religion, therefore, is a threat to the entire community. As Wilson explains, this dynamic is the source of anti-conversion laws that largely target Christianity and Islam, the world’s two major proselytising religions.

Fortunately, Wilson does not leave the reader with intractable problems. She draws on her experience in a variety of countries to argue for cultural contextualization. The language of rights is antithetical and counter-productive in places like Myanmar and Indonesia. Instead, terminology such as “social harmony” is more productive.

Wilson is very inclusive in her analysis of global conflicts. Her primary case studies are Myanmar, Iraq and the rise of far-right extremism. Although the final example might surprise some, it is linked to anti-Muslim and anti-Semitic acts such as attacks on mosques and synagogues, and its anti-immigrant policies encourage hatred of certain religious groups.

Wilson covers a diverse range of topics to illustrate the complexity of religious engagement. In chapter 4, titled “From Secular Development to Global Partnership,” she addresses international development, gender equality and climate change. These topics are often addressed separately, but many religious development agencies address all three. Wilson analyses projects from Kenya, Indonesia and Fiji to illustrate how different religious traditions and cultures engage with these issues. Western countries often fund these projects, but using Western language and concepts will often undermine a project’s effectiveness.

In chapter 5, Wilson gets to my favourite topic, FoRB. After discussing the challenges related to the Western understanding of religion and FoRB, she uses examples from Indonesia and India to illustrate some approaches that work. The example of Indigenous religious rights in Australia demonstrates that Western countries have difficulty with religious rights that don’t fit the Christian model.

This book will be helpful to a variety of practitioners. It is full of helpful thinking and illustrations of on-the-ground projects that integrate religion and culture

into peacebuilding, international development or conflict resolution. Many organizations should find this book helpful when onboarding new staff. The book is interdisciplinary, bringing together law, sociology, political studies and religious studies.

This book will confuse secular policy makers who do not see a role for religion in any of the above issues. It will anger people who want simple answers. It may be an eye-opener for some in the West by demonstrating the extent to which the rest of the world does not see things through a secular Western lens. It will frustrate those who want simple resolution of issues, typically through actions of the US government or the UN Human Rights Council.

In my role with the World Evangelical Alliance, I work with regional and national leaders in many countries. Most of them would agree with Erin Wilson's emphasis on local answers, dialogue and community building. *Religion and World Politics* could just as easily be titled *Religion and Local Action*. But Wilson's greatest contribution is to show how religion and religious actors can and should be engaged in positive ways to resolve global problems in their local contexts.

Janet Epp Buckingham, Professor Emerita, Trinity Western University and Director, Global Advocacy, World Evangelical Alliance

Secularism(s) in contemporary France: Law, policy and religious diversity

David Koussens, translated by Peter Feldstein

Berlin: Springer, 2023, 177 pp., ISBN: 978- 3031182327, US\$39.99 (paperback)

This comprehensive study on French secularism by David Koussens, professor at the University of Sherbrooke, Canada, is part of the series "Boundaries of Religious Freedom: Regulating Religion in Diverse Societies." According to Koussens, "we must speak of French secularisms in the plural." His sociological analysis of developments in the relationship between the French state and religion over the past 30 years shows that French secularism is not a univocal phenomenon. It exhibits intrinsic diversity due to French history, various legal regimes in the different territories of the republic, and legal and political changes affecting religion up to today.

More recently, the issues and their political and legal responses have been varied and evolving in a context of growing religious diversity and the salience of religious identity, in particular due to the visible presence of Islam. Koussens points out that "Islam has become the prism through which successive governments have intervened in the regulation of religious diversity," in particular, discussing the focus placed on religious symbols and artifacts.

Koussens strongly criticizes how, through misrepresentation, secularism is used as a rhetoric to defend an inherited national identity in connection with the Judeo-Christian culture. In a paradoxical twist, secularism, which should be blind to religion, becomes a tool to favor one religion and is used to justify a form of racism. The author warns against the growing popularity of the “great replacement” theory, which is characterized by fears about the substitution of a non-European, primarily African population for the French population and is used to justify restricting the freedom of religion of Muslim believers. He illustrates this trend with several cases from the Council of State on the issue of nativity scenes displayed by municipalities at Christmas. The criteria for compliance with secularism is whether the scenes are of a traditional and cultural nature, such as in Provence, or whether, conversely, the display is of a religious nature with the presence of a priest on its opening night or religious signs. Koussens alleges that this recurring issue becomes a Trojan horse for the defense of national identity, rooted in Christianity and exclusive of other faiths. He is therefore critical of French secularism, shedding light on the paradoxes of so-called state neutrality, which in reality is used to shape the French religious landscape in many ways.

Part I of the book helpfully interprets French secularism(s) – presenting a comprehensive overview of the prevailing theoretical and legal framework, explaining its historical development and giving examples of legal diversity across territories.

In Part II, Koussens focuses on the collective expression of religion in the public sphere. Through the issue of defining religion, he shows how public policies have shaped the idea of acceptable religion in France, giving little space to full diversity and to real neutrality towards minority groups. French secularism was first established to organize separation between churches and state (beginning with the famous founding act of 1905) without legally defining religion. From 1905 to 2022, a doctrine of acceptable religion in the public sphere has been shaped by jurisprudence of the Council of State and the Constitutional Council, governmental policies on cults, the notion of culture and heritage as applied to Christian symbols, and the identification of “principal spiritual families” which represent the dominant faith groups in relation with the State. This doctrine benefits the oldest religious traditions, whereas newly arrived religious groups (including Islam, but also Evangelical groups) experience inequality. Koussens illustrates his argument by analyzing two types of examples: (1) a legal system that largely benefits the religions which existed in France before 1905, and (2) chaplaincy services in public institutions (prisons, hospitals, the military), which are open only to majority groups and directed to serve certain purposes (such as fighting radicalization among Muslim detainees).

With the passing of the Law of 24 August 2021 to strengthen respect for the principles of the Republic, loyalty to the republican pact became a new condition governing the doctrine of acceptable religion in the public sphere. France has deliberately tightened controls over places and associations of worship, implemented a republican engagement contract as a condition to receive public subsidies for all associations, and consigned homeschooling to the authorization of prefects, religious belief being excluded from the legitimate reasons for home instruction. In this situation, French secularism does not imply full state neutrality but a form of subtle state intervention into the religious landscape.

Part III deals with the rights of the individual believer. Koussens shows how “new secularism” emerged in the wake of the prohibition of headscarves at schools in 2004. This new secularism “distanced itself from guarantees of individual rights and embraced a nationalist conception of secularism.” Since then, secularism has been used by the French state as a mode of emancipation of individuals, invading the private sphere to do so. The author reflects on the obligation of civil servants to display a religiously neutral appearance, which demonstrates the French state’s discomfort with visible expression of religion; this provision bars access to public services for people of some faiths. This strict neutrality policy, which does find some echoes in Belgium and Quebec, tends to spread outside the civil service and conquer the private sector as well. Muslim women wearing a full veil (*burqa*) or *burkini* at the beach have been identified as the enemy of the emancipatory project of the Republic. In the contexts of employment and public spaces, domestic and European case law has often found in favor of strict neutrality, leading to the erosion of individual rights.

Koussens concludes his in-depth analysis, citing President Macron’s recent speeches, by contending that the French new secularism is nationalist and assimilationist, and therefore differentialist. It fails to ensure real neutrality towards religion and, paradoxically, runs counter to the very universal values it claims to serve.

Nancy Lefevre, legal counsel, French Council of French Evangelicals

A principled framework for the autonomy of religious communities: Reconciling freedom and discrimination

Alex Deagon

Oxford: Hart Publishing, 2023, ISBN 978-1509950638, 280 pp., £85 (hardcover)

Alex Deagon has attempted the impossible: developing a principled framework that maximizes freedom for religious communities and minimizes discrimination against sexual minorities, and that both groups can agree on! As this is one

of the biggest challenges for religious freedom in the West (and also increasingly in parts of the Caribbean, Latin America, and Africa), if Deagon's proposal could succeed, it may resolve a seemingly intractable conflict.

The foundation for Deagon's framework is Jesus's command to love our neighbour. He applies "theological virtues such as dignity, humility, patience, generosity, kindness, forgiveness and compassion" (16). This is a very promising start in appealing to Christians. He builds on John Milbank's approach to peaceful co-existence, which contends that we must accept difference, even profound moral difference, to live peacefully in communities. Although the premise seems simple enough, putting it into practice is quite challenging.

Deagon sets out his framework in a scriptural context of love and self-sacrifice (18-19). He calls on Christians "to truly act with humility, love and sacrifice just like Christ did in humbling himself to death on a cross for our forgiveness" (18). Deagon analyzes the situation in three jurisdictions – Australia, the United States and England – to assess their compatibility with his framework and make recommendations for changes. These three countries all have a Christian heritage but differ markedly in church-state relations. All three have recently legalized same-sex marriage. A legal scholar, Deagon analyzes the constitutional frameworks, laws and court decisions.

Australia, Deagon's home country, takes a principled pluralist approach to church-state relations. The Australian Constitution contains a provision similar to the First Amendment to the US Constitution, prohibiting the establishment of religion and guaranteeing the free exercise thereof. Deagon laments the limited interpretation Australian courts have accorded to this constitutional protection and surmises that there is weak protection for religious communities in Australia.

Deagon contrasts the weak protection for religious institutions with the robust protection against discrimination on the basis of sexual orientation in the Sex Discrimination Act 1984. However, subsection 37(1) of the act exempts religious communities. Section 38 gives religious schools the right to discriminate. This section has been the subject of considerable debate in Australia and may be amended in ways that Deagon says will not promote peaceful coexistence. Deagon is also critical of the exemptions, which he suggests give religious institutions the ability to discriminate maliciously against sexual minorities. Perhaps more controversially, he proposes that Australia adopt a mild establishment of Christianity, rather than principled pluralism, which he sees as undermining religious freedom.

The United States with its famous "wall of separation between church and state," from Thomas Jefferson's letter to the Danbury Baptist Association, has adopted a soft secular approach to church-state relations. Given the abundance of religious freedom jurisprudence in the US, Deagon analyzes only the most signif-

icant Supreme Court cases on religious liberty. He concludes, “The First Amendment provides significant protection for the autonomy of religious communities” (81). Relatively recent legislation such as the Religious Freedom Restoration Act enhances this protection. Cases such as *Masterpiece Cakeshop* and *Hobby Lobby* raise the larger question of whether religious business owners can discriminate based on their religious beliefs. I commend Deagon’s extensive analysis of this contentious issue. Deagon also notes that the Equality Act, currently before the US Senate, would considerably narrow exemptions for religious institutions and would remove exemptions from businesses, potentially violating the First Amendment. He proposes that the US adopt pluralism rather than secularism as a model that would better protect religious freedom.

England, as was on full display in the recent coronation of King Charles III, has an established religion, even though the Church of England is in steep decline. As a member of the Council of Europe, however, it is subject to the European Convention of Human Rights and the jurisprudence of the European Court of Human Rights. Furthermore, these have been incorporated into English law by the Human Rights Act. Article 9 of the Convention protects religious freedom and has been interpreted to include some associational rights. Unfortunately, UK courts have applied this provision restrictively.

The Equality Act 2010, which prohibits discrimination on the basis of religion and sexual orientation, provides exemptions to religious communities and schools. However, this conflict is inevitable when religious institutions are exempted from the Equality Act’s provisions on discrimination by sexual orientation. Deagon proposes “an approach which embraces mutual respect and understanding” (148) and applies it to education, employment and provision of goods and services.

Deagon concludes with policy recommendations for each of the three countries examined. He also urges policymakers to learn more about religion and to listen to religious adherents. He notes that religion has been treated as a choice rather than as an identity, whereas sexual orientation has been treated as an identity rather than a choice. This approach has placed religion lower in the equality hierarchy. Religious adherents, on the other hand, understand their faith and practices as part of their identity. Deagon provides a rationale for granting business owners religious freedom to follow their consciences. Finally, he would grant associational rights to religious communities over and against an individual within that community. That is, an individual does not have the right to fully belong to a community.

Although I have focused mainly on Deagon’s points in favour of religious institutional autonomy, he does offer some advice for religious institutions and ad-

herents: live at peace with those who are different from you. In effect, he says we should be willing to grant others the right to live as they wish, especially if we are asking to live in accordance with our beliefs.

There is much to be commended in Deagon's book. He has developed a principled framework for peaceful relations between religion and sexual orientation. It requires give and take on both sides. However, neither side seems willing to give and fearful that if they do, the other side will take without giving back. Given that the conflict between religious and LGBTQ ideologies seems intractable in these three countries and many others, it is certainly worth consideration.

Janet Epp Buckingham, Professor Emerita, Trinity Western University, Director of Global Advocacy, World Evangelical Alliance

Religious accommodation and its limits

Farrah Raza

Oxford: Hart Publishers, 2023, ISBN: 978-1509937103, 248 pp., \$159.95 USD (hardcover)

'Reasonable accommodation' in the European context

Farrah Raza meticulously tackles the daunting task of exploring the limits of the accommodation of manifestations of religion or belief – a matter that has raised many questions and much debate in Europe and elsewhere. Raza argues for an inclusive approach to religious accommodation, using autonomy as the norm to determine which religious manifestations should be accommodated (based on the “harm principle” and a hierarchy of harms created).

“Reasonable accommodation” and its application to manifestations of religion or belief have been neglected in the jurisprudence of the European Court of Human Rights (ECtHR) and in European law in general. For that reason alone, Raza's proposal to use this principle in assessing matters of religion and belief in European jurisprudence makes this book a valuable contribution.

Raza advocates for the decision maker to take a sensitive stance on religious and non-religious beliefs, viewing them from the perspective of the adherent. For example, conscientious objections to abortion should be acknowledged through granting certain kinds of exemptions to healthcare professionals (173), although she argues that such exemptions should not easily be allowed.

Even though Raza displays a more nuanced approach to the accommodation of religion than the ECtHR has taken (for example, the ECtHR could have taken a less restrictive approach in *Grimmark v. Sweden* (App. No. 43726/17, 11 February 2020, ECtHR) where it stated that a midwife's right to freedom of conscience was not unjustifiably limited when she had to perform abortions against her belief

and conscience) the form of religious accommodation she supports still seems to fall short of fully protecting the right to freedom of religion or belief. Rather, reasonable accommodation as espoused by Raza remains bound by the limitations of secular ideology. Furthermore, some uncertainty remains as to how the practical recommendations regarding religious freedom accommodations should fit into the grounds of limitation provided in, for example, Article 9 of the European Convention on Human Rights (ECHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR).

The fundamental right to freedom of religion or belief exists prior to law

With regard to the former point (i.e. that Raza's view still falls short of what I would consider reasonable accommodation), the problem is that the definition of "reasonable" remains subject to some ideological interpretation of the values informing a democracy and, at least in Europe, to some version of secularism. Raza acknowledges secularism's lack of neutrality, noting that the scope of accommodation of religion and belief is contested, varied, and complex (8-9 and 109ff). She argues that "secularism as a constitutional norm should be interpreted in a way that upholds and protects individual autonomy" (118). She draws on the legal philosopher Joseph Raz's perfectionist liberalism as the most appropriate approach for the regulation of religion. As a result, the accommodation of religion will still be filtered through a version of the secular lens. I do appreciate that Raza argues for a more liberal and inclusive accommodation of religion as compared to a purely formalistic, secular approach (121). She states furthermore that: "Religious accommodation ... creates a presumption in favour of protecting religious views" (123). Nevertheless, I am not convinced that her approach sufficiently protects the right to freedom of religion and belief and the role it plays in the inherent human dignity and identity of a person.

With regard to freedom of expression, for example, it should not be necessary to advocate for reasonable accommodation. People express themselves in many contexts, and their right to do so is protected in international law. Only under strict criteria should this right be limited. Similarly, the public sphere should by default promote and welcome diverse expressions of religion and belief as the *status quo*. These principles offer much broader protection for religion and belief than Raza does. They favour religion as part of the inherent dignity and identity of human beings, rather than as something that has to be legally managed according to a higher normative criterion such as autonomy. Again, some limitations may be justified, but only under the strictly defined criteria provided for in Article 9 of the ECHR and Article 18 of the ICCPR.

Raza's model, consistent with secular tradition, continues to treat religion's role in public life as subject to legal regulation. For example, she writes, "Religious accommodation aims at maximizing the contexts in which religious or other beliefs can be practised" (122). Yet, the mere notion that the law can (pre-)determine contexts where religion and belief should or should not be practised denies the fact that religion is an indivisible part of human identity and dignity and not something that is shaped and invented by law.

The relationship of reasonable accommodation to the proportionality analysis

Raza does not address why we need a test to establish whether the accommodation of religion in the public sphere is reasonable, in addition to the proportionality test found in the limitation clauses of Article 9 of the ECHR and Article 18 of the ICCPR. She argues in favour of substantive secularism that upholds personal autonomy and an approach to religion based on the harm principle (15). She then identifies a hierarchy of four broad categories of harm to the autonomy of others that justify non-accommodation of religious claims (129, 134). Her version of reasonable accommodation is a way to achieve the least restrictive means possible, based on the criteria of autonomy and as determined by a hierarchy of harms (one step of the proportionality analysis) (140).

The question remains whether these harms and their hierarchical categorization provide for additional grounds of limitation to the strictly defined and closed lists of the relevant ECHR and ICCPR articles – namely, public safety, public order, health or morals, and the rights and freedoms of other people. An express explanation and justification of the integration of the author's proposal into the proportionality analyses of the ECHR and ICCPR would have been apt.

Georgia du Plessis, Research Fellow, University of the Free State, South Africa and University of Antwerp, Belgium

Guidelines for authors

This document combines essential elements of the editorial policy and the house style of IJRF which can be viewed on www.ijrf.org.

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 Africa 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.

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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?
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- **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 an anonymous 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.
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6. Include the following:
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 - Brief biographical details of the author in the first footnote, linked to the name of the author, indicating, among others, the institutional affiliation,

special connection to the topic, choice of British or American English, date of submission, contact details including e-mail address.

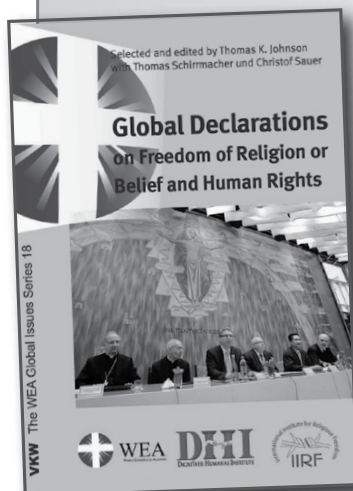
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9. Number your headings (including introduction) and give them a hierarchical structure. Delete all double spaces and blank lines. Use as little formatting as possible and definitely no "hard formatting" such as extra spaces, tabs. Please do not use 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 4,000-6,000 words. Articles longer than that may be published if, in the views of the referees, it makes an important contribution to religious freedom.
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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.
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7. 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.
8. 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.

Global Declarations on Freedom of Religion or Belief and Human Rights



by Thomas K. Johnson,
Thomas Schirmmacher,
Christof Sauer (eds.)

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Thomas Schirmacher

The Persecution of Christians Concerns Us All



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The International Journal for Religious Freedom is published twice a year and aims to provide a platform for scholarly discourse on religious freedom in general and the persecution of Christians in particular. It is an interdisciplinary, international, peer reviewed journal, serving the dissemination of new research on religious freedom and contains research articles, documentation, book reviews, academic news and other relevant items. The editors welcome the submission of any contribution to the journal. 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 National Code of Best Practice in Editorial Discretion and Peer Review for South African Scholarly Journals.

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