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FIDES ET LIBERTAS



2020

20TH ANNIVERSARY OF THE INTERNATIONAL
RELIGIOUS LIBERTY ASSOCIATION MEETING
OF EXPERTS: NO COMPULSION IN RELIGION

International Religious Liberty Association

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

We believe that legislation and other governmental acts which unite church and state are contrary to the best interest of both institutions and are potentially prejudicial to human rights, and we 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 in order 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.*

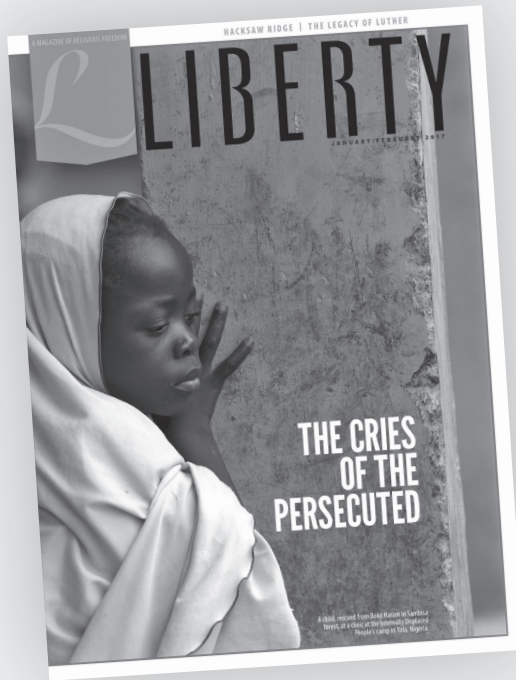
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The purposes of the International Religious Liberty Association are universal and nonsectarian. They include:

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, and 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.

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



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IN MEMORIAM

JUAN MARTÍN VIVES

1980-2019



With gratitude and love, we pay tribute to the extraordinary life of Juan Martín Vives, whose work in the field of religious freedom was marked by both his tremendous intellect and his deep compassion for humanity. His many contributions, within his home country of Argentina and globally, will not be forgotten. As a longtime friend and contributor to the IRLA, he will be greatly missed. We mourn a life that ended too soon.

Juan Martín Vives was a professor of undergraduate and postgraduate courses at Universidad Adventista del Plata, Argentina, as well as serving as General Counsel for the university. In 2015 he was appointed Director of the Center for Studies on Law and Religion (CEDyR) at the university and Editor-in-Chief of the academic journal *DER – Derecho, Estado y Religión*. He was named Dean of the Graduate School of Universidad Adventista del Plata in 2019. He earned a JD (National University of Córdoba), a diploma in Law Teaching (Universidad Adventista del Plata), an LLM in Corporate Law (Austral University), and a PhD in Public Global Law (Autonomous University of Barcelona). He was a member of the Charter Class of the International Center for Law and Religion Studies' Young Scholars Fellowship on Religion and the Rule of Law in Oxford and received a scholarship to pursue postgraduate studies in Lucerne, Switzerland, from the Center for Comparative Constitutional Law and Religion, University of Lucerne. He remained committed to the cause of promoting the principles of religious freedom and authored numerous articles and book chapters on this subject. He was a frequent speaker and lecturer on issues of law and religion, religious freedom, and relations between church and state.

Professor Vives was only 39 years old when he died unexpectedly of a heart attack on October 1, 2019. He is survived by his wife, Gisela, and their children, Jana and Mark.



WHY DOES THE INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION PROMOTE FREEDOM OF RELIGION OR BELIEF?

GANOUNE DIOP¹

It has been 20 years since a group of experts from around the world, representing a range of different academic disciplines, committed themselves to meet together regularly for the purpose of nurturing the principle of freedom of religion or belief as a fundamental, universal human right.

Since that time, this panel—known as the IRLA Meeting of Experts—has met each year in a different location around the world. The group has grown and changed as new members have been added, although a core group of founders continue to serve. I deeply appreciate the foresight and commitment of Dr. John Graz, Dr. Rosa Maria Martínez de Codes, Dr. Bert Beach, and Professor Alberto de la Hera. They started with a mere seed of an idea: they envisioned a diverse group of experts who would explore current international issues through the lens of freedom of religion or belief and make substantial, ongoing contributions to the academic discourse about these topics. Together, and with the help of others, they nurtured this idea into reality.

I am also wholeheartedly grateful for the deep commitment and consistent investment of time and energy of my fellow members of the IRLA Meeting of Experts. They attend yearly gatherings, generously contributing their expertise to discussions of global issues of religious freedom. In addition, through the years they have made significant academic contributions through the pages of this journal. Kudos to such a fine group of experts, who together are helping shape the international discourse around this fundamental freedom.

Perhaps, as we reflect on this 20th anniversary of the Meeting of Experts, it is fitting that we ask why this group has devoted so much time and energy to this task. What has motivated such an extraordinary focus on religious freedom?

There is something uniquely appealing in exploring the depth of religious freedom as it intersects with all of the fundamental freedoms and profound values that make us more human and humane. But religious

¹ Ganoune Diop, PhD, is Secretary General of the International Religious Liberty Association and Director of Public Affairs and Religious Liberty for the Seventh-day Adventist Church's world headquarters. He also serves as Secretary of the Conference of Secretaries of Christian World Communions.



freedom has not been properly understood in all of its scope or in the breadth of its meaning.

The worst distortion of a good does not make the good bad. In other words, corruption or deviation from the legitimate concept of freedom of religion or belief, and its use as a weapon of discrimination, does not invalidate its vital importance for peaceful coexistence among people of goodwill.

In the current global context of framing rights in competition with one another, there has been misunderstanding about freedom of religion or belief. It has been positioned against other civil rights, and the accusation has been made that religious freedom is a tool for discrimination. In this context, it has become urgent to revisit the very nature of freedom of religion or belief.

A clarification as to content can be helpful. What is the meaning, significance, and scope of religious freedom—also called by the international community “freedom of religion or belief”? What is so appealing about this particular good that people dedicate their lives to promote it?

Despite the fact that more than 5 billion people do not enjoy this freedom, and that its universality is challenged in academic circles, its importance cannot be underestimated. Religious liberty, or “freedom of religion or belief,” is part of the repertoire of the international community, used in legal, political, cultural, existential and international relations contexts. It is positioned as article 18 of the international human rights barometer, the Universal Declaration of Human Rights.

Along with civil rights, religious freedom is recognized as a constitutional provision designed to secure the prerogatives of every citizen. In the United States, to underscore its primacy among fundamental freedoms, many experts call it the “first freedom.” In fact, it undergirds all other freedoms. It presupposes freedom of thought, of conscience, and of choice. It is key to self-determination. Religious freedom translates into freedom of association, of assembly, and worship.

But there is more to religious freedom than meets the eye. From a faith-based perspective, religious freedom is a sign, a symbol, and even a seal of a covenant or a possible social contract to signify how human beings should relate to one another—that is, with respect, deference, and even reverence before the mystery of life. It is a sign that we should relate to any other human being with care and caution, without fear, and most certainly without violence.

Religious liberty is freedom from being harmed, hurt, humiliated, dis-



criminated against, or criminalized and subjugated to any form of violence. This freedom from violence should help us reimagine what life would be if it were fully embraced. The outcome would be peace and security.

But there is still more to freedom of religion. It is more than a rediscovery during the Renaissance or an insight from the Enlightenment era.

Religious freedom is not just a right—a legal or legislative provision to promote and protect. Something about religious freedom transcends the realm of legislative provisions. It is not just something to be voted by lawmakers. It goes beyond that. Its roots are deeper than social arrangements.

From a faith-based perspective, one dimension that needs to be taken into consideration is that religious freedom is a primarily a divine attribute. And since, according to Scripture, humans are created in the image of God, they reflect *divine* (and a theologian would specify *communicable*) attributes. Religious freedom is part of the image of God the creator.

It is, moreover, the root and tangible expression of human dignity. Human conscience, the locus of moral decision, corroborates this dignity. To deprive humans of religious freedom is to trample upon their dignity. Everyone ought to be respected on the basis of human conscience, which is the inner sanctuary of every individual.

Freedom of belief, or conscience, and of conviction is therefore an intrinsic attribute of every human being. In other words, it is a sign of our humanity. In fact, from a faith-based perspective, it is a primordial gift, a prerequisite for love to be possible. Love cannot be forced.

Nelson Mandela eloquently stated, “To deny any person their human rights is to challenge their very humanity.” Furthermore, from philosophical, theological, and existential perspectives, religious freedom is a reminder that human beings are sacred. Even more sacred than objects and places, be they holy places or national or international monuments. So, to promote and protect religious freedom is not just to promote an idea or to protect a concept or an ideology; it is an affirmation of the dignity and respect due to every person.

These are the deeper reasons why Seventh-day Adventists, as early as 1893, founded an organization called the International Religious Liberty Association (IRLA) to uphold this homage to the conscience of every person everywhere.

To promote religious freedom is to participate in making the world more human and humane. It is part of a mandate entrusted to each one of us as we respect, value, and honor the dignity of every person.

FIDES ET LIBERTAS



PART I

REFLECTIONS ON THE HISTORY OF THE IRLA MEETING OF EXPERTS



TWENTY YEARS OF PROMOTING AND DEFENDING A CULTURE OF RELIGIOUS FREEDOM¹

ROSA MARIA MARTÍNEZ DE CODES²

In the context of the 20th anniversary of the International Religious Liberty Association (IRLA) Meeting of Experts, under the leadership of Secretary General Ganoune Diop, a group of distinguished authorities from diverse disciplines and regions around the world gathered together in Fez, Morocco, to commemorate two decades of promoting and defending a culture of religious freedom. A special opening session was devoted to exploring the history and impact of this international think tank. Key individuals from IRLA's past were invited, including former Secretary General John Graz and former IRLA President Robert Seiple, the first United States Ambassador at Large for International Religious Freedom.

Those who know John Graz say that he has devoted his life to the issue of religious freedom. Once again, he gave us an outstanding picture of the role that religious freedom plays in the political dynamic. His presentation highlighted his passion for fairness and respect for the dignity of the individual and his deep concern for religious freedom and human rights for all peoples and in all situations.

Robert Seiple brought us an inspiring account of his spiritual pilgrimage and the lessons he learned from victims of repression and war he met during his lifetime of service around the world. He emphasized the importance of including more broadly spiritual practices and wisdom in support of efforts to bring reconciliation, healing, and freedom to all peoples, whatever their faith or nationality.

Following both presentations, my contribution deals with the history of IRLA's Meeting of Experts and the status of law pertaining to religious freedom; the most salient threats to freedom of religion and belief discussed by the group of experts since its origin; and, finally, the relevance of religious freedom to three global needs in the new millennium. I am responsible for all of the quotations cited in this presentation.

Religious freedom has gradually developed in various religious and

¹ References: irla.org/statements; *Fides et Libertas*; *Conscience et Liberté*.

² Rosa Maria Martínez de Codes, PhD, is Professor of American History at Complutense University, Madrid; a Vice President of the International Religious Liberty Association; and former Vice Director of Religious Affairs in Spain's Ministry of Justice. She presented this paper at the 20th anniversary meeting of the IRLA Meeting of Experts, which was held September 2-5, 2019, in Fez, Morocco.



political settings to the point where most of the nations in the world and many of the world’s religions have acknowledged it as a fundamental human right. Yet, the consensus embodied in various formal documents has not led to agreement on the meaning and foundations of religious freedom, nor on its relation to other fundamental rights.

Rooted in different legacies and cultural traditions, religious liberty remains a difficult concept, both philosophically and practically, because there are so many different understandings of “religion” and “religious freedom.” Twenty years ago, an international and interconfessional team of academics, lawyers, and members of non-government organizations (NGOs) recognized the need for a deeper understanding of religion and belief in our respective societies and, in response, they started exploring key issues with a comparative and holistic focus.

RESPONSIBLE DISSEMINATION OF RELIGION OR BELIEF

Under the leadership of Dr. Bert Beach and Professor Alberto de la Hera, the International Religious Liberty Association convened its first two Meetings of Experts in 1999 (held in El Escorial, Spain) and early 2000 (in Navas del Marqués, Spain). At that time, our priority was to raise consensus regarding the responsible dissemination of religion or belief. The practice of “proselytizing,” or making converts, inevitably affects interreligious relations. We committed ourselves to drafting “Guiding Principles for the Responsible Dissemination of Religion or Belief,” which is now available on the IRLA website, to help individuals and communities improve their relations with each other and to focus on relations between religious communities and states.

The principles of this document are based on the dignity of every human person and on an individual’s freedom to follow the voice of conscience. It tackles the issue of *coercion* with the following guidance in respect to a change of religion or belief: *To teach, manifest, and disseminate one’s religion or belief is an established human right. Everyone has the right to attempt to convince others of the truth of one’s belief. Everyone has the right to adopt or change religion or belief, without coercion, and according to the dictates of conscience. It is also addressed in the 10th principle, regarding the freedom to choose or reject one’s own religion: Dissemination of religious faith or belief should respect the addressed person’s freedom to choose or reject a religion or belief without physical or psychological coercion, and should not force that person to break the natural ties with family, which is the foundational component of society.*



We agreed that missionary activity is ethically acceptable only if it respects others and their convictions, provides individuals with freedom to search for and adhere to the fullness of truth, and ensures freedom from pressure of any kind, either by legal constraint or personal harassment.

RELIGION AND SECURITY

Before September 11, 2001, the link between religion and violence had not escaped the attention of lawmakers in some Western governments, but the real turning point came when religion was immediately identified as one of the driving forces behind the terrorist attack.

Immediately afterward, a few states approved laws enhancing national security. Some of them dealt explicitly with religion and called upon our Meeting of Experts to integrate their concern for religious freedom with respect to security measures. The group of experts convened for three meetings: the first held in Washington, D.C., November 14-17, 2002; the next in Paris on February 4, 2003, and third in Leuven, Belgium, June 9-11, 2003. The work of the Meeting of Experts was supported by the International Religious Liberty Association, the International Association for the Defense of Religious Liberty, the International Academy of Freedom of Religion and Belief, and the International Commission on Freedom of Conscience.

The resulting document, “Guiding Principles and Recommendations on Security and Religious Freedom,” addressed religious liberty concerns in connection with responses to the terrorist acts of September 11, as well as subsequent efforts by both public authorities and religious communities to resolve these issues. The guidelines noted: “Religious freedom requires security, just as true security requires religious freedom. The two are interdependent, mutually reinforcing, not exclusive, and do not collide or conflict. Too frequently, responses to religion-based terrorism have involved efforts to enhance security at the expense of religious freedom. These responses have often proved counterproductive and resulted in violations of international standards of human rights. Such violations, which diminish both security and religious freedom, must be opposed by governments, religious groups, people of faith, and all those who truly value human rights.”

The IRLA Meeting of Experts expressed concern that some responses to the 2001 terrorist attacks had resulted in inappropriate actions that violated fundamental human rights—in particular the right to freedom



of religion or belief. Examples included excessive tightening of religious association registration rules, unwarranted intrusion into the internal affairs of religious groups, religious and ethnic profiling, the exploitation of national security to limit religious pluralism, the use of laws repressing religious hatred to constrain freedom of religious speech, and the application of restrictive immigration laws in ways that prevent free movement of religious personnel.

We need to stress that international standards had provided clear guidance concerning the narrow range of circumstances under which states might legitimately impose limits on freedom of religion or belief. The Meeting of Experts affirmed the validity of the carefully defined and narrow limitations authorized by Article 18 of the International Covenant on Civil and Political Rights and the United Nations Human Rights Committee’s official interpretation of that treaty. The existing limitations clause for Article 18 permits states to address terrorist acts, including religiously motivated acts, but insists that laws authorizing such limitations be carefully crafted to minimize interference with freedom of religion or belief.

With the foregoing considerations in mind, the Meeting of Experts suggested to national and international public authorities, as well as to religious leaders and communities, a handful of guiding principles and recommendations, including the following:

- Security should not become the sole value of a society, even under the threat of terrorism. Regimes established under the auspices of “national security” have proved to be repressive and incompatible with the culture of human rights.
- In responding to terrorism, the state may impose sanctions only for actions, and not for thoughts, beliefs, or religious identity. State actions that have the effect of subjecting people to sanctions or discrimination, based simply on their beliefs or membership in religious organizations, are unacceptable.
- The right of religious freedom does not protect the incitement to religious persecution or violence, even if based on sacred scriptures or religious law. Religious leaders, believers, and communities should cooperate with public authorities to protect public safety, justice, and the rights of every person.

RELIGIOUS SYMBOLS AT STATE SCHOOLS

During the first decade of this century, the custom of veiling the



face evolved from a non-issue into a hotly debated topic. In the case of wearing a face veil, or niqab, it concerns an exceedingly small number of women but has become hypervisible in public spaces.

In the summer of 2019, the Netherlands joined a number of other European nations (Belgium, France, Switzerland, Turkey) in implementing a controversial ban on face-covering garments, such as the burqa or niqab. France was the first European country to ban wearing the burqa in public. It started in 2004, with a clampdown on students in state-run schools displaying any form of religious symbol. At that time several highly controversial state actions and court decisions challenged the right of students to wear religious clothing and symbols at state schools. The French parliament enacted a law in 2004³ banning primary and secondary students from wearing “conspicuous” (“ostensible”) religious attire at state schools. This law was widely understood as prohibiting Muslim schoolgirls from wearing headscarves (frequently called hijab).

One year later, in November 2005, the Grand Chamber of the European Court of Human Rights issued a decision regarding university students in Turkey—*Sahin v. Turkey*⁴—that upheld the Turkish ban on wearing Islamic headscarves in public universities.

In light of these background considerations, the IRLA Meeting of Experts took issue with the blanket ban on the wearing or display of religious symbols in state schools. The topic was addressed during meetings held in June of 2004 in Klingenthal, France, and again in November of 2005 during a conference in Sigüenza, Spain. In a document titled “Guiding Principles Regarding Student Rights to Wear or Display Religious Symbols,” the experts examined situations involving the wearing or displaying of religious symbols, with reference to international and other norms governing freedom of religion or belief, in order to identify basic principles that could be used as guidelines for governments, religious leaders, educational authorities, and public policy makers.

Two of the principles are worth repeating here: number 5, which says that “The right to manifest belief is a vital part of religious freedom as defined by the international documents, and this includes the right to manifest belief by wearing or displaying religious symbols and clothing,” and number 3, which declares that “It is not the role of the state to decide to interpret the significance of a religious symbol for an individual or a community.”

³ Law No. 2004-228 of 15 March 2004.

⁴ ECtHR, application no. 44774/98 of 10 November 2005.



We were fully aware of the range of circumstances in which wearing the headscarf might be a reflection of coercion emanating from a student's family members or social context. However, in light of the state's particular obligations to protect human rights, coercion by the state in banning headscarves sounded even more serious than coercion by private parties. Experts noted that banning the wearing of headscarves would not necessarily prevent familial or social pressure; indeed, it might increase such pressure, leading to forced withdrawal from public schools. We agreed that even legitimate efforts to eliminate coercion of those who do not wish to wear the headscarf do not justify the state in coercing others not to do so.

Recommendations included respecting the rights of students and parents, seeking solutions on a case-by-case basis, and avoiding a total ban on the wearing of religious symbols in public educational settings. To sum up, these recommendations were drafted in order to protect those acting on sincere religious beliefs and to try to minimize social tensions.

HATE SPEECH AND DEFAMATION OF RELIGION

Exploring the differing ideological viewpoints that informed the problematic United Nations Resolution "Combating Defamation of Religion" was the IRLA committee's task in 2008 at the Parliament Palace in Bucharest, Romania, and in 2009 at the IRLA headquarters in Silver Spring, Maryland.

The issue of hate speech and defamation of religions has been of great concern to those involved with the protection of human rights, and especially religious freedom, for several decades. Particularly problematic were resolutions and other documents that were approved or being considered in the United Nations settings that call upon states to take resolute action to prohibit the dissemination of ideas and material that constitute incitement to racial and religious hatred, hostility, or violence.

The issue of defamation of religions was first presented to the United Nations Commission on Human Rights in a draft resolution submitted by Pakistan in 1999 on behalf of the Organization of the Islamic Conference.⁵ Similar resolutions were adopted by the Commission on Human Rights every year from 1999 to 2005.⁶ Thereafter, resolutions on this topic have been adopted by the Human Rights Council.⁷ Commencing

5 "Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination," U.N. Doc. E/CN.4/1999/L.40 (April 20, 1999).

6 Commission on Human Rights Res. 2000/84 of 26 April 2000; 2001/4 of 18 April 2001; 2002/9 of 15 April 2002; 2003/4 of 14 April 2003; 2004/6 of 13 April 2004; 2005/3 of 12 April 2005.

7 HRC Res. 4/9 of 30 March 2007; HRC Res. 7/19 of 27 March 2008.



in 2005, the U.N. General Assembly began adopting similar resolutions.⁸

In an open letter dated September 12, 2007, to the President of the United Nations Human Rights Council (a position held at that time by Ambassador Doru Romulus Costea), the IRLA Meeting of Experts backed the analysis of U.N. Special Rapporteurs Doudou Diene and Asma Jahangir, who wrote: “International human rights law protects primarily individuals in the exercise of their freedom of religion and not religions per se,” and that “the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule. . . . Defamation of religions may offend people and hurt their religious feelings, but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.”⁹

Certain provisions in the United Nations resolution were considered by the group to be inconsistent with international norms, because they restricted speech critical of public issues and political expression on matters of public importance. “If we don’t take a position in opposition of some of those proposals, things would be worse,” said Dr. David Little, a research fellow at the Berkley Center for Religion, Peace, and World Affairs at Georgetown University. “They would be worse because the international organizations, specifically the United Nations, might be inclined to restrict religious speech and thus defeat some of the purposes that we, in this group, believe are enjoyed by allowing more open speech—that is, criticisms by one religion of another, of one religious group within other religious groups, etc., . . . If we didn’t allow that kind of speech, it would be more and more likely that the benefits of free speech would be denied, and we would all be worse off.”

Moreover, the group understood that initiating laws to prohibit free speech might be aimed at protecting the minority, but actually be turned against it. “We often think in the law that if something is bad and we pass a law against it, it will automatically disappear as if the law is a magic wand,” said Dr. W. Cole Durham, Jr., Founding Director of the International Center for Law and Religion Studies. “In fact, we have to think very carefully because all too often, passing those laws will not really help, since the minority

⁸ G.A. Res. 60/150 of 16 December 2005; G.A. Res. 61/164 of 19 December 2006; G.A. Res. 62/154 of 18 December 2007; G.A. Res. 63/171 of 18 December 2008.

⁹ Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief, and Doudou Diene, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, “Xenophobia and Related Intolerance,” Joint Report, U.N. Doc. A/HRC/2/3 (20 September 2006).



groups will be afraid to invoke them; they are afraid that doing so will serve as a lightning rod, and they will get all the more attacks and threatening phone calls. There are all kinds of ways the social opposition can come out.”

In light of these background considerations, the Meeting of Experts held in September of 2009 released a “Statement of Concern about Proposals Regarding Defamation of Religion.” The document stated that defamation of religions: (1) “*will interfere with the core religious right of evaluating, comparing, and exchanging religious beliefs and practices*”; (2) “*will interfere with the freedom of speech and expression*”;¹⁰ (3) “*can be used by dominant groups to repress the rights of vulnerable individuals and groups*”; (4) “*may also impair the rights of all religious groups by strengthening the power of the state to interfere in religious matters*”; and (5) “*will suffer from vagueness and a lack of enforceable standards.*”

In its final recommendations, the group emphasized that current national, regional, and international laws and standards were sufficient to protect against speech that resulted in discrimination or violence. We encouraged the United Nations to support dialogue on this issue by including representatives from states, religious bodies, non-governmental organizations, and other interested parties and by managing new methodologies to bridge differing cultural approaches to religious disagreements and insensitivities.

SECULARITY AND SECULARISM IN A PLURALISTIC WORLD

In the face of increasing conflict and widespread misunderstanding between secular governments and religious groups, the Meeting of Experts wanted to bring clarification to the place of religion in the secular state. From their hegemonic, cultural position, secularist doctrines are not just present in Western societies but in other cultures, in which such values and sensitivities have traditionally been foreign. Such doctrines have posed a challenge to the exercise of rights and freedoms recognized by international legal instruments, in the sense that some secularist practices discriminate against a number of religious and ethnic minorities, whose rights are thus undermined.

The goal of four successive meetings of the IRLA group was to deepen the analysis of the problems created by these secular doctrines. Four different venues (Sydney, August 2011; Toronto, August 2012; Ath-

¹⁰ The experts believe that the right to religion and belief, and the right to free expression, are mutually interconnected. We agree that the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule.



ens, January 2014; and Florence, August 2014) hosted an interdisciplinary group of experts from Europe, Canada, Australia, and the United States who analyzed, from their respective spheres, the most controversial aspects of this complex reality.

We defined a secular state as one that does not claim any religious authority or basis for its law and public policy. However, we stressed that secularization occurs in many forms, along a spectrum ranging from benevolent neutrality toward religion to overt hostility toward religion, and that it protects space for religious activity and belief in society. A third version of the ostensibly “neutral secular state” views religion very narrowly, as a purely private concern, and inhibits religious practice.

With respect to religion, the modern state has a range of areas in which it can choose whether or not to intervene. Formulas such as “neutrality” and “separation” translate in practice to many institutional requirements that raise complex questions of conflicting rights between groups and individuals. Religious freedom often involves accommodation of religious practices, so the group of experts addressed both sides of the issue: In a secular society that seeks equal treatment and equal opportunity for every citizen, what are the proper limits on such demands for accommodation? And what are the proper limits of state intervention in those practices?

Our reflections were driven by the following key questions: How do we attempt to reincorporate religion into our civil and social structures, making religion part of the modern secular society we proclaim to be? Does the law have a role in defining the boundaries of societal belonging? If so, should the pluralized society that migration has brought in its wake also result in legal pluralization? Is there any obligation to accommodate or even incorporate others’ minority legal norms into national legal systems? What are the limits of legal pluralism? Do our family-law codes have the openness to incorporate cultural diversity, or does an assumption of homogeneity impede an adequate response to ethnic and religious plurality in family practices?

Our meetings presented us with an opportunity to systematically address many of these issues and apply them to real-life situations. The experts endorsed a final statement about “The Relationship Between the Secular State and Certain Religious Freedoms.”



RELIGION AND RELIGIOUS FREEDOM IN CONFLICT RESOLUTION AND PEACEMAKING

In 2007 the President of the Council for America’s First Freedom, Ambassador Robert Seiple, called on the Meeting of Experts to debate conflict resolution, reconciliation, and peacemaking. We met in Richmond, Virginia, to start working on the issue. Eight years later, Ambassador Seiple recalled for us the importance of thinking over “identity conflicts.” He said: “The greatest problem in the world today is our inability to live with our deepest differences. Differences are a function of identity—and what we are least likely to give up. We have seen a quarter of a century of “identity conflicts,” from civil strife in Lebanon to genocide in Rwanda and ethnic cleansing in Bosnia. Conflicts are almost too numerous to mention, exemplifying segregation, apartheid, holocaust, and ethnic cleansing.”

He added: “If we are unable to respectfully bridge the dividing differences, we will face the ultimate irony of new and more difficult human boundaries, created by immigration and diaspora, towards a new tribalism.” Then he asked, “What might IRLA do to contribute to a solution-based discussion, ameliorating the need to live peacefully with our deepest differences?”

Ganoune Diop, who was elected Secretary General of the IRLA in 2015, took up the challenge and organized a program at an institution noted for its work in the conflict, Pepperdine University School of Law (August 2015). The focus of the Meeting of Experts was on the role of religious voices and the promotion of religious freedom in contributing to peacemaking and peacekeeping models. One of the desired outcomes of the Meeting of Experts was “to provide the best of religion and philosophical persuasions to end various kinds of discrimination, especially based on religion, and to foster acceptance of people’s religious freedom in all of its dimensions.”

We compared successful mediation in international relations with faith-based mediations. Factors such as legitimacy and leverage were found to contribute to success in both situations, however these two elements have a fundamentally different meaning and nature within religious contexts.

The group also assessed if religious mediators do, in fact, significantly impact peacemaking and we concluded that faith-based actors bring an added sense of trust and legitimacy into the process. Thus, we saw that



religious groups and actors can have significant leverage within a peace-making situation as they are often seen as neutral and respected arbiters.

The second field where religion could be helpful to promote peace had to do with interfaith dialogue and the role of religious leaders. The experts debated about, developing lines of communications between hostile parties, removing a climate of fear, and promoting common ethical principles. Finally, we concluded that some religious concepts or principles might be usefully built upon by political leadership as they seek to resolve a conflict situation.

THREE GLOBAL NEEDS (2016-2018)

Secretary General Ganoune Diop posed the importance of addressing three fundamental global needs in the last three meetings the experts held. I refer to the August 2016 meeting at Harvard Divinity School in Cambridge, Massachusetts, as regards “International Norms for Freedom of Religion and Belief;” to the August 2017 meeting in Princeton, New Jersey, on “Highlighting the Universality of Human Rights” and to the gathering held in October of 2018, in Cordoba, Spain, concerning “Freedom of Religion and Belief and Human Mobility.”

At Harvard in 2016, controversial cases and the politicization of religious freedom within the U.S. media and political circles encouraged us to focus on current American legal and theoretical disputes over religious freedom. We also discussed challenges to U.S. policies regarding how freedom of religion or belief norms are currently understood and applied, and we agreed that what had been accomplished to date was essentially intellectual, rhetorical, and cultural in nature. Until recently, religious freedom norms had been widely accepted, but we understood that their very legitimacy was being challenged.

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The Meeting of Experts renewed its consideration of the nature of



freedom of religion or belief; re-examined the relationships between freedom of religion or belief and freedom of thought and other human rights; explored the ways that concepts of religious freedom vary between nations and regions; and identified best practices for freedom of religion or belief.

A major emphasis of the 2017 Meeting of Experts at Princeton University was to highlight the “Universality of Human Rights.” Several scholars, contemporary thinkers, and politicians had written to deconstruct the very concept of human rights, making a case against the universality of human rights. On that occasion the contribution of Dr. David Little, who has for many years graced each IRLA Meeting of Experts with his presence and ideas, provided a very significant map of the terrain of the current objections to the legitimacy of human rights.

The debates helped IRLA to consolidate gains on the justification of human rights in general and religious freedom. Dr. Little contributed the idea of a two-tiered justification for human rights, which was further developed in the statement “A Response to Human Rights Skeptics: Articulating a Universal Foundation for Human Dignity.”

The group also explored ways to strengthen the foundations upon which the work of the United Nations and other international organizations, governments, and NGOs can flourish amid resistance to the universality and relevance of human rights.

The theme in 2018 was connected to what the United Nations Secretary General considers “one of the most urgent and profound tests of international cooperation in our time.” He identified this challenge as “managing migration.” The Meeting of Experts gathered at Casa Arabe in Cordoba, Spain, to discuss the multifaceted issues related to migration and the importance of its intersection with freedom of religion or belief and governance across Western countries.

We particularly focused on the following three broad concerns: security, cultural incompatibility, and social cohesion. Governments face the critical challenge of creating a narrative about immigration that embraces religious difference and religious freedom and that builds rather than detracts from community cohesion.

We agreed that faith communities had assumed a leading role in championing protection, education, employment, and legal migration opportunities for refugees. However, if religious institutions wish to integrate refugees and immigrants into their faith communities and promote



their integration into the larger society, those institutions must respect the right of individuals to act independently and to make their own free choices. Obviously, this topic should be considered for further research, debate, and recommendations in the future.

CONCLUSION

Because the case for religious freedom is so compelling, both for believers and the good of societies, the IRLA group of experts for the last 20 years has been looking for resources within their own faith traditions to generate knowledge, diffuse ideas, and fortify advocacy. Their aim is to influence practices, laws, attitudes, and high-level intellectual discourse in order to foster and respect the right of all individuals to peacefully express and manifest their most profound thoughts in matters of conscience and religion.



THE HISTORICAL INTERNATIONALIZATION OF RELIGIOUS FREEDOM¹

BLANDINE CHELINI-PONT²

My focus today will be on the history of religious freedom seen as an international standard. Religious freedom is, of course, the result of a long theological, philosophical, and cultural process that began to appear some centuries ago. But in the possible list of its roots, we often forget to mention its “internationalization,” and I would like to recall this specificity.

1648 TREATY OF WESTPHALIA

Historically, the first real encounter between religious toleration—not yet freedom—and international rules was the 1648 Treaty of Westphalia between the European Great Powers. This great peace treaty, after 30 years of a very bloody and partly religious war, is known as the first attempt to organize binding rules between the European states. So, the embryo of religious freedom and the beginning of our international system of state relations are historically connected.

What were the religious provisions of the Westphalian treaty? You need to remember that Europe, at that time, had been devastated for more than a century by political and religious conflicts between Protestants, Catholics, and their princes, in civil as well as interstate wars. Before and after the treaty, most of these states had been obliged to accept or to create statutes of religious toleration for their new religious dissidents, in a climate of general and usual intolerance rooted in centuries of theological interpretation of what religious truth meant. This intolerance was practically exercised and considered spiritually justified.

The Treaty of Westphalia recognized, for the first time, three Christian religions within its perimeter: Catholic, Calvinist, and Lutheran. Europeans who belonged to one of these three religions could continue to practice it, in the place where they lived, despite their religion not being the religion of their prince. Other Christians, such as Anabaptists, were guaranteed *ius emigrandi*, which meant they had the right to leave the territory of their lord or prince and settle in another territory, ruled by a

1 References: Fernando Arlettaz, *Les groupes religieux objet du droit international*, Aix-en-Provence, Presses universitaires d'Aix-Marseille, Collection Droit et Religions (2018).

2 Blandine Celine Pont, PhD, is Professor in History, Law and Religion at Aix-Marseille Université and an associate member of GSRL-École Pratique des Hautes Études in Paris.



prince who would accept them. A last clause of toleration for the private worship of non-recognized religions was added, which theoretically concerned all other believers, such as Jews, Muslims, or members of small Protestant cults.

No doubt this first international religious frame for protecting believers from open and bloody persecutions could appear to us as very primitive, and in actual practice it was not respected by the majority of the European states or principalities, which continued or began again to persecute their dissidents. Indeed, Catholic France continued to forbid Jewish settlement on its lands and, in 1685, ended its own statute of toleration by obliging French Protestants to convert (or die) while forbidding them to move out of the country, which is what 250,000 French Protestants nevertheless did.

AMERICAN DIPLOMACY AND THE 1878 CONGRESS OF BERLIN

Two centuries later, one country began to promote religious freedom in the international arena as a natural and sacred right to be protected. It was the young United States. At the time of its founding, this nation was able to find a new and proper way to peacefully organize the religious pluralism that existed in its society but was not yet reflected in the institutions of the ancient colonies transformed into free states. It prohibited the government from being linked with one established religion and constitutionally protected the free exercise of any religion. Step by step, religious freedom was built in this country, often against what historians are used to calling the Protestant establishment of its own states. By the end of the 19th century, American diplomacy was the only one to demand respect for the religious and unfortunate minorities of Europe, such as the Jews in Romania and Russia who were harassed, discriminated against, and often persecuted until death.

Nevertheless, it is by means of international law that the principle of religious freedom was incorporated into the national constitutions of Montenegro, Serbia, and Romania (states whose independence had been newly recognized), together with Bulgaria (a principality that paid tribute to the Ottomans) and Turkey. The Treaty of Berlin, which was signed on 13 July 1878 as the final act of the Congress of Berlin, undertook to guarantee the religious freedom of all their nationals as well as foreigners and declared that religion could not be a reason for discriminating against enjoying civil and political rights. Religious freedom was also recognized



by many other treaties signed in the late 19th century.³

Integrating religious freedom into a vision of international and peaceful order built on human rights and universal principles was a goal pursued by President Woodrow Wilson in January 1919 in his third League of Nations draft. Although religious freedom was not included in the final treaty and the agreement was not ratified by the American Congress, in the draft, the “free exercise of the religion and equality, in law and for real, between the members of different cults”⁴ was protected because, I quote, “religious persecution and intolerance [are] fertile sources of war.”

THE UNIVERSAL DECLARATION AND THE POST-WAR CONVENTIONS

Peace and religious coexistence were clearly connected in the minds of the first “internationalists,” who tried to better organize the rules of international life. However, it took another 30 years before religious freedom was declared and defined as a fundamental right in the Universal Declaration of Human Rights, approved in December 1948 by the General Assembly of the very new United Nations envisioned by U.S. President Franklin Roosevelt.

Religious freedom as a plural right of thought, conscience, and religion was officially born. After the Universal Declaration, a strong conventional process began in which religious freedom was included, and this process, under the foundational article 18 of the Declaration, gave religious freedom an international normative content. All international or regional instruments designed to protect human rights are either inspired by article 18 or else copied it, as did the European Convention on Human Rights.

In 1949, concerns about religious persecution or violence spilling into war were inextricably connected with the horrific fate of the European Jews just after the Second World War. Certainly, this explains why the conventional process focused on that aspect, especially in the construction of humanitarian law. Thus, the first international agreement mentioning

3 Examples include the 24 May 1881 Convention of Constantinople, whereby Thessaly was annexed to Greece; the 29 September 1913 Treaty of Constantinople between Bulgaria and Turkey; the 1–14 November 1913 Convention of Athens between Greece and Turkey; and the 1–14 March 1914 Treaty of Istanbul between Serbia and Turkey.

4 “Recognizing religious persecution and intolerance as fertile sources of war, the Powers signatory hereto agree, and the League of Nations shall exact from all new States and all States seeking admission to it the promise, that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, either in law or in fact, against those who practice any particular creed, religion or belief whose practices are not inconsistent with public order or public morals.” (Supplementary Agreement VII), published in David Hunter Miller, *The Drafting of the Covenant*, vol. 2 (New York, London: Putnam, 1928), p. 105.



the religious question—signed just one day before the Declaration—concerned the prevention and suppression of genocide and focused on religious groups among those protected by the prohibition. Aside from this binding text, two other conventions concerning refugees must be recalled: the first one, from 1951, included either effective or predictable religious persecution in a country as a reason to grant refugee status. This convention also provided refugees the right to freely exercise their religion and to freely raise their children within their religion. Article 33 forbids a refugee being expelled or driven back to a country where his/her life would be threatened on the basis of religion.

The same respect for religious convictions was at the core of the second convention, which was one of the first post-war humanitarian agreements. Their provisions include respect for the convictions of civilians and those out of action. These rules normally apply to all international and non-international armed conflicts as a fundamental guarantee.⁵ Article 27 of the fourth 1949 Geneva Convention relating to the protection of civilian population recalls that all protected people have, in all circumstances, the right to respect for their person, their honor, their family rights, and their religious convictions and practices.⁶ Civilians have the right to be assisted by their own ministers.⁷ The Geneva conventions are very detailed concerning the respect for people's religious beliefs and free exercise, notably the respect for funeral rituals, the religious activity of prisoners, or the religious education of orphans and children separated from their parents. Other provisions guarantee the protection, in all circumstances, of religious personnel at war, the right to their religious assistance, and the sending of holy books and objects in occupied territories. They guarantee the protection of religious buildings and the necessity to spare them at any cost, especially from bombing.

All of the provisions then included are particularly topical, and they preceded the great International Covenant on Civil and Political Rights of 1966. We need to remember this historical anteriority and the fact that agreements on peace and humanitarian conventions include the religious aspect as one of the most exposed during conflicts.

5 See Article 75, Paragraph 1 of the 8 June 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), and Article 4, Paragraph 1 of the 8 June 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

6 See Article 27 of the fourth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War (online at <https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=FFCB180D4E99CB26C12563CD0051BBD9>).

7 See Article 38, Paragraph 3 of the fourth Geneva Convention relative to the protection of civilian persons.



THE COVENANT ON CIVIL AND POLITICAL RIGHTS OF 1966 AND NEXT CONVENTIONS

Twenty years after the end of the Second World War, the International Covenant on Civil and Political Rights finally gave concrete existence to the various rights proclaimed in the Universal Declaration, including religious freedom. It gave them a binding security, and for the first time since the Universal Declaration, religious freedom was explained in more detail and in the normal context of the rule of law. We could consider it a late achievement, or we could consider how extraordinary it was to realize such a goal, in light of the recent past. Thanks to the covenant of 1966, the next conventions—namely, the 1989 Convention on the Rights of the Child, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the 2006 Convention on the Rights of Persons with Disabilities—not only made strong provisions for this specific and precious freedom, but also protected vulnerable people such as children, migrants, and disabled persons. In addition, the Human Rights Committee did tremendous work to improve, explain, and orientate the articles of the covenant.

THE UNITED NATIONS DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

So where are we today? The answer depends upon the extent of our hope. We can celebrate the fact that, at the beginning of the 1980s, the United Nations issued a very important Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. This declaration, which was exclusively devoted to religious freedom, went far in its details on the meaning of the right to worship; to assemble; to maintain religious locations; to found charities or humanitarian institutions; to possess, buy, and use religious materials; to publish, disseminate, and print religious materials; to educate people in appropriate locations; to open schools; to buy buildings and own them; to receive money and fructify it; to organize a religious group by its own rules; to follow holy days; to observe days off, specific precepts, and food, etc. Once again, it was the first time this freedom was provided and explained in such detail.

After this declaration, things moved fast. Within five years, the United Nations Commission on Human Rights decided to create a control



mechanism, without waiting for the traditional process of control and implementation each convention has in the form of an ad hoc committee. This mechanism consisted of creating the new role of a Special Rapporteur on religious intolerance, which in 2001 was replaced by the Special Rapporteur on religious freedom or belief. This Rapporteur's job is vital, and the method that was implemented is now used by other institutional or national bodies for religious freedom and by NGOs devoted to human rights or religious freedom. Each year, the Special Rapporteur's annual reports and special reports, points of criticism or satisfaction, and recommendations are read and taken into account. This, in turn, prompts the publication of other reports, including those of the American Congressional Commission and the committee on religious freedom of the European Parliament. NGOs are now more and more involved in finding, giving, and disseminating information, while the media is very interested in maximizing news on the religious state of the planet.

FUTURE?

Never in our history have the questions of religious freedom, religious pluralism, and religious justice been taken so seriously into consideration. On a sobering note, the last report of the UN Special Rapporteur stated that from 2004 to 2016, his office had dealt with 618 urgent calls and letters to 87 states. The majority of communications he received during this period concerned restrictions on the right to manifest one's religion and acts of religious discrimination and intolerance. The last Special Rapporteur sent an increased number of letters denouncing sectarian and radical attacks against religious minorities, false accusations of blasphemy and apostasy, refusals of or legal discrimination against religious buildings, the stopping of peaceful religious gatherings and private assemblies, arbitrary arrests, state censorship, etc.⁸

It seems that the lack of a new United Nations convention entirely devoted to religious freedom—which could be logically expected after the declaration of 1981—contributes to the halt or even the reversal of progress toward religious freedom. We urgently need a convention providing rights related to new persecution challenges, such as those related to changing one's religion, having no religion and expressing that fact, being an atheist (a right forbidden in many countries), or expressing one's opinion on any religious matter without fear—a right of expression

⁸ United Nations Human Rights Council, Report of the Special Rapporteur on freedom of religion and belief, A/HRC/34/50, 17 January 2017, § 8, pp. 4-5.



seriously endangered by new laws and penalties against blasphemy, which are being introduced all around the world. But how can such a convention be adopted, now that powerful countries claim that sacred religions need protection from disrespectful people? How can it be achieved when everyone says that such a convention would be counterproductive, and while religious radicalism is once again at work spreading death and causing fear, violence, horrific discrimination, and deliberate extermination?

I don't have the answer. A lot has been done in the recent past, but ahead of us, the road is still long after the very distant Treaty of Westphalia.

FIDES ET LIBERTAS



PART II

NONCOMPULSION IN MATTERS OF RELIGION



COMPULSIONS IN MATTERS OF RELIGION OR BELIEF AND LEGITIMIZATION OF VIOLENCE: EXPLORING AN ALTERNATIVE PARADIGM

GANOUNE DIOP¹

“No one engaged in thought about history and politics can remain unaware of the enormous role violence has always played in human affairs, and it is at first glance rather surprising that violence has been singled out so seldom for special consideration. In the last edition of the *Encyclopedia of the Social Sciences* “violence” does not even rate an entry. This shows to what an extent violence and its arbitrariness were taken for granted and therefore neglected; no one questions or examines what is obvious to all.”

Hannah Arendt, *On Violence*

In our International Religious Liberty Association context, with our focus on religious freedom, the expression “no coercion in religion or belief” may seem dissonant in light of the latest trends in religious restrictions and hostilities.

On July 15, 2019, a report from the Pew Research Center’s Forum on Religion & Public Life contained the following observation: “Over the decade from 2007 to 2017, government restrictions on religion—laws, policies and actions by state officials that restrict religious beliefs and practices—increased markedly around the world.”

This increase in restrictions of freedom of religion of belief, with over 5 billion people not enjoying the freedom to decide their beliefs according to the dictates of their conscience, makes us humble and somewhat circumspect. However, while some may be tempted to be discouraged and think that their efforts to promote freedom of religion or belief are in vain, I would like to remind them that the increase of evil should never intimidate the doers of good. It is in the current nature of things that the bad and the good coexist.

The good that we do regardless of how evil tends to spread is essential

¹ Ganoune Diop, PhD, is Secretary General of the International Religious Liberty Association and director of Public Affairs and Religious Liberty for the Seventh-day Adventist Church’s world headquarters. He also serves as Secretary of the Conference of Secretaries of Christian World Communions. He presented this paper at the 20th anniversary meeting of the IRLA Meeting of Experts, which was held September 2-5, 2019, in Fez, Morocco.



to the survival, well-being, and sustainability of moral order and peaceful coexistence in society.

In the following, I would like to explore the connections between restrictions of freedom of religion or belief and legitimization of violence—a violence that erodes the dignity and even the mystery and sacredness of all human beings.

Freedom of religion or belief signifies more than rights can express. It indicates or points to what it means to be human and humane. It opens theo-anthropological dimensions without which the meaning of life eludes human grasp.

THE LEGITIMIZATION OF VIOLENCE

“Compulsion in matters of belief” is a multifaceted and complex issue, made more so by the historical logic of nation-building or empire-building. These endeavors are based on legitimations of coercion, including the use of arbitrary force to subjugate others and appropriate their lands and resources. The conscience of the dispossessed has not, as a rule, been a factor under consideration during conquests, annexations, subjugation, slavery or genocides.

Looking at the root cause of the legitimization of violence, one finds the dark side of human drives, and death drives in particular.

ON VIOLENCE

Violence is a complex and many-sided phenomenon. It is part of a trajectory at the intersections of worldviews, values, behavior, and conceptions of as well as relations to other human beings. Slavoj Žižek, a Slovenian philosopher and writer of social critique, states that violence “takes three forms—subjective (crime, terror), objective (racism, hate-speech, discrimination) and systemic (the catastrophic effects of economic and political systems).”

In archaic societies and antiquity settings, violence and even brutality were among the tools used to affirm the hegemony of powerful rulers.² Violence was considered a powerful message.

The Roman Empire was steeped in a spiral of violence that communicated an ever-present message: *The emperor is powerful; the emperor is great.*

² Byung-Chul Han, *Typology of Violence* (Cambridge, MA: The Myth Press, 2018), 4. “Violence was a significant component of social practice and communication. Thus, it was not merely wielded but also expressly put on display. Rulers exhibited their power through deadly violence, through blood. The theater of brutality that was staged in public spaces also demonstrated the ruler’s power and magnificence.”



He had the power to make people suffer and to put them to death, even to ignominious death. Crucifixions, among other cruelties, were meant to instill fear of suffering in bystanders. They were public events.

“The ostentatious staging of deadly violence demonstrated the ruler’s power and magnificence. The ruling order employed the symbolism of blood. Brute violence did not conceal itself. It was visible and manifest. It had no shame. It was neither silent nor naked but rather eloquent and signifying. In archaic culture as well as in antiquity, the staging of violence was an integral, even central component of societal communication.”

In Roman antiquity, *munera* meant service performed for the public good. A *munus* was a gift expected of someone occupying an official post. One example was the *gladiatorum*, in which the gladiator battle made up only a part of the expected duty, or obligation, of the high-status Roman citizen. Far more brutal than these battles were the midday executions that preceded them. Along with the *damnatio ad gladium* (death by sword) and *damnatio ad flammam* (death by fire), there was also *damnatio ad bestias*. Criminals (or Christians) were thrown to hungry predators, to be mangled alive.”³

This, in fact, was part of the imperial cult.⁴ Violence was open, meaningful, and brutal.

At the time, Christians were on the side of the victims, those suffering—that is, until violence found a new legitimacy. When Christian leaders embraced the Roman Empire’s legitimization of violence, they also adopted the ways of the empire. Cesar was long gone, but theological elaborations inspired by Platonism, Neoplatonism, and Aristotelianism provided justifications for violence. This trend went unabated, until persecutions of Christians by Christians become widespread.

For Christians who adopted the ways of violence, it was a forgetfulness and betrayal of the life and teachings of Jesus. This betrayal led to terrorism, tortures, executions, burning at the stake, decapitations, death by drowning, and all kinds of horrors. The techniques of the inquisitions and subsequent murders, including the genocide of Christians such as the Waldenses, followed the pattern of first accusing others, then demonizing them, discriminating them, criminalizing them, and finally executing them.

In modern-day contexts, legitimizations of violence can be traced

³ Ibid.

⁴ Ibid. “The *munus gladiatorum* wasn’t merely entertainment for the masses, intended to satisfy their aggressive drives. Rather, it exhibited an inherent political significance. In the theater of brutality, the power of the sovereign stages itself as the power of the sword. Thus, the *munus gladiatorum* was an important part of the imperial cult.”



to various causes. Among the contemporary justifications of violence, a belief in one's providential entitlement or right to conquer—to dominate others and keep them under subjugation—stands out. Claims to divine endorsement of one's hegemonic adventures have motivated armies. Colonialism was certainly accompanied by such convictions.

Self-proclaimed divine appointees have marked history with coercion, brutality, cruelty, and the inhumane and degrading treatment of other human beings. No compulsion of people's conscience could have functioned as a deterrent to violations of their physical, emotional, intellectual, spiritual and social-economic integrity.

Religions have been instrumentalized, to a great extent, to inflict pain in order to coerce others into joining the conquerors' folds.

Historically, it is undeniable that Enlightenment philosophers played key roles in deconstructing and dismantling structures of absolutisms, whether they be the church, the state, religions, or ideological atheistic social systems. The so-called Reign of Terror subsequent to the French Revolution demonstrated that coercion is not just part of a religious reality or nomenclature; it is a deep-seated human phenomenon.

At its root, the accepted legitimization of violence has plagued most human organizations. Therefore, we need an entirely different approach to relating to human beings, other than coercion, instrumentalization, and subjugation.

Human dignity, though not an empirical property, elevates people to more than mere biological beings. The human spirit, or soul—the creation in God's image, according to Judeo-Christian traditions, or the vice-regency entrusted to human beings, according to Islamic traditions—positions all people to a high status: that of being sacred. Humans are elevated to intimate relation with the divine, and thus, any violation of human conscience becomes sacrilegious (in the etymological sense of stealing what belongs to the divine) in nature.

Paradoxically, scriptures from the monotheistic faith traditions present two kinds of discourses having direct anthropological, sociological, and existential implications. Several revealed norms were meant to be temporary, circumstantial, subject to changes, and bound to be obsolete when circumstances were no longer compelling or mandatory. Some of them were mere accommodations, because of the hardness of human heart.

More generally, all prescriptions in Scriptures do not necessarily express God's absolute will. Disregard or failure to make a distinction



between God's absolute will and God's circumstantial will brings insurmountable contradictions and irreconcilable hermeneutical difficulties.

Every religious tradition has historically wrestled between interpretations of its corpus, seen as fixed once and for all, and writings it considers to be internally dynamic, requiring evolving understanding or deemed to be progressive revelations, adapted to times and circumstances.

In other words, to put it bluntly, the distinct identity of any religious organization is barely the content of its whole scriptures. For example, Christian identity is not equivalent to the content of every part of Scripture. Yet, because this basic principle is ignored, confusion reigns when it comes to knowing what is genuinely Christian. The same can be said about the Islamic religion. The fact of having Sunni, Shia', Sufi Tidjaniya and Sufi Mourid testifies to this fact. Moreover, the difference of opinion among Muslims between Taqlid and Ijtihad is a testimony of this difficulty.

The Mourid in Senegal, following their leader Sheikh Ahmadou Bamba, refused to take arms and to fight militarily the colonial powers. They argued from the Qur'an that the battles of the Prophet Muhammed were allowed for only a limited time. They are no longer mandatory. Sheikh Ahmadu Bamba became a pacifist in the Sufi Islamic tradition.

In all religious traditions with written records, interpretations of scriptures (or, rather, misinterpretations of scriptures) have brought devastating consequences.

For example, coercion and the incalculable suffering of millions of black-skinned ethnic groups were based on a mythical curse: the curse of Ham. An autopsy of this nefarious belief may well show that it is still somewhat alive in some supranational, racist, and supremacist ideologies. They are based on a reading and interpretations of a scriptural text. Genesis 9, the most misused text to justify the supposed ontological inferiority and subjugation of people of African descent. J. N. Andrews, one of the early Seventh-day Adventists in 19th-century America, asked the following question: "Let us examine if 'all men are born free and equal,' how do we then hold three millions of slaves in bondage? Why is it that the Negro race are reduced to the rank of chattel personal and bought and sold like brute beasts?"

Of the interpretation of Genesis 9, historian and retired professor Edwin M. Yamauchi wrote: "No other verse in the Bible has been so distorted and so disastrously used down through the centuries for the exploita-



tion of Africans and African Americans as Genesis 9:25.”⁵

Gene Rice, a professor of Old Testament Language and Literature for more than 50 years, wrote: “Of all the passages of the Bible, none is more infamous than Genesis 9:18–27. Many a person has used this text to justify to himself and others his prejudice against people of African descent. Indeed, it has been widely used to claim divine sanction for slavery and segregation. Often the location of the passage is unknown, and one is not familiar with the details, [but] with the certainty of unexamined truth it is asserted that Bible speaks of a curse on Black people. And this notion has exercised so powerful an influence precisely because its adherents by and large have been ‘good church people’. While the hey-day of this understanding of Gen. 9:18–27 was during the last and early part of this century, it persists to this day.”⁶

Throughout the history of religious thought, several interpreters have used this text to distort God’s character and demonize God’s purpose.

Partisans of the reduction of peoples of African descents into slavery evoke the Bible and other holy writings to justify this traffic. They consider the anathema against Ham and his descendants by Noah a proof that Africans are by nature inferior to other peoples and that they were predestined to the condition of slaves.⁷ The slave trade, the deportation of Africans to various horizons by Arabs, Europeans, their subordination to other peoples, contributed to feed and justify their intrinsic inferiority.

Interpretation of texts can clearly lead to legitimization of coercion and become conduits or vehicles of violence.

The Reformation did not lead to the absolute rejection of violence, as Jesus taught. Suffice it to remember Luther’s so-called original sin: “the approval of the massacre of peasants.” Also, what about the murders of Conrad Grebel and Felix Mann within the Reformed tradition? What about the burning at the stake of Michel Servetus?

Christians have had a hard time following the nonviolent stance of Jesus, designated as the Prince of peace.

5 Edwin M. Yamauchi, *Africa and the Bible* (Grand Rapids, MI: Baker, 2004), 19.

6 Gene Rice, “The Curse That Never Was (Genesis 9:27),” *Journal of Religious Thought*, vol. 29 (1972), 5–27; also published in Suzanne Scholz, *Biblical Studies Alternatively: An Introductory Reader* (Upper Saddle River, NJ: Prentice Hall, 2003), 217.

7 These interpretations are found in Judaism, Christianity, and Islam. In the Rabbinical writings of the Talmud, for example, we find a declaration that perpetrates the myth of the curse and/or inferiority of people of African descent: “Since you have disabled me from doing ugly things in the blackness of the night, Canaan’s children shall be born black and ugly. Moreover, because you have twisted your head to see my nakedness, your grandchildren’s hair shall be twisted into kinks, and their eyes red; again, because your lips jested at misfortune, they shall swell; and because you neglected my nakedness, they shall go naked, and their male members shall be shamefully elongated. Men of this race shall be called Negroes; their forefather Canaan commanded them to love theft and fornication, to be banded together in hatred of their masters and never to tell the truth.”



More recently, human beings have used their belief in their election and exceptionalism as a type of “manifest destiny” to use coercion and violence in order to conquer, subjugate, and even decimate populations all over the globe.

The colonial subjugation of Africa at the conference of Berlin in 1884, corresponds to the same logic. Might is right. Coercion is legitimate.

The perpetration of genocide by literally every world power does not escape this nefarious logic of considering others as less than human and, therefore, unworthy of the goods of nature. Possessions—whether land, mineral resources, or other goods—are for the elect, the blessed.

The lofty ideal of freedom from coercion in matters of belief could have functioned as a moral deterrent or as an antidote against absolutisms, whether ecclesiastical, religious, royal, or ideological.

The sacredness of human conscience may be the essential and distinctly human aspect that can help redefine the way people relate to each other: that is, with respect, dignity, and decency.

Freedom of religion or belief is more than freedom from being harmed, hurt, humiliated, and harassed. It is freedom from being violated in one’s essential mystery, one’s connection to the divine, one’s inaccessible and inviolable space where no one should intrude.

Conscience is one’s inner sanctum, where Spirit-to-spirit conversation can take place. It is every person’s own and unique center of moral decisions. Individuals live beneath their God-given humanness or dignity when conscience is stifled or trampled, suppressed or murdered.

Coercion of conscience is a crime against humanity. Slavery, conquests, land thefts, exile, ethnic cleansing, and genocides would have never been the norm of human relations if all people were considered more important than worship places, cathedrals, mosques, synagogues, temples, or shrines.

Though appearing more benign, paternalistic or patronizing attitudes toward others are nonetheless conscience-killers.

In matters of religion or belief, no coercion means real exit from tutelage and access to freedom. It means the end of coercive absolutisms that attempt to justify their legitimacy through force, subjugation, and oppressions of others, brutally turning them into something they are not.

No coercion in matters of belief also means the end of intolerance and the beginning of acceptance, even without agreeing with others. It is solidarity at a deeper human level.



No coercion in matters of religion is actually the acknowledgment of the infinite value of every person. It is a call to not instrumentalize people. People are sacred, more important than holy places. It is below one's dignity to be forced to do or be someone against the dictates of one's conscience.



JOHN LOCKE AND THE PROTESTANT EPISTEMOLOGY BEHIND ‘NON-COMPULSION’ IN MATTERS OF RELIGION

NICHOLAS P. MILLER¹

John Locke’s *A Letter Concerning Toleration* is considered one of the cornerstone documents in the development of religious toleration and freedom in the modern West. The book sets the argument for religious freedom in society on three main pillars: (1) God does not appoint magistrates as authorities in religious matters; (2) while one can force obedience, one cannot force others to actually believe something contrary to their understanding, or force genuine worship; and (3) there is no basis to view magistrates as reliable judges of religious matters.

Points one and three are related, in that they both deal with the issue of whom God appoints as authorities in religious matters, and both points can be argued, depending on how one views the appropriate organization of church and/or state. Catholics and magisterial Protestants, at least in the Europe of Locke’s day, would simply would disagree with him on what the Bible or the magisterium or church tradition said about the proper authority of leaders of church and state. Similarly, Muslims, with their reliance on the Qur’an and its prescriptions about the civil roles of religious leaders and sharia law, would find Locke’s first and third points to be essentially nonstarters.

But Locke’s second point, which deals with the relationship of human nature to questions of truth and epistemology, appears to make a more universal claim about the human condition. If his claims about human nature and its relationship to religious belief are true in some broad sense, these other religions will find it more difficult to dismiss his arguments about the importance of toleration and freedom to a civilized and humane state. For his belief in noncoercion in religious matters, Locke relied on a distinction between objective knowledge and subjective assessment and belief. The former was based on direct observation of observable facts; the latter required the personal, internal judging and weighing of probabilities.

The realm of belief opened up a private, protected space in the life of the

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individual, as Locke believed that one must be persuaded of truth internally and that forced acceptance of a belief was nonsensical. For religious belief to lead to genuine and true worship and religious experience, one must genuinely believe. A forced belief would simply not lead to an internalized state of genuine religious being, and it would make a mockery of true worship.

Locke’s argument was very similar to those created by the beliefs of some dissenting Protestants regarding the role of the Holy Spirit in leading individuals into truth. This is not to argue that his epistemology was itself based directly on religious thought (though some influence is possible, as we shall see), but to point out that it was largely consistent with that held by certain dissenting Protestants. Interestingly, Locke’s knowledge/belief distinction, and the need for internal judgment and assent, finds resonance in branches of Islamic philosophy.

This paper will explore the basis of Locke’s argument regarding the relationship of truth and the human mind, whether this argument is secular or religious, and what implications it might have for Christian-Muslim discussions about noncompulsion in religion. Often Locke is portrayed as a foundational thinker for the secular conception of human nature and the forerunner of John Stuart Mill, Sigmund Freud, and other modernist thinkers who situate the individual within a purely horizontal, materialist framework.

Thus, his posture toward the religious thought of his day, is important to those who might hope to find in him resources for religious freedom in communities that are overtly religious, or still have significant religious influence, such as the Muslim world.

THE BACKGROUND TO LOCKE’S EPISTEMOLOGY OF BELIEF

It is generally acknowledged that Locke’s thought on religious freedom changed significantly over the course of his life. In his early writings, Locke gave the magistrate power over “things indifferent” in matters of religion.² Within a few years, however, he expressed a view of religious freedom that was a good deal more expansive than what those men proposed. The development of his thought on this topic reveals an interesting interplay of religious and philosophical thought.

Locke’s early views, while progressive for the day, were tempered with some conservatism regarding the magistrate and religion. This is most clearly seen in his writings of the early 1660s, including *Two Tracts of Government* (not to be confused with the much more widely known *Two*

² Henry Richard Fox Bourne, *The Life of John Locke*, vol. 1 (1876), 152, 155.



Treatises of Government, written decades later) and his *Reflections upon the Roman Commonwealth*.

In the latter work, he lauded the Roman state’s “enlightened” policy regarding religion, which he viewed as a tolerant Erastianism (the view that the state should be in charge of the church). The state supported and promoted merely two articles of belief: that gods existed, and that, most important, they were to be worshiped by people being “innocent, good, and just.”³ But apart from the simplicity of its creed, Locke believed that the key to the Roman state’s benevolent toleration of religion was that the national church was not overseen by church leaders or priests, but by the people and the senate. “The government of religion being in the hands of the state was a necessary cause of liberty of conscience,” he wrote.⁴ His position here stands in contrast to his later views on the magistrate’s complete lack of jurisdiction over matters of religion.

Locke expressed similar views in his *Two Tracts on Government*, published between 1660 and 1662. There he addressed the question of “whether the civil magistrate may lawfully impose and determine the use of indifferent things in reference to religious worship?”⁵ Locke answered this question with a resounding yes. “The supreme magistrate of every nation,” he wrote, “what way soever created, must necessarily have an absolute and arbitrary power over all the indifferent actions of his people.” His second tract echoed the same conclusion, opening with this question and answer:

“Whether the civil magistrate may incorporate indifferent things into the ceremonies of divine worship and impose them on the people: Confirmed.”⁶

In *Two Tracts*, Locke took a position directly opposing what he published in his later works. Rather than the people delegating to the state certain limited and express rights while retaining the rest, in his earlier view he posited that the people retain only those rights God has expressly given to them. But where there is no duty expressed by God, and the matter is indifferent, then the right to act, even in matters of worship, are all given over to the state.⁷

Notably absent from *Two Tracts*, given Locke’s later views, is any real

3 Ibid., 149.

4 Ibid., 151.

5 John Locke, *Locke: Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 10.

6 John Locke, *Two Tracts on Government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967), 210.

7 “But the liberty God had naturally left us over our exterior, indifferent actions must and ought in all societies be resigned freely into the hands of the magistrate, and it is impossible there should be any supreme legislative power which hath not the full and unlimited dispose of all indifferent things, since if supreme it cannot be bounded by any superior authority of man and in things of indifferency God hath left us to ourselves.” *Locke: Political Essays*, 15.



anguish or argument over the line between those things that are required and those that are indifferent. His discussion assumes that the distinction between what is clear and what is indifferent is, well, clear. Problems of biblical interpretation and the inherently probabilistic nature of that belief do not concern him much. Indeed, he uses the problem of certainty as a reason that the legislator should be allowed to make the decision in those areas where we are uncertain of our own liberty or freedom.⁸ It was only after 1670, when he began more fully contemplating the limits of human understanding—laying the groundwork for his famed *Essay on Human Understanding*—that the concepts of uncertainty and probability begin more obviously to influence his view on tolerance.

CONTACTS WITH PROTESTANT DISSENTERS

Locke’s thought on knowledge and freedom developed during a time when he had contact with certain Protestant dissenters and their writings. Part of this influence came in the form of works by Sir Henry Vane the Younger,⁹ as well as Vane’s advisor and associate, Henry Stubbe.¹⁰ Through Stubbe, who was both a student and librarian at Oxford, Locke became aware of Vane’s writings and eventually became acquainted with the Vane family.¹¹ It was Henry Vane’s brother Walter for whom Locke acted as secretary on a diplomatic mission to Cleves in the Rhineland in 1667. Locke and Stubbe corresponded on issues of religious toleration and discussed the views of Stubbe’s mentor, Henry Vane, a former governor of Massachusetts.¹² The governor had left the colony after siding with dissenting Protestants Ann Hutchinson and Roger Williams in opposition to the magisterial and heavy-handed Puritan clergy leadership of the colony. He had embraced the dissenting Protestant view that the state should respect and protect the right of private judgment in matters of religion.

Henry Vane had published a work that joined the Baptists in pointing out the magistrate’s inability to read the secrets of the heart or to

8 Locke, *Two Tracts on Government*, 225.

9 Material on Henry Vane, except where otherwise indicated, is from Ruth E. Mayers, “Vane, Sir Henry, the younger (1613–1662),” in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), online ed., available at www.oxforddnb.com/view/article/28086, accessed 01/15/2012.

10 Material on Henry Stubbe, except where otherwise indicated, is from Mordechai Feingold, “Stubbe, Henry (1632–1676),” in *Oxford Dictionary of National Biography*, available at www.oxforddnb.com/view/article/26734, accessed 01/15/2012.

11 John Marshall, *John Locke: Resistance, Religion and Responsibility*, 6–7.

12 *Ibid.*



determine what is spiritual truth. His first major argument concerns the nonexistence of any acknowledged “judge of Truth and Heresie.” This is what Rome has a claim to, writes Vane. “Protestants,” he asserts, “are justly broke off from them, because we did find that they did not teach right, and so did declare that there was no man, nor number of men whatsoever infallible in their determinations, and *that therefore Christians ought not to be led by an implicit faith but to search the Scriptures, and be instructed from thence.*” Those Protestants who wish to impose their views “clearly declare, that they are but papists in principle, though they call themselves Protestant” (emphasis added).¹³

Then there are the parallels with Locke’s later works. First, Vane agrees with Locke that by the light of nature and reason, humans can discover that God exists and that he ought to be worshiped.¹⁴ He also says, as does Locke, that the way to worship God is found in the teachings of biblical revelation. In the absence of any infallible earthly judge, each individual must find these teachings. Vane also goes on to argue that the very nature of religious belief requires this kind of freedom. He argues that one must personally understand and appropriate spiritual truth, and that this is an essential part of true religious faith and belief.

To show this connection, Vane contrasts natural or civil knowledge with spiritual knowledge. He compares advice from a physician or lawyer with that from a minister. “A man may waive his own judgment in recovering his health or securing his estate” and rely on that of his “physicians or lawyers.” But he “may not therefore waive his own light in matters of religion.” Why? Because “a man is profited in his health or estate by the effect of another’s skill ... but in spiritual matters he is no further profited by the doctrine of another, than he receives of it in the light of his own conscience, and is made one with it by inwards experience” (emphasis added).¹⁵

We are not certain that Locke read Vane’s book, but we do know that he was exposed to the substance of Vane’s arguments. Locke, who was at Oxford when Vane wrote the work, was interested in these matters even then and may well have read it at that time. A few years later, Locke’s Oxford friend and colleague Henry Stubbe wrote his own book on religious freedom. Stubbe’s work mentioned Vane by name and discussed the substance of his views. We do know that Locke read that book, as he wrote to Stubbe about it.

¹³ Henry Vane, *Zeal Examined* (London: G. D. Giles Calvert, 1652), 2.

¹⁴ *Ibid.*, 9.

¹⁵ *Ibid.*, 19–20.



Titled *An Essay in Defence of the Good Old Cause*, Stubbe’s book carried the subtitle “A Vindication of the Honorable Sir Henry Vane.”¹⁶ In it, Stubbe repeated many of Vane’s earlier arguments: that the magistracy had no power “to judge in spiritual matters;”¹⁷ that men could not rely on the “understanding and ability of others for spiritual truth;”¹⁸ that there is “no infallible judge to expound the scriptures” but, rather, that “the spirit of God in each saint is the sole Authentique Expositor of Scripture unto him that hath it;” and that “every one should follow his own judgment in matters of religion.”¹⁹ In short, it contained all of Vane’s, and the Baptists’, central biblical arguments about liberty of conscience, the limits on the civil magistrate, and the right of private judgment.

Locke’s response to Stubbe’s work was “broadly complimentary.” He agreed that it would be “excellent for men of different persuasions” to “unite under the same government ... and march to the same end of peace and mutual society though they take different ways to heaven.”²⁰ Locke did warn Stubbe that Catholics should not be tolerated, because of their dispensing with oaths and willingness to break faith with “heretics.”

It would seem to be more than an accident, then, that when Locke fashioned his broader views on toleration, they bore distinct similarities to these dissenting Protestant arguments. At the least, early exposure to these religious arguments influenced Locke to shape his own arguments in a manner that would find resonance within this growing dissenting Protestant stream. Whatever lay behind Locke’s thinking, he was definitely moving toward the toleration promoted by this dissenting current by 1667.

It was then that he wrote—but did not publish—his *Essay Concerning Toleration* (not to be confused with the later *A Letter Concerning Toleration*).²¹ It is perhaps not a coincidence that Locke in that same year associated with Henry Vane’s brother, Sir Walter, on his trip to Cleves, Germany. (Henry was now dead, having been executed shortly after the Restoration for his part in the death of Charles I.)

Whether the broadening of Locke’s views on toleration resulted from the trip itself—where he observed a number of different religions flour-

16 Henry Stubbe, *An Essay in Defence of the Good Old Cause* (London, 1659), 1. For a brief biography of Stubbe, as well as a discussion of the larger context of the ideas in his *Essay*, see James R. Jacob, *Henry Stubbe, Radical Protestantism and the Early Enlightenment* (New York: Cambridge University Press, 1983), 9–12, 30–31.

17 *Ibid.*, 28.

18 *Ibid.*, 30.

19 *Ibid.*, 72–73.

20 Marshall, 6–7.

21 Bourne, *The Life of John Locke*, vol. 1, 165–174.



ishing in mutual toleration—or from personal contact with the Vane family or from some other source cannot be proved. A combination of these possibilities likely had an effect.²² Locke now clearly proposed a much more confined role for the magistrate in spiritual matters. He limited the magistrate almost entirely to those matters touching on the common welfare. Nowhere does he suggest that the state should oversee even minimal religious beliefs of the church. But his scope for truly unrestricted religious belief and action is still somewhat narrower than his later formulation. He grants full toleration only to “purely speculative opinions and divine worship.” Neither of these, he claims, have any impact or bearing on the world or other people.²³

Then, harkening back to his earlier Two Tracts argument, he refers to a category of things—neither “good nor bad,” but indifferent—that “concern society and men’s conversations one with another.” Locke is unclear in defining what is “indifferent” in matters of religious belief. On the one hand, he appears to suggest that “in religious worship nothing is indifferent,” thereby removing the magistrate from all things religious.²⁴ On the other hand, he gives the magistrate power over some other matters he terms “indifferent,” though it is not clear whether or not they are entirely civil.

His examples of indifferent matters include divorce, polygamy, the raising of children, the eating of foods, and the schedule of work and rest.²⁵ Many religious people, however, viewed standards for marriage and divorce, and days of rest and worship, as important religious questions. While Locke seems to have moved from protecting mere religious belief to including religious worship, he does not seem to have yet broadened his view to include religious practices in general.

He also says that the magistrate could use force against particular religious groups that, because of their secrecy and close-knit affiliation, appeared to pose a potential threat to the state. They were not to be persecuted for their religious beliefs; rather, their religion was a “ribbon” or a “badge” that identified them as potentially hostile. This was not directed especially against Catholics. He dealt with them directly as a species of seditious heresy, with allegiances to a foreign civil power at war with England. Instead, in explaining the “badge” idea, he gave as an example the

22 Roger Woolhouse, *Locke: A Biography* (Cambridge: Cambridge University Press, 2007), 60, 63; Alan P. F. Sell, *John Locke and the Eighteenth-Century Divines* (Cardiff: University of Wales Press, 1997), 154–155.

23 Bourne, *The Life of John Locke*, vol. 1, 175.

24 Sell, *John Locke and the Eighteenth-Century Divines*, 157.

25 Bourne, *The Life of John Locke*, vol. 1, 178.



Quakers, should they become large enough to be dangerous to the state.²⁶

In his *A Letter Concerning Toleration* of 1689, Locke would drop all references to targeting religious groups on the basis of their religion being a badge. Furthermore, in that later letter he would make it clear that the magistrate had no role, even in matters of “indifference” within religion. He would draw a brighter and clearer line between secular and religious matters. He later acknowledged that questions of days of worship and rest, as well as questions of eating and drinking, might indeed have religious significance. The magistrate should not legislate on these matters, Locke would eventually conclude, because of their status of being “indifferent.”²⁷

HUMAN UNDERSTANDING AND RELIGIOUS BELIEFS

Locke did not express this broader view in print, however, for at least two decades. In the interim, he worked on his famed *Essay Concerning Human Understanding*. His evolving views on toleration can only be understood with some knowledge of this famous, complex work.²⁸ The *Essay* was provoked by a discussion he was having with some friends in 1671 on the relationship of “the principles of morality and reveal’d religion,” as one present at the time described the topic.²⁹ Locke scholars believe that the discussion had to do with the “basis of morality and its relation to natural and revealed religion.”³⁰ Locke himself said that the discussion was “a subject very remote” from the topic of human understanding that became the theme of his book. It is not surprising that a book inspired by discussion of issues of church, state, and morality, though dealing with the somewhat different field of epistemology and knowledge, should provide some insights into those very issues.

26 Ibid., 184–185.

27 Locke, *Two Treatises of Government and a Letter Concerning Toleration* (2015), 234–235.

28 Works dealing with Locke’s *Essay Concerning Human Understanding* and its treatment of themes related to religious belief, judgment, and toleration include: Douglas John Casson, *Liberating Judgment: Fanatics, Skeptics, and John Locke’s Politics of Probability* (Princeton, N.J.: Princeton University Press, 2011), 126–158; Gary Fuller, Robert Stecker, and John P. Wright, eds., *John Locke: An Essay Concerning Human Understanding in Focus* (New York: Routledge, 2000); Nicholas Jolley, *Locke: His Philosophical Thought* (Oxford: Oxford University Press, 1999); Roger Woolhouse, “Locke’s Theory of Knowledge,” and Nicholas Wolterstorff, “Locke’s Philosophy of Religion,” in *The Cambridge Companion to Locke*, ed. Vevya Chappell (New York: Cambridge University Press, 1994), 146, 172; Michael Ayers, *Locke Volume I: Epistemology* (New York: Routledge, 1991); John Colman, *John Locke’s Moral Philosophy* (Edinburgh: Edinburgh University Press, 1983); Neal Wood, *The Politics of Locke’s Philosophy: A Social Study of “An Essay Concerning Human Understanding”* (Los Angeles: University of California Press, 1983). For a discussion of the larger historic background of questions of knowledge, probability, and certainty in the age of Locke in a range of disciplines, see Barbara J. Shapiro, *Probability and Certainty in Seventeenth-Century England* (Princeton, N.J.: Princeton University Press, 1983), 74–118.

29 John Locke, *Essays on the Law of Nature*, ed. W. Von Leyden (Oxford: Clarendon Press, 1954), 61.

30 Ibid.



For our purposes, it is impractical to even begin to summarize a work as voluminous and detailed as this one. But certain elements of it relate directly to our topic of private judgment, religious belief, and religious freedom.³¹ The first is the emphasis that Locke's *Essay* placed on personal judgment in relation to individual understanding. The *Essay* is famous for its rejection of innate ideas, positing instead the view of the human mind as a "blank slate" (from the Latin *tabula rasa*), awaiting the imprint of sensations. This was a main point where Locke parted ways with Descartes. It left Locke necessarily with the view that humans must obtain ideas and notions from outside themselves, or as reflections on their own internal sensations. This meant that all persons must seek, find, and reflect individually for themselves.³²

Locke viewed knowledge of the external world as divided into at least two categories: knowledge and belief. Knowledge is that limited area of knowing where we can have certainty, as a result of our direct observation of the connections or disconnections concerning our observed "ideas" of the real world. This is a narrow area of understanding, dealing with mathematical proofs and observations of relation or identity (e.g., white is not black; gold is heavy, yellow, malleable, and does not burn).

Understanding that requires any sort of reasoning or reliance on evidence rather than direct observation or experience is classified as belief.³³ Most things we think we know fall into this second category, since they require some assessment of probabilities. This involves the exercise of individual judgment regarding the likely state of reality, given the probabilities.³⁴ In contrast to the way many moderns view it, he put both religious beliefs and beliefs about the natural world into this category. Indeed, he argued that moral truths could be known with greater certainty than most realities of the natural world.³⁵ Locke did not discount

31 Locke scholars have noted a connection between the development of Locke's thought on epistemology and the timing of his changing views on toleration, as well as on the connection between his developed theory of knowledge and his argument concerning toleration. See Michael Ayers, *Locke Volume I: Epistemology* (1991), 14-15; Douglas John Casson, *Liberating Judgment: Fanatics, Sceptics, and John Locke's Politics of Probability* (2011), 124-125; Nicholas Jolley, *Locke: His Philosophical Thought* (1999), 191-193.

32 Locke, *Essay Concerning Human Understanding*, 48-53.

33 There are also subdivisions of knowledge into various kinds, such as intuitive, demonstrative, and sensitive, but a discussion of these is beyond the scope of this work. A good overview of these matters can be found in Ayers, *Locke Volume I: Epistemology*, 81-152.

34 Locke, *Essay Concerning Human Understanding*, 652-657; Locke was very much more concerned with practical, useful knowing rather than theoretical precision. For Locke, "probability, rather than knowledge, must be our guide in most of the affairs of life.... 'Our Business here is not to know all things, but those which concern our conduct.' Therefore it is practical knowledge which is the truly valuable part of knowledge." John Colman, *John Locke's Moral Philosophy* (1983), 3, quoting Locke, *Essay Concerning Human Understanding*, 1.1.6.

35 Colman, *John Locke's Moral Philosophy*, 3-4.



religious knowledge or revelation and accepted that it can provide the foundation for the most reliable types of belief. He argued, though, that we must use reason and probability to determine if what is claimed to be a divine revelation really is a divine revelation.³⁶

For Locke, most religious beliefs, like most beliefs about life in general, fell squarely within the belief/probability category, where exercise of judgment is required. But he placed a belief or knowledge of the existence of God, along with his creatorship and our broad duty to worship and obey him, in the knowledge category. The details of the religious duties flowing from those truths, however, fell in the category of belief.³⁷

Locke further asserted that revelation could convey truths that were otherwise discoverable through reason, and vice versa.³⁸ Nothing can be revealed by revelation that is contrary to reason, because reason is the judge by which revelation is deemed authentic. It was not that reason needed to be able to validate or prove the truth of revelation, but rather, that revelation must not contradict reason. God, as the author of the truths of reason and revelation, could not contradict himself.³⁹ But most importantly, the use of reason in assessing the authenticity of divine revelation required the rational assessment of probabilities, along with the use of individual judgment to decide if each particular case of divine revelation was indeed authentic. One must assess, by reason, the legitimacy of an inspired document or person by examining its claims for supernatural indicia, such as the existence of miracle or prophecy.⁴⁰

Locke's rejection of innate ideas, and the important role for individual judgment assessing beliefs, undercut the popular notion that each man's conscience reflected only those things that were true. This popular view allowed many mainstream Protestants to say with a straight face that they believed in liberty of conscience but that the state had the right to punish acts against conscience, or to punish the one with the erring conscience—that is, the one who deliberately repudiated what conscience had revealed. Religious persecution was often justified on this basis. It was the position taken by the Puritan John Cotton in his debate with theologian Roger Williams, founder of the Colony of Rhode Island. This view assumed that everyone's conscience innately contained certain universal

36 Locke, *Essay Concerning Human Understanding*, 667.

37 *Ibid.*, 619–630.

38 *Ibid.*, 690–694.

39 *Ibid.*, 692–695.

40 *Ibid.*, 689–692.



spiritual truths and that the state, or state church, could hold persons accountable to these universal truths.

Locke's rejection of innate ideas and his promotion of a belief in the personal appropriation of truths meant that consciences would differ from person to person, depending on attentiveness, industry, access to revelation, and use of proper principles of reason.⁴¹ Locke did not make truth purely subjective or relative. He did not deny universal morality or truth but, rather, denied that universal morality was inherent in human beings. Locke argued that morality, even the existence of God, could be understood by the use of reason reflecting on the world.⁴² His was a belief in the personal appropriation of truth to the understanding of each person. Belief was a matter of the understanding, not the will.

Some would cast Locke in the mold of a modern liberal whose commitment to toleration was based on a kind of epistemic skepticism, but this would not be a fair portrayal. First, while some skeptics of Locke's day did advocate for toleration, other skeptics viewed the individual difficulty of arriving at truth as all the more reason for the centralized state to enforce it. American political science professor Andrew Murphy has pointed out that "[English philosopher Thomas] Hobbes and the more general influence of Erastianism in English politics" took this precise path of using skepticism to argue for a religiously paternal civil authority.⁴³

Further, Locke's view of the role of subjective judgment in religious matters was more akin to the subjectivity of the Baptists and Quakers than of the true religious skeptic. Dissenting Protestants emphasized the importance of the Holy Spirit in bringing the conviction of spiritual truth to the soul. They believed that truth was not meant to be just an intellectual adherence, but an experience. So while truth might be "known" in some objective sense, it did no good unless it was experienced and internalized by belief. This could only happen when it was voluntarily appropriated and acted on.

Locke's insistence on the "full persuasion of the mind" was thus not a concession to subjectivity or skepticism, but reflected a concern for the individual's experience of truth, and not just a simple knowing of it. Murphy has described well the link between Locke and the dissenting Protestant's view of conscience. For them, "conscience was a faculty of

41 Ibid., 69-71, 706-715.

42 Ibid., 89.

43 Andrew R. Murphy, *Conscience and Community: Revisiting Toleration and Religious Dissent in Early Modern England and America* (2001), 77-78.



the understanding and not the will, it could not be coerced into believing one thing or another.” On this, “Locke and Penn agreed.”⁴⁴

Based in part on these insights into the formation of knowledge and belief, Locke came to a stronger view of religious freedom by the 1680s. The political scientist and Locke scholar Douglas Casson has detailed the centrality and importance of the exercise of probable judgment—the private judgments of individuals in assessing the world around them—in Locke’s thinking on a wide range of topics, including economics, metaphysics, morality, politics, and toleration. Casson convincingly argues that it was in the formulation of the *Essay Concerning Human Understanding* that Locke came to sharpen his insights on private judgment in a manner that impacted his thought on a range of areas, especially that of religious toleration. No longer would he allow the magistrate involvement in things indifferent, or have a state-sponsored church with even a minimal theological creed.⁴⁵

MATURE POSITION: LOCKE’S *A LETTER CONCERNING TOLERATION*

We have a clear view of the shape of Locke’s church/state thought at this point in his *A Letter Concerning Toleration*, published in 1689. Despite the philosophical nature of the treatise, scriptural texts and ideas still play an important role in it. One scholar noted that “like Milton, Locke is sure that reading of scripture is crucial and foundational.”⁴⁶ Indeed, Locke begins his *Letter* by asserting that religious toleration is a fundamental teaching of Christ himself. On the first page, Locke quotes the New Testament: “‘The kings of the Gentiles exercise lordship over them,’ said our Savior to his disciples, but ye shall not be so, Luke xxii. 25, 26.”⁴⁷

Locke, unlike Milton (but like some of the dissenters from whom Milton drew, as well as Penn himself), extended his toleration beyond the “clear teachings” of scripture. Milton had viewed clear and central scriptural teaching as the bounds of conscience—although he allowed for diversity on a vast number of lesser issues—and for him, the right of private

44 Ibid., 228.

45 Douglas John Casson, *Liberating Judgment: Fanatics, Sceptics, and John Locke’s Politics of Probability* (Princeton, N.J.: Princeton University Press, 2011), 124–125. Casson acknowledges that Locke’s views on probable knowledge also drew on a legacy of Protestant thought developed by a number of religious thinkers, including the Dutch lawyer and Arminian remonstrant Hugo Grotius and the English Protestant thinker William Chillingworth, 112–113. For more on Chillingworth’s formulation of probable judgment in the context of religious belief, the need to accommodate those beliefs to each individual, and the resultant need for toleration, see Gary Remer, *Humanism and the Rhetoric of Toleration* (University Park: Pennsylvania State University Press, 1996), 141–167.

46 Locke, John Locke: *Writings on Religion*, ed. Victor Nuovo (2002), 41.

47 Locke, *Two Treatises of Government and a Letter Concerning Toleration*, 215.



interpretation ended where scripture was plain and needed no interpretation. But in Locke's *Letter*, his bounds of conscience have less to do with clear scriptural limits and more to do with the individual's need to personally comprehend religious duty. For Locke, this freedom of conscience must be respected, whatever the source of duty, whether from scripture or directly from God.

Later, Locke explicitly invoked the right of private judgment, stating that in matters of salvation, "every man ... has the supreme and absolute authority of judging for himself."⁴⁸ But his focus became the conscience of the human being in understanding all spiritual truths, rather than just merely the words or reading of scripture itself. As he put it in his *Second Letter on Toleration*, "every own [sic] is judge for himself, what is right; and in matters of faith, and religious worship, another cannot judge for him."⁴⁹ Rather than the foundation for all freedom, the right to interpret scripture for oneself is merely one instance of the broader right of conscience held by all humans before God.

In a key line that reveals the importance of his theory of religious belief for toleration, Locke writes that "all the life and power of true religion consists in the inward and full persuasion of the mind; and *faith is not faith without believing*."⁵⁰ In Locke's sophisticated hands, as in Penn's, the right of private judgment of scriptural interpretation became, as it had been with the earlier Baptists, a broader principle of the right of private judgment of religious duty and belief. In Locke's arguments, scriptural teaching supports both principles, and he treats them as related.

Locke seemed to grasp first the narrower principle of the right of private judgment in biblical interpretation, and this provided a base to move on to grasp the latter, broader principle of religious freedom. He early wrote on the right of private scriptural interpretation, then moved on to reject the role of the magistrate in scriptural matters of importance, and finally expanded that rejection to all matters of conscience.

How did Locke move from the narrower right of private scriptural interpretation to the broader notion of the right of private judgment in spiritual matters generally? The movement strongly appears to be connected with his increasingly sophisticated views of human understanding, as well as the exercise of personal judgment required to accept most truths. This element of

⁴⁸ Ibid., 242.

⁴⁹ Locke, *A Second Letter Concerning Toleration*, in *The Works of John Locke*, vol. VI (Elibron Classics Replica Edition of London: T. Davison, 1801), 135.

⁵⁰ Locke, *Two Treatises of Government and a Letter Concerning Toleration*, 219.



subjectivity was not a threat to religious faith; rather, it was a necessary basis of faith. As he notes in a follow-up to his original *Letter*, “where vision, knowledge, and certainty is, there faith is done away.”⁵¹

Others have observed the connection between the advance in Locke’s views of human understanding and his embrace of a more expansive religious toleration.⁵² But the connection of Locke’s thought in this regard with, and the parallels to, dissenting Protestant thought has not generally been seen. As I have already shown, this move from personal appropriation of belief to support for toleration is not unique or original with Locke. “Locke does not offer,” writes Murphy, “new or unprecedented arguments for toleration.”⁵³ The Baptists, as well as Vane and Stubbe, had already earlier argued for a broader toleration based on this private right of judgment in religious matters. It was an argument that embraced not just dissenting Christians, but also Jews and Muslims. The Baptists had not generally spoken in terms of knowledge versus belief, certainty versus probability, and the distinguishing role of reason. As noted, however, their concept of the importance of the Holy Spirit in revealing truth through Scripture to the individual believer brought them to a very similar epistemological stance. The Baptists had begun to call it soul liberty, but they used the language of reason and judgment that anticipated Locke’s more philosophical framing.

For instance, in 1661, an English Baptist by the name of John Stur-
gion wrote to the recently enthroned Charles II, pleading for toleration for himself and his fellow believers. One of his main arguments was that it is “unreasonable” to deny men the “use of their reason in the choice of religion.”⁵⁴ Sounding like Locke 20 years later, he wrote that “scripture, tradition, councils, and fathers, be the evidence in a question; *yet reason is the judge.*” And if we “are to be persuaded, we must see that we be persuaded reasonably.... No man hath any efficacy or authority on the understanding of another, but by proposal and persuasion, and then a man

51 Locke, *A Third Letter on Toleration*, in Locke, *The Works of John Locke*, vol. IV (1824), 143.

52 As one Locke scholar has put it, Locke’s “chief argument [for toleration] derives from his concept of the human understanding itself, and thus the process by which assents must occur, if it is to occur at all. In displaying this argument, we have also discovered a crucial connection between the various letters on toleration and the Essay Concerning Human Understanding.” J.T. Moore, “Locke on Assent and Toleration,” in Richard Ashcraft, ed., *John Locke: Critical Assessments* (London: Routledge, 1991). Moore sees the connection between Locke’s views of human understanding and religious toleration, but he does not offer a comparison with, or suggest a connection between, those views and that of Protestant dissenters.

53 Murphy, *Conscience and Community*, 149.

54 John Stur-
gion, “A Plea for Toleration” (London: S. Dover, 1661), reprinted in *Tracts on Liberty of Conscience and Persecution*, ed. Edward B. Underhill (Paris, Ark.: Baptist Standard Bearer, 2006), 332.



is bound to assent according to the operation of the argument, and the strength of the persuasion.”⁵⁵

The Baptists John Murton and Roger Williams had seen the logic of this connection of personal judgment, reason, and the personal conviction of religious truth. They had argued for a toleration that would encompass Catholics, Jews, and even Turks and other “pagans.” In Locke’s own time, William Penn had clearly spelled out this connection between personal understanding of scripture and general liberty for all in his own work on religious freedom. Penn relied on not only a natural law and natural rights arguments, but also the “force/understanding issue as part of a definition of what constitutes a rational being,” which has become identified with Locke.⁵⁶ We know that Locke had access to Penn’s works on toleration, as well as those of other dissenters.

But the Quakers and the Baptists were of insufficient influence to make this broader notion stick. The Baptists did not have the breadth of philosophical background to express their concepts in terms that would appeal widely and endure. Although Penn did have the training and background to deal intelligently with the topic, he was writing from the margins of society as a Quaker. And while he had connections and influence to bring money and power to bear on behalf of himself and his friends, especially in the setting up of Pennsylvania, his substantive political and religious ideas were sidelined, at least in Europe and England, as being part of his Quaker “enthusiasms.”

Thus, Locke’s unique contribution was not that he was the only one to express the universal principle of conscience and religious freedom in biblical terms or even in the more broadly accessible terms of natural law and philosophical reasoning. Rather, his unique role was in doing so from a place of real influence in society, as part of a circle that included leading politicians and aristocrats, and as a member of the establishment Anglican church. His explorations of human belief and understanding were expressed in largely philosophical and natural terms that resonated with elite thinkers in a world that was looking for a way out of the sectarian violence of the British Civil War. Locke’s *A Letter Concerning Toleration* provides “a synthesis of existing arguments in a highly effective, polemical form” that is the expression most remembered to this day.⁵⁷ But the fact of its durability should not obscure the truth that it embodied arguments made by many religious thinkers from the dissenting Protestant tradition of his time and earlier.

55 Ibid.

56 Richard Ashcraft, *Revolutionary Politics and Locke’s Two Treatises of Government* (1986), 489.

57 Murphy, *Conscience and Community*, 149.



For our purposes, it is of more than passing interest to note that Islamic philosophy embraces a similar distinction between knowledge and judgment. It divides human knowledge into conception (*tasawwur*), which is direct apprehension or observation of an object with no judgment, and assent (*tasdiq*), which is apprehension of an object that involves a judgment. Conceptions, or *tasawwurs*, are the main pillars of assent; without conception, one cannot have a judgment, or *tasdiq*. Thus, *tasdiq* is similar to Locke’s view of probable judgment, which involves a subjective conviction that by its nature cannot be externally coerced.⁵⁸ It is unsurprising that, given this philosophical view that religious beliefs cannot in fact be compelled, that the Qur’an should assert that “There is no compulsion in religion” [al-Baqarah 2:256].

Both Locke and Islam were influenced by Aristotle, who had similar conceptions about demonstrable knowledge, as opposed to probable knowledge based on dialectical inquiry.⁵⁹ Locke’s view of the certainty of most scientific knowledge was more skeptical and restrained than Aristotle, and his view of certain aspects of religious knowledge (such as the existence of a higher power) more robust. Islamic philosophy became very influenced by Aristotle’s thought during the Middle Ages. Indeed, it was the interchange of the Jewish, Christian, and Islamic communities in Andalusia, Spain, that reintroduced Aristotle to the Christian West.

Perhaps it is no accident that Andalusia at the time was probably the most tolerant place in Europe, allowing both Christian and Jewish communities to flourish. While not exactly religious freedom, it exhibited a level of tolerance not found in the European Christendom of the day. Perhaps if Locke were more widely understood as the centrally religious thinker that he was, he could be appreciated more deeply by modern Muslim thinkers in their quest to seek for resources of toleration and freedom, as they respond to the radicalization of segments of their communities in recent years.

58 Shams C. Inati, “Epistemology in Islamic Philosophy,” in *Routledge Encyclopedia of Philosophy*, ed. Edward Craig (1998), available at www.muslimphilosophy.com/ip/rep/H019, accessed 09/03/2019.

59 B. C. Burt, “Greek Philosophy - II. Rationalism § 14 – Aristotle,” *A Brief History of Greek Philosophy* (Boston: Ginn & Co., 1896), available at www.e-torredababel.com/greekphilosophy/aristotle-theoryofknowledge-burt.htm, accessed 09/03/2019.



FREEDOM AND COERCION: A JUDAIC APPROACH

ASHER MAOZ¹

A. TWO MEANINGS OF “FREEDOM OF RELIGION”

Religious tolerance seems problematic. If you know that truth lies with you, why should you tolerate opposite teachings? Why should you sanction the freedom to practice a religion that you know is false?

The term “freedom of religion” is a modern one. It does not appear in Jewish classical texts. This term may convey two different messages: freedom of “the other” to adhere to a different religion and tolerance toward different streams within your own faith, as well as toward nonreligious members of your community. In Judaism, this dilemma is further complicated by the fact that Judaism is a nation-religion.² By belonging to the Jewish people, one willy-nilly belongs to the Jewish faith. By converting to Judaism, you also become a daughter, or a son, of the Jewish people.

If we were to summarize the Jewish attitude in a nutshell, it may be correct to state that while Jewish religion is non-missionary outward, it is indeed missionary inward.

B. FREEDOM OF RELIGION OF “THE OTHER”

Let’s start with the external world. Before doing so, it is wise to add a word of caution: It would be erroneous to look for monolithic answers in Judaism. The Jewish faith is one of the oldest. It hardly speaks with one voice. Historical not less than theological aspects influenced its attitude.³ I will rather concentrate on what I believe to be mainstream contemporary Judaism.

Thus, my statement that Jewish religion is not a missionary one might be challenged. Indeed, in ancient times, especially around the latter part of the Second Temple, we may trace periods of massive, even forcible, conversion to Judaism. The New Testament notes that the Pharisees “compass sea and land to make one proselyte” (Matthew 23:15, KJV). In the post Talmudic era, we may even trace competition between Judaism and Christianity in gaining the polytheists.

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2 Cf. Asher Maoz, “State and Religion in Israel,” *International Perspectives on Church and State*, ed. Menachem Mor (Omaha, Neb.: Creighton University Press, 1993), 239, 243.

3 See Asher Maoz, “Can Judaism Serve as a Source of Human Rights?” *Heidelberg Journal of International Law*, vol. 64 (2004), 677, 714-718.



Such were the conversions to Judaism of the upper class in the kingdom of Adiabene, the kings of Himyar in southern Arabia in the fifth century, and Khazars in the first half of the eighth century. Even nowadays, we may witness rather esoteric movements that advocate conversion in order to strengthen the Jewish people. However, in modern times the Jewish attitude to proselytism inclined to be negative. It would be accurate to state that from a Jewish point of view, the option of conversion exists; however, there is an ostensible reluctance to conversion, let alone massive conversion.

The attitude toward other faiths might be split into three historical eras: past, present, and future.

After the Flood, we were told that “the people [were] one, and they [had] all one language” (Genesis 11:6, KJV). These people were all descendants of Noah, with whom God made a covenant, known as the Covenant of the Rainbow (Genesis 9:15-16). According to Judaic sources, the covenant included what is coined “the seven Noahide commandments” that are binding upon all mankind,⁴ though the Talmud tells us that six of the seven commandments were given already to Adam and Eve.⁵ These commandments are of basic moral character, described by some philosophers as rules of natural law. However, one of the commandments prohibiting the cursing of God, as well as the worship of other gods, might be described as of religious flavor or even advocating monotheism, for they include the prohibition against blasphemy and the prohibition against idol worship.⁶

Maimonides (Moshe ben Maimon, known as the Rambam, of 12th-century Spain, Pez, and Egypt), who is regarded as the greatest post-Talmudic codifier, states: “Whoever among the Nations fulfills the Seven Commandments to serve God belongs to the Righteous among the Nations, and has his share in the World to Come.”⁷

This statement infers that the Noahide commandments are optional, as only those who wish to be regarded as righteous must follow them. Yet, according to most authorities, these commandments are obligatory upon

4 See Aaron Lichtenstein, *The Seven Laws of Noah* (New York: Rabbi Jacob Joseph School Press/Z. Berman Books, 2nd ed., 1986).

5 *Babylonian Talmud*, tractate *Sanhedrin* 56a/b, quoting *Tosefta* (a compilation of oral law from the period of the Mishnah) *Sanhedrin* 9:4. These commandments are based on exegesis of Genesis 2:16 and 9:4-6.

6 Note, however, the reservation that these laws do not impose a positive obligation to worship God in David Novak, *The Image of the Non-Jew in Judaism: An Historical and Constructive Study of the Noahide Laws* (Toronto: Edwin Mellen, 1983), 126, et seq.

7 *Maimonides Mishneh Torah* [Repetition of the Law], known also as *Code of Maimonides*, *Hilkhot Melakhim u'Milhamot* [Laws of Kings and Wars], 8:14.



all descendants of Noah.⁸ Maimonides teaches, moreover, that a share in the World to Come is earned only if a person follows the Noahide laws specifically because he or she considers them to be of divine origin (through the Torah) and not simply a good way to live (in which case the individual would simply be a wise person).⁹ This is a further demonstration of the religious nature of the commandments, yet other authorities do not follow Maimonides' distinction. In any case, we may justly infer that universal freedom of religion lies only beyond these laws. This applied to all mankind, as we must bear in mind that the Jewish people did not exist yet.

The second stage starts with the appearance of Jewish people and the revelation on Mt. Sinai. However, in order to fully understand this stage, it might be wise to move to the third phase: the end of the days. The prophet Micah tells us that "in the last days the mountain of the Lord's temple will be established as chief among the mountains; it will be raised above the hills, and peoples will stream to it. Many nations will come and say, 'Come, let us go up to the mountain of the LORD, to the house of the God of Jacob. He will teach us his ways, so that we may walk in his paths.' The law will go out from Zion, the word of the LORD from Jerusalem" (Micah 4:1-3).

There is much debate as to which law will go out of Zion and what paths the peoples will follow. Are they verbally the Torah of Israel, or is it the ultimate word of the Lord—what may be referred to as scriptural truth.

I would like to attract your attention, however, to the fifth verse, where Micah states: "All the nations may walk in the name of their gods; we will walk in the name of the Lord our God for ever and ever."

It is obvious that by this, Micah refers to present reality, for in the last days all peoples will walk in the paths of the Lord.

This phrase may be understood as laying the groundwork for a contemporary attitude toward what may be coined, in present terminology, as freedom of religion for non-Jews. For until the last days, it is only the Children of Israel who must walk in the name of the Lord, while all other nations are free to walk in the name of their gods. Until then, the Lord seems to entertain a dual character: he is the God of Israel, yet at the same time he is the Lord of universe.

Maimonides makes an interesting observation. He notes that Moses

8 See Michael J. Broyde, "Jewish Law and the Obligation to Enforce Secular Law," *The Orthodox Forum Proceedings VI: Jewish Responsibilities to Society*, D. Shatz & C. Waxman, eds. (1997), ch. II, sec. 1, 103-143, available at www.jlaw.com/Articles/noach2.html, accessed 5 March 2006.

9 *Maimonides Mishneh Torah*, 8:14.



bequeathed the *Torah* and commandments “to Israel only and to whomever wishes to proselyte from the other nations, but whoever does not wish, we do not coerce him to accept *Torah* and commandments.”¹⁰ He continues and notes that “Moses our Master ordered, in the name of the Lord, to enforce all creatures on earth to accept all the commandments that were ordered to Noah, and whoever does not accept them will be put to death.”¹¹ Then he adds that a gentile must not observe the commandments given to the Israelites, but only those given to Noah, and summarizes: “The general rule is: They are not permitted to innovate into religion and devise new commandments for themselves out of their own mind, but either he becomes a proselyte and accepts all the commandments, or adhere to his own religion, neither adding to it nor subtracting anything from it.”¹²

The attitude toward other religions is not unequivocal. From the passage in Micah, we may infer the legitimacy of those religions, yet it is obvious that they are of lower stature since, in the Messianic days, when the earth shall be full of the knowledge of the Lord, as the waters cover the sea (Isaiah 11:9), they will be elevated to the utmost stage of walking in the paths of the Lord.¹³

We may find both in the Bible and in Judaic classic teachings harsh statements regarding idolatry¹⁴ binding paganism with moral corruption. It is essential to note in this context that according to the sagas, this does not apply to monotheistic faiths. In this regard, a distinction was drawn between Islam and Christianity. Maimonides and his disciples, while regarding Islam as pure monotheism, viewed the Christian Trinity to be idolatrous.¹⁵ On the other hand, sages who lived in Christian countries ruled that “though they utter the name of an alien divinity, their intention is to the creator of heaven and earth.”¹⁶ Nowadays there is full agreement that the rules regarding idolatrous

10 *Code of Maimonides, Hilkhoh Melakhim u’Milhamot*, 8:10.

11 *Ibid.*, 8:13.

12 *Ibid.*, 10:12.

13 Moreover, a gentile who converts to Judaism may not renounce it and return to the status of a son of Noah; see *Code of Maimonides, Hilkhoh Melakhim u’Milhamot*, 10:3.

14 The Hebrew terms for idolatry are *avodah zarah* (foreign worship) and *avodat kochavim umazalot* (worship of planets and constellations).

15 See *Code of Maimonides, Hilkhoh Akkum* [Laws Concerning Idolatry and the Ordinances of the Heathens], 9:4. See further David Novak, “The Treatment of Islam and Muslims in the Legal Writings of Maimonides,” in William M. Brinner and Stephen D. Ricks (eds.), *Studies in Islamic and Jewish Traditions*, vol. I (Atlanta: Scholars Press, 1986), 233-350; Id., David Novak, *Maimonides on Judaism and Other Religions* (Cincinnati: Hebrew Union College, 1997).

16 Rema on *Shulhan Arukh, Orah Hayyim*, sec. 156. The Rema [Rabbi Moshe Isserles], of the 16th century, Poland, wrote glosses to the *Shulhan Arukh*, [lit.: Set Table] a code of *halakha*, composed by Rabbi Joseph Caro, of the 16th century in *Eretz Israel* [Palestine], considered the most authoritative compilation of Jewish Law since the *Talmud*. The *Shulhan Arukh* is divided into four books, the first of which is *Orah Hayyim* [ways of life]. See also Rabbeinu Tam (Rabbi Jacob ben Meir, 12th century, France), *Tosafot* [Critical and explanatory glosses on the *Talmud*], *Sanhedrin*, 63b.



religions apply to neither Muslims nor Christians. Rabbi Menachem haMeiri regarded both Muslims and Christians as “nations bound by the way of religion,” different from the pagan societies of ancient times, which were not restricted by religious laws and norms.¹⁷ Thus, both Christians and Muslims were regarded as “assemblies for the sake of Heaven, destined to endure; their intentions are for the sake of Heaven and their reward will not be withheld.”¹⁸ Rabbi Joseph Albo, who lived in 15th-century Spain, even admitted the existence of “two divine Torahs, at the same time, for different nations.”¹⁹ Christianity and Islam were not only regarded as legitimate religions, but were even praised for removing the idols and subordinating their nations to the Noahide laws, thus giving them “moral attributes” far beyond what was demanded of them by the Torah of Moses.²⁰

In concluding his essay “Judaism Views Other Religions,”²¹ Aviezer Ravitzky deals with the transition from coexistence, or tolerance, to religious pluralism that requires welcoming the existence of the other religion. He points out the difficulties involved in such move and suggests to “support the minimalist conception of the ‘Seven Noahide Laws,’ which requires us to rest content with the basic decency of the other as the controlling criterion and not to look to the other faith’s special contribution to divine truth or make any positive doctrinal demands.”

I believe, however, that by its attitude toward Christianity and Islam as demonstrated above, the move toward pluralism did occur.

C. FREEDOM WITHIN THE JEWISH FAITH

When we move to the attitude within the Jewish faith, leniency is even more problematic, for all Children of Israel are part to the covenant with God at Mt. Sinai. The covenant was made with “all the men of Israel, from the hewer of your wood to the drawer of your water” (Deuteronomy 29:11), and we are being told that the covenant was made also with their children and children’s children. Therefore, all Children of Israel,

17 See: Rabbi Menachem haMeiri, 13th-century Provence, *Beit haBechira* [the Temple, Novellae on the *Talmud*], Tractate *Avodah Zarah* [Idolatry], 2b, 22a, 26a.

18 Rabbi Jacob Emden, of 17th-century Germany, quoted in David Rozen, “Esau—Jacob’s Brother: The Christian World Changes Its Attitude Towards Judaism,” *De’ot* 9 (October 2001) (*Heb.*), 16.

19 Joseph Albo, *Sefer Halkkarim* [Book of Fundamentals] (Jerusalem: Mahbarot le’Sifrut, 1951), 155. See Novak in *Studies in Islamic and Jewish Traditions*, vol. I, 336–340.

20 Jacob Emden, *Letter at the Conclusion of Seder Olam Zuta ve-Rabbah* [Small and Large Order of the World] (chronicle in Hebrew and Aramaic, starting with Adam and concluding with Mar Zutra IV of the 6th century). See further Asher Maoz, “The Values of a Jewish and Democratic State,” *Iyunei Mishpat* [Tel Aviv University Law Review] 19 (1995), 547, 578–87.

21 Aviezer Ravitzky, “Judaism Views Other Religions,” in J. D. Gort, Henry Jansen, and H. M. Vroom (eds.), *Religions View Religions: Explorations in Pursuit of Understanding* (Amsterdam and New York: Rodopi, 2006), 75–107.



including proselytes to Judaism, are bound by the covenant and are not free to deviate from the paths of the Torah.

A further relevant component is the sense of mutual solidarity within Judaism, the sense that “All Israelites are guarantors to each other.”²² It is the duty of each and every Jew not only to abide by Halakhah, which is defined as the entire body of Jewish law and tradition, but also to make sure that their fellow Jews abide by it. The behavior of each and every Jew may influence the revelation of eternal salvation.²³ It is for this reason that Judaism cannot sanction freedom from religion from within. This is, however, an overly simplistic statement of Halakhah.

To demonstrate the complexity of this issue, let’s turn to a dramatic event that took place in Yavneh, south of Tel-Aviv, where the Sanhedrin²⁴—the High Court of ancient Israel—moved after the destruction of the Second Temple. The event evolved around the sanctification of the month. The Jewish calendar combines lunar months with the solar year. A new month begins with the “rebirth” of the new moon. The proclamation of a new month is of utmost importance, as the religious festivals are set in accordance with that declaration. Nowadays, the beginning of the month is determined according to set charts. However, when the Sanhedrin existed, the new moon was proclaimed on the basis of its observation by witnesses. The Mishnah describes a disagreement between Rabban Gamliel, President of the Sanhedrin, and Rabbi Yehoshua, an imminent scholar, regarding the reliability of witnesses to the new moon. Rabbi Yehoshua was of the opinion that their testimony did not make sense, while Rabban Gamliel accepted it. The Mishnah tells us: “Rabban Gamliel sent him a message: I decree that you must appear before me with your staff and coins on the day which, according to your calculation, would be Yom Kippur, which would have been desecration of the holiest day in the Jewish calendar. Rabbi Yehoshua was in distress. However, we are told that in the end, he took his staff and his coins and went to Yavneh, to Rabban Gamliel, on the day of Yom Kippur according to his calculation. Rabban Gamliel stood up and kissed him on his head, and said to him: Go in peace, my teacher and student—my

22 *Babylonian Talmud, Tractate Shavuoth* [Pentecost], 39a.

23 *Vayikra Rabbah* [A collection of interpretations on Leviticus], portion 4, gives a vivid demonstration of this idea: “Rabbi Shimon bar Yochai taught: It can be compared to people on a boat. One took out an awl and began boring a hole in the boat beneath his seat. The others said to him, ‘What are you doing?’ He replied, ‘Is that any concern of yours? [I am not boring a beneath your seat] but only under mine.’ They said, ‘But you will sink the whole ship, and we will all drown.’”

24 The Hebrew word “Sanhedrin” [assembly] originates from the Greek *synedrion* [sitting together]. This is the name given to the council of 71 Jewish sages who constituted the supreme court and legislative body of ancient Israel.



teacher in wisdom and my student in that you followed my words.”²⁵

How does this episode bear on the issue of religious freedom? The answer might be that this was a unique episode that has no implication on our issue. Sanctification of the month required declaration by court, and as one sage stated, its decision is final whether right or wrong. We may, however, draw from that episode an important conclusion: while there is freedom of thought, it is not so with action, for Rabban Gamliel admitted that justice might have laid with Rabbi Yehoshua, yet he was forced to act in accordance with the court’s ruling.

This distinction is even more emphasized in the case of the rebellious elder. The Torah tells us in Deuteronomy 17:8-11 that a matter too hard to judge should be brought before the Levitical priests, or the magistrate in charge at the time, and that one must act “in accordance with the instructions given you and the ruling handed down to you” (verse 11) and must not deviate from them. This function was carried out by the Great Sanhedrin, which served as the final authority on Jewish law, and any scholar who went against its decisions was regarded a rebellious elder and theoretically liable to capital punishment. However, the scholar does not become a rebellious elder by merely teaching his opposite opinion, but only if he instructs others to act in accordance with his minority dissident opinion.²⁶

We are told in the Talmud that one of the leading sages was offered the position of President of the Sanhedrin if he would rescind his opinions that differed from those held by the majority. But the sage rejected the offer, stating that he would rather be called a fool than to become an evil person by giving up the “truth” as he saw it.²⁷

The same goes for the crime of “discovering new ‘faces’ of Torah not in accordance with Halakhah,” Again, this crime does not include one who merely reaches a conclusion different from that of the sages.²⁸

The Talmud is filled with conflicting opinions, and both majority and

25 *Babylonian Talmud*, Tractate *Rosh Hashanah*, 24b. The classic sources of Jewish law comprise Written Law, the Torah or Pentateuch, together with the rest of the Hebrew Bible [Old Testament] and Oral Law, or the Talmud. The latter consists of the Mishnah and Gemara. The Mishnah is a codification of post-biblical oral law, compiled in Palestine (Eretz Israel) circa the year 200. The Gemara is a collection of commentaries and expositions on the Mishnah. There are two Talmuds: The *Jerusalem Talmud*, known also as the *Palestinian Talmud*, or the *Talmud of the West*, was compiled in the second half of the fourth century in Palestine, and the *Babylonian Talmud* was compiled in Babylon in the sixth century. The *Babylonian Talmud* has traditionally been studied more widely and has had greater influence than the *Jerusalem Talmud*. Reference to the *Talmud*, or to a tractate in general, is always to the Babylonian Talmud.

26 See *Babylonian Talmud*, Tractate *Sanhedrin*, 86b; *Code of Maimonides*, *Hilchot Mamrim* [Laws of Rebels], 3:6.

27 See Rabbi Chaim Hirschensohn, *Sefer Yamim Mikedem* [The Book of Ancient Days: The Biblical Chronology] (Jerusalem, 1908), 233-236.

28 *Mishnah*, *Eduyot*, 5:6.



minority opinions are regarded to be “words of the living G-d.”²⁹ The Talmud, moreover, does not regard the ruling opinion of the majority as more right than the minority opinion. We are even told that the conflicting opinion is reported because, in the future, it may become the decisive one.³⁰

The right to deviate is not restricted to the academic sphere. There is no pope in Jewish religion. Even the institute of Chief Rabbi, which is so common nowadays, is not a halakhic institute. And ever since the abolition of the Sanhedrin, Judaism has lacked a central institute that will decide controversial issues. The rule is rather that each and every Jew may choose the rabbi whose rulings in halakhic matters he will obey.³¹

Referring to this phenomenon, the late Justice Menachem Elon, of the Supreme Court of Israel, wrote: “It is well-known that Jewish thought over the ages—including the halachic system...—is full of varying perceptions and conflicting approaches. No litigant finds it difficult to extract from the recesses of the sources some support for his own arguments and views. This applies to each and every issue.... Certainly it goes without saying that these approaches and perceptions taken together have contributed to the deepening and enriching of Jewish thought. Those, however, who seek understanding must distinguish between that which is of temporary significance and that which is of continuing importance, between the expression of the generally accepted opinion as against something exceptional.... From this vast and abundant storehouse, the inquirer must draw liberally that which his time and place require, and which they themselves join the treasury of Jewish philosophy and Jewish heritage.”³²

... “Pluralism is not a negative phenomenon or a defect: it is of the essence of the Halacha. ‘It is not a question of inconstancy or deficiency to say, Heaven forbid, that the Torah was thereby made into two Torot. On the contrary, that is the way of the Torah, the utterance of both are the words of the living God’ (Hayyim ben Bezalel, *Mayim Hayim*, Introduction). A multiplicity of views and approaches tend, moreover, to create harmony and uniformity through diversity. In the fine words of the latest of the codifiers, [Rabbi Yechiel Michel] Epstein (*Arukh haShulchan, Hoshen Mishpat, Introduction*), at the beginning of the century: ‘Every dispute among

29 *Babylonian Talmud*, Tractate *Erwin*, 13b; *Gittin*, 6b; *Jerusalem Talmud*, Tractate *Berakhot*, 1:4; *Mishnah, Yevamoth*, 1:6.

30 See *Tosefta, Eduyot* 1:4; *Commentary of Rabbi Samson of Sens on Mishnah, Eduyot*, 1:5.

31 See Asher Maoz, “The Values of a Jewish and Democratic State,” *Jerusalem City of Law and Justice*, Nahum Rakover, ed. (Jerusalem: The Library of Jewish Law, 1996), 147, 152.

32 Election Appeal 2/84 *Neiman v. The Chairman of the Central Elections Committee to the Eleventh Knesset*, 39(2) P.D. [*Piskei Din* – Judgments of the Supreme Court of Israel], 225, quoted from Nahum Rakover, *Modern Applications of Jewish Law: Resolution of Contemporary Problems According to Jewish Sources* vol. I, (1993), 209.



the Tannaim [Sages of the Mishna], the Amoraim [Sages of the Talmud], the Geonim [Sages that operated from the end of the sixth century until the middle of the 11th century] and the poskim [codifiers of Halacha] in pursuit of true understanding constitutes the word of the living God and each has a place in the Halacha. That is indeed the glory of our holy and immaculate Torah. The whole Torah is called a song and it is the glory of song that its different sounds are various but harmonious.”³³

Commenting on Rabbi Epstein’s view, Elon wrote: “The Halacha is a mighty symphony made up of many different notes; therein lies its greatness and beauty. In every generation, it needs a great conductor, blessed with inspiration and vision, who can find the interpretation of its many individual notes that will please the ear and respond to the needs of the contemporary audience.”³⁴

Professor Rackman noted: “In halakhic literature one can find support for virtually every theory of legal philosophy known to secular jurisprudence. No one theory by itself dominates the scene.”³⁵

All said so far is limited to activities within the boundaries of the Jewish faith and established rules. Judaism does not accept the right to trespass these boundaries. In cases that might have endangered the existence of Judaism and the future of the Jewish people and faith, the establishment might have reacted sharply, in very rare cases even leading to excommunication.³⁶

In conclusion, it would be accurate to state that Judaism does not recognize freedom of religion for its members. It does, however, sanction freedom within religion.

33 Ibid.

34 Menachem Elon, *Jewish Law—History, Sources, Principles*, vol. III (Philadelphia: Jewish Publications Society, 1994), 1452.

35 Emanuel Rackman, “Secular Jurisprudence and Halakhah,” *The Jewish Law Annual*, vol. 6 (1987), 45.

36 See Jan Wim Wesseliuss, “Spinoza’s Excommunication and Related Matters,” *Studia Rosenthaliana*, vol. 24, no. 1 (1990), 43. Note, however, the case of Elisha Ben Abuyah, a Jewish heretic of the first century. Rabbi Meir, one of the leading sages during the Mishnaic period and a former disciple of Elisha, continued studying Torah from him even after Elisha became a heretic. When asked how he could do so, the sage responded: “Rabbi Meir found a pomegranate. He ate its contents and discarded its shell.” Talmud, Tractate Chagigah, 15b; Rabbi Meir said, “Do not look at the vessel, but rather at what it contains.” Mishnah, Pirkei Avot [Teachings of the Fathers], 4:20; Referring to this proverb, Rabbi Menachem M. Schneerson, the Lubavitcher Rebbe, explained: “In addition to the obvious lesson, this clause also explains why Rabbi Meir could study Torah from Elisha. Rabbi Meir did not look at the “vessel”—Elisha and his conduct—but rather at what it contains: the Torah knowledge he possessed.” *Sichot Shabbat*, Parashat [Sabat talks, portion Emor], 5742-1982; Menachem M. Schneerson, *In the Paths of Our Fathers: Insights into Pirkei Avot from the Works of the Lubavitcher Rebbe* (1998).



JOINED AT THE HIP: THE INEXTRICABLE LINK BETWEEN MULTIFAITH DIALOGUE AND RELIGIOUS LIBERTY, PRESENTED AS A CANADIAN CASE STUDY

JAMES T. CHRISTIE¹

There is nothing brighter than prairie sunshine. Except, sometimes, those things that happen beneath it.

On a crisp April afternoon in 2014, Greg Selinger, the 21st Premier of the Canadian province of Manitoba, stood on the steps of the majestic legislative building in the heart of the capital city of Winnipeg. The “Leg,” as it is affectionately known, was designed and built in a more ambitious era and stands at the geographic centre, the “heart” of Canada and North America. It was from the heart that the Premier spoke. Standing with him were leaders of the Jewish, Christian, Muslim, Hindu, Jain, Sikh, Baha’I, and indigenous communities. A substantial number of constituents from those communities had gathered to hear him deliver, on his personal initiative, a public proclamation.

The Premier said:

PROVINCE OF MANITOBA

PROCLAMATION

Standing Up for Equality

Whereas Manitoba’s diverse, multicultural heritage enriches our quality of life and imbues us with a sense of pride; and

Whereas values of diversity, respect and equality are central to the Canadian Charter of Rights and Freedoms, aboriginal and treaty rights, multiculturalism and the cohesive society that Manitobans strive to preserve and promote; and

Whereas Manitoba’s Human Rights Code recognizes the individual worth and dignity of every member of the human family; and

Whereas Manitoba is a province based on liberty and fundamental freedoms that welcomes people of all different backgrounds and beliefs; and

Whereas those who encourage hate, division and fear directly undermine Manitoba’s values of acceptance, community and unity;

NOW THEREFORE LET IT BE KNOWN THAT I, Greg Selinger, Premier of Manitoba, call on all Manitobans to stand up for equality, human rights and dignity; and

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LET IT BE FURTHER KNOWN THAT I, Greg Selinger, Premier of Manitoba, call on all Manitobans to speak out peacefully and courageously against hate in all its forms and against those who aim to divide Canadians according to our different backgrounds and beliefs.

Greg Selinger Premier of Manitoba

His action, especially in light of the context and the status of those who joined him in solidarity, was unprecedented. Although lacking legislative authority, the proclamation's moral imperative was magisterial. This was a line drawn in the sand—against bigotry and hatred—for human dignity, religious liberty, and freedom of thought and conscience.

It emanated from Premier Selinger's head and heart, but it was born of the threat of intolerance and repression.

THE PATH TO PROCLAMATION

In the late autumn of 2013, the Parti Québécois government of Pauline Marois announced its intention to legislate a Charter of Québec Values. The proposed charter was intended to trump not only Canada's Charter of Human Rights and Freedoms, but even the existing human rights legislation of the province of Québec. The new charter would target religious symbols publicly displayed or worn by any civil servant in the province.

The Parti Québécois was established by the iconic and much-loved René Levesque. Its *raison d'être* was to lead Québec into sovereign state status, outside the Canadian confederation. By the turn of the century, that dream had faded, but the Parti Québécois remained determined to defend the conviction of many (mostly francophones) to rally around the banner of Québec as a "distinct society" within the larger anglophone and allophone reality of 21st-century Canada. Hence, the proposal for a Charter of Québec Values.

But Marois' government had a more comprehensive vision: the radical laïcization (secularization) of Québec society and culture. Here, a brief historical digression is in order.

FROM THE ULTRAMONTANE TO "LA RÉVOLUTION TRANQUILLE:" 1608-1960

For all intents and purposes, the beginning of European settlement of what is today the Canadian province of Québec may be marked as June 1608, with the arrival of Samuel de Champlain as the French governor.



Regardless of the apocryphal tales that de Champlain was himself Huguenot-Protestant, from the first, Québec was marked as Catholic. Not only Catholic, but ultramontane: more Catholic than the pope.

By the middle of the 17th century, power in Québec resided in three offices: the governor; the superintendent; and the archbishop. The great partnership of Count Frontenac, Jean Talon, and Bishop Laval sealed the civil-religious nature of the province for three centuries. Even the so-called English conquest of 1763 had little impact on the life of Québec. The English, taking their imperial cues from Rome, had little interest in local social norms and customs, so long as those norms and customs did not interfere with the business of Empire. Québec remained French-speaking and Catholic, like Ireland, with the Church dominating virtually every aspect of the lives of the great majority of the population.

Then came the 1960s. Pope John XXIII flung open the windows of the Vatican with his great ecumenical council. In Québec, new leaders emerged, determined to model a new Québec on the secular republic in France. Jean Lesage's Liberal Party toppled the draconian Maurice Duplessis and his Union Nationale. The three-centuries-old hold of ultramontane church and right-wing nationalist government was broken. The three "Northern Magi," in the words of political journalist Richard Gwyn, burst onto not only the provincial, but the national stage. Pierre Elliott Trudeau, Jean Marchand, and Gérard Pelletier dominated the political and intellectual life of Québec and Canada for a generation. So did the iconoclastic René Lévesque, and his Parti Québécois, quest for independence for Québec from Canadian confederation.

For Roman Catholicism, all of this constituted a perfect storm. Dr. Reginald Bibby of Lethbridge, Alberta, a church sociologist and demographer, estimates that in less than a generation, Roman Catholic adherence plummeted from 95 percent to 50 percent.

The secular state, radical *laïcité*, had arrived, and its ascendancy has been superbly chronicled by the late Dr. Gregory Baum of McGill University. Suffice it to say that the capstone of this revolution was the November 1976 electoral victory of René Levesque and his Parti Québécois. Marois' 2013 Charter of Values followed, in William Shakespeare's words, "as the night, the day."

And so, back once again to the more immediate past.



AN INSTRUMENT OF RESPONSE

There is an implicit challenge in addressing an issue of national significance from one province to another: in this case, the province of Manitoba addressed an issue in Québec. Happily, an arena for discussion and an instrument of response was in hand.

In 2004, the Honourable Lloyd Axworthy, international statesman and one-time Canadian Foreign Minister, was invited to return to his alma mater, the University of Winnipeg, as president. Axworthy had achieved international status as the architect of the landmark 1997 Mine Ban Treaty (for which the treaty coalition was awarded the Nobel Peace Prize); a champion of the International Criminal Court; the originator of Axworthy doctrine on international human security; and a creator of the often abused, but always considered, Responsibility to Protect (R2P) adopted by the United Nations in 2005.

When Axworthy took up his duties at the University of Winnipeg, an early priority of his tenure was to ensure a greater connection between his university and the international community. To that end, he suggested the concept of a freestanding Global College, which at the time was unique in Canada. He envisioned an unbounded “nexus,” in which the community of scholars, policymakers from all levels of government, and the community might come together to engage in research, dialogue, and action.

The Global College of the University of Winnipeg was an ideal context in which to pursue questions of religious liberty. In late 2005, I was appointed inaugural Dean of the college and, in collaboration with Dr. Axworthy and the family of the late distinguished professor and activist John Carl Ridd, established the Ridd Institute for Religion and Global Policy. The inaugural Director was Dr. Thompson Faulkner. Following his premature death and the completion of my decanal appointment, in July of 2010, I assumed his duties.

As Director, I swiftly established a series of “Ridd Salons,” or gatherings within the nexus of distinguished thought leaders, students and professors, and the community beyond the university. It was a positive meeting of “town and gown.”

Among the distinguished international participants were Dr. Ahmad Yousif, author of volumes on Islam and science and of the first multivolume discourse on Islam and world religions; Dr. Patrice Brodeur, distinguished Professor of Religious Studies at Université de Montréal and a founding Director of the King Abdullah Centre for Intercultural and



Interfaith Dialogue in Vienna; and Dr. Robert Sawyer, arguably the most celebrated science fiction writer in the English-speaking world. Sawyer is the recipient of the “triple crown” of science fiction awards: The Hugo, The Nebula, and The Campbell. He is also a twelve-time laureate and a lifetime honoree of the Canadian Aurora Award. An outspoken atheist, Sawyer is happy to make common cause with theologians and religionists in pursuing the common theme of what it means to be human.

RESPONSE AS PROTEST

In the first few days of December 2013, Shahina Siddiqui was the special guest for a Ridd Salon dedicated to the express purpose of addressing the implications for religious freedom in the Québec of Premier Marois’ Charter of Values. Siddiqui is the founder of the Islamic Social Services Agency (ISSA) in Winnipeg. This particular salon was on point with the Global College objectives of research, dialogue, and action. The research component took the pulse of a broad cross section of Winnipeg’s highly diverse community. Dialogue dominated the evening among the religious and humanist constituencies present, which included Jews, Christians, Muslims, Sikhs, and Hindus.

One week after the gathering, Ms. Siddiqui obtained permission to convene a rally in the Rotunda of the Manitoba Legislative Building, which according to estimates at the time reported in the *Winnipeg Free Press*, attracted hundreds of participants. Speakers “covered the waterfront” of civic, religious, and academic leaders, and the rally drew more than a few activists from multiple human rights and civil society organizations.

The message of the evening was not lost on the government of the day. To return to the opening sentences of this paper, a straight line may be drawn from the Ridd Salon gathering to the rally at the Manitoba Legislature to the Premier’s proclamation of the following April.

It is surely not too much of a stretch to consider these actions one small skirmish in the much larger campaign that ultimately led to the defeat of the Charter of Quebec Values, and of Madame Marois herself, in 2014. It is a case study demonstrating that multifaith dialogue is an invaluable and inseparable partner in the project to preserve religious liberty in a democratic society.

One would imagine the above, to paraphrase Thomas Jefferson, to be “a self-evident truth.” Apparently, however, imagination does not always stretch.



A DANGEROUS DISCONNECT

Some aspects of our existence are, to a greater or lesser degree, interdependent. The discipline and science of physics, through the recently identified precepts of “chaos theory,” has demonstrated, as the wit notes, that a butterfly beating its wings in Tokyo may precipitate an ice storm in Toronto. Odd thought, no doubt. But it is curious to see how an ancient insight somehow gains credibility, even respectability, when articulated by a contemporary physicist. One recalls the old joke that when the last peak of knowledge and wisdom is scaled, and a triumphant scientist rests on the summit, a theologian will be there to offer greetings and tea. The religions of the “East” have maintained from time immemorial that all creation is interrelated. That insight is a key element of contemporary complexity theory. Reality, as the late C. S. Lewis notes, resembles far more a great and ever-branching tree than anything else. I paraphrase.

But humanity seems cursed by a penchant to build silos in every aspect of life. For example, the people and politicians of the American Republic, no matter how the current president trumpets his nation’s greatness, appear unable to make the connection among guns, gun control, and the present plague of firearm-related deaths. Similarly, closer to my home in Canada, several Christian denominations have yet to identify a causal link between the dearth of theologically well-formed Christian leaders and the denominations’ wholesale abandonment of theological education.

And so it is that in relation to the process narrated above, one prominent, faithful, and effective leader of the Muslim community in the province of Manitoba, a full participant in the project that culminated in Premier Selinger’s Proclamation of April 2014, continues to maintain that multifaith dialogue is but pointless chatter, bearing no relation to events clearly expressive of the twin virtues of human dignity and religious liberty.

But permit me to state unequivocally that the Manitoba manifestation, and the Premier’s proclamation on the twin pillars of human dignity and religious liberty, would never have materialized had the substructure of action not been raised on a foundation of multifaith dialogue. So, then, we arrive at the heart of this paper.

IN PRINCIPLE

The syndicated daily cartoon of social satire, *Non Sequitur* by Wiley Miller, occasionally features a mock superhero character, Obvious Man. Let us grant that in context, Obvious Man’s “super mission” is, well, obvi-



ous: to remind human beings of what they know but seem perpetually to forget. As C. S. Lewis noted, “It’s all in Plato.”

More apt, perhaps, is British linguist Samuel Johnson’s famous maxim, “People need to be reminded more often than they need to be instructed.”

The reader might consider what follows to be a sort of *aide-mémoire*.

The 10 principles here described bear the intention of reminding readers of the irreducible interdependence of multifaith dialogue and religious freedom and, I dare to suggest, human dignity itself. They are intentionally modelled on the “Dialogue Decalogue” of the great Professor Leonard Swidler, first published in *The Journal of Ecumenical Studies* in 1983.

THE 10 COMPLEMENTARY PRINCIPLES OF MULTIFAITH DIALOGUE AND RELIGIOUS LIBERTY

- Existence has meaning and purpose.

This is irreducible, whether religious or not. The religious see meaning intrinsically; the nonreligious seek meaning, or create it. The Canadian Interfaith Conversation, marking its tenth anniversary in 2019, and itself the product of interfaith dialogue, recognizes this principle in its biannual Our Whole Society national conferences, each event welcoming people of every faith and of none.

- The quest for meaning is sacred, which in this context means inviolable.

This inviolability applies to any actor: religious, ideological, political, or secular.

- The quest for meaning and purpose may be expressed religiously, spiritually, or existentially.

Again, this applies whether one sees meaning as intrinsic to existence, established by the divine, or whether one existentially imposes meaning upon creation.

- Meaning and purpose may be expressed individually, collectively, or both.

This may be seen harmoniously represented as something resembling balance in the complementary United Nations documents, the 1948 Universal Declaration of Human Rights, and the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

- Interreligious dialogue and religious/spiritual freedom are co-terminous and mutually dependent.

On this point, I can do no better than refer the reader to the 2014



Selinger Proclamation cited above.

- Dialogue is essential to identifying and protecting the integrity of multiple worldviews.

Through dialogue, we learn to know and respect our diverse neighbours in a pluralistic society, so that we may be witness for them. One recalls the extensive international support for the Baha’i in Iran, the Falun Gong in China, North American Muslims post-9/11; and the doctrinally groundbreaking position of The United Church of Canada recognizing the validity of Islam as a world religion in its study document “That We Might Know One Another.”

- Multifaith dialogue can only thrive in an atmosphere of religious freedom.

A case in point is Malaysia. Modern Malaysia is a classic example of a Westphalian State. The Treaty of Westphalia, 1648, ended the Thirty Years’ War in Europe, establishing the suspect principle that the “religion of the Prince shall be the religion of the people.” In Malaysia, indigenous Malay are Muslim by virtue of the Sultan, who is the Head of State, with other religious persuasions (e.g., Christian, Sikh, Hindu, secular Chinese) uneasily tolerated. It is a demographically plural society, lacking both genuine dialogue and religious liberty.

- The preservation of religious liberty is dependent on healthy and open multifaith dialogue.

To anticipate religious liberty for ourselves, we must be committed to valuing every aspect of our neighbour who is “other”—far beyond even the basic principles of intrinsic human dignity.

- The particularities of doctrine must never be confused with the pre-eminence of the divine.

The best of doctrine—no matter how faithful, fully formed, or even creative—must be seen at best as an approximation of the divine fiat. It is, in the manner of C. S. Lewis, “a roadmap” of inestimable value, but far from reality.

As 2025 approaches, and with it the 1700th anniversary of the Council of Nicea, religious libertarians must be alert to, and wary of, a misguided Christian triumphalism that celebrates the co-optation of the Christian faith by the Constantinian state. The world does not require a further iteration of an antique and unlamented Christendom. It is the obligation of the secular, democratic state to preserve and respect inviolate the liberty and integrity of religious, spiritual, and philosophical expressions



within its bounds (within limits prescribed by the Universal Declaration of Human Rights).

The secular state, understood as the defender and arbiter of the public square, may be, and ought to be, the best friend and champion of both multifaith dialogue and religious liberty. Here, the work of eminent McGill-based philosopher Charles Taylor in his magnum opus, *A Secular Age*, may be instructive, especially his notion of reasonable accommodation.

“DÉJA VU, ALL OVER AGAIN”

In June 2019, the Premier of Québec, François Legault, and the ruling Parti Coalition Avenir Québec (CAQ) succeeded in passing Bill 21 in the Assemblée nationale du Québec. This new legislation echoes, at higher volume, Premier Marois’ Charter of Quebec Values of 2013. Its implementation coincided with the new school year and is affecting every aspect of Québec society. In the words of American baseball legend and philosopher Yogi Berra, “it’s déjà vu, all over again.”

On September 10, 2019, the Canadian Interfaith Conversation convened a colloquium to gather insight and information. Whether or not that meeting will result in the kind of action that led to the 2013 Selinger Proclamation remains to be seen. So far, Québec appears ominously quiet. Yet, much is at stake in that province and beyond.

At least the dialogue has begun. May it continue, and may religious liberty and human dignity prevail.



SECULARISM AND AUSTRALIA'S CONSTITUTIONAL FAULT LINES: COERCION OF BELIEF WITHIN CHANGING SOCIO-LEGAL ORTHODOXIES

BETTINA KRAUSE¹

I want to focus briefly on a contemporary aspect of coercion that is sometimes overlooked: namely, that human rights itself can be harnessed in ways that can be coercive. The deeply ironic reality is that in the name of expanding or strengthening a particular human right, the powers of law and of the state are used in ways that contract, or shrink, another fundamental right.

In recent times, one issue that has come to exemplify this particular challenge is the growing tension between the value of religious freedom, on one hand, and equality, on the other—specifically within the context of LGBT rights and anti-discrimination law.

This issue is as dominant in Washington D.C., where I work, as it is in many other Western liberal democracies. It is particularly challenging because, when all is said and done, and despite all the reassuring talk about balancing rights, there is a sense that any clash on this issue between religious freedom and equality must inevitably lead to a jurisprudential outcome. That one value, and one conception of morality, will be privileged in law at the expense of the other.

Rather than talk about these issues in the abstract, though, I would like to explore them through a brief story from my homeland, Australia, which involves a celebrated rugby union player named Israel Folau.

To understand this story, you need to know this young athlete's place within Australia's popular culture. For many years, he was one of the brightest stars on a rugby team that is revered, within a country where it is often said that sport is the national religion.

Israel's parents are both from Tonga, a South Pacific island that is historically socially conservative. He is a lay pastor of his Christian Assemblies Church who reads the Bible every day and credits his athletic success to God's leading. These facts have long sat uneasily among ordinary secular Australians, who generally view public expressions of personal faith with suspicion.

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In April 2019, Folau posted an Instagram message that went viral. It was not his first social media post on the subject of sexual identity, but it was perhaps his most unambiguous and, to many of his readers, his most offensive. He wrote: “Warning: Drunks, Homosexuals, Adulterers, Liars, Fornicators, Thieves, Atheists, Idolaters. Hell Awaits You. Repent! Only Jesus Saves.”

The response of both in social media and in the mainstream media was immediate. In the months that followed, Israel lost a multi-million-dollar contract with Rugby Australia and was removed from Australia's National Rugby team and he subsequently contested his termination in the courts.

AN UNDERDEVELOPED HUMAN RIGHTS CULTURE

Israel's fall from grace poured fuel on an already fiery and unprecedented public discussion in Australia about the competing claims of religious freedom and equality. Australia's most recent foray into this area of public policy began in 2017, when the Commonwealth, or federal, government initiated a non-binding referendum on whether same-sex marriage should become legal. Eighty percent of the electorate participated in this plebiscite, and just over 60 percent returned a Yes vote, thus paving the way for the Marriage Amendment Act of 2017. The public debate surrounding this was bitter in the extreme, with the conservative religious community—usually relatively silent within Australia's political system—suddenly finding its voice with a vengeance.

Following the legalization of same-sex marriage, in response to newly aired concerns from the religious community, the government launched a Royal Commission into the state of legal protection for religious freedom in Australia. Before the findings of this commission could be officially released, however, they were leaked in full to the media, and the result was public outrage.

This outrage was not directed to the fact that Australia is the only Western liberal democracy that lacks a bill or charter of rights. Nor was much attention given to the fact that Australia has failed to codify into domestic policy its international treaty obligations under the International Covenant on Civil and Political Rights (ICCPR). Public attention was not caught by the fact that there is no constitutional prohibition in Australia that would prevent the State governments from legislating to either inhibit or advance religion. In fact, two national referendums—in 1944



and 1988—have been held on whether to restrict the ability of states to legislate laws that may impede religious freedoms and neither achieved a majority. Thus, in theory, Australian state governments can pass laws impeding religious freedom.

What the public and the media did focus on, however, in the leaked Commission report were religious exemptions to anti-discrimination laws. Although religious exemptions have long been embedded within many Commonwealth and state laws, it seemed to come as a surprise to many that under current law, a religious school has broad scope to define and protect its religious ethos in relation to how it treats LGBT students. The ensuing public debate about this and related issues fueled anger on the part of equality advocates and defensiveness on the part of the faith communities.

And thus, the defining narratives of Australia’s current public discourse around religious freedom were set.

There is, among some faith communities in Australia, a fear of an ascendant majoritarianism that is not just threatening traditional legal protections for religious free exercise, but also demanding that religions themselves change in order to accommodate a new moral orthodoxy. Leaders and members of conservative Judeo-Christian institutions in Australia now feel themselves under attack from an ideological secularism that elevates “equality” as a defining social and moral value.

As in many countries and regions—including Canada, the United States, Europe, and increasingly Central America and South America—tension in Australia is ramping up because of an emerging monoculturalism. This strident narrative insists on a winner-take-all outcome, which discourages the search for reasonable compromises that can offer dignity for all.

From the perspective of Australian faith communities, there is a stunning irony that in the name of “human rights” the very foundations of liberal society are being eroded.

Some may find nothing particularly novel about Australia’s current social and legal discourse around these issues. These are the struggles of balancing rights in which all liberal democracies are engaged. However, I would suggest that Australia faces a significant additional challenge. What makes this struggle between religious freedom and equality very different within the Australian context is that Australia’s social and legal structures are uniquely ill-equipped to deal with these questions.

Australia is an outlier among Western liberal democracies; its approach



to issues of human rights is normatively incoherent, to say the least. It has no codified (and thus litigated) charter of rights and freedoms. No grand constitutional rights narratives have seeped down and become embedded in public consciousness. In the courts, there is little framework for weighing the claims of competing rights stakeholders beyond the simple application of laws that are facially neutral, which do not appear to be discriminatory yet may indeed discriminate in application or effect. And within Australian legal scholarship, there has been comparatively limited opportunity for the development of a robust discourse around individual rights and freedoms.

We often say that human rights norms need a human rights culture in order to be effective, and we often make that observation in relation to countries outside the western legal tradition. But although Australia's legal system is strongly linked with the socio-legal cultures of both Britain and the United States, a home-grown, organically Australian human rights culture has failed to thrive.

COMPLACENT CHURCHES AND WEAKENED PROTECTIONS

It is these great deficiencies of Australia's legal and social structures that are being clearly exposed by the saga of Israel Folau, amidst the increasingly bitter dialectic between the narratives of religious freedom on one hand, and equality and inclusiveness on the other.

In any discussion of how and why this should now be, it is important to note that in many ways, mainline religions in Australia—the very ones that now feel themselves under so much attack—have over the decades significantly and willingly acquiesced in the stunting of Australia's human rights discourse around issues of religious freedom. For much of the 20th century, mainline religions—especially Judeo-Christian churches—have been comfortably ensconced in Australia as keepers of community morality. And this has been a largely hegemonic conception of community morality. It is a role that seemed untouchable, and in that role, mainline religious groups have, in the past, been quite content with a narrow, restrictive approach to religious freedom that often saw minority or unpopular religious views marginalized and legally unprotected.

How did Australia come to this point? At the dawn of the 20th century, the drafters of Australia's Constitution paid the U.S. founding fathers the compliment of replicating, almost word-for-word, the first amendment religious freedom clauses, which appear in Australia's Constitution as Section 116. But any similarities end there. In contrast to the robust,



individual-focused conception of religious freedom rights in the United States, Australian courts seemed determined from the outset to neutralize the scope and operation of Section 116.

In the 118 years since Federation—since Australia became an autonomous governing nation—our High Court has heard only a handful of cases dealing with religion under the constitution and has never found a s. 116 violation.²

From the earliest of these cases, Section 116 has been defined negatively and narrowly: the federal government must not pass laws that purposively interfere with religious practice, and it must not prescribe a national religion. Consequently, Section 116 provides no mechanism for constitutional review of laws which, although facially neutral, operate to advance or inhibit religion expression. Neither does Section 116 yield any significant constitutional boundaries for religious aid—so long as it is non-preferential—that falls short of actually setting up a national church.³

The court has viewed the religious freedom clause through the lens of legislative power rather than seeing it as protecting substantive, individual rights. The High Court treats s. 116 the same way it deals with other exercises of federal power: if a law is “with respect” to an enumerated head of power, the effect of the law—and even the legislature’s motive—are of no consequence.

In the words of one of Australia’s great High Court justices, the religious freedom section of the constitution has been treated as a “clause in a tenancy agreement” rather than as “a great constitutional guarantee of freedom of and from religion.”⁴

And yet, for the majority of the twentieth century, mainstream Judeo-Christian institutions had very few reasons, indeed, to be dissatisfied with the status quo.

There are many practical consequences of Australia’s constitutional legalism when it comes to religious freedom, but I’d like to focus briefly on just two.

This first consequence is weak protection for minority or unpopular religious beliefs. The High Court’s restrictive approach to s. 116 over the past century has allowed the Court to do the following:

- Hold that Section 116 did not protect a conscientious objector

2 David S Bogen “The religion clauses and freedom of speech in Australia and the United States: incidental restrictions and generally applicable laws” (1997) 46 *Drake Law Review*, 53-95, 58.

3 *DOGS case*, id, 559.

4 Justice Murphy, dissenting in the *DOGS case*, 146 CLR 559, 623.



who refused military service on religious grounds.⁵

- Hold that Section 116 was not violated by a government declaration during the Second World War that Jehovah's Witnesses are "prejudicial to the defense of the Commonwealth" and the closing of their facilities by police.⁶
- Find that Section 116 was not violated by the practice of the Australian Security and Intelligence Organization reporting an individual's association with the Church of Scientology to federal government departments where that individual has applied for employment.⁷

This restrictive interpretation has also enabled the High Court to hold that the government-sanctioned removal of Aboriginal children to be raised in white families did not unlawfully prevent the Aboriginal plaintiffs' participation in the religious life of their indigenous communities.⁸

The second consequence of the Court's narrow approach to s. 116 is that traditional Judeo-Christian religious institutions have been privileged, and the government has been given almost unfettered discretion in supporting religious enterprises, short of actually establishing a national church.

For instance, the Court has held that the federal government can continue to directly support church-run schools through state educational grants. This substantial government funding means that some 40 percent of Australian K-12 students attend private—usually parochial—schools. In the main high court case that dealt with school funding issue, the majority opinion included the observation that s. 116 does not preclude laws "which may assist the practice of a religion and, in particular, of the Christian religion."⁹

In the past, mainline churches in Australia have demonstrated an intuitive grasp of their quasi-established position. There is a well-documented historical record of churches opposing proposed legislative expansions of the religious liberty discourse.

In 1984, major Christian churches strongly opposed recommendations for broadening the definition of religion under the New South Wales Anti-Discrimination Act. In 1988, mainline religions were among the public opponents of the proposed Constitutional amendment to strengthen s

⁵ *Krygger v Williams* (1912) 15 CLR 366.

⁶ *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth of Australia*, (1943) 67 CLR 116.

⁷ B Gaze and M Jones, *Law Liberty, and Australian Democracy*, The Law Book Company, Sydney, 1990, 85.

⁸ *Alec Kruger & Ors v The Commonwealth of Australia*; *George Ernest Bray & Ors v The Commonwealth of Australia* (1997) 190 CLR 1.

⁹ DOGS case, 160.



116 protection. Many churches were concerned that such a change would be interpreted as requiring a level of church–state separation that would put public funding for faith–based schools in jeopardy.

In 1993, when Australia’s Attorney–General announced the government would adopt the UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, a number of Christian churches publicly registered their hostility to the move.¹⁰

RELIGIOUS FREEDOM PROTECTION WITHIN A TRANSFORMED MORAL LANDSCAPE

In conclusion, we return to Israel Falou. His social media post and its aftermath raises all manner of issues revolving around the balancing of rights within a liberal democracy. Freedom of expression versus hate speech. Religious freedom versus equality. These are issues all related to a more fundamental question: which is, when is it legitimate to use the coercive power of the state to marginalize one view of morality in favor of new social and moral orthodoxies?

Early indications are that the Australian government will continue to answer that question in relation to religious freedom, at least, as it has done in the past—balancing rights and freedoms through an ad hoc, piecemeal approach, defined by a patchwork of religion–based exemptions, at both the federal and state levels. And it is an approach, of course, that is inherently vulnerable to legislative or judicial erosion, depending on which way public and political sentiment blows.

In 2019, Australia’s socially conservative government released the first draft a religious discrimination bill for public comment—it is a bill that has long been promised as a “fix” for many of the problems with religious freedom protection in Australia.

When this draft bill was finally revealed, many mainline faith communities in Australia were disappointed that it did not deliver the substantive rights–based approach to religious freedom protection for which they had lobbied. Instead, in a speech in late August 2019 the Attorney General was quick to assure the public that the proposed bill does not create a positive right to freedom of religion – which he said was often seen as a “sword” that can be wielded by religious communities. Instead, he explained, it aims to provide a “shield” by prohibiting discrimination on the basis of religious belief or activity in many different areas of public life.

10 J Baldock “Response to Religious Pluralism in Australia” (1994) 7 *Australian Religious Studies Review* 21, 28.



Some decades ago, a legal scholar James Richardson wrote that, “Freedom of religion in Australia has depended on the goodwill of those in power at any given time, a majoritarian approach that offers little solace to members of the minority faiths...”¹¹

He made this observation at a time when conservative Judeo-Christian conceptions of sexual morality were the unquestioned norms within Australian society. But since that time, these conservative views have become, in a sense, a “minority faith” in a secular society that has adopted a new object of worship in the notion of equality when it comes to sexual orientation and gender identity.

For those whose religious convictions are out of step with this new moral orthodoxy, a religious freedom that rests on the goodwill of those in power offers very cold comfort, indeed.

11 James T Richardson “Minority Religions (Cults) and the Law: Comparisons of the United States, Europe and Australia,” *University of Queensland Law Journal*, 18 at 199.



FREEDOM OF CONSCIENCE IN TUNISIA: PROSPECTS AND LIMITS

ALEXIS ARTAUD DE LA FERRIÈRE¹

INTRODUCTION

As the initial enthusiasm for the Arab spring has largely given way to consternation in many countries, Tunisia remains the object of cautious optimism (at least in the eyes of many Western governments and international actors). Despite a morose economy (currency inflation, unemployment, and stagnation in tourism and direct foreign investments), chronic public sector strikes, and active internal terrorism, Tunisia is seen as a democratic beacon in the MENA region, offering a model for how to reconcile liberal governance with an Islamic society.

Central to Tunisia's glowing reputation, the 2014 Constitution was drafted and adopted by a democratically elected National Constituent Assembly between October 2011 and January 2014. The UN Secretary General, Ban Ki-Moon, welcomed the adoption of the new constitution as a "model for other peoples aspiring to reform."² Although subject criticism with regards to its form, the new Constitution has particularly been lauded for enshrining the principle of freedom of conscience in its Article 6.

In this paper, I would like to consider the question of religious liberty within the new Tunisia. I will first offer a brief overview of the constitutional drafting process and the final text. I will then discuss the question of legislative reform and governance following the adoption of the new condition. In the final section, I would like to consider a more normative question of how we should evaluate the state of religious freedom in Tunisia. Should we share in the generalised enthusiasm and hold that Tunisia represents a laudable example of freedom of conscience? Or should we maintain a more sceptical stance on the basis that there exists a significant gap between the *de jure* guarantees enshrined in the constitution and the *de facto* practices of Tunisian society and state, which retain coercive aspects?

THE CONSTITUTION

Following the fall of the authoritarian Ben Ali regime, elections were

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² <https://news.un.org/fr/story/2014/01/282242-tunisie-ban-salue-ladoption-de-la-nouvelle-constitution>



called in 2011 to form a National Constituent Assembly to draft a text which would replace the 1959 Constitution. In terms of religious freedom, and the relation between church and state, the constituent Assembly was tasked with addressing two key questions:

1. The relationship between Islam and civil law: Should Islamic Muslim law be the (or a) source of Tunisian law? Should laws and regulations be required to conform to Islamic law?
2. The relationship between Islam and the state: Should there be a state religion? Should the state propagate, enforce, or control the practice of Islam by its citizens?

The first three drafts produced by the Assembly were not promising from a liberal perspective. The first version released in July 2012 referred to *shari'ah* as the source of legislation and to Islam as the State religion, whilst no reference was made to freedom of conscience. This orientation reflected the priorities of the Islamist Ennahda party, which held the greatest number of seats in the Assembly, but not an absolute majority (89 of 217). Further, it was only within the third draft that the recognition of the “principles of human rights” was included, with the proviso that these should be adhered to “in as far as they are in harmony with the cultural specificities of the Tunisian people”.

By 2013, stalemate within the Constituent Assembly was compounded by strong civil society protests and the assassination of two prominent left-wing leaders (Chokri Belaïd and Mohamed Brahmi). This plunged the country into a political crisis and halted the constitutional process. Whilst the transition process seemed to be on the brink of collapse, a solution was found through the mediation of the National Dialogue Quartet,³ which notably succeeded in negotiating a constitutional settlement subsequently ratified by the Constituent Assembly.

The final text of the constitution reflects the compromises which were required to resolve this crisis, notably in matters of religion. Thus, article 1 of the final Constitution contains an explicit reference to Islam: “*Tunisia is a free, independent, sovereign state; its religion is Islam, its language Arabic, and its system is republican*”. However, Article 2 counterbalances this explicit recognition of Islam, characterising the state as civil and omitting any reference to religious law: “*Tunisia is a civil state based on citizenship, the*

³ Composed of :The Tunisian General Labour Union (UGTT, Union Générale Tunisienne du Travail), The Tunisian Confederation of Industry, Trade and Handicrafts (UTICA, Union Tunisienne de l’Industrie, du Commerce et de l’Artisanat), The Tunisian Human Rights League (LTDH, La Ligue Tunisienne pour la Défense des Droits de l’Homme), The Tunisian Order of Lawyers (Ordre National des Avocats de Tunisie)



will of the people, and the supremacy of law”.

The wording of Article 1 in fact reproduces the first article of the 1959 Constitution. This ambiguous wording was an express desire of country's first president, Habib Bourguiba, who sought to position the Republic of Tunisia in a middle ground: neither a neutral secular state, nor an Islamic State. In practice, under the previous regime, the ambiguous wording was usually interpreted as referring to Islam as the religion of the Tunisian nation and not as the religion of the state (although this was a subject of debate). Article 2 in the 2014 text was intended to reinforce this interpretation and to bar the path to a theocratic regime. Importantly, these two articles include the proviso stating that they could not be subject to amendment.

The most important article of the final constitution for our purposes is Article 6.

The state is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalisation.

The state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for takfir and the incitement of violence and hatred.

Article 6 thus refers to religious freedom and its limits and innovates by *specifically* recognizing the freedom of conscience. On the one hand, the article guarantees freedom of conscience, freedom of worship; on the other hand, it grants protection of religion and the sacred and prohibition of any attack on it.

The prohibition of *takfir* is an ambiguous clause because it provides a recognition of an Islamic concept, whilst at the same time proscribing what is essentially a religious judgement. Mosques and places of worship are declared neutral and free from any “partisan instrumentalization”, but this does not mean, as subsequently recalled by Islamists, that imams are prohibited from discussing political topics in their preaching.

What is also notable about this article is that it reflects the shift in Ennahda's stance over the course of the transition period. During the constitutional assembly, Ennahda increasingly characterised its approach to *shari'ah* as being based more on *maqâsid* (higher objectives) and *maslaha* (human interests) than on *hudûd* (rigid rules). On the specific question of blasphemy, the party adopted the line, following Rached Ghannouchi, that a gradual



approach of “convincing, not coercing” would lead the public to respect Islamic values was ultimately better for Tunisia. Thus, Ennahda’s Islamizing state project became more focused on gaining power on the political and social levels than on immediately enacting religious legislation.

REFORM PROCESS

Whilst the 2014 Constitution provides a new framework for freedoms and rights in Tunisia, significant work remains to be done to update the legislative code and to effectively guarantee the rights set out in the in Constitution.

In 2017, President Essebsi created the Individual Freedoms and Equality Committee, which produced a report recommending widespread reforms on gender equality (especially with regards to matters of inheritance, marriage, and parental custody in the 1956 Personal Status code), the abolition of the death penalty, and the decriminalisation of homosexuality. Again, such reforms raise the question of the relationship between Islamic law and civil law, and between Islam and the state because, if enacted, they would effectively expunge the Islamic influence from civil law.

This debate has notably crystallised around the question of inter-religious marriage. In September 2017, President Essebsi repealed a 1973 circular that required a non-Muslim man to convert to Islam in order to marry a Muslim woman. However, many local officials—notably the mayor of El Kram, a working class municipality on the outskirts of Tunis—have refused to sanction such marriages on the basis that such a practice would violate the Islamic character of Tunisia as set out in Article 1 of the Constitution. The resolution of such disputes is currently impeded by the fact that the Constitutional Court has still not been established due to factional disputes over the nomination of its members, further precipitated by the sudden death of Essebsi.⁴

In addition to questions surrounding the personal code, the effective rights and liberties of religious minorities also remains fragile. Thus, the Baha’i community’s petition to be recognised as a registered community (a legal requirement in order to establish an official house of worship and a cemetery) has been denied. Christian converts are subject to social

⁴ Further precipitated by the sudden death of Essebsi. Art 84:“(…)En cas de décès (du Président de la République) ou d’incapacité permanente ou pour toute autre cause de vacance définitive, la Cour constitutionnelle se réunit sans délai, constate la vacance définitive et en informe le Président de l’Assemblée des représentants du peuple qui est sans délai investi des fonctions de Président de la République par intérim, pour une période de quarante-cinq jours au moins et de quatre-vingt-dix jours au plus”.



pressure, although state authorities remain tolerant and provide protection (also surveillance) to churches. The Catholic Church is subject to specific limitations in its activities by virtue of the 1959 Modus Vivendi between the Tunisian Republic and the Holy See; this quasi-Concordat prohibits the constitution of new Catholic Churches and the propagation of Catholic doctrine to persons who are not born to Catholic parents. Finally, Self-identified free thinkers and atheists have also demanded the right to drink and eat in public during Ramadan. Although several fast-breaking demonstrations have been held successful in central Tunis, social pressure against such deviations are strong and municipal governments continue to publish circulars demanding that cafes close during this period.

Issues of religious liberty also arise within the practice of the majority religion, as the state’s recognition and financial support of Islamic institutions is accompanied by certain powers of oversight and intervention. Thus, the government oversees Islamic prayer services by subsidizing mosques, appointing imams, and paying their salaries. The Grand Mufti is appointed by the President, the Ministry of Religious Affairs suggests themes for Friday sermons, but does not directly regulate their content. The government can also remove imams who are deemed to preach “divisive” theologies.

CONCLUSION

This brief overview highlights the internal tensions which characterise the question of freedom of conscience and religious liberty within the Tunisian context. Whilst the constitution provides for “*freedom of conscience and belief, and the free exercise of religious practices*”, in practice such freedoms are subject to significant constraints. Arguably, the country remains in a transitional phase and therefore we should refrain from characterising the current situation as a final settlement. How then should we anticipate Tunisia’s future trajectory in this regard?

In July 2019, Beji Caid Essebsi died whilst in office, throwing into doubt the viability of his reform process. The subsequent election of Kaïs Saïed to the Presidency in October 2019 has further confused the situation. A novice to elected office, unaffiliated to any major political party, the new President’s priorities in terms of religious liberty remain to be determined. Although he has affirmed a commitment to the principle of the freedom of conscience, in his former career as a jurist he has consis-



tently invoked Islamic jurisprudence in matters of inheritance and family law. Compounding this ambiguous situation, the most recent legislative elections, also held October 2019, did not deliver an absolute majority of seats to any political party. Thus, since February 2020, the country has been ruled by a broad coalition government.

Despite this political transition, the Individual Freedoms and Equality Committee remains in place. The Committee's proposal to introduce a Code for Individual Freedoms, first advanced in 2018, retains support amongst liberal civil society actors and a minority of parliamentarians, although it has yet to be debated in the National Constituent Assembly.

In this context, the near-term trajectory of freedom of conscience in Tunisia will depend largely on internal balancing and negotiations between coalition partners in the legislature and on the clarification of President Saïed's orientations. In the longer term, much will depend on the direction of the evolution of cultural norms within Tunisia society.

FIDES ET LIBERTAS



PART III

IRLA ACTIVITIES



In keeping with its mission to “disseminate the principles of religious liberty throughout the world,” the IRLA is focused on reaching thought leaders in every sphere—academic, political, religious, and within the international multi-lateral community. Below is a summary of some of its activities during 2019.

INTERFAITH UN SUMMIT HIGHLIGHTS HUMANITARIAN FUNDING

The Fifth Annual Symposium on the Role of Faith-Based Organizations in International Affairs, held January 29, 2019, at the United Nations Secretariat in New York City, New York, United States, was co-organized by the International Religious Liberty Association and focused on practical and ethical issues surrounding development funding.

Dr. Ganoune Diop, IRLA Secretary General, was a presenter and moderator during the event. More than 300 people attended, representing both the UN community and a diverse range of organizations, including Protestant, Catholic, Islamic, and Jewish groups.

Speakers throughout the day emphasized the important role religion and faith-based organizations can play as the UN pursues its far-reaching development agenda, known as the 2030 Sustainable Development Goals. These 17 goals, set by the UN in 2015 as its guiding objectives for the next 15 years, encompass a range of humanitarian challenges, ranging from eradicating poverty and hunger to overcoming the scourge of illiteracy.

The event was the fifth in a series of annual symposiums. Other organizers of this year’s symposium included the General Board of Church and Society of the United Methodist Church, the World Council of Churches, Islamic Relief USA, and ACT Alliance. The event was again cosponsored by the United Nations Inter-Agency Taskforce on Religion and Sustainable Development.

According to Dr. Diop, this annual event at the United Nations has become an invaluable way for faith-based organizations to talk with each other and with UN officials about shared concerns and goals, and to strategize ways to work together more effectively.

UNITED NATIONS SUMMIT IN GENEVA FOCUSES ON RELIGION AND PEACE

The Second Global Summit on Religion, Peace and Security was convened April 29 to May 1 in Geneva. The event was organized by



IRLA's European affiliate, the Association International for the Defense of Religious Liberty (AIDLR), in partnership with the office of Dr. Adema Dieng, UN Special Rapporteur for the Prevention of Genocide. The high-level event was attended by representatives of NGOs, faith communities, and embassies, along with UN personnel and other public officials. The goal of the event was to bring together all the relevant stakeholders for greater cooperation on global issues relating to religion, peace, human rights and security.

ADVOCACY FOR BRUNO AMAH

The IRLA continues to advocate on behalf of Bruno Amah, a Seventh-day Adventist layperson wrongfully convicted for murder and currently in his eighth year of detention in Lome, the capital of the west African nation of Togo. In April, the IRLA Secretary General visited Togo for the fourth time to meet with Mr. Amah, his legal counsel, and his family. Recent attempts at negotiating a presidential pardon for Mr. Amah were unsuccessful. The IRLA continues to solicit support from others in the international community. Most recently, we presented a dossier on the case to Adema Dieng, UN Special Rapporteur for the Prevention of Genocide, who has some connections with Togo and has expressed an interest in the case.

WASHINGTON GALA HIGHLIGHTS OUTSTANDING RELIGIOUS LIBERTY ADVOCACY

The 17th annual Religious Liberty Dinner was held at The Religious Freedom Center of the Newseum Institute in Washington, D.C., on May 20. The annual dinner is sponsored by the International Religious Liberty Association (IRLA), North American Religious Liberty Association (NARLA), Liberty magazine, and the Seventh-day Adventist Church. The dinner drew more than 120 people, making it one of the most highly attended in recent years. Distinguished guests included international ambassadors, commissioners, local government officials, policy-makers, and past honorees. Ted N.C. Wilson, president of the Seventh-day Adventist Church, opened the program with a greeting and invocation. The theme of the dinner was "Championing Freedom of Conscience for All" and the keynote speaker was Rep. Sheila Jackson Lee of the United States' House of Representatives. Jackson Lee is serving her eleventh term in congress representa-



tive the 18th Congressional District of Texas, which is in Houston.

The national award was presented to Stanley Carlson-Thies who is founder and senior director of the Institutional Religious Freedom Alliance (IRFA), which promotes the religious freedoms that enable faith-based organizations to make their uncommon contributions to the common good. IRFA is a division of the Center for Public Justice, an independent, non-partisan organization devoted to policy research and civic education. The evening's first international award recipient was Chris Seiple, founder and president emeritus of the Institute for Global Engagement.

The dinner's final awards recipient was Asma Uddin, who is a senior scholar at the Religious Freedom Center of the Freedom Forum Institute. Uddin is religious liberty lawyer, scholar, lecturer, professor, and author with an expertise in church and state relations, international human rights law on religious freedom, and Islam and religious freedom.

RELIGIOUS FREEDOM WEEK IN BRAZIL

A packed agenda of events and high-level visits marked Religious Freedom Week in the Brazilian city of São Paulo, May 24-27. Celebrations were coordinated by Adventist member and State Representative Damaris Moura, an attorney and long-time religious freedom advocate in the country. She helped organize the week of events in partnership with the Brazilian Association of Religious Freedom and Citizenship (ABLIRC), and IRLA affiliate.

A special guest for the celebrations was IRLA Secretary General Ganoune Diop. Events held around the city brought together religious leaders, civil authorities, government officials, political representatives, and human rights associations. The purpose of the celebrations, according to organizers, was to “promote wide public respect for different beliefs in the face of the many tragedies and massacres that have occurred in the name of religion.” Several symposia focused on the foundational role played by religious freedom in society and the challenges of religious intolerance.

IRLA PARTICIPATES IN G20 INTERFAITH FORUM, JAPAN

The IRLA Secretary General was a plenary speaker at the G20 Interfaith Forum held in Tokoyo, Japan. on June 8 and 9. The event brought together various religious groups, nonprofit organizations and former political leaders to discuss issues of peace, welfare, the environment and



other global challenges. Speakers included former British Prime Minister David Cameron, former New Zealand Prime Minister John Key and former Irish Prime Minister Enda Kenny.

Over the course of the two-day program, participants developed policy recommendations based on their discussions for the G20 world leaders, who met in Osaka on June 28 and 29 to discuss global issues.

The 2019 forum was the sixth, offering an annual platform where a network of religiously linked institutions and initiatives engage on global agendas and provide a faith-based perspective on current challenges.

HUMAN RIGHTS SUMMER SCHOOL

Dr. Ganoune Diop was again invited to teach at the Summer School on Human Rights, an annual program sponsored by the Conference of European Churches (CEC). This year's program took place June 17 to 20 in Lisbon, Portugal. Students from different national, ethnic and religious backgrounds were given an opportunity to study together and to receive inter-disciplinary training on freedom of expression, hate speech, hate crime and how to prevent incitement to hatred in religious contexts.

The participants looked into the relation between a growing lack of respect of other people in communication, especially in social media, and the rise of political populism on a global scale.

Presentations were videoed to be added to CEC's extensive library of resources on current human rights issues.

SOUTH PACIFIC RELIGIOUS FREEDOM ADVOCACY TRAINING

IRLA Secretary General Ganoune Diop made a week-long visit to the South Pacific region in August to conduct a series of training programs. Together with local IRLA leaders, he visited Vanuatu, New Zealand and Australia. While in New Zealand, the delegation met with Muslim community leaders followed by a visit to the Al Noor mosque, one of the two mosque sites where 51 people were gunned down in a terrorist attack in the city earlier this year.

In Vanuatu, the group shared about the work of IRLA with local faith leaders, government ministers, members of parliament and senior civil servants. In Sydney, Dr. Diop presented a workshop on religious freedom advocacy.

FIDES ET LIBERTAS



PART IV

SUBMITTING MANUSCRIPTS AND REVIEWS



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. 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 informa-



tion (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. 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 or author's requests for information should be addressed to:

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BOOKS IN REVIEW

Fides et Libertas book reviews are meant to carry on the conversation with the author(s) 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 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*.

Book reviews should be submitted by email attachment in Microsoft Office Word or compatible format.



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(s) or editor(s)
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, contact:

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