

FOI ET LIBERTÉ

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FAITH AND LIBERTY

GLAUBE UND FREIHEIT

# FIDES ET LIBERTAS



2003

THE JOURNAL OF  
THE INTERNATIONAL  
RELIGIOUS LIBERTY  
ASSOCIATION

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## RELIGIOUS LIBERTY OR SECURITY?

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“On September 11, 2001, security jumped to the top of America’s—and I dare say the worlds—hierarchy of values,” wrote Robert Seiple. He added “For the foreseeable future, everything else will pale in comparison.”

Speaking at the opening of the 5th World Congress on Religious Freedom in Manila, June 10, 2002, United Nations Special Rapporteur Abdelfattah Amor stated:

“... since September 11, the struggle against terrorism seems to have justified even the more serious attacks on human rights coming from states known internationally for their protection of human rights and for the lessons that they intended to give in this domain.”

The issue of security also became a priority for our International Religious Liberty Association Board of Experts. We decided to focus our meetings on the idea of religious liberty and security. The first meeting was held November 14-17, 2002, in Washington, D.C., near the Capital, and the second was held at the Catholic University of Leuven, Belgium, June 9-11, 2003. Several government officials attended our meetings. To finalize our statement called “Religious Freedom and Security” we held a second meeting in Leuven. The work was well done, and I am sure the final document will be useful for all who deal with this very sensitive issue. Security is a right—a right to be protected—and it is the responsibility of the state to protect its citizens. Freedom of conscience or religious liberty is also a right. Are these rights—religious freedom and security—opposed? The IRLA Board of Experts does not think so.

“Religious freedom requires security, just as true security requires religious freedom. The two are interdependent, mutually reinforcing, not exclusive, and do not collide or conflict.” “Security of person” and “freedom of thought, conscience, and religions” are basic human rights according to the Universal Declaration of Human Rights, Articles 3 and 18 (1948), and the International Covenant on Civil and Political Rights, Articles 3, 9, and 18 (1966). Religious freedom should not be restricted just because terrorism may have religious connections. I used to say the same about dangerous cults. Religious minorities should not be persecuted just because dangerous cults are a reality. As defenders of religious freedom, we are not opposed to the need for more security. But as defenders of religious freedom, we are opposed to the use, consciously or not, of the need for security to justify a policy of religious intolerance. “The IRLA document says that states undermine long-term security when they pursue security and any other objectives that are inconsistent with respect for human rights and the rule of law.” The Experts agreed that “Respecting freedom of religion is more effective in gaining loyalty of citizens and in achieving peace and security than are weapons and coercive measures.” This is good advice for civil authorities. Well balanced, the document underlines the responsibilities of the religious communities. “At the same time, religious communities must understand that genuine religious freedom does not confer authority to impose beliefs, or ignore the rights and freedoms of others.” It is a welcome appeal to the main actors in our democratic societies.

We have to show the world how we can face this new struggle, which includes dealing with terrorism that has a religious dimension, without destroying the foundation of our society and the dream of so many human beings: Freedom. We also have to show the world that freedom means both *responsibility* and *security*.



JOHN GRAZ - 2003

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We believe that religious liberty is a God-given right.

We believe that legislation and other governmental acts which unite church and state are contrary to the best interest of both institutions and are potentially prejudicial to human rights, and hold that it is best exercised where separation is maintained between church and state.

We believe that government is divinely ordained to support and protect citizens in their enjoyment of natural rights, and to rule in civil affairs; and that in so doing, government warrants respectful obedience and willing support.

We believe in the natural and inalienable right of freedom of conscience — to have or not have a religion; to adopt the religion or belief of one's choice; to change religious belief according to conscience; to manifest one's religion individually or in community with others, in worship, observance, practice, promulgation, and teaching — subject only to respect for the equivalent rights of others.

We believe that religious liberty also includes the freedom to establish and operate appropriate charitable or educational institutions, to solicit or receive voluntary financial contributions, to observe days of rest and celebrate holidays in accordance with the precepts of one's religion, and to maintain communication with fellow believers at national and international levels.

We believe that religious liberty and the elimination of intolerance and discrimination based on religion or belief are essential to promote understanding, peace, and, friendship among peoples.

We believe that citizens should use lawful and honorable means to prevent the reduction of religious liberty, so that all may enjoy its inestimable blessing.

We believe that the spirit of true religious liberty is epitomized in the Golden Rule: *Do unto others as you would have others do unto you.*

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## STATEMENT OF PURPOSES

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The purposes of the International Religious Liberty Association are universal and nonsectarian. They include:

- 1** To disseminate the principles of religious liberty throughout the world.
- 2** To defend and safeguard the right of all people to worship, to adopt a religion or belief of their choice, to manifest their religious convictions in observance, promulgation and teaching, subject only to the respect for the equivalent rights of others.
- 3** To support the right of religious organizations to operate in every country by their establishing and owning charitable or educational institutions.
- 4** To organize local, national, and regional chapters, and to conduct seminars, symposiums, conferences, and congresses.

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## MISSION STATEMENT

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The mission of the International Religious Liberty Association is to defend, protect, and promote religious liberty for all people everywhere.



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# NATIONAL SECURITY AND RELIGIOUS FREEDOM:

TACTICAL TRADE-OFF OR COMPLEMENTARY  
COMPONENTS? AN ANALYSIS OF THE NEW  
GUIDELINES AND RECOMMENDATIONS

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JONATHAN GALLAGHER

*IRLA Deputy Secretary General and Communication Director, USA*

Excuses are easy, especially if the argument behind the excuses seems unchallengeable. But however easy it may be to use an excuse to reduce freedom, especially religious freedom, the argument cannot remain unchallenged, even if national security is invoked.

Nor is it necessarily a question of mutually incompatible rights and freedoms. National security is surely a preoccupying concern, yet it does not need to be seen as the card that trumps all others. In the name of security, many abuses can occur, and society is immeasurably poorer as a result. History is littered with examples of those who have surrendered their civil liberties in return for a measure of personal and societal security.

It may be a coincidence in terms of the date when, on September 11, 1773, Benjamin Franklin wrote to Josiah Quincy, “They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”

It is certainly no coincidence in that thought. Freedom and security are not, and do not have to be seen as, trade-offs.

That fundamental principle lies at the heart of the document prepared by the IRLA Board of Experts over several months, culminating in the final meeting in Leuven, Belgium, June 9-11, 2003. With many countries responding to the terror threat, the danger is that religious freedom becomes an unintended casualty, “collateral damage” to society, if you will. Believing that freedom of conscience is a vital asset to security—and that to crack down on religious expression will only destabilize society, the opposite effect of what is intended—the Board of Experts spent many hours drafting recommendations.

The introduction to the final document, “Guiding Principles and Recommendations on Security and Religious Freedom,” states that, “Religious

freedom requires security, just as true security requires religious freedom.” It goes on to point out that “the two are interdependent, mutually reinforcing, not exclusive, and do not collide or conflict. Too frequently, responses to religion-based terrorism have involved efforts to enhance security at the expense of religious freedom. These responses have often proved counterproductive, and result in violations of international standards of human rights.”

The document concludes, “Such violations, which diminish both security and religious freedom, must be opposed by governments, religious groups, people of faith, and all those who truly value human rights.”

It is the intention of the IRLA to give this document the widest possible distribution, including governments, security agencies, international organizations, and also religious communities, as a basis for developing appropriate strategies that support security without undermining fundamental rights. Most important is the clearly-expressed commitment to upholding religious freedom, which cannot be the subject of “derogation,” even when national security concerns are invoked. Indeed, the document cites the relevance of international agreements as reflecting this vital principle:

“International standards have provided clear guidance concerning the narrow range of circumstances under which states may legitimately impose limits on freedom of religion or belief. The Board of Experts affirms the validity of the carefully defined and narrow limitations authorized by Article 18 of the *International Covenant on Civil and Political Rights* and the United Nations Human Rights Committee’s official interpretation thereof set forth in paragraph 8 of its General Comment No. 22 (48), which specifically notes among other matters that limitations based on national security alone are not permitted.”

As James Madison so perceptively observed, “There are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.” The danger is that by frequent and extensive actions, states will, intentionally or not, compromise religious liberties and end up destroying the freedom they so vigorously proclaim. It is the role of civil society to remind its leaders and legislators that fundamental human rights cannot be abridged or reduced without significant damage, not only to the operation of society itself, but to national security as well. A repressed society is inherently unstable, and despite the claims of the security community, many restrictions in freedom will inevitably be counter productive.

While recognizing Thomas Jefferson’s comment that, “the natural progress of things is for liberty to yield and government to gain ground,” the IRLA

does not believe this necessarily has to be so. Through ensuring widespread dissemination of the importance of freedom of conscience and civil liberties to the security and social health of any nation, the IRLA invites all parties to observe the international agreements on religious freedom, not for their own sakes, but from the perspective of national self-interest.

That is the intention of these guiding principles and recommendations. As a working document, it is not intended to be the last word on the subject. But at the very least it proclaims the concept that security and religious freedom do not need to be seen as conflicting—quite the opposite. The IRLA continues to believe the words of Franklin D. Roosevelt, “In the truest sense freedom cannot be bestowed; it must be achieved.”

(In addition to the actual document, we include in this edition of *Fides et Libertas* some papers associated with the theme of security and religious freedom, along with contributions on other subjects. )

This contribution is the IRLA’s modest achievement, and is sent out with the hope that it will find ready reception among the international community. For without true religious freedom, civil liberties, and freedom of conscience, there can be no true security for any nation.



E N D

The Leuven meetings which concluded June 11, 2003, were the culmination of a year’s intensive study and dialogue that brought together experts for previous consultations in Washington and Paris. The IRLA Board of Experts includes church leaders, experts in canon law, and academics from many faith communities. The IRLA, organized in 1893, is now widely recognized as one of the foremost agencies in promoting and defending international religious freedom.



**JONATHAN GALLAGHER**

*IRLA Deputy Secretary General and Communication Director, USA*

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# GUIDING PRINCIPLES AND RECOMMENDATIONS ON SECURITY AND RELIGIOUS FREEDOM

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IRLA GROUP OF EXPERTS

## THE MUTUALLY REINFORCING RELATIONSHIP OF SECURITY AND RELIGIOUS FREEDOM

Religious freedom requires security, just as true security requires religious freedom. The two are interdependent, mutually reinforcing, not exclusive, and do not collide or conflict. Too frequently, responses to religion-based terrorism have involved efforts to enhance security at the expense of religious freedom. These responses have often proved counterproductive, and result in violations of international standards of human rights. Such violations, which diminish both security and religious freedom, must be opposed by governments, religious groups, people of faith, and all those who truly value human rights.

This document, produced by the *International Religious Liberty Association's* Group of Experts, <sup>1</sup> addresses religious liberty concerns in connection with responses to the terrorist acts of September 11, 2001, and subsequent events, and identifies guiding principles and recommendations to advance efforts by both public authorities and religious communities in resolving these issues.

Terrorism can take many forms. Without entering into the complexities of defining terrorism, it is important to recognize different situations in which terrorism occurs. Terrorism carried out by nation states can occur when totalitarian governments oppress populations or minority groups. Oppressed populations may resort to acts of terrorism against occupation armies or tyrannical regimes. Other forms of terrorism involve the resort to violence that targets innocent people in order to instil fear, challenge governments, and destabilize whole societies. This document deals with the reaction to the kind of religion-based terrorism that is exemplified by the events of September 11, 2001.

Similarly, “security” has multiple aspects , including:

- “security of person,”<sup>1</sup> ensuring respect for personal liberty and integrity, both physical and psychological
  - “public safety,”<sup>2</sup> guaranteeing collective security under the rule of law. National authorities have the duty to uphold and protect these personal and collective dimensions of security
  - “international security,”<sup>3</sup> promoting peace and stability among nations.
- Religion-based terrorism threatens all of these aspects of security—personal, national, and international.

## THE IMPORTANCE OF RELIGIOUS FREEDOM TO SECURITY

Many nations have responded to recent events, as well as to the call in various United Nations Resolutions for action to counter terrorism through the acceptance of relevant international conventions and protocols, and by adopting laws and implementing other measures designed to combat terrorism.

While recognizing both the need to take firm action to prevent terrorism and the complexity of the issues involved, the Group of Experts is concerned that some of the responses have resulted in inappropriate actions that violate fundamental human rights—in particular the right to freedom of religion or belief. Examples include excessive tightening of religious association registration rules, unwarranted intrusion into the internal affairs of religious groups, religious and ethnic profiling, the exploitation of national security to limit religious pluralism, the use of laws repressing religious hatred to constrain freedom of religious speech, and the application of restrictive immigration laws in ways that prevent free movement of religious personnel.

Security cannot be achieved without addressing the underlying issues that give rise to terrorism; these issues include injustice, humiliation, poverty, dictatorship, hatred of other national, ethnic, or religious groups, and violations of human rights and fundamental freedoms, particularly denial of freedom of religion or belief. The struggle against terrorism must confront the root causes of terrorist activity, and not just its violent consequences.

Many terrorists have publicly claimed that their acts are grounded on religious beliefs. Moreover, religion continues to be exploited to fuel terrorist threats and actions. Failure to grasp the role that religious beliefs play in motivating terrorist activities will result in reduced security. Disrespect and lack of awareness of religious freedom trigger responses that jeopardize social stability and security.

Religion, society and state, in the minds of many, are so intertwined that they allow little or no liberty for others. Religion, for some, can become a political creed. Often it constitutes a pervasive way of life. Even for those who no longer adhere to the tenets of a particular belief system, religion may be a source of personal and collective identity. Responses to terrorism and security threats must take these aspects of religion seriously.

Respecting freedom of religion is more effective in gaining loyalty of citizens and in achieving peace and security than are weapons and coercive measures. At the same time, religious communities must understand that genuine religious freedom does not confer authority to impose beliefs or to ignore the rights and freedoms of others.

As authorities recognize the vital importance of freedom of religion, while at the same time striving to protect security, responses to situations should be developed on an issue-by-issue basis, giving due regard to the immediate and long-term consequences of possible limitations on fundamental freedoms.

## RELEVANT PRINCIPLES OF INTERNATIONAL LAW

The community of nations shares values and principles that are able to foster mutual understanding and cooperation in pluralistic societies. Among the international instruments supporting these universal values are the *Universal Declaration of Human Rights* of 1948, the *International Covenant on Civil and Political Rights* of 1966, the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief* of 1981, and the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992.

Both “security of person,” together with life and liberty, and “freedom of thought, conscience and religion” are recognized basic human rights,<sup>5</sup> which should never be separated when dealing with the problem of religion-based terrorism.

At the same time, “the use of religion or belief for ends inconsistent with the Charter of the United Nations and other relevant instruments of the United Nations is inadmissible.”<sup>6</sup>

International standards have provided clear guidance concerning the narrow range of circumstances under which states may legitimately impose limits on freedom of religion or belief. The Group of Experts affirms the validity of the carefully defined and narrow limitations authorized by Article 18 of the *International Covenant on Civil and Political Rights* and the United



Nations Human Rights Committee’s official interpretation thereof set forth in paragraph 8 of its General Comment No. 22 (48),<sup>7</sup> which specifically notes, among other matters, that limitations based on national security alone are not permitted.

With the foregoing considerations in mind, the Group of Experts suggests to public authorities, national and international, as well as to religious leaders and communities, the following guiding principles and recommendations:

## PRINCIPLES AND RECOMMENDATIONS

### **Responsibilities of Society**

**1•** Society has the right to protect itself against aggression, whether by legally-founded preventive means or by prosecution of those responsible for crimes. The duty to assure security, including physical, psychological and moral integrity, is proper to public authorities. Under the rule of law, where legislative, judiciary and executive powers are separated and mutually controlled, the necessary protection of security should be consistent with the respect for liberty and all other human rights.

**2•** Both on a global scale and on a national level, the underlying causes of terrorism, that include but are not limited to unequal distribution of knowledge, technology and economic resources, should be overcome by promoting interaction in socio-economic and cultural life, negotiation, and dialogue.

**3•** Situations of oppression must be dealt with by following the legal and agreed mechanisms provided in the *Charter of the United Nations*, and not by terrorism.

**4•** Security should not become the sole value of a society, even under the threat of terrorism. Those regimes established under the auspices of “national security” have proved to be repressive and incompatible with the culture of human rights.

**5•** Comparative study and analysis of the laws passed by various countries in the effort to combat terrorism should be undertaken with the intent to analyze compliance with international human rights standards, including the requirement to observe the narrow limitations clause of Article 18, paragraph 3, of the ICCPR, and also to identify best practices and more effective means of implementation.

## **Responsibilities of the State in Combating Terror**

**6•** Along with other values guaranteed by law, security of persons and public safety may be defended by the resort to public force. Public force is a legal means to assure that law may prevail. Any resort to such force by the police or the military should be proportional to the achievement of its objective.

**7•** In combating terrorism, the state should avoid adopting exceptional measures such as widespread arrest, imprisonment for extended periods without charge, new use of military courts or secret tribunals, which could be counterproductive, viewed as excessive, and open new fields of tension. The state should apply strict scrutiny as to those measures to assure that they genuinely enhance security without disproportionate cost and do not infringe religious freedom.

**8•** While some measures may in fact enhance security (such as improving cooperation among police and intelligence services), states should not undermine security by broadly alienating and antagonizing the very people whose help is most needed to combat terrorism and violence. The state should provide compelling evidence that its measures are effective, necessary, and not counterproductive.

**9•** States undermine long-term security when they pursue security and any other objectives that are inconsistent with respect for human rights and the rule of law.

**10•** In responding to terrorism, the state may impose sanctions only for actions, and not for thoughts, beliefs, or religious identity. State actions that have the effect of subjecting individuals to sanctions or discrimination, simply for belief or for membership in religious organizations, are unacceptable.

**11•** Public authorities should not impute responsibility for terrorist activities indiscriminately to religious bodies or to non-culpable members by holding them liable for the crimes of some individuals, even when such terrorism is supposedly carried out in the name of the religion or group. Where it is proved that terrorist conduct is directly and intentionally provoked by the teachings of religious leaders, the latter may be prosecuted for their personal action of incitement to crime. The state should not refuse or ban the legal existence of religious bodies without proof that they pose a direct threat to public safety, health, order, or the rights of others.

**12•** Legal definitions and elements of crimes need to be structured so as to make certain that vague and overbroad terms are avoided, and that excessive

scope of liability which could ensnare the innocent is prevented. In particular, criminal norms that establish inchoate liability such as the law of attempts and conspiracy, and other laws punishing group criminality, money laundering legislation, and the like, should be structured in a way that minimizes the risks that law-abiding citizens and organizations may violate criminal law.

**13•** When dealing with individuals who have been detained or confined in connection with national security concerns, states are obligated to respect the human rights of those involved, including their right to freedom of religion or belief.

**14•** Public authorities concerned with security issues should consult with religious leaders and experts on human rights, with a special focus on the fundamental right to freedom of religion or belief. In this way, resolution of the many issues involved may be achieved following a case-by-case approach.

### **Responsibilities of Religious Leaders, Believers and Communities**

**15•** Religious leaders and believers should behave in an informed and responsible manner when they speak of other religions and their members. In particular, they should avoid attributing to other religious groups intentions that the groups may not have.

**16•** Religious leaders have a particular responsibility to denounce religion-based terrorism arising within their own religious community.

**17•** Throughout history, religions have provided inspiration for peace and mutual understanding, and have also played an important role in strengthening social solidarity. The moral and peace-promoting functions of religion make it a strong ally for enhancing security.

**18•** Religion should never serve as a justification for hatred, disrespect of others, or violence. While religion has at times been used as a justification for violence, the needs of society in which different religions and cultures coexist demand that religions interpret their sacred texts, doctrines, and traditions according to this reality of peaceful coexistence.

**19•** The right of religious freedom does not protect the incitement to religious persecution or violence, even if based on sacred scriptures or religious law. Religious leaders, believers, and communities should cooperate with public authorities to protect public safety, justice, and the rights of every person.

*Leuven, Belgium, June 11, 2003.*

*Appendix*  
**LEGAL ANALYSIS OF LIMITATION CLAUSE OF  
 ARTICLE 18 ICCPR**

The balance between protection of religious freedom and taking into account necessary limitations was carefully structured in Article 18(3) of the ICCPR. The risks of terrorist activity were known when the key international instruments were adopted, and the principles enunciated in those instruments remain sound.

These standards have underscored the significance of freedom of religion or belief by noting that even in time of public emergency, “[n]o derogation from Article . . . 18” may be made. *International Covenant on Civil and Political Rights*, Article 4, paragraph 2. Freedom of religion differs in this regard from other fundamental freedoms such as freedoms of expression, peaceable assembly, and association, which are derogable during times of declared public emergency.

According to Article 18 of the *International Covenant on Civil and Political Rights*, “Everyone shall have the right to freedom of thought, conscience and religion.” The internal right to belief is absolute, and may not be constrained by states. Only “manifestations of religion” may be subjected to limitations, and then only under the narrow conditions specified in paragraph 3 of Article 18, which provides: “Freedom to manifest one’s religion or beliefs 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.”

General Comment 22(48), paragraph 9, provides in full:

Article 18(3) permits restrictions on the freedom to manifest religion or belief only 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. The freedom from coercion to have or adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18. The Committee observes that paragraph 3 of Article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on

which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner (emphasis added) United Nations Human Rights Committee, General Comment No. 22(48), Adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPRJC/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

The General Comment stresses that restrictions of religious freedom not based on grounds explicitly mentioned in Article 18 are not permitted. The Human Rights Committee specifically notes that for this reason, limitations based on national security alone are not permitted. That is, blanket concerns about national security are not enough to justify infringing the right to freedom of religion or belief. That right can only be limited when the state measure in question deals with a concrete and genuine threat to “public safety, order, health or morals, or the fundamental rights and freedoms of others.” While individual acts of terrorism can clearly be addressed within these limits, a generalized concern to avert terrorism does not allow states to derogate from or engage in practices that curtail religious freedom.

Similarly, a generalized sense of offence to the public order in the sense of order public does not suffice. Of course, terrorist violence does violate public order in the narrower sense of causing an actual physical disturbance in public space, and laws aimed to curtail such violence are clearly permissible. Even when limitations are permissible, however, they must be narrowly tailored and proportional to the objective pursued.

The existing limitations clause for Article 18 thus permits States to address terrorist acts including religiously-motivated acts, but insists that laws authorizing such limitations be carefully crafted to minimize the interference with freedom of religion or belief.



END

- 1 The Group of Experts convened in three meetings, in Washington, D.C. from November 14-17, 2002, in Paris on February 4, 2003, and in Leuven from June 9-11, 2003. The work of the Group of Experts was supported by the International Religious Liberty Association, the International Association for the Defense of Religious Liberty, the International Academy of Freedom of Religion and Belief, the International Commission on Freedom of Conscience.
- 2 International Covenant on Civil and Political Rights, art. 9(1) (1966).
- 3 *Id.*, art. 18(3).
- 4 Charter of the United Nations, art. 1 (1945).
- 5 *Universal Declaration of Human Rights*, articles 3 & 18 (1948); *International Covenant on Civil and Political Rights*, articles 3, 9, & 18 (1966).
- 6 *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, Preamble.
- 7 See the legal analysis, including the text of the UN Human Rights Committee’s official interpretation of the meaning of the limitation clause of Article 18, annexed at the end of this document.



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# RELIGION AND SECURITY IN EUROPE AFTER SEPTEMBER 11: A GLOOMY PERSPECTIVE?

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Since the beginning of the 1990s, scholars have been writing about the “revanche de Dieu”<sup>1</sup> and the “deprivatization of religion.”<sup>2</sup> They have stressed that religion, which had long been confined to the private sphere of human life, was reacquiring an important role in public life. Taking as examples Iran under Khomeini, Poland with Walesa, and the liberation theologies supporting the revolutionary movements in Central and South America, these scholars have explained how religion “leaving its assigned place in the private sphere, had thrust itself into the public arena of moral and political contestation [...] challenging the legitimacy and autonomy of the primary secular spheres, the state and the market economy.”<sup>3</sup>

Conflicts—even violent conflicts—are inevitably part of the public arena. Once it became clear how important religion could be in this area, politicians did not hesitate to make use of religion to motivate and mobilize people for political, national, and ethnic struggles. What happened in the Balkans during the 1990s demonstrated the role religion can play when religious divisions overlap with national and ethnic ones and showed the weakness of the religious authorities in resisting the political exploitation of religion.<sup>4</sup>

These conflicts provided the ground where religious terrorism developed. Previously, religion had sometimes been a component of terrorism based on secular motivations, be they political, ethnic, or national. In some cases, as in Northern Ireland, it had been an important component, but rarely the central one. In the last 10-20 years, a new breed of terrorist has appeared: religiously motivated, killing people in the name of God.<sup>5</sup> In many cases the hope of a supernatural reward makes “religious” terrorists indifferent to their own lives. The most hideous form of violence, directed against defenseless civilians, has become inextricably related to religion.

Scholars debate whether religion is the real motivation of terrorism or whether it is simply a good instrument for recruiting followers and a medium by which to amplify the impact of terrorist actions.<sup>6</sup> In other words, it is still debated whether Bin Laden's agenda is really religious or whether it is a political one disguised in religious clothing. When choosing the best strategy to fight terrorism, it is essential to have a correct understanding of the terrorists' motivations. But the debate about the motivations of those who mastermind terrorism should not overshadow the central point of the topic: there are people who are genuinely convinced that it is legitimate, even compulsory in some situations, to kill in the name of God.

## RELIGION AND SECURITY AFTER SEPTEMBER 11, 2001

The new link between religion and violence did not escape the attention of lawmakers of some European States, but the real turning point came only on September 11, 2001. Religion was immediately identified as one of the driving forces behind that attack. Therefore, religious liberty was deeply affected by the need for more security. National security exigencies restricted religious freedom in at least three ways:

**1• In a general way:** Laws restricting some fundamental rights (freedom of movement, freedom of association, etc.) have been enacted or are in the process of being enacted in many States.<sup>7</sup> These restrictions have not spared religious liberty due to the enactment of more stringent provisions regarding the granting of visas, the transferring of funds over foreign borders, the registration of foreign organizations, etc. The right to disseminate a religious belief—already under attack in many countries<sup>8</sup>—has inevitably been affected.<sup>9</sup>

**2• In an indirect way:** It is undeniable that religion can motivate terrorist acts. We would be right in considering such behavior as a perversion of religion, but it is hard to question the fact that many of them are in good faith. There is a need to prevent people from considering that violence can be religiously justified and to break the bond of religion and violence once it has been established. If a doctrine advocates the subversion of the State, opposes the democratic fundamentals of the civil society, etc., are State authorities empowered to require it to be changed and to enforce this change? Political

parties have been banned precisely on this ground<sup>10</sup>: will the same attitude be followed where religious organizations are concerned?

It is easy to understand how many important questions have been raised by the post-September-11 approach to religion and security. Faced with these problems, it is pointless to take refuge in declarations of principle, reaffirming that religious liberty is an inviolable right or, on the contrary, that security is the pre-condition for the enjoyment of any human right. Both statements are correct, but they are of little help in finding a balance between the two values. What is needed is an analysis of the conditions required to reconcile religious freedom and national security in a way that makes it possible to have at the same time as much security and as much liberty as possible in the actual circumstances. Of course I am convinced that, in the long run, religious liberty contributes towards developing the sense of integration and tolerance that lies at the foundation of a stable and safe society,<sup>11</sup> but preaching religious liberty without making use of the resources available in a democratic society to prevent its exploitation against fundamental human rights<sup>12</sup> can start a process that is likely to end in the suppression of religious liberty itself.

One point should be made clear. Religious terrorism is in no way confined to Muslims: it concerns many religions, including Christianity. But a part of public opinion seems to be convinced that Islam is an inherently violent religion.<sup>13</sup> I do not share this opinion. The Koran does not contain more violent passages than other sacred books. Islam was a peaceful religion for a long period of time (the whole nineteenth century and most of the twentieth). The vast majority of Muslims do not support any kind of violent act and, finally, violence—both in the past and present—is common to the followers of other religions. For these reasons, today's situation should be studied by analyzing its historical roots. By understanding this historical process and removing the social and cultural motivations that started it, it will be possible to break the link between religion and violence.

## THE LEGAL PROVISIONS AFFECTING RELIGION

Immediately after (and in some cases before) September 11, 2001, a few European States approved laws enhancing national security. Some of them dealt explicitly with religion. Examining these legal provisions is of interest. Human-rights oriented lawyers will be called upon to integrate their concern for religious liberty with respect to security measures in a practical way, showing the best way to operate this integration in each specific situation.



**1• Fighting religious terrorism.** The most important European legal provision in this field is the U.K. Terrorism Act 2000, which concerns the proscription of terrorist groups.

By “terrorism,” the Act means “the use or threat of action [...] designed to influence the government or to intimidate the public or a section of the public [...] made for the purpose of advancing a political, religious, or ideological cause.”<sup>14</sup> The lawmaker is now aware that terrorism can be inspired by a religious purpose and he is no longer prepared to grant religion a presumption of innocence, as happened in the past.<sup>15</sup>

This Act is a complex piece of legislation. Here are two observations.

The first regards the definition of terrorism. It is framed in very broad terms<sup>16</sup> and that opens the door to dangerously extensive interpretations. It is difficult to disagree with those who fear that the law will criminalize expressions of dissent and who request some clauses that prevent this risk, along the lines of those now under discussion in Canada.<sup>17</sup>

Nevertheless, the Act is founded on a sound principle: resorting to violence to advance a religious cause is always illegitimate. It is a minimal statement, but it identifies the borderline that divides what is acceptable and what is not.

The second observation regards the Secretary of State’s discretionary power to proscribe a terrorist organization: according to the Act, once he is convinced an organization is involved in terrorism, the Secretary of State may by order proscribe it,<sup>18</sup> without the need of any court decision. This provision is an example of the growing tendency to punish an association for the crimes committed by its members<sup>19</sup> and inevitably entails the danger of extending to innocent people the prosecution and repression called for by the crimes of some extremists. It is reasonable to require that “organizations that are the sole vehicles of a particular belief system should be subject of especial scrutiny before proscription is permitted.”<sup>20</sup>

**2• Repressing religious hatred.** The interest of State officials in charge of national security is increasingly directed at inter-religious confrontations and conflicts. Preventing religious strife is considered a very effective way to enhance security: for this reason, many States have started paying more attention to their obligations under Art. 20(2) of the International Covenant on Civil and Political Rights (ICCPR)<sup>21</sup> and have enacted new laws that repress religious hatred.

Enforcing religious tolerance through State laws is not without its dangers. Violence is an integral part of the sacred texts of many religions, and it would not be difficult for a malevolent State officer to pick an appropriate passage of

the Bible, the Gospel, or the Koran and construe it as an incitement to religious strife or violence. The same result could be attained more effectively through the activity of the religions themselves, which could develop codes of religious harmony<sup>22</sup> or common guidelines to be applied to controversial issues.<sup>23</sup>

These codes and guidelines are still few. This observation raises the question of the role of the religious communities: fighting religious hatred is primarily their responsibility. If they are unwilling or unable to do so, States will step in and take the problem into their own hands. But the States' approach will inevitably be more attentive to political rather than religious interests.

**3• National security as a limitation to religious liberty.** National security is not listed among the legitimate limitations to the manifestation of religion in the international covenants,<sup>24</sup> nor in most European constitutions.<sup>25</sup> Faced with the increase in religiously motivated terrorism, a demand to include national security among these limitations is to be expected.

To assess the impact of this inclusion on religious liberty, we need to reflect on the meaning, scope, and aim of the national security clause, starting with those internationally protected human rights (freedom of expression, assembly, association, etc.) that can be legitimately limited in the name of national security.<sup>26</sup>

According to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, “national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.”<sup>27</sup>

Until now, though the case law of international courts regarding national security has dealt with secular matters (disclosing of classified secrets, prohibiting reporting interviews with representatives of proscribed political organizations, banning associations because of their totalitarian program, etc.),<sup>28</sup> it is not difficult to think of issues that have a religious profile. Imagine that an official religious authority, basing his statements on the sacred books of a religion, exhorts part of the population of a country to secede (for example, because that population is not entitled to live according to its religious law), urges soldiers professing a particular religion to desert so that they are not obligated to fight against soldiers of a different State but of the same religion, demands that a “holy” war should be waged against another State: these are a few examples of how national security can be affected by religion and interfere with religious freedom.

While Articles 18(3) of the ICCPR and 9(2) of the ECHR may already provide some grounds for restricting these manifestations of religion<sup>29</sup>, it is hard to deny that such behavior by a religious authority does primarily endanger national security, which is not included in these articles. As episodes of this kind become more frequent, a request to include national security among the limitations of religious liberty would not be unreasonable, provided it is framed in a way that minimizes the risk of placing unjustified restrictions on the right to manifest religion.

Apart from the respect of the usual conditions required for limiting religious liberty (any restriction should be prescribed by law, aimed at protecting a legitimate national security interest, and necessary in a democratic society), the main guarantee that national security is not abused resides in establishing a definite link between repressible manifestations of religion and violence.<sup>30</sup> The same guarantee can be further enhanced by listing a number of religious manifestations that are explicitly protected and cannot be restricted on grounds of national security: this could be the case, for example, of the religious manifestation that (a) “constitutes objection, or advocacy of objection, on grounds of religion, conscience, or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;”<sup>31</sup> (b) “is directed at communicating information about alleged international violations of international human rights standards or international humanitarian law;”<sup>32</sup> (c) “advocates non-violent change of government policy or the government itself;” (d) “constitutes criticism of, or insult to, the nation, the state, or its symbols, the government, its agencies, or public officials, or a foreign nation, state, or its symbols, government, agencies, or public officials, unless the criticism or insult was intended and likely to incite imminent violence.”<sup>33</sup>

A provision contained within these limits might satisfy the need for more national security and reduce the restriction of religious freedom to the minimum.

If national security is further threatened (for example, as a consequence of a war), it is possible that other and more radical measures may be taken. Depending on the situation prevailing in each country, such measures might include stricter control over places of worship<sup>34</sup> and foreign religious personnel;<sup>35</sup> exceptions to the respect of religious privacy,<sup>36</sup> including the religious confidentiality;<sup>37</sup> tightening up the registration procedure of religious organizations, particularly those that have their headquarters abroad. In the worst cases, even the right to change religion could be affected.<sup>38</sup>

This scenario would deeply affect the whole system of Church-State relations far more deeply than the limited measures that have already been taken and have been examined in this paragraph.

## THE LONG-TERM IMPACT ON CHURCH-STATE RELATIONS

The effect of the events of September 11 will not be limited to the legal provisions I have examined in the previous paragraph. The new balance between security and freedom is bound to affect some basic principles that define the place religion is given in European society. It is unlikely that the September 11 events will be strong enough to change the fundamental features of the European system of Church-State relations in depth, but they may provide new impetus to already ongoing processes that regard, in particular, the separation of Church and State and the notion of traditional religion.

**1• Lowering the wall of separation.** In Europe the wall of separation started being lowered many years ago, but it is possible that this trend may be accelerated by the need for more security.

The recourse to religion that, in good or bad faith, has been made by some terrorist groups is bound to erode the consensus surrounding the principle that the State is not competent in religious affairs. Religions are no longer “beyond the cognizance of civil government,” as James Madison once said<sup>39</sup>; civil government has a legitimate interest in taking cognizance of what religions affirm and practice.<sup>40</sup> More important is the fact that religions are not beyond State intervention to prevent them from being turned into instruments of violence. Religions have lost their innocence<sup>41</sup>; they no longer live in a Garden of Eden where every tree bears good fruits. They need to prove that they are harmless.

Lowering of the wall of separation will have different manifestations regarding majority and minority religions. As far as minority religions<sup>42</sup> are concerned (and particularly those tenets that question the secular character of the State, the respect of its symbols, etc.), an increase in State control and interference in their practice and (possibly) belief is to be expected.<sup>43</sup> Of course Islam will be in the forefront, but it is possible that other minority groups will be affected. Governments may be tempted to exploit the national security issue to keep under control not only violent and dangerous religious groups, but also “unpopular” religious communities, that is, groups which believe and

behave in a way that is not in line with the principles and practices upheld by the majority of citizens. If this attitude should prevail, security reasons will provide a good tool for giving vent to the creeping mistrust of some religious minorities that is on the increase in Europe, both in the West (laws regarding “new” religious movements) and in the East (the treatment of non-Orthodox religions in Russia). Models for a more restrictive legislation may be provided either by the French law on “sects”<sup>44</sup> or by the legal provisions in force in some post-Communist European countries.<sup>45</sup> The second option is more likely to come true, due to the enlargement of the European Union to a number of these countries in 2004: the need to harmonize different legal systems may strike a middle-way balance between West and East European standards on religious liberty and equal treatment of religious groups, raising the Eastern standards but lowering the Western ones.<sup>46</sup>

The issue is far more complicated when we come to majority religions. In Europe the fear of terrorism with the fear of immigration, particularly Muslim immigration. The growing presence of immigrants from Asia and Africa has spread the conviction that Europe is on the verge of losing its identity, of being transformed into a multi-cultural continent without a soul. An increasing number of people think that security cannot be effectively granted without social cohesion and a strong collective identity. As Christianity is a central part of the European identity, churches are more and more called upon to join the battle to preserve the European cultural heritage and to provide the principles and the values for building some kind of European “civil religion.”<sup>47</sup> There is an inherent danger in this process and it should be carefully considered. One may wonder how non-Christian religions—and particularly Islam—can contribute to the shaping of the European civil religion. It is likely that, at least at the beginning, their contribution will be marginal: this might exacerbate their feeling of exclusion, raising precisely those security problems that should be avoided. Either civil religion is really inclusive—and then it can play its cohesive role—or it creates new divisions. The question of the crucifix in the classroom is an example.<sup>48</sup> To support its presence because the crucifix is a symbol of the European identity and culture could easily convey the idea that non-Christians are not fully part of European history and tradition have no place in today’s Europe. This would make it more difficult to conceive the European Union as a common house where everybody can feel at home irrespective of their religious convictions. The same remarks could easily be repeated regarding the proposal to mention the Christian roots of Europe in the future constitution of the European Union.

**2• Reinforcing the distinction between traditional and non-traditional religions.** A second long-term consequence of the events of September 11 could be the strengthening of the European inclination to distinguish between traditional and non-traditional religions, that is, between religions that are part of the historical, cultural, and social heritage of a country on one hand and on the other religions that cannot claim such a position.

Sometimes this distinction is openly expressed in legal provisions. In Lithuania, for example, the Constitution (Art. 43) separates traditional from non-traditional religions and a law states which ones are placed in the first or in the second class;<sup>49</sup> in Greece, the Constitution (Art. 3) proclaims that the Orthodox religion is the prevailing religion of the country and a number of North European countries still have a State or National Church.<sup>50</sup> Sometimes this same distinction is not explicitly stated in legal provisions, but it can be easily detected by analyzing the legal system of a country: in Poland, Italy, Spain, and other predominantly Catholic countries, the traditional character of the Catholic religion is revealed by the concordats these countries have concluded with the Catholic Church.

This rough description of the European system of Church-State relations would require many more distinctions and nuances, but at least one point is clear. There are some religions in Europe that are non-traditional religions, such as Islam<sup>51</sup> and the so called “new” religious movements.<sup>52</sup>

Islam and the “new” religious movements are precisely the religions that raise the most acute security worries. Of course, nearly everybody will admit that not all Islam is radical and not all “new” religious movements are dangerous.

Deepening the distinction between traditional and non-traditional religions could offer an easy way to deal with these security issues without singling out Islam or a specific “new” religious movement. The registration of non-traditional religions could be subjected to more stringent requirements than those requested for traditional religions. A whole set of legal restrictions can be easily applied to non-traditional religious groups on the grounds that they are foreign or scarcely rooted in the history and tradition of a country.

Two dangers are inherent in this scenario.

First, it would increase the gap between “first class” and “second class” religions. It is a gap that needs to be closed, rather than widened, if we really want to grant religious liberty in today’s Europe. If the range between the State support offered to the religions placed at the lower and at the higher level is too wide, not only does equality suffer, but also individual religious freedom.

Second, excessively differentiating between the traditional and the non-traditional religions would increase the distance that divides the legal systems prevailing in Europe and in the United States, where such a distinction is unknown. That would result in more frictions and tensions (like those that have already emerged in relation to French and German policy regarding the “new” religious movement<sup>53</sup> and in the weakening of the whole Western model of Church-State relationship).

What conclusions can be drawn from these long-term forecasts? Perhaps the scenarios I have drawn will not come true, but having a clear picture of what could happen is the best way to prevent it from occurring. Basically, these scenarios are to be avoided because they are exceedingly defensive in their approach to the problems posed by the Muslim presence in Europe. They fail to realize that the feeling of exclusion many European Muslims experience will be increased if the Muslim community is confined among the less favored religions. That would be a bonus for the extremist and radical Muslim groups. On the contrary, a sound strategy should start with the consideration that the vast majority of Muslims living in Europe are not involved in terrorism or violence. They deserve to be integrated into European society as much and as quickly as possible, through a policy of inclusion aimed at favoring the development of a European Islam.<sup>54</sup> In no way does this policy exclude a rigorous approach towards those Muslim groups that do not accept the rules of a democratic State or that are prone to use of violence.

## CONCLUSION.

Religious violence is not an ephemeral phenomenon. It has deep roots which go far beyond the tensions that divide the “Christian” West and a part of the Islamic world. Some scholars stress that we are living at a time of declining secular ideologies: religion is one of the few motivating forces left and it is exploited to mobilize people for political objectives.<sup>55</sup> Others point at the growing fear that the West, and particularly the U.S., are leading the world “into a scene of onrushing economic, technological and ecological forces that demand uniformity of values”: faced with this perspective, some people will be tempted to “resort to religious identity to wage a total war against this universalism, to amplify their appeal and to obtain spiritual justification.”<sup>56</sup>

The task of the States and secular organizations is quite simple: to make clear that religiously motivated violence is unacceptable. Of course, when this message is translated into legal provisions, some careful distinctions are to be

made along the lines shown in the third paragraph of this paper; if not, there is the danger to criminalize religion instead of religious violence, religious freedom instead of religious extremism. That would damage precisely the security exigencies that are in need of protection.

Once this message has been unequivocally conveyed, States and secular organizations have exhausted their task. Everything else has to be left to religious communities and their leadership. This implies the sensitive theological work of interpreting the religious sources in a way that sublimates the violence they frequently contain; and requires a careful reconsideration of the dignity to be recognized to the “other,” the non-faithful or the faithful of another religion; it advocates a political theology that looks sympathetically to the secular character of the State and the civil society, etc.

There is no guarantee that religions will be able to perform this task successfully. But there is no viable alternative—in particular, it would be unwise to rely on the States that are not equipped to deal with religious violence beyond the limited task of granting public security and order. Religions are left alone with this huge responsibility—it could well be for them an opportunity to give a great contribution to the shaping of the civil society of the third millennium or, on the contrary, a step toward their own marginalization.



E N D

1. This is the title of a book written by Gilles Kepel, Paris, Seuil, 1990.
2. The “deprivatization” of religion is the central thesis of José Casanova’s *Public Religions in the Modern World*, Chicago-London: The University of Chicago Press, 1994.
3. José Casanova, *Public Religions*, pp. 3 and 5.
4. See Paul Mojzes, *Religion and the War in Bosnia* (Atlanta: Scholar Press, 1998).
5. See Bruce Hoffman, *Inside Terrorism* (London: Gollanez, 1998); Mark Juergensmayer, *Terror in the Mind of God: The Global Rise of Religious Violence* (Berkeley: Univ. of California Press, 2000).
6. See “Religion and Terrorism.” Interview with Dr. Bruce Hoffman, February 22, 2002, in [http://www.religioscope.com/info/articles/003\\_Hoffman\\_terrorism.htm](http://www.religioscope.com/info/articles/003_Hoffman_terrorism.htm), visited on January 7, 2003.
7. Information on the status of anti-terrorism laws in Australia, Canada, United States, France, India, Hong Kong, Japan, U.K. are available at [www.jurist.law.pitt.edu/terrorism/terrorism3a.htm](http://www.jurist.law.pitt.edu/terrorism/terrorism3a.htm); [www.attimes.com/oceania/DD23A\\_h01.html](http://www.attimes.com/oceania/DD23A_h01.html); [www.ahrchk.net/hrsolid/mainfile.php/2002vol12no03/2221.htm](http://www.ahrchk.net/hrsolid/mainfile.php/2002vol12no03/2221.htm) (visited on Nov. 6, 2002).
8. On the prohibition of proselytism see Silvio Ferrari, “Globalization, Postmodernism and Proselytism,” in *Fides et Libertas*, 1999, pp. 13-27; Tad Stahrke, “Proselytism and Freedom to Change Religion in International Human Rights Law,” in *Brigham Young University Law Review*, 1999, 1, p. 267 ff.; John Witte Jr.—Richard C. Martin (eds.), *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism*, (Maryknoll, New York, Orbis: 1999).
9. The impact of the Sept. 11 events is not limited to missionary activities, but extends to many more areas: for example, the rise of the insurance costs of religious buildings could consume critical funds and reduce the scope of religious activities (see “United States: Jewish Groups Feeling the Pinch after Post 9/11 Hikes in Insurance,” in [http://www.religioscope.com/articles/2002/015\\_insurance.htm](http://www.religioscope.com/articles/2002/015_insurance.htm), visited on Sept. 18, 2002).
10. See for a recent example the European Court of Human Rights decision in the case of Refah Partisi (The Welfare Party) and others v. Turkey, July 31, 2001 (applications n. 41340/98 and 41342-44/98).



11. The same concept is expressed in the 2002 Annual Report on International Religious Freedom of the U.S. State Department: "9/11 has raised the stakes for U.S. religious freedom policy. To the extent that policy succeeds, it will provide one of the most effective and sustainable antidotes, not only to religious persecution and discrimination, but also to religion-based violence and a potential clash of civilizations" (the report can be read at <http://www.state.gov/g/drl/rls/irfr/2002.html>, visited on Nov. 8, 2002). See also the statements collected in Todd Hertz, Opinion Roundup: What Does 09.11.01 Means for Religious Liberty Policy?, in *Christianity Today*, week of October 8, 2002, in <http://www.christianitytoday.com/ct/2001/141/33.0html>, visited on Nov. 7, 2002.
12. The U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) declares in its preamble that "the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible."
13. See William Pfaff, "Totalitarian Thinking: Stop Calling Islam the Enemy," in *International Herald Tribune*, December 5, 2002.
14. Terrorism Act 2000, sect 1(1)(c), italics added.
15. The previous definition of terrorism, contained in the section 20 of the U.K. Prevention of Terrorism (Temporary Provisions) Act 1989, did not mention religion.
16. But not as broad as those contained in the sec. 2(15) of the U.S. Homeland Security Act of 2002, approved on January 23, 2002.
17. The Canadian Bill C-36, quoted at note 22, explicitly exempts from the definition of terrorism those acts that cause "serious interference with or serious disruption of an essential service, facility or system" but are a "result of advocacy, protest, dissent or stoppage of work that is not intended" to endanger the life, health or safety of persons: see n. 4, amending the Criminal Code by adding the section 83.0(1)(b)(ii)(E).
18. Terrorism Act 2000, sec. 3(4). According to sec. 3(5) of the Act "an organization is concerned in terrorism if (a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism, or (d) is otherwise concerned in terrorism."
19. Another example is the anti-sects law recently approved in France (Loi no. 2001-504 du 12 Juin 2001 tendant à renforcer la prévention et la repression des mouvements sectaires portent atteinte aux droits de l'homme et aux libertés fondamentales, in *Journal Officiel*, n. 135, Juin 13, 2001). The law allows possible the dissolution of a sectarian association when its leaders have been condemned for violation of the criminal legislation.
20. Peter Edge, *Legal Responses to Religious Difference* (London, Kluwer Law International, 2002).
21. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."
22. For an example see Singapore. "Code on religious harmony to be unveiled next year: PM Goh," in *Human Rights Without Frontiers*, <http://www.hrwf.net>, Oct. 22, 2002, visited on Oct. 2, 2002.
23. Such as proselytism: see the guiding principles listed in Bert Beach, "Proselytism in the Context of Globalization, Religious Liberty and Non Discrimination," in *Fides et Libertas*, 2001, pp. 85-87.
24. See Art. 18(3) ICCPR and Art. 9(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Human Rights Committee of the United Nations explicitly excluded it is legitimate to invoke national security as a limit to Art. 18: see par. 8 of the General Comment n. 22(48), CCPR/C/21/Rev. 1/Add. 4, adopted on July 20, 1993.
25. For example, no Constitution of the European Union member States lists national security among the limitations to religious freedom.
26. See Art. 19(3b) of the ICCPR and art. 10(2) of the ECHR, regarding freedom of expression; Art. 21 and 22(2) ICCPR and Art. 11(2) ECHR, regarding freedom of assembly and association.
27. Sect. I, n. vi. The text of the Siracusa Principles can be read at [www.article23.org.hk/english/research/iccpr.doc](http://www.article23.org.hk/english/research/iccpr.doc), visited on January 9, 2003. The Siracusa definition of national security is further specified in the Johannesburg Principles of National Security, Freedom of Expression, and Access to Information. According to principle 2(a), "A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or the use or threat of force, whether from an external source, such as military threat, or an internal source, such as incitement to violent overthrow of the government." The text of the Johannesburg Principles is available at [www.article19.org/docimages/511.htm](http://www.article19.org/docimages/511.htm), visited on January 9, 2003.
28. See Jacques Velu—Rusen Ergec, *La Convention Européenne des droit de l'homme*, (Bruxelles: Bruylant, 1990) pp. 618-19 and 657-59; Mark W. Janis, Richard S. Kay, Anthony W. Bradley, *European Human Rights Law* (Oxford: Oxford Univ. Press, 2000) pp. 185-189.
29. On the point whether the examples made in the previous sentences can be regarded as manifestations of religion, see Malcolm D. Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997) pp. 304-314.

30. The formulation proposed by Boothby, "International Law Principles," is: "Religious manifestation may be punished as a threat to national security only if a government can demonstrate that: (a) the manifestation is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the religious manifestation and the likelihood or occurrence of such violence."
31. See Lee Boothby, "International Law Principles."
32. Ibid.
33. The Johannesburg Principles, n. 7(a) (i), 7 (a) (ii) and 7 (b). Boothby ("International Law Principles"), paraphrasing the Johannesburg Principles in the context of religious manifestation, does not reproduce this part of the text.
34. Places of worship enjoy a particularly strong protection in the legal systems of many European States. In Italy, for example, police cannot enter a church unless a crime is being committed: in any other case, the religious authority in charge of the church must be notified in advance. After September 11, these restrictions on police control of places of worship (and particularly mosques) could be easily lifted. For a non-European example, see Malaysia Will Tape Sermons on Mosques, in *Human Rights Without Frontiers*, November 6, 2002, available at <http://www.hrwf.net>, visited on November 11, 2002.
35. In The Netherlands, for example, new imams are required to attend compulsory classes where they are given courses on topics like freedom of speech and religion, non-discrimination, women's rights, homosexuality, etc.: if they refuse, they will not get residence permit. See Netherlands, "Muslims Told to Speak Dutch in Mosques," in *Human Rights Without Frontiers*, <http://www.hrwf.net>, Oct. 2, 2002, visited on Oct. 3, 2002.
36. In consideration of the increasingly significant link between terrorism and religion, knowing the religious affiliation of a person, particularly if he/she is an immigrant, could be considered a legitimate interest of security officers. A proposal in this sense was recently made by the Ministry of Interior of the German Land of Bavaria: immigrants should declare their religion when they enter a country and this information should be fed to a central database. See the interview given to *Il Corriere della Sera* on September 21, 2002 (Beckstein, lo "sceriffo" della Baviera: "Copiere le norme italiane sulle impronte").
37. The protection traditionally enjoyed in the attorney-client relationship was one of the first casualties of the post-September 11 regulations enacted in the U.S. (see David H. Hendeon – Lee Canipe, "Notes on Church-State Affairs," in *Journal of Church and State*, vol. 44, n. 2, Spring 2002, pp. 394-396). The erosion of the right to privacy could affect also the confidentiality of the minister-parishioner relationship. This confidentiality is strongly protected by the laws of many European States (see for example James Casey, *State and Church in Ireland*, in Gerhard Robbers (ed), *State and Church in the European Union* (Baden-Baden: Nomos, 1996) p. 165; Richard Potz, *State and Church in Austria*, *ibid.*, p. 254, Gerhard Robbers, *State and Church in Germany*, *ibid.*, p. 71. Similar provisions are in force in Italy, Spain, Portugal, etc.), but it was recently weakened by some court decisions (notably in France) connected to cases of pedophilia involving religious ministers (see Olivier Echappé, "Le secret en question," in *L'Année canonique*, XLIII, 2001, p. 285-300, regarding the Court of Caen decision of September 2, 2001). The issue of pedophilia was perceived as so sensitive that religious or professional confidentiality was not regarded as a sufficient exemption from obligation to report a crime. The same could happen when equally sensitive issues—security for example—are at stake.
38. Recently the most important Italian newspaper gave prominence to an article which stressed that conversions to Islam frequently contain "an implicit or explicit refusal of the liberal civilization of the West" (Angelo Panebianco, "I crociati al contrario," in *Il Corriere della Sera*, August 19, 2002): therefore, these conversions cannot be considered exclusively in a religious perspective, as they have relevant political implications. The article does not draw the conclusions that logically descend from this statement, but this line of reasoning paves the way to the introduction of some limitations to the freedom of conversion, on the model of the laws already existing in some Middle East and Asian countries.
39. Derek H. Davis ("The Dark Side to a Just War: The USA PATRIOT Act and Counterterrorism's Potential Threat to Religious Freedom," in *Journal of Church and State*, vol. 44, no. 1, Winter 2002) quotes Madison (p. 6) and adds that "the PATRIOT Act [...] could have the harmful result of striking down the veil that has obscured religious belief and, to a lesser extent, religious practice from the cognizance of governmental authority" (p. 8).
40. See Robert A. Seiple, "Religious Liberty on the Global State," in <http://www.globalengagement.org/issues/2001/11/rseiple-philly.htm>, visited on Nov. 8, 2002.
41. The lost innocence of religions is not absolutely new. The Aum Shinrikyo gas attack on Tokyo's subway or the mass suicide of the Solar Temple followers, etc., had alerted the public opinion about the existence of dangerous or destructive sects: but these events involved small and borderline groups (the favor the term "sect" found in the popular language shows they were not regarded as "true" religions). What is new in the September 11 events, is that they involved Islam, the second largest religion of the world. On the difference between the violence coming from groups that are or are not part of a historical tradition see Jean-Francois Mayer, "Violence at Nouveaux Mouvements Religieux: Quelles Leçons Pouvons-nous Tirer?," in [http://www.terrorisme.net/analyse/2002/005\\_nrm.htm](http://www.terrorisme.net/analyse/2002/005_nrm.htm), visited on September 4, 2002.
42. It is not easy to identify "minority religions" as each religion is a minority religion somewhere in Europe. What makes the difference is that some religions (for example, Islam, Judaism, and the so-called "new" religious movements) are minority religions practically everywhere; others (the Roman Catholic or the Orthodox religion, for instance) are minority religions in some countries, but are by far the religions of the majority in others.

43. On the forms this control could assume, see *supra*. par. 3.
44. Loi no. 2001-504 du 12 Juin 2001, *supra* note 27.
45. See Silvio Ferrari, W. Cole Durham, Jr., Elizabeth Clark (eds.), *Law and Religion in Post-Communist Europe*, (Leuven: Peeters, 2003).
46. At a much deeper level, the problem the European Union will have to face is striking a balance between the conception of religious liberty prevailing in the Orthodox Church on one hand and in the Catholic and Protestant Churches on the other hand. According to Grace Davie's *Religion in Modern Europe: A Memory Mutates* (Oxford: Oxford Univ. Press, 2000) pp. 3-4 and other scholars, this difference is only the emerging part of a much larger division, whose roots go deeply down in history (see also Lawrence Uzzell, "Russians and Catholics," in *First Things*, n. 126, October 2002, pp. 21-23).
47. See Grace Davie, *Religion in Modern Europe*, pp. 194-94. Davie stresses that the European Union cannot progress from a merely economic to a complex socio-political entity without some kind of European civil religion taking shape.
48. The question of the crucifix in the classrooms was discussed in Germany a few years ago, after the decision of the Constitutional Court of May 16, 1995 (see Joseph List, "The Development of Civil Ecclesiastical Law in the Federal Republic of Germany, 1995/1996," in *European Journal for Church and State Research*, 3, 1996, pp. 13-14), and now is debated in Italy (see La Moratti: "Il Crocifisso Tornerà Nelle Aule," in *Corriere della Sera*, 19 settembre 2002; Crocifisso a scuola: la Chiesa frena la Lega, *ibid.*, 21 settembre 2002).
49. Law on Religious Communities and Associations of the Republic of Lithuania, October 4, 1995, art. 5 and 6.
50. About these systems of Church-State relations and the reasons of their decline see Silvio Ferrari's conclusion. *Church and State in Post-Communist Europe*, in Silvio Ferrari, W. Cole Durham, Jr., Elizabeth Clark (eds.), *Church and State in Post-Communist Europe*, Leuven, Peeters, 2003.
51. Except in some parts of the Balkans and Russia.
52. It could be argued that Judaism too is not a traditional religion in today's Europe. But Judaism contributed considerably in shaping the European identity through the medium of Christianity. The references to the Judeo-Christian roots of Europe is frequent in the political language of the European institutions.
53. See the reports on International Religious Freedom published annually by the U.S. Department of State. The last issues are available at <http://www.state.gov/g/drl/rls/irf/>, visited on January 10, 2003.
54. Regarding the position of Islam in Europe, see Felice Dassetto, Brigitte Maréchal, Jøgen Nielsen, Convergences Musulmanes. Aspects Contemporaines de l'islam dans l'Europe Elargie (Louvain-la-Neuve: Bruylant, 2001); W.A.R. Shadid and P. S. van Koningsveld (eds.), *Religious Freedom and the Neutrality of the State: the Position of Islam in the European Union* (Leuven: Peeters, 2002).
55. See Religion and Terrorism, *Supranote*.
56. Bob. S. Hadiwinata, "Terrorism, Religion and Global Politics," available at <http://mail2.factsoft.de/pipermail/national/2002-December/011474.html>, visited on January 6, 2003.



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# INTERNATIONAL LAW PRINCIPLES APPLIED TO NATIONAL SECURITY AND RELIGIOUS EXPRESSION: A REPORT, SOME OBSERVATIONS AND SUGGESTIONS

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On March 1, 2003, 20 distinguished experts representing a variety of viewpoints came together at George Washington University School of Law in Washington D.C. to explore together “The Relationship Between Security and Religious Freedom.” The event was sponsored by the Council on Religious Freedom located in Washington D.C. We explored the constitutional and human-rights responses to violence and crime committed in the name of religion.

There was considerable debate over many issues, but there was consensus that the rule of law, both domestic and international, must not be a casualty of the war against terrorism. There was also general agreement that all state actions taken in the name of national security are not necessarily legitimate or permissible under international human- rights standards.

Thus, the American Bar Association’s (ABA) Task Force on Terrorism and the Law quite properly criticized President Bush’s military order concerning the establishment of a military commission to try non-citizens who were deemed to be complicity in “acts” of “international terrorism.”

The ABA report expressed concern, as did many in our consultation of experts, that the president’s order of November 13, 2002, provided only the sketchiest outline of procedures for the commission, leaving the Secretary of Defense the job of establishing procedures.

The report recognized that the U.S. is a party to the International Covenant on Civil and Political Rights. Our experts generally agreed with the ABA taskforce that relevant to the military commission was Article 14 of the covenant, which establishes certain standards and procedures that should be

used in all courts and tribunals. The basic rights set forth in the covenant have been respected in “war crimes” prosecutions conducted by United Nations (UN) special tribunals.

Our experts recognized that the ABA report was not only directed toward protecting religious freedom. However, when people use religion as a cover for terrorist attacks, it is easy to categorize such atrocities against all members of that religion.

After September 11, it would have been an easy second step to persecute, or at least vilify, all adherents of the Muslim religion. In fact, our experts heard reports of such limited conduct in the United States. No doubt there would have been more of this except for the quick action of the Executive Branch of the U.S. government.

One concern that has also been expressed relates to the work of the intelligence and law enforcement communities. It is recognized that the threat of terrorism obviously requires a close cooperation between the intelligence and law enforcement communities to apprehend those who would destroy. But great care must be exercised to maintain the distinction between these two communities.

Some of our experts expressed concern with attempts of law enforcement to infiltrate genuine religious communities, as was the case in the past. Our experts also recognized that under the guise of national security or public order, unpopular or minority religions might be subject to restrictive measures by the state.

Internationally recognized standards guarantee the right to believe and manifest one’s religion. Article 18 of the Universal Declaration of Human Rights states:

*“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”*

In 1966 the UN General Assembly adopted the International Covenant on Civil and Political Rights. Article 18(3) of the covenant deals with limitations on the religious human rights provided for in Article 18. These limitations do not limit the right to believe. Article 18 only permits limitations on the freedom to manifest one’s religion or belief “as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedom of others.”

It should be noted that the list of limitations does not specifically mention “national security” as one of the limitations on the freedom to *manifest* one’s religion or belief:

Our experts, therefore, noted that any such limitation on the right to manifest one’s religion or belief

- must not result in the suppression of the right itself
- must not result in discrimination based on religion or belief
- must be prescribed by law prior to their imposition
- must be necessary for the protection of public safety, order, health, morals, or rights of others
- must be the least restrictive available to ensure these protections

In order to be deemed prescribed by law, the laws must not be vague. That is, they must be formulated with sufficient precision to enable the individual to regulate his or her conduct.

During our discussions, the experts explored the use of the Siracusa Principles of the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights<sup>1</sup> and subsequent Johannesburg Principles on National Security, Freedom of Expression, and Access to Information.<sup>2</sup> There was interest in applying the Johannesburg Principles to religious expression or manifestation. The Johannesburg Principles were adopted for application to Article 19 for the International Covenant as it relates to national security. The following is a paraphrase of the Johannesburg Principles in the context of religious expression or manifestation, the following general principles should be observed:

## I. GENERAL PRINCIPLES

### **Principle 1: Freedom of Belief and Religious Manifestation**

No restriction on freedom of religious manifestation on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.

#### **Principle 1.1: Prescribed by Law**

- 1• Any restriction on religious manifestation must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.

- 2• The law should provide for adequate safeguards against abuse, including prompt, full, and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

**Principle 1.2: Protection of a Legitimate National Security Interest**

Any restriction on religious manifestation that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

**Principle 1.3: Necessary in a Democratic Society**

To establish that a restriction on religious manifestation is necessary to protect a legitimate national security interest, a government must demonstrate that:

- 1• The expression or manifestation at issue poses a serious threat to a legitimate national security interest;
- 2• The restriction imposed is the least restrictive means possible for protecting the interest; and
- 3• The restriction is compatible with democratic principles.

**Principle 2: Legitimate National Security Interest**

1. A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

**Principle 3: Prohibition of Discrimination**

In no case may a restriction on freedom of religious manifestation, including on the grounds of national security, involve discrimination based on language, religion, political, or other opinion, national or social origin, nationality, or other status.

## II. RESTRICTIONS ON FREEDOM OF RELIGIOUS EXPRESSION AND MANIFESTATION

**Principle 4: Protection of Religious Opinions or Other Beliefs**

No one may be subjected to any sort of restraint, disadvantage or sanction because of his or her religious opinions or other beliefs.

**Principle 5: Religious Manifestation that May Threaten National Security**

Religious manifestation may be punished as a threat to national security only if a government can demonstrate that:

- 1• The manifestation is intended to incite imminent violence;
- 2• It is likely to incite such violence; and
- 3• There is a direct and immediate connection between the religious manifestation and the likelihood or occurrence of such violence.

**Principle 6: Protected Religious Manifestation**

1• The peaceful exercise of the right to freedom of religious manifestations shall not be considered a threat to national security or subjected to any restrictions or penalties. Religious manifestation which shall not constitute a threat to national security includes, but is not limited to, religious manifestations that:

- a• constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;
- b• is directed at communication information about alleged violations of international human rights standards or international humanitarian law.

**Principle 7: Unlawful Interference with Religious Manifestation by Third Parties**

Governments are obliged to take reasonable measures to prevent private groups or individuals from interfering unlawfully with the peaceful exercise of religious manifestation or other beliefs. In particular, governments are obliged to condemn unlawful actions aimed at silencing freedom of religious expression and manifestation and to investigate and bring to justice those responsible.

We must also be concerned with the rule of law protections included in the international standards regarding human rights. Religious human rights can be effectively lost by rule of law abuses in the name of national security.

It is important to note with particular alarm that it is not only non-democratic countries that have used national security to restrict internationally recognized due process protections, but western democratic countries (including the United States) as well. I have already mentioned some concerns in the United States.

In the wake of 9-11, at the urging of the Canadian government, its parliament, like the U.S. Congress, enacted what many Canadian human rights activists felt to be several pieces of problematic legislation. Among them was the Anti-Terrorism Act, which creates “Investigatory Detention,” allowing the police to detain an individual suspected of having information related to a “terrorism offense” and compelling that individual to answer any questions put to him.



Should that individual refuse to surrender his right to silence, there would be no limit to the time he could be detained.

Of course, such concerns are not limited to Canada, however. In South Korea the government introduced an “anti-terror” bill limiting rights to freedom of expression and freedom of assembly. In Jordan, the authorities changed the Penal Code expanding the definition of “terrorism” and enlarging the scope of offenses punishable by death.

In India a law against terrorism gives the police wide powers of arrest and permits up to six months detention without charge or trial for political suspects. Hong Kong has new national security laws, including one on sedition, which seriously endangers verbal or written communication.

What is perhaps most disturbing is UN Security Council Resolution 1373, which sets forth a range of legislative and other measures for states to adopt to prevent and suppress “terrorism.” But neither the Security Council nor its newly-established Counter-Terrorism Committee took the time to remind states of their UN Charter obligations to comply with international human rights or advised how to do so. Even the UN High Commissioner for Human Rights’ efforts to issue such guidance went without attention. This is difficult to comprehend, but should be most alarming.

Rule of law concerns were also addressed in the Johannesburg Principles. These rules of law, including due process protections as they relate to national security concerns limitations on religious human rights, may be paraphrased as:

### III. RULE OF LAW AND OTHER MATTER

#### **Principle 8: General Rule of Law Protections**

Any person accused of a security-related crime involving religious expression or manifestation is entitled to all rule-of-law protections that are part of international law. These include, but are not limited to, the following rights:

- 1• The right to be presumed innocent;
- 2• The right not to be arbitrarily detained;
- 3• The right to be informed promptly in a language the person can understand of charges and supporting evidence against him or her;
- 4• The right to prompt access to counsel of choice;
- 5• The right to a trial within a reasonable time;
- 6• The right to have adequate time to prepare his or her defense;
- 7• The right to a fair and public trial by an independent and impartial court or tribunal;

- 8• the right to examine prosecuting witnesses;
- 9• the right not to have evidence introduced at trial unless it has been disclosed to the accused, and he or she has had an opportunity to rebut; and
- 10• the right to appeal to an independent court or tribunal with power to review the decision on law and facts and set it aside.

In short, concern for national security must not trump all other concerns. The current war on terrorism is unlike past wars, which had an anticipated end. We have been repeatedly warned that this war may not be concluded in the foreseeable future. If “national security” concerns may trump religious human rights, those rights may well be lost forever. The principles I have referred to, if applied to the right to manifest religion, may provide for national security concerns while hopefully preserving core religious-freedom principles.

1. For a discussion of the Siracusa Principles, see 7 Human Rights Quarterly 3-14.
2. The Johannesburg Principles were adopted on October 1, 1995, by a group of experts in international law, national security, and human rights convened by Article 19, the International Centre Against Censorship in collaboration with the Centre for Applied Legal Studies of the University of Witwaters in Johannesburg, South Africa. See <http://www.gwu.edu/~cnss/secretcy/johanprincip.html>.



E N D



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# RELIGIOUS PLURALISM AS A FACTOR IN PEACE

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## I. RELIGIOUS PLURALISM AND CONFLICT

In the aftermath of September 11, the notion that religious pluralism could be a factor in peace may sound increasingly paradoxical. In all too many contexts, pluralism is not a factor in peace, but a cause of war. At a minimum, it seems to be a recipe for human tension at every level of society. Samuel Huntington's now famous book, *The Clash of Civilizations*,<sup>1</sup> attracted criticism for suggesting that in the post-communist world, the bipolar conflicts of the Cold War would be replaced by tensions between religiously-based civilizations, but its predictions seem to be coming to pass. As of the late 1990's, there were roughly forty armed conflicts that can be classified as wars<sup>2</sup>, and this number has been fairly consistent for several years<sup>3</sup>. Most of these involve religion in some way,<sup>4</sup> if only as a social marker of the identity of those involved in the conflict<sup>5</sup>. At the beginning of his book *Building Peace*, John Paul Lederach notes that "between 1989 and 1996, more than seventy wars occurred in sixty locations and involved more than one-third of all member-states of the United Nations."<sup>6</sup> Scott Appleby notes that "[f]rom 1945 to 1960, ethno-religious concerns drove more than half the world's civil wars. The proportion increased to three-quarters from 1960 to 1990 and accelerated again with the collapse of the Soviet Union in 1991."<sup>7</sup> Increasingly, wars are intrastate affairs<sup>8</sup>. And as September 11 underscored, a pattern of conflict and violence threatened by terrorist activities can be expected in the future.

In what sense, then, is pluralism a factor in peace? At a time when daily headlines scream the implication of religion in war and violence, doesn't realism demand skepticism about the role that religious pluralism in particular can play in promoting stability and peace?

My answer is that we do need realism, and we need to look with care at situations in which religion engenders violence and other pathologies of conflict. But the reality is that pluralism is an inescapable fact of modern life. The demography of most countries has been increasingly pluralized over the

last half century as a result of massive movements of population, whether as refugees, or simply as a result of efforts of individuals to find improved working or living conditions. The effects of pluralization are compounded by the realities of a shrinking world. The illusion of religious homogeneity could be maintained in a particular country a century ago, when travel and communication were difficult. In today's world, no one can escape awareness of religious differences in surrounding societies. In the global setting there is no such thing as a religious majority; there are only religious minorities. Awareness of mistreatment of co-religionists, whether at home or abroad, is only a headline, a news broadcast, or an email away. The deep lesson of modern history is that peace in a pluralistic world is best maintained through building structures of mutual understanding and respect. This in turn is best accomplished through strengthening and refining the protection of freedom of religion or belief. It is not religious pluralism itself that is hazardous, but inappropriate constraints on pluralism.

In what follows, I will first trace the emergence of this key realization: namely, that pluralism is an inescapable social reality, and that the path to peace lies not in trying to ignore, to minimize, or to eliminate this reality, but in finding ways for individuals and groups with differing beliefs to live together under conditions of freedom, equal treatment, and mutual respect. Because this idea of respectful pluralism was given its classic expression by John Locke, I refer to it as the “Lockean Insight.” But it has become much more: it is now a fundamental axiom of international human rights and domestic constitutional law. Having identified the axiom that links pluralism and peace, I then address a false fear about reconciling exclusivist claims with pluralism. I also criticize the emergence of what I would call “pseudo-pluralism” as a failed response to the demands of the axiomatic Lockean Insight. Finally, I address the issue of how religious communities can contribute more effectively to the process of building peace.

## II. THE LOCKEAN INSIGHT: ACHIEVING PEACE THROUGH RESPECTING FREEDOM

The tendency to see pluralization as a social hazard rather than as a factor of peace is an old one. For much of human history, it was assumed that religion was a kind of social glue that held society together. Religious dissent was seen as an initial signal of a process that could, if left unchecked, result in the disintegration of society. The religious wars that followed the Reformation

seemed to prove that if religious dissenters were given too much freedom, society would be torn apart. The initial solution to the problem of religious warfare was the *cuius regio* principle: namely, that the prince should determine the religion of his realm<sup>9</sup>. This approach recognized the reality of pluralism by allowing princes to choose among differing religious orientations, but assumed that religious homogeneity within the state was vital for social peace. The religions that are dominant in various European countries are a reflection of the residual impact of the *cuius regio* principle.

The difficulty, of course, was that matters of conscience do not conveniently track boundaries or the will of the local prince. Dissent continued to arise, and inevitably resulted in conflicts with the prevailing religion supported by the local sovereign. What John Locke saw was that typical perceptions of the relationship of religious dissent and violence mistook cause for effect. He recognized that it is not religious dissent that causes eruptions of violence, but persecution of strongly-held dissenting beliefs. In a key passage in his *Letter Concerning Toleration*, Locke wrote:

*Now if that church, which agrees in religion with the prince, be esteemed the chief support of any civil government, and that for no other reason...than because the prince is kind and the laws are favorable to it; how much greater will be the security of government, where all good subjects, of whatsoever church they be, without any distinction upon account of religion, enjoying the same favor of the prince, and the same benefit of the laws, shall become the common support and guard of it; and where none will have any occasion to fear the severity of the laws, but those that do injuries to their neighbors, and offend against the civil peace!*<sup>10</sup>

Locke's contention in this passage was that far from destabilizing a regime, toleration and respect could have exactly the opposite effect. In the context of a pluralistic society, a regime that respects divergent beliefs will win support from those it respects, resulting in much greater stability that can be achieved by favoring the dominant group.<sup>11</sup>

At the time Locke propounded his insight, the idea was purely theoretical. No society had been organized on this principle. Within a century, however, it became a central aspect of the "lively experiment" with religious freedom in the United States, and over the past two centuries, the idea has been vindicated both in United States and within countless other countries that have adopted constitutional principles that accord religious freedom and respect to the various religious sub-groups in their pluralistic societies.

By effectively guaranteeing freedom of religion, countries help to prevent the seeds of conflict from germinating and to provide assurances that past conflicts will not be repeated. Principles of religious freedom can transform social pluralism from an explosive powder keg into a stable and vibrant form of social life.

Not surprisingly then, by the time that international human rights were being codified in the aftermath of World War II, freedom of religion or belief emerged as an axiomatic feature, memorialized in Article 18 of the Universal Declaration of Human Rights,<sup>12</sup> Article 18 of the International Covenant on Civil and Political Rights (“ICCPR”),<sup>13</sup> and in a variety of other international instruments.<sup>14</sup> It is recognized in the overwhelming majority of the world’s constitutions,<sup>15</sup> including virtually every European constitution<sup>16</sup> and the constitution of every independent country in the Western Hemisphere.<sup>17</sup> Its preeminence is emphasized by the fact that it is one of the rights specified to be non-derogable even “in time of public emergency which threatens the life of the nation,”<sup>18</sup> and unlike the freedoms of expression and association, cannot be overridden due to national security concerns.<sup>19</sup>

The axiomatic character of this commitment to respectful pluralism has been underscored in recent case law of the European Court of Human Rights in Strasbourg. In *Kokkinakis v. Greece*,<sup>20</sup> the court’s leading case on freedom of religion or belief, the court stated:

As enshrined in Article 9, freedom of thought, conscience, and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics, and the unconcerned. *The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.*<sup>21</sup>

This profound commitment to religious freedom and to respectful pluralism has been cited repeatedly in subsequent decisions of the European Court.<sup>22</sup> Significantly, the Court has noted that the obligation to respect pluralism extends to situations in which the state fears that some tensions between different religious groups may arise. In *Serif v. Greece*, a case in which Greece sought to prosecute a Moslem leader (who had been elected by his religious community) for usurping the role of a state-appointed mufti, the Greek government defended its position on grounds that it needed to avoid

potential conflict on religious grounds. The European Court rejected this argument, reasoning:

Although the Court recognizes that it is possible that tension is created in situations where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. *The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other...*<sup>23</sup>

The Lockean Insight with its respect for religious difference was balanced by a recognition that there are limits to what can be tolerated in the name of religion. Among other things, Locke suggested that the intolerant need not be tolerated. His interpretation of this principle appeared to exclude Catholics, Moslems, and atheists, thus radically narrowing the scope of the right to tolerance he was advocating. In this area, Locke identified a valid principle, but he applied it incorrectly. That is, Locke's "limitation clause" was far too broad and would have denied religious freedom to an excessively broad array of religious and belief communities. However, he was right in recognizing that there must be some limits.

Since Locke's time, there have been over three centuries of experience in framing sound approaches to this problem of limitation. The basic principles that should govern have been distilled and well-stated in the fundamental international human rights instruments.<sup>24</sup> Their formulation of these limitations is now familiar, but deserves some explication, because there is a tendency, particularly where security interests are at stake, to think these limitations justify greater narrowing of religious freedom protections than they in fact do. The European Convention, later followed in all essential respects by the ICCPR, contains the following limitations clause:

Article 9(2): Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others.

Several points need to be stressed about this clause, and the parallel Article 18(3) of the ICCPR. First, limitations may be imposed only on *manifestations* of religion; matters that are purely matters of belief, arising in the internal sphere of conscience (the *forum internum*) may not be constrained.<sup>25</sup> Second,

limitations can only be imposed by law, and in particular, by laws that comport with the rule of law ideal.<sup>26</sup> That is, limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by rules that purport to be laws, but are so vague as to allow arbitrary enforcement.<sup>27</sup>

Third, limitations must further one of a narrowly circumscribed set of legitimating social interests. Recognizing that all too often majority rule can be insensitive to minority religious freedom rights, the limitations clause makes it clear that in addition to mustering sufficient political support to be “prescribed by law,” limitations are only permissible if they additionally further public safety, public order, health or morals, or the rights and freedoms of others. Significantly, as the UN Human Rights Committee’s official commentary on the parallel language of Article 18(3) of the ICCPR points out, the language of the limitations clause is to be strictly interpreted:

Restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.<sup>28</sup>

As noted earlier, freedom of religion or belief is so important that it is not derogable even in times of emergency.<sup>28</sup> Of course, where emergency situations or threats to national security constitute concrete threats to public health, safety, and order, or to the rights of third persons, the limitation clauses allow proportionate interventions by state officials, but generalized appeals to national security or other state interests outside the ambit of the concrete and imminent threats to the named interests do not suffice. Similarly, the reference to “public order” as a legitimating ground must be understood narrowly as referring to prevention of public disturbances. Significantly, the term for “public order” in the French version of the ICCPR is not “ordre public” in the sense often used in French public and administrative law to refer to the general policies of the community, but rather “*la protection de l’ordre*,”<sup>30</sup> terminology suggesting concrete public disturbance and disorder.

Fourth, even if a particular limitation on freedom of religion or belief passes all the foregoing tests, it is only permissible as a matter of international human rights law if it is genuinely necessary. The European Convention adds the phrase



“necessary in a democratic society,” which is missing in Article 18(3) of the ICCPR. It is not clear how much the reference to democratic society adds to the necessity test, because in any society, only certain measures are strictly necessary for public safety, health, order, and so forth. In countries that are committed to democratic values, however, the reference is an added reminder that limitations need to be construed narrowly in no small part because freedom of religion and belief is a crucial dimension of democratic order.

The decisions of the European Court of Human Rights in Strasbourg, which has had the most experience adjudicating the meaning of limitation clause language, have made it clear, that in most cases, analysis turns ultimately on the necessity clause. In the European Court’s decisions, public officials defending a certain limitation can often point to legislation supporting it, and the legitimating grounds of Article 9(2) are broad enough that they can be used to cover a broad range of potential limitations. The intuitions of popular consciousness tend in the same direction, since government has assumed a pervasive role within the setting of contemporary social welfare states, and older assumptions about the virtues of limited government are often forgotten. In this context, insistence that limitations be genuinely and strictly necessary puts crucial brakes on state action that would otherwise impose excessive limitations on manifestations of religion.

As the European Court has framed the issue, an interference with religion is necessary only when there is a “pressing social need” that is “proportionate to the legitimate aim pursued.”<sup>31</sup> Clearly, when analyzed in these terms, the issue of necessity must be assessed on a case-by-case basis. However, certain general conclusions have emerged. First, in assessing which limitations are “proportionate,” it is vital to remember that “freedom of thought, conscience, and religion is one of the foundations of a “democratic society’.”<sup>32</sup> Second, limitations cannot pass the necessity test if they reflect state conduct that is not neutral and impartial,<sup>33</sup> or that imposes arbitrary constraints on the right to manifest religion.<sup>34</sup> Discriminatory and arbitrary government conduct is not necessary—especially not in a democratic society. In particular, state regulations that impose excessive and arbitrary burdens on the right to associate and worship in community with others—such as burdensome registration requirements—are impermissible.<sup>35</sup> Third, as the European Court has recognized, “in democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership . . . .”<sup>36</sup> By the same token, there is no necessity (and indeed it is inappropriate) to involve recognized ecclesiastical authorities from one

denomination in state licensing or approval procedures that may affect the rights of other religious groups to manifest their religion.<sup>37</sup> In general, where religious groups can point to alternative ways that a particular state objective can be achieved that would be less burdensome for the religious group and would substantially accomplish the state's objective, it is difficult to claim that the more burdensome alternative is genuinely necessary.

The United States Supreme Court's decision in *Employment Division v. Smith*<sup>38</sup> which held that any neutral or general law can override a religious liberty claim, fails to measure up to the foregoing international standards. In effect, the *Smith* decision holds that limitations may be imposed on manifestations of religions whenever such limitations are prescribed by a neutral and general law. That is, the *Smith* decision drops all but the "prescribed by law" requirement of the typical international limitations clauses such as Article 18(3) of the ICCPR and Article 9(2) of the European Convention. This overlooks decades of experience, much of it garnered in the United States, that suggests that rule- of- law constraints alone do not provide sufficient protection for religious freedom.<sup>39</sup> Historical experience has shown that it is far too easy to frame legislation that appears neutral on its face but that unnecessarily and disproportionately burdens particular religious groups, whether intentionally or inadvertently. The irony is that the American Supreme Court has abandoned heightened scrutiny of limitations on religious freedom precisely when international consensus has recognized the need to do more than defer to limitations that have been "prescribed by law." While the European Court has yet to fully clarify its position on the "general and neutral" law issue in its case law construing Article 9(2),<sup>40</sup> the requirement that it assess the "necessary in a democratic society" requirement should lead to a better result.

Reflecting on the limitations clauses in the aftermath of September 11 confirms their ongoing relevance and resilience. The risks of religiously-motivated terrorism have changed the world in general, and the world of religious freedom in particular. Yet reflection suggests that the drafters of the international instruments understood the issues at stake correctly. States have a legitimate interest in intervening to avert terrorist behavior, but these interventions need to be structured in ways that can be squared with international religious freedom protections, including their limitation clauses. The limitation clauses give adequate room for officials charged with dealing with terrorist threats. At the same time, the fact that the exceptions to religious liberty protections carved out by limitations provisions are narrowly drawn helps to assure that genuine religious beliefs are respected

and made secure. A security regime that fails to secure religious freedom has inevitably failed in its task, both because threatened believers may threaten security, and because security is not an end in itself, but a means to securing ordered liberty, including religious liberty.

### III. THE FALSE FEAR OF EXCLUSIVISM: PLURALISM DOES NOT DEMAND RELATIVISM

While proper application of limitation clauses provides sophisticated guidance for determining when state intervention in religious liberty cases is permissible, practical problems remain. In a world increasingly sensitive to risks posed by religious extremists, a major question that has emerged is how to identify those who count as extremists not entitled to protection. Stated differently, the question is, how pluralistic is pluralism required to become? With respect to this issue, I want to make a narrow but significant point. It is sometimes argued that religious groups which that make exclusivist truth claims count among the “extremists” which that cannot be tolerated. The assumption is that groups that which make claims that they are the only true church, or hold exclusive access to salvation, will feel impelled to impose their views on others and this will inevitably be a source of social tension.

But this is clearly not the case, or at least not necessarily the case. As demonstrated by the developments associated with the Second Vatican Council in the Roman Catholic tradition, a religious community can claim that its beliefs are true without believing that its beliefs maybe imposed on others.<sup>41</sup> Among other reasons, this is because the truths to which a religious tradition is committed may include the truth that human beings have dignity, and that the conscience of the “other” should be respected. Truth commitments may be fully compatible with joint efforts with others in pursuit of the common good. Religious illiteracy is as likely to contribute to violent conflict as exclusivist claims.<sup>42</sup>

The corollary is that commitment to pluralism does not carry with it an implied commitment to relativism. In formulating state policy toward religion, it is as inappropriate for states to evaluate a particular religious community’s beliefs about the exclusiveness of its truth claims as it is to evaluate beliefs about resurrection, virgin birth, or the last prophet. A state committed to human rights, and in particular to freedom of religion and belief, should insist on tolerance and mutual respect among citizens, but may not insist that believers compromise or relativize their commitment to the truths in which they believe.

## IV. PSEUDO-PLURALISM

One of the disturbing trends emerging in many parts of the world is a state preference for what I would call pseudo-pluralism. This can take various forms, but it comes down to an undue narrowing of the permissible scope of pluralism. I call it pseudo-pluralism because it is in general substantially more pluralistic than having an established religion, but it typically stops short of affording genuine respect to the full range of legitimate groups in society.

A predominant form this trend takes is to favor “traditional” religions over new religious movements (without any reference to whether the new movements are genuinely dangerous to society). Behind this trend there is often an implicit or explicit policy of state paternalism with respect to religion. State officials will advance a position that amounts to saying, “Our citizens may not be able to adequately evaluate these religions for themselves.” The concrete manifestation of this position appears in restrictive registration laws for religious organizations.

Another version of this notion has been identified by Nikolas K. Gvosdev, who notes that the emergence of a “Eurasian consensus,” according to which “the primary value ascribed to pluralism is the preservation of peaceful coexistence and harmony amongst the different communities found in society, with preeminence reserved for traditional faiths.”<sup>43</sup> According to Gvosdev, many of the states of Eurasia are moving towards a system of “managed pluralism,” which tends to protect existing groups and their respective positions in society, while blocking unpopular groups and paying insufficient attention to claims of individual believers.<sup>44</sup>

In some ways what we are seeing is the emergence of what might be termed a “*neo-cuius regio*” regime—not one in which the prince chooses the religion of his people, but one in which the state determines the range of legitimate religions. While the state will inevitably have some need to define criminal activity and restrict religious freedom at its outer boundaries, such paternalism in religion is fundamentally at odds with international religious freedom norms when it restricts the rights of legitimate religious groups. It is not genuinely “respectful pluralism” but a kind of smokescreen used to legitimize privileging of the dominant religions.

## V. WHAT RELIGIOUS GROUPS CAN DO TO ENHANCE PLURALISM

There are a variety of ways that religion can contribute to the process of minimizing and mitigating the conflicts that might otherwise arise from

pluralism. My own sense is that religious communities need to assume greater proactive responsibility in ameliorating sources of tension and conflict that have historically emanated from differences in religion. Among other things, there is a growing realization that religion can play an important role in helping to resolve conflicts and achieve long-term reconciliation.

There are a number of difficulties preventing religious groups from fulfilling their potential in this area. Among other things, religious leaders tend not to be adequately trained for dealing with matters of interfaith friction, or more generally, with conflict resolution whatever the source. Religious leaders are usually prepared primarily for caring for their congregations and carrying out pastoral duties. The skill set required for interacting with others, including government officials, and helping to resolve conflicts is typically a distinctive one.

Nonetheless there are a variety of things that can be done. First, there is a vital need to expand understanding of the resources within religious traditions, such as relevant passages from sacred writings, traditions, exemplary figures, and the like that call for tolerance, respect, and love of others. As knowledge of other religious traditions expands, respect tends to grow as well. Second, there is a need to help others understand the theological commitments of one's own tradition in this area, and ways that these commitments impose constraints on intolerance. Once believers in one tradition understand that there are theological grounds encouraging tolerance and respect in another tradition, it becomes easier for the former to have confidence in building positive relations with the latter. Third, building networks involving leaders from many religious backgrounds, very much in the way that International Religious Liberty Association chapters typically do, is extremely important into generating working relations with others. Some of the most effective work can be done not by top-level denominational leaders, but by middle level leaders who can work across denominational lines to promote grass roots efforts. No doubt there are many additional steps that can be taken, but the fundamental starting point is to find ways for members of different groups to enter into dialogue with each other.<sup>45</sup>

## VI. CONCLUSION

In the years ahead, religion will be an increasingly significant factor in both public and private life. Increasing pluralization of society appears to be an irreversible trend everywhere. Improved transportation and communication means that awareness of this diversity is more widespread than ever before.

The path to peace in this setting depends on finding ways to make pluralization a source of stability rather than a source of friction. There is a ring of paradox to this suggestion, because during too much of history, pluralism has been a source of social disintegration. In fact, however, the idea of religious freedom as originally worked out by classic political thinkers such as Locke and as now crystallized in international religious freedom norms holds the key to resolving the apparent paradox. By assuring legal protection for differences in religious belief and world view, religious freedom rights assure that believers (and non-believers) will be protected in the core domain of conscience. This in turn translates into profound loyalty to a system that provides such protections and into understanding of the importance of guaranteeing equal protections to others. The result is the kind of stability we have come to associate with democratic regimes that are genuinely committed to the protection of human rights. While increased concerns about risks of terrorism and religious extremism have arisen since September 11, the concerns do not require a wholesale revamping of existing international norms regarding freedom of religion and belief. The existing norms strike an appropriate balance between the needs of security and the needs of religious liberty. Indeed, security and religious liberty in the last analysis are not at odds with each other, but are in fact intertwined objectives. Neither can exist without the other. In the course of pursuing these mutually supportive objectives, we need to be wary of pseudo-dangers and pseudo-solutions. Authentic religious freedom is capable of accommodating both robust and exclusivist truth claims and a range of pluralism that extends substantially beyond the comfortable circle of traditional religions. Indeed, it is a better source of stability in the long run than its counterfeits. In the last analysis, authentic religious freedom, with appropriate but narrowly drawn limits, is the best assurance we have for stability and peace in an increasingly pluralized world.



E N D

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2. John Paul Lederach: *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington: U.S. Institute of Peace Press, 1997), p. 149.

3. *Ibid.*, p. 7.
4. R. Scott Appleby: *The Ambivalence of the Sacred: Religion, Violence, and Reconciliation* (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publishers, 2000), p. 58.
5. David R. Smock: "Introduction," in David R. Smock, ed.: *Interfaith Dialogue and Peacebuilding* (Washington: United States Institute of Peace Press, 2000), p. 3. "Rarely is religion the principal cause of conflict," Smock maintains, but "religion is nevertheless a contributing factor in places as widely scattered as Northern Ireland, the Middle East, the Balkans, Sudan, Indonesia, and Kashmir."
6. Lederach, *supra* note 2, p. 4.
7. Appleby, *supra* note 4, p. 58.
8. Lederach, *supra* note 2, p. 9.
9. The principle of "cuius regio, eius religio," which literally means, "whose the region, his the religion," was established by the Peace of Augsburg and recognized by Charles V in 1555. See Malcolm D. Evans: *Religious Liberty and International Law in Europe* (Cambridge, New York: New York University Press, 1997), pp. 45-48.
10. John Locke, *A Letter Concerning Toleration* (first published in 1689; cited edition: Buffalo, New York: The Library of the Liberal Arts, 1990), pp. 68-69.
11. For a more extensive discussion of the Lockean insight, see W. Cole Durham, Jr.: "Perspectives on Religious Liberty: A Comparative Framework," in Johan D. van der Vyver and John Witte, Jr., eds: *Religious Human Rights in Global Perspective: Legal Perspectives* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1996), pp. 7 - 12.
12. G. A. Res. 217 [7 (A)(III), December 10, 1948, U.N. Doc. A/810, at 71 (1948)].
13. G. A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. no. 16, at 52, 55, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171 (1976) (Art. 18).
14. *American Declaration of the Rights and Duties of Man*, art. III, O.A.S.res. XXX, adopted by the Ninth International Conference of American States, Bogota (1948): *Novena Conferencia Internacional Americana, 6 Actas y Documentos* (1953), 297-302. See also *United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, adopted 18 Jan. 1982, G.A. Res 55, 36 U.N. GAOR Supp. (No. 51), U.N. Doc. A/RES/36/55 (1982).
15. See, e.g., Afghanistan Const. art. 40; Albania Const. art. 24; Algeria Const. art. 36; Andorra Const. art. 11; Angola Const. art. 45; Antigua and Barbuda Const. art. 11; Argentina Const. §14, §20; Armenia Const. art. 23; Australia Const. Act §116; Austria Const. art. 7; Azerbaijan Const. art. 48; Bahamas Const. arts. 15 cl. 2, 22; Bahrain Const. art. 22; Bangladesh Const. arts. 39, 41; Barbados Const. art. 19; Belarus Const. art. 31; Belgium Const. art. 19; Belize Const. arts. 3 cl. 2, 11; Benin Const. art. 23; Bolivia Const. art. 182; Bosnia and Herzegovina Const. art. II cl. 3g; Brazil Const. art. 5; Bulgaria Const. art. 37; Burkina Faso Const. art. 7; Burundi Const. art. 27; Cambodia Const. art. 43; Cameroon Const. p.mbl., art. 86; Canada Const. Act. § 2a; Cape Verde Const. arts. 27 cl. 2, 45, 48; Chile Const. art. 19 cl. 6; People's Republic of China Const. art. 36; Republic of China Const. art. 13; Colombia Const. arts. 18, 19; Congo Const. art. 26; Democratic Republic of Congo Art. 25; Cook Islands Const. arts. 64 cl. 1d; Costa Rica Const. art. 75; Croatia Const. art. 40; Cuba Const. art. 8; Cyprus Const. art. 18; Czech Republic Const. art. 10 (provision incorporating international human rights treaties); Denmark Const. ch. 7; Djibouti Const. art. 11; Dominica Const. art. 9; Dominican Republic Const. art. 8 cl. 8; Ecuador Const. art. 23 cl. 11; Egypt Const. art. 46; El Salvador Const. art. 25; Eritrea Const. art. 19; Estonia Const. arts. 40, 41; Ethiopia Const. art. 27; Fiji Const. art. 35; Finland Const. §11; France Const. art. 1; Gabon Const. art. 1; Georgia Const. art. 9, 19; Germany Basic Law arts. 4, 7, 12a, 140, 141; Ghana Const. art. 21 cl. 1; Greece Const. art. 13; Grenada Const. Order art. 9; Guatemala Const. art. 36; Guinea Const. art. 7; Guyana Const. art. 145; Haiti Const. art. 30; Honduras Const. art. 77; Hong Kong Basic Law art. 32; Hong Kong Bill of Rights art. 15; Hungary Const. Art. 60; Iceland Const. art. 73; India Const. art. 25; Indonesia Const. art. 29, amend. 2; Iraq Const. art. 25; Ireland Const. art. 44; Italy Const. art. 19; Jamaica Const. art. 21 cl. 1; Japan Const. art. 20; Jordan Const. art. 14; Kazakhstan Const. art. 22; Kenya Const. art. 78; Kiribati Const. Art. 11; North Korea Const. art. 68; South Korea Const. arts. 19, 20; Kuwait Const. art. 35; Kyrgyzstan Const. art. 16; Latvia Const. art. 99; Lebanon Const. art. 9; Liberia Const. art. 14; Libya Const. art. 2; Liechtenstein Const. art. 37; Lithuania art. 26; Luxembourg Const. art. 19; Macedonia Const. art. 10; Madagascar Const. art. 10; Malawi Const. art. 33; Malaysia Const. art. 11; Mali Const. art. 4; Malta Const. §32b, §40; Marshall Islands Const. art. II, §1; Mauritania Const. art. 10 cl. 1; Mauritius Const. para. 2; Mexico Const. art. 25; Micronesia Const. art. IV, §2; Moldova Const. art. 31 cl. 2; Monaco Const. art. 23; Mongolia Const. arts. 16 cl. 15, 35 cl. 8; Morocco Const. art. 6; Mozambique Const. art. 78; Namibia Const. art. 21; Nauru Const. art. 11; Nepal Const. art. 19; Netherlands Const. arts. 6, 23 cl. 3; New Zealand Bill of Rights Act §13; Nicaragua Const. art. 29; Nigeria Const. art. 38; Northern Mariana Islands Const. §2; Norway Const. art. 2; Oman Basic Law art. 28; Pakistan Const. art. 20; Panama Const. art. 35; Paraguay Const. art. 24; Peru Const. art. 2 cl. 3; Philippines Const. §5; Poland Const. art. 53; Portugal Const. art. 41; Puerto Rico Const. art. 22, §3; Qatar Const. art. 50; Romania Const. art. 29; Russia Const. art. 28; Rwanda Const. art. 18; St. Kitts and Nevis Const. art. 11; St. Lucia Const. art. 9; St. Vincent Const. art. 9; American Samoa Const. §1; Western Samoa Const. Art. 11; Senegal Const. art. 19; Serbia and Montenegro Const. art. 43; Seychelles Const. art. 21; Sierra Leone Const. art. 24; Singapore Const. art. 15; Slovakia Const. art. 24; Slovenia Const. art. 41; Solomon Islands Const. art. 11; Somaliland Const. art. 5; South Africa Const. arts. 15, 31, 185; Spain Const. art. 16; Sri Lanka Const. art. 15; Suriname Const. art. 18; Swaziland Const. art. 24; Sweden Instrument of Government ch. 2 art. 1 cl. 6; Switzerland Const. art. 15; Syria Const. art. 35; Taiwan Const. art. 13; Tajikistan Const. art. 26; Thailand

- Const. §38; Tibet Const. art. 10; Tonga Const. art. 5; Trinidad and Tobago Const. §4h; Tunisia Const. art. 5; Turkey Const. art. 24; Turkmenistan Const. art. 11; Tuvalu Const. arts. 23, 29; Ukraine Const. art. 35; Uruguay Const. art. 5; U.S. Const. amend. 1; Uzbekistan Const. art. 31; Vanuatu Const. art. 5 cl. 1f; Venezuela Const. art. 57; Vietnam Const. art. 70; Zambia Const. preamble, art. 19; Zimbabwe Const. art. 19. The texts of the foregoing constitutions and the cited provisions can be found at <<http://confinder.richmond.edu>> or at <<http://www.religlaw.org>>.
16. See Albania Const. art. 24; Andorra Const. art. 11; Austria Const. art. 7; Belarus Const. art. 31; Belgium Const. art. 19; Bosnia and Herzegovina Const. art. II cl. 3g; Bulgaria Const. art. 37; Croatia Const. art. 40; Cyprus Const. art. 18; Czech Republic Const. art. 10 (provision incorporating international human rights treaties); Denmark Const. ch. 7; Estonia Const. arts. 40, 41; Finland Const. §11; France Const. art. 1; Georgia Const. art. 9, 19; Germany Basic Law arts. 4, 7, 12a, 140, 141; Greece, the Holy See, Hungary Const. art. 60; Iceland Const. art. 73; Ireland Const. art. 44; Italy Const. art. 19; Latvia Const. art. 99; Liechtenstein Const. art. 37; Lithuania art. 26; Luxembourg Const. art. 19; Macedonia Const. art. 10; Malta Const. §32b, §40; Moldova Const. art. 31 cl. 2; Monaco Const. art. 23; Netherlands Const. arts. 6, 23 cl. 3; Norway Const. art. 2; Poland Const. art. 53; Portugal Const. art. 41; Romania Const. art. 29; Russia Const. art. 28; Serbia and Montenegro Const. art. 43; Slovakia Const. art. 24; Slovenia Const. art. 41; Spain Const. art. 16; Sweden Instrument of Government ch. 2 art. 1 cl. 6; Switzerland Const. art. 15; Turkey Const. art. 24; Ukraine Const. art. 35; and the United Kingdom (the latter, of course, does not have a written constitution, but does protect religious freedom). The Constitution of San Marino, dating from Oct. 8, 1600, does not expressly address religious freedom issues.
  17. See Antigua and Barbuda Const. art. 11; Argentina Const. §14, §20; Bahamas Const. arts. 15 cl. 2, 22; Barbados Const. art. 19; Belize Const. arts. 3 cl. 2, 11; Bolivia Const. art. 182, Brazil Const. art. 5; Canada Const. Act. § 2a; Chile Const. art. 19 cl. 6; Colombia Const. arts. 18, 19; Costa Rica Const. art. 75; Cuba Const. art. 8; Dominica Const. art. 9; Dominican Republic Const. art. 8 cl. 8; Ecuador Const. art. 23 cl. 11; El Salvador Const. art. 25; Grenada Const. Order art. 9; Guatemala Const. art. 36; Guyana Const. art. 145; Haiti Const. art. 30; Honduras Const. art. 77; Jamaica Const. art. 21 cl. 1; Mexico Const. art. 25; Nicaragua Const. art. 29; Panama Const. art. 35; Paraguay Const. art. 24; Peru Const. art. 2 cl. 3; Puerto Rico Const. art. 22, §3; St. Kitts and Nevis Const. art. 11; St. Lucia Const. art. 9; St. Vincent Const. art. 9; Suriname Const. art. 18; Trinidad and Tobago Const. §4h; Uruguay Const. art. 5; U.S. Const. amend. 1; Venezuela Const. art. 57.
  18. ICCPR, *supra* note 13, Art. 4(1).
  19. Unlike Articles 19 (freedom of expression), and 21 (freedom of assembly), and 22 (freedom of association) of the ICCPR, the limitation clause of Article 18 (freedom of religion) does not list national security as a permissible ground for limiting freedom of religion or belief. See United Nations Human Rights Committee, General Comment No. 22 (48) on Article 18, adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), para. 8.
  20. *Kokkinakis v. Greece*, 260-A Eur.Ct.H.R. (Ser. A) (1993) (App. No. 14307/88).
  21. *Ibid.*, para. 31.
  22. See, e.g. *Serif v. Greece*, Judgment of 14 December 1999, (App. No. 38178/97) para. 49.
  23. *Ibid.*, para. 53.
  24. See, e.g., ICCPR art. 18(3); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9(2).
  25. Malcolm D. Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997), pp. 294-98.
  26. See, e.g., *Sunday Times v. the United Kingdom*, 30 Eur. Ct. H.R. (ser. A) at 30 (1979); *Kokkinakis v. Greece*, 260-A Eur. Ct. H.R. (ser. A) at 15 (1993); Carolyn Evans, *Freedom of Religion under the European Convention of Human Rights* (Oxford: Oxford University Press, 2001), pp. 138-142; Malcolm Evans, *supra* note 25, pp. 319-320.
  27. *Hasan and Chaush v. Bulgaria*, Eur. Ct. H.R., App. No. 30985/96 (Oct. 26, 2000), paras. 84-87; Carolyn Evans, *supra* note 26, pp. 139-42.
  28. United Nations Human Rights Committee, General Comment No. 22 (48) on Article 18, adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), para. 8.
  29. ICCPR, art. 4(2). Technically, the European Convention does not list freedom of religion or belief as a non-derogable right. See European Convention, art. 15(2). However, since all the adherents of the European Convention have also ratified the ICCPR, and Article 15(1) provides that derogation is only permissible "provided that such measures are not inconsistent with [a High Contracting Party's] other obligations under international law, freedom of religion is in fact non-derogable for parties to the European Convention. See Carolyn Evans, *supra* note 26, p. 165.
  30. Carolyn Evans, *supra* note 26, p. 150.
  31. See, e.g., *Kokkinakis v. Greece*, 17 E.H.R.R. 397 (1994)(ECtHR, May 25, 1993), para. 49; *Wingrove v. United Kingdom*, 23 Eur. Ct. H.R. (ser.A) 1937 (1996), para. 53; *Manoussakis and Others v. Greece*, 23 E.H.R.R. 387



- (1997)(ECtHR, Sept. 26, 1996), paras. 43-53; *Serif v. Greece* (ECtHR, Dec. 14, 1999, para. 49; Metropolitan Church of Bessarabia v. Moldova (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 119.
32. *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 114.
  33. *Ibid.*, para. 116.
  34. *Ibid.*, para. 118; *Manoussakis and Others v. Greece*, 23 E.H.R.R. 387 (1997) (ECtHR, Sept. 26, 1996), paras. 43-53.
  35. *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 118.
  36. *Ibid.*, para. 117; *Serif v. Greece*, (ECtHR, Dec. 14, 1999), para. 52.
  37. *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 117.
  38. *Employment Division, Dep't of Human Resources v. Smith*, 494 U.S. 872 (1990).
  39. See, e.g., Douglas Laycock, "Formal, Substantive, and Disaggregated Neutrality Toward Religion," *De Paul L. Rev.* 39:993.
  40. Carolyn Evans, *supra* note 26, p. 186.
  41. For an excellent brief overview of the developments in the Roman Catholic tradition on this point, see Appleby, *supra* note 4, p. 42-48.
  42. Cf. Appleby, *supra* note 4, pp. 13-15, 68-69.
  43. Nikolas K. Gvosdev, "Can Social Stability and Individual Freedom of Conscience Coexist?", *9 East-West Church & Ministry Report* (Birmingham, AL: Samford University, Fall 2001), p. 6.
  44. *Ibid.*, p. 7.
  45. For more extensive exploration of ways that religious groups can contribute to conflict resolution, see Rüdiger Noll, The Role of Religion and Religious Freedom in Contemporary Conflict Situations, in Tore Lindholm, W. Cole Durham, Jr., and Bahja Tahzib-Lie (eds.), *Facilitating Freedom of Religion or Belief: A Deskbook*, chapter 33 (The Hague: Kluwer Law International, forthcoming 2003).



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# SECURITY AND RELIGIOUS FREEDOM

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The “war on terrorism” has redefined U.S. foreign policy, as well as relations between Europe, the United States, and much of the rest of the world. Virtually every aspect of this “war” has significant legal dimensions, just as it does for international relations.

The new security laws are an understandable response to terrorism, but they raise questions about their legality and moral legitimacy. I will focus on the evolution of the Spanish legal framework regarding terrorism, with particular attention to the Political Parties Law, of June 27, 2002, and its relationship to religious freedom.

We are all aware that procedures for banning political parties are written into the legislation of many European countries, to prevent concealment of intentions or actions that directly oppose fundamental values and principles of coexistence and respect for basic human rights and freedoms. These come within the framework of the rights and guarantees that countries’ constitutions and laws grant to political parties as the basic pillars of public involvement and of the democratic system itself.

This has been highlighted by the European Court of Human Rights (ECHR) and borne out by French and German law, where several political parties have been banned since 1970. In a recent ECHR ruling over the “Refah Partisi” and others against Turkey (July 31, 2001), the court noted that the political party (RP) is number fifteen in the list of political parties banned in Turkey in recent years. Four cases on the list reached the European Court, which in all four ruled that Turkey had not infringed the Rome agreement.

## A. LEGISLATIVE MEASURES INTRODUCED INTO THE SPANISH LEGAL ORDER AFTER SEPTEMBER 11

Contrary to what happened in other countries after September 11, the reaction of Spain’s legislators was not to produce specific legislation on

terrorism. Nevertheless, very significant general dispositions have appeared that directly affect this issue. The most important is the Organic Law 6/2002, of June 27 on Political Parties. Although it is a general law that covers the entire legal regime of the parties, its connection with terrorism is very clear. One of the objectives is the dissolution of these political parties whose activity is linked with terrorism. This objective has been corroborated by the declaration of the illegality of the radical nationalist political formation called Batasuna.

Analysis of this law must be made in the context of the provisions of the Organic Law 1/2002, of March 22, regulating the right of association. Political parties have an undeniable associative nature, and therefore any analysis of their legal regime must be within the framework of the right of association. This is confirmed by the fact that jurisprudence of the ECHR, in connection with political parties, has mainly to do with Article 11 (regulating the right of association) of the European Human Rights Convention, which does not contain specific provisions regarding political parties.

## B. REGULATION OF THE RIGHT OF ASSOCIATION

The Organic Law 1/2002 of March 22 regulates the right of association following Article 22 of the Spanish Constitution. This law replaces the old Law 191/1964, of December 24, regulating associations, dating from the Franco period.

The law distinguishes between general associations, to which the law applies in every detail, and special associations, to which it only applies in a complementary way. This approach is set out in the Preamble where the Constitution defines the principles common to all associations in its Article 22, and at the same time it contains norms relating to associations of constitutional relevance, such as political parties (Article 6), trade unions (Article 7 and 28), or religious confessions (Article 16). The general regime of the right of association set out in this law is thought as a common and minimum regulation, which must be compatible with the special laws that regulate specific types of associations.

According to this legislative approach, both religious confessions and political parties appear included in those associations governed by their specific regulations (Article 1.3). Consequently, the regime of this law can only be applied in a subsidiary way.

I would like to highlight Article 2.7, which states that those associations pursuing aims or using means typified as criminal are illegal. We can deduce

that an association can be declared illegal not only through performing illicit actions, but also through pursuing aims that are contrary to the legal order. As a consequence, such aims are susceptible to penal sanctions.

Article 38 of the law regulates the dissolution of associations. According to the provisions of Article 22.4 of the Constitution, except in the case of voluntary dissolution agreed by the members competent judicial authority. More specifically, dissolution can only be decreed (a) when the association is illicit according to penal legislation; (b) when the causes of dissolution provided for in this law or special laws are applied; and/or (c) when the association is declared cancelled or dissolved through application of civil legislation.

### C. REGULATION OF POLITICAL PARTIES

The Political Parties Law, June 27, 2002, regulates the legal regime of political parties, replacing the fragmentary and pre-constitutional law, December 4, 1978. The law develops the constitutional precepts regarding political parties contained in Articles 6 and 22 of the Constitution. Article 22 refers in particular to the fundamental right of association and must be kept in mind when analyzing the regime of the parties because “a party is a particular type of association” (SCT 3/1981, of February 2, LF 1.º). Throughout four chapters, the law addresses political parties’ organization, functioning, and activities; their dissolution and suspension, and their financing.

The Spanish Political Parties Act, in contrast to other legislation, bases itself on the consideration that any project or objective is understood as being compatible with the Constitution, provided that it is not defended by action which violates democratic principles or citizens’ fundamental rights. The law does not permit banning a party for the ideas it defends or the aims it proclaims. So it is, therefore, not a question of prohibiting the defense of ideas or doctrines, no matter how far they diverge or even question the constitutional framework. The focus then is on actions the party undertakes. Unacceptable action or behavior includes:

- Attempts against the life or physical integrity of persons, or the exclusion or persecution of persons for reasons of ideology, religion or beliefs, nationality, race, gender, or sexual orientation.
- Fomenting violence as a method of achieving political objectives or dismantling conditions which make democracy and pluralism possible.
- Complementing and politically backing actions of terrorist organizations that aim to reverse the constitutional order or seriously disrupt public order.

- The Law searches for repeated and serious, not isolated incidents, and that a consistent history must be verified by the Supreme Court and, in particular, by the Special Court, as provided for in Article 61 of the Basic Law of the Judiciary. On March 27, 2003, the Special Court of the Supreme Court heard the case and issued a sentence declaring the so-called political parties Herri Batasuna, Euskal Herritarrok, and Batasuna, unlawful.

## THE IMPACT OF LEGISLATION REGULATING ASSOCIATIONS AND POLITICAL PARTIES ON RELIGIOUS FREEDOM. THE SPANISH MODEL

Clearly, neither the Organic Law 1/220, of March 22, governing the Right of Association, nor the Political Parties Law 6/2002 of June 27 were drafted with religious confessions or political parties of a fundamentalist religious nature in mind. The first of the laws has not adversely affected religious freedom; the regulation of religious confessions and the associations these confessions create refers back to their specific legislation.

On the other hand, certain doubts arise regarding the Organic Law on Political Parties. From our viewpoint this law is relevant to the extent that it could perhaps have introduced mechanisms to outlaw and dissolve a political party of religious inspiration. Does it introduce these mechanisms? The answer is conditional: if that party repeatedly undertakes activities considered by law to be a serious offence and as supporting or collaborating with terrorism, it could undoubtedly be declared illegal and dissolved by the competent court. In contrast, if a party has no links whatsoever with terrorists but limits itself to proposing and defending the implementation in society of a certain religious project, it is far from clear whether the law establishes mechanisms for declaring it illegal.

The political project of a religious fundamentalist party is not easily compatible with democratic principles and the recognition of fundamental freedoms and rights. This entails the implementation of a certain religious concept, to the exclusion of all others. Public institutions as a whole would be structured around certain religious parameters that would inspire the behavior of public authorities. This would give rise to a type of social organization which, apart from being contrary to the principle of freedom of religious confession provided for in the Spanish Constitution, collides head on with the recognition of human rights and respect for the dignity of the human being (Article 10).

However, this circumstances in itself would not be grounds for the dissolution of a party that aspired to introduce this system, unless one admits at least one of the following hypotheses: either that our Constitution accepts a system of militant democracy, or that it is possible to outlaw a party on the grounds of its theoretical objectives, irrespective of its actual actions and conduct. Both hypotheses are very closely linked and, to a certain extent, they overlap. Nonetheless we will address each one separately.

References to militant democracy are quite frequent in the outlawing of political parties, particularly in Germany's legal order, where Article 9 of the Fundamental Law of Bonn prohibits political parties whose actions are directed "against the constitutional order."

Under Spanish Law, however, it is not clear whether a militant democracy exists that imposes positive acceptance of the Constitution. The Spanish Constitution does not lay down limits to constitutional reforms; no part or precept of our Constitution excludes the possibility to reform. The only limits that are laid down regarding the behavior of political parties are those derived from Article 6 of the text "Their creation and activity is free, provided that the Constitution and the law are respected. Their internal structure and functioning must be democratic." If these requirements are fulfilled and constitutional lines are respected, there is no exclusion, at least expressly, of any type of political objective, i.e., suppression of democracy, modification of the State's organizational structure, change in the territorial unity of the State, or the introduction of a confessional system contrary to the current neutrality of the State in religious matters.

The Constitutional Tribunal addressed this question when hearing and judging the appeal by the Basque Government against the Political Parties Law, alleging breach of the Spanish Constitution. The Tribunal strongly rejects the suggestion that a system of militant democracy exists in our legal system. "The Spanish Constitution, unlike the French or German, does not exclude the possibility of reforming any of its precepts, nor does it subject the power of constitutional revision to more express limits than those of a strictly formal and procedural nature" (SCT 48/2003, of March 12, LF 7.º). This does not mean that the Spanish Constitution does not contain certain basic principles that must be respected.

Thus a fundamentalist religious party cannot be declared illegal merely because it promotes and proposes a political project that is contrary to the democratic system and constitutional principles and values, provided, of course, that it always aspires to introduce this project through the democratic

channels provided for in the Constitution and with total respect for fundamental rights.

Does this mean, then, that a political party can only be outlawed and dissolved on the grounds of its activities, but never because of its objectives?

The answer provided by the law itself and constitutional jurisprudence is “yes.” The Law always refers to the activity of the political parties and certain types of conduct: systematic breach of fundamental rights; encouraging, facilitating, or legitimizing violence; or supporting terrorist groups. The objectives in themselves, in the absence of such activity or conduct, are not grounds for being declared illegal. As the Constitutional Tribunal affirmed in its ruling on the appeal against the constitutional nature of the law, “in the Presentation of Reasons, the starting premise is the distinction between, on the one hand, the proclaimed ideas and aspirations of a political party and, on the other hand, its activities, stressing that “the only objectives that are explicitly prohibited are those that would be qualified as a criminal offense”, in such a way that *any project or objective is understood to be compatible with the Constitution, always provided that it is not defended through actions that breach democratic principles, or the citizens’ fundamental rights*. Consequently, and what matters now, is that the law precisely establishes which conduct would be grounds for declaring illegality, meaning possible circumstances in which political parties, through their actions, and not through the final objectives contained in their programs, breach the requirements of Article 6 of the Spanish Constitution defined by law” (SCT 48/2003, of March 12 LF 7.°).

On this point both the Organic Law on Political Parties and the jurisprudence of the Constitutional Tribunal distance themselves from the doctrine laid down by the European Human Rights Tribunal in the case of Refah Partisi (the Prosperity Party) and others against Turkey, of July 31, 2001.

In this judgment, the Strasbourg Tribunal resolved the appeals presented against the dissolution of a political party of Islamic religious inspiration decreed by Turkey’s Constitutional Tribunal. The appellants alleged breach of Articles 9, 10, 11, 14, 17, and 18 of the European Human Rights Convention, and of Articles 1 and 3 of Additional Protocol 1 to the Convention. The Tribunal centered the case on the analysis of possible breach of Article 11 of the Convention (right of association) and unanimously declared that separate examination of the alleged breach of the other Articles cited was not appropriate. The Tribunal ruled, by four votes to three, that dissolution of the party had not breached the appellants’ rights of association.

One of the objectives of the Prosperity Party was the abolition of the principle of laicism contained in the Turkish Constitution, through the

introduction of Sharia or Islamic law. According to their beliefs, everybody should be governed by the religious mandates imposed by the confession or community to which they belong. The Tribunal's opinion was that this model of society is radically contrary to the Convention's system.

The Tribunal considers that the democratic principles that inspire the European Human Rights Convention are untouchable. It rejects admittance of models of society that are incompatible with the Convention's system, even when they are democratically implanted.

As we say, the approach taken by the Organic Law 6/2002 on Political Parties is different: only actions and conduct are relevant. In this sense, the Supreme Court ruling of March 27, 2003, affirmed that "this same norm (the Organic Law on Political Parties) does not later establish any grounds whatsoever for outlawing political party because of their particular political aspirations, but it does establish, as justified grounds for declaration of illegality, as will be seen later, an "activity" which breaches democratic principles, since this same activity pursues the weakening or destruction of the regime of freedoms, as the elimination or impossibility of the democratic system, and through the performance of certain types of conduct, in a repeated and serious manner, which the Law itself goes on to describe." And the same applies to the jurisprudence of Spain's Constitutional Tribunal, which rejects admittance of a system of militant democracy.

The conclusion one reaches from the foregoing is that the Organic Law 6/2002, of June 27, governing Political Parties, has not negatively affected religious freedom, nor has it restricted the introduction of political parties of a religious nature, provided that their activities and conduct are not contrary to constitutional principles. The situation for these political parties and, in general for the religious groups that could support them, has not changed substantially when compared to the regime of illicit associations provided for in Article 515 of the Penal Code of 1995. According to this precept, illegal associations are those that, even when having a legal objective, use violent means to achieve it; the same consideration applies to associations that incite discrimination, hate, or violence against persons, groups, or associations for reason of ideology, religion or beliefs. The political parties that behave thus shall be declared illegal and can be dissolved by the Criminal Court Judge by virtue of the provisions of Article 520 of the Penal Code.



END





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# EXPLOITING HEAVEN FOR EARTHLY GAIN: HOW RELIGION IS MANIPULATED AND MISUSED

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## RELIGION: POLITICAL ‘SHARP INSTRUMENT’

Bernard Katz called organized religion “the world’s largest pyramid scheme”<sup>1</sup> and was not being complimentary. The vulnerability of religious concepts to abuse and manipulation has occurred many times through history. Ancient Roman writers declared the necessity of being deceived in religion<sup>2</sup>—as if it was a self-evident requirement. The misuse of religion for other ends—politics, ambition, power, greed, control—is apparent in much of the past, and may even be viewed as the primary historical factor. Intriguingly however it seems that even our contemporary world, which we view as developed and civilized, is also highly susceptible to such misuse of religion.

Those who dismiss such a connection as part of the medieval past fail to recognize the continuing power of religion to stir and motivate. One commentator calls religion a “sharp instrument” that has “fallen into the hands of politicians, has played a terrible role in human bloodshed, and has become a major participant in human oppression and the destruction of human lives.”<sup>3</sup>

The overwhelming temptation to use religious fervor as a tool for political, economic, or social gain is clearly just as much a reality today as it was in the time of the Crusades or in the colonization of the Americas.

Behind many of the supposed religious conflicts that plague our times is not so much the clash of faith ideals but issues related to an overpopulated planet and societies in competition. As the struggle for resources increases, as different groups vie for power, it becomes all too easy to brand the enemy as those of the “other” religion.

Cynical and contemptuous political leaders may see all too well the advantage of siding with the majority religion, and exploit it in their quest for domination.

Other leaders may simply be swept along on a tide of nationalism that equates national identity with one religious faith. Others still may truly believe in the religious perspective, though it may be much distorted from original ideals.

The corrupting of religion in the service of the state has a long history, and the spectacle of religion misused in the grab for power and domination is often described. Take Thomas Paine, for example, in his “Age of Reason”:

“Of all the systems of religion that ever were invented, there is none more derogatory to the Almighty, more unedifying to man, more repugnant to reason, and more contradictory in itself, than this thing called Christianity. Too absurd for belief, too impossible to convince, and too inconsistent for practice, it renders the heart torpid, or produces only atheists and fanatics. *As an engine of power, it serves the purpose of despotism; and as a means of wealth, the avarice of priests; but so far as respects the good of man in general, it leads to nothing here or hereafter.*”<sup>4</sup>

Not that Paine was really singling out the abuse of Christianity—he had no time for any organized religion, because of the tendency for exploitation:

“I do not believe in the creed professed by the Jewish church, by the Roman church, by the Greek church, by the Turkish church, by the Protestant church, nor by any church that I know of. My own mind is my own church. *All national institutions of churches, whether Jewish, Christian, or Turkish, appear to me no other than human inventions set up to terrify and enslave mankind, and monopolize power and profit.*”<sup>5</sup>

## HIJACKING FAITH: CHEERFULLY DOING EVIL

Recognizing the power of religious conviction to provide both “logical” basis and reason for action, faith concepts are frequently hijacked for whatever far more earthly ends those in authority wish to achieve. Consequently:

“The most heinous and the most cruel crimes of which history has record have been committed under the cover of religion or equally noble motives.” Mahatma Gandhi.<sup>6</sup>

“Men never do evil so completely and cheerfully as when they do it from religious conviction.” Blaise Pascal.<sup>7</sup>

This is because if “faith” has at its heart some inexplicable mystery that can only be interpreted by those in religious power, then obedience to religion becomes the highest ideal. If such blind faith can be “harnessed” to fulfill the objectives of political leaders, then they have an army of the faithful that can be commanded at will.

“Blind faith can justify anything. If a man believes in a different god, or even if he uses a different ritual for worshipping the same god, blind faith can decree that he should die—on the cross, at the stake, skewered on a Crusader’s sword, shot in a Beirut street, or blown up in a bar in Belfast.” Richard Dawkins.<sup>8</sup>

The polarization that occurs between the apparently mindless “faithful” and the secularists who reject any such concepts is the future we face. On the one hand are those who will do anything in the name of God, and on the other, those who deny any God at all.

One result is that people will reject religion, convinced that it is a primary source of evil:

“Lies—there you have the religion of slaves and taskmasters.” Maxim Gorki (Aleksai Maksimovich Peshkov)<sup>9</sup>

“At least two thirds of our miseries spring from human stupidity, human malice and those great motivators and justifiers of malice and stupidity, idealism, dogmatism and proselytizing zeal on behalf of religious or political idols.” Aldous Huxley.<sup>10</sup>

An alternative result is a retreat into religious isolationism, a retreat to what seemed the solid religious assurance of the past. Here is the root of religious extremism—the retreat into dogma and the reassurance that God is wholly on your side, thinking that God can sanction any action you may wish to take, since your enemies are His enemies too.

## THE PROBLEM IS THE FAITHFUL

Yet, as we noted above, the reason for religious antagonism lies far more in the situation of society than in the creeds of faith. All the world religions make claims of tolerance and mutual respect. In the words of UN Secretary-General Kofi Annan, “the problem is usually not with the faith, but with the faithful.”

As he also said in his address to world religious leaders, “Religion is frequently equated with light. But we all know that the practice of religion can have its dark side, too. Religious extremism has too often oppressed or discriminated against women and minorities. Religion has often been yoked to nationalism, stoking the flames of violent conflict and setting group against group.”<sup>11</sup>

Speaking for the world’s largest Christian communion during a visit to Cairo, Egypt, Pope John Paul II declared, “To promote violence and conflict in the name of religion is a terrible contradiction and a terrible offense against God.... But past and present history give us many examples of such a misuse of religion.”<sup>12</sup>

So what is really going on here? If various faiths proclaim peace and harmony, and if leaders disavow violence and state that such actions are a misuse of religion, why all the religious conflicts?

Take the Indonesian example. We saw red-clad Christians and white-clad Muslims in holy war, butchering each other. How did this flare up in what until so recently was a nation renowned for inter-religious harmony?

It seems the argument began over a taxi fare...

That such an apparently trivial event should start such a conflagration points to issues beyond the religious. The collapse of an authoritarian regime; competition for resources such as land, food, and water; political instability; disputes between tribal entities; jealousies over economic status of ethnic groups—all these factors appear to be far more significant true issues in the ongoing violence. Religious differences just made it easier...

Similarly in the Kosovo situation. Though frequently cast in the media as a religious struggle between Orthodoxy and Islam, the foundational issues have more to do with other factors: ethnicity, political aspirations, economic domination, territoriality, and so on. In fact, a report from the International Crisis Group concluded: “Despite this essential division of religious activities along ethnic lines, it cannot be said that religion per se was an important contributing factor in the conflict between Serbs and Albanians.”<sup>13</sup>

That is not to say that religion is not utilized. Tragically, religion is all too frequently used to devastating effect.

## A TEXTBOOK CASE OF MANIPULATION

India is rapidly on its way to becoming a textbook illustration of how religion can be used and manipulated. The development of “Hindu fundamentalism” parallels the progress of political nationalism that is destroying a long history of tolerance and pluralism in Indian society. The appropriation (some would say misappropriation) of the majority religion by various politicians has created a new dynamic that brands other religious groups as non-indigenous, with the implication that they should not be tolerated as part of a Hindu state.

Those promoting a “Hindu India” to the exclusion of others have encouraged an atmosphere of suspicion and fear, with inter-religious conflict as the obvious result. Hinduism is now presented as the “national faith” with attempts made to limit and prevent the activities of other religious groups. Legislation is being used to impose government control over what is termed “conversion.” Pressure

to re-convert to Hinduism is strong. The violence that has erupted in a number of Indian states is symptomatic of such an ideological swing.

What is happening in India is no accidental process. The role of religion in society is exploited and twisted to self-serving ends by those who wish to gain power. By equating faith and nationalism, politicians gain support—for who would dare contradict what is presented as an “article of faith”? In crisis situations, the majority seeks scapegoats. For a country of more than one billion people, with great competition for food and water, with most resources rapidly being depleted, it does not take much imagination to foresee inter-religious conflict of cataclysmic proportions. The truth is that when society reaches its breaking point, religious toleration is a scarce commodity.

## POLARIZATION OF BELIEF SYSTEMS

As we have already observed, religion is increasingly associated with either irrelevance or evil. The extreme formulations of belief now find resonance with the underprivileged and oppressed, and are also reflections of an over-crowded world. When life does not seem to count for much, violent expressions of religion are hardly “unacceptable.”

As a result, even “tolerant” belief systems are increasingly polarized. Islam is used by a number of nations and groups as a mode of intolerance. Within Christianity also, extremism provides a focus for disadvantaged groups, or those disaffected with society for whatever reason. Even Buddhism, long associated with peace and non-violence, begins to become politicized and nationalized in countries such as Bhutan.

The threats to those who are “other” or different are clear. Religion has often been used as a form of self-identity and a means of excluding those who do not adhere to the same beliefs. Increasingly, religion will be the dominant point of conflict in the unstable future.

Yet many supposed inter-religious conflicts are based on something far removed from religion: land use and over-crowding in India, political domination in Northern Ireland, ethnic antagonism in the Balkans, etc. The Moslem-Christian clashes in Indonesia can be seen as communities competing for resources, and have been inflamed by rumors and agitation by hyper-religionists (Christians are killing Moslem babies, Moslems are torturing Christian women, and so on).

Radical religious movements develop that appeal to fanaticism by the demonizing of others. In this way religious tenets are appropriated to the

power structure of the movement, and any moderate religionists are sidelined or their commitment to their religion questioned. Once religion is made “extreme” in this way, it becomes very difficult to return to a tolerant position, since toleration is portrayed as compromise and weakness. The “higher ground” is then occupied by extremists who vie for the position of who can use religion in the most extreme way.

## CONTINUATION OF RELIGIOUS INTOLERANCE AND PERSECUTION

The past century has seen more bloodshed in the name of religion than any previous century. Millions continue to be persecuted, tortured, and killed for their faith. This religiously-inspired violence affects various faith groups and is not confined to Christians. Around the world, Muslims, Baha'is, Hindus, and others are victims of faith-based persecution.

In a world that claims understanding and tolerance, such persecution may appear an anomaly. However, it is very deep-seated and is additionally related to nationalism and hyper-religionism (see above). Religion as a force for control remains, and those who profess another faith are viewed as dangerous and subversive, unpatriotic, and “foreign” in their own land. “The world is like a map of antipathies, almost of hates, in which everyone picks the symbolic color of his difference,” said Juan Ramon Jiminez.

Commenting on the situation in Europe and Central Asia, the Organization for Security and Cooperation in Europe’s Supplementary Meeting on Freedom of Religion and Belief (22 March 1999) reported:

“Following the opening remarks, several States noted that religious tensions, intolerance, and the political use of religious identity have emerged as significant factors in a growing number of conflicts in the OSCE region. Since preventing conflict is a principal mission of the OSCE, several participants noted the importance of understanding better the ways in which religion is used to incite and escalate conflict, as well as the positive role that religious communities may play in conflict prevention and reconciliation.”<sup>14</sup>

*The political use of religious identity.* This is the way the world is and illustrates the troubling future ahead. Unquestionably, clashes based on a wide range of issues will be characterized as religious conflict, as religion is increasingly seen as a highly useful tool to motivate and bind societies together in the struggle against the enemy.

## NIGHTMARE PLAGUE

The nightmare plague of twenty-first century that all should dread is this manipulative misuse of core religious beliefs that results in a host of religious wars, having as their objective the dispossessing of others and the exploitation of the captured resources.

Reading various world reports that detail religious intolerance and discrimination is depressing. While concepts of religious freedom are enshrined in various international documents, they are systematically ignored in many countries. Even in those nations where religious tolerance has been prevalent for many years, there is a disturbing trend toward intolerance of new religions and minorities on the basis of threats to society and the need to defend tolerance itself!

Inter-religious persecution and conflict must be expected to increase, with resultant impact on those trying to evangelize and propagate their faith. Many nations will become synonymous with their dominant religion, and minority religions must expect increased discrimination, intolerance, and religious violence. As Steven Weinberg comments, “With or without religion, good people can behave well and bad people can do evil; but for good people to do evil—that takes religion.”<sup>15</sup>

## RESCUING RELIGION FROM ITS MANIPULATORS

“I want nothing to do with any religion concerned with keeping the masses satisfied to live in hunger, filth, and ignorance,” wrote Jawaharlal Nehru. “I want nothing to do with any order, religious or otherwise, which does not teach people that they are capable of becoming happier and more civilized, on this earth, capable of becoming true man, master of his fate and captain of his soul.”<sup>16</sup>

Religion can only be rescued from those who would exploit and manipulate it by means of the believers themselves. Only by denying the political misappropriation, by emphasizing the true spiritual objectives of religion, can the sharp instrument of religion be taken out of the hands of those who would wield such a weapon for their own earthly advantage. Only by realizing that much of the conflict comes not from religion itself but from the way it is used to cloak other divisive and conflicting issues, can there be a disassociation of religion from war and violence. Only by understanding that the heart of religious beliefs is virtue and not vice; love, not hatred; and progressive, not destructive, can there be true religious freedom.

At a World Conference for Religion and Peace meeting at Oslo, Norway, in November 2002, European religious leaders recognized the challenge they faced in trying to reclaim their role from the “political fundamentalists.” They clearly understood the immense dangers of remaining silent and unresponsive in the face of religious hijackers, who appear ready to exploit any belief system for their own ends. Their statement reads in part:

“The role of religion is paradoxical in relationship to conflict. Religion may be exploited for hatred and warfare. Religious wars, crusades, pogroms, and jihads have marked the history of Europe. Our religions teach us that this is wrong. We are committed to engaging the deep moral resources of our religious traditions for peace, justice, truth, and reconciliation. As political fundamentalists attempt to misuse our religious traditions, we recognize our responsibility to demonstrate the capacity of our religious communities to work together for the common good.”<sup>17</sup>

Two religious leaders have commented on the situation that faces them in India—as we have noted above, a challenge of epic proportions. The issues of misrepresentation, exploitation, misappropriation, propaganda, extremism, and all kinds of political misuse and interference in religion are recognized, along with the conviction that only by a recovery of what may be termed true religiosity can the challenge be properly addressed:

“Once a people are infected with fundamentalist prejudices and robbed of their freedom to think and choose dispassionately, democracy begins to stagger on its feet and collapse into fascism. The factors that aid and abet this process are: the educational under-development of the people, the hijacking of religion by vested interests and the exploitation of people’s sacred sentiments for political and other ulterior gains, the partisan patronage of the State, the large-scale use of propaganda, the apathy of the intelligentsia, and the support of the media. It does not have to be argued that religious fundamentalism is already a plague for South Asia. But what needs to be noted is the fact that secularism, as we know it today, has proved itself unable to halt the juggernaut of religious fundamentalism in our context. The antidote to religious fundamentalism is not religiously neutral secularism, but true spirituality that insists on universal and inviolable values and nurtures people in the practice of justice, compassion, and fair-play.” Swami Agnivesh and Rev. Valson Thampu in the January 2003 edition of the *South Asian*.<sup>18</sup>

At its heart, religion is not only a relationship with the spiritual dimension. It plays out in the real world, and it reveals its true nature most effectively in



human relationships. All too often, in the words of Jonathan Swift, “We have just enough religion to make us hate, but not enough to make us love one another.”<sup>19</sup> If there is no valuing, appreciating, or caring for others, then the truth is not in the religious experience, and the God concept is denied. For in the end,

“A religion true to its natures must also be concerned about man’s social conditions. Religion deals with both earth and heaven, both time and eternity. Religion operates not only on the vertical plane but also on the horizontal. It seeks not only to integrate men with God but to integrate men with men and each man with himself.” Martin Luther King, Jr.<sup>20</sup>

Earthly exploitation of religion can only be countered by the higher beliefs of religion itself, recognizing that the phrase “religious conflict” should be a contradiction in terms.



E N D

1. Widely cited on the Web, for example at [www.2think.org/quotes2.html](http://www.2think.org/quotes2.html).
2. “Diodorus Siculus admitted it to be the duty of the State ‘to establish effective gods to do the work of police,’ and laid it down, that ‘It is to the interest of States to be deceived in religion.’” [members.tripod.com/jbrooks2/ra1fic1.htm](http://members.tripod.com/jbrooks2/ra1fic1.htm). Similar words are ascribed to Marcus Terentius Varro, see [www.skepticfiles.org/think/cookies.htm](http://www.skepticfiles.org/think/cookies.htm).
3. “The role of religion in creating war and the destruction of humanity cannot be denied. This sharp instrument has fallen into the hands of politicians, has played a terrible role in human bloodshed, and has become a major participant in human oppression and the destruction of human lives.... From the beginning of time, manipulators of the human family have used religion to enslave people. History has shown us horrible wars and destruction as a result of the misuse of religion. The name of religion has been invoked to cover every form of barbarism. Nations have taken religion to destroy each other and some nations have destroyed themselves by their own religions. This sharp, double-edged tool offers love, understanding, compassion, and a relationship with God, on one hand, but on the other hand, on a social and political level, religion has, all too often, been a tool for manipulation.” Seyedeht Dr. Nahid Angha, “Religion and Non-Violence: Conflict Resolution.” *Sufism Journal* Vol. 8, No. 3, at: <http://www.sufismjournal.org/principles/principlesv8n3.html>.
4. Thomas Paine, *The Age of Reason*. My emphasis. [http://www.uuofscv.org/thomas\\_paine.htm](http://www.uuofscv.org/thomas_paine.htm)
5. Thomas Paine, *The Age of Reason*. My emphasis. <http://www.geocities.com/peterroberts.geo/Relig-Politics/TPaine.html>
6. [fweb.berry.edu/academic/Education/vbissonnette/miss/quotes.html](http://fweb.berry.edu/academic/Education/vbissonnette/miss/quotes.html)
7. [http://www.wisdomquotes.com/cat\\_evil.html](http://www.wisdomquotes.com/cat_evil.html)
8. Richard Dawkins, *The Selfish Gene*, Oxford University Press, new ed., 1989. p. 198, at: <http://www.earlham.edu/~peters/courses/eb/quotes.htm>
9. <http://www.nd.edu/~observer/09112001/Viewpoint/>
10. <http://www.quotationspage.com/search.php3?Author=Aldous+Huxley&file=all2>
11. Press Release SG/SM/7520, 29 August 2000. <http://www0.un.org/News/Press/docs/2000/20000829.sgs7520.doc.html>
12. 24 Feb 2000. Cairo, Egypt. (CNN) Pope John Paul II stepped off an airplane in Muslim-dominated Egypt on Thursday and condemned what he called the “misuse of religion” to justify and promulgate violence throughout history.  
 In remarks made shortly after his arrival in Cairo, the pope praised his Egyptian hosts for their work in promoting peace, and appealed for harmony among the world’s spiritual communities.  
 “To do harm, to promote violence in the name of religion is a terrible contradiction and a great offense against God,” the 79-year-old pontiff said after a brief private meeting with Egyptian President Hosni Mubarak. [www.cnn.com/2000/WORLD/meast/02/24/pope.egypt.02](http://www.cnn.com/2000/WORLD/meast/02/24/pope.egypt.02)

13. "Three religions—Islam, Orthodoxy, and Catholicism, have long coexisted in Kosovo. A large majority of Kosovo Albanians consider themselves, at least nominally, to be Muslim. A minority, about 60,000, are Catholic. Most Kosovo Serbs, even those who are not active religious believers, consider Orthodoxy to be an important component of their national identity. Nevertheless, despite this essential division of religious activities along ethnic lines, it cannot be said that religion per se was an important contributing factor in the conflict between Serbs and Albanians... During the war, Serb forces destroyed numerous Islamic facilities, including virtually all Islamic libraries and archives. After the war, Albanians replied by destroying scores of Orthodox churches. These acts of reciprocal vandalism seemed motivated on both sides more by the desire to eradicate the evidence of the other's presence in Kosovo than by religious fanaticism." <http://www.crisisweb.org/projects/showreport.cfm?reportid=226>
17. <http://216.239.51.100/search?q=cache:oAQWeTggz3UC:www.osce.org/odihr/documents/reports/shdm/m99-religion-report.pdf+%22misuse+of+religion%22&hl=en&ie=UTF-8>
14. <http://www.osce.org/odihr/documents/reports/shdm/m99-religion-report.pdf>
15. <http://www.religioustolerance.org/quotes5.htm>
16. <http://home.xnet.com/~blatura/thoughts.shtm>
17. "Standing Together For Peace," *European Council of Religious Leaders*, Oslo, Norway, 12 November 2002, [www.wcrp.org/RforP/WORLDWIDE/111201\\_EUROPEAN\\_CRL\\_STATEMENT.htm](http://www.wcrp.org/RforP/WORLDWIDE/111201_EUROPEAN_CRL_STATEMENT.htm)
18. <http://www.the-south-asian.com/Jan%202003/Peace%20in%20South%20Asia-Swami%20Agnivesh-Rev%20Thampu-3.htm>
19. [www.brainyquote.com/quotes/quotes/j/q107557.html](http://www.brainyquote.com/quotes/quotes/j/q107557.html)
20. <http://www.brainyquote.com/quotes/quotes/m/q139171.html>



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# WHAT RELIGIOUS LIBERTY IS AND IS NOT

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Not a few ideological pitfalls mark the road to religious liberty. Since most people want to travel this freeway, it is important to be acquainted with these faulty concepts, some of which could be real philosophical booby traps. Religious liberty, dealing as it does with such a basic, sacred human right, deserves an intellectual rather than a visceral approach.

It is imperative that anyone studying religious liberty avoid personal prejudice or preference, for erroneous concepts of this human right may spark opposition to the principle. To understand what religious liberty really is, I find it helpful to know what it is not.

There are at least seven common fallacies about religious liberty, and their recognition will help us understand what religious liberty really is. All are influenced, to some degree, by the basic misunderstanding that religious liberty involves freedom from moral duties and liberates man from religious responsibility.

**1•** Religious liberty is not freedom from God, though this is exactly what many secularists and atheists mean when they speak of religious liberty. In the nineteenth century, when political liberalism was in vogue—especially in Europe—the concept of religious liberty was not infrequently identified with secularism, agnosticism, free-thinking, and rejection of the idea of a transcendental God dominating mankind. According to this school of thought, the individual needs to be freed from the supposed tyranny of a man-created god. Religious liberty thus becomes freedom from dependence on, and obedience to, an exacting but “imaginary” supreme being.

Quite the contrary, religious liberty means religious independence from men in order to more effectively and freely allow for religious choice, which may include dependence upon God. It proposes freedom from intrusion by individuals and government in order to guarantee a person’s ability to choose if he or she wishes unfettered recognition of divine Lordship. This is in harmony

with the biblical viewpoint: “We ought to obey God rather than men” (Acts 5:29). The Christian believes that he has an inalienable moral duty towards a loving but sovereign God. Religious liberty allows the fulfillment of this duty, if so chosen.

**2•** It is not freedom from men. Some libertines would interpret religious liberty as total freedom from all outside control by family, school, government, and society, as if this liberty implied no obligation to the community or to society as a whole. Even in the delicate area of religious liberty, no responsible citizen advocates absolute freedom. The statement that “no man is an island” has not only poetic but practical significance. Indeed, we are all part of humanity’s main. “The truth is that we neither live nor die as self-contained units.”<sup>1</sup>

There are two aspects of religious liberty: (a) Freedom to believe and hold religious opinions and (b) Freedom to act in accordance with one’s beliefs. Freedom of opinions, per se, is absolute because it has little, if any, social significance, but freedom to exteriorize beliefs into acts falls into the social context of conduct. Few would deny the right of public authorities to intervene in order to protect society against practices that endanger public morals or violate the rights of others. It is of the essence of a country’s greatness to make generous provision for the religious liberty rights of minorities. However, these rights do not exist in a social vacuum and cannot be properly implemented outside the framework of the right of the majority and the welfare of others. All honor to courts and government agencies able to achieve a dynamic balance between the rights and conscience of one and the rights and welfare of all.

**3•** It is not freedom from self. Some would interpret religious liberty as implying the individual’s unconditional right to believe exactly as he chooses. While religious liberty involves the unqualified civil or legal right to believe according to personal predilection, it does not mean freedom from the essential moral obligation to obey one’s conscience. Every person has a God-given responsibility to his or her human dignity and must therefore train the conscience to be upright. The Bible teaches that “anything which does not arise from conviction is sin” (Romans 14:23; NEB).

Using the constitutionally guaranteed right of freedom of conscience to violate this selfsame conscience is a serious abuse, not only of moral duty to self, but of a civil right. As Dr. Carrillo de Albornoz suggests, if society or government were able to prove bad faith, moral turpitude, and violation of conscience, the person in question could hardly claim the right to religious liberty in society. But, of

course, this is not possible, and precisely for this reason liberty of conscience is so essential a human right. “Society cannot possibly allow its respect of religious freedom to depend on facts that it cannot investigate.”<sup>2</sup>

**4•** It is not freedom from church. Some mistaken individuals interpret religious liberty as meaning freedom from organized religion and independence from church authority. They assert that true religious liberty is really freedom to shake off the “yoke” of ecclesiastical control. Some favor this type of religious liberty as a means, not so much for exalting personal freedom of action, as for substituting the authority of the state, hopefully benevolent, for the supposedly always oppressive power of the church.

There is, of course, abundant historical evidence pointing to abuses of ecclesiastical power. Clerical pressure, physical and psychological coercion, spiritual blackmail, emotional and moral arm-twisting, ecclesiastical sanctions, interdict, and secret delations (accusations) have enslaved the human spirit, corrupted the Christian ministry, and marred the image of the Christian church by persecuting millions. Coercion or inquisition have no place in a religious society. Yet, while man’s response to the divine call and search for truth must be free, and every person has the right in the human context to refuse this call and decide against church membership, some form of church authority is necessary if there is to be an ecclesia uniting seekers of God. Some kind of internal church discipline is essential, but it should be a propelling authority of creative action based on constructive outlook rather than restrictive authority based on negative inlook.

**5•** It is not freedom from state control, although supporters of this concept of religious liberty advocate total independence from government. They see a massive wall separating the church from any state control and thus deny legitimate government authority. Paul in his epistle to the Romans makes it clear that existing authorities are instituted or ordered by God, and thus legal government is “divinely instituted.” The state has rightful power, even in certain matters bearing upon the operation of the church. The state has the right and duty to promote the welfare of the people by upholding public order and safeguarding equal justice for all citizens.

True religious liberty requires that the state not interfere with the religious beliefs of its citizens, thus recognizing that there is a closed arena, which Albornoz calls “pure religious liberty”<sup>3</sup>, where the state is incompetent. On the other hand, there are areas where religious activities and state jurisdiction

overlap. Separation of church and state must at times be an invulnerable wall, but on occasion it must be a permeable honeycomb allowing legitimate cooperation and even government regulation. Church activities often can hardly be separated from rights or enterprises that fall under the regulatory powers of government. Think of church schools and state education laws, church construction and building codes, church financial operations and laws affecting financial transactions, church-operated health care institutions and health regulations, to name but a few spheres of joint influence where ironclad separation is out of the question.

In unfortunate instances, religious liberty has been used as a convenient cloak to camouflage the dagger of disloyalty and subversion and to cover up opposition to the legitimate authority of the state. Loyal citizenship is not in opposition to loyalty to God.

**6•** It is not freedom for religious animosity and strife. Not a few churchgoers attack, defame, and falsely accuse other religious confessions in the name of religious liberty. Religious liberty is the right to believe, preach, teach, propagate, and live one's beliefs free from outside coercion. It is not an excuse for mudslinging and irresponsibly attacking other churches or their adherents. It is not a weapon for religious wars of words or a warrant for division, vicious competition, and contention. It should not be misused as an arena for interconfessional combat. Use of false, self-seeking, or intimidating evangelistic avenues represents a corruption of legitimate witness and is nothing less than a moral abuse of religious liberty. On the contrary, religious liberty is the *sine qua non* for peaceful human and interchurch relations—the basis for communal and international harmony. On the other hand, most such conduct falls under the heading of moral obligation, and civil government is not competent to decide whether or not the witness of the church is proper, except as evangelistic methods violate nonreligious legal norms, such as laws governing libel or breaches of the peace.

**7•** It is not freedom for indifference. Supporters of this view tend to think that is really makes little difference what or if you believe. Religious beliefs are unimportant, they say; religious differences are irrelevant. Some opponents of religious liberty fear a mildew of religious unconcern. Of course, authentic religious liberty upholds the right of every person to reject any or all religion. However, from a Christian theological perspective, the cardinal purpose of religious liberty is not to promote religious apathy or irreligion but to

represent the most secure platform on which one may stand in individual and collective searches for religious identity and belonging.

## WHAT THEN IS RELIGIOUS LIBERTY?

In the New Testament, several basic concepts of religious liberty emerge from the life of Christ. These are further developed theologically by the apostle Paul.

**1•** Religious liberty respects the conscience of others. The Greeks had a saying, “All is to the wise.” This led to the privileged position, supported by philosophers, that if a man was right as a ruler, he had the prerogative to impose his views on his subjects. Paul objects to this concept in his first letter to the Corinthians (see 8:4-13) where he discusses the controversy over eating foods previously offered to idols. The majority said it was acceptable to eat the food, but a minority objected for reasons of conscience. Paul sides with the majority but says that while the conscience of the majority is, objectively speaking, correct, the church must take into account the conscience of the minority. The rights of even an unenlightened conscience must be protected and respected. The stronger is not to pass judgment upon the weaker, and no Christian is to be a stumbling block for another. Respect of others’ opinions is even more imperative in today’s pluralistic society.

**2•** Religious liberty respects the transcendence, absoluteness, and sovereignty of God. There is a danger here. Historians can point to the negative effect of monotheism on religious liberty, especially in the Hebrew-Christian-Islamic tradition. Leo Pfeffer says that “compulsion in religion is a heritage of the monotheistic worship when Moses commanded must, under penalty of death, be accorded to a jealous God.”<sup>4</sup>

However, respect for the absolute and universal sovereignty of God leads to the conviction that God transcends man and is sovereign Lord of all. This being the case, it is outrageous for man to claim to know all about the ways and intentions of God. Philip Wogaman puts it this way: “Latent beneath religious intolerance is the silent assumption of one’s own absolute rightness...If God is sovereign and transcendent, he is also to some extent hidden.”<sup>5</sup> Man needs the freedom to reach out toward the unfolding possibilities of truth, but “his finitude limits his ability to gain all the truth.”<sup>6</sup>

Theological conceptions of God are really only relative manifestations of God. They often point to God, but they are not God; God is absolute, but our

understanding of God isn't. To use doctrines, creeds, or theological beliefs as a justification for religious oppression of people with different beliefs is absolutizing one view over another—a form of idolatry.

Respect for God's sovereignty places no limitations on God's communication to man through man. God's freedom to work through all persons and circumstances should not be frustrated by efforts to silence human beings of different religious persuasion. Religious liberty, then, deals not so much with the freedom of man as with the freedom of God to speak to and through all men. It is idolatrous to limit the manifestations of God to our own orthodox interpretation. "God is His own interpreter, and He will make it plain."<sup>7</sup> Religious liberty, then, is not an act of charity toward our fellows, but an act of respect for the sovereignty of God.

**3• Religious liberty respects God's day of judgment.** In the Old Testament, God is presented as the Judge, the coming King, the Vindicator. "To me belongeth vengeance, and recompense...For the Lord shall judge his people."<sup>8</sup> The Pauline writings show a great respect for God's day of judgment. Paul says, "Judge nothing before the time, until the Lord come."<sup>9</sup> For an individual to decide what beliefs are right or wrong, to act as inquisitor, to assume the right to be a judge of motives, is a usurpation of divine authority that belongs to God and will be exercised on the day of judgment. Is it not idolatry to make absolute claims of rightness and try to establish a doctrinal platform on which to judge fellow human beings, thus providing a basis for religious persecution? A Roman Catholic theologian calls this attitude "eschatological impatience." Christians are invited to forgive others "seventy time seven," to love their enemies, not judge them. We are not qualified to judge. In the parable of the good wheat and the bad tares, the tares and wheat grow together until the day of harvest. Likewise in the church, the wheat and tares grow together. It is not the task of the church to destroy the tares; we must leave judgment to God alone.

**4• Religious liberty respects the separate functions of church and state.** As indicated earlier in this work, religious liberty embraces the manifestation of church-state separation. Here we get into a controversial area. The New Testament indicates there is absolute separation in something quite different. The climatic temptation of Jesus was Satan's offer to become a political Messiah, presupposing the union of church and state. The New Testament espouses the idea that there is not to be such a union. There are to be separate functions and respect for these institutions, but it would be difficult to draw an unequivocal line any say, Here is the state, and there is the church, and never the twain shall meet.



There are two aspects of the state: its sinful predisposition, or the negative aspect; and the positive aspect, recognized as the minister of God for good. These two conflicting aspects are shown in Revelation 13 and Romans 13, respectively. The state exists essentially to promote the social and economic welfare of its citizenry, not their eternal salvation as such, but the framework in which they can endeavor to reach eternal salvation. The state does not preach. This function belongs to those who have “come out” and formed a separate kingdom and who are willing to lead others into that kingdom. Therefore, the state must be detached and impartial in questions of preaching. The New Testament shows distinctly the different purposes of Caesar’s temporal kingdom and Christ’s spiritual kingdom.<sup>10</sup> There should be respect for the separate functions and spheres of influence, but where to draw the line is a complicated question. In some areas it is very clear that “this is the church.” But other domains overlap to a degree that makes delineations difficult.

The concept of separate functions and spheres of influence is a distinctly New Testament contribution. All pre-Christian societies were sacral in nature and bound by the sacral ties of common religious and political loyalty. The New Testament envisions a revolutionary pluralistic society, but this balance is not always easy to maintain. There must be a form of separation of church and state, but exactly how this balance can be maintained is another question. The New Testament advocates “a free church in a free state.” When this delicate balance is upheld, men can loyally render unto Caesar what belongs to Caesar and render freely and lovingly unto God the things that belong to God.



E N D

1. (Romans 14:6, *The New Testament in Modern English* J.B. Phillips, 1972). Moderating norms are necessary.
2. (A.F. Carrillo de Albornoz, *The Basis of Religious Liberty*, p.30). Only God knows the heart, and no human tribunal (civil or ecclesiastical) can judge conscience.
3. (op. cit., p. 140)
4. Deuteronomy 13:6-9; Leviticus 24:16; 2 John 9-11. *Church and State Freedom*, 1953, p. 6.
5. *Protestant Faith and Religious Liberty*, p.95.
6. *Ibid*, p. 101.
7. William Cowper, *New Advent Hymnal*, No. 32).
8. Deuteronomy 32:35, 36.
9. 1 Corinthians 4:5.
10. John 18:36, 37; Matthew 22:21; Matthew 4:8-10; Matthew 6:19, 20, 24, 33.



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# RELIGIOUS FREEDOM:

## THE HINDU PERSPECTIVE

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Hinduism is generally regarded as one of the world's oldest organized religions. Unlike most Western religions, Hinduism does not have a single founder, a specific theological system, a single system of morality, or a central religious organization. It is based on eternal truths, principals, and values of life, which are embodied in the Vedas, the sacred scriptures that ground Hindu culture.

Many people mistakenly think that Hinduism is polytheistic, however, this is not the case. Strictly speaking, Hinduism is a henotheistic religion—a religion that recognizes a single God, but at the same time, recognizes other deities as facets, manifestations, or aspects of the Supreme Being. The supreme deity, or godhead, as we say, is known as *Brahman*, and He exists in all living things in the form of *Atma* or “soul.”

Hinduism is considered more a way of life than a religion, and for this reason, the Hindus prefer to call it “*Sanathan Dharma*,” which means “eternal righteous values of life which sustain the universe.” Any path of spiritual discipline, which leads to God-experience can be designated as *Dharma*. The essence of Hindu Dharma is that God exists in all creation—animate and inanimate.

### RELIGIOUS FREEDOM WITHIN HINDUISM

Hinduism has no founder, no single code of beliefs, nor has it ever had any religious organization that wielded temporal power over its followers. The fact that Hindu Scriptures emphasize individual thought and expression and the freedom to choose one's path to eternal Truth, *Brahman*, has inevitably resulted in innumerable local sects of Hinduism.

Today, Hindus throughout India have different customs, traditions, and beliefs. There are various sects within Hinduism. (Shaivas, Vaishnavas, Suras, Shakta, and many movements Swaminarain, Arya Samaj, Ramakrishna, Brahma Kumaris, Radha Saomik SatyaSai, and ISCKON to name a few). There are even some groups that have originated in Hinduism and then separated

themselves from the main body into independent religions, such as Buddhism, Jainism, and Sikhism.

This endless and overlapping multiplicity of sects and movements originating from a common system of beliefs, made tolerance essential for every sect and sub-sect of Hinduism. Despite slight differences in their ways of worship, people belonging to different sects and movements of Hinduism co-exist together in peace and harmony. Sometimes, even within a family, the father may be a follower of Shiva while the mother may be a Radha Soami, and the children go to a Hindu temple and worship all the deities.

## RELIGIOUS FREEDOM AND TOLERANCE INSIDE AND OUTSIDE HINDUISM

The absence of a central authority and a central code made Hinduism an assimilative religion, which tolerated different sects that diverged from itself. When it encountered religions from other countries, Hinduism did not resist their assimilation into itself.

Hinduism thus spread through assimilation and acculturation. Therefore, Hinduism is a collection of different spiritual philosophies. As the Vedic seer once proclaimed: *Ekam Satya, Viprah Bahudaa Vadanti* (Truth is one; people call it by various names).

So, Hinduism is a very liberal and tolerant religion. The doctrine of *Brahman*, the ultimate reality, involves the tolerance and understanding, peace and goodwill, and recognition of the immense variety of paths by which the soul can fulfill its ultimate destiny.

This attitude of tolerance was extended to all forms of belief that came into India from other parts of the globe, including Islam and Christianity, which still have many followers in India.

The central principle that emerged from the wealth of Hinduism was that the way to salvation was a matter of personal and individual choice. People are free to choose whichever faith or religion they wish to follow or be a part of, be it a sect of Hinduism or a whole different religion, and everyone can co-exist peacefully.

The teachings of the Hindu scriptures make Hinduism a non-proselytizing religion. The Hindu only wants a Hindu to be a better Hindu, a Muslim to be a better Muslim, a Christian to be a better Christian and so on. So people may convert from Hinduism to another religion or from another religion to Hinduism, provided they have good knowledge of both religions, otherwise

they will find that they have gone beyond the idea, desire, or need for a conversion.

India, with its large Hindu population, has an unrivalled tradition of religious freedom and tolerance. That tradition was born of the consciousness that truth can never be the monopoly of any sect or creed. According to government statistics of India in 1998, Hindus constitute 82.4 percent of the population; Muslims, 12.7 percent; Christians, 2.3 percent; Sikhs, 2 percent; Buddhist, 0.7 percent; Jains, 0.4 percent; and others (including Parsis, Jews, and Bahai's), 0.4 percent.

Today in India, the Constitution provides for freedom of religion, and the government respects this right in practice. India is a secular state in which all faiths generally enjoy freedom of worship. However, tension between Muslims and Hindus, and to a lesser extent, between Hindus and Christians, continues to pose a challenge to the concepts of secularism, tolerance, and diversity on which India was founded.

There is no ban on professing and propagating religious beliefs, but speaking publicly against other beliefs is considered dangerous to public order and is prohibited.

So far, there have been no reports of religious detainees or prisoners in India.

## RELIGION AND POLITICS

As in the West, the idea of separation of Church and State has also existed in India since ancient times.

Past Hindu emperors did not indulge in religious persecution. All denominations in their kingdom were protected, while religious persecution was the order of the day in other countries. In fact, many persecuted people sought shelter in India. The Hindu civilization has offered refuge to the persecuted, including Christian followers of Saint Thomas, the brother of Jesus, Jews, and Zoroastrians. In modern days, India has given refuge to the Buddhist Tibetans under the leadership of Dalai Lama. The governing factor in politics was *Dharma* rather than a particular denomination.

Ancient India never sought to impose a particular creed upon the people either. Various schools of thought propounded the doctrines of agnosticism, atheism, and materialism. Jainism, Buddhism and later Judaism, Christianity, Zoroastrianism, and Islam were permitted to propagate their teachings, build their places of worship, and establish their respective ways of life. As the famed historian Max Weber put it: "It is an undoubted fact that in India,

religions and philosophical thinkers were able to enjoy perfect, nearly absolute freedom for a long period. The freedom of thought in ancient India was so considerable as to find no parallel in the west before the most recent age.”

## HOLY WARS

World history is full of instances where wars have been waged on the basis of religion. There have been crusades and jihads, which were justified as holy wars and defended as just wars. Believers of one faith have fought with believers of another faith. There have also been fights between different groups belonging to the same faith, on religious grounds and quoting their respective scriptures to justify their cause.

No Hindu Scripture allows the waging of wars as means of spreading religion or imposing it on others. In pursuing the dictums of the Hindu scriptures venerating diversity, Hindu civilization is not motivated by an impulse to convert.

A Hindu does not fight for the glory of God; a Hindu’s God is described by several names and is of universal character, therefore a Hindu is above sectarianism and the need to search for glory. Hinduism believes in the universality of religious experience, truth, and goodness, asserting that the same god can be found in every faith. So a holy war to please god does not exist.

Hinduism is not a missionary religion. It does not force its beliefs on others, so religious crusades do not exist. In fact, Hindus have promoted freedom of religion with an almost excessive zeal to the point of not perceiving that people of other faiths may follow with equally fanatical zeal the opposing philosophy—believing that their form of worship is the ONLY true way of salvation, and that others who do not come within their fold are sinners.

The prophets of renascent India have reasserted in most emphatic terms the fundamental faith of Hinduism: that all religions are branches of the same tree, that the same sap flows in them all and therefore, mutual toleration is of the utmost importance in all matters affecting religious belief and practice.

This is the wisdom, the tolerance, the patience, the all-comprehensive concept that *Sanatana Dharma* teaches us.

## CONCLUSION

Religious tolerance is merely the first step in promoting and creating religious peace and harmony in our world. It is not enough simply to tolerate

or be indifferent to people of different faiths. We must work together to acknowledge, respect, learn about, and appreciate other faiths and build spiritual bridges within today's society.

We may not understand or appreciate the intrinsic values of certain religious rituals or practices carried out by certain co-religionists. Similarly, others may not be in a position to understand or appreciate our own rituals or practices. We should try to fathom or understand practices which are foreign to us since it will help to create a better understanding, thus enhancing the spirit of tolerance amongst followers of multi-religious denominations.

It has been said that respect begets respect. And, there can be no freedom without respect. Respect and tolerance for other religions will definitely contribute to smooth and cordial relationships in a multi-religious society.

All religions are, in reality, just different paths converging on the same point—the one and only God, who is at once the goal and origin of the different paths. God is like the hub of a wheel, with the various religions being the spokes; the closer one gets to the hub, (God) the closer one gets to the other spokes as well.

With these understandings, let us open our hearts to God, to all forms of God, and to all people of different religions, faiths, and spiritual expressions. Let us look upon each other as brothers and sisters and learn to live in peace and harmony.

*“There is only one caste,  
the caste of humanity.  
There is only one language,  
the language of the heart.  
There is only one religion,  
the religion of LOVE.  
There is only one God—  
He is omnipresent.*



END



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# RELIGIOUS FREEDOM AND THE GENERAL ACT OF RELIGIOUS LIBERTY IN SPAIN

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## A FORMER CONFESSIONAL STATE

Until 1967, when the first Spanish Law of Religious Freedom was passed, the concept of official faith governed the situation for religious freedom in Spain. This concept has been extensively adopted in many parts of the world throughout history. As a result, the many countries of the United Nations adhere to a certain official religion. Historically an official faith has been adopted in both Catholic and Protestant countries, as well as in Buddhist, Moslem, and Zen nations. It is still in force in numerous places (the Anglican Church in Great Britain, the Evangelical Church in Scandinavia, the Moslem faith in various Islamic countries and so forth). The largest number of countries that have renounced the official faith and established a regime of religious freedom are in fact those countries that were traditionally Catholic (Latin America, Portugal, Spain, Italy, France, Austria, Belgium, etc.).

In Spain, except for a few isolated exceptions of short duration, particularly the Constitution of the Second Republic of 1931, all the traditional Constitutions maintained the official faith concept until 1978. It was supported by not only the Fundamental Laws of Franco's regime (Principle II of the Movement's Law of Fundamental Principles of 1958), but also by Article I of the Concordat with the Holy See of 1953. Under the official faith system, the regime's attitude towards confessions other than the official one was, at least since the middle of the nineteenth century, one of tolerance, which in Spain substantially practiced in allowing private worship.

## THE RELIGIOUS FREEDOM LAW OF 1967

Principle II of the Fundamental Principles Law of 1958 mentioned above established that the doctrine of the Catholic church would inspire state legislation.

This undertaking of the Franco regime obliged it to revise its own norms with respect to religious freedom when this right was expressly proclaimed as the Church's doctrine in the Declaration *Dignitatis Humanae* by the Council of Vatican II. This resulted in the promulgation of the Religious Freedom Law in 1967, which recognized that minority confessions had a series of rights, fundamentally that of public worship. This law was positively received by the non-Catholic confessions, to the extent that they had finally recovered at least a substantial part of the freedom that they had lost in Spain at the end of the fifteenth century.

## THE CONSTITUTION OF 1978

Article 16 of the Constitution of 1978, the first in the Spain history to recognize religious freedom as a fundamental personal right, establishes this freedom in both the individual sphere and in the collective context, expressly mentioning communities and confessions. It also established ideological freedom and freedom of worship, but without mentioning freedom of conscience. Legal discussion has extensively investigated the scope and meaning of each one of these freedoms, as well as the nature of the State defined by this Article of the Constitution—with or without an official faith?—a lay society?—as well as the meaning of the obligation imposed on the state administration to take into account the religious beliefs of Spanish society, and the consequent relationship of cooperation with the Catholic Church and the rest of the confessions. Without entering into these arguments, which are irrelevant here, it should be pointed out that each of these norms, which Article 16 of the Constitution lays down, in each one of its three paragraphs, required a subsequent legislative development. To meet this requirement, the Organic Law of Religious Freedom appeared in 1980.

## THE GENERAL ACT OF RELIGIOUS LIBERTY

### a• Approval

The Law was passed in the Congress of Deputies after all the prior stages of Parliamentary Proceedings had been completed, with a voting result of 274 in favor, one against and nine abstentions. The King sanctioned the Law on July 5, 1980, and it was published in the State Gazette on July 24.

### b• The Law

The Law consists of eight articles, two transitional provisions, one revocatory provision, and one final provision. The final provision authorizes



the government to dictate the subsequent provisions that may be necessary for the application of certain norms contained in the Law. The revocatory provision effectively eliminates the previous Law of Religious Freedom of 1967; and the transitional provisions regulate certain administrative situations of pre-existing religious entities and associations. Where the body of the General Act is concerned, the eight articles are based on the development of the Constitution within Spain's legal order, which is the principal unilateral source of regulating religious freedom in Spain (with the principal bilateral source being the Agreements that may have been signed in the past or may be signed in the future with certain faith communities).

### **c• The Articles**

Article 1 of the 1980 law guarantees freedom of religion and worship as recognized by the Constitution (1) as well as the equality of all persons before the law (2); it also repeats the Constitutional provision (Article 16.3) according to which “no faith shall be the official State religion.” Although this formula suggests that the legislators' intention was that the State would be neither confessional nor secular, there are doctrinal sectors that argue that it is not the most suitable formula for establishing said principle in an overwhelming fashion. Exercising this freedom is regulated by Article 2.1 a, b and c; the right of association for religious purposes is addressed in Articles 2.1 d, 2.2 and 6; limitations on exercising said rights are regulated by Article 3.1; certain aspects of the State's duty to cooperate with the various confessions are covered by Article 2.3, and the judicial guardianship of these rights is enshrined in Article 4. Article 5 creates a Public Registry in the Ministry of Justice in such a way that religious entities acquire a legal personality through inscription in said Register; Article 7 determines the possibility of different creeds signing cooperation agreements or conventions with the State and the necessary conditions for same; Article 8 creates a Religious Freedom Advisory Board, laying down its composition and functions.

### **d• Problems with Law's meaning**

The interpretation and application of the General Act of Religious Liberty presents a series of problems, given that legal opinion is not unanimous either in its evaluation or in determining the exact meaning of its articles. There are even a number of proposals to modify the Law. The most extensive work in this context was undertaken by the Religious Freedom Advisory Board itself. In 1998, the Board published its conclusions under the title “Religious Freedom, Twenty

Years After the General Act.” Problems that arise from reading the General Act include: The limitation of the Law to the scope of religious phenomena; the concept of a religious confession; requirements for inscription in the Register and the cancellation of inscriptions; and the signing of Agreements.

## THE ACT’S LIMITATION TO RELIGIOUS AFFAIRS

The General Act of Religious Liberty clings tightly to the specific sphere of religious phenomena. In fact, Article 16 of the Constitution foresees three types of freedom in its point 1—namely ideological, religious, and worship, however only the last two are addressed in Article 1 of the General Act, paralleling the Religious Freedom Law. This decision of the legislators, to target this Law strictly toward religious freedom and not any other type of freedom—ideological or ways of thinking—appears to be clearly and expressly corroborated by Article 3.2, which leaves outside the scope of protection afforded by this Act “activities, purposes, and entities relating to or engaging in the study and experimentation with psychic or para-psychological phenomena or the dissemination of humanistic or spiritualistic values or other similar non-religious aims do not qualify for the protection provided in this Act.” It is not a question of these activities being unworthy of protection, but this Act is not the right place to provide it. This approach was not unanimously accepted in the parliamentary debates on the General Act. The Andalusian Group demanded to guarantee freedom of conscience as well as freedom of religion. On the other hand, the Socialist group asked for the suppression of point 2 of Article 3 for two reasons: a broad concept of religion can frame the situations described in said point, and the Act leaves the determination of whether an activity or a group is religious or not in the hands of the Administration. To this point it is worth stating that:

**1•** The Constitution—a fact not to be discussed here—does not mention freedom of conscience in its Article 16. It does, however, address freedom of ideology, a wider freedom than that of religion, and legislators opted legitimately to pass a law focused on Religious Liberty.

**2•** Though the concept of religion can be wide, it is also unscientific to apply it to any form of manifestation or to beliefs of a humanistic nature.

**3•** Within the limitations contained in Article 16.1 of the Constitution, no citizen is denied the freedom to believe and act in accordance with their beliefs,

whatever they may be, but for the legal purposes of the General Act—granting legal personality to certain entities and the possibility of signing agreements with the Administration—the State is necessarily obliged to take a stance on the religious character or otherwise of the groups that request recognition, at the risk of allowing abuse of the Act through the fraudulent use of the term “religious” on the part of any group that wishes to take advantage of the legal possibilities that the norm offers to citizens. The Socialist Administration itself shared this argument at the time of applying the Law, which, as we have mentioned, obtained a practically unanimous vote in Parliament.

## THE CONCEPT OF RELIGIOUS CONFESSION

A religious confession is the organic structure that is the subject of the relationship with the State expressly referred to in Article 16.3 of the Constitution. This is why it is so important to have a clear definition of the concept of a religious confession, and why specific attention is given to its beliefs. As a matter of fact, Article 16.3 obliges the State to maintain relationships of cooperation with a religious confession. The General Act is aimed, above all, at establishing the base on which such cooperation will be supported and developed. In fact, at no point in the Act does it say what a confession may be; moreover, the terminology used in the Act—churches, confessions, and religious communities—is far too imprecise. Article 3.2 attempts to delimit the concept of confession through the negative route, saying what it is not, and not what it is, and the negative definition of a term is obviously not the most precise. The only positive criteria to define what a religious confession, for the General Act and thereby for the public administration, is that of religious aims established in Article 5 of the Act, which we will address later, and which also presents its own problems.

## THE REGISTRY OF RELIGIOUS ENTITIES

The Register has also given rise to numerous doctrinal studies, above all on the nature, requirements, and consequences of inscription. Articles of the Act generates various problems including:

- 1• The heart of point 2 of Article 5 is whether the public administration has the ability to evaluate said requirements and grant or deny inscription, or whether the simple presentation of the required documentation, irrespective of its

content or meaning, is sufficient to obtain automatic inscription in the Register. The only documentation that could contain fraudulent inaccuracies that public administration could detect are those relating to the foundation or establishment in Spain. All other documentation, objectives, denomination, functioning regime, representative bodies—if the public administration cannot moderate or classify it—could be inscribed as confessions, with blatant abuse of the Act, by entities that use the disguise of religion to pursue objectives that are far from religious—be they licit or illicit—or entities with systems of organization and government that degrade their members' civil rights or are responsible for criminal activities in other countries, etc. Public opinion frequently classifies as sects those entities that present themselves as religious without being so. “Sect” is not a legal term but a social one, and it should not be applied to every new or unknown religious entity that has just arrived in Spain, or to one that, being based here, has not achieved sufficient degree of integration in the social fabric of the country. Neither should the public administration accept, in a passive fashion, the simple claim of any entity that it is religious, without verifying the seriousness of its aims, their nature, its organizational system and particularly their activities, here and in other countries where they may have had a presence, since the easiest way to verify the religious nature of any entity is through its activities. This is how the public administrations in the majority of democratic states have proceeded. This is also the way that Spain's public administration has acted since 1980 until today, with some margins of error or discrimination that have not always been corrected satisfactorily by the country's courts of justice.

2• The other problem is the cancellation of inscriptions in the Registry, because the excessively strict nature of article 5.3 deprives the public administration of any initiative in this respect. It only provides for cancellation when the entity in question applies for it or when a definitive court judgement orders it. This has left the Registry in the incongruous situation of being loaded with inscriptions that are legally alive or in force but are really extinct or dead, since those entities that disappear or cease to exist rarely apply for cancellation of their inscription, and a court judgement will only arise if some form of controversy has been resolved at law.

## AGREEMENTS

Article 7 of the General Act provides for the establishment of cooperation agreements between the state and the churches, confessions and religious

communities registered in the Registry, with the requirement for this being that the entity has achieved a recognized deep-rooted nature in Spain through its scope and number of believers.

The point that presents particular difficulty in this legal text is the requirement of “recognized deep-rooted nature.” The norms only offers two terms to identify their meaning—scope and number of believers—and these terms can obviously be interpreted within extremely flexible margins. The solution adopted by the public administration in 1992, when it signed three agreements with religious minority groups, was recognizing the deep-rooted nature according to historic and cultural coordinates. This is the only explanation why, together with Evangelists and Muslims, clearly of wide scope and number, the requirement should be recognized in the case of Judaism, whose number of believers in Spain is substantially lower than that of the two religions mentioned but also lower than that of various other confessions.

The Religious Freedom Advisory Board has recently been clarifying the deep-rooted nature of a confession on the basis of three factors: (a) presence, considered as a matter of fact; (b) the historic or temporal factor, and (c) the degree of recognition, seen as a social and cultural factor. It is only when the three factors concur that a confession will be considered to have a recognized deep-rooted nature, which is certainly a clarifying criteria and in accordance with the norm.

Acceptance of recognized deep-rooted nature that gave rise to the three agreements of 1992—the only ones that have been signed in application of the General Act, since those in force with the Catholic church date from 1962, 1976 and 1979 are prior to this law and are not affected by it—was not extended to three other specific confessions and the Agreements were not signed with churches, confessions and communities as such, as established by Article 7.1 of the General Act. The recognized deep-rooted nature of three religions was accepted—Evangelical, Muslim and Judaism. The agreements were signed with two Federations—FEREDE (Spanish Federation of Evangelical Religious Entities) and FCIE (Spanish Federation of Israelite Communities)—and with one Commission—CIE (Spanish Islamic Commission).

## WHAT ARE THESE FEDERATIONS AND WHAT IS THIS COMMISSION?

**1•** FEREDE is a federation of the different evangelical denominations settled in Spain, but this expression is understood in a very ambiguous way. For example, the Orthodox church belongs to the FEREDE, but it is clearly not of

evangelical faith (Protestant). Likewise, it includes the Adventist church, born in the nineteenth century outside the tradition of Protestantism, but it excludes the Mormons, whose origins are from around the same period and equally do not proceed from Protestant lineage. This means that FEREDE is made up of various non-Catholic Christian confessions with no point of union among them other than that having been accepted into the Federation. This has given rise to an interesting anomaly: once a confession or a Christian church has been inscribed in the Registry—decided by the public administration—acceptance into FEREDE (and thereby into a regime of cooperation agreement) is decided by FEREDE and not by the State. The State therefore finds itself deprived of the power of decision to cooperate or not through the agreement route with one Christian church or another, having renounced this right, which obviously ought to belong to the State, and has ceded it to a religious entity of an administrative nature, a Federation of Churches.

**2•** FCIE is not a federation of confessions, but a federation of communities of the same faith. Judaism is a single confession, although in its heart different ideological/religious trends exist, organized in communities that do not depend on each other. In Spain no central religious authority has jurisdiction over all of them. These communities have joined in a Federation for the purposes of representing the communities before the State. In this case the Federation is not a different entity from the assembly of communities so much as a union of all of them that designate a representative for their relationship with the State.

**3•** Muslims are different. Although they appear to be a single religion or confession, there are various ideological groups. Muslims lack a superior authority, a unit, or a head. Their communities are completely autonomous with respect to one another. In Spain, these communities are formed into two federations (UCIDE and FEERI), not in one like Judaism. There are also communities that do not belong to the Federation. The two federations, instead of following the example of Judaism—one federation reaching an agreement with the State—did not join forces to negotiate with the public administration but instead created a Commission (CIE), a purely administrative body representing both federations—and within them the federated communities—before the State, signing the agreement and forming part of it.

**4•** Other churches, confessions and religious communities have not applied for or have not obtained the status of “recognized deep-rooted.” If individual

non-federated entities were to obtain it, the established system would effectively collapse. Various Christian churches that are somewhat artificially inserted in FEREDE would ask for their own independent agreement; the Islamic Commission would probably collapse, leading to the need to renegotiate the agreement. Thus the system established in 1992, although effectively in normalizing the religious situation in Spain, has enormous gaps which only the goodwill of the confessions and the public administration can fill on a day-to-day basis. Undoubtedly, however, a major revision of all these problems will have to be undertaken eventually, which may even lead to a new version of the General Act, to take advantage of the experience of its almost 25 years of existence, and thereby improve the treatment of religious freedom in Spain.



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