

FOI ET LIBERTÉ

FE Y LIBERTAD

FÉ E LIBERDADE

FAITH AND LIBERTY

GLAUBE UND FREIHEIT

FIDES ET LIBERTAS



2013

RELIGIONS AND FREEDOM OF RELIGION:
CONTRIBUTIONS TO PEACE AMONG ALL PEOPLE

International Religious Liberty Association

12501 Old Columbia Pike

Silver Spring, Maryland 20904-6600, United States of America

Phone: +301.680.6686 Fax: +301.680.6695

E-mail: Info@IRLA.org Web site: www.IRLA.org

INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION

BOARD OF DIRECTORS

Delbert Baker (USA)

Vice President

Bert B Beach (USA)

Vice President

Williams C Costa Jr (Brazil)

Alberto de la Hera (Spain)

Vice President

Ganoune Diop (Senegal/France)

Deputy Secretary General

Karnik Doukmetzian (Canada)

Vice President

John Graz (Switzerland)

Secretary General

Dan Jackson (Canada)

Robert Kyte (Canada)

Dwayne Leslie (USA)

Deputy Secretary General

Denton Lotz (USA)

Vice President

Rosa Maria Martinez de Codes (Spain)

Vice President

Todd McFarland (USA)

Legal Advisor

G T Ng (Singapore)

Daisy J F Orion (Philippines)

Treasurer

Robert Seiple (USA)

President

David Trim (UK)

ADVISORY DIRECTORS

Guillermo Biaggi

Lee Boothby

Barry W Bussey

Gordon Christo

Rajmund Dabrowski

Ken Denslow

W Cole Durham

Albert C Gulfan Jr

Eugene Hsu

Orlan Johnson

Alvin Kibble

Erton Köhler

Anatoly Krasikov

Jairyong Lee

Israel Leito

Nicholas Miller

Roland Minnerath

Barry D Oliver

John Rathinaraj

Paul S Ratsara

Blasious Ruguri

Gunnar Stålsett

James D Standish

Bruno Vertallier

Gilbert Wari

Bertil Wiklander

Ted N C Wilson

PANEL OF EXPERTS

Delbert Baker

Raimundo Barreto

Jean-Paul Barquon

Jean Bauberot

Bert Beach

Lee Boothby

Barry W Bussey

José Camilo Cardoso

Blandine Chelini-Pont

Hui Chen

Jaime Contreras

Pauline Cote

Rajmund Dabrowski

Derek Davis

Jean-Arnold de Clermont

Alberto de la Hera

Ganoune Diop

W Cole Durham

INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION

Silvio Ferrari

Alain Garay

Timothy Golden

John Graz

T Jeremy Gunn

Eugene Hsu

Vaughn James

Anatoly Krasikov

Michael Kulakov

Natan Lerner

Dwayne Leslie

David Little

Denton Lotz

Rosa Maria Martinez de Codes

Todd McFarland

Dallas Miller

Nicholas Miller

Roland Minnerath

Liviu Olteanu

Gerhard Robbers

Jaime Rossell

Robert Seiple

Henri Sobel

Tad Stahnke

Gunnar Stalsett

James D Standish

H Knox Thames

Rik Torfs

Mitchell Tyner

Sauna Van Praagh

INTERNATIONAL REPRESENTATIVES

Jonathan C Catolico

(Southern Asia-Pacific Region)

Paul Charles

(Southern Africa Region)

Gordon Christo

(Southern Asia Region)

Oleg Goncharov

(Euro-Asia Region)

Roberto Herrera

(Inter-American Region)

Orlan Johnson

(North American Region)

Si Young Kim

(Northern Asia-Pacific Region)

Irineo Koch

(West Central Africa Region)

Liviu Romel Olteanu

(Euro-Africa Region)

Rafael Rossi

(South American Region)

James D Standish

(South Pacific Region)

STAFF

John Graz

Secretary General

Ganoune Diop

Deputy Secretary General

Dwayne Leslie

Deputy Secretary General

Carol E Rasmussen

Office Manager

Gail Banner

IRLA Specialist

DECLARATION OF PRINCIPLES

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 religious liberty 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.

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.*

STATEMENT OF PURPOSES

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

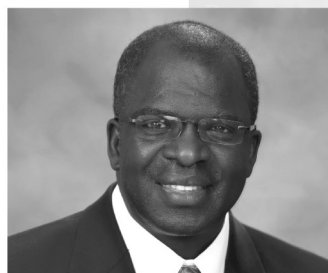
- 1 Dissemination of the principles of religious liberty throughout the world;
- 2 Defense and safeguarding of the civil right for all people to worship, to adopt a religion or belief of their choice, to manifest their religious convictions in observance, promulgation, and teaching, subject only to the respect for the equivalent rights of others;
- 3 Support for religious organizations to operate freely in every country through the establishment of charitable or educational institutions;
- 4 Organization of local, national, and regional chapters, in addition to holding seminars, symposiums, conferences and congresses around the world.

MISSION STATEMENT

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



GLOBAL FAITH & FREEDOM



Global Faith & Freedom is an inspirational talk show covering controversial issues on religion and politics. You will hear thoughtful discourse from experts in the field of Religious Freedom.

Watch Global Faith & Freedom on the HOPE Channel (Hopetv.org) at the following times (Eastern Time Zone):

Wednesday - 7:00pm; 8:30pm

Friday - 7:30am

Sunday - 6:30am

www.GlobalFaithandFreedom.org





FIDES ET LIBERTAS THE JOURNAL OF THE INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION

12501 Old Columbia Pike
Silver Spring, Maryland 20904-6600, USA
Phone: 301.680.6686 Fax: 301.680.6695
www.IRLA.org

John Graz, Publisher
Ganoune Diop, Executive Editor
Dwayne Leslie, Managing Editor
Barry W Bussey, Associate Editor
Nicholas Miller, Associate Editor
Carol E Rasmussen, Copy Editor
Gail Banner, Production Assistant
Lindsay Sormin, Graphic Design/Layout Editor

Statements of fact in this issue of FIDES ET LIBERTAS are those of the authors as they understand the facts. The views expressed by the authors are their own and do not necessarily represent the International Religious Liberty Association. Copyright © 2013 International Religious Liberty Association. All rights reserved.

Price US\$10.

This periodical is indexed in the ATLA Religion Database(r), a product of the American Theological Library Association, 300 S. Wacker Dr., Suite 2100, Chicago, IL 60606, USA. email: atla@atla.com, <http://www.atla.com>.

ISSN 1940-6924

CONTENTS

GANOUNE DIOP
INTRODUCTION TO *FIDES ET LIBERTAS*
11

JOHN GRAZ
KEEP HIGH THE SPIRIT OF 313
14

ROBERT A SEIPLE
INSIGHTS FROM THE FIELD
16

JEAN BAUBEROT
ROGER WILLIAMS AND LIBERTY OF CONSCIENCE
21

LARRY MILLER
TERROR IN THE NAME OF GOD:
AN EXISTENTIAL CHALLENGE TO RELIGIOUS BELIEVERS
26

HEINER BIELEFELDT
MUSLIM VOICES IN THE HUMAN RIGHTS DEBATE
32

LUC GONIN
FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION
IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS:
THE SCOPE OF ARTICLE 9 ECHR, TERMINOLOGICAL
DISTINCTIONS AND CURRENT LEGAL DIFFICULTIES
60

WESLEY GRANBERG-MICHAELSON
MIGRATION, QUEST OF FREEDOM,
AND THE NEW FACE OF GLOBAL CHRISTIANITY:
A JOURNEY IN UNITY AMONG CHRISTIAN FAITH TRADITIONS
83

GANOUNE DIOP
MORE THAN LIBERTY, RIGHTS, AND RESPECT:
CHRISTIAN PERSPECTIVES ON HUMAN DIGNITY
90

FIDES ET LIBERTAS
SUBMITTING MANUSCRIPTS
115



INTRODUCTION TO *FIDES ET LIBERTAS*

The theme of *Fides et Libertas* for 2013 and 2014 is Religious Thought and Religious Freedom. The articles in this volume explore the multifaceted nature of the relations between religions, religious freedom, and human rights. History has witnessed the human tragedy caused by the politicization of religion and the religionization of politics. Religious wars have plagued human history and have inflicted incalculable pain and suffering and death on millions. These ills are still current.

The question that has begged for an answer can be framed as follows: In today's world, can religions and philosophical beliefs be forces for good? In the next two volumes of *Fides*, several authors from various philosophical backgrounds and religious persuasions have joined the conversation in order to bring clarity, healing, reconciliation, and life together for the sake of peace among nations, peoples, and individuals.

Ambassador Robert A Seiple—who comes with a rich experience of working for the good of people as a former president of World Vision—brings a practical perspective as he highlights what we can learn from persecuted peoples who model the best of faith.

Professor Jean Bauberot makes a compelling case for the important contribution of Roger Williams to religious freedom. Williams made Rhode Island the first state in the world to be founded on the principle of freedom of religion. He even inspired the first amendment of the constitution of the United States. Revisiting some of the issues that made him a landmark in the culture of religious freedom is helpful in addressing today's challenges.

Our world is divided on the best means to secure one's rights. Radical approaches embrace violence in many forms. Even God is used as an instrument to terrorize people who have the right to peace. The Rev Dr Larry Miller insightfully draws the readers' attention to one of the aspects of religion that discredits religion itself. "Terror in the name of God" is one of the reasons radical secularists propose to completely marginalize religion from the Public Square and civil society.

Professor Heiner Bielefeldt, Special Rapporteur on Freedom of Religion or Belief at the United Nations, has rendered a service to the international community by bringing awareness to the complexity of the human rights debate in reference to the input from Muslim voices. Islam is not a monolithic reality. Fine distinctions are needed to better grasp contemporary issues that are at stake and the conflicting pictures and approaches to global challenges.

One of the challenges that is completely changing the face of the geo-political and religious make-up of our world is the phenomenon of migration. Rev Wesley



Granberg- Michaelson focuses on the unprecedented global scale phenomenon of migration that has completely changed the landscape of Christianity. His article is most welcome at a time when search for identities and allegiances has characterized most religious communities. His analysis helps to contribute to how people can better understand each other. It reveals the social and religious dynamics that allow better co-existence, collaboration, and building of relationships of peace in the midst of differences, unique self-understanding and claims.

Europe is facing unprecedented challenges in reference to people of other faiths not indigenous to its historic fabric. Legal challenges are subtle. Dr Luc Gonin has provided clarification of the issue of freedom of thought, conscience and religion in the European Convention on Human Rights.

Underneath the whole debate on human rights and freedom of religion or belief lies the assumption of human dignity as foundation for the rights of the individual. Each world religion and major world philosophy has addressed the issue of human dignity, even though from various premises of their inner-logic. A pluri-disciplinary approach to this issue is warranted because of the scope, ramifications and implications of human dignity from ethical, legal, and judicial domains of life. The remarkable consensus of the major streams of world Christianity, for example, is a fascinating space for inter-confessional dialogue and collaboration to affirm, promote and protect the value and worth of every person. Beyond the Christian faith, collaboration with and among world religions on this very issue can contribute to the peace the world of international and national organizations are helping to build. The article on human dignity indicates the heuristic nature and the tremendous potential of promoting not only a culture of human rights, but also a culture of human dignity.

Ganoune Diop, Ph.D.
Director United Nations Relations
Deputy Secretary General
International Religious Liberty Association





KEEP HIGH THE SPIRIT OF 313

JOHN GRAZ¹

The year 2013 marked a special year for religious freedom. It was the 1700th anniversary of the *Edict of Milan*. Religious Freedom has been an issue for governments and religions since the beginning of history. It has been a long, long battle with victories and defeats, with dreams and disappointments, with hope and despair. Periods of tolerance occasionally appeared like an oasis in a desert of intolerance and persecution.

The *Edict of Milan* in 313 was an oasis, a great breakthrough which ended three centuries of persecution. Christians and other believers had been targeted by Emperors who believed they were gods and by States which denied basic freedoms to their citizens. In 313, the young Emperor Constantine made a difference by ending persecution, and he had a major role in promulgating the Edict of Milan. He deserves our gratitude. As a result of the edict, Christians and others were free to worship God as they chose, to have access to all professions, and to receive back their confiscated properties.

I can imagine their reaction. For them, Constantine was a man sent by God to protect His people. They gave him great authority so that he chaired the Council of Nicaea and took a strong theological position in developing the Christian creed.

It did not take long before the bishops received special privileges and were integrated into the State protocol. We know what happen a few years later; but just imagine what it would have been like if the *Edict of Milan* had been respected. It would have changed the history of the world. Rome would have become the promoter and defender of religious freedom. Freedom would have become a prominent value for all citizens and a desired one for people around the world.

In 380, Christianity became the exclusive religion of the State and people were forced to become Christians. The parenthesis of freedom was closed.

In 2013 two mass meetings were held in the city of Nis in Serbia, where Constantine was born. One was organized by Catholics with the Bishop of Milan. The other one was a great Orthodox gathering with the Ecumenical Patriarch of Constantinople and the Patriarch of Moscow. The meetings focused more on Constantine than on religious freedom. It would have been so powerful to have a ceremony with all religions represented and also with non-religious associations. It would have

¹ John Graz, PhD, is Secretary General of the International Religious Liberty Association.



shown that the message of the *Edict of Milan* had not been forgotten.

This did not happen. Maybe it was because the concept of religious freedom as defined by Article 18 of the United Nations Universal Declaration of Human Rights is no longer appreciated—even by those who have been persecuted. For some it is not easy to believe that the State should not support any one religion, but should give all religions the same freedom to build churches, temples, mosques, synagogues, schools, and universities. Human beings like privileges, but they are not always ready to share those privileges with others.

The IRLA did not forget 313 and the *Edict of Milan*. We celebrated religious freedom in many programs and venues:

- In a stadium in Tuxtla Gutierrez, Mexico where 27,000 gathered for a Day of Religious Freedom and Friendship
- In Sao Paulo, Brazil, where our association held a symposium, public lectures, a concert, and a gathering of 25-30,000 people who pledged their support for religious freedom. The City Council in Sao Paulo voted to have an annual Day of Religious Freedom on May 25, the date of our large gathering.
- In Yaoundé, Cameroon, during our 3rd Pan-Africa Congress and the festival which followed with 5,000 people.
- At the 11th annual Religious Liberty Dinner which was held at the Canadian Embassy in Washington DC with the Religious Freedom Ambassadors of Canada and the United States as participants.

These events were attended by leaders of many religions. Believers and non-believers were welcomed. Religious freedom for all was the theme.

We will keep the Spirit of 313 next year and in all the coming years. We will continue to promote this great value of religious freedom. The Spirit of 313 is the best answer to religious fanaticism, to intolerance and to persecution.



INSIGHTS FROM THE FIELD

ROBERT A SEIPLE¹

One of the most intriguing questions for those of us involved in the issue of religious freedom is this: Can the best of our faith counteract the worst of our religion? A reminder for context: We live in a world where people still die for their faith. Equally true, however, there are those who will kill for their religion. Much is obviously at stake, and we neglect this question at our considerable peril.

Where might we find examples of the “best of faith?” We can assume that the legal underpinnings for religious freedom and, by extension, the potential for authentic faith, have been firmly established. The challenge is that the legal rationale for this human right now needs to be incorporated as “settled law” in the hard places of our globe. Not a quick fix and no small task, but also not impossible given the good work already done by the legal profession.

Similarly, much scholarship has been devoted to the cultural context in which religious liberty resides. History, anthropology, majority/minority identities, secular-ity (to name a few)—all have gotten very credible attention from scholars around the world.

If we stopped here, however, we might miss the deepest, most earnestly held motivations that profoundly impact the issue of religious freedom—the insights that come from the field. Specifically, what is to be heard and applied from those who this day are experiencing pain, suffering, and the coercive manipulations of both governments and people groups because of what they believe, in whom they trust, and how they worship?

What learnings might come from “the hard places” that can inspire our behavior and further motivate our passions towards “the best of faith?” The following example, from the distant country of Laos, begins to flesh out meaningful answers.

In 1999 Laos had the dubious distinction of being one of the world’s worst offenders of religious freedom. This small, landlocked country of 6.5 million people was close to the top of the list when it came to intentional government harassment and persecution of religion. Christianity bore the brunt of this persecution. Forced renunciations of faith, destruction of churches, and prolonged imprisonments of

¹ Ambassador Robert A Seiple was the first United States Ambassador-at-Large for International Religious Freedom. He also served as President of the Council for America’s First Freedom, based in Richmond, Virginia. He is currently President of the International Religious Liberty Association.



church leaders were a few of the tactics used to eradicate what the Lao felt was a “Western” religion.

The Lao government had reason to be suspicious of the West. At the end of the century Laos was still struggling to emerge from the negative impact of the war in Vietnam. During the war, Laos had hosted the major supply routes into South Vietnam from the North. Indeed, much of the infamous Ho Chi Minh Trail went through Laos. For its hospitality, Laos was to absorb one of the greatest aerial bombardments in the history of war. More bombs were dropped on Laos during the so-called “Secret War” than fell on Germany during four years of WWII. There are still over 400 crash sites under investigation in Laos, the silent tombs for so many American aviators. Unexploded ordinance from that time continues to claim casualties, mostly children who come across defective bombs while playing in the woods. After 35 years of relative peace, this war without winners, only victims, continues to claim its victims.

Laos was born poor (landlocked, with few natural resources), was made poor by war, and was kept poor by a stifling communistic ideology that only recently began to fully open itself to the global economy. In 1999, 40 percent of Laotians lived below the poverty line. Seventy-five percent were illiterate. International interest in Laos was low as there were much more lucrative nations available in the neighborhood, both for cheap labor and the promise of future consumption.

It would have been easy to dump all of our frustrations concerning religious freedom globally on tiny Laos. That seemed too easy and, perhaps, unfair. A decision was made in the US Department of State to work with the Lao, actively promoting the practical benefits of religious freedom, benefits such as loyalty, stability, and security.

This work continues to this day. When I left the State Department, my wife Margaret Ann and I started the Institute for Global Engagement, a non-profit organization intentionally designed to work the issue of religious freedom in the most difficult countries in the world. Laos would be our first! Specifically, we wanted to visit the village of Keng Kok, a small town in Savannakhet Province and ground zero for religious persecution in Laos. This was the birth place of former Prime Minister Nouhak, a hardliner on all subjects dealing with the West and, as a loyal Communist, no fan of religion. In Keng Kok, government officials built their resumes by taking intractable stands against any practice of religion. The persecution of Christians, specifically, was encouraged. When it came to making life difficult for practicing Christians, Keng Kok officials were assured they would be acting with impunity. My old friends in the State Department arranged for a visit through the government officials in Laos.

Our reception by the local officials in Keng Kok was most cordial. They knew we were there to discuss a very sensitive issue, but hospitality was the order of the day. We enjoyed a Baci ceremony, a Lao cultural custom that honors friendship.



Gifts were given, blessings bestowed, and smiles appeared to be both ubiquitous and genuine.

Now it was time for the District official to brief us on our agenda, the progress towards religious freedom. “We have no religious freedom issues here,” he began with a straight face. “We used to, but now there are no more Christians. No more Christians means no more problems of this kind.” We feigned incredulity. “All of them decided to stop being Christian on the same day?” “Yes,” he assured us and, seeming pleased with his answer he added, “all 1,135 Christians.” We were rolling our collective eyes at this. “You mean on the same day you got all 1,135 Christians to renounce their faith?” “Yes,” he replied, and then to complete this curious dialectic he brought the briefing to an end with this: “Since there are no more Christians, we took their church and turned it into an elementary school.”

This was the clearest example we had to date of a forced renunciation of faith. Maximum coercion, threats of harm that would come to the Christians, loss of employment opportunities, denial of education for the children, perhaps a strategic “disappearance” of one of their leaders—and on a form prepared by the government, the dubious opportunity to profess fear over faith. None of this was ameliorated by the “best use” exercise of converting the church to a school.

We asked to see the church. It was one of the largest buildings in the village. Well built, but locked up this Sunday afternoon when we made our visit. As we walked around to the back of the church, we heard music from the adjoining lot. It sounded familiar. To our great surprise, and the immense consternation of our government hosts, there, sitting on the grass, were about 60 “no more Christians” having a praise and prayer service. More than a service, it was a staged religious demonstration, something virtually unheard of in a communist state. The women in the group were crying. Surely they were aware of what they were doing, and the potential consequences of the act upon the men. By nightfall, they reasoned, they would all be in jail, or worse.

Our Communist hosts were embarrassed. They had just been caught in a lie. Worse than that, the lie was exposed by Laotian Christians who were in the process of making an incredible statement. As their entire professional lives passed before the eyes of our hosts, we made our way to the group of Christians. The pastor and five elders came to meet us, all dressed in sackcloth, with ashes embedded on their chests!

Sackcloth and ashes. We were stunned. The pastor, an older man named Myeum, began an amazing conversation with us. What follows are four specific insights that came out of that historic meeting.

“What are you doing?” I asked, somewhat incredulously.” Pastor Myeum replied, choosing to answer a different question. “We are the face of religious persecution.” Indeed, religious freedom has a face. The stories told are all about people, not statistics, not legalese. Empathy never follows mere documentation, but is always



associated with a face, a pulse, a personality. Sometimes, in our desire for impeccable scholarship and credible legal formulations, we lose sight of the individual, the “face” of what we do and the motivations supporting our actions.

Secondly, Pastor Myeum was crystal clear concerning his desire for his church. “We want the world to know that there is a church in Laos.” Sure it is tiny, occupying distant soil, but the “best of faith” cannot and should not be constrained by either congregational size or national boundaries. There is a worldwide communion and the church was a part of it. “Tell the rest that we exist.” A church, strengthened in its faith through persecution, wants the world to see its witness, to take them seriously, never forgotten, and a contributor to a larger body of fellowship.

I continued with my questions. “Do they let you preach?” His answer demonstrated a type of courage rarely seen in today’s world. “They ask me not to preach, but I told them they would have to put a bullet in my brain if they wanted me to stop.” Such courage is palpable. When it is modeled, it cannot be dismissed. Indeed, it creates its own attractiveness, drawing others into its sphere. The church grows. And it has grown in Laos. In Keng Kok, through our efforts and the blessing of the Prime Minister’s Office, the church was finally returned to the congregation. We offered to raise money for a new school, which we did, and returned the next year with a check. A day of celebration ended in the Church, newly repainted with manicured lawns and ubiquitous flowers lining the entrance. A cross had been erected outside and another inside the sanctuary. Once again, we saw tears, but this time they were tears of rejoicing.

This was just the beginning. We now had the attention of the government. Conferences on Religious Freedom followed. A religious freedom law (Decree 92) was enacted, with input from the various religious denominations in Laos. Religious freedom seminars have been conducted throughout the country for church leaders and government officials alike.

Of course, all of this is still very new and progress is never a straight line, but the religious freedom genie is out of the bottle in Laos, never to return.

The final request from Pastor Myeum has remained close to my heart. “You show as much courage as you have seen here today.” Words to stiffen the backbone! My venues are safer but the opportunities are just as visible. His challenge holds me accountable. His integrity inspires me. For all of us involved with religious freedom issues, this is our daily call to arms.

One final thought. The District official who authored the phrase “no more Christians” wasn’t at the celebration. He got cancer and did not live out the year. Before he died, however, he went to the church. He confessed his role in the persecution of the church. He allowed that he was sorry. He asked for the church’s forgiveness. In his final days, it was volunteers from the church that provided his hospice care.

A face, a place, incarnational courage and the challenge to emulate this courage.



The persecuted church has much to teach us. These teachings take place on both a micro and macro level, for individuals and institutions alike. We need to learn from those who daily model the “best of faith.”

“He that has ears to hear, let him hear.”



ROGER WILLIAMS AND LIBERTY OF CONSCIENCE¹

JEAN BAUBEROT²

[Roger Williams (1603-1683), a native of Wales, was born in London. He became an Anglican clergyman after studies at Cambridge. Early on he protested against religious persecution, being of the opinion that the Gospel must be lived without government interference. After being threatened, eventually he left for English North America (1630-1631) and served as a minister in Massachusetts. However, his ideas regarding the separation of church and state appeared baneful to John Colton, a leading minister, and he caused Williams to flee the colony (1638). He moved toward becoming a Baptist, sought after the friendship of the Indians by defending their languages and rights, and bought land from them. He founded Providence, the future capital of Rhode Island (1638) and made it into a city of refuge for those persecuted for religious reasons. The charter he wrote states that every member of the new colony promises to submit “in active and passive obedience to all such orders or agreements as shall be made for the public good of the body in orderly way by the major consent of the present inhabitants . . . and others whom they shall admit into them only in civil things.” We publish here extracts from the preface, slightly modified, by Jean Bauberot, of the book by Marc Boss, *Genèse religieuse de l’État laïque. Textes choisis de Roger Williams, Labor et Fides*, 2014, avec l’aimable autorisation de cette maison d’édition].

Roger Williams is one of the leading inventors of *laicity*. In his way of acting and in his language he has set forth the founding principles of lay finality and goals (that is religious liberty, non-discrimination in regards to religion) as well as the means to be used (separation of political power and religious authority, government neutrality in regards to the various religious convictions). Furthermore, he applied those principles when he exercised civil responsibilities. This contribution by Roger Williams to human history is still undervalued. Williams remains unrecognized by cultivated society and even by individuals considered, rightly or wrongly, as specialists regarding *laicity* and *secularism*. Thus, the well-known formula regarding

¹ Translated from French by Dr Bert B Beach.

² Prof Jean Baubérot is an historian and French specialist in sociology of the religions and founder of the sociology of secularity. He was the founder and director of the Group of Sociology of the Religions and Secularity (CNRS-EPHE (1995-2001)). He is the honorary president at Paris École pratique des hautes études. He is also a member of the Société internationale de sociologie de la religion (SISR) and chaired the Ernest Renan society in 1995 and 1996. Baubérot was awarded the prestigious French Chevalier of the Légion d’honneur.



the “wall of separation” necessary between the state and the church is attributed to Thomas Jefferson, when actually the American statesman borrowed the term from the Rhode Island pastor!³

Thus, the life and work of Williams, his “separatist puritanism,” should attract the attention not only of Protestant readers or those interested in the history of Protestantism and its theologies, but also call for increased interest by all those people who wish to give thought to the relationships between religion and society, to the politico-theological genesis of the modern state, and to how political and cultural modernity has been built and considered the sub-foundation of democracy and *laicity*.

I hope that I will be permitted to present a personal experience. While trying to present in a synthetic way the history of *laicity*, I tried to present in at least a succinct way the contribution of Roger Williams.⁴ I ran into, at best, a polite indifference, and often into suspicion. Despite supporting my presentation with indications given by Max Weber⁵ more than a century ago, as well as calling upon recent research,⁶ I noticed a certain refusal to take into consideration the studies that I was summarizing. I asked myself, “Why?” In listening to my interrogators, it seemed to me that my suggestions were seen *a priori* as unlikely. Roger Williams was not seen as dwelling in the right pigeon hole!

Let us pass over those who think that outside of France there is no *laicity*, in the same way others are of the opinion that outside the Church there is no salvation. The objection is quite crude. Nevertheless, implicitly or explicitly, this objection is at work in many minds. There is a persistent idea that separation was achieved in the United States to benefit the churches, while in France it took place as an advantage for the State. Here we find two serious errors in one. When the American constitution was adopted, the established churches saw disestablishment as “dispossession,” and the 1905 French law dealing with separation broke the age old Gallican control the French state had exercised over religion.

A more subtle approach, for those whose thought is not limited by intellectual narrowness, indicates that Roger Williams possessed two “vices.” First of all, he was a theologian and not a philosopher. To recognize him, may seem to give him a recovering or recuperating “apologetic” role, as if *laicity* needed necessarily a Christian origin in order to be legitimate. At this point a good number of those who accept non-French contributions to the principles of *laicity* (e.g. Spinoza, Locke) leave the

³ Cf., notamment, J Witt, “Facts and Fiction about the History of Separation of Church and State,” *Journal of Church and State*, Vol 48, 2006, 22.

⁴ *Les laïcités dans le monde*, Paris, PUF (1^{ère} édit. 2007, 18, 3^{ème} édit, 2010, 15s.) et surtout (avec M Milot), *Laïcités sans frontières*, Paris, Le Seuil, 34-36.

⁵ M Weber, *L'éthique protestante et l'esprit du capitalisme suivis d'autres essais* [1904-1905], présentation et traduction de J-P Grossein, Paris, Gallimard, 2003, 156.

⁶ E S Gaustad, *Liberty of Conscience. Roger Williams in America*, Valley Forge, Judson Press, 1999 (1^{ère} édit. 1991); Timothy L Hall, *Separating Church and State. Roger Williams and Religious Liberty*, Urbana-Chicago, University of Illinois Press, 1998.



ship: outside of philosophy there is no intellectual salvation! However, if one should not “recuperate” when this should not be the case, one should not forget that secularism and *laicity* also have religious origins.

Nevertheless, even for those who accept these religious origins, Williams appears quite disconcerting. The founder of Rhode Island is in no way a secularizing theologian. In no way is he a modernist, pre-liberal announcer of the philosophies of the Enlightenment and an “enlightened Christianity.” He was an extremist theologian. Today, he would be called “fundamentalist;” some would use the frequent term “integrist.” How could such a man be placed rightfully in the Pantheon of the initiators of secularism or of *laicity*?

Thus fixed ideas and social stereotypes are challenged. A whole mental universe is upset. Roger Williams always appears as scandalous, a splinter in the flesh of the followers of “conformed” thinking! Exit Roger Williams. The simplest course to take is to ignore all studies about him! One could think that we are dealing with nonsense or idle story! We could cast out Williams from our world vision, as did the pastors and magistrates of Massachusetts in the 17th century, by banishing him from the territory of their colony, accusing him of having “conceived and divulged” opinions, so dangerous that he could no longer continue to exercise his ministry in this colony.

However, facts are stubborn! Already in 1940 Samuel Brockunier indicated what seems to us a paradox, the “sectarian principle” defended by Williams (his wish to have a “regenerated” church), as well as fight for a State separated from religion, that is two concepts structurally and logically tied to his ecclesiology and theology.⁷ Timothy Hall insists: “If by tolerance one means ecumenism, Williams was incorrigibly intolerant” and was not “willing to give way in the area of spiritual truth.” This legal scholar then differentiates between a “separatist tolerance and a “ecumenical tolerance” and states that the “religious dogmatism” of Williams, far from being in contradiction to his wish for absolute respect for liberty of conscience, rather represents “the principle source.”⁸

Williams was as his adversary Cotton, “an orthodox Calvinist” in regards to the doctrines of original sin and divine election. It is thus inside Calvinist Puritanism that the rupture takes place. Here are a few quotations from Williams: For him, a national church which imposes by the civil power “a forced uniformity” is engaged in “a rape of conscience.” Such a church transforms her adepts into “weathercocks” who turn in all directions “at the mercy of the powerful winds of a sword or dominant authority.” There is no point to break with “Papism,” to have translated the Bible into the vernacular, to have permitted the simplest men and women to study the Scriptures,” if then you force them “to believe according to what the church believes.”

It is thus in the name of Protestant principles (*sola scriptura*, universal priest-

⁷ S H Brockunier, *The Irrepressible Democrat: Roger Williams*, New-York, Ronald Press, 1940, 43.

⁸ Timothy L Hall, *op cit*, 27,160, 42.



hood) that Williams considers both Papists and Protestants guilty “when they exercise even the least coercion on “diverse and opposing consciences.” For him, there is nothing “as blasphemous” as to punish and “forbid heretics and blasphemers, etc,” doing this “under the mask or cover of the name of Christ.” To God alone belongs constraint, and the human being does not have the right “to force or to be forced.” It is necessary to respect “liberty of conscience absolutely for all: that of the most heterodox Christians (Papists, Prelates, Presbyterians, independents, Socinians, Anti-nomistes, etc.”), as well as that of the “worst pagans, Jews, Turks (Muslims), or anti-Christians.” Converting all these diverse consciences through the power of civil violence, “is, in fact, wanting to usurp God’s power, substituting oneself for the dialog between God and the human being, to deprive the God of Heaven of His rights and the consciences of His subjects of their rights and their heavenly liberties.”

The “liberty of worship,” in its various components, “the free choice of worship, pastor, and the pastor’s salary,” appear in Williams as inseparable aspects of freedom of conscience. The political, judicial, administrative powers, in view of Williams, are civil in essence “and their representatives are neither judges, nor governors or protectors of the condition of spiritual or Christian worship.” They must guarantee “the impartiality and equal liberty, peace, and security for the various meetings “to which people can go truly, everyone according to his or her conscience,” be it Christian or not. Only the respect of “civility” is required. Liberty, “doing away with barriers, obstacles, or civil impediments” is equal for all convictions and doesn’t depend on social status. This must be the same “whether we be of higher or lower rank.” Released from spiritual surveillance, “the civil government” will better accomplish the tasks that are its responsibility.” “Thy acting in a civil capacity . . . its duty is to give the nation a civil organization and nominate civil officers everywhere in the land, to register the birth of children and record as an authority the burial of all in an impartial way.”

Today we have difficulty to grasp the full significance of this stated position. In regards to these stated principles, they have for us become quite familiar. It is a big temptation to view Williams as close to us, and transform him into a positive and “modern” hero in contrast to the negative and “archaic” figure of his adversary John Cotton. Actually, such a nice view would be fallacious for several reasons! First of all, this idea would overlook considerably the shocking character of the writings of Williams. The authorities in Massachusetts had all kinds of reasons to think that the public order was put in danger. In their eyes, “the religious error” of Williams consisted in seriously compromising what we would call today community life. In propagating seditious doctrines, Williams seemed to be a contagious “leper” much needed to be neutralized, and even more, he was seen as a “spiritual criminal.”⁹ In order to create any proximity between Williams and ourselves, it would be necessary that our own affirmations be as scandalous, unbearable for the social order and nor-

⁹ Timothy L Hall, *op cit* 59.



mal contemporary thinking, and as innovating for the future as those of the founder of Rhode Island.

Just one recall: Williams didn't only sap the structures of Christian society, he called in question also the foundations of the colonial state. His view and attitude in regard to the Indians were, for that time, not the norm.

Furthermore, Williams mixed rather closely his sermons, writings, and actions! Freely preaching and writing represent already a form of action, and as a result he paid the price of banishment from Massachusetts. He became a builder, endeavoring to apply the principles he expressed. His many activities, such as the founding of the Plantation of Providence, his negotiations with the Indians, his vocation of creating a place of refuge for Christians or non-Christians who were persecuted for reasons of conscience, the government he exercised, and his travel back and forth between New England and England in order to obtain the legitimate existence of Rhode Island, all this activity reveals a considerable internal coherence and the undeniable qualities of political strategist and statesman.

The 1638 charter indicated that obedience to civil authority was due "only for civil matters." However, the concrete exercise of religious liberty required admitting that religious liberty could not be unlimited, to the extent that it could interfere with civil laws. The most obvious example given is the matter of human sacrifices for religious reasons. Thus we note that the "lay state" was not set forth by Williams only in theory, it was also experienced in practice.¹⁰ Williams and his companions moved ahead into the unknown, while our path is already in part sign posted.

Finally, the last reason: I have purposely given privileged emphasis in choosing my quotations from the writings of Williams that built lay thinking. However, as already indicated, this pastor's thought is fundamentally theological, and presents a theology which in no way yields to secularized ideas. Williams was able to welcome to Rhode Island pursued Quakers, but this did not keep him from engaging in doctrinal polemics with them. The refusal to use the "civil sword" did not, as far as he was concerned, mean the absence of spiritual warfare with use of "spiritual weapons." "His admiration for manifestations of sincere consciences did not keep him from believing that all consciences are ultimately subject to the requirements of truth and stand or fall to the extent that they recognize (or not) this truth."¹¹ The dialectic legacy of Williams can be summed up in the search of truth in liberty. His love for liberty called in question the 17th century, while his love for truth questions our today.

¹⁰ Sur cette question, *ibidem*, 99-115.

¹¹ Ibid 42.



TERROR IN THE NAME OF GOD: AN EXISTENTIAL CHALLENGE TO RELIGIOUS BELIEVERS

LARRY MILLER¹

Over the past 30 years we have experienced an upsurge of terrorism as well as a change in its nature and scope. From being primarily local and focused in its execution, terrorism has moved front and centre on the global stage and often seems quite indiscriminate in its choice of individual victims. For many, terrorism is one of the gravest of all threats to world peace and human security.

More to the point and as the title implies, contemporary terrorism often claims a religious identity and uses religious language to describe its violent strikes against the enemy. Following the destruction of the Twin Towers, Osama bin Laden said: “Here is America, struck by God in one of its vital organs” But the religious character of much of today’s terrorism is matched only by the religious character of the dominant responses to it. Several years after bin Laden’s commentary, George W Bush told a Christian audience in the United States: “God told me to strike al-Qaeda and I struck them, and then he instructed me to strike at Saddam, which I did.”

So much violence today is inflicted in the name of God, both by those popularly known as terrorists and by those who fight them, that it has revived in a dramatic way the centuries’ old debate about the connection between religion and violence. For many of our neighbours, it undermines belief in the basic goodness of religion—in particular of the goodness of the three monotheistic faiths. “When asked what he thought constituted the real ‘axis of evil,’ British journalist Christopher Hitchens replied: ‘Christianity, Judaism, and Islam.’”²

These developments constitute a fundamental existential challenge to the faith of religious believers, especially peaceable religious believers. The challenge may be greatest for believers who claim that the sacred texts recounting the foundational events of the faith to which they ascribe reject the use of lethal violence as a means to overcome evil—as I understand the narratives of the life, death, and resurrection of Jesus of Nazareth to do. Far from showing that God is on “my side” and providing justification for violent advancement of “my cause,” these narratives reveal God on the side of one who resisted evil non-violently, choosing to die instead of to kill,

¹ Rev Dr Larry Miller is Secretary of the Global Christian Forum. Previously, he served as General Secretary of the Mennonite World Conference for nearly 22 years.

² Cited by Christopher D Marshall, *For God’s Sake! Religious Violence, Terrorism, and the Peace of Christ*, online: http://www.micahnetwork.org/sites/default/files/doc/library/religion_and_conflict_0.pdf, 6. Accessed 23 September 2013.



choosing to give his life rather than to take the lives of others.

RESPONDING TO TERROR PERPETRATED IN THE NAME OF GOD: FOUR TASKS FOR BELIEVERS

How can we respond to the challenge posed to believers by violence carried out in the name of God? Among the many possible and useful responses, I would like to suggest for your consideration four actions, four inter-related tasks for religious believers facing this challenge: 1) conduct a “terror-audit” of one’s own religious tradition; 2) refuse participation in “holy war” against terrorism; 3) engage in “just peacemaking” both locally and globally; and 4) displace belief systems that sanctify killing in God’s name.³

1. Conduct a Terror-Audit of One’s Own Religious Tradition

The first task for every religious community may be to enter into a process of critical self-examination, in part by undertaking what has been called a “terror-audit.”⁴ This audit is an honest and careful assessment of one’s own historical, moral, and theological complicity in violence. This assessment can and should lead to confession, seeking forgiveness, healing of memories, and a restoration of relations between communities in conflict.

A terror-audit is not something one religious community can do for another. Each community must undertake the assessment for itself. And in today’s world where there is so much attention on Islamic terrorism, especially in Christian-related communities, it is imperative that Christians take the initiative to conduct a Christian terror-audit.

Many of us who are Christian forget the shameful history of terror done in the name of Christianity throughout the centuries. There is the violence of the Christian crusades of the 11th to 13th centuries, the prosecutions of the Catholic Inquisition in the Middle Ages, the mutual anathemas and capital punishments by Christians of religious opponents during the period of the Protestant Reformation in 16th century Europe, the bloody wars of religion that followed the Reformation, and the brutal forced conversions and enslavement during the European conquest of the Americas in the 17th and 18th centuries.

But this Christian terror-audit will deal also with recent history. After all, “it was not ‘Muslim terrorists’ who brought horror to Rwanda; it was Christians killing other Christians. It was not some ‘demonic’ cult groups that planted bombs in Northern Ireland; it was Christians trading brutality with other Christians. It was not ‘atheistic communists’ who instituted a reign of terror in South Africa; it was Christians kidnapping and torturing and murdering other Christians.... Even in the

³ These ideas, as well as most others in this presentation, come from Christopher D Marshall, Head of the School of Art History, Classics and Religious Studies, Victoria University of Wellington, New Zealand. Marshall’s specialities include the study of ethics, peace theology and practice, and restorative justice — both theory and practice.

⁴ C Marshall, *For God’s Sake!*, 16.



Balkans, violence between Serb Orthodox Christians and Croat Catholic Christians has been as vicious as between Christians and Muslims.”⁵

Pope John Paul II's initiative to critically review Catholic history and confess its failings is an example of something like a terror-audit, though it did not carry that name and was not focused narrowly on violence. In a 1994 memorandum to all Cardinals, the Holy Father announced that confession of institutional sin would be a prominent part of the Year of Jubilee celebrations in the year 2000 in Rome. “How can we be silent about so many kinds of violence perpetrated in the name of the faith?” he asked, specially mentioning “religious wars, courts of the Inquisitions, and other violations of the human person.” He went so far as to compare them to “the crimes of Hitler’s Nazism and Marxist Stalinism.” The church, he said, “must on its own initiative examine the dark places of history and judge it in the light of Gospel principles.... The church needs a *metanoia*, a discernment of the historical faults and failures of her members in responding to the demands of the Gospel.”⁶

This discernment led the Pope, in his homily on the Day of Pardon (Sunday, 12 March 2000), to confess and seek forgiveness for “*the infidelities to the Gospel committed by some of our brethren*, especially during the second millennium. Let us ask pardon for the divisions which occurred among Christians, for the violence some have used in the service of the truth and for the distrustful and hostile attitudes sometimes taken towards the followers of other religions.”⁷ Some of these “infidelities” were identified more specifically in the universal prayer of confession and request for forgiveness during the Day of Pardon and still more specifically in ensuing bilateral exchanges with individual groups.

2. Refuse to Participate in and to Sanction “Holy War” Against Terrorism

For the past decade, the international response to international terrorism has focused primarily on “containment” of the terror, with massive fire power as the primary instrument. Billions of dollars have been spent and thousands of lives have been sacrificed in the so-called “war on global terror.” Though combat fatigue may be gaining ground in some countries, this war has received broad popular support, including from Christians who view it as a sort of “holy war.” In fact, “holy war” is a mirror image of “holy terror.” Both see their action as sacred duty. Both demonize the opponent. Both refuse compromise or negotiation with the enemy, whose destruction is seen as the only way to lasting peace. Both are suspicious of those who call for moderation. Both seek pre-emption rather than prevention. Both perceive the problem as a battle to be won rather than as an injustice to be resolved. To fight “holy terror” with “holy war” is to legitimate the method and strengthen the resolve of those wielding terror in the name of religion. If terror is to be reduced, the re-

⁵ Lee Griffith, *The War on Terrorism and the Terror of God* (Grand Rapids, MI: Wm B Eerdmans, 2002), 6.

⁶ Cited in Ivan J Kauffman, “Facing the Inquisition: A Pope Seeks Pardon,” *America* (December 10, 2007), 25-26.

⁷ Online: http://www.vatican.va/holy_father/john_paul_ii/homilies/documents/hf_jp-ii_hom_20000312_pardon_en.html. Accessed 23 September 2013.



sponse to it should be reconceptualized in terms other than those of “war” or, where believers are concerned, “holy war.”⁸

Instead of thinking in terms of fighting a war—whether a “holy war” or even what in Christian tradition has been called a “just war”—it may be more helpful to think in terms of a criminal justice framework and “just policing.” This is not playing with words. Good and just “police action differs from military action in terms of its normative character. Police work is subject to judicial restraint; it is guided by the requirements of procedural fairness: it has strictly limited aims (to control wrong-doing, not to kill all wrongdoers); it does not exercise judgment or administer punishment; its coercive power is applied to the offending party alone; and it is expected to apply minimal force in performing its duties.”⁹ Development of an effective international justice framework and, within that framework, international “just policing” merits the support of religious believers. Participation in and moral sanctioning of “holy war” do not.

3. Engage in “Just Peacemaking”

Religious terrorism appears to grow most easily “in deprived, oppressed, and traumatized communities where traditional forms of religious adherence are high.”¹⁰ If this is the case, the prevention and therapeutic treatment of religious terror requires response to the basic “factors that predispose communities to violence, such as poverty, joblessness, human rights abuses, indebtedness, ready access to weapons, state failure, political or military repression, and other perceived injustices and humiliations ...,”¹¹ including those against the dignity of peaceful religious expression. In other words, response to terrorism requires sustained initiatives in what has recently been called “just peacemaking.”

Nonviolent resistance is central to the way of “Just Peace.” But Just Peace is more than resistance to oppression and rejection of violence. It is rooted in respect for the dignity of every woman and man. Just peacemaking embraces social justice, the just rule of law, and shared human security. It develops the institutions of civil society and the practice of religious liberty. It identifies common security interests of adversaries while promoting cooperative methods of conflict resolution and restorative justice. In short, Just Peace is a “process of freeing beings from fear and want, of overcoming enmity, discrimination and oppression, and of establishing conditions for just relationships that privilege the experience of the most vulnerable”¹²

Religious believers who confess that God is a God of peace need to be on the

⁸ Cf. C Marshall, 11.

⁹ Christopher D Marshall, “Religious Violence, Terrorism and Restorative Justice,” in Daniel van Ness and Gerry Johnston (eds.), *Handbook on Restorative Justice* (Uffculme Cullompton, Devon: Willan Publishers, 2007), 381.

¹⁰ C Marshall, *For God’s Sake!*, 12.

¹¹ Ibid.

¹² World Council of Churches, “An Ecumenical Call to Just Peace: ‘Guide our feet into the way of peace (Luke 1:79)’” (Geneva: World Council of Churches, 2011), online: http://www.overcomingviolence.org/fileadmin/dov/files/iepc/resources/ECJustPeace_English.pdf, p 5. Accessed 23 September 2013.



local and global forefronts of the struggle to make peace justly.

4. Displace Belief Systems That Sanctify Killing in God's Name

Terrorism in the name of God is not only a response to poverty, oppression, or humiliation. Just like “holy war,” it is also the expression of a “theological world view, which rests upon a selective appropriation of key texts and themes from sacred tradition, and is energised by a determination to defend true religion against forces of apostasy and dilution.”¹³ Therefore, in responding to the challenge of religious violence, the most particular task for believers may be to displace these belief systems within our own religious communities by articulating and advocating theologies and practices that promote Just Peace, nonviolent protest, transformation of conflict, reconciliation of adversaries, and healing of memories. While this is a task for all believers in these communities, it is one especially for leaders of religious communities.

How can we carry out this task? In addition to the self-critical assessment of a “terror-audit,” at least five inter-related kinds of responses are necessary.

- We must challenge every theological or religious justification of the use of lethal violence of any kind, not only the violence of terrorism but also the violence of the wars used to combat it.
- We must affirm the complete legitimacy of believers engaging in active non-violent resistance to all forms of injustice and oppression. The concerns of those using violence in the name of God can sometimes be affirmed even if their methods and ideological or theological convictions cannot.
- We must engage in building humane and trusting relationships across confessional and religious walls. This is not a matter for academics and theologians only, or only at the international level. Urgent and basic is the “need to bring *local faith* communities into face-to-face contact, both to express their acceptance of one another as equally valued human beings and to explore how each other’s religious insights can help promote”¹⁴ human dignity and Just Peace for all.
- We must invest heavily in equipping (educating) members of our religious communities for “hospitable encounters with other traditions, and to challenge extremist voices within (our) own tradition A committed and theologically informed laity is an important resource for resisting violent voices. Knowledgeable believers can challenge the militants from within their shared theological tradition, as well as encouraging others to reject the call to arms.”¹⁵
- We must fully support the development and use of faith-connected mechanisms of conflict transformation and reconciliation at all levels. In this respect, one important role for leaders of religious communities is “to identify and articulate those parts of the sacred tradition that summon peacemaking and

¹³ C Marshall, *For God's Sake!*, 13.

¹⁴ Ibid.

¹⁵ Ibid.



forgiveness ahead of self-interest, those parts that affirm the sanctity of life above all else”¹⁶

If we are able not only to undertake but also to endure in the accomplishment of these tasks, we may over time respond with some effectiveness to the existential challenge posed to believers today by the blasphemy of violence perpetrated in the name of the God of Peace and All Good.

¹⁶ Ibid.



MUSLIM VOICES IN THE HUMAN RIGHTS DEBATE¹

HEINER BIELEFELDT²

I. INTRODUCTION

The main purpose of this article is to display a plurality of Muslim positions in the area of human rights. Like other religions or cultures, Islam is a complex reality harboring various, and frequently conflicting, interpretations about its inherent normative demands. Such diverse interpretations also emerge in the field of human rights. As the title of this article suggests, there is not *one* binding Islamic position but rather *a great variety* of “Muslim voices” offering different views about whether and how the idea of human rights and Islamic normative requirements fit together.³

This article can, at the same time, be read as an exploration of the relationship between the universal claims of human rights on the one hand and the traditional values rooted in a particular culture on the other. It seems beyond question that many tensions between traditional Islamic norms and international human rights standards exist. No one can predict whether and how they will be settled in the future. However, because all cultures and religions are open to various interpretations and evolutions, the frequently perceived antagonism between universal human rights and cultural identity appears at least questionable.

In order to overcome this perceived antagonism, one must clarify the concept of human rights. Therefore, I begin my analysis by suggesting an understanding of human rights that refers primarily to the Universal Declaration of Human Rights and, at the same time, is potentially open to a variety of different cultural interpretations.

¹ This article was written in the Law Faculty of the University of Toronto. I want to thank the Dean and the members of the Law Faculty for their generous support. I owe many insights to the students who attended my course on “Dialogue about Rights and Cultural Imperialism,” in the spring term of 1994. I am also indebted to Cheryl Cline, David Dyzenhaus and Craig Scott who gave me helpful criticism of this paper. Finally, I would like to express my thanks to the Alexander von Humboldt Foundation for facilitating both my stay and my research in Toronto.

² Heiner Bielefeldt was born in 1958. He studied philosophy, theology, and history at the Universities of Bonn and Tübingen (Germany) where he received a Ph.D. He worked from 1983 to 1990 on the “Research Project on Human Rights” in Tübingen. He is currently employed at the Faculty of Law at the University of Heidelberg. Among his publications are several books on subjects of political philosophy and human rights. Dr Bielefeldt is also United Nations Special Rapporteur on Freedom of Religion or Belief.

³ In order to avoid misunderstandings, I should make it clear that I am not a Muslim and thus not part of the internal Islamic discourse on human rights. Furthermore, I am lacking the language skills needed to explore the sources written in Arabic, Persian, Turkish or Urdu. Consequently, I will only make reference to articles or books which are available in English, French or German. I have tried to remedy this problem by talking, over some years, with many scholars of Islamic studies and, in particular, with Muslims of different backgrounds and various political convictions.



I then move on to an identification of the main areas of conflict between the Islamic normative tradition and human rights. The third section focuses on the different positions Muslims take today to deal with these conflicts. I conclude with a short retrospective on my main arguments followed by some remarks about the complexity of the human rights debate.

II. WHAT ARE HUMAN RIGHTS?

A. Basic Elements of Human Rights

Human rights constitute political and legal standards. That is, they require political and legal implementation through national, regional, and international institutions including, if possible, effective monitoring mechanisms. I would like to emphasize this political and legal aspect of human rights, in order to make sure that their scope is *limited*. Unlike Islam and other religions, which claim to shape the whole lives of their adherents, human rights do not represent an all-encompassing “weltanschauung” or way of life, nor do they provide a yardstick by which to evaluate cultures and religions in general. Human rights are not necessarily the highest manifestation of ethical spirit in human history either, because they are not intended to replace, for instance, Christian demands of love, Islamic solidarity, or the Buddhist ethic of compassion. Rather, they concentrate on political justice by setting up some basic normative standards.⁴

However, in spite of their limited scope, human rights might have a significant influence on the self-perception of societies and cultural or religious communities in a way that extends beyond law and politics. This is because they rely on a commitment to the mutual recognition of human beings in their inalienable dignity. This idea of human dignity has roots in various cultures and religions. It includes the claim that all human beings should be entitled to *equal* respect, a claim which, in the modern era, has become politically binding in terms of equal rights of freedom. Freedom and equality thus constitute the emancipatory content of human rights. This emancipatory demand finds expression in the 1948 Universal Declaration of Human Rights which states in Article 1: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁵

Article 1 suggests another aspect of human rights—their claim to universality. They are cosmopolitan rights, as it were. In its preamble, the Universal Declaration emphasizes the global importance of human rights as “a common standard of achievement for all peoples and all nations” and as “the foundation of freedom, justice and peace in the world.”⁶ Recently the World Conference on Human

⁴ *Universal Declaration of Human Rights*, adopted 10 Dec. 1948, G.A. Res. 217A (III), 3 U.N. GAOR (Resolutions, part 1) at 71, U.N.Doc. A/810 (1948) [hereinafter *Universal Declaration*].

⁵ *Id.* at preamble.

⁶ *Vienna Declaration and Programme of Action* of 25 June 1993, reprinted in 14 HUM. RTS. L.J. 353 (1993).



Rights confirmed that “the universal nature of these rights and freedoms is beyond question.”⁷

Combining the three elements just mentioned, I would like to propose the following short definition: Human rights are (1) political and legal claims; (2) to equal freedom; (3) in a universal perspective. Admittedly, this definition is quite abstract and does not contain anything novel. Its abstractness, however, can be seen arguably as a virtue, signaling an openness for further historic development in the human rights discourse in light of future experiences and new demands.

B. Understanding Human Rights

1. A Modern Concept

The concept of human rights emerged only in the modern era. To be sure, the various elements that comprise this concept can be found in premodern times as well. The idea of human dignity has prominent roots in the Biblical book of Genesis; cosmopolitan ideals can be found as early as the third century before the Common Era in Stoic philosophy; and the principle of the “rule of law” became binding in various medieval documents, such as the Magna Carta Libertatum of 1215. Comparable ideas have occurred in non-Western cultures as well. A book edited by UNESCO has traced many of the roots of human rights in a variety of cultures across all continents.⁸ Yet, the connection between these elements—the combination of the political principle of the rule of law with a universal commitment to equal dignity and freedom—came about only two or three centuries ago. A historic breakthrough was achieved in the late eighteenth century in the “Virginia Declaration of Rights” of 1776 and the “déclaration des droits de l’homme et du citoyen” of 1789.⁹ The adoption of human rights in international law gelled even later, after the Second World War. Hence, it is fair to say that human rights are a genuinely modern phenomenon.

Acknowledging the modernity of human rights often has led to their being perceived as proof of “historical progress.” Certainly, they are a political achievement that deserves defense and further development. However, instead of integrating them into an ideology of general progress—which implies the assumption that they are generally superior to traditional normative institutions—it seems more appropriate to view human rights as operating in response to concrete experiences of injustice in the modern world, such as political oppression by an absolutistic state, exploitation of workers in the market economy, colonialism, and imperialism. As Jack Donnelly has pointed out, the possible abuses of power in modern capitalist market economies

⁷ Unesco, *Le Droit D’être Un Homme. Recueil De Textes Préparé Sous La Direction De Jeanne Hersch* (1968).

⁸ See Louis Henkin, *The Rights of Man Today* 5-9 (1978).

⁹ See Jack Donnelly, *Universal Human Rights in Theory & Practice* 64 (1989). See also Reza Afshari, “An Essay on Islamic Cultural Relativism in the Discourse on Human Rights,” 16 *Human Rights Quarterly* 248 (1994) (“The UDHR and the other human rights covenants define what is needed to protect a life of dignity and equality in a modern state.”).



and modern nation states require genuinely *modern* safeguards to facilitate human life with dignity. To provide such safeguards is the purpose of human rights.¹⁰

Furthermore, recall that the twentieth century is not only the century in which international organizations and universal standards of human rights were brought about, it is also a century marked by global wars and experiences of injustice that immediately affected all of humankind. It is no coincidence that the preamble of the Universal Declaration of Human Rights refers to “barbarous acts which have outraged the conscience of mankind.”¹¹ As this line suggests, it was not utopian expectations of future progress, but rather the experience of atrocities, especially those committed by Nazi Germany, that sharpened the awareness that international human rights standards had become an urgent need.¹² Such experiences of injustice lie at the heart of the human rights movement from its very beginning in early modernity. In any case, recollection of these injustices should prevent superficial pretensions that the societies of the modern era are morally superior to premodern societies.

2. The Emancipatory Challenge

Human rights are a political means of recognizing human dignity in a legally binding way. This legal codification involves the endowment of all people with equal rights of freedom. The individual person, thus, can gain a higher degree of freedom than is normally granted on the basis of traditional normative concepts. According to Immanuel Kant, freedom is the only “birthright” of all human beings. It is the underlying principle of all human rights in general: “There is only one innate right. Freedom ..., insofar as it can coexist with the freedom of each other in accordance with a general law, is the only original right belonging to every man by virtue of his humanity.”¹³

However, although human rights clearly enlarge the scope of individual freedom, they are by no means merely individualistic. They are not meant to lead to an “atomistic society” devoid of communitarian solidarity. Against the widespread confusion of human rights and Western individualism, human rights always imply a social dimension, because human freedom can unfold only in relation to fellow persons. A purely individualistic concept of religious liberty, for instance, would almost amount to a contradiction in terms, because religious life is hardly conceivable outside of religious communities. Accordingly, religious liberty entails not only the right of individuals to hold and express their personal creeds, but also includes the rights to

¹⁰ Universal Declaration, *supra* note 4, at preamble.

¹¹ See Virginia A. Leary, “The Effect of Western Perspectives on International Human Rights,” in *Human Rights in Africa: Cross-Cultural Perspectives* 15 (Abdullahi Ahmed An-Na'im & Francis M. Deng eds., 1990).

¹² Immanuel Kant, *The Metaphysics of Morals* 63 (Mary Gregor trans., 1991) (parenthetical omitted). The German term *allgemeines Gesetz* has been translated by Gregor as “universal law.” In my opinion, however, it refers to empirical legal norms which are to be brought about by the “general will” of the people. That is why I prefer the translation as “general law.” See Heiner Bielefeldt, *Neuzeitliches Freiheitsrecht Und Politische Gerechtigkeit. Perspektiven Der Gesellschaftsvertragstheorien* 93-100 (1990).

¹³ See Immanuel Kant, “An Answer to the Question: What is Enlightenment?” in *Kant's Political Writings* 54-60 (Hans Reiss ed., 2nd ed. 1991).



worship together and to organize religious communities independent of government interference. To give another example, freedom of expression does not focus only on the private individual but also facilitates the development of public discourse in a civil society. As Kant has emphasized, it is the duty of all citizens to make “public use of reason” to accomplish a just society.¹⁴ “Freedom of the pen,” he says, “is the only safeguard of the rights of the people,” that is, the basic “republican” right, the significance of which cannot be fully appreciated unless one is committed to the ideal of a republican union of citizens. Finally, the most basic social community, the family, has received explicit recognition in the Universal Declaration of Human Rights. In what is clearly “communitarian” language, Article 16 states: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹⁵

These examples are intended to demonstrate that the emancipatory claim to equal freedom that underlies human rights does not entail the dissolution of communitarian bonds. However, it does challenge authoritarian traditions within communities. Undoubtedly, human rights are incompatible with some traditional practices such as child marriage, the persecution of religious dissenters, and the social ostracism of political dissidents. To put it in a different way, human rights can, and ought to, reshape communities and societies critically, in accordance with the equal respect owed to every person.

It remains an open question, though, how exactly this is to happen and how conflicting interests between individuals and communities can be settled justly. No encompassing solution can be offered in an academic analysis like this. Facing the frequently overwhelming power of communities over the individual, the individual certainly needs special protection in order to preserve some independence. Communities, in turn, might benefit from critical contributions made by their emancipated members and also comments made by outspoken dissidents. In any case, critical independence and solidarity do not form an insurmountable contradiction, but rather, belong together in shaping human life freely and responsibly. Hence, one should be suspicious of the purportedly general antagonism between individualism and communitarianism sometimes invoked by both “liberals” and “communitarians.”¹⁶ What is at stake in human rights is not an abstract individualism but rather the principle of equal freedom which, as a critical demand, always affects individuals and communities simultaneously.

3. Towards an “Overlapping Consensus” on Human Rights

As emphasized above, human rights entail a universalistic claim in that they refer to all human beings. This cosmopolitan claim, though, has triggered the charge that

¹⁴ Id. at 85.

¹⁵ *Universal Declaration*, supra note 4, at art. 16.

¹⁶ This antagonism also occurs frequently in the Islamic debate on human rights. See, e.g., Bassam Tibi, “Islamic Law/Shari’a, Human Rights, Universal Morality and International Relations,” 16 *Human Rights Quarterly* 289 (1994).



such universalism only conceals the global dominance of a particular culture—the cultural imperialism of Western states. Are human rights, as some critics have alleged, only “a Western construct with limited applicability?”¹⁷

Admittedly, one can hardly deny that the concept of human rights is of Western origin, insofar as it first emerged in Europe and North America. However, from this historical fact it does not follow that the very idea of human rights is essentially and exclusively connected with Western culture and philosophy and hence only applicable to Western societies.

First, recall that the concept of human rights gelled politically under circumstances of revolutions and often faced a great deal of resistance from the representatives of the established cultural and religious traditions in the West. The Catholic Church, for instance, endorsed religious liberty as late as 1965 in the Second Vatican Council.¹⁸ This might give evidence that the idea of human rights does not simply derive from the entirety of the Occidental culture.

Further, human rights do not stem from, and are not dependent on, a particular Western philosophy or ideology. A French “homme des lettres” in the declining ancien regime and a Protestant preacher in the puritan colonies of New England would perhaps disagree about all questions of religion, philosophy, and life style; and yet, it is at least conceivable that they could cooperate politically in demanding human rights. Thus, pluralism has always been acknowledged in the human rights movement.

Moreover, the experience of radical pluralism has played a significant role in the formulation of the very concept of human rights. In order to overcome the religious and civil wars following the Protestant reformation, one had to learn how to coexist peacefully with people of different beliefs.

The only way to establish a new social contract was by understanding difference as an expression of human freedom that, for the sake of human dignity, deserves political recognition and legal protection.¹⁹ A person holding a different creed ought not be treated any longer as “a lost brother” or “a lost sister” but as a responsible agent entitled to equal respect. Thus emerged the concept of human rights as a way to promote mutual respect between people of different convictions and to render this respect politically effective.

Even though human rights are a concept of Western origin, they are historically connected with the experience of radical pluralism that today has become an unescapable reality in many societies all over the world. Pluralism and multiculturalism, both within and between the states, cannot be abolished unless one wants to risk political disasters including civil wars, “ethnic cleansing,” and the breakdown of international communication and cooperation. In the face of such political dangers,

¹⁷ See generally Adamantia Pollis & Peter Schwab, “Human Rights: A Western Construct with Limited Applicability,” in *Human Rights: Cultural and Ideological Perspectives* 1-18 (Adamantia Pollis & Peter Schwab eds., 1979).

¹⁸ For a detailed analysis see Kinrad Hilpert, *Die Menschenrechte: Geschichte, Theologie, Aktualität* 137-73 (1994).

¹⁹ See Bielefeldt, *supra* note 12, at 108.



the idea of human rights seems to offer an opportunity for accomplishing a basic normative consensus across ethnic, cultural, and religious boundaries.

On this view, the universality of human rights does not mean the global imposition of a particular set of Western values, but instead, aims at the *universal recognition of pluralism and difference*—different religions, cultures, political convictions, ways of life—insofar as such difference expresses the unfathomable potential of human existence and the dignity of the person. To be sure, pluralism and difference apply also to the concept of human rights which itself remains open—and must be open—to different and conflicting interpretations in our pluralistic and multicultural political world. Without the recognition of such difference within the human rights debate, the discourse would amount to cultural imperialism. Nevertheless, it seems clear that the very idea of human rights precludes some political practices, such as oppression of dissidents, discrimination against minorities, slavery, and apartheid.

What is at stake in the international debate on human rights is accomplishing an “overlapping consensus” across different peoples, religions, and cultures. According to John Rawls, who has suggested this notion, an “overlapping consensus” means a practical normative consensus on political and legal justice in a pluralistic democratic society.²⁰ Whereas comprehensive philosophical or religious doctrines are unlikely to get general support in pluralistic societies, the concept of political justice is defined by Rawls as entailing only *limited* normative demands: it refers to the basic societal institutions and does not cover the more encompassing normative claims made in comprehensive religious or philosophical doctrines. What Rawls describes as the feature of his concept of political justice can be applied to human rights as well: they too constitute only *limited* normative demands in that they focus on political and legal standards of international justice.²¹ At the same time, however, they can potentially be connected with more comprehensive doctrines or cultural values, insofar as they refer to the principle of human dignity which itself might facilitate a critical mediation between the normative requirements of human rights on the one hand and various religious or cultural traditions on the other. Thus an overlapping normative consensus between different religions and cultures might be achievable.

III. CONFLICTS BETWEEN SHA'RIA AND HUMAN RIGHTS

A. Areas of Conflicts

This section identifies the main areas of conflict between Islamic tradition and human rights. However, I would like to briefly emphasize first that authoritarian religious and cultural traditions certainly are not the only obstacles—not even the

²⁰ See Rawls, *Political Liberalism*, supra note 3, at 133. It should be noted that Rawls while emphasizing religious and philosophical pluralism in modern democratic societies hardly mentions the phenomenon of multiculturalism.

²¹ See John Rawls, “The Law of Peoples,” in *On Human Rights: The Oxford Amnesty Lectures* 1993, at 68–71 (Stephen Shute & Susan Hurley eds., 1993).



main obstacles—to the adoption and implementation of human rights in Islamic countries. Given a recent tendency to conjure up cultural and religious tensions as the new post-Cold War paradigm in the analysis of political conflicts,²² one should take into consideration that the causes, features, and “justifications” of human rights violations actually look strikingly similar in very different countries, across all national, cultural, and religious boundaries. If abuses such as arbitrary detentions, torture, and the oppression of political dissidents occur in Islamic countries, they do not, for the most part, have a specifically “Islamic” rationale.²³ Even if some governments try to vindicate political oppression by invoking “Islamic values” or by waging “holy wars,” one should not blame Islam as a whole for its being abused politically.

On the other hand, the emancipatory principle of human rights presents a challenge to the Islamic tradition, because the emancipatory principle has been articulated only in the modern era. By comparison, the Islamic shā'ria—the normative tradition commonly known as “Islamic law”—is much older.²⁴ The shā'ria rests partly on the Qur'an which stands out as its primary source. However, because the Qur'an primarily contains general ethical principles, rather than detailed instructions, other normative sources must be consulted as well. Next to the Qur'an, the most important source is the practice of the prophet Muhammad. Representing a binding model for Muslims, his sayings and patterns of behavior have been collected in the “Sunna,” which means tradition. In addition to the Qur'an and Sunna, supplementary normative sources include consensus among Islamic scholars, conclusions based on analogy, customary law, and the principle of common welfare.²⁵ By drawing upon these various sources, the shā'ria took shape during the first two or three centuries of Islamic history.

Due to the timing of its development, it is hardly surprising that the classical shā'ria differs from the modern idea of universal human rights. Although the shā'ria puts a great deal of emphasis on the equality of all the faithful before God, it traditionally assumes unequal rights both between men and women and between Muslims and members of other religious communities.²⁶ Hence, discrimination against women and against religious minorities continues to occur. In addition, the traditional Islamic criminal law includes some forms of corporal punishment that, according to human rights standards, are adjudged to be cruel and degrading. The following paragraphs give a brief overview of these conflicts.

B. The Legal Status of Women

Most scholars will certainly agree with the Pakistani author, Fazlur Rahman, who states: “The Qur'an immensely improved the status of the woman in several

²² See Samuel P. Huntington, “The Clash of Civilizations?” 72 *Foreign Affairs*. 22-49 (1993).

²³ See “Demokratie Und Menschenrechte” in *Nordafrika* 133 (Sigrid Faath & Hanspeter Mattes eds., 1992).

²⁴ See generally Noel James Coulson, *A History of Islamic Law* (1964).

²⁵ See generally Joseph Schacht, *An Introduction to Islamic Law* (1964).

²⁶ See Mohamed Charfi, “Islam et droits de l'homme,” 9 *Islamochristiana* 16-17 (1983).



directions but the most basic is the fact that the woman was given a fully-pledged personality.”²⁷ For example, under pre-Islamic custom, the bride was regarded as an object to be purchased. However, under the Qur’an, the bride is considered a person whose consent must be obtained to validate a marriage contract. Accordingly, the dower that previously was owed to her father now is owed to the bride. Sura 4:4. Because the woman has the right to fully dispose of her own property, the dower, in turn, provides her with some independence within the marriage and with basic social security in cases of divorce or widowhood. Thus, the dower might be thought of as a symbol of the improved social and legal status of Muslim women in general.

On the other hand, the idea of equal rights regardless of gender is unknown to the traditional shā’ria.²⁸ For instance, theoretically, the man is permitted to marry up to four women under certain circumstances. Polygamy, partly designed to provide for widows and orphans in a premodern society, certainly mirrors the inequality between the sexes. Further, to conclude a marriage contract the woman relies on a male representative who has some authority in shaping the agreement, although the bride’s wishes are to be respected; at least she has the right to veto an unwanted husband.²⁹ With regard to divorce, the husband can repudiate his wife unilaterally. However, many Muslims disapprove of this practice and legal reforms in many Islamic countries have restricted the husband’s traditional right to unilateral divorce while giving the wife more rights to demand divorce.³⁰ Nonetheless, the legal regulations in matters of divorce still reflect the unequal status of the genders, discriminating against women. Finally, the laws of inheritance entitle male heirs to twice the share to which female heirs are entitled.³¹

Because the focus of the shā’ria has always been upon family matters, these Islamic family and inheritance laws continue to hold force in the vast majority of Islamic countries today.³² Therefore, several Islamic states have entered substantial reservations to the 1979 Convention on the Elimination of All Forms of Discrimination against Women, in particular to Article 16 which entails the claim of equal rights for men and women in matters of family law and divorce.³³

Apart from family law, the social position of Muslim women varies greatly from

²⁷ Fazlur Rahman, *Islam* 38 (2nd ed. 1979).

²⁸ See Schacht, *supra* note 25, at 161. See also Wiebke Walther, *Women in Islam from Medieval to Modern Times* 47 (1993).

²⁹ However, as Wiebke Walther points out, “silence is sufficient indication of agreement in the case of a virginal bride, since she is considered to be too shy or timid to speak for herself.” Walther, *supra* note 28, at 55.

³⁰ See Norman Anderson, *Law Reform in the Muslim World* 118-23 (1976).

³¹ See Schacht, *supra* note 25, at 169-74.

³² This finds frequent expression in current constitutions of Islamic states. See, for example, the Egyptian constitution, Article 11: “The state shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.” *Constitution of the Egyptian Islamic Republic* art. 11.

³³ See Donna E. Arzt, “The Application of International Human Rights Law in Islamic States,” 12 *Human Rights Quarterly*, 202-230 (1990); Sami A. Aldeeb Abu-Sahlieh, “Les Musulmans Face Aux Droits De L’homme.” *Religion & Droit & Politique. Étude Et Documents* 181-82 (1994).



country to country. For example, in Saudi Arabia women are not even permitted to drive cars,³⁴ but in the Maghreb states women frequently hold public office.³⁵

C. Restrictions on Religious Liberty

Islam has mostly shown tolerance towards religious minorities, following the command of the Qur'anic verse: "There shall be no compulsion in religion." Sura 2:256. Historic evidence shows that some Christian minorities and dissidents preferred living under Islamic rule to being persecuted by their fellow Christians in the Byzantine and Habsburg empires. Thus, with regard to religious tolerance, Islam seems to have a better historical record than Christianity. Ann E. Mayer emphasizes this point. She writes: "Despite incidents of discrimination and mistreatment of non-Muslims, it is fair to say that the Muslim world, when judged by the standards of the day, generally showed far greater tolerance and humanity in its treatment of religious minorities than did the Christian West."³⁶

Yet, this traditional tolerance falls short of full religious liberty which, as a basic human right, requires recognition of people of different creeds on the basis of *equality*. The traditional Islamic state, by contrast, assigned different ranks and rights to people of different beliefs.³⁷ Only faithful Muslims qualified as full members of the political community. Adherents of the non-Islamic monotheistic "religions of the book"—Jews, Christians, and Zoroastrians—enjoyed considerable autonomy in matters of self-administration, religious law, and family law. However, even these protected minorities ("dhimmis") suffered from some kinds of discrimination. They were excluded from military service and accordingly had to pay a special tax. Their places of worship were not allowed to outshine the Islamic mosques in size or magnificence. Furthermore, restrictions concerning mixed marriages were enforced to preserve the ongoing Islamic dominance. Whereas a Muslim man was permitted to marry a woman from the tolerated minorities, Jewish or Christian males could not marry Muslim women. With the husband as the head of the family, this provision ensured that children of mixed parentage were raised as Muslims. Marriages between Muslims and polytheists generally were prohibited.³⁸

In theory, the Islamic concept of tolerance only applied to the monotheistic religions of revelation and excluded polytheists and atheists explicitly. In practice, however, adherents of other religions were often placed on an equal footing with the non-Islamic monotheistic "people of the book."³⁹ Had this not been the case, the coexistence of Muslims and Hindus in the Indian subcontinent would have been inconceivable. An absolute limit on tolerance, however, was drawn in cases of apos-

³⁴ See Aldeeb Abu-Sahlieh, *supra* note 33, at 175.

³⁵ On recent sociological developments in the Maghreb states, see Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* xxiv-xxix (2nd ed. 1987).

³⁶ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* 148 (1991).

³⁷ See Schacht, *supra* note 25, at 130-33.

³⁸ See Adel Theodor Khoury, *Toleranz Im Islam* 154-56 (1980).

³⁹ See Mayer, *supra* note 36, at 148.



tasy—the conversion from Islam to another religion. This was generally considered to be an act of betrayal warranting the death penalty.⁴⁰

Although the constitutions of modern Islamic states profess Islam to be the official religion of the state,⁴¹ non-Islamic minorities are for the most part granted religious liberty and equal rights as citizens. The position of head of state, though, generally remains reserved for a Muslim. The constitutions of Iran and Pakistan provide for distinct representation for religious minorities in parliament.⁴² Apart from constitutional law, however, serious discrimination is still legally enforced in nearly all Islamic countries.⁴³ For instance, interreligious marriages continue to be restricted in accordance with the traditional shā'ria requirements,⁴⁴ although this clearly violates Article 16 of the Universal Declaration of Human Rights which explicitly recognizes the right to marry “without any limitation due to race, nationality or religion.”⁴⁵

Religious minorities outside the traditionally tolerated “people of the book” suffer from even more dramatic forms of discrimination. For instance, the Baha'is community in Iran and the Ahmadis in Pakistan suffer such discrimination today. The Baha'is are often considered to be renegades of Islam because they have formed a new post-Islamic religion. In Iran, where about 350,000 Baha'is live, systematic discrimination—such as exclusion from higher education and from many professions, confiscation of property, and desecration of Baha'i shrines and houses of worship—became an official policy after the 1979 Islamic revolution.⁴⁶ Unlike the Baha'is, the Ahmadis regard themselves as Muslims and perform all traditional Muslim practices such as prayer, fasting, and pilgrimage. However, they were excommunicated from the Islamic community by a 1974 amendment to the Pakistan Constitution, because they were alleged to have contested the position of Muhammad as the seal of the prophets. In 1984, Zia ul-Haq issued an ordinance forbidding the Ahmadis to call themselves Muslims. Thus, Ahmadis who continue to profess the Islamic creed publicly or call their places of worship mosques face charges of blasphemy, charges

⁴⁰ See David Little et al., *Human Rights and the Conflict of Cultures: Western and Islamic Perspectives on Religious Liberty* 76 (1988).

⁴¹ See, e.g., the current constitutions of Bahrain (art. 2); Egypt (art. 2); Iran (art. 12); Jordan (art. 2); Kuwait (art. 2); Malaysia (art. 3); Morocco (art. 6); Tunisia (art. 1).

⁴² See the 1979 *Constitution Of The Islamic Republic Of Iran* art. 64 (amended in 1989); the *Constitution of the Islamic Republic of Pakistan* art. 51 (amended in 1985).

⁴³ See, e.g., Abdullahi Ahmed An-Na'im, “Religious Freedom in Egypt: Under the Shadow of the Islamic Dhimma System,” in *Religious Liberty and Human Rights in Nations and Religions* 43-59 (Leonard Swidler ed., 1986) [hereinafter *Religious Liberty*]. See also Abdullahi Ahmed An-Na'im, “Religious Minorities under Islamic Law and the Limits of Cultural Relativism,” 9 *Human Rights Quarterly* 1-18 (1987).

⁴⁴ See Aldeeb Abu-Sahlieh, *supra* note 33, at 127-37.

⁴⁵ Universal Declaration, *supra* note 4, at art. 16. It should be noted that the *International Covenant on Civil and Political Rights*, which deals with marriage in Article 23, does not explicitly include the right to marry without limitations due to religion. *International Covenant on Civil and Political Rights*, at art. 23, adopted 16 Dec. 1966, 999 U.N.T.S. 171 (entered into force 23 Mar. 1976), G.A. Res. 2200(XXI), 21 U.N. GAOR Supp. (No. 16) 53, U.N. Doc. A/6316 (1966). See Abu-Sahlieh, *supra* note 33, at 127-28.

⁴⁶ See Mayer, *supra* note 36, at 157-58. *Human Rights Watch World Report* 1994, at 292 (1994).



that carry drastic penalties.⁴⁷ In general, Muslims converting to another religion encounter severe social and legal sanctions in many Islamic countries. Although the traditional death penalty for apostasy does not exist in the criminal codes of contemporary Islamic states⁴⁸—except Mauritania and Sudan⁴⁹—cases of imprisonment and even execution on the charge of apostasy have been reported in recent years.⁵⁰ Missionary work to convert Muslims is explicitly forbidden in some countries and punishable by criminal sanctions, fines, and even imprisonment.⁵¹ Moreover, apart from criminal law, apostasy also carries harsh consequences in civil law. For example, a convert's marriage automatically becomes null and void, and he or she loses all claims to inheritance as well as the custody of his or her children.⁵²

D. Corporal Punishment

Whereas the social and legal situation of women and religious minorities raises major human rights problems in many countries all over the Islamic world, traditional shā'ria penalties, such as amputating the right hand for theft, amputating a hand and a foot for highway robbery, or stoning for adultery,⁵³ are rarely carried out today. These so-called "hadd-punishments," that partly derive from the Qur'an, do not exist in the criminal codes of the vast majority of contemporary Islamic states. There are, however, a few countries that continue to apply or that have reinstated these punishments. Thus, while Saudi Arabia has always maintained the shā'ria as the basis of its criminal law, other states, such as Pakistan, Iran, and Sudan, reintroduced hadd-punishments into their criminal codes only recently (between the late 1970s and the early 1980s).⁵⁴ Unlike the amputation of limbs, flogging is still a widespread punishment in many countries.⁵⁵ Human rights organizations and UN monitoring bodies have repeatedly condemned the application of such cruel forms

⁴⁷ See Mayer, *supra* note 36, at 159-60; *Amnesty International, Pakistan: Violations of Human Rights of Ahmadis* (1991).

⁴⁸ See Martin Forstner, *Das Menschenrecht der Religionsfreiheit und des Religionswechsels als Problem der islamischen Staaten*, 10 *Kanon, Kirche Und Staat Im Christlichen Osten* 118 (1991).

⁴⁹ See Aldeeb Abu-Sahlieh, *supra* note 33, at 108-09. Sudan officially reinstated the death penalty for apostasy in 1991. See Akolda M. Thier, *Islamization of the Sudan Laws and Constitution: Its Allure and its Impracticability*, 25 *Verfassung Und Recht In Übersee* 211 (1992).

⁵⁰ See Aldeeb Abu-Sahlieh, *supra* note 33, at 110-11.

⁵¹ For instance, according to Article 220 of the Moroccan penal law, a person who tries to shake a Muslim's faith by means of seduction is to be punished with imprisonment up to three years. See Muhammad Makki Naciri, "Judicial Aspects of Religious Liberty in Morocco," in *Conscience and Liberty* 73-75 (1991).

⁵² See Mayer, *supra* note 36, at 167.

⁵³ An overview of the shā'ria criminal law is given in Schacht, *supra* note 25, at 175-187. For a more detailed analysis of the traditional concepts, see *The Islamic Criminal Justice System* (M. Cherif Bassiouni ed., 1982).

⁵⁴ See Konrad Dilger, "Tendenzen der Rechtsentwicklung," in *Der Islam In Geschichte Und Gegenwart* 186-97 (Werner Ende & Udo Steinbach eds., 3rd ed. 1991).

⁵⁵ Not only in the Islamic world. See Tom Kuntz, "Beyond Singapore: Corporal Punishment A to Z," *New York Times*, 26 June 1994, at E5.



of corporal punishment as a violation of human rights.⁵⁶

IV. MUSLIM POSITIONS ON HUMAN RIGHTS TODAY

A. Tradition and Modernity

As argued earlier, human rights represent a specifically modern standard of political and legal justice that challenges traditional normative rules that do not rest on the principle of equal freedom. However, human rights are not opposed to, or superior to, cultural or religious traditions. First, recall that the scope of human rights is limited—they focus on basic political and legal standards. Human rights cannot offer any answers to the existential questions of human life and death, they are not intended to frame all aspects of human life, and they do not pretend to absorb or supersede all traditions. In short, human rights do not compete with cultural and religious traditions directly, but concentrate on political and legal aspects of human coexistence. At the same time, human rights do rely on the idea of human dignity which can be found in various cultural and religious traditions. Thus, although human rights do not derive immediately from religious traditions, they are not alien to those traditions that have recognized the idea of human dignity. Hence, with reference to human dignity, a critical reconciliation between the competing requirements of particular religious traditions and modern international human rights standards might be conceivable.

Certainly, whether such a hermeneutic mediation will succeed remains an open question. Two widespread attitudes have the potential to render futile any attempt to reconcile human rights standards with religious traditions. The first attitude rejects human rights as an alien concept that is basically hostile to one's own traditional culture. The second attitude uncritically "embraces" human rights as an exclusive achievement of one's own culture. Interestingly, both of these attitudes have occurred in the West, for instance in the Christian churches. After a long period of resistance against the emancipatory claims of the modern concept of rights generally, the churches today often consider human rights to be an expression of "Christian values." The problem with this is not the assumption that human rights have some Christian roots and make sense in a Christian ethic. This is certainly true. What seems problematic is the widespread presumption—be it explicit or implicit—that human rights belong *exclusively* to the Christian tradition. On this problematic view, the universality of human rights becomes tantamount to the universal religious mission of Christianity. At the same time, the emancipatory claim of equal rights of freedom might be distorted by premature harmonization with more traditional and authoritarian Christian concepts. As the next section shows, strikingly similar

⁵⁶ See Aldeeb Abu-Sahlieh, *supra* note 33, at 67. During the 1994 annual session of the UN Human Rights Commission the conflicting views clashed when the Sudanese government charged the UN special rapporteur on Sudan with blasphemy, because he had frankly criticized the application of hadd-punishments in Sudan as violating human rights. See "Human Rights and Islam: Sudan Cites Higher Authority," *The Economist*, 5 Mar. 1994, at 42-45.



tendencies towards a unilateral embracing of human rights can be found in many contemporary Islamic statements as well.

In order to overcome both defensive and embrative attitudes towards human rights, the sources of tradition and of modernity must be scrutinized critically. Modern legal standards and the underlying emancipatory principles might shed new light on the understanding of tradition and the self-perception of cultural and religious communities. Studying the sources of tradition, in turn, might provide critical insights about modernity. In any case, one should refrain from all claims of exclusivity with regard to human rights that many consider “the privilege of the whole of humanity”⁵⁷ or, more precisely, a normative demand directed to the different peoples, cultures, and religions that have to bring about an overlapping normative consensus in order to coexist peacefully on this small globe.

The following paragraphs present some Islamic positions in the human rights debate. The distinctions between conservative, liberal, and pragmatic approaches relied on in the following paragraphs are not meant to provide an adequate structure that can do justice to the complexity of the discourse and to the individual positions within it; rather, they are only a rough way of bringing some order to the analysis.

B. Conservative Arguments

When the General Assembly of the United Nations had to decide on the Universal Declaration on Human Rights, in 1948, the Saudi Arabian ambassador strongly objected to religious liberty, particularly to the right to change one’s religion, a right explicitly mentioned in Article 18. Saudi Arabia eventually joined South Africa and six communist states and abstained from the vote; no state rejected the declaration outright.⁵⁸ Saudi Arabia’s abstention reflects the reluctance of a conservative Islamic government to endorse the emancipatory concept of human rights, a concept that is perceived to be alien and detrimental to the Islamic tradition.

Meanwhile, different conservative approaches have arisen. Instead of rejecting human rights altogether, the emphasis is more on redefining these rights in an exclusively Islamic framework. A prominent representative of this tendency is the Pakistani author Abu l-A’la Mawdudi, an influential source of inspiration for Pakistani and international fundamentalist movements.⁵⁹ In his book, *Human Rights in Islam*, Mawdudi blames the West for claiming human rights to be an exclusively Occidental heritage. He writes: “The people in the west have the habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance and completely

⁵⁷ Isaac Nguéma, “Human Rights Perspectives in Africa,” 11 *Human Rights Law Journal* 262 (1990).

⁵⁸ See Arzt, *supra* note 33, at 215. South Africa and the communist states abstained for different reasons. However, other Islamic states initially joined Saudi Arabia in its criticism of Article 18 but eventually endorsed the declaration. *Id.* at 216. Among the advocates of an encompassing religious liberty, including the right to conversion, was the foreign minister of Pakistan, Zafrullah Khan, a member of the Ahmadi minority. See Little, *supra* note 40, at 41.

⁵⁹ See generally Charles J. Adams, “Mawdudi and the Islamic State,” in *Voices of Resurgent Islam* 99-133 (John L. Esposito ed., 1983).



unaware of all these benefits.”⁶⁰ This polemical criticism might be partly justified because Western arrogance often has presented an obstacle to cross-cultural discourse. Nevertheless, Mawdudi’s approach deserves a similar critique, because he merely harmonizes human rights with the traditional shā’ria without addressing the possible tensions and conflicts between the two. In his view, human rights thus merely form an inherent part of the Islamic tradition.

In this uncritical amalgamation, the emancipatory content of human rights gets distorted, if not completely lost. It is striking, for instance, that in his section on “equality of human beings,” Mawdudi only precludes distinctions in rights based on “colour, race, language or nationality” without mentioning gender and religion in this context.⁶¹ He seems to ignore the fact that the idea of human rights, as it has been enshrined in international standards, implies the *universal* recognition of equal liberty. This is a concept that goes beyond the limited recognition of equality within the classical shā’ria, because the universal concept of human rights explicitly includes equal rights between men and women, and between adherents of different religions.⁶² By contrast, Mawdudi holds a much more restricted idea of equality and, accordingly, fails to address critically the ongoing discrimination against women and against religious minorities in many Islamic countries.

It is revealing that Mawdudi addresses the issue of women’s rights primarily in a section entitled: “Respect for the Chastity of Women.”⁶³ Referring to Mawdudi’s book, the Pakistani feminist Riffat Hassan points out sarcastically: “Many Muslims, when they speak of human rights, either do not speak of women’s rights at all or are mainly concerned with the question of how a woman’s chastity may be protected.”⁶⁴

With regard to religious liberty, Mawdudi makes reference to the Qur’anic verse 2:256 which forbids coercion in matters of faith. In accordance with traditional Islamic tolerance, he affirms: “No force will be applied in order to compel [non-Muslims] to accept Islam. Whoever accepts it he does so by his own choice.”⁶⁵ Mawdudi fails, however, to address crucial issues, such as the ban on conversion from Islam to another religion and the restrictions on interreligious marriages, that still stand as obstacles to the full recognition of religious liberty in most contemporary Islamic countries.

More outspoken on the latter question is Ahmad Farrag, a journalist from Saudi-Arabia, who unequivocally denies the right to marry without restrictions based on religious difference, a right that is guaranteed in Article 16 of the Universal Declara-

⁶⁰ Abu L-ʿAla Mawdudi, *Human Rights in Islam* 13 (1976).

⁶¹ Id. at 23.

⁶² See the Universal Declaration on Human Rights: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” *Universal Declaration*, supra note 4, at art. 2.

⁶³ Mawdudi, supra note 60, at 19.

⁶⁴ Riffat Hassan, “On Human Rights and the Qur’anic Perspective,” in *Human Rights in Religious Traditions* 63 (Arlene Swidler ed., 1982).

⁶⁵ Mawdudi, supra note 60, at 32.



tion on Human Rights. He writes: As a Muslim I reject that article.⁶⁶ In line with the classical shā'ria, he concedes that a Muslim male may marry a Jewish or Christian woman. However, marriages between Muslim women and non-Muslim males as well as all marriages between Muslims and polytheists are considered to be illegitimate. In an attempt to justify this, Farrag argues that a Muslim woman would not receive due respect for her religious beliefs by a non-Muslim husband. Furthermore, he claims that a marriage between persons of completely different faiths, such as Islam and polytheism, would necessarily break down.⁶⁷

Some international Islamic statements on human rights also reflect this conservative disposition. This holds true for both the "Universal Islamic Declaration of Human Rights," issued by the Islamic Council for Europe in 1981,⁶⁸ and the "Cairo Declaration on Human Rights in Islam," adopted by the Organization of the Islamic Conference in August 1990.⁶⁹ While the Islamic Council for Europe is a nongovernmental organization whose statements are by no means binding, the Organization of the Islamic Conference brings together representatives of the Islamic states. Hence the Cairo Declaration, albeit not legally binding, does carry some political authority.

Like Mawdudi, the authors of the Cairo Declaration seem to integrate the language of human rights into the preexisting framework of the shā'ria in such a way that the latter never is questioned critically. On the contrary, the shā'ria acts as the exclusive yardstick used to determine the scope and content of human rights. The concluding Article 25 emphasizes: "The Islamic shā'ria is the only source of reference for the explanation or clarification of any of the articles of this Declaration."⁷⁰

Despite the fact that Article 1 affirms the equal dignity of all human beings, "without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations,"⁷¹ differences in terms of basic rights continue to exist. Thus, Article 6 apparently presupposes the traditional understanding of gender relations, including the predominant role of the husband as head of the family. Article 6 states: "Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage. The husband is responsible for the support and welfare of the family."⁷² Equality in dignity, which is asserted in the declaration, apparently does not amount to equal rights

⁶⁶ Ahmad Farrag, "Human Rights and Liberties in Islam," in *Human Rights in a Pluralist World: Individuals and Collectivities* 141 (Jan Berting et al. eds., 1990).

⁶⁷ See id.

⁶⁸ For a critical analysis, see Mayer, *supra* note 36, at 27.

⁶⁹ "The Cairo Declaration on Human Rights in Islam," reprinted in *Conscience and Liberty* 90-95 (English translation 1991).

⁷⁰ Id. at art. 25.

⁷¹ Id. at art. 1.

⁷² Id. at art. 6.



for women and men,⁷³ as they are claimed by Muslim feminists today with reference to international standards of human rights.

Although the Cairo Declaration does not explicitly mention traditional hadd-punishments, it is revealing that Article 2, which deals with the right to life, makes a caveat on behalf of the shā'ria saying that "it is prohibited to take away life except for a shā'ria prescribed reason."⁷⁴ The same caveat applies to "safety from bodily harm" which also is granted only by allowing exceptions on a "shā'ria prescribed reason." In any case, the legitimacy of corporal punishment is not challenged critically and might even receive reinforcement from the Cairo Declaration.

Article 5, which deals with marriage and family matters, states: "Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right." Nondiscrimination on the basis of religion is absent from this list of precluded restrictions on marriage. Accordingly, the traditional shā'ria obstacles to interreligious marriages are not addressed critically.

Even more problematic is Article 10 which unambiguously violates the principle of equality by giving Islam a privileged status above all other religions. It reads: "Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism." The Cairo Declaration, thus, seems to ban conversion from Islam and, more clearly, all missionary work among Muslims. Undoubtedly, this is at odds with religious liberty as it has been enshrined in international legal standards within the UN framework. Hence, the Cairo Declaration actually weakens or denies some basic international human rights by claiming a general priority for the traditional shā'ria.

C. Liberal Arguments

Whereas conservative Islamic documents like the Cairo Declaration tend to "Islamize" human rights at the expense of their universality and their emancipatory content, liberal Muslim reformers consider human rights a genuine challenge. Liberal Muslim reformers admit that in modern circumstances a normative consensus across cultural and religious boundaries is imperative to promote international peace and cooperation. Abdullahi Ahmed An-Na'im, a leading figure in the Islamic discourse on human rights, writes: "Under contemporary economic and political conditions, no country in the world is religiously monolithic, however traditional and 'closed' it may wish to be."⁷⁵ Consequently, Muslims, like people of other cultures, are called upon to engage in cross-cultural dialogue on human rights.

⁷³ The fact that Islamic documents often stress equal dignity without acknowledging equal rights is emphasized by Donnelly, *supra* note 9, at 49.

⁷⁴ Emphasis added.

⁷⁵ Abdullahi Ahmed An-Na'im, "Toward an Islamic Reformation," *Civil Liberties, Human Rights, and International Law* 102 (1990).



Understanding human rights to be an international and cross-cultural demand is tantamount to the insight that these rights cannot be simply integrated into the existing normative framework of the shā'ria. It has indeed to be admitted that there are fundamental tensions between traditional shā'ria norms and the requirements of human rights. These tensions need careful assessment, rather than premature harmonization. What is at stake is a self-critical reevaluation of the shā'ria and its underlying principles: an opportunity to seek out ways to genuinely mediate between and reconcile the competing normative requirements.

Some scholars, like the Egyptian judge Muhammad Said al-Ashmawy, focus on the original significance of the shā'ria which etymologically means, a "path leading to the fountain in the desert."⁷⁶ In this view, the shā'ria does not form a comprehensive legal system,⁷⁷ but consists mainly of general religious and ethical principles, such as prayer and fasting, solidarity within the community, respect between the genders, and tolerance towards minorities. The conjoining of these ethical principles with medieval legal reasoning appears to be a historic process that calls for critical evaluation. Only such criticism can help to recapture the essential normative requirements of Islam that have been overshadowed by a historic body of detailed regulations. As the Lebanese philosopher Subhi Mahmasani puts it, "this great body of particulars often dominated the general principles, and, with repeated imitation, took a rigid and formalistic taint alien to the original substance."⁷⁸ Mahmasani blames the medieval jurists for having "mixed religion with the daily ways of life" to such an extent that, finally, "incidental worldly matters were placed on the same level with the original, essential and immortal provisions of religion."⁷⁹

Liberal Muslim reformers advocate for an emancipated understanding of the shā'ria, stressing its original meaning as a "path" or guide, rather than a detailed legal code. They do not attempt to deny the binding character of the shā'ria. On the contrary, at stake is a critical form of obedience that seems even more demanding because it requires active efforts of interpretation by the faithful. Such active reasoning—"ijtihād"—was originally regarded as an independent source of Islamic law that, only after increasing petrification of the shā'ria, became replaced by obedience to the established teachings of the Sunna law schools.⁸⁰ Hence, many Muslim reformers demand the recovery of ijtihād in order to do justice both to modern needs and to the original spirit of the Islamic shā'ria. Mahmasani writes: "The door of ijtihād should be thrown wide open for anyone juristically qualified. The error, all the error,

⁷⁶ Muhammad Said Al-Ashmawy, *L'islamisme Contre L'islam* 124-25 (1989).

⁷⁷ Ashmawy points out that only 80 Qur'anic verses, among about 6,000 verses, entail legal instructions. Id. at 37.

⁷⁸ Subhi Mahmasani, "Adaptation of Islamic Jurisprudence to Modern Social Needs," in *Islam in Transition: Muslim Perspectives* 183 (John J. Donohue & John L. Esposito eds., 1982).

⁷⁹ Id. at 185.

⁸⁰ See Rahman, *supra* note 27, at 78 ("The qualifications for *ijtihād* were made so immaculate and rigorous and were set so high that they were humanly impossible of fulfillment."). It should be noted that Shia Islam has always continued to recognize *ijtihād* as a source of law. See Patrick Bannerman, *Islam in Perspective: A Guide to Islamic Society, Politics and Law* 46 (1988).



lies in blind imitation and restraint of thought. What is right is to allow freedom of interpretation....”⁸¹ Ali Merad, a historian from Algeria, describes the task as follows: “We must therefore strive to peer through the contingencies of history, in order to discover the direction in which revelation points, to formulate normative criteria, and to find out what God’s intention is. But this is a hazardous route to take.”⁸²

Abdullahi Ahmed An-Na’im goes a step further, subjecting the Qur’anic text itself to critical scrutiny. In keeping with traditional exegesis, he distinguishes between Suras that were revealed in Mecca from Suras that were revealed in Medina. However, following his teacher Mahmoud Muhammad Taha, An-Na’im holds that these two stages of revelation imply a kind of theological ranking. Whereas the Suras of the Mecca period contain the eternal theological message of Islam, the Medina parts of the Qur’an mostly refer to the particular needs of the first Muslim community and cannot be immediately applied to modern circumstances. An-Na’im suggests that an Islamic reformation can be achieved by reading the Qur’anic normative rules of the Medina period in light of the theological principles that form the first and most important message of Islam.⁸³

The critical approaches of liberal Muslims, such as Ashmawy, Mahmasani, and An-Na’im, facilitate reforms both in the field of law and in theology. These critical approaches pave the way for political and legal changes. They also lead to a new awareness of the humane character of the Qur’anic revelation which is the most important source of the shā’ria. It is no coincidence, in that context, that modern Muslim thinkers place a great deal of emphasis on human dignity as an essential part of the Qur’anic teaching. For instance, they invoke the idea of each human’s vocation as God’s deputy on earth (Sura 2:30); they cite Sura 17:70 which says that God has honored the children of Adam; and they point out that, according to Sura 33:72, God has bestowed a special trust upon humankind, elevating the human person above all cosmic powers.⁸⁴

Riffat Hassan refers to the main dogma of Islam, that is, the uniqueness and transcendence of God, in order to contest traditional hierarchies. As there is only one God and no mediator between God and the human being, each individual stands immediately before God—all human pretensions of religious guardianship over fellow persons must be condemned as illegitimate from a Qur’anic perspective. As Sura 12:40 emphasizes, the ultimate judgment of a person’s vocation and destiny lies exclusively with God. The monotheistic creed thus yields emancipatory consequences because it challenges all claims of absolute obedience among human beings. Such claims of absolute obedience by which a human being takes a quasi-divine role

⁸¹ Mahmasani, supra note 78, at 182.

⁸² Ali Merad, “Die Scharia als Weg zur Quelle des Lebens,” in *Freiheit Der Religion. Christentum Und Islam Vor Der Herausforderung Der Menschenrechte* 393 (Johannes Schwartländer ed., 1993) [hereinafter *Freiheit Der Religion*].

⁸³ See An-Na’im, supra note 75, at 52-57.

⁸⁴ See Rotraud Wielandt, “Menschenwürde und Freiheit in der Reflexion zeitgenössischer islamischer Denker,” in *Freiheit Der Religion*, supra note 82, at 179-209.



would indeed come close to polytheism that is strictly condemned in Islam. Applying this insight to the traditional gender roles, Hassan critically points out: “The husband, in fact, is regarded as his wife’s gateway to heaven or hell and the arbiter of her final destiny. That such an idea can exist within the framework of Islam—which totally rejects the idea of redemption, of any intermediary between a believer and the Creator—represents both a profound irony and a great tragedy.”⁸⁵

The Tunisian scholar Mohamed Talbi, a member of the Honorary Committee of the “International Association for the Defence of Religious Liberty,” invokes the very same argument in order to demand unambiguous and full recognition of religious liberty beyond the boundaries of the traditional concept of limited tolerance. Talbi argues that a faithful Muslim’s submission to the unfathomable divine will should lead to the mutual recognition of human beings in their freedom of conscience, because no one can pretend to know God’s plans concerning his or her fellow persons. Thus Talbi writes:

“From a Muslim perspective, and on the basis of the Qur’anic teachings, religious liberty is fundamentally and ultimately an act of respect for God’s sovereignty and for the mystery of His plan for man, who has been given the terrible privilege of building on his own responsibility, his destiny on earth and for the hereafter. Finally, to respect man’s freedom is to respect God’s plan. To be a true Muslim is to submit to this plan. It is, in the literal sense of the word, to put oneself, voluntarily and freely, with confidence and love, in the hands of God.”⁸⁶

With regard to the traditional forms of corporal punishment, Talbi, like many reformers, applies the critical distinction between the essential Qur’anic principles and the historic circumstances in which they were first implemented. While the principles remain valid, the modes of their implementation may change, in accordance with new experiences and possibilities. That is why Talbi regards corporal punishment as an anachronism that cannot be justified in modern circumstances. He writes:

“When the Qur’an refers to justice and equality as the ultimate goals underlying amputation punishments, this means that the true purpose to be pursued is life, not mutilation as such or death. Were it possible for us today to ensure a life of justice and equality in a different way, this would certainly be a way pointing in the same direction as the Qur’an does.”⁸⁷

From a liberal Islamic point of view, it seems possible that the traditional obstacles to the endorsement of human rights can be overturned critically. For many

⁸⁵ Hassan, *supra* note 64, at 63.

⁸⁶ Mohamed Talbi, “Religious Liberty: A Muslim Perspective,” in *Conscience and Liberty* 31 (1991).

⁸⁷ Mohamed Talbi, “Zum Problem der Umma und der Scharia in der islamischen Welt heute,” in *Freiheit Der Religion*, *supra* note 82, at 391



liberal Muslims, no inherent contradiction exists between Islamic principles and the emancipatory claims of human rights as embodied in the existing international standards. Moreover, the Qur'anic idea of human dignity, in the opinion of Talbi, requires a political commitment to human rights, in solidarity with people of different religious beliefs and philosophical convictions. Referring to the ongoing atrocities occurring worldwide, he insists: "In a world where giant holocausts have been perpetrated, where human rights are manipulated or blatantly ignored, our Muslim theologians must denounce all forms of discriminations as crimes strictly and explicitly condemned by the Qur'an."⁸⁸

D. "Pragmatic" Reconciliation?

The contrast between conservative and liberal Islamic interpretations of human rights, as sketched above, does not cover the entire spectrum of the debate. Between both positions range a large number of "pragmatic" approaches that often combine liberal and conservative attitudes. Apart from fundamentalist movements that certainly do not represent the majority of Muslims today, Islam has always accommodated a pragmatic humanitarianism,⁸⁹ in keeping with the Qur'anic promise that "God intends every facility for you; he does not want to put you to difficulties." Sura 2:185. Hence, rigidity and puritanism are atypical of the Islamic tradition as a whole. As a matter of fact, the Islamic tradition appears capable of dealing flexibly with human needs and shortcomings. Such pragmatism also has shaped the sha'ria from its very beginning.⁹⁰ Therefore, some reconciliation between the traditional sha'ria and the modern idea of human rights conceivably could be accomplished in accordance with this well established Islamic pragmatism.

Actually, such steps already have been taken in many Islamic countries. Legal reforms, even those involving sensitive matters of family law, can be traced back to the early twentieth century. Although not breaking away from the traditional sha'ria completely, these legal reforms, nonetheless, facilitated some changes towards a better social and legal status for women. Such reforms have restricted practices such as child marriage, polygamy, and the husband's right to repudiate his wife unilaterally.

The 1917 Ottoman Law of Family Rights, for instance, tried to curb polygamy by explicitly recognizing stipulations that, on a voluntary basis, can be inserted into the marriage contract to bestow the wife with the right to judicial divorce once the husband takes a second wife.⁹¹ The possibility of negotiating and inserting such conditions or stipulations into a marriage contract traditionally has been acknowledged, at least by some of the established Islamic law schools. However, under the Otto-

⁸⁸ Talbi, *supra* note 86, at 27.

⁸⁹ See Udo Steinbach, "Die Menschenrechte im Verständnis des Islam," 8 *Verfassung Und Recht In Übersee* 47-59 (1975).

⁹⁰ See Schacht, *supra* note 25, at 76-77.

⁹¹ See Article 38: "If a woman stipulates in her marriage contract that her husband shall not marry another wife and that, should he do so, then either she herself or this other wife will be divorced, the contract is valid and the stipulation recognized." Anderson, *supra* note 30, at 49.



man Law of Family Rights, those marriage contracts, that effectively can impede polygamy, now receive official political and judicial support. Although polygamy still remains legally permissible in theory, it becomes officially discouraged. At the same time, women's rights concerning divorce have improved, partly because the clauses and conditions included in marriage contracts can provide new criteria for suing the husband for judicial divorce.⁹²

It is noteworthy, in this context, how Muhammad Abduh, Grand Mufti of late nineteenth century Egypt, advocated restrictions on polygamy.⁹³ His argument, based on the Qur'an, is as follows: Although the Qur'an allows a man to marry more than one woman, it adds the caveat that this may not be done unless the husband is able to treat all his wives with full equal justice. Sura 4:3. In another place, however, the Qur'an states that this requirement can hardly ever be satisfied: "you are never able to be fair and just as between women, even if it is your ardent desire." Sura 4:129.

Muhammad Abduh and many of his Muslim followers, therefore, read the Qur'an as forbidding polygamy implicitly. Up until now, however, Tunisia is the only Arab state that has abolished polygamy completely by making reference to this interpretation of the Qur'an.⁹⁴

With regard to religious liberty, mainstream Islam clearly accepts religious pluralism but still seems reluctant to endorse an unrestricted right to interreligious marriage and to conversion from Islam to another religion. Thus, converts continue to face social ostracism and are viewed by some as "renegades" or "apostates." On the other hand, it is worth mentioning that Khomeini's fatwa against the novelist Salman Rushdie failed to get support from international Islamic organizations which also condemned Rushdie's *Satanic Verses*, but did not back up Khomeini's death sentence against the author.⁹⁵ The execution of Mahmoud Muhammad Taha, leader of a liberal Islamic movement in Sudan, on the charge of heresy in January 1985, shocked most Sudanese. As Ann E. Mayer reports: "Outrage and disgust over the execution and televised heresy trial prevailed, even among Sudanese Muslims who had no personal sympathy for Taha's theological positions.... Owing to the policies of Nimeiri, Islam became associated with an act of medieval barbarism, but many Muslims considered the execution a violation of fundamental Islamic values."⁹⁶

While traditional shā'ria norms continue to mark family structures all over the Islamic world, the shā'ria criminal law is applied only in a few Islamic countries today. As mentioned earlier, the emphasis of the shā'ria has always been much more on family matters than on criminal law. The portrayal of the shā'ria as primarily consisting of a set of cruel punishments, as it is sometimes presented in Western media,

⁹² See Anderson, *supra* note 30, at 118-23.

⁹³ See John L. Esposito, *Islam and Politics* 51 (3rd ed. 1991).

⁹⁴ See Dilger, *supra* note 54, at 174.

⁹⁵ See Malise Ruthven, *A Satanic Affair: Salman Rushdie and the Rage of Islam* 116 (1990).

⁹⁶ Mayer, *supra* note 36, at 186.



therefore, is at least one-sided.

Moreover, the “hadd-punishments,” which in theory stand out as the most prominent part of the classical criminal law because they are based on the Qur’an and the Sunna, had only a minor practical importance in the history of Islamic societies. There is no doubt that these corporal punishments—amputation of limbs, decapitation, stoning—are utterly cruel. In keeping with the humane character of the Islamic tradition, however, they were only rarely carried out, even in the past. Indeed, in many parts of the Islamic world they have not been applied since time immemorial.

In his analysis of the classical shā’ria, Joseph Schacht concludes: “There is a strong tendency to restrict the applicability of *hadd* punishments as much as possible....”⁹⁷ Narrow definitions of the crimes in question, short statutes of limitation, and extremely high evidentiary requirements ensured that those punishments would be executed only in exceptional cases.

Hand amputation, for instance, did not apply to ordinary theft; rather hadd-theft was determined in such a narrow way that actual crimes seldom would fit the definition. Moreover, the second Caliph Omar reportedly ruled out the application of amputation for theft in times of starvation.⁹⁸ Hence, many Muslims assume that this penalty, if it is applicable at all, will be applicable only in an ideal Islamic society that can provide fully the basic needs of all of its members eliminating any excuse for theft. For the time being, however, these cruel penalties are inappropriate and must therefore be suspended. This type of reasoning might be typical of many moderately conservative Muslims who are reluctant to contest the validity of hadd-punishments in theory, but nevertheless, want to avoid their actual implementation by invoking practical obstacles to their reintroduction.

Actually, reports from the Sudan indicate that the vast majority of the population, including conservative Muslims, were opposed to the reintroduction of amputation punishments in 1983.⁹⁹ It is revealing that many Sudanese called these new criminal sanctions only the “september laws,” rather than recognizing them as “shā’ria.”¹⁰⁰ This suggests a widespread awareness among the Muslim population that the restoration of such cruel punishments is an abuse of political power and not a legitimate expression of religious or cultural tradition. Resistance against the reintroduction of amputation punishments has been reported from other countries as well. In Pakistan, for instance, amputation sentences could not be carried out because physicians generally refused to assist.¹⁰¹

According to the classical shā’ria, stoning for adultery (which is not based on the Qur’an) cannot be imposed unless four male Muslim eyewitnesses with a

⁹⁷ Schacht, *supra* note 25, at 176.

⁹⁸ See Ashmawy, *supra* note 76, at 50.

⁹⁹ See Arnold Hottinger, *Islamischer Fundamentalismus* 55 (1993).

¹⁰⁰ See Khalid Duran, “Religious Liberty and Human Rights in the Sudan,” in *Religious Liberty*, *supra* note 43, at 74.

¹⁰¹ See Esposito, *supra* note 93, at 173.



good reputation give a detailed account of the act of penetration.¹⁰² (According to some law schools, one or two of the males could be replaced by a double number of female witnesses.) The question that naturally arises in that case is whether it is conceivable that people could observe such an act of sexual intercourse without thereby jeopardizing their requisite good reputation. Even a conservative author like Aly Aly Mansour has to admit: "It is nearly impossible to satisfy the prerequisite for eyewitnesses...."¹⁰³ The only conceivable possibility is that the act of adultery is committed publicly, leading to the presumption that the people involved are insane and, consequently, cannot be punished.

Whatever the traditional shā'ria might require in theory, most contemporary Muslims will presumably feel that such a cruel punishment like stoning can never be applied in practice. This attitude seems to prevail even among conservative Muslim scholars. It might be worth mentioning, in this context, that Pakistan's Federal Shā'ria Court resisted the reintroduction of stoning in Pakistan, in the early 1980s, by repeatedly refusing to apply this form of punishment. Only by replacing some of the judges with his own allies, prime minister Zia ul-Haq finally succeeded in having stoning judicially confirmed as being in accordance with the shā'ria.¹⁰⁴

These examples may suggest that, not only in consciously liberal approaches, but also in moderately conservative strains of Islam, a reconciliatory mediation between tradition and modernity seems conceivable. Certainly, one should be aware of the possible misunderstandings that easily can occur in such a mediation: it can amount to a superficial harmonization between Islam and human rights, whereby the emancipatory and cosmopolitan claims of human rights get unilaterally amalgamated with the existing shā'ria tradition. In order to overcome such misunderstandings, the relationship between shā'ria and human rights needs to be further clarified. In any case, one should not underestimate the potential for Islam to cope with new challenges and demands in a pragmatic way. In conformity with the humane flexibility that has largely marked the shā'ria, some of the conflicts between different normative requirements might be settled.

V. RETROSPECTIVE AND CONCLUSIONS

A. The Complexity of Contemporary Islam

I have tried to show that a great variety of Islamic positions in the area of human rights exist. There are conservatives who deny all conflicts between tradition and modernity, thereby simply merging the language of human rights with the classical shā'ria. Some liberal reformers, by contrast, suggest that only a self-critical reevaluation of the shā'ria, which in their view originally was intended to provide normative guidance rather than serving as a comprehensive legal code, facilitates a genuine

¹⁰² See Schacht, *supra* note 25, at 177.

¹⁰³ Aly Aly Mansour, "Hudud Crimes," in *The Islamic Criminal Justice System*, *supra* note 53, at 199.

¹⁰⁴ See Esposito, *supra* note 93, at 173.



reconciliation of the requirements of Islam and human rights. Besides the positions held by conservatives and liberals, intermediate approaches exist as well, resulting from the pragmatic humanitarianism that has largely shaped the shā'ria.

Given the fact that democratic structures are still missing or poorly developed in many Islamic countries, it is difficult to assess the strength of the various currents in contemporary Islam. A conservative point of view, as reflected in the Cairo Declaration on Human Rights in Islam, might be representative of the convictions of a large portion of Muslims today. The militancy of fundamentalist movements, however, is basically alien to the mainstream Islamic tradition and therefore can count only on limited support. Although fundamentalist parties recently have gained ground in many Islamic countries, they are still far from representing the majority of Muslims today. Arnold Hottinger estimates that, apart from exceptional political circumstances, not more than 15 percent of the Muslim population would vote in elections in favor of fundamentalist movements or parties.¹⁰⁵

Liberal critics and reformers, in turn, certainly occupy a difficult position in most parts of the Islamic world. The June 1992 assassination of Faraj Fouda, an Egyptian author who publicly proposed the adoption of secularist philosophy in Islam,¹⁰⁶ shows that even physical survival of outspoken Muslim reformers is in jeopardy. It is no coincidence, therefore, that many of them have chosen to live outside their home countries. Labeling them as merely "Westernized," however, would do serious injustice to their identity as Muslims and to the complexity of the internal Islamic controversy as well.

Finally, one should take into account that many Muslims still might feel insecure about the relationship between traditional religious norms on the one hand and modern legal standards on the other. That is why many Muslims assert the validity of the traditional Islamic shā'ria in principle and, at the same time, seem prepared to accommodate pragmatically some political and legal reforms. For instance, even those who defend the legitimacy of hadd-punishment in theory, frequently prefer to avoid the actual implementation of these punishments, invoking practical obstacles to their reintroduction. Although such pragmatic accommodation is not sufficient to solve the general conflict between competing normative requirements, accommodation does provide some intermediate solutions.

B. Practical Consequences

What are the practical consequences of this analysis for the current debate on human rights? First, it is worth repeating that we must abandon the abstract counterpoising of universal human rights on the one hand with cultural sensitivity on the other. This is not to say that tensions and conflicts do not exist. As argued above, there are fundamental obstacles to an unconstrained and unambiguous recognition

¹⁰⁵ See Hottinger, *supra* note 99, at 38.

¹⁰⁶ See *Human Rights Watch World Report 1993*, at 296 (1993).



of human rights in the Islamic tradition—and in other traditions, too. However, because traditions evolve, in light of new experiences and needs, such obstacles might be overturned both by deliberate efforts on the part of intellectual reformers as well as through the pragmatic wisdom and humanitarianism of the people. What can non-Muslims do to foster such a process? It seems clear that they should not directly engage in the internal Islamic discourse about human rights. What can be done, however, is a self-critical analysis of one's own culture in order to overcome the various forms of ideological appropriation of human rights. As people from the West, we have to detach ourselves from the idea that these rights are simply individualistic claims that are detrimental to communitarian solidarity, we should refrain from building human rights into an ideology of general progress modeled on the patterns of Western civilization, and we should not confuse human rights monitoring with demands for the introduction of a Western-style market economy.

In any event, self-criticism of one's own human rights policy is a necessary precondition to any serious cross-cultural dialogue on human rights.

According to my experience, conservative Muslims frequently perceive any commitment to the implementation of human rights as a new Western "crusade." That is, they fear that human rights are part and parcel of an all-encompassing ideology or way of life that is intended to eventually replace Islamic faith and practice. In order to avoid such a misunderstanding, I have repeatedly stressed the limited scope of human rights. Their focus lies on basic political and legal institutions; and they do not pretend to serve as a transhistoric yardstick, suitable to measuring cultures and religions generally. In other words, human rights are not, and should not be presented as, an international "civil religion."

On the other hand, human rights might shed new light on the self-perception of cultural and religious communities, because the principle of human dignity, which has roots in many different cultures, serves as the foundation for human rights. Moreover, given that the recognition of human dignity under circumstances of modernity needs to become binding in terms of emancipatory political and legal claims, human rights present a challenge to authoritarian traditions in cultures and religions. However, this challenge might well open up new occasions for developing a modern religious identity, by leading, for instance, to a new awareness of some essential Islamic principles that have been overshadowed by detailed legal casuistry.

The most desirable accomplishment of the international discourse on human rights would be an international and cross-cultural "overlapping consensus." This would be a normative consensus focusing on international political and legal standards that, at the same time, could be connected critically with the more specific perspectives of religious and cultural communities. To be sure, we are far from such an ideal situation. Human rights remain controversial across the various ideological camps throughout the world. Given that this is the case, what are we to do for the time being? Do we have to postpone the implementation of international normative



standards until they are universally acknowledged? Does cultural sensitivity require that we refrain from monitoring human rights and first engage in cross-cultural dialogue?

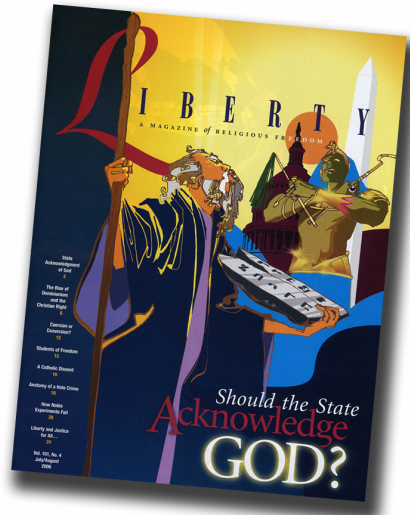
We cannot afford such a strategy in the face of human rights abuses on all continents. Subordinating the monitoring of human rights to cross-cultural dialogue would result in an utterly restricted and biased “dialogue;” it would amount to a betrayal of all those whose voices are brutally silenced. Hence, there is no alternative to doing both simultaneously: implementing the existing standards and engaging in an open discourse about their interpretation and improvement, in the context of different cultural perspectives and changing political needs. What is ultimately required in both human rights and cultural sensitivity is that we learn to listen. We have to listen to the voices of the victims of human rights abuses and cultural imperialism. Human rights advocates have to speak on behalf of those who are silenced. This, however, is not meant to replace their voices, but rather, to make it possible that they can one day speak for themselves.

This article first appeared in the *Human Rights Quarterly* 17.4 (1995) 587-617. It is copyright c 1995 by The Johns Hopkins University Press and is used by permission.

Give the gift of Liberty!

A contribution of just \$7.95 will sponsor a year-long subscription to the oldest and best champion of church-state separation.

Subscribe for yourself or give the gift of *Liberty* to a friend or colleague.



Share your passion for religious freedom today!

NAME

STREET

CITY, STATE, ZIP

AMOUNT ENCLOSED:

PLEASE MAKE CHECKS PAYABLE TO: LIBERTY, 12501 OLD COLUMBIA PIKE, SILVER SPRING, MD 20904
TO PREVIEW THE CURRENT ISSUE, PLEASE VISIT OUR WEBSITE: WWW.LIBERTYMAGAZINE.ORG



FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS: THE SCOPE OF ARTICLE 9 ECHR, TERMINOLOGICAL DISTINCTIONS AND CURRENT LEGAL DIFFICULTIES

LUC GONIN¹

According to its marginal note, Article 9 of the European Convention on Human Rights of 4 November 1950 (hereafter: ECHR) protects “*freedom of thought, conscience and religion*.” This freedom is of highest importance because it concerns and protects the deepest convictions of every human being and those convictions are what make each person unique. The European Court of Human Rights (hereafter: ECtHR) formulated this truth in an elegant way in its famous decision *Kokkinakis v. Greece* (1993):

“As enshrined in Article 9 ..., freedom of thought, conscience and religion 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...”²

It also must be remembered that freedom of religion does not only protect those who have a vibrant faith but also, still in the terms of the ECtHR, “atheists, agnostics, sceptics and the unconcerned.”³ Thus, this human right is essential to defend mankind itself and to prevent States from taking “God in their hands” to impose their views on religion by violence. Indeed, such a development would lead to authoritarianism, or even totalitarianism. History has unfortunately shown in Dachau, Sachsenhausen and Auschwitz how terrible the situation of human beings is when religious freedom is totally despised. Therefore, this human right must be defended with passion.

The ECtHR underlines, too, the central role of freedom of religion when it asserts that it has become, over time, “one of the foundations of a democratic society.”⁴ In addition, it must be recalled here that in a pluralistic society, a society characterized

¹ Luc Gonin has a PhD in Law (University of Geneva) and is Lecturer and Senior Researcher at University of Neuchâtel (Switzerland), Former Legal Adviser for Foreign Affairs (Switzerland). This article is based on a book published by the author *in French* and its content is clearly inspired by some chapters of that monography (Luc Gonin, *La liberté religieuse – La situation juridique au sein du Conseil de l’Europe et en Suisse* [Geneva/Zurich/Basel: Schulthess, 2013]).

² ECtHR, *Kokkinakis v. Greece*, dated 7 May 1993 (application no. 14307/88), § 31.

³ ECtHR, *Kokkinakis v. Greece*, op. cit., no. 2, § 31.

⁴ ECtHR, *Kokkinakis c. Grèce*, op. cit., no. 2, § 31. See also ECtHR, *Leyla Sabih v. Turkey* (Great Chamber), dated 10 November 2005 (application no. 44774/98), § 104.



by transnational flows,⁵ the importance of freedom of religion is bound to grow.⁶ One can therefore only hope that religious freedom becomes a global and actual reality; otherwise, a person's freedom will always be limited, imperfect or even utopian.⁷

The general concept of freedom of religion raises several difficulties which the author would like to analyze in this article. First, its precise scope is not perfectly defined by Article 9 ECDH. Indeed, this provision contains different notions, such as *religion*, but also *belief*, *thought* and *conscience*, and it is sometimes quite hard to clearly distinguish the different types of liberties Article 9 ECHR includes. The first section of this paper will, therefore, attempt to juridically clarify the precise scope of this human right and also to distinguish which activities fall, respectively, under freedom of religion, freedom of belief, freedom of thought and freedom of conscience. This research has to be done since courts—and sometimes authors—tend from time to time to mix situations that should be distinguished from a legal point of view. For the sake of precision, this contribution will also seek to define exactly what a *religious manifestation* is. This question is crucial because it is only such manifestation of religion, or of a belief, that might be, according to Article 9 § 2 ECHR, restricted under certain conditions.

Second, this contribution will focus on another current legal issue related to Article 9 ECHR: the question of the personal scope of this provision. In this section, the author will try to demonstrate why this scope, as currently applied by the ECtHR, is debatable. As will be shown, this problem is especially significant for legal persons: for example, must profit aiming legal persons always be excluded from entitlement to this human right? This contribution will propose a new approach to this specific issue.

Before starting the legal analysis of Article 9 ECHR, it should finally be pointed out that, though this paper focuses on Article 9 ECHR, its findings will by analogy equally be useful for many questions linked to freedom of religion in other international systems of protection of human rights and in national constitutional orders.

1. JURIDICAL CLARIFICATIONS ON THE PRECISE MATERIAL SCOPE OF ARTICLE 9 ECHR AND ITS LEGAL CONSEQUENCES

A. Preliminary remarks

Regarding the material scope of Article 9 ECHR and as mentioned earlier, this disposition concretely refers to the notions of *thought*, *conscience* and *religion* in the

⁵ Luc Gonin, *L'obsolescence de l'Etat moderne – Analyse diachronique et contextuelle à l'exemple de l'Etat français* (Zürich: Schulthess, 2011), 197ff.

⁶ Zimmermann asserts that freedom of religion is “extremely topical” nowadays (Tristan Zimmermann, “L'histoire constitutionnelle de la liberté de conscience et de croyance en Suisse”, *Commentationes Historiae Iuris Helveticae* VIII (2012): 9-82, 81).

⁷ Frowein also underscores the centrality of Article 9 ECHR (Jochen A. Frowein, “Artikel 9 – Glaubensfreiheit”, in *Europäische Menschenrechtskonvention – EMRK-Kommentar*, 2nd edition, ed. Jochen A. Frowein and Wolfgang Peukert [Kehl/Strasbourg/Arlington: N. P. Engel, 1996], 353-360, 353).



first part of the § 1 and to the concept of *belief* in its second part. § 2 is structured so that beliefs enjoy the same protection as religion, since the two terms are placed on the same level.⁸ It must also be noted that due to the semantic richness of the provision, judges have broad interpretive powers in the field of freedom of religion.

Concerning the structure of this section, the concept of *religion* will first be examined because of its fundamental nature for Article 9 ECHR (1.B.). This paper will continue by focusing on the notion of *belief* and related issues (1.C.). It will then try to determine the exact material scope of the concepts of *thought* and of *forum internum* (1.D.). Before discussing the notion of *manifestation* at the end of the section (1.E.), the notion of *conscience* will specifically be discussed (1.E.).

B. The notion of *religion*

In relation to the concept of *religion*, it should first of all be noted that the Court did not wish to give an exact definition of this concept. On the contrary, it explicitly stated in the case *Kimlya v. Russia* (2009) that:

“It is clearly not the Court’s task to decide in abstracto whether or not a body of beliefs and related practices may be considered a ‘religion’ within the meaning of Article 9 of the Convention.”⁹

This statement was made in the context of a dispute concerning the Church of Scientology. This litigation also gave Strasbourg the opportunity to remind European States of two key points of its jurisprudence. First, the Court should only play a role of “subsidiary nature” in the field of human rights and, second, “in the absence of any European consensus on the religious nature” of an association, the regional judges “must rely on the position of the domestic authorities in the matter.”¹⁰ Therefore, it is possible to assert that the ECtHR observes a form of restraint in this area.

However, even though there is no exact judicial definition of the concept of *religion*, Strasbourg has gradually specified the notion’s outlines through its case law. First and foremost, it is clear from the regional jurisprudence that traditional religions benefit from the protection granted by Article 9 ECHR. Believers of the most prevalent forms of Christianity can thus invoke that provision,¹¹ with more or less success according to the exact circumstances of the case, as well as adherents to

⁸ See also Christoph Grabenwarter and Katharina Pabel, *Europäische Menschenrechtskonvention – Ein Studienbuch*, 5th Edition (Münich *et al.*: C. H. Beck *et al.*, 2012), 289.

⁹ ECtHR, *Kimlya et al. v. Russia*, dated 1st October 2009 (applications nos. 76836/01 and 32782/03), § 79.

¹⁰ ECtHR, *Kimlya et al. c. Russie*, *op. cit.*, no. 9, § 79.

¹¹ For a decision concerning Christianity, see ECommHR, *Knudsen v. Norway*, dated 8 March 1985 (application no. 11045/84), 247ff.



Judaism,¹² Hinduism,¹³ Buddhism,¹⁴ Islam¹⁵ or Sikhism.¹⁶

According to regional judicial organs, religious movements with fewer members may also, in many cases, rely on Article 9 ECHR. This is, for example, the case of The Salvation Army.¹⁷ Strasbourg has also analyzed the question in relation to the so-called Unification Church,¹⁸ neo-druidic groups,¹⁹ Jehovah's Witnesses,²⁰ the Church of Scientology,²¹ the Osho movement²² and the "Divine Light Zentrum" association.²³

Moreover, it should be pointed out that if Article 9 ECHR guarantees the right to believe, it equally protects the right not to believe. The European Commission of Human Rights (hereafter: ECommHR) has been examining the issue of atheism, e.g., in its decision *Angelini v. Sweden* (1986).²⁴ Besides, the famous decision *Kokkinakis v. Greece* (1993) states quite clearly that freedom of religion is "also a precious asset for atheists, agnostics, sceptics and the unconcerned."²⁵

It is therefore unquestionable that the term *religion* is broadly interpreted by the regional judges. Such dynamic interpretation is likely due to the importance of this freedom for individuals and society as a whole. Concretely, it seems that religious freedom may be invoked by a spiritual organization as soon as it is part of an identifiable religion. For a religion to be identifiable, that belief must usually possess a kind of confession of faith, have at least general precepts on how the believers are supposed to live and have a form of worship service.²⁶ In other words, the concept of religion reaches its limits when an individual does not sufficiently demonstrate the

¹² For a decision concerning Judaism, see ECommEDH, *D. v. France*, dated 6 December 1983 (application no. 10180/82), 201f.

¹³ For a decision concerning Hinduism, see ECommHR, *ISKCON et al. v. United Kingdom*, dated 8 March 1994 (application no. 20490/92).

¹⁴ For a decision concerning Buddhism, see ECommHR, *X. v. United Kingdom*, dated 20 December 1974 (application no. 5442/72), 41f.

¹⁵ For a decision concerning Islam, see e.g. ECommHR, *Karaduman v. Turkey*, dated 3 May 1993 (application no. 16278/90).

¹⁶ For a decision concerning Sikhs, see ECommHR, *X. v. United Kingdom*, dated 6 March 1982 (application no. 8231/78), 5ff.

¹⁷ ECtHR, *Case of the Moscow Branch of the Salvation Army v. Russia*, dated 5 October 2006 (application no. 72881/01), § 57ff. However, this case was primarily decided on the basis of Article 11 ECHR, this article being "read in the light of Article 9" ECHR (§ 98).

¹⁸ For a decision concerning the Unification Church, see ECommHR, *X. v. Austria*, dated 15 October 1981 (application no. 8652/79), 89ff.

¹⁹ For a decision concerning neo-druidic groups, see ECommHR, *A.R.M. Chappell v. United Kingdom*, dated 14 July 1987 (application no. 12587/86).

²⁰ For a decision concerning Jehovah's Witnesses, see ECtHR, *Kokkinakis v. Greece*, op. cit., no. 2, in part. § 28-50.

²¹ For a decision concerning the Scientology sect, see e.g. ECommHR, *X. and Church of Scientology v. Sweden*, dated 5 May 1979 (application no. 7805/77), 68ff.

²² For a decision concerning the Osho movement, see ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, dated 6 November 2008 (application no. 58911/00), in part. § 67-101.

²³ For a decision concerning the "Divine Light Zentrum" organization, see ECommEHR, *Omkarananda and the Divine Light Zentrum v. Switzerland*, dated 19 March 1981 (application no. 8118/77), 105ff.

²⁴ ECommHR, *Angelini v. Sweden*, dated 3 December 1986 (application no. 10491/83), 41ff.

²⁵ ECtHR, *Kokkinakis v. Greece*, op. cit., no. 2, § 31.

²⁶ Grabenwarter and Pabel, op. cit., no. 8, 292.



existence of a religion of which he wants to derive some rights.²⁷

Concerning the notion of religion, it should also be specified that the existence of religious freedom in the classic sense of the term does not preclude a State from taking, in certain circumstances, measures against religious movements that it considers dangerous in order to ensure individual freedom and to avoid potentially lethal consequences. Surely, in the case *The Christian federation (sic) of Jehovah's Witnesses in France v. France* (2001),²⁸ the judicial authorities in Strasbourg did not have to decide on the “dangerous nature” of Jehovah’s Witnesses because of the litigation’s specificities. Indeed the case concerned legislation *in abstracto* and therefore the applicant association was not able to demonstrate that it was a potential or real victim of a violation within the meaning of Article 34 ECHR.²⁹ However, the ECtHR had to take a more clear position in its decision *Leela Förderkreis EV et al. c. Germany* (2008).³⁰ This second case, which took place over several decades, involved various meditative movements of Indian origin that had been developing since the 1960s in Germany. In 1979, a campaign organized by the authorities was launched to warn the population against such associations, describing them as “sects,” “youth sects,” or also “psycho-sects.”³¹ The authorities warned German citizens that these movements were “destructive,” “pseudo-religious,” and that they also manipulated their members.³²

Many of the movements that were criticized were only partially successful before the German Supreme Court in 2002; thus, the judges in Karlsruhe felt that their qualification as “sect” was not, in this specific case, prohibited by freedom of religion.³³ Therefore, the religious movements affected by the German Supreme Court’s decision sought to assert their rights before the ECtHR, alleging in particular a violation of their religious freedom.³⁴

In this litigation, Strasbourg recognized the existence of an interference with religious freedom, but the judges were of the opinion that this interference was founded on a sufficient legal basis, the German Constitution itself, the *Grundgesetz*. Indeed, this legal text included, amongst others, the obligation for the State to inform the public on matters of public interest.³⁵ The regional judges also took

²⁷ On this topic, see amongst others ECommHR, *X. v. Germany*, dated April 1st 1970 (application no. 4445/70), in part. the Law no. 6 ; ECommHR, *X. v. United Kingdom*, dated 4 October 1977 (application no. 7291/75), p. 55f. See also Francis G. Jacobs, Robin White and Clare Ovey, *The European Convention on Human Rights*, 5th Edition (Oxford: Oxford University Press, 2010), 404.

²⁸ ECtHR, *The Christian Federation (sic) of Jehovah's witnesses in France v. France*, dated 6 November 2001 (application no. 53430/99), in part. the Facts A.

²⁹ ECtHR, *The Christian Federation (sic) of Jehovah's witnesses in France v. France*, op. cit., no. 28, in part. the Law.

³⁰ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22.

³¹ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 7.

³² ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 8.

³³ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 20.

³⁴ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 20.

³⁵ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, in part. § 85-91; see also Jacobs, White and Ovey, op. cit., no. 27, 405.



the view that the local authorities were pursuing legitimate aims under Article 9 § 2 ECHR: protecting public order, public security and freedoms and rights of other persons.³⁶ Finally, a majority of five judges (out of seven) came to the conclusion in this case that the requirement of the necessity of a restriction in a democratic society was also met, in particular due to the emergence within German society of quite a number of new religious or ideological associations which gave rise to societal tensions.³⁷ Faced with this “burning public issue,” the German State was therefore, according to the ECtHR, entitled to take measures to protect, *inter alia*, mental integrity of young people living in its territory.³⁸ It should, however, be pointed out that the judgment of the regional Court also relied on the fact that since 1998 information provided to the public by the German authorities was formulated in a less direct way, avoiding terms which had been prohibited by the *Verfassungsgericht* or which were particularly discriminatory.³⁹

This judgment underlines therefore that, depending on the exact circumstances of a case, the qualification by a State of a “religious organization” as a “sect,” or the use of other pejoratively connoted words by officials is not always prohibited. This is especially true if this assertion is justified by a sufficient legal basis and by a public interest and if it is also necessary in a democratic society in the light of the concrete situation.

In summary, we see that the Court has not given an exact definition of religion. On the contrary, it gave the concept a broad scope of interpretation. However, the Court has carefully considered the notion of religion in some cases, such as *Leela Förderkreis EV et al. c. Germany* (2008) cited above. On this occasion, it clarified which critical adjectives could and could not be used to describe religious movements. In this context, it must be noted that rather severe criticisms of organisations are not always excluded, depending on exact circumstances. Thus, we note that recognition as a religious organization or person does not provide complete protection to those persons, even though this recognition generally ensures a broad defense against the State’s infringements of Article 9 ECHR.

C. The notion of *belief* and related issues

Article 9 § 1 ECHR also protects certain types of beliefs that do not, strictly speaking, derive from a particular religion.⁴⁰ This is explained by the fact that the term *belief* is explicitly used by the Convention in the second part of Article 9 § 1 ECHR. However, such personal convictions do not enjoy protection of this legal provision in all cases. They must, quite the opposite, meet two specific requirements that have been developed by the regional judges.

³⁶ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 94.

³⁷ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 98.

³⁸ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 98.

³⁹ ECtHR, *Leela Förderkreis E.V. et al. v. Germany*, op. cit., no. 22, § 100.

⁴⁰ Grabenwarter and Pabel, op. cit., no. 8, 292.



In order to fall under Article 9 ECHR's scope, a belief must first "attain a certain level of cogency, seriousness, cohesion and importance."⁴¹ Thus, it is impossible to grant the protection guaranteed by religious freedom under Article 9 ECHR to a belief devoid of seriousness or internal consistency. Secondly, the Court stated in the same case, *Campbell and Cosans v. United Kingdom* (1982), that a conviction must also be "worthy of respect in a 'democratic society'" and not be 'incompatible with human dignity.'⁴²

If one feared an overly restrictive interpretation of these two conditions, the Court's case law underlined that this concern was frequently unwarranted. Over the years Strasbourg has, for example, found that it was not impossible for some forms of pacifism to be regarded as beliefs in the sense of Article 9 ECHR;⁴³ the regional judges reached the same conclusion in cases concerning communism⁴⁴ and veganism.⁴⁵ It is important at this point to stress that when it is *the expression* of personal beliefs that is limited, the regional courts will generally examine the dispute under Article 10 ECHR, which protects freedom of expression or, depending on the circumstances, under Article 11 ECHR which guarantees freedom of assembly and association.⁴⁶

However, the Strasbourg judges have on several occasions refused to recognize the required seriousness of a conviction in order to make it fall under Article 9 ECHR's protection. In specific disputes involving language preferences⁴⁷ or beliefs regarding assisted suicide,⁴⁸ they have indicated that these questions do not benefit from the protection of freedom of religion. Regarding euthanasia, the legal specialists specified that:

"The Court does not doubt the firmness of the applicant's views concerning assisted suicide but would observe that not all opinions or convictions constitute beliefs in the sense protected by Article 9 § 1 of the

⁴¹ In this regard, the Court pointed out that: "In its ordinary meaning the word 'convictions,' taken on its own, is not synonymous with the words 'opinions' and 'ideas,' such as are utilised in Article 10 (Article 10) of the Convention, which guarantees freedom of expression; it is more akin to the term 'beliefs' (in the French text: 'convictions') appearing in Article 9 (Article 9) – which guarantees freedom of thought, conscience and religion – and denotes views that attain a certain level of cogency, seriousness, cohesion and importance" (ECtHR, *Campbell and Cosans v. United Kingdom*, dated 25 February 1982 [application nos. 7511/76 and 7743/76], § 36 [our emphasis]). See also Jim Murdoch, Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights – Council of Europe human rights handbooks (Strasbourg: Council of Europe Press, 2012), 16.

⁴² ECtHR, *Campbell and Cosans v. United Kingdom*, op. cit., no. 41, § 36.

⁴³ For a decision concerning pacifism, see e.g. ECommHR, *Arrowsmith v. United Kingdom*, dated 16 May 1977 (application no. 7050/75).

⁴⁴ For a decision regarding communism, see ECommHR, *Hazar, Hazar and Acik v. Turkey*, dated 11 October 1991 (application nos. 16311/90, 16312/90 and 16313/90).

⁴⁵ For a decision concerning veganism, see ECommHR, *C.W. v. United Kingdom*, dated 10 February 1993 (application no. 18187/91), the Law no. 1.

⁴⁶ Murdoch, op. cit., no. 41, 16.

⁴⁷ For a decision concerning language preferences, see ECtHR, *Case "relating to certain aspects of the laws on the use of language in education in Belgium" v. Belgium (merits)* (Great Chamber), dated 23 July 1968 (application nos 1474/62; 1677/62; 1691/62; 1769/63; 1994/63 and 2126/64).

⁴⁸ For a decision concerning assisted suicide and Article 9 ECHR, see ECtHR, *Pretty v. United Kingdom*, dated 29 April 2002 (application no. 2346/02).

Convention.”⁴⁹

Dismissing the position of the appellant, they also affirmed that:

“Her claims do not involve a form of manifestation of a religion or belief, through worship, teaching, practice or observance as described in the second sentence of the first paragraph. As found by the Commission, the term ‘practice’ as employed in Article 9 § 1 does not cover each act which is motivated or influenced by a religion or belief.”⁵⁰

The *X. v. Germany* decision (1981) went in the same direction.⁵¹ In this case, concerning a man’s wish to have his ashes scattered on his plot, the ECommHR explicitly clarified that not “*each act which is motivated by a religion or a belief*” is entitled to Article 9 ECHR’s protection.⁵² In this dispute, the regional judges did not consider that the wish was guaranteed by Article 9 ECHR.⁵³ It must also be specified that in its *Pichon and Sajous v. France* judgment (2001), the Court did not agree that pharmacists were entitled to derive from their personal convictions a refusal to sell the contraceptive pill to three customers in possession of a medical prescription.⁵⁴ It asserted among other things that:

“... as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere.”⁵⁵

These examples show how difficult it is, even with the two conditions specified above, to identify *exactly* which practices resulting from a belief are entitled to Article 9 ECHR’s guarantee and which are not. In this regard, we must admit that we are particularly surprised by the decision of the Court in the case of *Pichon and Sajous v. France* (2001). Indeed, it does not seem at all absurd to imagine that a pharmacist might not want to transmit, due to his own convictions, birth control pills, given the position of some major religions on sex issues. In addition, pharmacies in France are not so rare that one can imagine that a woman seeking such a contraceptive would be faced with a phenomenal challenge should she not obtain it in the first drugstore she enters.

It must also be said that if the issue seems rather minor in the case of a contraceptive pill, one may wonder which attitude the Court would adopt if a pharmacist

⁴⁹ ECtHR, *Pretty v. Royaume-Uni*, op. cit., no. 48, § 82 (our emphasis).

⁵⁰ ECtHR, *Pretty v. Royaume-Uni*, op. cit., no. 48, § 82 (our emphasis). See also Jens Meyer-Ladewig, EMRK – Europäische Menschenrechtskonvention – Handkommentar, 3rd Edition (Baden-Baden/Basel: Nomos, 2011), 232.

⁵¹ ECommHR, *X. v. Germany*, dated 10 March 1981 (application no. 8741/79).

⁵² ECommHR, *X. v. Germany*, op. cit., no. 51, 137.

⁵³ ECommHR, *X. v. Germany*, op. cit., no. 51, 138s.

⁵⁴ ECtHR, *Pichon and Sajous v. France*, dated 2nd October 2001 (application no. 49853/99).

⁵⁵ ECtHR, *Pichon and Sajous v. France*, op. cit., no. 54, the Law.



should refuse to transmit an abortive medication, for reasons of personal beliefs, in a State where this medication can be legally prescribed. The question is as acute for a State which allows, for the purpose of assisted suicide, the prescription of a lethal cocktail.⁵⁶ Hence, it is primarily the exclusion of personal convictions in the professional field that leaves us at the very least skeptical due to the future developments that such a stance involves.⁵⁷

D. The notions of *thought* and *forum internum*

By nature, a thought is immaterial; it is therefore not known to those around you until you express it. The Court aptly expressed this reality in its judgment *Georgian Labour Party v. Georgia* (2008), where it asserted that:

“It considers that an intention to vote for a specific party is essentially a thought confined to the *forum internum* of a voter and its existence cannot be proved or disproved until and unless it has manifested itself through the act of voting...”⁵⁸

Therefore, one could imagine at first sight that protection for freedom of thoughts is actually useless as it primarily relates to the *forum internum* of an individual; that is to say, to an area which the outside world is completely unable to perceive. One cannot, however, assert such uselessness, since by placing freedom of thought in the ECHR, the Convention’s authors have clearly demonstrated their commitment to prohibit any attempt to indoctrinate the European populations.⁵⁹ Thus, no State has the right to impose a specific concept of life through compulsory education provided to its population.⁶⁰ Accordingly, one sees the extent to which freedom of thought and *forum internum* are closely related.⁶¹

The importance of *forum internum*, and thus of freedom of thought, is also emphasized by the very wording of Article 9 § 2 ECHR: this paragraph only allows State restrictions on manifestations of freedom of religion or belief and not on freedom of thought as such.

Regarding case law, the Court did not condemn the existence of a State Church as contrary to freedom of thought, provided that a person may quite easily leave this Church.⁶² In addition, it must be pointed out that it is not only issues of indoctrination in “classical philosophical matters” that are problematic, but also—at least

⁵⁶ On the question of assisted suicide, see e.g. a recent decision by the Court: ECtHR, *Gross v. Switzerland*, dated 14 May 2013 (application no. 67810/10).

⁵⁷ On that topic, see also ECtHR, *Eweida and others v. the United Kingdom*, dated 15 January 2013 (application nos 48420/10; 59842/10; 51671/10 and 36516/10).

⁵⁸ ECtHR, *Georgian Labour Party v. Georgia*, dated 8 July 2008 (application no. 9103/04), § 120 (our emphasis).

⁵⁹ Frohwein, op. cit., no. 7, 368f.

⁶⁰ Grabenwarter and Pabel, op. cit., no. 8, 291.

⁶¹ On the notion of *forum internum*, see also Thierry Obrist and Luc Gonin, “Freedom of Religion and Church Taxes in Europe”, *World Tax Journal* (Amsterdam, Volume 5 – Issue 2 – June 2013): 269-300, 274f.

⁶² ECtHR, *Darby v. Sweden*, dated 23 October 1990 (application no. 11581/85), in part. § 24 (*a contrario*). See also Frohwein, op. cit., no. 7, 369.



potentially—those related to the content of compulsory lessons of sexual education.⁶³ Such disputes should, however, be primarily decided on the basis of Article 2 of Protocol no. 1 of the ECHR (to be read in conjunction with Article 9 ECHR).⁶⁴

The *Riera Blume and others v. Spain* case (1999) raised another interesting issue related to freedom of thought.⁶⁵ In this legal conflict, several people belonged to a sectarian group, the *Centro Esotérico de Investigaciones*, which had managed to completely change the personality of its members. For example, these followers suppressed any contact with their relatives and prostituted themselves on the sect's advice. According to their families, the idea was to raise funds for the religious movement.⁶⁶ For the purpose of subjecting these members "to a process of 'deprogramming' by a psychologist and a psychiatrist at the request of Pro Juventud," an association that fights against sects, these individuals were, with the active support of Spanish authorities, deprived of their liberty for several days.⁶⁷ This case raises serious issues related to freedom of thought, as it concerns the *forum internum* itself of the persons involved; nevertheless, the Court did not consider it necessary to decide the specific question of a possible violation of Article 9 ECHR, since it had already found an unjustified infringement of Article 5 ECHR, a disposition which guarantees everyone's right to liberty and security.⁶⁸ One can somehow regret this situation because it would be interesting to know what stance Strasbourg would have adopted concerning freedom of religion, in this complex case, in relation to the core of Article 9 ECHR.

It appears from the previous development that a State cannot, in general, require a person to reveal his innermost thoughts about the existence and "the right order of things." Accordingly, the Court held in the case *Alexandridis v. Greece* (2008),⁶⁹ that national authorities cannot require a lawyer, while taking an oath, to disclose the fact that he was not a member of the Orthodox Church.⁷⁰ On the contrary, the ECtHR held that it was necessary that the individual had the right:

"...not to be forced to manifest his religion or religious beliefs and not to be compelled to act in a way from which it can be drawn, as a conclusion, that he has—or has not—such beliefs."⁷¹

⁶³ On this topic, see e.g. ECtHR, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, dated 7 December 1976 (application nos 5095/71; 5920/72 and 5926/72), § 53.

⁶⁴ See ECtHR, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, op. cit., no. 63, § 53.

⁶⁵ ECtHR, *Riera Blume and others v. Spain*, dated 14 October 1999 (application no. 37680/97).

⁶⁶ ECtHR, *Riera Blume and others v. Spain*, op. cit., no. 65, § 13.

⁶⁷ ECtHR, *Riera Blume and others v. Spain*, op. cit., no. 65, § 14.

⁶⁸ ECtHR, *Riera Blume and others v. Spain*, op. cit., no. 65, § 35 and 38.

⁶⁹ ECtHR, *Alexandridis v. Greece*, dated 21 February 2008 (application no. 19516/06).

⁷⁰ See also Frédéric Sudre, *Droit européen et international des droits de l'homme*, 10th Edition (Paris : Presses universitaires de France, 2011), 565f.

⁷¹ ECtHR, *Alexandridis v. Greece*, op. cit., no. 69, § 38 (our free translation). The original text states that the applicant has the right : « (...) de ne pas être obligé à manifester sa confession ou ses convictions religieuses et de ne pas être obligé d'agir en sorte qu'on puisse tirer comme conclusion qu'il a – ou n'a pas – de telles convictions ».



Similarly, the ECtHR held in 2010 that a State has no right to demand witnesses, suspects and plaintiffs to swear on the Bible during criminal law procedures; it also ruled that a State is not entitled to force these people to say that they do not belong to the Orthodox Church.⁷² In 1999, the Court was already of the opinion that a State cannot compel members of a national parliament to take an oath on the Bible, in the case *Buscarini and others v. San Marino*.⁷³ In its decision, Strasbourg emphasized *inter alia* that:

“...it would be contradictory to make the exercise of a mandate intended to represent different views of society within Parliament subject to a prior declaration of commitment to a particular set of beliefs.”⁷⁴

In another area, the field of identity documents, the Court did not accept that official pieces of identification forced the citizens of a country to reveal their personal convictions.⁷⁵ On the contrary, such a requirement was not compatible with the right of an individual not to have to make his most intimate views about life known to the public, according to Strasbourg.⁷⁶ The regional judges ruled on this issue in their decision *Sinan Işık v. Turkey* (2010) and pointed out the fact that:

“Since the [identity] card is ... frequently used in everyday life, it constitutes de facto a document requiring the applicant to disclose his religious beliefs against his will every time he uses it.”⁷⁷

These cases highlight how many bridges exist between religious freedom in its traditional sense and freedom of thought. In our view, one should not be surprised beyond measure when one knows that without thought there would be no religion.

However, freedom of thought does not exclude that, in some specific circumstances, an individual might be required to disclose some of his “most intimate aspects.”⁷⁸ As an example, a man who does not wish to serve in the army on grounds of conscientious objection is not entitled to hide behind Article 9 ECHR in order not to reveal his personal thoughts. On the contrary, he must convey enough relevant information so that national authorities can decide knowingly on the merits, or not, of his objection.⁷⁹

The situation is quite similar for persons employed by a public company who want to benefit from special leave due to their specific concepts of life. As Strasbourg

⁷² ECtHR, *Dimitras and others v. Greece*, dated 3 June 2010 (application nos 42837/06; 3237/07; 3269/07; 35793/07 and 6099/08), § 78.

⁷³ ECtHR, *Buscarini and others v. San Marino*, dated 18 February 1999 (application no. 24645/94).

⁷⁴ ECtHR, *Buscarini and others v. San Marino*, op. cit., no. 73, § 39. See also Renata Uitz, *La liberté de religion dans les jurisprudences constitutionnelles et conventionnelles internationales* (Strasbourg : Editions du Conseil de l'Europe, 2008), 45.

⁷⁵ ECtHR, *Sinan Işık v. Turkey*, dated 2 February 2010 (application no. 21924/05).

⁷⁶ Murdoch, op. cit., no. 41, 18f.

⁷⁷ ECtHR, *Sinan Işık v. Turkey*, op. cit., no. 75, § 50.

⁷⁸ ECtHR, *Sinan Işık v. Turkey*, op. cit., no. 75, § 51.

⁷⁹ Murdoch, op. cit., no. 41, 19.



explicitly pointed out in its judgment *Kosteski v. Macedonia* (2006), an employee must, in that case, prove the seriousness of his convictions in order to possibly obtain such a leave.⁸⁰ Otherwise, a State has the right not to respond to his request without committing, thereby, a violation of Article 9 ECHR.⁸¹

In addition, it should be specified that national authorities are entitled to ask about the beliefs of a person, at least in a general way, if these convictions might play a central role in the exercise of a public function. This right is justified by the fact that the State must ensure that there is no severe incompatibility between the said function and candidate's ideological position. Nevertheless, authorities must respect the principle of proportionality in such a case; otherwise, their questions are likely to lead to an unjustified infringement of Article 9 ECHR or of other provisions of the Convention. The *Vögt v. Germany* decision (1995) deals exactly with this issue, even though it should be noted that, due to its specificities, this litigation was mainly discussed in terms of Article 10 and 11 ECHR.⁸² In this case, the ECtHR held that one cannot judge the fact of performing tasks within the Communist Party as incompatible with teaching activities.⁸³ Germany was thus condemned in this dispute involving a teacher who had strong communist convictions. Concretely, this country was sentenced for violation of the applicant's freedom of expression and also for violation of her freedom of assembly and association. Respecting the principle of proportionality is just as essential when parents request that their child be excused from school teaching that deals with religion and philosophical questions. Thus, one cannot expect these parents to expose their private lives and most personal thoughts in detail in order to obtain an exemption for their daughter or son.⁸⁴ Such a disproportionate exposure would lead to a violation of Article 2 of Protocol no. 1, as interpreted in the light of Article 9 ECHR.⁸⁵

E. The notion of *conscience*⁸⁶

Article 9 ECHR explicitly protects the conscience of an individual, a concept which can also be linked to the *forum internum*. For now, a precise definition of this notion is missing at a regional level.⁸⁷ However, one can assert that *conscience* is closely related to the ability of any person to judge for themselves the moral value of human behavior and to possess their own standard of right and wrong.

⁸⁰ ECtHR, *Kosteski v. Macedonia*, dated 13 April 2006 (application no. 55170/00), § 39.

⁸¹ On this topic, see also ECommHR, *N. v. Sweden*, dated 11 October 1984 (application no. 10410/83), 203ff.

⁸² ECtHR, *Vögt v. Germany (Great Chamber)*, dated 26 September 1995 (application no. 17851/91), § 41-68.

⁸³ ECtHR, *Vögt v. Germany (Great Chamber)*, op. cit., no. 82, § 41-68.

⁸⁴ Anne Kühler, *Das Grundrecht der Gewissensfreiheit – Ein Beitrag zum Verständnis von Article 15 der Bundesverfassung unter Berücksichtigung der Praxis des Schweizerischen Bundesgerichts, der EMRK-Organen, des UNO-Menschenrechtsausschusses und im Rechtsvergleich* (Berne: Stämpfli Verlag, 2011), 118.

⁸⁵ ECtHR, *Folgerø and others v. Norway (Great Chamber)*, dated 29 June 2007 (application no. 15472/02), § 100-102.

⁸⁶ This section largely replicates a portion of an article co-authored with Obrist (Obrist, Gonin, op. cit., no. 61, in part. 283ff).

⁸⁷ Kühler, op. cit., no. 84, 104.



Moreover, it should be noted there is a consensus in the European region to estimate that the violation of conscience as part of the *forum internum* is incompatible with Article 9 ECHR.⁸⁸ Indeed, according to § 2 of this provision, no restriction to conscience, as such, is possible; on the contrary and as previously mentioned, it is only the “freedom to manifest one’s religion or beliefs” which might be restricted.⁸⁹ Hence, a State has no right to impose by force its judgment concerning the moral value of human behaviors. In other words, public authorities are not allowed to “act as God,” by trying to modify the “moral weights and measures” of their citizens.⁹⁰ Such intentions, in fact, characterize authoritarian and totalitarian States and, accordingly, are very dangerous for the freedom of individuals.

The situation is much more complex when it comes to the concrete manifestation of this conscience in society. Some authors argue that this manifestation should necessarily enjoy the protection given by Article 9 ECHR, while others defend the opposite view.⁹¹ The difficulty is partly due to the fact that Article 9 § 1 of the Convention only provides a right to “manifest one’s religion or belief.” Scholars defending a dynamic interpretation of Article 9 ECHR believe that people should not give undue emphasis to the legal formulation employed. As a result, these legal experts believe that the said formulation also covers the manifestation of acts which are intimately linked to conscience.⁹² For these authors, such manifestations must therefore enjoy the protection of “freedom of religion,” even though these demonstrations might be, under certain conditions, submitted to restrictions.

The second school of thought considers that such a rewriting of Article 9 § 2 ECHR does not honor the treaty provision. It therefore considers it necessary to renounce such a dynamic interpretation of this disposition and estimates that there is, for now, no right to manifest one’s conscience on the basis of Article 9 ECHR.⁹³ According to these authors, if one were to recognize such a right, it would not be subject to any restriction based on the current formulation of freedom of religion. Such a solution would not be viable because it would lead, in the worst case, to a situation in which any legal obligation might have to yield to conscientious objections.⁹⁴

The judicial organs of the Council of Europe were rather sensitive to the arguments of the latter authors when determining the exact influence of freedom of conscience on human actions. They therefore interpreted religious freedom in this field rather restrictively.⁹⁵ This was, for example, the case in their decision *C. v. the United*

⁸⁸ See e.g. ECtHR, *Kokkinakis v. Greece*, op. cit., no. 2, § 33.

⁸⁹ Our emphasis.

⁹⁰ Meyer-Ladewig, op. cit., no. 50, 229.

⁹¹ For a short presentation of different positions on that legal dispute, see e.g. Kühler, op. cit., no. 84, 105f.

⁹² Leonhard Hammer, *The international Human Right to Freedom of conscience: some suggestions for its development and application* (Burlington: Ashgate Press, 2001), 133ff. and 152ff.

⁹³ Jacobs, White and Ovey, op. cit., no. 27, 410.

⁹⁴ Kühler, op. cit., no. 84, 106 (with various cross-references).

⁹⁵ Kühler, amongst others, has the same opinion (Kühler, op. cit., no. 84, 127).



Kingdom (1983).⁹⁶ In this dispute, a member of the *Quakers* (Religious Society of Friends)—who attach great importance to pacifism—did not want an amount collected from his taxes to be used to fund military research.⁹⁷ The *Quaker* did not agree to pay the entire amount of taxes due because he was not able to obtain a guarantee from the national authorities that the money collected would be used exclusively for peaceful purposes. The English citizen invoked a violation of Article 9 ECHR, arguing that the use of money collected from his taxes for military research was contrary to his freedom of belief and thought. In this case, the ECommHR considered that the refusal to pay taxes is not a manifestation of religion intimately linked to personal beliefs falling under Article 9 ECHR⁹⁸ and it also underscored that a person cannot refuse to abide by legislation in reason of Article 9 § 1 ECHR when the legislation “applies neutrally and generally in the public sphere, without impinging on the freedoms guaranteed by article 9.”⁹⁹ According to the judges, the duty to pay taxes is a general duty which has, in itself, no impact on an individual’s conscience.¹⁰⁰ The ECommHR therefore considered that the appellant could not prove that there had been interference between his rights guaranteed by Article 9 § 1 ECHR and his tax obligations and it dismissed the appeal.¹⁰¹ Hence, we note the rather restrictive stance of Strasbourg judges with this judgment.

Specifically regarding the freedom of conscience of pupils, the ECtHR ruled conflicts arising in this area mainly rely on Article 2 of Protocol no. 1 (interpreted in the light of Article 9 ECHR). For this reason, this point will not be developed here. We simply would like to stress that it is the concept of indoctrination that is at the heart of this issue and that the ECHR’s Grand Chamber had, in 2011, a rather restrictive interpretation of this concept in the *Lautsi v. Italy* case.¹⁰² Specific issues related to religious education are also primarily examined under the same Article 2 of Protocol no. 1. This point will accordingly not be developed in this section either. It should only be pointed out that in this area regional judges did not demonstrate a strong willingness to protect conscience at all costs.¹⁰³

In the field of military duties, it must be specified that for a long time Stras-

⁹⁶ ECommHR, *C. v. the United Kingdom*, dated 15 December 1983 (application no. 10358/83). On that case, see also David Harris *et al.*, *Law of the European Convention on Human Rights*, 2nd Edition (Oxford: Oxford University Press, 2009), 432.

⁹⁷ On this case, see also Obrist, Gonin, *op. cit.*, no. 61, 283.

⁹⁸ ECommHR, *C. v. the United Kingdom*, *op. cit.*, no. 96, 147.

⁹⁹ ECommHR, *C. v. the United Kingdom*, *op. cit.*, no. 96, 147.

¹⁰⁰ The power of taxation is also explicitly recognized by Article 1 of the Protocol no 1. to the ECHR. This disposition states that: “1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. 2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”. See also Thierry Obrist and Luc Gonin, “Grundrechte und Steuerrecht: Unerwartete Interaktionen”, *Jusletter (Switzerland)* (12 March 2012): 1-8, 1ff.

¹⁰¹ ECommHR, *C. v. the United Kingdom*, *op. cit.*, no. 96, 147.

¹⁰² ECtHR, *Lautsi v. Italy (Great Chamber)*, dated 18 March 2011 (application no. 30814/06).

¹⁰³ For a brief introduction on that topic, see e.g. Kühler, *op. cit.*, no. 84, 117ff.



bourg felt that conscientious objectors were not entitled to escape army obligations by invoking Article 9 ECHR.¹⁰⁴ This position was *inter alia* based on Article 4 § 3 lit. b) ECHR, which provides that the following activities are not considered as forced or compulsory labor:

“...service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service.”

Thus, Article 4 ECHR does not consider military service to be incompatible with this legal provision. Its formulation seems also to underline that State authorities are not obliged to recognize a form of conscientious objection in their domestic legal order; on the contrary, this recognition constitutes only an option for Member States. It would be surprising to condemn a nation for violation of Article 9 ECHR in the case of enrollment of an individual despite his conscientious objections, while Article 4 imposes no obligation in this area for countries.

Notwithstanding, the *Bayatyan v. Armenia* judgment (2011) was a turning point in this field.¹⁰⁵ Indeed, using a particularly dynamic interpretation of the treaty disposition, the Court held that:

“...Article 9 does not explicitly refer to a right to conscientious objection. However, it considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person’s conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.... Whether and to what extent objection to military service falls within the ambit of that provision must be assessed in the light of the particular circumstances of the case.”¹⁰⁶

There is, therefore, a significant reversal of case law with this decision, although the concrete issue was decided on the basis of the applicant’s religious convictions and not, strictly speaking, on his “conscience.”¹⁰⁷

The jurisprudential change described above is puzzling for at least two reasons. First, what is the real level of consistency of the ECtHR on issues of freedom of conscience? In fact, the manifestation of conscience cannot, as a rule, be used successfully, but it seems that an important exception is currently emerging in the field of military duties. Second, how can an interpretation of freedom of religion which is fully contrary to Article 4 § 3 b) ECHR be justified from a legal point of view? If obvious societal changes justify this quite dynamic interpretation, why would the

¹⁰⁴ Jacobs, White and Ovey, op. cit., no. 27, 416ff.

¹⁰⁵ ECtHR, *Bayatyan v. Armenia* (Great Chamber), dated 7 July 2011 (application no. 23459/03).

¹⁰⁶ ECtHR, *Bayatyan v. Armenia* (Great Chamber), op. cit., no. 105, § 110 (our emphasis).

¹⁰⁷ ECtHR, *Bayatyan v. Armenia* (Great Chamber), op. cit., no. 105, in part. § 111.



treaty provision itself not be changed by an amendment? Thus, one must criticize this situation for legal reasons, even though he might agree with the actual outcome. Indeed, in order to ensure men's and women's freedom, a society must be governed by laws and not by men. Accordingly, in order to reach a better protection of manifestations of conscience, the European region must, in our view, undertake a rewriting of the Convention itself through the legal procedure provided for this purpose. Any other solution is unworthy of the law.

F. The notion of *manifestation*

Article 9 ECHR does not only aim to protect the internal forum of human beings, but also actions that are closely related to their personal beliefs. This is clearly seen in the text of the treaty provision itself, since its § 1 states that everyone has the right “to manifest his religion or belief, in worship, teaching, practice and observance.” Such “manifestations,” according to the same passage, may take place “either alone or in community with others and in public or private.” These precisions should not surprise the reader beyond measure when one knows that many religious movements conduct public demonstrations of their faith from time to time. In addition, it should be highlighted that the acts referred to in Article 9 § 1 ECHR do not constitute a comprehensive list.¹⁰⁸

However, the notion of *manifestation* within the meaning of Article 9 ECHR does not include all actions which are remotely linked to a religious or a philosophical belief. On the contrary, the ECommHR stated—as early as 1977—that a demonstration of one's convictions “has to have some real [and objective] connection” with these beliefs.¹⁰⁹ In a case involving the distribution of pamphlets against the United Kingdom's military intervention in Northern Ireland, the ECommHR stated in particular that:

“...it has to be determined on the face of the leaflet itself whether or not the contents of that leaflet and the act of its distribution were in fact a manifestation of the belief of pacifism. In fact, the contents of the leaflet and its distribution did not amount to the manifestation of a belief and so did not enjoy the protection of Article 9 (1).”¹¹⁰

Having seen this, it is now possible for us to take a closer look at the various elements referred to in the treaty text (worship, teaching, practice and observance).

Worship, as a manifestation of religious freedom, includes the acts of worship and contemplation as well as sermons and preaching. The question of the number of participants is not decisive; in fact, according to Strasbourg, a service can be celebrated by a single person, by a small group of people or by a large crowd.¹¹¹ With

¹⁰⁸ Grabenwarter and Pabel, op. cit., no. 8, 293.

¹⁰⁹ ECommHR, *Arrowsmith v. the United Kingdom*, op. cit., no. 43, 127.

¹¹⁰ ECommHR, *Arrowsmith v. the United Kingdom*, op. cit., no. 43, 127.

¹¹¹ Grabenwarter and Pabel, op. cit., no. 8, 293 (with various cross-references).



respect to the notion of *teaching*, also mentioned in Article 9 § 1 ECHR, it should be pointed out that this provision does not deal with the question of religious education provided in public schools. This issue actually has to be considered under Article 2 of Protocol no. 1 ECHR. Article 9 § 1 ECHR encompasses any form of catechism taught by a religious group which aims to transmit specific spiritual knowledge.¹¹² This education can also have proselytic overtones since the freedom to manifest one's religion includes, according to the ECtHR:

“... the right to try to convince one's neighbour, for example through ‘teaching,’ failing which, moreover, ‘freedom to change [one's] religion or belief,’ enshrined in Article 9 ..., would be likely to remain a dead letter.”¹¹³

Regarding *practice* and *observance*, these terms encompass religious processions and pilgrimages which are manifestations of religious beliefs since ancient times. According to some authors, ringing church bells is also included in this category, as well as the muezzin's call to prayer.¹¹⁴ The ECtHR had the opportunity to indicate that wearing specific clothing¹¹⁵ like the Islamic veil in some cases¹¹⁶ also fell into this group. The same applies to the observance of certain rules regarding food.¹¹⁷ The ritual slaughter of animals is, likewise, regarded by Strasbourg as the performance of a religious act protected by Article 9 § 1 ECHR. This does however not preclude that such killings, as other religious practices and observances, may be subject to certain conditions.¹¹⁸

Throughout the years, regional judges have nevertheless indicated that various acts are not sufficiently related to philosophical and religious convictions in order to benefit from Article 9 ECHR's protection. Distributing leaflets against abortion in front of a clinic does not, for example, fall into the scope of religious freedom; indeed, according to the ECommHR, these flyers are primarily designed to persuade pregnant women not to abort and do not primarily pursue a religious goal.¹¹⁹ Similarly, refusing to work on a particular day cannot be, in general, regarded as a manifestation of religion within the meaning of Article 9 ECHR.¹²⁰ The refusal to provide a letter of repudiation to an ex-wife can neither be seen as a manifestation of an ex-husband's religious beliefs; this is at least the position of Strasbourg in a

¹¹² Grabenwarter and Pabel, *op. cit.*, no. 8, 293.

¹¹³ ECtHR, *Kokkinakis v. Greece*, *op. cit.*, no. 2, § 31. See also Murdoch, *op. cit.*, no. 41, 22.

¹¹⁴ Grabenwarter and Pabel, *op. cit.*, no. 8, 293.

¹¹⁵ ECtHR, *Ahmet Arslan v. Turkey*, dated 23 February 2010 (application no. 41135/98), § 35.

¹¹⁶ ECtHR, *Leyla Şahin v. Turkey (Great Chamber)*, *op. cit.*, no. 4, § 78.

¹¹⁷ ECtHR, *Jakóbski v. Poland*, dated 7 December 2010 (application no. 18429/06), § 45.

¹¹⁸ ECtHR, *Cha'are shalom ve tsedek v. France (Great Chamber)*, dated 26 June 2000 (application no. 27417/95), § 77ff.

¹¹⁹ ECommHR, *Van den Dungen v. the Netherlands*, dated 22 February 1995 (application no. 22838/93), 150.

¹²⁰ ECtHR, *Kosteski v. Macedonia*, *op. cit.*, no. 80, § 38. See also ECommHR, *Stedman v. the United Kingdom*, dated 9 April 1997 (application no. 29107/95), 104.



case involving a member of the Jewish faith.¹²¹ The ECtHR also stated, in the case *Salonen v. Finland* (1997), that choosing a name for one's child is not, in general, a manifestation of the parent's freedom protected by Article 9 ECHR.¹²² Thus, the conclusion reached is that judicial organs in Alsace seek to strike a balance that seems occasionally quite hard to find.¹²³

2. ENTITLEMENT OF LEGAL PERSONS TO THE FREEDOM OF RELIGION

A. Short Introduction

Historically speaking, freedom of religion has been understood as an individual right for human beings.¹²⁴ As mentioned earlier, this freedom particularly protects the right to believe or not to believe without state interference.¹²⁵ Nevertheless, from the very wording of Article 9 § 1 ECHR, it appears that every person has the right to manifest their freedom of religion "either alone or in community with others." This guarantee also includes a collective aspect which allows a religious organization to invoke it in some instances.¹²⁶ The wording of Article 34 ECHR, which enables any "group of individuals claiming to be the victim of a violation" of a conventional right to appeal to the ECtHR, demonstrates the soundness of this statement. Regarding religious groups basing their action on Article 9 ECHR, one must specify that they can assert their own right to freedom of religion and that they do not have to derive their right, necessarily, from the individual rights of their members.¹²⁷ To date, however, Strasbourg does not consider that profit aiming legal persons or organizations which don't have a religious goal, but an ideal one, are entitled to freedom of religion.¹²⁸

B. Two difficult questions

In the author's view, the current situation regarding legal persons leaves many questions open and is also not entirely satisfactory from a logical and legal point of view. Two areas in particular raise questions: the first one concerns the exclusion *ab initio* of the use of Article 9 ECHR for legal persons pursuing an ideal purpose but not a religious one; the second one relates to profit aiming legal persons which are

¹²¹ ECommHR, *D. v. France*, dated 6 December 1983 (application no. 10180/82), 201f. See also Murdoch, op. cit., no. 41, 22.

¹²² ECtHR, *Salonen v. Finland*, dated 2 July 1997 (application no. 27868/95), the Law no. 2.

¹²³ On the specific problem of "manifestation" of conscience, see above sect. 1.E.

¹²⁴ Grabenwarter and Pabel assert that freedom of religion is a "pure individual right" ("*reines Individualrecht*") (Grabenwarter and Pabel, op. cit., no. 8, 290). See also Andreas Auer, Giorgio Malinverni and Michel Hottelier, *Droit constitutionnel suisse* (vol. II) – Les droits fondamentaux, 2nd Edition (Bern: Stämpfli, 2006), 219ff.

¹²⁵ Grabenwarter and Pabel, op. cit., no. 8, 290.

¹²⁶ Jacobs, White and Ovey, op. cit., no. 27, 409.

¹²⁷ See e.g. ECtHR, *Chârae shalom ve tsedek v. France* (Great Chamber), op. cit., no. 118, § 72.

¹²⁸ Murdoch, op. cit., no. 41, 24f.



also automatically deprived of the protection guaranteed by Article 9 ECHR. We propose to examine the two issues one after another.

- 1) Legal persons pursuing an ideal purpose, but not a religious one, and freedom of religion¹²⁹

As shown previously, Article 9 ECHR does not only protect freedom of religious *stricto sensu*, but also freedom of thought and conscience.¹³⁰ As a reminder, one can define freedom of thought as the prohibition of State indoctrination¹³¹ and prohibition of State discrimination based on someone's personal convictions.¹³² Freedom of conscience protects everyone from a State's unjustified influence when that person has important individual decisions to make. One might wonder whether a non-profit organization, which does not have a main religious goal, but an ideal one, is entitled to invoke its freedom of thought or conscience.¹³³

The ECommHR partially clarified its position on this point in the decision *Verein "Kontakt-Information-Therapie" and Hagen v. Austria* (1988).¹³⁴ In this decision, the applicant was a non-profit association which ran a rehabilitation center for persons suffering from drug addictions. An employee of that association—and the association itself—refused to disclose personal data concerning their clients, arguing that such a disclosure would violate their freedom of conscience.¹³⁵ Strasbourg clearly stated that the recognition of representative status in regards to a legal person only extends to religious belief and does not encompass questions of freedom of conscience.¹³⁶ The ECommHR argued in the following way:

“... the rights primarily invoked, i.e. the right to freedom of conscience under Article 9 of the Convention and the right not to be subjected to degrading treatment or punishment (Article 3), are by their very nature not susceptible of being exercised by a legal person such as a private association. Insofar as Article 9 is concerned, the Commission considers that a distinction must be made in this respect between the freedom of conscience and the freedom of religion, which can also be exercised by a

¹²⁹ This section derives clearly from a precedent publication co-written with Thierry Obrist and has also a highly similar content (Obrist, Gonin, op. cit., no. 61, in part. 291ff).

¹³⁰ See above sect. 1.D. and 1.E.

¹³¹ In the field of education, the prohibition of State indoctrination as a strict limit to the authorities' activities is clearly stated in the *Lautsi* decision issued in 2011 (ECtHR, *Lautsi v. Italy* [Great Chamber], op. cit., no. 102). The Court's Great Chamber asserted in this case that: “*The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that the States must not exceed (...)*” (§ 62).

¹³² Jens Meyer-Ladewig, *Europäische Menschenrechtskonvention: EMRK – Handkommentar*, 3rd Edition (Baden-Baden and Basel: Nomos and Helbing & Lichtenhahn, 2011), 228.

¹³³ On the difficulty to clearly separate religion, thought and conscience, see also Harris *et al.*, op. cit. no. 96, 427.

¹³⁴ ECommHR, *Verein "Kontakt-Information-Therapie" and Hagen v. Austria*, dated 12 October 1988 (application no. 11921/86).

¹³⁵ ECommHR, *Verein "Kontakt-Information-Therapie" and Hagen v. Austria*, op. cit., no. 134, 87.

¹³⁶ Murdoch, op. cit., no. 41, 18.



church as such.”¹³⁷

Accordingly, the ECommHR makes a clear distinction between freedom of religion *stricto sensu* and freedom of conscience in this passage. It is fair to deduce from the quotation that a legal person cannot exercise freedom of conscience but is able to invoke freedom of religion in some cases. It is interesting to note that, according to the regional judges, a legal person may possess religious beliefs, but this person may not have a conscience.

Strasbourg treats in a different way legal persons with religious purposes and other non-profit organizations. While the first category may invoke the freedom of religion guaranteed by Article 9 ECHR, the second one is not entitled to invoke the freedom of conscience guaranteed by the same legal provision. In the author's eyes, this position raises some problems. Indeed, one might wonder how a legal person may have religious beliefs without a conscience. It seems thus that a legal organization's religious beliefs are derived from its statutes (e.g.) and not at all from its potential conscience. It must also be stated here that it is probable that regional judges would adopt a similar argumentation in relation to legal persons' claims based upon freedom of thought. By his very nature, a legal person is not able to have personal and individual thoughts.

Even though one might assert that the position of the ECommHR and of the ECtHR relies on justifiable grounds, such as major differences existing between a human being and a legal person, it must nevertheless be noted that the distinctions between religion and conscience made by the regional judges strain the overall coherence of its jurisprudence in the field of Article 9 ECHR. Indeed, the affirmation of the existence of religious beliefs without a conscience is at the very least questionable.

2) Profit-seeking legal persons and freedom of religion¹³⁸

Concerning the second issue, in various cases the judicial instances in Alsace held that “a corporate profit making body can neither enjoy nor rely on rights defined by Article 9, paragraph 1.”¹³⁹ In the case *Kustannus oy Vapaa ajatteliija ab, Vapaa-ajattelijain liitto — Fritänkarnas förbundry and Kimmo Sundström v. Finland* (1996), three appellants were for example involved: a limited liability corporation, a registered freethinkers' “umbrella association” and, finally, the manager of the corporation.¹⁴⁰ The main objective of the company involved in the legal dispute was to publish and sell books (and other written material), supporting the movement of “freethinkers.”¹⁴¹ The argument was concretely caused by the requirement for the company to pay a

¹³⁷ ECommHR, *Verein “Kontakt-Information-Therapie” and Hagen v. Austria*, op. cit., no. 134, 88 (our emphasis).

¹³⁸ This section also derives clearly from a precedent publication co-written with Thierry Obrist and has a highly similar content (Obrist, Gonin, op. cit., no. 61, 293ff).

¹³⁹ See e.g. ECommHR, *X v. Switzerland*, dated 27 February 1979 (application no. 7865/77).

¹⁴⁰ ECommHR, *Kustannus oy Vapaa ajatteliija ab, Vapaa-ajattelijain liitto — Fritänkarnas förbundry and Kimmo Sundström v. Finland*, dated 15 April 1996 (application no. 20471/92).

¹⁴¹ Murdoch, op. cit., no. 41, 18f.



church tax according to the legal framework of Finland. Domestic Courts expressed the opinion that the appellant was mainly a company pursuing a commercial goal, rather than a religious one or a public utility one, and the ECommHR asserted that:

“The Commission would [...] not exclude that the applicant association is in principle capable of possessing and exercising rights under Article 9 para. 1. However, the complaint now before the Commission merely concerns the obligation of the applicant company to pay taxes reserved for Church activities. The company form may have been a deliberate choice on the part of the applicant association and its branches for the pursuance of part of the freethinkers’ activities. Nevertheless, for the purposes of domestic law this applicant was registered as a corporate body with limited liability. As such it is in principle required by domestic law to pay tax as any other corporate body, regardless of the underlying purpose of its activities ... and irrespective of the final receiver of the tax revenues collected from it.”¹⁴²

Therefore, it is no exaggeration to affirm that legal persons with mainly religious purposes are treated differently from profit-seeking legal persons. Thus, legal persons having mainly commercial purposes are not entitled to claim the benefit of the freedom of religion in Strasbourg at present. In the author’s view, this situation raises an issue. Indeed, the question of entitlement to freedom of religion of profit-seeking legal persons is a really difficult one and cannot be answered in a dogmatic way or only by referring to national legislation. As exposed in an earlier article with Obrist, the author considers that such an entitlement can only be excluded after an in-depth analysis of the concrete circumstances of a case.¹⁴³ Unfortunately, tools for a comprehensive analysis of the issue are currently lacking on a European level since the ECtHR refuses to examine the merits of actions based on Article 9 ECDH from profit-seeking legal persons.

Therefore, the author proposes, still according to the article co-written with Obrist, three factors which must be taken into consideration when trying to answer the complex question of entitlement to freedom of religion of profit-seeking legal persons. First, one must determine whether that legal person primarily has a commercial aim or a religious one. In the author’s view, entitlement to freedom of religion should not be excluded by the mere fact that a legal person is mainly aiming to make a profit. On the contrary, this fact should only constitute one of the factors which guides the judges in their decision to recognize, or not, such an entitlement. Indeed, doing business is rarely neutral, philosophically speaking, and one might easily imagine a private corporation which may, in some situations, truly feel hurt in its religious beliefs. For instance, this could be the case of a merchant of prayer mats

¹⁴² ECommHR, *Kustannus oy Vapaa ajattelija ab, Vapaa-ajattelijain liitto – Fritänkarnas förbundry and Kimmo Sundström v. Finland*, op. cit., no. 140, the Law 1.b.iii (our emphasis).

¹⁴³ Obrist, Gonin, op. cit., no. 61, 294f.



who has to pay (Christian) church taxes in a Western country.

Second, it is essential to take into account the size of the company; that is to say that, in the author's opinion, tribunals must distinguish really small economic entities from rather large ones. Nevertheless, this factor by itself is not decisive, but it is a clue which may be useful in determining the potential rights of an economic entity in the field of religious freedom. For example, if a company employs thousands of employees worldwide it will be really difficult to define its religious beliefs without falling into the realm of fiction. On the other hand, a company owned by one person and employing two or three people might have strong and coherent religious convictions which also largely shape the juridical frame of the legal person. Again, a small family business that sells prayer mats is more likely to invoke a violation of its religious beliefs than a huge multinational company, such as Nestlé, Volkswagen or Citibank, employing tens of thousands of employees with various religious backgrounds. Third, the legal status of the entity is also of significance. In the author's opinion, a legal person is more easily entitled to freedom of religion if that person chooses specific forms of association which, surely, protect the individuals from economical hazards but which are, at the same time, quite compatible with the development of religious beliefs. In this respect, cooperatives and associations are more likely to have a non-exclusive commercial objective than conventional corporations or limited liability companies. In the same context, one can assert that partnerships are closer to the individual partners than a company listed on a stock exchange is to its anonymous and sometimes very numerous shareholders. Indeed, if investors in a legal person opt for a corporation form, this tends to show that non-business related aspects, for example religious questions, play a minor role in the purposes of the legal person. Yet again, the specific legal status and form of a legal person does not allow, by itself, decisive conclusions.

In light of the above, the author asserts that tribunals should not reject claims from profit-seeking legal persons only because they aim at a mainly commercial goal. On the contrary, judicial organs should combine the three factors presented above in the analysis. Indeed, this solution makes most sense from a legal point of view, rather than refusing entitlement without a thorough examination of the concrete situation. However, it must be underlined at this point that no freedom of religion violation may be invoked if the taxpayer is not in good faith. That would be the case, for instance, if an appellant invoked a conventional infringement with the main intention of avoiding church taxes. Thus, in this context, particular attention must also be paid to the principle of good faith.¹⁴⁴

¹⁴⁴ The abuse of law is forbidden through Article 17 ECHR. It should also be specified here that other factors might also be helpful in determining how significant religious questions are for a legal person. For instance, a close reading of its statute may give some guidance concerning its exact sensitivity to faith-related issues, even though it is really rare, currently, to find clear information on this topic in those legal documents, at least in Europe. However, the law under which a company is incorporated may still allow it to indicate its religion in its statutes or by other means.



3. CONCLUSION

This article has demonstrated how extensive the scope of Article 9 ECHR is. Indeed, judicial organs in Strasbourg have developed an important case law which protects not only believers of major religions but also other “identifiable” religions holding a confession of faith, and having at least general precepts on how their followers are supposed to live and a form of worship service. As exposed, atheists are likewise protected in the field of freedom of religion. The scope of Article 9 ECHR also includes beliefs which attain a certain level of cogency, seriousness, cohesion and, finally, importance. In addition and as explained above, every Member State of the Council of Europe must also respect the freedoms of thought and of conscience of individuals. Thus, Article 9 ECHR’s protection clearly exceeds the notion of “religion” *stricto sensu*. This contribution also tried to present which “religious manifestations” benefit from Article 9 ECHR’s guarantee and which ones do not enjoy such favour.

The second aim of this article was to show which terminological distinctions must be made in order to understand ECtHR’s case law—and its nuances—and to recognize specific current legal difficulties. Those distinctions are quite important since, e.g., religious organizations may invoke Article 9 ECHR in some cases, while judicial organs in Strasbourg do not permit legal persons pursuing an ideal purpose, as opposed to a religious one, to invoke Article 9 ECHR. The same applies to profit-seeking legal persons. Thirdly, this paper has tried to propose tools for a comprehensive analysis of interactions between legal persons and Article 9 ECHR. Indeed, in the author’s view, excluding entitlement to freedom of religion to all profit aiming legal persons without exception is not a solution which takes the current diversity of legal situations in that field sufficiently into account.

Thus, it will be of great interest to see how ECtHR’s case law evolves in the next few years in the field of freedom of religion, especially because of the increasingly diverse population of the European region.



MIGRATION, QUEST OF FREEDOM, AND THE NEW FACE OF GLOBAL CHRISTIANITY: A JOURNEY IN UNITY AMONG CHRISTIAN FAITH TRADITIONS

WESLEY GRANBERG-MICHAELSON¹

When the World Council of Churches' Central Committee, its governing body, meets in Geneva, members are housed in hotels near the Ecumenical Center. A few years ago we stayed at the Ramada Park Hotel, not far from the airport and the WCC's offices. While the plenary sessions of the 150-member Central Committee were held at the Center, various other committees and working groups met at the hotel. I drove a rental car and would find a parking space on streets two or three blocks away from the Ramada.

On one occasion, after endless committee meetings dealing with budget deficits, structural reorganization proposals, reports of program activities, theological discussions on baptism, and reports on urgent human rights conflicts around the world, I was walking wearily from my car to the hotel. Suddenly sounds of boisterous singing, music, and worship broke through the quiet, sedate Geneva neighborhood. The sounds came from a community hall, a small building used for various functions and gatherings, just a block behind the Ramada Park Hotel. Curious, I wandered closer. A group of African immigrant Christians was engaged in a vibrant, spiritually exuberant worship service.

¹ Wesley Granberg-Michaelson served as General Secretary of the Reformed Church in America for 17 years from 1994 to 2011. Previously he held the position of Director of Church and Society at the World Council of Churches in Geneva. Earlier in his career he served as the Legislative Assistant to US Senator Mark O Hatfield, and then as the Managing Editor of *Sojourners* magazine when it was founded. He played a leading role in establishing Christian Churches Together in the USA, and presently helps guide the development of the Global Christian Forum.

Over the course of his ministry his ecumenical work has taken him to all corners of the world. He is the author of *Underexpected Destinations: An Evangelical Pilgrimage to World Christianity and Leadership from Inside Out: Spirituality and Organizational Change*, as well as four other earlier books. His numerous magazine articles have appeared in *Sojourners*, *Christian Century*, *Christianity Today*, *The Church Herald*, *Ecumenical Review*, and other publications. In the fall of 2012, Granberg-Michaelson was appointed as a Distinguished Visiting Scholar at the John W Kluge Center of the Library of Congress. While there he researched and wrote his latest book, *From Times Square to Timbuktu: The Post-Christian West Meets the Non-Western Church* (Eerdmans Publishing, released in the fall of 2013). The book deals with the effects of the shift in world Christianity to the global South and the impact of global migration on congregational life and society in the global North. It was chosen to be part of the 2013 National Book Festival in Washington DC.

Granberg-Michaelson is a graduate of Hope College and Western Theological Seminary, both in Holland, Michigan, and was ordained as a Minister of Word and Sacrament in the Reformed Church in America in 1984. Presently he serves as the Ecumenical Advisor to the Reformed Church in America as well as playing a role in speaking and consulting to church organizations. He also serves today on the governing boards of *Sojourners*, the National Council of Churches (USA), Christian Churches Together in the USA, Church Innovations, and the Global Christian Forum. His wife, Karin Granberg-Michaelson is an ordained minister in the Reformed Church in America, and they have two children. Wes and Karin make their home in Grand Rapids, Michigan.



In cities throughout Europe and North America, thousands of congregations like this one flourish today. Often, they are off of our ecclesiological radar even when they may be in the next block. My colleagues in the WCC, like me, had no idea that a group of African Christians was worshipping within a block of their comfortable hotel. Many would be surprised to learn that such congregations even existed in Geneva and elsewhere. They aren't identified on the ecumenical map.

At the same time, those African Christians, who through various pathways found themselves in Geneva and gravitated to this congregation, could not imagine that the World Council of Churches was meeting a block away. More precisely, most would have little if any idea of what the World Council of Churches is, or that it exists to nurture Christian unity throughout the world.

That accidental encounter made a lasting impression on my ecumenical journey. At the time I knew little about the presence of such congregations, comprised of those who were strangers and sojourners in cities like Geneva, New York, Chicago, and even Grand Rapids, Michigan. As I walked away from that community hall into another WCC committee meeting in the hotel, I sensed moving from one religious world into another. Though only a block apart, they were separated by a vast cultural, spiritual, and theological divide. Unaware even of each other's existence, it was hard to know how to even think about building a bridge.

Yet, another impression began to form. The gap between the churches of the global North and the global South, which had become a focus of my work in ecumenical travels throughout the world, was immediately at hand, encountered when parking my car. These major divisions in world Christianity were at our doorstep. Building a bridge between the churches of the global North, steeped in the tradition and catholicity of the Christian faith, and those of the global South, infused with a focused, contextual spiritual energy producing vital growth, could begin in the places I have called home—Chicago, Geneva, Washington DC, New York, and even Grand Rapids.

Migration is transforming the religious life of Europe and North America. This has long historical precedent, of course. Religious migrants have shaped the history of Christianity in the United States. But attention needs to be focused on how that reality is continuing today, in ways often not fully understood or appreciated. The influx of immigrants particularly since 1965 has now made the United States the most religiously diverse country in the world.²

Commonly we view immigration as introducing large numbers of non-Christian religions into US society. Important scholars like Diana Eck have documented the fascinating increase in religious practice in the United States, particularly in her classic work, *A New Religious America*,³ and the Pluralism Project at Harvard Univer-

² Jehu Hanciles, *Beyond Christendom: Globalization, African Migration, and the Transformation of the West* (Orbis Books, Maryknoll, New York, 2008), 7.

³ Diana Eck, *A New Religious America: How a "Christian Country" Has Now Become the World's Most Religiously Diverse Nation* (Harper, San Francisco, 2001).



sity. Certainly stories abound about mosques springing up in cities once considered part of an American “Christendom.” In 2010, the number of mosques in the US increased to 2,106, from 1,209 a decade earlier.⁴

Buddhist religious practice seems almost commonplace in various regions. While accurate estimates of the number of Buddhists in the US are difficult to obtain, they probably total between one to two percent of the population. But the US is the top destination for the world’s migrant Buddhists, including over half a million from Vietnam.

Hindu temples and retreat centers now appear throughout the American religious landscape. Immigration from Asian countries in recent decades also has dramatically increased the number of Hindus in the US, including over one million from India, for a total US Hindu population of about 2.29 million, but less than one percent of US residents.⁵

Yet, popular assumptions about the impact of immigration on non-Christian religious practice in the US disregard more fundamental realities. In fact, immigration to the US is having its most dramatic religious effects on the Christian population of the country. That is because, first of all, an estimated 60 percent of all present immigrants arriving in the United States are Christian.⁶ Moreover, many come with practices, traditions, and expressions of their faith that have been shaped in a non-Western context. They bring understandings and styles of Christian practice which often seem foreign to long-established traditions. As the introduction to a major study on religion and these new immigrants, states:

“Even though significant numbers of new immigrants are Christian, they are expressing their Christianity in languages, customs, and independent churches that are barely recognizable, and often controversial, for European-ancestry Catholics and Protestants.”⁷

These new Christian immigrants will have a dramatic effect on America’s future religious life in ways that already are beginning to be experienced. Consider this. According to the 1990 Census, 19.7 million people living in the US were born in another country.⁸ By 2010, there were 43 million foreign born residents in the United States, or one of out every five international migrants alive in the world. Of these, 74 percent were Christian, 5 percent were Muslim, 4 percent were Buddhist,

⁴ “Number of Mosques up 74% since 2000” *USA Today*, February 29, 2012: <http://usatoday30.usatoday.com/news/religion/story/2012-02-29/islamic-worship-growth-us/53298792/1>.

⁵ “So, How Many Hindus are there in the U.S.,” *Hinduism Today*, January/February/March, 2008, p 61. Also see David Briggs, “Hindu Americans: The Surprising, Hidden Population Trends of Hinduism in the U.S.,” *The Huffington Post*, April 28, 2011: http://www.huffingtonpost.com/david-briggs/first-hindu-census-reveal_b_853758.html.

⁶ Hanciles, *Beyond Christendom*, 7.

⁷ Helen Rose Ebaugh and Janet Stalzman Chafetz, *Religion and the New Immigrants: Continuities and Adaptations in Immigrant Congregations* (AltaMira Press, Walnut Creek, California, 2000), 14.

⁸ Ibid 13.



and 3 percent were Hindu.⁹ While those proportions will shift somewhat in the future, the overwhelming reality is that immigration to the United States is having major effects on the Christian population in the country. A strong argument can be made, for instance, that the growing percentage of those who classify themselves as having no religious affiliation in the US—now at 20 percent—would be higher were it not for immigration.

An estimated 214 million people in the world today are migrants, living in a country different from where they were born. Nearly half of these migrants are Christians—about 105 million, far more than the proportion of Christians in the world, which is about 33 percent. And for these Christians who are on the move, the United States is their chief destination, presently accounting for about 32 million, or 13 percent of the Christian community in the US. That percentage will continue to rise. These new immigrant Christians are changing America's religious landscape. Despite the growing religious pluralism in the United States, the dramatic, ongoing story of religious migration to this country will be revealed keenly in the contours of American Christianity.

Not only do the numbers of Christian migrants to the United States tell this story; it is also told by the intensity of their belief and religious practice. Jehu Hanciles, a native of Sierra Leone who now is Chair of World Christianity at the Chandler School of Theology in Atlanta, has done pioneering studies of non-Western Christianity. His book *Beyond Christendom: Globalization, African Migration, and the Transformation of the West*¹⁰ is a masterful, deeply researched presentation focusing particularly on the effects of South—North migration, and the missiological significance of African migration to the US. The life and witness of 70 African immigrant congregations in six US cities was also examined. At one point Hanciles observes:

“Certainly, the vigorous growth of immigrant churches and congregations in metropolitan centers throughout the country over the last three to four decades suggests that they represent the most dynamic and thriving centers of Christian faith in America.”¹¹

In Europe, the impact of migrant churches on religious life is even more dramatic. On any Sunday in London it is estimated that more non-white groups are attending church services—58 percent—than traditional English white church-goers.¹² Similar situations are found in Amsterdam, Brussels and other major metropolitan areas. Hamburg, Germany, for instance, has 60 African congregations and an African Christian Council. The Protestant Church in the Netherlands supports an orga-

⁹ This information is found in the Global Migration and Religion Database, a project of the Pew Forum and Religion and Public Life. An interpretative article, “Faith on the Move: The Religious Affiliation of International Migrants” was released on March 8, 2012, and can be found at: <http://www.pewforum.org/geography/religious-migration-exec.aspx>.

¹⁰ Hanciles, *Beyond Christendom*.

¹¹ Ibid 286.

¹² Ibid 128.



nization called *Samen Kirk in Nederland* which links together 67 migrant churches.

The Federation of Evangelical Religious Entities in Spain finds 30 percent of its membership from immigrant groups originating in Latin America and Africa.¹³ And in Geneva, where I first encountered that African immigrant congregation, I subsequently learned that there are about 70 congregations of migrants linked together in a fellowship called Witnessing Together in Geneva. These developments, and especially the immigration of African Christians to Europe, actually have been studied longer and in far greater depth than similar movements in the US.¹⁴

Global trends will insure that migration, particularly from the South to the North as well as from the East to the West, will be a growing part of the world's future. In our world the richest one percent has a total income equal to that of the poorest 57 percent. Economic conditions as well as social conflicts will continue to produce pressure for people to migrate from relatively impoverished countries to more affluent countries. Some have no choice but to be on the move, fleeing persecution or war. As has always been true, many moving from one country to another are seeking religious freedom. Others seek temporary sojourns for educational or employment opportunities. Many more make permanent new homes.

Further, the majority of those on the move will continue to be Christian. And if, in fact, every Christian migrant is a potential missionary, we are witnessing a major, non-Western missionary movement in the world. Think of it this way. As the West becomes post-Christian, non-Western Christianity is coming to the West.

As Western culture becomes increasingly secular and post-Christian, the urgent need is for a genuine pluralism to develop, where voices and practices of Christians (as well as those of other faiths) that are rooted in an alternative spiritual vision from the prevailing culture are respected and engaged in public discourse, and make a contribution in shaping the common good of society. Christians whose roots of faith and life developed outside of the West, and now have migrated there, will become particularly critical to the development of such a genuine pluralism.

How existing congregations in societies shaped and molded by Western Christianity, and now becoming increasingly secularized, respond to Christian immigrants now living in their midst will be decisive for the future shape of Christian witness. Even more, this is where the major divisions of world Christianity, which now tear

¹³ Frieder Ludwig and J Kwabena Asamoah-Gyadu (ed), *African Christian Presence in the West: New Immigrant Congregations and Transnational Networks in North America and Europe*, (African World Press, Trenton, New Jersey, 2011), 7. This recent, outstanding volume of essays originated from a conference on this topic held at Luther Seminary in 2007.

¹⁴ See Gerrie ter Haar, *Halfway to Paradise: African Christians in Europe* (Cardiff Academic Press, Cardiff, 1998). This excellent account has since been followed by other essays by Gerrie ter Haar and the volume by Ludwig and Asamoah, *African Christian Presence in the West*, cited above. Pages 8-10 in the introduction to their book includes an impressive description of the various conferences and research efforts centering on the religious dimensions of immigration to Europe from Africa, and the book contains five cases studies from Europe. In a similar way, Afe Adogame, Roswith Gerloff, and Klaus Hock, *Christianity in Africa and the Africa Diaspora* (Continuum International Publishing Group, London, 2008) includes seven essays covering examples of the Africa Christian Diaspora in Europe.



the members of the global body of Christ asunder, and keep them in isolation from one another, can find hope for healing and a rediscovery of the unity given as God's gift. As in the past, when the modern ecumenical movement has its beginning, a fresh and discerning understanding of how God's mission is working in the world today can be the portal for grasping anew the radical, demanding, but life-giving call to Christian unity.

We are, beyond any doubt, at one of those hinge points in Christian history. When the Gutenberg Bible was printed, its eventual consequences were unimaginable. But the last five centuries have witnessed democratized expressions of Christian faith that have changed practices and spread experiences through the myriad languages and cultures of the modern world.

Now an equally profound movement is occurring as the rising centers of Christian vitality have become detached geographically and culturally from the places in the North and the West which for so long have been Christianity's dominant, comfortable home. We can project the demographic features of this future. That alone is stunning. But it's far more difficult, and more decisive, to ascertain the spiritual, theological, and ecclesiological features of this future. Such discernment, however, is essential if the Body of Christ, in the new, incarnationally inspired clothing of world Christianity, is to serve as God's intended vehicle for the world's healing, reconciliation and salvation.



MORE THAN LIBERTY, RIGHTS, AND RESPECT: CHRISTIAN PERSPECTIVES ON HUMAN DIGNITY

GANOUNE DIOP¹

I. INTRODUCTION

This article attempts to identify the foundations for the worth and value of every human person that would justify the mobilization of countless people of good will to secure freedom, justice and peace for all. It aims to foster conversation and cooperation between religions and secular ideologies. It postulates that dignity, even though regarded in some postmodern contexts with suspicion as another tool for power and control,² remains the best foundation for relating to people, treating them with respect and honor. The human person is irreducible to being an object. Dignity is in our view the bedrock for what it means to be human and humane. It has been convincingly demonstrated that the issue of human dignity is not to be confined to a religious arena.³ Significant contributions have shown that human dignity “can be understood nonreligiously and applied universally because it is a feature

¹ Professor Ganoune Diop, PhD, is the Representative of the SDA Church at the United Nations in New York and Geneva. He is also the Associate Director of the Public Affairs and Religious Liberty Department (PARL) at the Seventh-day Adventist Church world headquarters. He extensively works to foster mutual understanding between Christian faith traditions and other world religions and philosophies. He regularly trains leaders in capacity building in reference to peace, justice, and human rights: the pillars of the United Nations. One of his main functions is to introduce the Adventist faith tradition to leaders of each country. He is executive editor of *Religious Freedom World Report* and executive editor of *Fides et Libertas*.

² Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca and London: Cornell University Press, 2013), XIII, postulates “The increasing use by advocates of the language of ‘dignity’ to anchor human rights can be understood as an attempt to hold ground in the face of eroding authority....” He later in his book intimates that “the protection of human dignity can lead us in various directions, many of which are paternal and conservative” 159. In his context Schopenhauer advanced a radical view of dignity when he wrote: “That expression dignity of man, once uttered by Kant, afterward became the shibboleth of all the perplexed and empty-headed moralists who concealed behind that imposing expression their lack of any real basis of morals, or at any rate, of one that had any meaning. They cunningly counted on the fact that their readers would be glad to see themselves invested with such a dignity and accordingly be quite satisfied with it.” For another author, dignity is a pompous façade, flattering to our self-esteem but without any genuine substance behind it. Furthermore, it is said to be redundant at best—any content it has comes from another value, autonomy. (See Michael Rosen, *Dignity: Its History and Meaning* (Cambridge, MA: Harvard University Press, 2012), 178. The right to challenge the legitimacy of either human rights or human dignity is more certainly an inherent right legitimized by the concept and reality of human rights itself.

³ Christiaan W J M Alting von Geusau, *Human Dignity and the Law in Post-War Europe: Roots and Reality of an Ambiguous Concept* (Oisterwijk, The Netherlands: Wolf Legal Publishers, 2013), 6-7, traces two main philosophical roots. He writes: “The two main schools of thought having shaped the development of dignity in its legal framework in post-War Europe are the Christian tradition with its revival of natural law thinking on the one hand, and enlightenment rationalism inspired by Kantian thought and its further development in post-War Europe on the other hand.)



of human personhood.”⁴ One can understand and describe human dignity in strictly secular terms as a purely secular concept; however, it would be a loss not to explore the various “harmonics” it displays in religious thought. In a multipolar world of ideas, the trajectories considered in this article focus on perspectives from Judeo-Christian traditions. In this configuration, despite numerous valuable contributions, conceptual clarification is needed as to the foundation of human dignity itself. But first, a conversation about various contributions to the current fabric of our society woven with multifaceted threads will provide our topic a context that shows its relevance.

A. Our Current Context

Our contemporary world has been indelibly and in various ways shaped by what could be termed “the Enlightenment Project.” This movement in human history and experience has given more chances, some would argue, to civil peace, especially subsequent to the wars of religions that have punctuated the history of the West since the Reformation. Characteristic to this new era is the fact that a theocentric philosophy has been replaced in most Western countries by models of institutions informed by the concept of individual liberties. The neutrality of the state has the vocation to guarantee pluralism of opinions and attitudes.⁵ As a result of this shift to a more anthropocentric approach to reality, the landscape of civil society has so changed that Christians in Europe, for example, are now claiming a minority status, advocating minority rights not just for others but also for themselves. This obviously does not mean in any way that religion is no longer a player in the public square. The relationship between the religious phenomena and secularism must be nuanced in light of its complexity and variety of models depending on the country studied.

In the international arena, among the gains brought by the “Enlightenment Project” are the concepts of human rights and universal justice, and the developing idea of a “right to peace.” Widespread agreements on climate change and global warming are now part of the fabric of what matters to people and nations.

The reality of an International Court of Justice and a Permanent International Criminal Court are part of a global consciousness for ethical and moral values shared by most humans.

The idea of “crime against humanity,” itself associated with an Enlightenment concept (even though such concepts are found in the writings of biblical 8th century prophets such as Amos), is increasingly considered as a global taboo. The reality and ills of wars, ethnic and politico-religious conflicts, the intolerable sight of child soldiers current in many regions of the world, and child trafficking—even though

⁴ Ari Kohen, “An Overlapping Consensus on Human Rights and Human Dignity.” In *Human Rights at the Crossroads*, Ed. Mark Goodale (Oxford: Oxford University Press, 2013), 61.

⁵ Philippe Portier. L’essence religieuse de la modernité politique. Éléments pour un renouvellement de la théorie de la laïcité. In Jacqueline Lacrée et Philippe Portier. *La modernité contre la religion? Pour une nouvelle approche de la laïcité* (Rennes: Presses Universitaires de Rennes, 2010), 8.



still part of the world landscape—are resisted and vigorously fought by numerous governmental and non-governmental organizations.

The increased impact of the adoption of global moral values gives an opportunity to assess the specific contribution of the Christian faith to make this world a better place for all.

B. Christians' Core Rationale for Liberty, Rights, and Respect

One of the richest images about the church is that it is the body of Christ. The church is not a mere non-governmental organization. Whatever the church is involved in is based on a spiritual worldview that is biblically based, Christ-centered, and Holy Spirit-driven, to the glory of God and for the good of His creation.

Engagement with any aspect of reality whether social, political, legal, economic, judicial or any other sphere, can best reflect a Christian endeavor when it is clearly founded on and informed by a biblical worldview.

The Christian rationale and motivation to engage and serve in the public square is deeper than mere religious freedom, freedom of conscience or of belief, though these rights recognized by the international community are necessary and wholeheartedly embraced. There are literally hundreds of organizations, NGOs in particular, who put forward significant effort and resources, working selflessly and with great sacrifice to promote, protect, and defend freedom of religion or belief. There is, however, more to the story for Christians.

People of all philosophies or religious persuasions affirm human dignity based on various premises. Christians believe that there is more that needs to be brought to the public square.

Before specifying the nature of the multifaceted contributions to the wellbeing of civil society, it may be worthwhile to highlight the values that seem to motivate people and nations to work together to make our world a better place.

A fitting place to take the pulse of what matters most to people around the world is the forum of the pillars of the United Nations.

The three pillars are the following:

1. Peace and security,
2. Justice and development, and
3. Human rights in terms of individual liberty, personal equality, and human dignity.

The concept of individual liberty can be further expanded to include freedom from want, freedom from fear and freedom to live in dignity.

Violations of any of these pillars disrupt the dignity of human beings and erode the chances for social peaceful co-existence and cohesion. They deprive humans of the opportunity to live decently with dignity.

Violations of human rights have one common denominator: the ignorance, neg-



ligence or refusal to accept and affirm the dignity of every person.

The Millennium Development Goals, as tools, can also function as a thermometer of what matters to people in today's world. Their implementation certainly functions as an antidote against the ills and woes of humanity. As a reminder they are the following:

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

Key among what matters to people and nations are protection of every person's life, health, education, equality including gender equality, development and environmental sustainability.

The global community has taken enormous and noteworthy steps in having crafted significant instruments to promote a global culture of rights. There is no lack of international conventions, agreements, covenants and treaties (bilateral treaties, multi-bilateral treaties, and multilateral treaties) that show the importance of human rights in general and freedom of religion or belief in particular. However, the question still remains to be addressed anew: What are the foundations for human rights?

Beneath the justification for the need for peace and security, the need for justice and development, the acknowledgment, advocacy, promotion and protection of human rights, there is a dimension of freedom of conscience and belief that is worth underlining: a concept that is given a unique perspective in the Judeo-Christian Scriptures and traditions—human dignity. Human dignity is the foundation for freedom, for solidarity among all the people of the human race, and for caring responsibility for the environment entrusted to us with a view of preserving its resources for all to share.

II. HUMAN DIGNITY AS A FOUNDATION FOR HUMAN RIGHTS

Peoples from various religious and philosophical backgrounds and persuasions share the belief that the foundation for human rights resides in the dignity of every human person. The importance of human dignity is a given when we observe that it is assumed and evoked as justification for the founding document on human rights:

“The idea of dignity is to the fore in human rights documents. The Preamble of the United Nations Declaration of Human Rights begins by



saying that ‘the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’⁶

The concept of human dignity has drawn considerable attention from cross-disciplinary studies and practices. However, even though the human family has benefited from the competence of many people in various domains of expertise: scientists, ethicists, legislators, lawyers, economists, medical doctors, philosophers, theologians and others, the fact is that from bioethics to court decisions, opinions vary as to the foundations for human dignity.

For many, the issue is not only to live but also to die in dignity. So-called pro-life advocates hotly debate what that means. Moreover, is human dignity innate or is it a virtue granted dependent on merits?

The issue of human dignity informs opinions about stem cell research. Should stem cell research be limited to therapeutic goals or reproductive purposes? Article 11 of the UNESCO conference in the “Universal Declaration on the Human Genome and Human Rights” in 1997 states that, “Practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted.”⁷

A jurisprudential approach has influenced several debates on human dignity. But even here clarity of thinking is needed.

“It has been an important aspect of decisions in many cases, and numerous constitutional rights or interests have been aligned with human dignity in the last fifty-eight years. Nevertheless, no organizing jurisprudence is yet discernable. An increasingly significant constitutional precept, in fact, has grown with little guidance or refinement. It is a broadly based principle, somewhat less restrained than other doctrines. Indeed, it is ultimately intertwined with much of our juristic thinking about civil and political rights and freedoms and is, therefore, more eclectic at its base, more amorphous in nature and content, but more ubiquitous in import and use than any other constitutional principle.”⁸

In politics, even democracy is essentially inseparable from the concept of human dignity.

Social justice, an incontrovertible component of what matters most to our global consciousness, “is more than an equitable distribution of wealth and a matter

⁶ Roger Trigg, *Equality, Freedom, and Religion* (Oxford: Oxford University Press, 2012), 28.

⁷ Joe M Kapolyo, *The Human Condition: Christian Perspectives through African Eyes* (Carlisle, Cumbria, UK: Langham Global Library, 2013), 6-7, contends that the UNESCO conference declaration is “by and large the position of most of the scientific community, and all the countries of the world agree with this Declaration, which prohibits the realization of a scientific possibility that is ethically unacceptable.”

⁸ Jordan J Paust, “Human Dignity as a Constitutional Right: A Jurisprudential Based Inquiry in Criteria and Content,” *The Social Science Research Network Electronic Paper Collection*, University of Houston Public Law and Legal Theory Series 2012-A-2, 150.



of public policy and spending. It is an issue of human dignity and human rights.”⁹

The root cause of suffering—the dehumanization and exploitation of the vulnerable and defenseless, the greed that systematically and systemically causes deprivation of basic subsistence to the poor, the use and abuses of women and children, the de-sacralization of human bodies reduced to objects of pleasure and disposables—all have the same root, that of despising the truth of the infinite value and worth of every human person, in essence the dignity of every person.

The divisions, hostilities, tribal conflicts, and rivalries for the control of resources at local, regional, and global levels, the search for power to dominate others and use them for one’s own interest, and the wars that inflict incalculable pain and suffering to millions of people on planet earth are all expressions of this one evil: refusal to recognize and respect the dignity of every person.

In the African context it has been perceptively noticed “all being said, Africa works to promote new socio-cultural structures. We think that the real issue is about individual dignity which is necessary to reflect upon and be respected.”¹⁰

When humans give in to violence and are addicted to power, there is no end to indignity. There is, therefore, the need to develop a culture not only of human rights but more deeply a culture of upholding, promoting, and protecting human dignity.

Every people group faces this single challenge that determines the course of every relationship. A critical question of utmost importance is the following: How can the concept of human dignity and its implications for justice and peace be integrated into the very fabric of how people think, act, and relate to one another? Success in this area could reverse several dysfunctions within society.

The gains will be considerable: the respect of common space will lead all people of good will to participate in creating a welcoming environment for the sake of the common good. Development for the sake of others, and eradication of corruption and its root, greed, will become a reality for a battered world where the poor paradoxically reside in the midst of enormous wealth and natural resources. The riches of African soil and the widespread poverty on this continent are a sad illustration of this paradox.

To improve the living conditions of millions of people around the globe, an impressive number of organizations and agencies works to inform persons and groups about their rights. These contributions of people from various fields of study bring

⁹ Petro Nikken, “Social Justice in the Inter-American System of Human Rights: An Approach,” in Ida Lintel, Antoine Buyse and Bianne McGonigle Leyh (eds.). *Defending Human Rights: Tools for Social Justice*. Volume in honor of Freid van Hoof at the occasion of his valedictory lecture and the 30th anniversary of the Netherlands Institute of Human Rights (Cambridge: Intersentia, 2012), specifies that “social justice can be related to a society organized fairly, which implies that its members can live and interact in a manner consistent with the dignity of the human person. Social justice requires that everyone has not only virtual but actual access to individual and social goods which are contained in human rights, in particular life, liberty, security, justice, participation in public affairs, work and a decent standard of living, which includes minimum levels of education, health and so on.”

¹⁰ Gabriel Ndinga, “De la dignité individuelle en Afrique.” *In Dignité humaine en Afrique: Hommage à Henri De Decker* (Yaoundé, Cameroun: Presses de l’UCAC, 1996), 81.



awareness to the human family about their rights and at the same time their duties or responsibilities.

A multidisciplinary approach and collaboration are warranted to concretely address the various challenges connected to the issue of human rights, the rights of minorities and all people groups. Key in this process is revisiting the foundation for human rights, specifically, human dignity.

Human dignity is a constitutional right and an international legal precept; however, the need to take into account other perspectives that can enrich the debate and provide a path forward in the betterment of human relations cannot be underestimated.

III. CONTRIBUTIONS OF A JUDEO-CHRISTIAN THEOLOGICAL ANTHROPOLOGY

This article postulates that the international community gains in promoting a culture of human rights focusing on human dignity by factoring in input from the realm of theology, which has a particularly vital contribution to make about the importance, scope and relevance of human dignity as foundational to how we relate to or treat others.

In its own way and on its own terms, consonant with their specific inner-logic, each world religion addresses the issue of human dignity. This topic actually provides a platform where authentic interfaith dialogue can take place.¹¹

A. Philological and Philosophical Considerations

Aside from the conversation about the legitimacy of challenging values that appear to many as self-evident, talking about human dignity is a complex and difficult topic. As a word, “dignity” is characterized by polysemy. It is used in various domains of life: moral, ethical, theological, anthropological, and political to name but a few. It is considered the ground for inherent and inalienable rights. It is also used to challenge the persecution and oppression of vulnerable peoples.

In addition to the fact that it is rarely defined, some even advance that there can be no exact agreed upon definition.

Moreover, even though considered a slippery term and in spite of its fluidity, the

¹¹ A comparative study of world religions and philosophies is beyond the scope of this article. Suffice it to note that, as Behrouz Yadollahpour concludes, no single understanding of human dignity gains unanimity in Islamic circles.

“Detailed study of the exegeses and commentaries of the Holy Qur’an indicates that no single theory regarding human dignity is dominant among them. Although they quote from the same holy text, their key question on the human nature is entirely different from one another. Some hold that this endowed human dignity is essential to human beings of all ethnicity, skin color and the else and that human dignity is the distinguishing feature of humankind in acquiring virtue. Others, on the contrary, don’t regard dignity as essential to human kind but believe that as much as the one’s virtue and faithfulness increase, his requirements for dignity increase too.” *2011 International Conference on Society and Economics Development IPEDR*, vol 10 (2011) © (2011) IACSIT Press, Singapore. See Philip Vinod Peacock. “The Image of God for Today: Some Insights on the Imago Dei,” in *Crested in God’s Image: From Hegemony to Partnership*, Edited by Patricia Sheerattan-Bisnauth and Philip Vinod Peacock (Geneva, Switzerland: World Communion of Reformed Churches and World Council of Churches, 2010), 22.



concept of human dignity seems to enjoy a convenient near consensus and a rallying point that mobilize people of various interests and agendas, to the extent that most conventions, treaties, and covenants in the international arena evoke human dignity as the ground and justification for their own existence.

In a recent insightful article, Heiner Bielefeldt, current UN Special Rapporteur on Freedom of Religion or Belief, states “human dignity constitutes the very precondition for any normative interaction among human beings within and among societies. At the same time, the concept of human dignity has a long history and it strongly resonates within most religious and cultural traditions, including the Bible, the Qur’an. The works of Confucius, or Stoic philosophy, to mention a few examples.” He goes on to conclude, “This denotes the possibility that human dignity could become the center of an overlapping normative consensus shared by people from different religious or non-religious backgrounds, who otherwise may continue respectfully to disagree on many questions of ultimate concern.”¹²

The complexity of our topic is connected among other things to the fact that “dignity is not a property among other empirical data...Dignity is rather the transcendental ground for the fact that human beings have rights and duties.” Having therefore a specific delineation of its meaning and scope may present a challenge.

In his political and moral philosophy, Immanuel Kant found human dignity to be foundational.¹³ For him the human person, an intrinsically free being, has absolute inner worth. It is actually the inner freedom, which characterizes human beings, that constitutes at the same time the innate dignity. It is in this discussion that is placed Kant’s “most often quoted categorical imperative, his paradigm on the absolute inner value of human dignity, which is ‘act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.’”¹⁴

Recently, Konrad Raiser has pointed out the correlation between human rights and human dignity in that “the term human rights ...denotes both entitlements to basic freedoms and the legitimate expectation that needs will be satisfied. Thus understood, human dignity must be regarded as being at the centre of a human-rights discourse that emanates from the needs for decent life and not only from the requirements of the rule of law.”¹⁵

The wide acceptance of its foundational status, in legal, political, ethical, social, and several other spheres, positions human dignity as a heuristic field of study that can help address and perhaps heal divisions, fractions, discriminations, and other ills

¹² Heiner Bielefeldt, “Misperceptions of Freedom of Religion or Belief,” in *Human Rights Quarterly* 35 (2013), 68. See also Ari Kohen, “An Overlapping Consensus on Human Rights and Human Dignity,” in *Human Rights at the Crossroads*, Edited by Mark Goodale (Oxford: Oxford University Press, 2013), 61-71.

¹³ See Immanuel Kant, *The Metaphysics of Morals*, Part II – Metaphysical first principles of the doctrine of virtue, translated and edited by Mary Gregor (Cambridge University Press, 13th edition 2009).

¹⁴ Christiaan W J M Alting von Geusau, op cit 99.

¹⁵ Konrad Raiser, *Religion, Power, Politics* (Geneva, WCC Publications, 2013), 131.



that plague the public square.¹⁶

At an existential level, one crucial piece of information that affects the very meaning of life and determines every person's worth is the foundation for human dignity. Exegetes and theologians in the Christian tradition have in various ways attempted to clarify and explain the justification for human dignity in ways that have a unique impact upon the worth of every person and upon the ways people relate to one another.

The perspective upon which this presentation focuses on is the Judeo-Christian writings, specifically the Bible, where various writers address or intimate the justification for human dignity. It is postulated "from very ancient times theological thinking within the Judeo-Christian heritage has considered the *Imago Dei* or the Image of God to be the corner stone of thinking on who humans are and on their relationship to God, to other humans, and to the world around them."

Well-known thinkers, from Augustine, Thomas Aquinas, and Calvin to Karl Barth, to name but a few, have contributed to showing the centrality of this question of human dignity, especially as it is connected to the issue of the so-called *Imago Dei*.

Mainstream Christian traditions have all affirmed the centrality of human dignity as a foundation for how to relate to, treat, and honor the worth and value of all human persons irreducible to being objects, political beings, or mere biological entities. The consensus or unanimity of thinkers from all streams of world Christianity is remarkable.

One can argue that the concept of human dignity based on the fact that all humans are created in the image of God constitutes the gift of the Christian world to the world and the best platform where tangible unity exists among those who base their anthropology on the mystery and revelation of who God is and who those created in His image are.

The Second Vatican Council document, *Dignitatis Humanae*, unequivocally stressed the foundational nature of human dignity. The rich Orthodox traditions on human dignity provide critical reflections on the pitfalls of a one-dimensional humanist approach to human rights deprived of a Christian perspective.¹⁷

Orthodox writers have underlined in the context of *apophatic anthropology* that the "decisive element in our human personhood is that we are created in the image and likeness of God."¹⁸

"Human dignity is not some vague kind of civic pride but arises from the certainty that each human being is indeed a sacred person, the creation of a personal God. Human dignity has nothing to do with egotistical arrogance but is associated

¹⁶ Robert Spaemann, *Love and the Dignity of Human Life: On Nature and Natural Law* (Grand Rapids, MI: Eerdmans, 2012), 27.

¹⁷ See also the Roma Catholic document *Gaudium Et Spes*.

¹⁸ See Archbishop Anastasios (Yannoulatos), *Facing the World: Orthodox Christian Essays on Global Concerns* (Crestwood, NY: Vladimir's Seminary Press, 2003). Also, Metropolitan Kallistos Ware, *Orthodox Theology in the Twenty-First Century* (Geneva, Switzerland: World Council of Churches Publications, 2012), 32.



with an awareness of human greatness and its limitations. Dignity is marked by discretion, consideration, and respect for others.”¹⁹

The WCC Faith and Order study document, *Christian Perspectives on Theological Anthropology*, can most certainly be considered a landmark publication on the issue.

B. Justification for a Theocentric Anthropology

Addressing the future of the very concept of human rights in a multipolar world, a world of various religious and secular ideologies, John L Allen Jr, the Vatican correspondent for the *National Catholic Reporter*, argues for the need of a “Catholic natural law theory and theological anthropology.”²⁰ The focus of this endeavor, he suggests, should be on an analysis of the spiritual dignity of the human person rather than political ideas derived from the Enlightenment.

His suggestion is welcome, especially in light of the broadening conversation about the universality of human rights as mainly framed through the lenses of secular rationality. The rich Asian traditions on the issue and Islamic perspectives on human rights also make it useful to revisit the specific contributions of the Judeo-Christian traditions in addition to the input of secular ideologies.²¹

Most religions, philosophies, and worldviews affirm human dignity. However, the justification for this dignity is variously construed. This is mainly due to the fact that their perspectives start from different premises.

A conversation with world religions and world philosophies on the urgent consensus to uphold human dignity is one of the needed platforms to promote and uphold peace and justice among people of good will.

The Judeo-Christian contribution to human dignity has the potential to help people live and relate to one another in ways that makes life on planet earth a peaceful and joyful experience for all. This dignity is based on the fact that humans are created in the image of God according to His likeness. But since the Bible states that Jesus Christ is the image of the invisible God (Col 1:15), Christians take the issue of human dignity further. They factor in that their attitude to others has a correlation to their relationship with God. In other words, respect for people’s dignity reflects our respect for God.

Christians participate in the worth of Christ. According to Revelation 5:4, in the whole universe, He alone is worthy. No one is found in heaven, on earth or under the earth, worthy to open the book of meaning and destiny of humankind but Jesus Christ.

The perspective, therefore, from which Christians view the whole of reality, is

¹⁹ Archbishop Anastasios (Yannoulatos), *Facing the World: Orthodox Christian Essays on Global Concerns* (Geneva, Switzerland: WCC Publications, 2003), 60.

²⁰ John L Allen Jr, *The Future Church: How Ten Trends Are Revolutionizing the Catholic Church* (New York: Crown Publishing Group, 2009), 445.

²¹ Tony Evans, *Human Rights in the Global Political Economy: Critical Processes* (London: Lynnie Rienner, 2011), 60-87.



the grace and privilege to participate in the dignity of God as revealed in Jesus Christ.

C. More than Mere Respect

Ideally, if Christians live up to their calling, respecting every person they meet would be a minimum. In their Scriptures, God gives a clear commandment to love one's neighbors as oneself. If Christians were to take this word seriously, the message of Christ would be more credible, and the world would be different. Talking even about freedom without building one's relations with everyone upon this foundation creates dissonance, not only cognitively but also existentially.

All biblical laws and the entire Torah itself depend on the commandment to love God and to love one's neighbor as oneself, says Jesus (Matt 22:37). However, God explicitly expanded in many ways these two fundamental commandments for the purpose of helping people to be creative in affirming human dignity. He asks us, for example, to honor every person:

"Act as free men, and do not use your freedom as a covering for evil, but use it as bond slaves of God. **Honor all people**, love the brotherhood, fear God, and honor the king." (1 Peter 2:16-17).

D. Beyond Justice: God's Righteousness

Another key foundation to human rights and freedom of religion or belief that is inseparable from them is the idea of justice. But here, too, Adventists, while adhering, supporting, and promoting justice for all for the sake of Jesus Christ and His teachings, take this issue further. Jesus Christ spoke about a righteousness that must surpass that of the scribes and Pharisees of His day. What the law required was actually a minimum from the point of view of Jesus Christ. The follower of Jesus therefore goes far beyond what the law requires.

Christians are law-abiding citizens in-so-far as laws do not violate their conscience. They do not neglect the laws of the land. They surpass them indeed. They transcend the requirements of laws. They respect legislations, precisely by going beyond what they demand. They become societal signs of God's righteousness.

The Law demanded justice, even retributive justice. Jesus emphasized distributive justice, also called righteousness. Jesus came to go beyond retributive or even restorative justice or reparative justice, to promote distributive justice that climaxes in love, even love for an enemy (Matthew 5).

The attention is no longer on oneself and on one's needs and rights but rather on the others, the neighbors and their needs and what we owe them.

The righteousness Jesus promotes is illustrated in the famous so-called "antitheses." They begin as follows:

"You have heard that it was said 'you shall not murder,' but I tell you do not be angry against your brother, do not insult your brother." In other words do not put



people into boxes; for in doing so you confine them, which is contrary to the freedom for which they were born (see Matt 5:21-26).

E. A Whole New Way of Thinking about Religious Liberty

The central place of religious liberty has been widely recognized. It is said that, “Religious Freedom is the prerequisite for and the guardian of all other freedoms.”²²

More fundamentally, however, a whole new paradigm of thinking about human rights, freedom of religion or belief, and human dignity, is needed. The Christian claim is that Jesus Christ in putting an emphasis on the kingdom of heaven has brought a new way of thinking in the setting of the New Covenant, the kingdom of God, and God’s righteousness.

More than a culture of human rights, but including it, it is part of fundamental Christian values to promote a deeper culture of commitment to uphold, promote, protect, and honor human dignity in all our dealings. This is not just about human performance in the public square—programs put in place to get recognition or accolades. The idea of people’s adoption in Christ should give any person in this tradition the peace and confidence in every person’s infinite value. Adventists, in particular, who claim to find ultimate solutions to human predicaments in Christ and His coming, are called to guard themselves from estimating the value of a person through performance, connections, prestige, or being recognized, rewarded, and the like. The value of a human being is deeper than all these.

Texts from Christian Scriptures that clearly portray Christ as an example or model are significant:

“For you have been called for this purpose, since Christ also suffered for you, leaving you **an example for you to follow in His steps**, who committed no sin, nor was any deceit found in His mouth; and while being reviled, He did not revile in return; while suffering, He uttered no threats, but kept entrusting Himself to Him who judges righteously; and He Himself bore our sins in His body on the cross, so that we might die to sin and live to righteousness; for by His wounds you were healed. For you were continually straying like sheep, but now you have returned to the Shepherd and Guardian of your souls” (1 Peter 2:21-25).

Human dignity, then, elevates every person we meet to the status of one with infinite worth, a person to be respected, loved, and honored.

1. More than Freedom

The undergirding value in these words of Jesus is freedom, one’s own freedom and other people’s freedom, which is demonstrated in the fact of not judging and confining one’s brother or even one’s enemy.

In the same context of the so-called Sermon on the Mount, Jesus climaxes His statements as follows:

“You have heard that it was said, you shall love your neighbor and hate your

²² *Religious Freedom: Main Statements by the WCC 1948-75* (Geneva, 1976).

enemy, but I say to you, love your enemies and pray for those who persecute you so that you may be sons of your Father who is in heaven. For he makes his sun to rise on the evil and on the good and sends rain on the just and on the unjust. For if you love those who love you, what rewards do you have? Do not even the tax collectors do the same? You therefore must be perfect, as your heavenly Father is perfect" (Matt 5:43-48)."

Freedom is one of Christianity's most central ideas.²³ However, for Christians the supreme value is not freedom *per se*, for that would transform freedom into an idol. From a Christian perspective, God is the supreme value. Loyalty to God is more important than freedom. In the book of Revelation, persecuted Christians value loyalty to God more than their own lives. The text reads:

"They overcame him because of the blood of the Lamb and because of the word of their testimony, and they did not love their life even when faced with death" (Rev 12:11).

God is indeed their supreme value. In this perspective, conformity to God's person and purposes is the focus of all freedom lovers even at the expense of their own rights. Even when their rights are violated, Christians still seek the welfare of others for God's sake.

The freedom to love and fellowship with one's brothers and sisters in humanity, even if one's own rights are violated, is deep in the priority list of God's character and will. The recognition, respect, protection, and promotion of human dignity lead to respecting, protecting, and promoting freedom, all freedoms, and in particular freedom of conscience.

The roots of the Christian faith support the freedoms recognized by the international community in the context of human rights. However, there are deeper reasons than mere solidarity with the human family as important and crucial as these are. The Bible provides significant perspectives on freedom.

While respecting other contributions to the value of freedom, Christian discourse on freedom is informed by Jesus Christ's life and teachings, His death and resurrection.

That Jesus came to provide freedom is clear in His inaugural address in Luke 4:18-19.

In the Gospel of John He stated that it is the Son of God Himself who gives

²³ Hans Dieter Betz, *Galatians: A Commentary on Paul's Letter to the Churches in Galatia* (Philadelphia: Fortress Press, 1979), 256. He perceptively wrote "freedom" is the central theological concept which sums up the Christian's situation before God as well as in this world. It is the basic concept underlying Paul's argument throughout the letter...Christian freedom is the result of Christ's act of having liberated those who believe in him (the 'indicative'), but this result is stated as a goal, purpose, and direction for the life of the Christian (the 'imperative')." Furthermore, he insightfully stated the following: "It was the gift of the Spirit which enabled the Galatians, as all Christians, to experience freedom (3:2-5). This experience amounted to a liberation from the elements of the world and their tyrannical regime of evil (1:4, 4:1-10), and included liberation from slavery under the Law and sin (cf 2:19; 3:13, 25; 4:5), from death (cf 2:20; 3:11; 5:25; 6:8), from ignorance of God (4:8-9), from superstition (4:8-10), and from social oppression and religious cultural discrimination (3:26-28)."



true freedom.

“If the Son makes you free, you will be free indeed” (John 8:36).

An historical understanding of Jesus’ death on the Cross of Calvary is the necessary expiation it provides to release humans from the penalty of sin, death, Satan, and evil spirits. His resurrection is seen to inaugurate an era of true freedom. Death is defeated; communication, relationships, and life can truly spring forth.

Moreover, from a Christian perspective, freedom is inseparable from the Holy Spirit. Where the Spirit is there is freedom, argues the Apostle Paul (2 Cor 3:18). Christians have been called to freedom repeats the same Apostle (Gal 5:1, 13).

2. Profile of a Free Person According to the Apostle Paul

A free person is a person full of the Holy Spirit, a person who bears the fruit of the Spirit: love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, and self-control.

A free person is one who reflects God’s character. A free person is one who is willing to give up his or her freedom for the sake of others if necessary. Just like Jesus, just like the Apostle Paul who said: “For though I am free from all men, I have made myself a slave to all, so that I may win more...I have become all things to all men, so that I may by all means save some. I do all things for the sake of the gospel so that I may become a fellow partaker of it” (1 Cor 9:19-22).

These words most likely inspired the reformer Martin Luther who wrote:

“A Christian person is a free sovereign above all things, subject to no one.” (by faith)

“A Christian person is a dutiful servant in all things and subject to everyone.” (by love)

Ellen White, one of the co-founders of the Seventh-day Adventist Church, wrote about the depth of this freedom God endowed to every person.

“It is not God’s purpose that any human being should yield his mind and will to the control of another, becoming a passive instrument in his hands. No one is to merge his individuality in that of another. He is not to look to any human being as the source of healing. His dependence must be in God. In the dignity of his God-given manhood, he is to be controlled by God Himself, not by any human intelligence.”²⁴

“No man is to think that he is the owner of the minds and capabilities of his brethren. He is not to think that others must submit to his dictation. He is liable to err, liable to make mistakes, as every man is. He is not to try to control matters in accordance with his ideas.”²⁵

Furthermore, freedom is expressed in how people relate to one another. In other

²⁴ Ellen G White, *Counsels on Health*, 345.

²⁵ Ibid.



words, Christian courtesy in the public arena is one of the most beautiful expressions of freedom and respect of other people's dignity.

"True courtesy is not learned by the mere practice of rules of etiquette. Propriety of deportment is at all times to be observed; wherever principle is not compromised, consideration of others will lead to compliance with accepted customs; but true courtesy requires no sacrifice of principle to conventionality. It ignores caste. It teaches self-respect, respect for the dignity of man as man, a regard for every member of the great human brotherhood."²⁶

In a world of controversies, conflicts, violence, and wars, freedom is at all times at risk. Freedom is a prerequisite to love; it is therefore at the root of the covenant between God and humans and also between humans.

IV. IN THE IMAGE OF GOD AS FOUNDATION FOR HUMAN DIGNITY: JUDEO-CHRISTIAN PERSPECTIVES AND CONTRIBUTIONS

Each world religion or religious tradition reveals at its foundation an affirmation or concern for human dignity.

The affirmation of human dignity takes on a deliberate tone in the Judeo-Christian tradition in that it is woven in the very fabric of the creation story. It provides a rationale for the respect for every person.

The foundation for assessing the value, worth or dignity of a human being is inseparably connected to the revelation of God and His purpose in creating human beings.

Foundational Thesis:

- The foundation for human dignity is that every person is created in God's image according to His likeness (Gen 1:26-27). God is the primary reference for understanding who humans are and how all persons ought to be treated.

According to a Judeo-Christian perspective, what makes humans unique in this created order is the endowment to relate to God in unique ways: to love God, to worship God in all freedom, and to fellowship with Him. All human beings exist to be free. Humans cannot fulfill the destiny for which they were created without freedom. In other words, freedom is a prerequisite to meaningful relationships and to love in particular.

The premise upon which this presentation is based is the following: Humans are created for God. They are invited to fellowship in love with the Creator. The importance of this relationship is built on the love of God for every person God created in His image.

The essential dignity granted by virtue of being created in the image of God comes with the freedom to choose.

This freedom obviously implies the freedom of thought and expression. The

²⁶ Ellen G White, *Adventist Home* 426.



core of meaningful relationships, especially in the case of covenants, consists in the ability to choose and to change one's opinion or religious or non-religious affiliation. It is the right to believe or not to believe. Without this prerogative, coercion would characterize the relations between human beings. The root of totalitarianism and the trampling of human dignity lie in the abuse which deprives a human being or a people group of the fundamental right to believe or not to believe, to choose or to change.

We will now proceed to highlight a theocentric approach to human dignity, to underline that human beings are sacred beings and that our vocation is to participate in God's character and to share and promote life. The key questions are as follows: What does it mean that humans are created in God's image according to His likeness? Why should every person be respected, valued and honored? What gives every person infinite dignity? I have singled out the following characteristics of God that are an incontrovertible part of what it means to be human and humane.

A. Creation in the "Image of God"

Thinkers throughout the history of Judeo-Christian thought have given various explanations of Genesis 1:27.²⁷ These explanations have a bearing upon human identity, human worth and significance, theological anthropology, bioethics, and many other areas Christian thinkers share with fellow human beings.

Scholarly conversations have produced various understandings of the expression "image of God."²⁸

1. Substantive or ontological theories understand the "image of God" as consisting of qualities possessed by the human person whether in reference to human rationality, volition, spirituality, or freedom.
2. Relational endowments refer to abilities that qualify humans to relate to God and to others.
3. Functional views emphasize human activities such as representative re-gency.²⁹ These latter views focus on tasks to perform rather than rights or intrinsic values.³⁰

²⁷ William M Greathouse. *Wholeness in Christ: Toward a Biblical Theology of Holiness* (Kansas City, 1998), 37. He remarks that "Going back to Irenaeus, Roman Catholic theology has traditionally made a distinction between the image (*tselem*) and the likeness (*demut*) of god in which we humans were created. In this view, image defines that which distinguishes humankind from the animal creation (rationality, freedom of will, immortality, and so on), while likeness defines the state of holiness in which 'Adam stood before he defected.' This interpretation fails to take into consideration the fact that Genesis 1:26 is an instance of Hebrew parallelism; both terms have to do with parallel representations or models and are simply two ways of saying the same thing."

²⁸ Jason McMartin, "The Theandric Union as *Imago Dei* and *Capax Dei*," in *Christology Ancient & Modern: Explorations in Constructive Dogmatics*. Eds. Oliver D Crisp and Fred Sanders (Grand Rapids, MI: Zondervan, 2013), 137.

²⁹ Gunnlaugur A Jonsson, *The Image of God: Genesis 1:26-28 in a Century of Old Testament Research* (Lund: Almqvist & Witsell, 1988), 219-23.

³⁰ This view connects the two commands of Genesis 1:26 and 28, taking the second as a purpose clause. In other words, "let them have dominion" is a purpose clause directly and contextually related to the first command "let us make man in our image after our likeness." Idem 29.



In other words, the following underlying question is subsumed at the background of the issue: Does the expression “created in His image” refer to human abilities: intellectual, ethical, moral abilities; spiritual capacities; relational attributes; mandate to rule; or responsibility as God’s representatives, His image bearers?

A careful contextual study (both the immediate and the larger biblical context) reveals that there are dimensions incontrovertible or necessary to making sense of the verse according to which humans are created in God’s image.

In the immediate context, the creation of Adam and Eve is distinguished from the creation of animals. Animals are created according to their kind, but humans are created in the image of God. Moreover, humans are entrusted with the stewardship of the earth. Also, in light of chapter 5, creation in God’s image is connected to the idea of filiation. Furthermore, in the context of Genesis 9, the ban on murder is based on the very idea that humans are created in the image of God, according to His likeness (Gen 9:6).

Psalms 8 associates the concept of glory, honor and dominion to the creation of humans.

Critical to any legitimate interpretation is the fact that God is the model or foundation of how we understand who human beings are. In other words, theology is from a Judeo-Christian perspective key to thinking about biblical anthropology.

Knowing who God is, is essential to knowing who humans are.

Correlated to this knowledge, is an underlying assumption that humans are made capable of embodying or reproducing God’s communicable attributes (Gen 9:6; Rom 8:29, Col 3:10; James 3:9). There are attributes that are God’s unique prerogatives such as His omniscience, His omnipotence, and His omnipresence. However, attributes in reference to His character are to be reproduced in those created in His image.

One must obviously avoid the pitfall of reducing the image of God to an attribute or to a combination of attributes where the Bible is not as specific. A holistic approach to the biblical record in its entirety does more justice to such a fluid concept as this one. Humans are to be considered as images of God.

From a grammatical point of view, the preposition in the phrase “let us make man in our image” can be understood as “let us make man as our image.” In this perspective, Humans function as living symbols of God: His representatives. This perspective is contextually consonant with the command Adam and Eve are given to reign over the creation on earth.

A key goal of the plan of salvation then is the restoration of the moral image of God.

This statement does not subsume that humans have completely lost the status of being in the image of God, for that would mean that what constitutes human



dignity resides outside of humans.³¹ The two trajectories of thought are not contradictory. On the one hand, who humans ought to be is granted through regeneration, which is a gift from God of a new being created in the image of God the fullness of which is sought through sanctification. On the other hand, who all humans are in our present condition of being human testifies of a dignity by virtue of special creation. Every human being is created in the image of God.

B. God as Model of Being

1. God as Mystery Correlates with Human Nature as Mystery

The God in whose image and in whose likeness humans are created cannot be confined or defined. As God is inexhaustible mystery, that is one of whom it is impossible to know everything about, so are humans. The Apostle Paul would venture to say that human life is hidden in Christ and that when Christ appears then part of the mystery will be lifted. He said elsewhere that we know only in part but then we will know as we are known (1 Corinthians 13). The implication of the revelation of human beings as mystery is that human beings cannot be confined to any category. The mystery of any human person ought to be factored in in any of our dealings with one another. Mystery is constitutive to human dignity.

2. The Revelation of God as Inner-fellowship.

The Living God is a relational God within God's being. The mystery of God is that God is an inner-relational being. There is plurality within the one being of God. God is not an isolated solitary monad.

Humans are the pinnacles of God's creation. We were created to communicate with God in unique ways. The destiny of each person created in God's image is precisely fellowship with the triune God of love. The very goal of the whole history of salvation is the reversal of the separation from God and restoration of fellowship. The cessation of sickness, the disappearance of evil, the defeat and cancellation of death, the absence of conflict, the advent of peace and justice, and heaven itself are secondary to the presence of God and fellowship with Him.

Humans are created to fellowship with God and with one another. God as model of relationality calls for humans to live in community, every person connected to the other with bonds grounded in God. There is one human race and one human family.

3. The Incarnation and Identification as Root for Solidarity

God did not confine Himself in a way to be inaccessible. In other words, He did not sequester Himself in an unapproachable light. God came and became one of us in order to show us how to be human. From this perspective and according to Christian belief in particular, the supreme model of being human is One who is called the

³¹ See the discussion in John Piper, "The Image of God: An Approach from Biblical and Systematic Theology (March 1, 1971).



Son of God, Jesus Christ. Another way of expressing this is found in Hebrews 1:3, the radiance of God's glory and exact representation of His nature.

4. God Identifies with Every Person

God identifies with human beings. He is involved in our destiny. God identifies with humans to such a degree that our attitude toward the poor is correlated to our attitude toward God.

- "Whoever oppresses a poor man insults his Maker, but he who is generous to the needy honors him" (Prov 14:31).
- "Whoever mocks the poor insults his maker" (Prov 17:5).

Moreover, in the first covenant, God told Israel,

- "Whoever touches you touches the apple of my eye" (Zech 2:8).

Jesus identifies with humanity in such a way He could say:

- "Whenever you did this to the least of my brothers you did it to me." (Matt 25:40)
- And again, He identifies with the hungry, the thirsty, the stranger, the naked, the sick, and the prisoner (Matt 25:35-36).

God identifies with humans; therefore, humans are called to identify with one another.

Solidarity among humans is necessary. The creation of humans in the image of God prepares the way for the climax of the covenant, which is not only that humans imitate God by embracing God's communicable attributes, or that humans participate in the life of God, but also more essentially God identifies with humanity.

God experienced the plight and predicament of humans and creation in order to liberate the world from evil and death. This is the ground for affirming human dignity, every person's dignity; because in the Judeo-Christian tradition God is the model for humans: our very being, our values, our doing and behavior have their source in Him. The whole edifice of the Christian faith is built on the premise that God assumed humanity to model what it means to be human.

God thus catapults human dignity to unprecedented heights. When we deal with humans we indirectly deal with God. The New Covenant even stipulates that if we do not love humans we see we cannot love God. Whatever is done to the least of Christ's followers is done to Him, in other words. Whatever is done to any human being is done to God.

The complete picture of God's relations to humanity is that, on the one hand, humans represent God as vice-regents, but on the other hand, God represents humans. The mediatorial or priestly office of Christ finds a remarkable expression here.

There is a fundamental truth that must not be missed; a vision that makes us different. We are connected to Christ and to one another in a deeper way.

"In the days of Christ, selfishness and pride and prejudice had built strong and high the wall of partition between the appointed guardians of the



sacred oracles and every other nation on the globe. But the Savior had come to change all this. The words which the people were hearing from His lips were unlike anything to which they had ever listened from priest or rabbi. Christ tears away the wall of partition, the self-love, the dividing prejudice of nationality, and teaches a love for all the human family. He lifts men from the narrow circle that their selfishness prescribes; He abolishes all territorial lines and artificial distinctions of society. He makes no difference between neighbors and strangers, friends and enemies. He teaches us to look upon every needy soul as our neighbor and the world as our field.”³²

Through Christ Jesus, incarnation, death, resurrection, ascension, session as High priest, and kingship, God creates a new humanity, one family of people sharing the life, fruit, and gifts of the Holy Spirit: a new humanity where ontological hierarchy is abolished. All people become brothers and sisters. Every person is now endowed with infinite worth and value.

5. Jesus Christ as Image of the Invisible God

One of the goals of the incarnation was to model what it means to be human from God’s perspective. This did not limit itself to being an idea. Rather, Christians claim that to image God, God embraced humanity in a complete way by becoming human and thus provided the model of being human. Jesus unites divinity and humanity in an unprecedented and unsurpassable manner.

Created in the image of God, means created in the image of Jesus Christ, according to His likeness. He is the image of the invisible God.

Only one man is the true image of God. Jesus is the true image of God. “In their case the god of this world has blinded the minds of the unbelievers, to keep them from seeing the light of the gospel of the glory of Christ, who is the image of God” (2 Cor 4:4).

Created in God’s image means created in the image of Christ, because Christ is the image of the invisible God. He is the icon, the visible face of God. The mystery of every person is inseparable from the mystery of Christ. In the New Covenant Christ frequently designates himself as the Son of man, the representative of humanity. What it means to be human is embodied in Him. Therefore His interest in the poor, the needy, the disenfranchised, the outcasts, the sick, and the marginalized, becomes the model for the world to emulate.

From a Christian perspective, Jesus Christ is the model of a new humanity, a new way of being human, grounded on love for every neighbor, every person created in the image of God. Freedom, justice, and peace are connected to His person.

6. The Love of God for the World: A Model for Relating to Others

The root cause of God’s involvement in human affairs is birthed by the love of

³² Ellen G White, *Thoughts from the Mount of Blessings*, 42.



God, the love that is constitutive to God's being.

The climax of the Judeo-Christian Scriptures is the stunning declaration that God is love. He first loves human beings, declares the Apostle John. Consequently, humans are in fact created to reciprocate God's love. The importance of love appears in the "Shema Israel" in Deuteronomy 6. Jesus Christ also reiterated it in His summary of the law and the prophets (Matt 22:37-40).

Human beings are created to manifest this love towards fellow human beings. The story of the Bible is mainly about the God who is love telling people that He so loves the world that He gave the person of His Son so that whosoever believes in Him may not perish but have everlasting life—that is, everyone who lives through Him.

God, in the first testament told His covenant partner Israel: "I have loved you with an everlasting love" (Jer 31:3). Also God's commitment to love is not intimidated by His people's response: "For the mountains may be removed and the hills may shake but my loving-kindness will not be removed from you, and my covenant of peace will not be shaken, says the Lord who has compassion on you" (Isa 54:10). A mother may forget her nursing child but God constantly remembers the object of his love (Isa 49:15).

But love cannot exist without freedom. Biblical narratives insist on this point. Love cannot be forced. No one can be forced to love. Love has to spring from a personal decision otherwise it cannot exist. This is the reason why freedom is essential to any meaningful relationship. Without the freedom to choose, love is not possible. Any form of manipulation or aggression violates the dignity of humans. Coercion kills love and prevents its reality. It erodes human dignity. God, who is love, created out of love. Therefore He created freedom.

An essential element of the teachings of Jesus is an invitation to love. Not even enemies are excluded from such love (Matt 5:43-48).

7. The Generosity of God as Model for Being a Blessing to Others

God blesses; ultimately God is the supreme blessing, the supreme value. God's first acts according to the biblical narrative are associated with the concept of blessing. God blesses His creation. The climax of God's creation of human beings in His own image is the act of blessing them. It is the destiny of every human being to be blessed and to be a blessing. God's will to bless humans was reiterated with Abraham (Genesis 12). God purposed to bless all the families of the earth. Paul understood the gospel God preached to Abraham to be precisely the blessing of all nations.

Jesus came to fulfill this pristine purpose of God. "It is you who are the sons of the prophets and of the covenant which God made with your fathers, saying to Abraham, 'and in your seed all the families of the earth shall be blessed.' For you first, God raised up His Servant and sent Him to bless you by turning every one of you from your wicked ways" (Acts 3:25-26). Humans are created and called to be bless-



ings to one another.³³

“Finally, all of you, have unity of mind, sympathy, brotherly love, a tender heart, and a humble mind. Do not repay evil for evil or reviling for reviling, but on the contrary, bless, for to this you were called, that you may obtain a blessing” (1 Peter 3:8, ESV).

Called to be a blessing—that is the calling of all believers in and followers of Jesus Christ. Humans, created in the image and likeness of God, are all called to be blessings to one another. That is part of the call to be human in the first place.

8. God’s Holiness as Testimony to the Sacredness of Every Person

God is holy. He is sacred. He is different. He cannot be confined in a box. He is always more than can be conceptualized. He is the “Other.” Humans are called to be holy; that is every person’s vocation. The priestly language used in Genesis hints at a concept that is developed in both testaments. Human beings are sacred. Israel was called a holy nation (Exodus 19). The new covenant is based on the fact that the followers of Jesus are called a holy nation. Moreover, the Apostle Paul affirmed that people are temples of the Holy Spirit, indwelt by God.

This dimension of being created in God’s image could be, in our view, the best incentive for the respect of every person. When people realize that whatever they do to the least of human beings—that is according to current conventional social classifications—they do to God, all human relationships would be reconfigured and based on the ultimate worth of every person. Humans are sacred.

“Human dignity is not some vague kind of civic pride but arises from the certainty that each human being is indeed a sacred person, the creation of a personal God. Human dignity has nothing to do with egotistical arrogance but is associated with an awareness of human greatness and its limitations. Dignity is marked by discretion, consideration, and respect for others.”³⁴

The idea of God’s holiness includes a key component, which is that God should not be manipulated or used. The same applies to humans who are created in God’s image. Humans are not to be used, abused, or defiled. They are sacred.

9. God’s Justice, Righteousness and Peace to Be Mirrored

God is a God of justice and righteousness claim the Judeo-Christian Scriptures. Justice and righteousness are so central that without them, argues the prophet Amos, there can be no future for God’s people, that is those in a covenant relation with Him (Amos 5:18-24), and no future for the world either. The prophet Micah had outlined what God expected from all humans:

“He has told you O man, what is good; and what the Lord requires of you, but

³³ The Lockman Foundation (2008-01-26). Holy Bible: *New American Standard Bible* (NASB) (Kindle Locations 36982-36984). The Lockman Foundation. Kindle Edition.

³⁴ Archbishop Anastasios (Yannoulatos), *Facing the World: Orthodox Christian Essays on Global Concerns* (Geneva, Switzerland: WCC Publications, 2003), 60.



to do justice, to love kindness, and to walk humbly with your God?" (Micah 6:8).

The acknowledgment and care for human dignity have to be translated into acts of justice towards all human beings. This is more than retributive justice as specified earlier. It is distributive justice that expresses itself in the name of our common humanity; every person has the vocation to be dedicated to the wellbeing of others.

10. God of Peace

The rich concept of shalom as complete physical, mental, emotional, spiritual wellbeing, and healthy relations with God and with others, is a main covenant outcome.

Through the prophet Jeremiah, God makes a case that He "knows the plan He has for humans, plans of peace and a future" (Jer 29:11).

Not only is the Messiah called the Prince of Peace (Isa 9:6), but key among the blessings of the New Covenant is being a peacemaker. Jesus in the so-called Sermon on the Mount said: Blessed are the peacemakers for they shall be called children of God. This means they reflect the character of their Creator.

11. God of Truth and Faithfulness

One of God's revealed attributes is expressed by the word "Amen." It expresses both ideas of truth and faithfulness. As such the notion of caprice and instability are distanced from the character of God. God is dependable. The same attribute of Amen is also a title of Jesus Christ in the book of Revelation. In the third chapter of this last book of the Bible, Jesus introduces himself as "the Amen, the faithful and true witness" (Rev 3:14). The word Amen is one of the Hebrew terms not translated into Greek in the New Testament writings. The implication of this is that humans are also called to be dependable, truthful and faithful.

B. The Unity of the Human Race

According to Judeo-Christian Scriptures, human beings—man and woman—are the climax of God's creation. Theirs is a very special creation, in which humans are created in the image of God, according to His likeness. Humans are in a special relationship to God. The most obvious contextual meaning of such an expression is that humans are in filial relationship to God.

The immediate implication is that humans are to reflect God's character if they are true to this filial relationship. The other incontrovertible truth is that the whole human race has been created to be a family. If, therefore, the Bible is taken seriously, then all humans are connected in God in whose image we are created. In other words: everyone is connected to everyone.

III. CONCLUSION

The foundational status of human dignity is undeniable. Human dignity is, in fact, the foundation of all other values in society, whether freedom, justice or peace. It is also the foundation for the concept and reality of human rights. It is essential



to understand human dignity as central to the ordering of society. From this perspective, along the lines of the Kantian principle of the categorical imperative cited above, it is asserted that “human dignity is not a mere value that may be compared, let alone ranked, with other values. It is a foundational ‘stand-alone’ principle necessary to even be able to speak about the values of a society.” It is axiomatic and a precondition for any normative interaction among human beings within and among societies. In modern and postmodern pluralistic societies, it is necessary to articulate the content of human dignity in “strictly secular terms.” This obviously does not exclude the need to bring in the contributions of religious thought. The aim of this article was to highlight the contributions of the Judeo-Christian traditions, not only to point out human dignity as the foundation for human rights and freedom of religion or belief, but also to suggest that according to a biblical worldview the concept of creation in God’s image and according to His likeness is construed as the very foundation for human dignity itself. This means also that the infinite value of every person is anchored in God, the model of being who identifies with everyone. All humans have the vocation to reflect God’s attributes, participating in the life of God.

IV. SUMMARY OF FINDINGS AND IMPLICATIONS

A. Why Humans Were Created

According to the Judeo-Christian narratives, Human dignity is grounded in the reasons why humans were created in the first place.

- Humans are created in the image of God.
- Humans are created in the first place to relate to the Creator.
- This relationship is more profoundly a filial relationship.
- Human beings are related to one another in the family God created. There is therefore one human race and one family.
- Humans are sacred by virtue of the fact that every person is created in the image of God. People value and respect temples, shrines, cathedrals, mosques, and churches; but according to the Judeo-Christian Scriptures, human beings are the temples of God, temples of the Holy Spirit. This means that human dignity is based on the fact that God who is holy has created humans in His image with the dignity of holiness. Every person is sacred.
- Every person ought to be respected, honored. In the Judeo-Christian Scriptures, the Apostle Peter puts it in no uncertain terms: In 1 Peter, he declares, “Honor all people.” This is most likely one of the most neglected commandments.
- Humans should not be subjected to violence of any kind. All violation to their human dignity thwarts God’s purposes for creation.
- Humans are created to fellowship with God. All forms of exclusion, discrimination, and rejection betray and profane the circle of fellowship humans are to



form around their connection with God. This explains why, according to the Apostle John, humans cannot love God they do not see if they do not love one another (1 John 4:20-21).

- Moreover, human are temples of the Holy Spirit. This is the reason why human dignity is best expressed through holiness. But biblical holiness is inseparable from love. The God who is celebrated as holy and worshipped by billions of angels is the God of love. He is love (1:4:8).
- Love is the fulfillment of the commandments of the Torah. On the two commandments to love God and to love one's neighbor as oneself, depend all the Law and the Prophets (Matt 22:38-40), argues Jesus.

The root cause of all violations of human rights is the trampling of human dignity. This dignity is inseparable from the revelation of humans being created in the image of God.

B. Implications

The fact that humans are created in the image of God, endowed with infinite dignity, is in the Judeo-Christian Scriptures the ground for the prohibition of murdering human beings (Gen 9:6) or cursing humans (James 3:9). More profoundly,

- Every person should be treated as sacred. This implies that no person should be violated. Moreover, any form of violence should be excluded. Being a peacemaker is what Jesus promoted.
- Every person should be valued, honored, respected and loved; just because people are created in the image of God.
- To fully experience their God-given dignity, freedom of conscience, religious freedom and all the other freedoms connected with them ought to be secured for every person. Love cannot be forced. It can only be experienced where there is freedom to choose or change.

Human dignity calls for respect, justice, and peace to be enjoyed by all. Christians have this distinctive added responsibility to even pray for those who strip them of outward signs of dignity; just as a crucified, shamed Jesus could under excruciating pain pray for the perpetrators of the flagrant injustice of punishing the innocent He was.

FIDES ET LIBERTAS SUBMITTING MANUSCRIPTS

Fides et Libertas encourages the submission of manuscripts by any person, regardless of nationality or faith perspective, who wishes to make a scholarly contribution to the study of international religious freedom. *Fides et Libertas*, as the scholarly publication of the International Religious Liberty Association, seeks to obtain a deeper appreciation for the principles of religious freedom that IRLA has enunciated, including the following: religious liberty is a God-given right; separation of church and state; government's role of protecting citizens; inalienable right of freedom of conscience; freedom of religious community; elimination of religious discrimination; and the Golden Rule. *Fides et Libertas* is open to a wide perspective in upholding those principles including:

- Historical studies
- Articles that deal with theoretical questions of theology and freedom
- Essays on the meaning of such concepts as human rights and justice
- Works focused on politics and religion; law and religion

Articles should be accessible to the well-educated professional as well as to the lay person who seeks to know more. They are to be a means of continuing a scholarly conversation of the subject at hand. Therefore it is incumbent on the author to bring a new insight or knowledge to the conversation.

ARTICLE SUBMISSION

Submitted articles are evaluated by academic and professional reviewers with expertise in the subject matter of the article. *Fides et Libertas* will seek to ensure that both the identity of the author and the identity of the reviewer remain confidential during this process. *Fides et Libertas* accepts simultaneous submissions but requires the author to notify the editorial staff immediately if he/she accepts another offer.

Fides et Libertas prefers to accept articles under 11,000 words. Articles should be submitted as an electronic attachment. Copies should be in Word 2003 or a more recent version of Word. Articles must be submitted in U.S. or U.K. English. A paper copy only manuscript will not be accepted. In order to ensure an anonymous and expedited review process, we request a copy with no headers or other author-identifying information (make sure tracking feature is turned off). Although published articles will appear in footnote format, manuscripts may be submitted in endnote format. Citations in each article should conform to the latest edition of *The Chicago Manual of Style*.

REVIEW PROCEDURE

After an initial review of the article by the editors of the *Fides et Libertas* to ensure that articles minimally meet its mission, standards and priorities, each article is referred to an outside peer reviewer. Final decisions on accepting or rejecting articles, or sending them back with encouragement to re-submit, are made by the editors. Upon acceptance, articles then undergo a thorough technical and substantive review, although authors retain full authority on editorial suggestions on the text. If technical deficiencies, such as significant errors in citations or plagiarism, are discovered that cannot be corrected with the help of staff, the Executive Editor reserves the right to withdraw the manuscript from the publication process. Generally, *Fides et Libertas* publishes material which has not previously appeared and it does not simultaneously publish articles accepted by other journals.

Articles in electronic format or disk, or author's requests for information should be addressed to:

Dr Ganoune Diop, Executive Editor
Fides et Libertas
International Religious Liberty Association
12501 Old Columbia Pike
Silver Spring MD 20904-6600 USA
diopg@irla.org

BOOKS IN REVIEW

Fides et Libertas book reviews are meant to carry on the conversation with the authors under review. A simple description of the book fails to reach the goal envisioned by *Fides et Libertas*. We are looking for essays that take positions and provide clear reasons for such—being in the range of 2,500-5,500 words. Smaller review essays will be considered provided they actively engage with the topic and the author.

The Book Review Editor will make a decision on publishing the review based on the quality of the review and whether it is in keeping with the mission of *Fides et Libertas*.

Electronic Format of Book Reviews: Book reviews should be submitted by email attachment or CD in Microsoft Office Word or compatible format to our Book Review Editor.

Book Review manuscripts should be double-spaced, with the following information at the top whenever it is available:

1. Name of book
2. Book's author or editors
3. Publisher with date
4. Number of pages and price

Review Essays may have a title (which is not necessary) which should be placed immediately above the identifying information.

Reviewer's Name for Book Reviews should appear at the end of the review, together with a footnote giving the reviewer's title(s), if any, and institutional affiliation(s) together with the institution's location.

For Further Information about the *Fides et Libertas* Book Review Policies and Procedures, or to submit your name as a reviewer, or an idea for a book to be reviewed, please contact:

Dr Ganoune Diop, Executive Editor
Fides et Libertas
International Religious Liberty Association
12501 Old Columbia Pike
Silver Spring MD 20904-6600 USA
diopg@irla.org

