



# FIDES ET LIBERTAS

1998

*The Journal of*

*the International*

*Religious Liberty*

*Association*





# FIDES ET LIBERTAS

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*The Journal of the  
International Religious  
Liberty Association*

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# *Declaration of Principles*

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

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

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

We believe in the natural and inalienable right of freedom of conscience—to have or not to 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 includes also the freedom to establish and operate appropriate charitable or educational institutions, to solicit or receive voluntary financial contributions, to observe days of rest and celebrate holidays in accordance with the precepts of one's religion, and to maintain communication with fellow believers at national and international levels.

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

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

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

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*The Journal of the International Religious Liberty Association*

John Graz, *Publisher*  
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# Salute to the UDHR

John Graz

Secretary General  
International Religious Liberty Association  
Silver Spring, Maryland, United States of America

Fifty years!

We like celebrating a fiftieth anniversary. Fifty is the age of maturity. For a person, it is a time to re-evaluate. What about one of humanity's most important documents—the Universal Declaration of Human Rights? At fifty, it is obviously older. Is it also tired? No. Less appealing? No. Bereft of its nascent admirers? No. Having reached a half-century maturity, is it still full of promise? Emphatically, *yes!*

I find the UDHR story totally amazing. How was it possible for people, leaders, and nations to dream of a world in which human beings would be respected—a world of human rights, freedom, and dignity for all?

They could have thought revenge, control, oppression. But no, they dared to dream the best for humankind. They had endured a paroxysm of hatred and racism and survived. Now they just decided to build another world. A new world. A better world.

Fifty years later the world *is* better. And worse. Consider the status of religious freedom. It is threatened in many countries, nonexistent in some. Clothed with new words and new obsessions, intolerance stalks the land. Fanatics, religious and secular, dictate nightmare visions of the next millennium. The present *fin de siecle* must be revived by the message of tolerance from those who wrote and voted the Universal Declaration.

This first issue of *Fides et Libertas* is dedicated to those who, surrounded by darkness, saw the light. It is the IRLA's way of celebrating, globally, the UDHR's great fiftieth anniversary. The purpose of *Fides et Libertas* is to defend, promote, and protect religious freedom according to Article 18 of the Universal Declaration as well as other international instruments. Find herein trenchant arguments for religious liberty compellingly expressed by leaders of thought and leaders of people around the world. Our authors live in different countries, espouse different cultures, confess different faiths. But they are one in the defense of religious freedom. On this principle they stand together:

*Everyone has the right to freedom of thought, conscience and religion. . . .*



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# Religious Liberty: Essential to the Dignity of Humanity and the Preservation of Peace

Carlos Saul Menem  
President of Argentina  
Buenos Aires

The Republic of Argentina is justifiably proud of its tradition of respect for religious liberty. Our Constitution includes freedom of worship among its fundamental principles because its authors understood that the immigrants they aspired to attract would need to forge a society in which the first right to be respected would be to worship God free from coercion and discrimination.

Thus, without regard to religious beliefs, men and women of Argentina have reached the highest responsibilities in the world of science, culture, labor, and politics. Certainly there have been temptations to authoritarian tendencies, but such represented phenomena foreign to authentic Argentine sensibility.

Now we are concluding a century marked by tremendous contrasts, including religious liberty. Constitutions have affirmed human rights—religious liberty in particular. International organizations have done the same in the conviction that the violation of the rights of the person cannot be considered an internal question for the states alone. Such violations affect the peace of the world. The principal religious confessions, including the Roman Catholic Church, beginning with the Second Vatican Council, have committed themselves to follow the road of dialogue and reconciliation, of recognition of the rights of those professing other beliefs.

At the same time, our century has witnessed explosions of hate and intolerance, and the negation of the right of individuals and communities to express and to transmit their faith.

Let me emphasize that a pluralistic society cannot and should not be indifferent to religious and moral values. Without these values the human being is at sea and loses the meaning of his or her existence, ending up a prisoner of self. When you build not on pluralism, but rather on an ethical relativism, on the reduction of that which is sacred to the person, you opt for a negative kind of secularism instead of the positive. From the moment of human conception, this process threatens life itself. New gods acquire a religious dimension: efficiency at whatever cost, consumerism,



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the drug culture, dehumanized sex. We have observed this in our time.

Finally, I would underline the importance of peoples and governments to assume with renewed conviction the defense and promotion of religious liberty as essential to the dignity of the human persona and for peace in the world on the verge of a new millennium.

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Translated from the Spanish and condensed from President Menem's message to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# Freedom of Conscience: “No Speculation, No Condescension, No Play”

Iris Rezende

Member of the Senate  
Former Minister of Justice of Brazil  
Brasilia

I present this piece as a minister of two governments—God’s and Brazil’s. A minister is one who serves. I want to serve both faithfully. Liberty is a theme that has held my attention since I was a boy in Cristianopolis, a city conceived as a dream community of Christians, a place for people who would be free to exercise their beliefs and live by the inspiration of the word of God. Liberty has always been the greatest desire of humanity. Freedom of choice is the registered trademark of God. According to Scripture, He even gave humanity the freedom to obey or disobey His divine determinations. The news on television shows some nations curtailing freedom. People endure persecution, even atrocities, because of their religious convictions. So I thank God that I live in a country where, by virtue of the Federal Constitution, a citizen is guaranteed freedom of “conscience and beliefs, being assured the freedom to exercise religious worship and, by law, being guaranteed protection for places of worship and their liturgies” (Chapter I, Article 5-VI).

Religious expression, which is the way we affirm the God in whom we believe, cannot be violated without serious consequences. To prevent a citizen from professing his or her faith is to crush the aspirations with which free nations and civilized people identify.

The pages of history are marked with the blood of confrontations motivated by religion: the Crusades, the Inquisition. Look up the record of religious persecution in Brazil—the volumes of history by Pedro Tarsier—to be informed of the violence against liberty in my country. But thanks to the education that, little by little, has come to our people, respect for the beliefs of others has become generally accepted.

In the past, one of the main causes for religious persecution was the predominant model of the time: religion imposed by the state. Even today, alarming crimes are committed in the name of



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religion. They are related to politics, to the discretionary power of government.

A brief sweep of history is useful here. Locke affirms that the legitimate sphere of the state is limited to questions outside the spirit of humanity. Accordingly, the state must not relate to religion because it is an internal or private matter. In the Old World the prevalent idea held that a nation, like a family, should profess one religion—the one determined by the sovereign in power. In Greece and Rome religion was a state matter. Those whose beliefs differed from the system set by law were not oppressed provided they respected the institution of national worship. To illustrate, Rome permitted complete freedom to the followers of *licitae religiones* provided they participated in the worship of the emperor. (It is apparent that there was no religious liberty as such, but rather a pretense of tolerance amid previously established conditions.)

Then, during the first centuries of Christianity, there arose men of stature who faced the issue forthrightly. Such a one was Tertullian: “It is a fundamental human right, a privilege of nature, that every man adopt a religious attitude according to his own convictions. Certainly it is not part of religion to impose religion—to which free will, and not force, should lead us” (*Ad Scapulum*, 2). Other church fathers declared religious persecution to be a work of evil. Athanasius promoted a conciliatory position in the treatment of so-called heretics.

But in Constantine’s time, the matter was inverted. Everyone was compelled to become a Christian! Gibbon states that Maximilian was the first Christian emperor to shed the blood of his own subjects for reasons of diverging religious opinions.

According to historian J. C. Rodrigues, in the Portuguese Brazil of 1810 the royal prince signed two treaties with England, one of commerce and one of friendship. For the first time it was assured “that Portugal gave a foreign power the right to build a Christian temple that would hold Reformation workshops.” This was a specific grant to English Christians. But the exterior of the authorized “temples” (or chapels) had to look like family residences (J. C. Rodrigues: *Religioes Acatolica* [Non-Catholic Religions], p. 105).

In August of 1819 on Rua dos Borbons (now called Rua Evaristo a Veiga) in Rio de Janeiro, the cornerstone was set for the first Protestant temple in South America, thanks to Article XII of that treaty of friendship with England. Protests took place in the Catholic sectors, but the treaty was observed.

Only in 1881 with the passage of the Electoral Reform Law



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did it become possible for a non-Catholic to run for the General Assembly. Again, loud protests arose. But Senator Cristiano Ottoni referred to the absurdity of “closing the door to non-Catholics who are Christian, who freely proclaim their faith, while opening the door to many nominal Catholics, who hold seats in Parliament, but who are at times free thinkers and at times partisans of protoplasmic theories [of] spontaneous generation [and] annihilation of the spirit through decomposition of matter, but who call themselves Catholic simply because they lack the courage to give up a religion in which they do not believe” (Rodrigues: *op. cit.*).

In subsequent years, Rui Barbosa became Brazil’s distinguished apostle of religious liberty and freedom of conscience. Perhaps one of the main reasons this illustrious fellow countryman was not permitted to attain the presidency of the republic was his passion for these liberties—liberties which went against many of the interests of individuals and corporate bodies of the time. Said Barbosa: “Every civilization is born in liberty, every liberty in the assurance of the rights of individuals. Liberty and legal security are equivalent terms that may be substituted one for the other.” And this ringing testament: “With the conscience—its liberty, its rights, there is no speculation, no condescension, no play.” Why? Because of the important reason that “of all freedoms, freedom of thought is the greatest and the highest. All other freedoms come from that one freedom. Without it, all other freedoms leave the human personality mutilated, society choked, the government of the state turned over to corruption” (Conference of February 20, 1910, Belo Horizonte, and in *Ruinas de Um Governo [Ruins of a Government]*, 1931).

Christian liberty is not an ideology, says Julio Barreiro, Uruguayan evangelical and professor of political science: “In a world such as ours, so shaken by ideologies, we often run the risk of interpreting our faith by the various courses set by the ideological thinking of the society to which we belong.” And Barreiro quickly adds: “This risk becomes much greater when we try to interpret Christian liberty in that manner” (Julio Barreiro: *A Experiencia da Fe [The Experience of Faith]*).

To put limits on religion and to impede the proclamation of faith, yoking it to the power of the state—these are discriminatory attitudes and acts that, in their utmost, nullify all other liberties. Sad to say, religious leaders arise from time to time who practice moral injustices that are part of their systems. Public power is thus constrained to take a position against them because of the infringement of irrevocable constitutional principles. In such



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moments, it is hoped that true religious parties who know the meaning of religious freedom, will serve as contacts with those who collaborate to do away with the problem, using means of personal communication in addition to their pulpits, to guide their believers and impede the less informed from being led astray by the error and dissent that would inevitably occur. In all its nuances, liberty must be regulated by balance, social respect, and a sense of justice.

The great mission of Jesus was to proclaim liberty to those who were bound by their sins and transgressions, so as to return humanity to the ideal set forth in the first chapter of Scripture, when God looked out and saw that everything was good. To establish religious freedom in its fullness, we must remember that only as we know Christ, only as we hold fast to His word, will we be truly free. “Then you will know the truth, and the truth will set you free” (John 8:32 NIV). The result? The liberty that Christ gives us is freely connected to love for others. Only the person who loves his or her brother is truly free. Only the person who overcomes the world, its lies, and its errors, is truly free in faith, in expression, and in witness.

Brazil counts itself among those nations that guarantee freedom, not admitting by constitutional prescription any restriction to liberty of belief. Nearly 160 million people throughout the country are free to exercise their faith and proclaim, if they so wish, their religion. This is our tradition. This is our historic position. May God protect us and inspire us to seek this purest and noblest of Christian principles.

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Translated from the Portuguese. Adapted and edited from an address to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997. At the time, Senator Rezende was Minister of Justice.



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# Religious Freedom: What It Is and What It Is Not

Dwain C. Epps

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Commission of the Churches on International Affairs  
World Council of Churches  
Geneva

## Introduction

In few parts of the world has the notion of freedom with respect to religion been so widely used and misused as in Central and Eastern Europe with their particular histories of church-state relations.

For Communism, religion itself was a barrier to human freedom, and the influence of dominant expressions of religion in the affairs of state was a barrier to democracy and social equality. In the name of freedom Communism sought first to separate church from the state and school from the church, and soon sought to eliminate religion altogether as the opiate which blocked freedom of conscience.

For the opponents of Communism, freedom—particularly religious freedom—was a key word in the struggle against totalitarianism.

But Communism failed in its attempt to eliminate religion. It failed to achieve its stated aim of a form of democracy which would put the oppressed in control of their own destiny. Its notion of freedom proved to be pure ideology and led finally to its collapse.

The West regarded this as a victory of its idea of freedom and now presses on to impose its own ideological concept of religious freedom, arguing as strongly for a free market of religion as it does for unrestricted access to the economic markets of the former socialist states.

Thus religious liberty remains one of the most contentious political issues of the day. Communism was blind to the capacity of religion to free the human spirit. Capitalism is blinded by a narrow ideological construct of freedom of the individual and unable to understand any role for religion other than that which prevails in its own societies.

Religious freedom is an essential. The question is, What concept of this fundamental human right serves the needs of, say,



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Central and Eastern Europe? Can a new understanding emerge which is appropriate to this context?

Real answers to these questions can be given only by those who have experienced the profound impact of decades of official atheism, and who know firsthand how it has rendered religion vulnerable to all sorts of political and religious manipulation from both outside and within. So let us seize every opportunity to share what we have learned from the past and what we are now learning from the dilemmas now faced by church and society. Such experiences can be a new beginning of contextual reflection of religious liberty and the roles of the church and the state in protecting and promoting this right.

The task is difficult because the context is so varied and complex. It is marked by the resurgence of fervent popular religious sentiments frozen in past cultural experiences, and the emergence of new power struggles in both religious and political spheres. The collapse of Communism unleashed old national, ethnic, and religious tensions which have deeply divided both society and the church. Religion has been used and misused. Confused thinking and narrow perceptions of religious liberty have often exacerbated all these tensions.

In such a time it is necessary to consider what religious liberty *is* and what it is *not*. The right to religious freedom, like all other human rights, is based on widely accepted international norms and standards. But how is it to be understood and applied here and now? Fortunately, this is not an exercise in *creatio ex nihilo*. A solid foundation has already been laid by the ecumenical movement and by the Roman Catholic Church. This foundation can be built upon.

### **The evolution of ecumenical thought on religious liberty**

Ecumenical concern for religious liberty has its roots in the missionary stream of the movement for church unity and cooperation. The first substantial statement was made at the 1928 Jerusalem meeting of the International Missionary Council. It appealed in particular to followers of non-Christian religions, urging them and the churches "to hold fast to faith in the unseen and eternal in the face of the growing materialism of the world; to cooperate with us against all the evils of secularism; to respect freedom of conscience so that men may confess Christ without separation from home and friends; and to discern that all the food of which men have conceived is fulfilled and secured in Jesus Christ."

The 1937 Oxford Conference on Church, State, and



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Community cited several freedoms as necessary conditions for the church's fulfillment of its obligations to society:

- \* The right to public and private worship, preaching, and teaching.
- \* Freedom from state imposition of religious ceremonies and forms of worship.
- \* Freedom to determine the nature of its government and the qualifications of its ministers and members.
- \* Freedom of the individual to join the church.
- \* The right to control the education of ministers and the right to provide religious instruction to youth.
- \* Freedom of Christian service and missionary activity, both home and foreign.
- \* Freedom to cooperate with other churches.
- \* Freedom to use public facilities available to all citizens or associations as will make it possible to accomplish these ends.

Joint committees on religious liberty, subsequently formed by churches in Great Britain and the United States, developed memoranda and statements for submission to governments in the months leading up to the 1945 San Francisco conference where the United Nations was to be chartered. They built on the Oxford principles and also on Franklin Delano Roosevelt's famous "Four Freedoms" enunciated in 1941, which included "the freedom of every person to worship God in his own way—everywhere in the world."

The joint committees set the right to religious liberty in the wider framework of universal human rights which, they were convinced, formed the essential basis of a new, just, and peaceful world. Dr. O. Frederick Nolde (who would subsequently be named to direct the Commission of the Churches on International Affairs formed in 1946) became the spokesperson for a group of non-governmental organization consultants to the US delegation at San Francisco. Very largely due to his effective advocacy of the positions developed by the denominations belonging to the then developing World Council of Churches, a preamble was added to the Charter expressing the determination of the "peoples of the United Nations [to] reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small." A new article was added to the body of the Charter which states that a chief aim of the United Nations Organization shall be the achievement of "international cooperation . . . in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" (Article 1, Section 3).



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The First Assembly of the World Council of Churches (Amsterdam, 1948) issued a Declaration on Religious Liberty which further articulated the emerging broad consensus among its members:

\* Every person has the right to determine his own faith and creed.

\* Every person has the right to express his religious beliefs in worship, teaching and practice, and to proclaim the implications of his beliefs for relationships in a social or political community.

\* Every person has the right to associate with others and to organize with them for religious purposes.

\* Every religious organization, formed or maintained by action in accordance with the rights of individual persons, has the right to determine its policies and practices for the accomplishment of its chosen purposes.

### **The evolution of Roman Catholic thought on religious liberty**

In 1948, however, the Roman Catholic Church had a quite different view of religious liberty—a view articulated in 1888 by Pope Leo XIII:

Justice . . . forbids, and reason itself forbids, the state to be godless, or to adopt a line of action which would end in godlessness—namely, to treat the various religions (as they call them) alike, and to bestow upon them promiscuously equal rights and privileges. Since, then, the profession of one religion is necessary in the state, that religion must be professed which alone is true.

But Roman Catholic thinking on this question underwent what some commentators have called a “Copernican revolution.” A century later Pope John Paul II used his 1988 World Day of Peace message to declare that

[r]eligious freedom, an essential element of the dignity of every person, is a cornerstone of the structure of human rights, and for this reason an irreplaceable factor in the good of individuals and of the whole of society, as well as the personal fulfillment of each individual. It follows that the freedom of individuals and of communities to profess and practice their religion is an essential element for peaceful human existence.

The essential turning point was Pope John XXIII’s encyclical *Pacem en Terris* (April 11, 1963) which stated that “every human being has the right to honour God according to the dictates of an upright conscience, and the right to profess his reli-



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gion privately and publicly.”

Building on this profoundly new understanding, the Second Vatican Council adopted a landmark Declaration on Religious Freedom (December 7, 1965) which addressed religious liberty not as a question of “inner freedom,” but rather as an aspect of social and civic freedom. “[T]he human person has a right to religious freedom,” the Council declared. This is a right which “has its foundation in the very dignity of the human person as this dignity is known through the revealed world of God and by reason itself . . . a harmony exists between the freedom of the church and the religious freedom which is to be recognized as the right of all men and communities and to be sanctioned by constitutional law.”

According to Vatican II, civil authority has no jurisdiction over religious acts: “The religious acts whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God, transcend by their very nature the order of terrestrial and temporal affairs. It would clearly transgress the limits set to its power were it to presume to direct or inhibit acts that are religious.”

In 1980 the Vatican further elaborated Roman Catholic principles on religious liberty in a memorandum to the Madrid follow-up of the Helsinki Accords on Security and Cooperation in Europe. The document listed elements necessary to achieve full religious liberty at all levels—personal, community, and international.

But it was John Paul II’s 1988 address (cited above) that brought together the thinking of the Roman Catholic Church and that of the ecumenical movement. “Every violation of religious freedom, whether open or hidden,” the pontiff said, “does fundamental damage to the cause of peace, like violations of the other fundamental rights of the human person.” Three years later, in his 1991 World Day of Peace message, the pope made the point succinctly in this memorable phrase: “If you want peace, respect the conscience of every person.” He went on to say that “religious freedom is not merely one human right among others, . . . it is the most fundamental, since the dignity of every person has its first source in his essential relationship with God. . . . Religious freedom is the most profound expression of freedom of conscience.”

### **The evolution of international standards**

The 1948 WCC Amsterdam Declaration was profoundly influential at another critical turning point in history. Following the First Assembly, Dr. Nolde proceeded to Paris where the United Nations General Assembly was considering the draft of a Universal Declaration of Human Rights. It was his draft of the article on reli-



gious liberty which finally commended itself:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Article 18.)

These essential elements were later incorporated, nearly verbatim, in the International Human Rights Covenants, in the several regional human rights conventions, and in the UN's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. While this last instrument has not yet been translated into an enforceable international convention, it nonetheless constitutes a widely accepted basis in law for implementing the rights and freedoms flowing from the freedom of thought, conscience, and religion or belief. It calls all states to

take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life; [and] . . . to make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs. . . .

The preamble to the 1981 Declaration affirms that "the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind. . . ." It goes on to express the conviction that "freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination."

Heeding this call, a number of the newly independent states formed after the disintegration of the Soviet Union and some Central and Eastern European nations have drawn on the Declaration in drafting new constitutions.

### **Universality and absolutism**

But as defenders of freedom build upon these universal standards and the concepts developed by the World Council of Churches and the Roman Catholic Church, it will be useful to



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reflect on some of the issues which arise in the current discussion on religious liberty.

One of these is the question of the universality of international human rights principles. Some hold that these standards are based on Western intellectual traditions of the Enlightenment. Thus, it is suggested, they are remnants of the age of imperialism and colonialism and therefore cannot claim universality. Others suggest that while such standards may indeed be applicable in pluralistic societies with stable and well-developed systems of jurisprudence, nations with their own cultural traditions long suppressed by colonial rule, or countries now in transition to democratic rule, cannot be expected to apply them to the letter. The answer given by the ecumenical movement has been that the principle of universality of standards is a fundamental one. The universal rule of law and the very basis of world order laid out in the United Nations Charter depend on this. Of course, universality does not mean homogeneity; the application of principles must be patterned to varying contexts.

And here is a related and equally legitimate question: Is the right to religious freedom an absolute right—or can it be limited under particular circumstances? The answer given in the Universal Declaration of Human Rights is clear. The right to religious freedom and the other enunciated human rights may be limited only “for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Many Christians, however, have argued that religious liberty is a special case for absolutism. In a 1977 address, former WCC General Secretary Philip Potter remarked that “[j]ust as theology was long considered the ‘Queen of the Sciences,’ religious liberty was in the early years of the World Council of Churches a sort of ‘Prince of Human Rights.’” In the ecumenical movement, human rights thinking emerged from the missionary concern that all barriers to the propagation of the gospel must be removed. The individual’s freedom to hold or to change his or her faith, to persuade others, and to decide freely on the religious education of one’s children lay at the very heart of the gospel message. The predominant theological and juridical view held religious liberty as the very cornerstone of the edifice of human rights.

Some churches today, and even some powerful states, are strongly reasserting such an absolutist view of religious freedom. The U.S. Congress passed legislation which requires a



determination to be made about other states' respect for the right to religious freedom. Countries judged to be in violation of standards defined by American law may have their diplomatic recognition withdrawn or trade or other sanctions applied against them.

But ecumenical social thought with respect to religious freedom has never been so narrow. The Amsterdam Declaration of 1948 emphasized the right to religious liberty, but at the same time it called for the elaboration of an international bill of rights to protect the rights of minorities, to eliminate racial segregation or discrimination, to guarantee freedom from arbitrary arrest, and to promote the realization of human freedom through social legislation. Respect for the right to religious freedom and for the full body of rights of which it is a part was not seen as an end in itself, but rather as the essential basis for just and peaceful international relations (see Report of Section IV: The Church and International Disorder, *Official Report of the First Assembly*. Geneva: World Council of Churches, 1948).

The Fifth Assembly of the WCC (Nairobi, 1975) restated and sharpened this longstanding conviction of the ecumenical movement:

The right to religious freedom has been and continues to be a major concern of member churches and of the WCC. However, this right should never be seen as belonging exclusively to the Church. The exercise of religious freedom has not always reflected the great diversity of convictions that exist in the world. This right is inseparable from other fundamental human rights. No religious community should plead for its own religious liberty without active respect and reverence for the faith and basic human rights of others.

Religious freedom should never be used to claim privileges. For the Church, this right is essential so that it can fulfill its responsibilities which arise out of the Christian faith. Central to these responsibilities is the obligation to serve the whole community.

Churches and other Christian communities carry, on the basis of the Gospel, a special responsibility to express in word and deed their solidarity with those people whose human rights and fundamental freedoms are denied.

(*Breaking Barriers: The Official Report of the Fifth Assembly of the World Council of Churches*, p. 106. Geneva: 1975.)

The responsibility for the protection of the right to religious freedom is seen therefore as a shared obligation: shared between



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church and state, among the churches themselves, between the individual Christian and his or her church, and among Christians and people of other faiths. Today we might go further still: The responsibility for the realization of this right is one shared among ethnic and linguistic groups, among majorities and minorities, and among nations and states.

### **The responsibility of the state**

The international instruments referenced above clearly spell out the obligations of the state. Government may not interfere in the affairs of the church and other religious bodies unless their actions violate the rights and freedoms of others or fail to meet the just requirements of morality, public order, and the general welfare in a democratic society. Government may not interfere in the individual's choice of belief or religious affiliation. It may not prohibit believers from manifesting in public or in private their religion or belief in worship, observance, and practice or teaching, either individually or in community with others.

But there are many gray areas when it comes to the implementation of such principles.

Much of modern thinking and practice in the field of religious liberty is based on the ideas of those who, in the late 18th century, framed the US Constitution and Bill of Rights. Thomas Jefferson wrote about a "wall of separation" between church and state. James Madison influenced the First Amendment prohibiting the establishment of religion resulting from official state recognition of any church or religious body. This was possible, even necessary, in a nation of immigrants, many of whom had fled religious persecution in Europe perpetrated by governments dominated by a majority church.

In Eastern and Central Europe, some Roman Catholic and Orthodox majorities question such an absolute separation of church and state, partly out of their experience under Communist rule, and partly out of their conviction that it is they who have for centuries provided both social cohesion and protection of their peoples' faith, language, and culture from the onslaught of foreign invaders. Some suggest that even in the US that wall of separation between religion and government has become very porous despite the fact that the non-establishment clause of the First Amendment is formally respected. Such absolute separation, it is also argued, may be possible where there is a massive body of law, custom, and practice developed over more than two centuries, something that may not be immediately achievable or even advisable in some other countries.



### **Secularism, secularity, and religious liberty**

The global debate about universality of rights also criticizes the notion of religious freedom as a protection for secularism. For example, Islam complains that this has led to the erosion of spiritual values and, consequently, to a breakdown of public and personal morality, an increase of licentious behavior, and widespread social violence.

In response, defenders of the secular model of the state argue that it is the only viable construct within which government can deal equitably with organized forms of religion and fully protect the freedom of conscience and belief in society. While the ecumenical movement has tended to view secularism as corrosive of fundamental religious and social values, it has nevertheless warned against equating it with the notion of the secular state, which is particularly essential for safeguarding the rights of religious and other minorities. Properly conceived and governed, the secular state guarantees equal protection under the rule of law while at the same time it upholds tradition, culture, and even shared spiritual and moral values.

### **Religious freedom and equality under the law**

In many European societies churches have traditionally been major providers of education and essential medical and social services. Under socialism, virtually all of these functions were taken over by the state. After 1991 divisive debates arose with respect to the restoration to the churches of such functions and of the properties associated with them. The right to religious freedom has generally been interpreted internationally to extend to the right to own and manage property essential to the legitimate religious and social functions of the churches, and especially to equal treatment under the law of all religious groups. For this the state is to be held accountable.

When it comes, however, to basic education and the determination of standards to be applied in the provision of medical and social services, religion cannot claim absolute freedom. Here again it is the responsibility of government to establish those general norms and standards which must be commonly applied to assure enjoyment of the full range of human rights to all citizens without distinction. For example, the claim of national minorities that education in their own languages is a right must be balanced against the obligation of the state to ensure the unity of the nation as a whole and to require that basic civic education be provided in a common national tongue. Religious groups also have the right to provide social services to the com-



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munity. But it is the responsibility of the state to ensure that such services are accessible to all and that they are provided with respect for standards generally agreed upon. Religious groups, including minority religious groups, have the right to full and equitable participation in determining such standards and how they are to be applied.

Similarly difficult and divisive issues arise with respect to state financial support or cooperation with religious organizations. The long tradition of church-state relations in Central and Eastern Europe, where the state assumed considerable responsibility for gathering and distributing funds to religious bodies or directly funded some of their activities, will continue. The degree to which this can be considered a right in the context of religious freedom is debatable. But what is unquestionable is the right to equality of treatment by all churches and religious bodies by the state. Extreme vigilance is necessary to ensure that religious bodies are not subject to infringements of their freedom as a result of undue state interference and, conversely, that government is not subjected to undue religious pressures.

#### **What is a religion—and who decides?**

Tradition and practice can guide church-state relations in many areas, but the matter of religious freedom and new religions moves into uncharted territory. How are new manifestations of religion in society to be viewed? What criteria are to be applied in taking decision as to which groups are considered authentically religious? Is it legitimate to withhold recognition of new churches or religious movements in favor of churches or religious groups with historical societal presence? Does the state have a role in protecting its citizens from proselytism by new religious organizations or other groups of foreign origin? Should the state withhold recognition from new religious movements which arise within its own borders or from schismatic groups who destabilize or disrupt historic churches or religious associations, thus threatening the cohesion and rights of society as a whole?

In its 1928 Jerusalem Declaration, cited earlier, the International Missionary Council qualified its intention: “We would repudiate any symptom of a religious imperialism that would desire to impose beliefs and practices on others in order to manage their souls in their supposed interests.”

The World Council of Churches has long warned against the misuse of religious freedom with respect to proselytism. The New Delhi Assembly in 1961 regretted that the behavior of some church mission bodies had destroyed the positive connotation that the word



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“proselytize” once carried. Proselytism, the New Delhi Assembly said, is not something different from witness, but is the corruption of witness: “Witness is corrupted when cajolery, bribery, undue pressure, or intimidation is used—subtly or openly—to bring about seeming conversion.” Since 1991, the WCC has condemned religious imperialism and proselytism in Eastern and Central Europe for its destabilizing effects on churches struggling to recover from the pain, suffering, and martyrdom of the Communist period and also because it betrays the fundamental ecumenical principles of Christian solidarity and common witness. This warning was reiterated by the Central Committee at its 1997 meeting in Geneva.

Nevertheless, the principle of religious freedom must also protect new religious movements and new mission activities when they give vitality to the gospel message by making it relevant to people today and when they contribute to the renewal of the church in society.

As stated at the beginning, questions related to religious liberty are complex and full of contradictions. Human rights and religious freedom are dynamic, in need of constant debate and further elaboration according to changing circumstances. The WCC is convinced that since these matters often divide churches and nations, they must be the subject of open discussion and dialogue. It is for this purpose that the ecumenical movement exists. Appropriate answers are best sought by those directly caught up in the contradictions.

### **The role of religion in promoting religious liberty**

It has already been noted that responsibility for democratic governance of society in general and, in particular, the protection and the promotion of religious liberty cannot be left to the state alone. Religion, together with the whole of society, has a shared responsibility. The transition from totalitarian rule to democracy is excruciatingly difficult under any circumstance. This is as true in Central and Eastern European nations as it is in states such as Brazil and the Philippines, as well as other nations struggling to overcome the legacy of military dictatorships. But in this age of globalization with its neo-liberal ideology of the free market, it is doubly difficult. New coalitions must be forged to resist the forces which fragment the social, political, and economic aspects of society. Government and political parties cannot manage alone. The concerted efforts of government, the private sector, religion, and organizations of civil society are needed. In the field of religious liberty, churches, synagogues and temples, and mosques do bear a special responsibility.



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### **Religion a model of democracy to society**

It has been said that of the three related rights enunciated in the Universal Declaration of Human Rights—the rights to freedom of thought, of conscience, and of religion—it is the second which is nearest to an absolute right, without which all other human rights fall.

It is also true that the Christian church itself has been among history's chief violators of this fundamental right. Free thought and exercise of conscience have more often been condemned as heresy than welcomed, and their advocates within the church more often punished than celebrated. Moreover, it is true that the church has more often violated the religious freedom of people than has the state. Sad indeed is the record of how dominant Christian majorities have treated people who belong to minority churches, who adhere to other faiths. Thus the heaviest burden for the ensuring of respect for the right to religious liberty falls on religion itself. To meet the challenge, people of faith must come to terms with—and confess—their own errors and shortcomings. To be credible to society as a whole, members of churches across the spectrum must ensure that this right is respected within each church and in our relationships one with another.

As the Nairobi WCC Assembly stated, religious liberty is not an exclusive privilege of the church, but religious freedom is necessary for the church to be able to serve the whole community. In this respect, the churches are called to provide a model of democracy to society in their dealings with one another, showing tolerance, mutual respect, and a will to strengthen the common witness to the gospel of Jesus Christ. Majority and minority churches alike are accountable to and responsible for one another, and beyond this, to all religious bodies in society who share the right to equal treatment under law.

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Edited from an address by Dr. Epps to the Ecumenical Conference, Dobogoko, Hungary, 1997.



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# What Is Religious Liberty and What Should the Laws Guarantee?

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## Meanings and sources of religious liberty

The modern concept of religious freedom as a right of citizens was recognized constitutionally for the first time in the First Amendment to the United States Constitution ratified in 1791: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .”

Earlier, in 1776, the Bill of Rights of Virginia had provided for the transition from a system based on religious tolerance to a system of complete separation of state and church.

Many European constitutions of the 19th century reflect their nations’ long traditions as confessional states. They focus the right of religious freedom as a right of the *citizen*, or even as a right of the person as an *individual*. Protestantism had fostered the growth of a liberal ideology (evident in those constitutions) which emphasizes the rights of citizens—the rights of persons. And some of those countries tried, through legislation, to make compatible religious freedom and the confessional state.

However, in nations with strong Catholic traditions—confessional states such as Italy and Spain—the right of religious liberty was recognized only recently—in the 20th century. In 1965 the church included among the documents of the Second Vatican Council the Declaration of Religious Freedom. Until then, the Catholic monopoly allowed no more than lukewarm religious tolerance.

Legal scholars gave the theory of subjective rights its basic formulation during the 19th century in Germany, and then, in this century, in Italy. There emerged a more precise concept of religious liberty as a “public subjective right”—not only an individual right, but a collective right as well. As such, religious freedom (1) protects the immunity of the person; (2) entitles the person to specific behaviors such as the right of association and the right to practice a particular style of worship; and (3) requires the state,



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directly or indirectly, to provide assistance, including religious assistance, to people in public institutions such as hospitals and prisons.

Today religious liberty is a right *ergo omnes*. The contemporary concept of religious liberty holds that it is a right not only inherent in the state, but also in the person. Religious liberty is a public right because the relationships deriving from it (not just among individuals but, basically, between the state and the person—the physical or juridical person) are considered a public good by the state. Religious liberty is a constitutional right, recognized as such by the general standards of constitutions. Religious liberty is protected judicially by the supreme courts of the states. Finally, religious liberty is a fundamental right protected not only by national constitutions, but also by international human rights covenants established since the Universal Declaration of Human Rights of December 10, 1948. And the Declaration itself has become the inspirational model for the many recent constitutions around the world.

The Universal Declaration and the constitutions following its example speak of freedom of thought, conscience, and religion. Why this distinction? Is religious liberty one, single, global freedom with three different aspects? Or are there, formally, three different freedoms? From the 50s to the late 70s most Western European scholars favored the latter option, taking into account the concrete goal of religious liberty. But realistically, the notion tends to expand to the ideal of freedom of conscience. Freedom of thought relates to ideas or concepts about different aspects in life. Freedom of conscience relates to moral judgments. And freedom of religion and belief relates not just to personal opinions but to faith and conviction. What a person believes builds into a system of values. Thus the connection between freedom of conscience and freedom of religion is obvious.

Freedom of religion has a double sense. In the positive, it is the protection of the right to believe (“theism,” for example). In the negative sense, it is the right not to believe (as in “atheism”). And here the idea of freedom of thought as a fundamental right has a clear meaning. In their legislation, many states recognize both senses in order to avoid discriminatory attitudes against citizens.

This point leads into the international and constitutional framework of religious freedom. The framework has two axes: (1) The principle of equality and of equal treatment under the law. (2) The principle of non-discrimination. Like the two faces of the same coin, both are important when we speak about the collective



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right of religious freedom. In practice it is very difficult to avoid discrimination among religious groups and communities because of historical, sociological, ethnic, or cultural reasons.

Discrimination is a constant danger that must be avoided by all legislation. Here the role of the courts—both ordinary and constitutional—is essential to guarantee non-discrimination for religious reasons and, at the same time, equal treatment under the law. Note that equal treatment under the law does not mean equalitarianism. It means we treat equally what is equal and unequally what is unequal. While this premise is clear in theory, it is, in practice, difficult to apply. So the role of the principle of non-discrimination is basic when the distinction between what is equal and what is unequal is unclear.

What are the sources of religious liberty? We must consider the influence of John Locke and Jean Jacques Rousseau and the impact of rationalism and positivism on European tradition in the 18th century. But a century earlier, in 1636, on the American continent, Roger Williams became the first defender of religious freedom when he founded the colony of Rhode Island, establishing freedom of conscience as a rule of behavior. The essence of religious freedom is contained in Williams' 1644 treatise *The Bloudy Tenent of Persecution for the Cause of Conscience*. Williams is the cornerstone of the American tradition of religious liberty upon which the Founding Fathers, inspired also by the British and French freethinkers of the 18th century, framed the Constitution and the Bill of Rights.

Today the recognition of human rights as a fundamental, originating in the natural and universal dignity of the human being, is promoted by every contemporary international declaration. And the first example of religious liberty as a human right is, of course, Article 18 of the Universal Declaration of Human Rights.

### **Legal guarantees of religious liberty**

In the hard reality of every nation religious freedom is influenced, obviously, by its historical background. Another factor is the country's sensitivity to the avoidance of past prohibitions or restrictions of religious freedom. Consider that the recent constitutions of former communist countries (except Albania) formally recognize the right of religious freedom. But in practice it is a right difficult, if not impossible, to exercise. The result: Attitudes of real persecution. Thus the formal recognition of religious liberty requires very real and very effective protections *guaranteed* by the state.

There are general minimum standards that should apply to the



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content of religious liberty law—standards which must be endorsed and safeguarded by each state. Within contemporary formulations of religious liberty as a subjective right, an *ergo omnes* right, a public right, a constitutional right, and a fundamental right, the content of religious liberty tends to enlarge its original dimensions to preserve and respect as much as possible of the autonomy and the freedom of each person and each religious group. Accordingly, then, international laws and constitutional courts must guarantee the right of religious freedom in its external expressions. Here is a general framework:

(1) As an *individual right* the content of religious liberty law must guarantee the freedom

(A) to profess or not to profess a religion or a belief;  
(B) to receive or not to receive religious instruction;  
(C) to participate or not to participate in any form of worship; nor to be compelled, directly or indirectly, to disclose personal religious convictions; and to have access to places of worship;

(D) to refuse to take any oath contrary to personal convictions;

(E) to express openly personal religious beliefs, or to maintain silence about such beliefs; and

(F) to decline the performance of military armed service contrary to one's belief system, substituting instead the performance of humanitarian services.

(2) As a *collective right* the content of religious liberty must guarantee the freedom of bodies

(A) to manifest convictions and to propagate their religious choices or beliefs, protecting each group and each person within a group, privately and/or publicly, from coercion; protecting the right to spread their convictions or beliefs; and to observe and practice their religion without interference or intervention;

(B) to associate themselves into religious organizations and to be accorded, where required, official recognition and registration in order to achieve juridical personality and legal status, for which registration the state can check only for the observance of formal observance of appropriate requisites;

(C) to acquire and maintain places for worship, and to conduct and to attend religious services and activities;

(D) to establish, maintain, and manage religious institutions, and to self-govern them; and to communicate freely with other national or international institutions;

(E) to produce, sell, buy, import, export, and distribute religious literature, printed materials, audiovisual materials, and



other objects used for religious activities;

(F) to establish and administer private schools and to conduct educational, cultural, charitable, and/or other social activities; and

(G) to solicit and to receive voluntary financial aid from individuals and institutions.

What warranties should the state provide to fulfill its guarantee of religious liberty? I would suggest seven.

(1) The state should declare itself non-confessional, recognizing no official or established religion. This standard may not be easily reached because of national historical peculiarities. England is confessedly Anglican. Some of the Scandinavian countries are confessedly Lutheran. Even nations constitutionally non-confessional may possess a sociological confession rooted in history, as, for example, Italy or Spain. However, the minimum guarantee must be the balanced application of the principle of equality and non-discrimination between majority churches and minority churches: Neither may receive special state privileges; neither may exercise any political authority.

(2) The state must allow individuals in public institutions—members of the military, patients in hospitals, inmates in prisons—to receive from their churches necessary spiritual assistance.

(3) The state should exempt religiously purposed activities from taxation.

(4) Public authorities should be prohibited from involvement in the selection of religious ministers and ecclesiastical officials and their roles; the structuring of religious organizations; and the sponsorship of worship or other religious rites.

(5) State regulations must provide for reasonably accommodating citizen participation in religious festivals, and for the development of effective alternatives to civil service systems.

(6) Constitutional, civil, and criminal law must protect the right of religious freedom, providing for the prosecution of unlawful action that damages or destroys religious objects or religion-owned property.

(7) To facilitate the collective right of religious freedom, and with regard to the unique religious and sociological background of the country, the state could enter into signed agreements with religious organizations.

Finally, what are the limits of religious liberty? Regarding the public expression of religious freedom the international standards are clear: the Universal Declaration of Human Rights (Article 29.2), the International Covenant on Civil and Political Rights (Article 18.3), and for member nations of the Council of Europe,



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the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 9.2). States should align their legislation to these international standards—standards which set, in the first place, the fundamental rights and freedoms of others, and secondly, limitations prescribed by law as necessary to protect public safety, order, health, or morals. As the jurisprudence of each state develops criteria and precise guidelines, it must keep in mind that religious liberty remains a fundamental right. Any limitation, any restriction of religious liberty must not only be justifiable, but must fully respect its essential content.



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# Religious Liberty: Dangers and Hopes in the Current Situation

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Religious liberty does not seem to have captured the support of all minds. Every religion has a tendency to consider itself as the sole possessor of truth and that it is its task to call all people to this truth. This is not always favorable to inter-religious tolerance. Furthermore, every religion may be tempted to fight against what it qualifies as deviant error, whether in its midst or outside of its religious borders. This, of course, does not favor inter-religious tolerance nor, especially, tolerance of religious minorities.

It is a fact that religious extremism is developing, seemingly placing entire regions of the world in danger. The principal religions are well acquainted with extremism. They are sometimes exposed to terrorist manifestations which do not bypass either those that govern or those that are governed. The interlacing of that which is political and that which is religious, either in a manifest or latent way, continues to support many attitudes and ways of acting, and to nurture tensions and support conflicts.

Though considerable progress has been made on the level of law, real conditions have often remained below the level of juridical evolution and have not known in any way such a rapid evolution as the law itself. This gives all the more reason for concern since these conditions appear at times to be at the source of ambivalence in the negotiations and the political instruments used in dealing with the religious questions. Furthermore, the excesses that have been committed under cover of religious liberty, especially those committed by certain groups (or at least attributed to certain groups), are of such a nature that they provoke reactions with perverse effects, which tend to promote additional intolerance and discrimination toward all those who do not conform to the established order.

It is important in this connection to distinguish between the freedom of belief and the freedom to manifest the belief. While freedom of belief is absolute, the freedom to manifest one's belief



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must be subject to certain limitations, as has been underlined by the United Nations Human Rights Commission.

In any case, it is evident that freedom of religion cannot serve as a cover for groups without scruples and, perhaps, without faith. This said, it must be added that the question of the so-called "sects" must be looked at in a careful manner—without passion, without generalization, taking due count of the facts and the elements involved in every case, particularly in the light of established international norms regarding freedom of religion and belief. I believe it is important that a more sustained and careful examination of the sects must take place in the future. But this should not be identified as the same question as dealing with the "new religions."

"Hatred, intolerance and acts of violence, including those that are motivated by religious extremism" could be of such a nature that they might favor the emergence of situations which might endanger or compromise in one way or another peace and international security and strike at the right of human beings to have peace.

I tend to believe that the preservation of the right to peace should incite to a greater extent the development of international solidarity, with a view to the control of religious extremism, wherever it arises, by defining a minimum of rules and common principles for the conduct and activity in dealing with religious extremism, and then by acting both on the causes and the effects without selectivity or ambivalence.

On another level, it is basic to say that places of worship should be reserved for religious activities, not political; that the legal status of political parties should be defined in such a way that the continuing activities of religions cannot be the object of interference by political variables; and that public schools should be placed outside control of ideology, politics, or partisanship.

One should also underline that all forms of intolerance and discrimination are born in the minds of people. It is, therefore, at this level that any primary action must take place. The role of education—specifically, the school—is essential, even unavoidable. I will never tire of repeating that it is of primordial importance to develop in a consistent way a whole pedagogy of education for the rights of man, for liberty, and tolerance.

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The author is senior professor of juridical science, University of Tunis, Ariana, Tunis, Tunisia. Translated from the French. Condensed and edited from an address by Prof. Amor to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# Religious Liberty in a Democratic State: Problems and Solutions

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Many people are insisting on changes in religious liberty as it faces the proliferation of new movements whose originality and vigor both attract and give concern. First of all, is it necessary to call these new movements “religious” in order for them to benefit from arrangements in place for the revealed religions? Or should one go even further by providing financial help as compensation for their inferior status (due to their recent birth) in comparison with the older religions? Moreover, could not this reasoning be applied to older religions which have been increasing in membership within certain states?

Consider the sect phenomenon. The word “sect” has a pejorative connotation in some of the nations unaccustomed to the ferment of religious denominations in Anglo-Saxon societies. A legal theory has developed which holds that a sect is different from a religion and therefore does not have the right to benefit from the protection of national and international instruments relating specifically to religion. So it is necessary to determine with some precision the criteria that will define what a sect really is. Several have been suggested.

\* A small number of members. It is easy to draw attention to the contradiction that exists in using such a criterion at the very time when respect for minorities is proclaimed as a national and international principle. When one takes an internal view of the notion of religion, one cannot but note that there are religions whose character is not, or at least is no longer, contested. And there are religions which, for reasons of theology, choose to be religions of their professing members only, deliberately remaining outside the general population. One would have to expect quite a number of deceptions when one uses the quantitative criterion.

\* Eccentricity. If eccentricity is defined in relation to reason, then no religion can avoid the label of a sect. For it is the very nature of faith to be at least in some ways irrational and mystical.



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Wrote Tertullian: "I believe in that which is absurd." Back in 1912, the Court of Appeals in Paris, in an opinion regarding spiritism and its relationship to Article 901 of the Civil Code, stated that "all religious beliefs are essentially respectable, provided they are sincere and held in good faith, and it is not the right of civil judges, whatever their personal opinions and beliefs, to attack, criticize, or condemn them" (D. 4 December 1912. D. 1914.2.213).

\* Newness. It is probably this third criterion, without being explicit, that plays the largest role because it is simple to verify and perhaps also because time is a dimension familiar to law. In this case a sect would be, basically, a religion that is being born. This approach ignores phenomena which have been analyzed in the science of religions: dissidents, schisms, heresies, and reforms, which attest to the possibility of new confessions coming into existence instantaneously. By setting up barriers to religious experience and forbidding all creativity in theological research, this criterion fails to recognize freedom of conscience in one of its essential forms. It is true that the objection to newness is sometimes transposed from history to geography, and thus becomes a sort of extraneous objection. But this is an inadmissible argument. In fact, it would be valid against more than one established religion—and even, perhaps, against Christianity as a whole. In law, newness is condemned by the principle of free communication, which is found today in Article 10, Paragraph 1, of the European Convention guaranteeing human rights and the freedom of each person to receive or to communicate ideas without consideration of borders.

One can see, then, that the concept of "sects" is hard to pigeonhole. Is this not also the case for religion? Does anyone know today exactly what is a religion? (See Jacques Robert: "Accepter la foi" in *Le Monde des débats*, February 1994, p. 9.) One could say that religion is defined by two elements, one objective, the other subjective.

The objective element is given by the existence of a community. A community is not simply an accumulation of individuals. It is a coherent group. It is a moral entity. Religion is a collective phenomenon. This does not necessarily mean a mass phenomenon. There are churches that wish to see themselves as national, while others view themselves as minority churches, even as micro-minorities. French law has wisely refused to incorporate confessional statistics within its norms. Article 19 of the law of 1905 is important in this connection. With regard to the establishing of a worshipping community, the law in no way considers the



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number of faithful attached to the particular confession.

The second element, the subjective element, is faith. Faith has its seat in the individual conscience. Nevertheless, it is not a solitary conscience, for it is the reciprocity of consciences which makes for a religion. Thus the two elements, objective and subjective, cannot be separated. You need to have faith in order to give sense or meaning to a group, but you need to have a group, no matter how small, in order to have faith emerge from its interior manifestation, something law cannot grip. A group's cohesion is based on its common faith, its spiritual communion, and its package of beliefs. But how does one *characterize* religious faith or belief? One could be tempted to define the character of faith through the various acts that manifest it: practices, observances, rites, liturgies, sacraments. The fact is that these manifestations are often of an original nature which signify the presence of a religion.

The argument, however, is not decisive. After all, there are municipalities that have organized civic baptisms and courts have their own rituals. Acts and manifestations are empty forms. Only the belief that animates them provides them with a religious significance. It becomes necessary, then, to go back to the heart of the question: the object of belief. Not every conviction is a faith; neither is a political party nor a philosophical school a religion. The essence of religion is the appeal to a divinity (at the least, to a supernatural power), to that which is transcendent, absolute, and sacred. Of course, formulas of the appeal vary. Not all cases are subject to scrutiny. For example, there can be an imprecise zone between the invocation of the supernatural—which is religion, and speculation about the metaphysical—which is only philosophy. But in general, belief in a god brings about religion—without, nonetheless, requiring any external representation whatever of this god.

It must be said that no religious movement can place itself above the laws. Every church, every association, every sect must answer for its acts. French law does not allow condemnable acts to go unsanctioned. Those engaged in an extreme kind of proselytism—who, voluntarily or not, break the law—place themselves on the margin of society. Penal infractions are precisely defined and quite numerous: fraud, abuse of confidence, violence, illegal detention, failure to assist people in danger, acts against public morals, white slave traffic, the illegal practice of medicine, and the kidnapping of children, to cite just a few.

Without necessarily going to court, public authorities can either declare nonexistent an association founded for illegal pur-



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poses or conducting illegal activities, or administratively dissolve such an organization on the basis of the ordinance of October 2, 1943, which authorizes the dissolution of groups or associations "having an activity contrary to liberty of conscience and liberty of worship." Public authorities can also invoke the law of June 10, 1936, revised in 1972, regarding armed groups or private militias. Whether we are dealing with ancient religions or new, the state cannot, on the basis of evidence, tolerate the least infringement of law and order.

Without doubt there are different interpretations of the concept of public order. But let us not confuse public order and social order with moral order and religious order. Since 1905, the secular state has respected and protected the various churches. But one cannot forget that Judeo-Christian thinking produced the mentality of the west and that we are more familiar with certain churches or religions than with others—those which shock us by their exterior aspect, their esoteric nature, and their ostensible adherence to beliefs and rites foreign to our culture.

Having said this, are we not facing the risk of possible discrimination between old and new religions to the extent they do not exercise equal influence on national culture nor occupy the same place in history? Though public law cannot ignore such religious specificities, the recognition of differences between various ways of worship should in no case lead to discrimination between them. The concept of equal protection by the state should not disappear in the face of differentiation. It is certainly permitted, however, to ask if reverse discrimination is not beginning to take place before our very eyes. How? By giving special privileges to the new religions simply because they have been ignored or neglected.

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The author is honorary president of the University of Paris (Le Sorbonne). Translated from the French. Condensed and edited from an address by Professor Robert to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# The Distinctive Roles of Church and State

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## I. Introduction

In addressing this topic, I want to comment generally concerning roles that are genuinely different, roles that overlap, and principles that can help guide this sensitive interaction. Within that framework I then will discuss more concretely what I see as practical issues being faced throughout Central and Eastern Europe.

But first a story—a story about three members of a small cultural minority group in Louisiana known as Cajuns. (Their name is derived from “Acadians,” Francophones who long ago migrated from Canada to the southern US.) On their way to the market the three Cajuns were delighted to find a one hundred dollar bill. They began to talk about how they would spend the money. Soon they passed by a church, the sight of which brought pangs of conscience. “We really need to give some of this money to God,” one of them said. The others reluctantly agreed. Now they faced a new question: How much of the \$100 should they give? One said they should draw a line between them and the church, then throw the bill in the air. If it landed on the church side of the line, they would give it to God. But if it landed on their side, they would keep it. The second Cajun disagreed. “What we should do,” he said, “is draw a circle on the road, and then throw the bill in the air. If it falls inside the circle, we give it to God. Otherwise we keep it.” “But I have an even better idea,” declared the third Cajun. “Let’s just throw it up in the air, and if God wants it, he can take it.”

## II. Perspectives on the Distinctive Roles of Church and State

### A. The jurisdictional approach to separating church and state

The Cajun story is democratic in its way. It celebrates peasant cleverness. But it can also be seen as a metaphor for a progression



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of approaches that have been taken to analyze the meaning of the famous remark of Jesus when asked whether He should pay taxes to the Roman Empire: "Render therefore unto Caesar the things that are Caesar's, and unto God the things that are God's" (Matthew 22:21). Through much of history, the answer has been thought to be jurisdictional. The Cajuns' line in the road represents a boundary between the competing sovereignties of church and state. Other metaphors have been used to describe this line. Consider the "two swords" doctrine, first enunciated by Pope Gelasius I around the end of the fifth century: There are two swords "by which this world is chiefly ruled, the sacred authority of the priesthood and the royal power."<sup>1</sup>

Philosopher John Locke used jurisdictional terms in what has become one of the classic formulations of the distinctive roles of church and state in his *Letter Concerning Toleration*.<sup>2</sup> Locke argued that it is vital "to distinguish exactly the business of civil government from that of religion. In his view,

the whole jurisdiction of the magistrate reaches only to . . . civil concerns; and . . . all civil power, right and dominion is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the salvation of souls. . . .

The vague modern notion of "separation of church and state" is yet another metaphor suggesting this jurisdictional approach. Thomas Jefferson imagined a "wall of separation" between church and state.<sup>3</sup> As the United States Supreme Court has noted, however, in our complex world it is no longer clear whether the wall Jefferson envisioned is straight or curving, quite like the serpentine walls he designed for some of the buildings he constructed.

### **B. Protecting spheres of autonomy when state and religious interests overlap**

With the growth of the social welfare state and its pervasive influence on all aspects of life, it has become more typical to think about the relation of religious and state institutions in a way suggested by the second Cajun, the one who wanted to draw a circle on the road. Religious freedom is conceptualized in terms of "circles or spheres of autonomy" that can be encroached on only to advance compelling state interests that can be furthered in no less burdensome way.<sup>4</sup> Current international instruments such as the European Convention recognize that religious freedom rights may be limited for certain reasons that correspond in essence to Locke's notion of the role of civil power. According to the European Convention, any limitations must be grounded on legiti-



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mate state interests in protecting public safety, public order, health, morals, and the rights of third parties.<sup>5</sup> Prevailing international law, however, recognizes that in the context of modern nation states these interests are so pervasive that one cannot be assured religious freedom will be protected by the limiting of state action to the civil interests specifically identified from Locke to the European Convention as legitimate bases for state action. Rather, state encroachment on religious freedom can be justified only if such limitations “are prescribed by law and are necessary in a democratic society” for the protection of civil interests. The Strasbourg Court has construed this to mean that the interference with a right must be motivated by a “pressing social need” and must be “proportionate to the legitimate aim pursued.” In modern legal systems this proportionality test is now crucial to determine whether state action that burdens religious freedom is legitimate or not. Note that while the sphere of freedom provided by this approach is smaller, the protection it provides is larger and stronger.

To give practical examples, this means that any limitation on freedom of religion—whether it be rules governing the initial grant of entity status to a church, the coercive imposition of tax rules on the transfer of funds from believers of one faith tradition to another, the enforcement of health regulations, the application of accreditation requirements to private schools, or the regulation of evangelistic missions—is permissible only if it is “prescribed by law” and “necessary in a democratic society.” All such regulations should deal with those civil interests Locke would have seen as appropriate for state oversight. But the intervening centuries have taught us that more is required to protect religious freedom. It is vital to set constraints on majoritarian legislation and bureaucratic action—constraints that will assure religious minorities they are protected and their rights are to be overridden only if the state action in question passes the proportionality test.

What the “sphere of autonomy” model recognizes is that one cannot satisfactorily answer the question about what is Caesar’s and what is God’s by providing a list of distinctive roles for religious and state institutions. Church and state have overlapping interests. Religion will be marginalized if it has authority to act only with respect to matters in which the state has no interest. Moreover, as construed in modern democratic societies, state action can be justified only if it is the least restrictive or least burdensome method of advancing the state interest in question. If the state’s objective can be fulfilled nearly as well while accommodating religious beliefs and practices, the less burdensome approach



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must be chosen. In many situations, this can be accomplished by giving churches appropriate exemptions or by narrowing the scope of the regulation in question.

### **C. The hazard of secular blindness: Undue privileging of secular outlooks**

The “even better idea” proposed by the third Cajun—throw the hundred dollar bill in the air and see if God takes it—corresponds to the pervasive secularism of our times. It is easy to give lip service to the importance of religion in society and to religious freedom, but fail to provide effective protections on whims of inconvenience. The difficulty is that those charged with enforcing good secular regulations do not understand how religious communities work and what is vital to their functioning. An example:

A recent case in the United States involved the Salvation Army, the provider of a most effective treatment program for alcoholism. Recovering alcoholics are situated under 24-hour supervision and occupied with tasks such as gathering used clothing for charity. But an overzealous enforcer of labor laws charged that the Salvation Army was not paying even minimum wages. Of course, the whole program would collapse if the Salvation Army were required to pay its clients minimum wages and overtime as well for their voluntary participation in a therapeutic work program. Fortunately, wiser heads prevailed; an accommodation was arranged.

But this does not always happen. Too often secular blindness combined with bureaucratic insensitivity cripples the ability of religious groups to provide the kinds of contributions contemporary society needs them to make. The cure for this problem lies in taking the proportionality test seriously, and not manipulating the test to give undue weight to the secular interests of the state.

Ultimately, it was the second Cajun, rather than the first or the third, who was wisest.

### **III. The Importance of Religion to Civil Society**

It has become common to view society in three sectors: the private market, government, and not-for-profit organizations, charities, and religious bodies. According to private market theories, societal wealth will be maximized by taking advantage of the natural incentives and efficiencies of private markets. However, it is well known that private markets break down in certain areas. For example, markets fail to generate optimal social solutions whenever entrepreneurs can profit without internalizing the full cost of business activities—such as not bearing the costs of pollu-



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tion caused by business operations. Moreover, some vital social functions—care of the poor, for example—are inherently not profitable. Such market problems make vital the second sector: government. But government institutions likewise provide no panacea. They are often too cumbersome, insufficiently responsive to private needs, and too prone to become bureaucratic and impersonal. When both market and government fail, the third sector—not-for-profit, charitable, and religious organizations—is vital.

I have a problem with this picture. Why should this sector be placed third, a last resort when all else has failed? Historically, it was probably first, and in any event it makes sense to let the voluntary private sector accomplish as much as it can before society resorts to solutions from government.

Religious institutions have long provided a vital buffer between the individual and the leviathan state. Religious organizations provide vital contexts in which individuals can find the meaning of life and experience many of their most meaningful relationships. They are vital to the inculcation of habits of honesty and moral integrity. They energize efforts in such altruistic areas as education, health care, and social services where profit motives are not sufficient. Their link to the transcendent is a constant source of renewed vision and deepened commitment to the social good. Of course, organized religion does not have a flawless track record; humans are not always true to their religious ideas. But in general, religious institutions have a massively positive influence on society.

There is, however, a paradox concerning the cultivation of civil society. While the state has a vital interest in the flourishing of civil society, the state cannot itself create civil society by direct action. The essence of civil society in general and religion in particular is voluntarism. Government efforts to bring it about simply yield more government.

Alexis de Tocqueville recognized this paradox in his analysis of the role of religion in reinforcing mores in American democracy. He understood that unlimited materialism can be a terrible source of instability in democratic society, and that mores are necessary to keep natural passions in check. What religions have in common is the general promotion of good morals. According to Tocqueville, “While the law allows the American people to do everything, there are things which religion prevents them from imagining and forbids them to dare.”<sup>6</sup> Pluralism in religion tends to keep religion vibrant in part by keeping it competitive. The state contributes to this process not by direct action, but by the



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indirect route of protecting religious freedom. As Robert Bork suggests in his book *Slouching Towards Gomorrah*, one of the hazards of our day is that corrosive secularism is undermining the voluntary institutions vital to keeping the potentially destructive forces of material culture in balance.<sup>7</sup> In Central and Eastern Europe the hazard is that societies are inundated with the allures of American material culture without a counterbalancing revitalization of the influence of religious life.

#### **IV. Practical Concerns in Respecting the Distinctive Roles of Church and State**

##### **A. Church finance**

One of the great challenges for revitalizing religion in the countries of Central and Eastern Europe has to do with the financing of churches. For centuries, churches in this region have depended on state support, a dependency compounded during the communist era by the expropriation of church facilities. These two factors combine to make virtually impossible the existence of church entities without, in some form, substantial state support. (The American patterns of voluntary support of churches that have grown up over two centuries, which allow the "no aid" principle to work, cannot be replicated overnight in Europe.) But even in Europe there ought to be some limitations to state support of religion.

First, every effort should be made to assure that the aid granted to churches does not compromise their independence. In this regard, note that restoration of church property has a rather different character than direct funding of church programs. When the state restores wrongfully seized property to a church, there is no assumption that the state has a right and an obligation to monitor how the restored property is used. But whenever tax dollars are spent by private organizations, it is almost inevitable that some level of state regulation will follow. One of the reasons many smaller churches reject state aid as a matter of principle is that they believe such regulation is too great a cost to pay for financial subsidies.

Second, even where direct funding is required, efforts should be made to structure it in ways that will not reinforce the dependency of churches on government largesse. Spain's effort to bring about a transition toward voluntary support of religious institutions seems very interesting. Successful or not, it is certainly praiseworthy.

Third, the Hungarian experience suggests that aid should be



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channeled to areas where there is broad consensus that religion is providing a general social benefit. Thus, support of health care, the secular aspects of education, and sports and youth programs is far less controversial than the funding of salaries of teachers of distinctive religious doctrines. Similarly, where buildings have historical value, some public support for maintenance costs can be justified, since the public has a general interest in preserving historical structures, notwithstanding the specific faith represented by the building.

Fourth, support should be structured to minimize the extent to which tax systems are used to force citizen support of religious institutions in which they may not believe. One major approach is tax exemption schemes which, without directly endorsing any particular religion, alleviate churches of burdens as part of a general recognition of the benefits of altruistic society. The German model provides for an important constraint. As is well known, Germany has a sophisticated church tax system. What is less well known is the extent to which this system is structured to minimize coerced taxation in support of particular religious institutions. Actually, the church tax is not really a state levy, but a tax imposed by the churches in their capacity as public corporations. The church tax is collected by the state pursuant to a contract paying the state for this collection service. Taxes collected from a believer in one church are not transferred to another body in which the taxpayer does not believe. Moreover, under rulings of Germany's Constitutional Court, the church tax scheme would be unconstitutional if those subject to the tax do not have a right to withdraw from the church imposing the tax. To that extent, then, the tax remains voluntary.

Finally, care should be taken to assure that all religious groups are treated equally. Essentially, once the state decides to make public benefits available to some, it needs to provide reasonably equal access to equivalent benefits to all, to the extent they are requested. This does not apply, of course, to restoration of wrongfully seized property since this is not at all a benefit, but rather just compensation.

### **B. Non-intervention in matters of belief**

One of the axioms of religious liberty is that the state should not intervene in matters of religious belief. The state should not regulate patterns of worship or matters of doctrine. Significantly, church organization is very often extremely important as an aspect of doctrine. This is one of the reasons why it is vital for the state not to intervene in the internal affairs of a church, including



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regulation of those who shall serve as clergy and other employees. Non-intervention extends to ecumenism. The state should not take any stand on the movement of churches to attain organizational unity. Many churches believe this would be a good thing—which is fine for them. But other bodies are conscientiously opposed to such unification. Such separatist religious beliefs should be respected.

Moreover, while the state may have legitimate interests in limiting the excessive politicization of religion, it is vital to remember that religious institutions have a right to speak out on issues about which they have conscientious beliefs. Individuals and institutions should not be deprived of the right to freedom of expression merely because they are religious. If anything, the combination of religious freedom and freedom of expression should assure religious expression greater protection than ordinary political speech.

Similarly, the state should respect rights to share beliefs through evangelism. For many religious traditions, the obligation for members to share their religious beliefs with others is an imperative. To say to such that they may have religious freedom so long as they do not evangelize is the equivalent of telling Roman Catholics they may worship however they please so long as they not take the Eucharist.

### **C. Accommodation of religion**

In view of the proportionality principle stressed above, every effort should be made to accommodate practices motivated by sincerely held religious beliefs. Religious holidays and days of rest should be respected. There should be a presumption in favor of accommodating religious needs even to the extent of granting exemptions from ordinary laws, unless those laws reflect compelling interests that are “necessary in a democratic society.”

It is important to notice that this principle extends to laws granting entity status to churches. In the modern legal world, freedom of religion is significantly constrained without access to at least some type of legal entity. In compliance with principles recognized in the Helsinki Process, countries should provide religious organizations with access to some appropriate kind of legal entity or recognition so that it is possible for religious organizations to acquire property, enter into contracts, and build houses of worship without hassle or delay. Entity status should not be used as a method to exclude or discriminate against smaller religious communities.



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## V. Conclusion

Religious liberty is one of the great cultural treasures of modern democratic society. Its implementation contributes to the alleviation of the countless forms of human suffering that have flowed over the ages from intolerance and religious persecution. Tocqueville is correct. Protection of religious freedom is one of the critical roles that the state can play to bring about indirectly the flourishing of civil society. The expansion of religious freedom has been one of the great achievements of the last several years in Eastern and Central Europe, but this key value is under constant pressure from a variety of sources. I hope for its strengthening.

<sup>1</sup> Berman, Harold J.: *Law and Revolution: The Formation of the Western Legal Tradition* 92 (1983).

<sup>2</sup> Locke, John: "A Letter Concerning Toleration" (first published in 1689), appearing in *Library of the Liberal Arts* (New York: Macmillan Publishing Co., 1950).

<sup>3</sup> Hanson, Joel: *Jefferson and the Church-State Wall: A Historical Examination of the Man and the Metaphor*. 1978 Brigham Young University Law Review 645.

<sup>4</sup> See *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The "compelling state interest" test was substantially weakened by the U. S. Supreme Court in *Employment Division v. Smith*, 494 U.S. 872 (1990), then substantially restored by Congress in the Religious Freedom Restoration Act, 42 U. S. Code, Sections 2000bb to 2000bb-4 (Supp. V. 1993). During the summer of 1997, however, the Supreme Court resorted to the separation of powers doctrine to declare the RFRA largely unconstitutional.

<sup>5</sup> Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, U.N.T.S. 213:222, entered into force September 3, 1953, as amended by Protocol No. 3, entered into force September 21, 1970, and Protocol No. 5, entered into force December 21, 1971.

<sup>6</sup> Tocqueville, Alexis de: *Democracy in America* 292 (\_\_\_\_\_: Harper Perennial).

<sup>7</sup> Bork, Robert H.: *Slouching Towards Gomorrah: Modern Liberalism and American Decline* (\_\_\_\_\_: \_\_\_\_\_, 1996).

Adapted and edited from an address by Professor Durham to the International Symposium on the Role of Churches in Renewed Societies, Budapest, Hungary, 1997.



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# The Universal Declaration of Human Rights: Questions and Answers

National Coordinating Committee for UDHR 50  
United Nations  
New York

## **What is the Universal Declaration of Human Rights?**

The Universal Declaration of Human Rights is the primary international articulation of the fundamental and inalienable rights of all members of the human family. Adopted by the United Nations General Assembly on December 10, 1948, the UDHR represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings.

Among others, these include civil and political rights such as the right not to be subjected to torture, to equality before the law, to a fair trial, to freedom of movement, to asylum, and to freedom of thought, conscience, religion, opinion, and expression. The rights outlined in the UDHR also include economic, social, and cultural rights, such as the right to food, clothing, housing and medical care, to social security, to work, to equal pay for equal work, to form trade unions, and to education.

Originally intended as a "common standard of achievement for all peoples and all nations," over the past fifty years the Universal Declaration has become a cornerstone of customary international law, and all governments are now bound to apply its principles. Because the Universal Declaration of Human Rights successfully encompasses legal, moral, and philosophical beliefs held true by all peoples, it has become a living document which asserts its own elevating force on the events of our world.

## **Are governments legally required to respect the principles outlined in the UDHR?**

Yes. While the record shows that most of those who adopted the UDHR did not imagine it to be a legally binding document, the legal impact of the Universal Declaration has been much greater than perhaps any of its framers had imagined.

Today, direct reference to the UDHR is made in the constitutions of many nations that realized their independence after the document was adopted. Prime ministers, presidents, legislators, judges, lawyers, legal scholars, human rights activists, and ordi-



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nary people throughout the world have accepted the Universal Declaration as an essential legal code. Dozens of legally binding international treaties are based on the principles set forth in the UDHR, and the document has been cited as justification for numerous United Nations actions, including acts of the Security Council.

As oppressed individuals turn increasingly to the Universal Declaration for protection and relief, so governments have come to accept the document not just as a noble aspiration, but as a standard that must be realized. Because it is universal, a central and integral part of our international legal structure, the Universal Declaration is widely accepted as a primary building block of customary international law—an indispensable tool in upholding human rights for all.

### **Does the UDHR successfully incorporate different concepts of human rights?**

Yes. The drafting of the Universal Declaration of Human Rights represented the first time in history that people from cultures throughout the world worked together to formulate a comprehensive and common vision of inalienable human rights. In the UN General Assembly's Third Committee alone, there were 85 meetings held with a total of 1,400 separate votes taken on various issues concerning the drafting of the Declaration (this is after the Commission on Human Rights had completed its work!). For nearly three years, representatives of various nations labored to enumerate and articulate the specific rights and freedoms that had been more broadly guaranteed to all in the UN Charter.

Remembering that the world was embroiled in the ideological controversies of the Cold War, this was an incredibly complicated and difficult task. Yet the final document encompassed rights and freedoms given varying emphasis by both Western democratic and Communist countries. The Universal Declaration reflects different beliefs as to the philosophical basis of human rights and balances traditional civil and political rights with economic, social, and cultural rights.

The drafters of the UDHR struggled through a multitude of sometimes subtle and sometimes stark differences in linguistic, cultural, political, and philosophical values. The world's major legal systems and legal philosophies were considered in stages of the debate as were, to varying degrees, the most widely practiced religious beliefs, including Buddhist, Christian, Confucian, Hindu, Islamic, and Jewish traditions. Under the chairmanship of Eleanor Roosevelt, the Commission on Human Rights successfully



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reached a shared understanding of what constitutes the inalienable rights and freedoms of all human beings in every corner of the globe.

### **Why does the Universal Declaration ring true for persons from all cultures?**

The authors of the UDHR strove to understand and articulate their differing cultural traditions and convictions throughout every stage of their complex work. In fact, most of the debate and discussion centered on negotiating differences in cultural and historical perspective. A special group was employed to sort out the differences in meaning of every word of each article as translated through the official languages of the United Nations.

This process of debate and discussion had an importance of its own. Never before had such a diverse group of people come together to explain the values and traditions that define the core nature of their respective societies. It was a real international learning experience. In many ways, the debate helped to illuminate the ideological differences that drive decision making on the most crucial international issues.

In the end though, those involved in this three year process held the rights enumerated in the UDHR to be truly universal—belonging to members of every society and culture. They agreed that the Universal Declaration reflected shared convictions and beliefs. The rights were regarded as transcending national, social, and cultural boundaries.

All of these rights are necessary to the person who would realize his or her full potential as a human being. As such, they represent a universal standard that has meaning for all people.

### **Does the 50-year old UDHR adequately address current human rights dilemmas?**

Yes. The UDHR sets forth a framework for realization of the full scope of human rights and freedoms. By design, it is an open-ended and forward-looking document. For instance, Article Two says that everyone is entitled to all the rights and freedoms set forth in the Declaration “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The UDHR’s framers knew that with time other kinds of discrimination might attract public attention, and they worked to anticipate this.

Unfortunately, the challenges that the UDHR addressed in 1948 are still very much present in our world. Governments con-



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tinue to torture and murder individuals because of their beliefs, their ethnicity, or their opinions. Millions across the globe remain “ill-housed, ill-clad, ill-nourished.” And, if we ask ourselves which of the rights framed in 1948 might be dismissed today, we find that none may be. Who would argue that torture or slavery is necessitated by the demands of modern life or of a global economy? Those who have suggested that the rights enumerated in the Universal Declaration are outdated, seem to do so in an attempt to justify oppressive measures that undermine these rights.

Respect for the rights of every individual is enduring and the struggle against human rights violators, ongoing. More and more, individuals throughout the world have formed groups to document the suppression of freedoms set forth in the UDHR and to demand that the Declaration be fully respected in their own societies. The continued violation of human rights, and the achievements of ordinary citizens who turn to the UDHR for defense, both highlight the increasing relevance and importance of the Universal Declaration. The urgent need to protect these rights is more compelling than ever.

### **After adopting the Universal Declaration, what was the next step?**

While the significance of the Universal Declaration cannot be overestimated, it is important to remember that the UN Commission on Human Rights which drafted the document was also charged with drafting a legally binding international treaty on human rights, and with creating effective measures of implementation.

After many years of negotiations, it was ultimately decided that what had been imagined as a single human rights treaty should actually be two treaties or “Covenants.” The rights acknowledged in the Universal Declaration were separated into these two distinct Covenants, respectively, the “International Covenant on Civil and Political Rights” and the “International Covenant on Economic, Social and Cultural Rights,” both of which were adopted by the General Assembly in 1966. They entered into force in 1976, and have been ratified by more than 130 states. Taken together, the Universal Declaration of Human Rights along with the two legally binding Covenants form the “International Bill of Rights.”

The Covenants were drafted and adopted as legally binding international treaties meant to ensure full protection of the rights proclaimed in the Universal Declaration. They elaborate the rights proclaimed in the Declaration in more specific language and they



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also elaborate the limitations of these rights. Each of the Covenants is monitored by a committee of experts which reviews the performance of states in upholding the agreed upon provisions.

Over the last 50 years, the rights set forth in the UDHR have been reiterated and affirmed in numerous international human rights treaties dealing with specific populations or with specific rights and freedoms. The rights have also been incorporated into regional human rights treaties and documents such as the "European Convention of Human Rights," the "European Social Charter," the "African Charter of Human and Peoples Rights," and the "Helsinki Accords."

### **What tools does the United Nations have for protecting human rights?**

Based upon the conviction that governments have an obligation to protect the human rights proclaimed by the UDHR, the United Nations has created a number of mechanisms and procedures to influence the conduct of governments that violate these rights.

The Commission on Human Rights is the primary international forum for addressing human rights violations. The Commission has created a number of specialized bodies to monitor and report on human rights problems such as torture, free expression, violence against women, and religious freedom worldwide. Its Subcommission on Prevention of Discrimination and Protection of Minorities sets standards and conducts studies of new human rights issues. There is also a Commission on the Status of Women. Each of the six major international human rights treaties established an expert committee that monitors the respective treaty.

Recently, the UN created the post of High Commissioner for Human Rights. Establishment of this high-level position will help make human rights even more central to the work of the UN by giving these issues the political stature and voice they need in the international arena. This post was fiercely advocated for decades by non-governmental organizations that wanted to see a real champion of human rights defend them globally.

In recent years, the UN Security Council has created two international war crimes tribunals (for atrocities in Rwanda and the former Yugoslavia). The UN is currently working to establish a permanent International Criminal Court that will hold violators accountable and vigorously pursue justice for the individual crimes of genocide, crimes against humanity, and war crimes.

Finally, the UN strives not only to protect human rights, but to



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promote them as well. The UN offers technical assistance to countries, publishes human rights information, and makes human rights counselors and educators available at the request of governments. Of course, many of the UN's specialized agencies are actively engaged in human rights issues as a component of their work, including UNICEF, UNESCO, the International Labor Organization, and the UN High Commissioner for Refugees. Election monitoring in post-conflict situations is an example of how the international community helps promote civil and political rights, while emergency relief operations promote rights such as the right to food and shelter.

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# Speaking Up for Religious Liberty: NGO Action at the UN

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There are big problems concerning religious liberty in many countries of the world. There are different ways for trying to reach solutions to these problems. One of them is through the activities of non-governmental organizations at the United Nations. As an international organization, the UN has the authority and responsibility to pressure the governments of member states to solve religious liberty problems. In consultative status with the United Nations, the NGOs can make the UN, its various agencies, and its member states aware of issues by providing timely, factual information about violations of the right to freedom of religion and belief. Some of my personal experiences illustrate what UN NGOs can do in favor of religious liberty.

The most important document of the United Nations dealing with religious liberty is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted by the General Assembly on November 25, 1981. The draft of the declaration was prepared by the UN Human Rights Commission in Geneva. Several non-governmental organizations contributed significantly. As an NGO representative, I took the opportunity to cooperate with some of the governmental delegations (Canada, the Netherlands, the Philippines, and the United States), suggesting to them the inclusion of a paragraph very important to some religious minorities. My suggestion was accepted, and so among the several liberties listed in Article 6 of the Declaration as being included in "the right to freedom of thought, conscience, religion or belief" is the freedom "[t]o observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief" (Section (h)). The quoting of this section has helped solve many problems in many countries concerning the liberty of Jews and Seventh-day Adventists to observe Saturday as their religious day of rest. In Italy, Poland, and Spain, for example, the right to observe the sev-



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enth-day Sabbath is even expressly guaranteed by law.

Ever since the adoption of this declaration in 1981 the General Assembly and the Human Rights Commission have always included in their annual agendas an item concerning its implementation. This has prompted open discussion in New York and especially in Geneva. Member states and NGOs denounce violations of the declaration, call for increased respect of religious liberty, and request the HRC to take necessary measures. But because of political affinities, economic interests, or other reasons, the member states tend to be selective in their interventions for religious freedom. They speak about some countries; they do not speak about certain other countries.

But according to former French Prime Minister Michel Rocard (addressing the HRC), “When the states keep silent, the NGOs speak.” Thus did Mr. Rocard clearly acknowledge the irreplaceable role played by NGOs. The NGOs will address matters to UN agencies when the governmental delegations keep silence. The duty of non-governmental organizations is not to speak *against* nations and governments, but *for* human rights and *for* religious freedom in the countries where human rights and religious freedom are violated.

I recall Communist Albania, a country—the only one in the world!—that constitutionally and culturally prohibited the right to freedom of religion as a way of life. On several occasions, I intervened before the HRC and appropriate subcommissions to deplore the violation of religious liberty. But the member states were silent. Eventually, I succeeded in convincing some of the members of the Subcommission on Human Rights to adopt a resolution, subsequently endorsed by the full HRC, urging the Albanian government to respect human rights, including the right to religious liberty. Before its fall, Albania’s Communist regime changed its attitude regarding religious freedom.

A similar case is that of Saudi Arabia, arguably the most religious liberty-repressive nation in the world. Apart from Islam, all other religions are forbidden. But in this country we count approximately 500,000 Christians who are guest workers. Officially, they cannot have churches, nor may they gather in private homes to celebrate their religious rites with a pastor or a priest. The list of massive, systematic violations of human rights has lengthened over time. But what nation has ever intervened publicly at the HRC to denounce these violations? For years I have spoken to the HRC and to the Subcommission on Human Rights about the situation in Saudi Arabia. Earlier this year—1997—I provided to the delegation of each nation member of the



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UN Human Rights Commission a letter with two important reports concerning the violations of human rights in Saudi Arabia. I have learned this effort was deemed a positive contribution. In an open address to the HRC, the representative of the Netherlands referred to the violations of human rights in Saudi Arabia—and he said he was speaking on behalf of the other nations in the European Community. Then, in private, the HRC decided to continue its examination of the situation in Saudi Arabia.

Experience has taught me that determination and perseverance are required to change the status quo.

The UN Human Rights Commission offers to NGOs much more than the privilege to present statements—oral and written. Here we have the opportunity to establish direct relations with the representatives of nearly every nation in the world. And since the member states do not like to have their human rights violations publicly exposed by the NGOs, they are more disposed to discuss with NGO officers the solutions to perceived problems. I know this to be so from personal dialogues with, to offer a couple of examples, Burundi's and Russia's delegations in Geneva. These discussions led to meetings in Bujumbura and Moscow which, in turn, produced happy results.

Non-governmental organizations are able to contribute to the solution of religious liberty problems by submitting data to the UN's special rapporteur on religious intolerance, Professor Abdelfattah Amor. I know him to be completely committed to the defense of religious freedom—with intelligence, courage, and wisdom. His clarification of an essential dimension of religious liberty—the freedom to change religion—is particularly helpful in Islamic countries where extremism requires the execution of Muslims who convert. In support of his clarification, the special rapporteur quoted from the second important UN document on religious freedom: the General Comment on Article 18 of the International Covenant on Civil and Political Rights. In 1993 this General Comment was adopted by the UN's Human Rights Committee, a body of 18 experts of high moral character and recognized competence in the field of human rights established to promote implementation of the covenant. Here it is specified that, among other things, the right to religious freedom includes "the right to replace one's current religion or belief with another."

Because of the position of the Islamic nations, it was not easy for the committee to include this sentence in its General Comment. But two non-governmental organizations contributed to the process, one of them being the Association Internationale pour la Defense de la Liberte Religieuse. Over many months I wrote



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letters to and talked personally with committee members, especially those coming from Islamic countries. It was a major victory.

The General Comment on Article 18 of the International Covenant on Civil and Political Rights includes another paragraph particularly important to religious minorities and new religious movements because it clarifies the scope and the meaning of the right to religious freedom proclaimed in the article itself:

“Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be subject to hostility by a predominant religious community.”

The ICCPR is an international legal instrument. The more than 135 nations which have ratified or acceded to the ICCPR are obligated to give the force of law to all the rights it proclaims, including the right to freedom of religion, and to report to the UN Human Rights Committee on measures adopted to make effective the identified rights. Usually it takes a couple of days for the committee to examine the report of a signatory state. Committee members then put questions to the state’s representative regarding implementation of the covenant. They may even recommend specific action to implement Article 18’s objectives for freedom of religion and belief. Legislative changes advancing religious liberty have resulted from this procedure. And NGOs can and do participate by providing the committee with data regarding religious liberty in states which are parties to the covenant.

Again, NGO cooperation with the United Nations is truly an important method for reaching practical solutions in matters of religious liberty.

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Prior to his present service with the International Association for Religious Freedom, Dr. Rossi was for many years the secretary general of the Association Internationale pour la Defense de la Liberte Religieuse based in Bern. This article was condensed and edited from an address Dr. Rossi presented at the International Religious Liberty Association’s Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# Pluralism: The Pathway to Peace

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History has proven that religion does not always bring peace. Rather, religion often generates political discord and conflict. Yugoslavia and Northern Ireland are contemporary examples of how religion can produce bloodshed between and within countries.

It was the lack of respect for pluralism in Europe and resulting religious persecution that caused individuals who were adherents of minority religions to flee to America. Such groups included, among others, Puritans, Quakers, Mennonites, and Roman Catholics. They came to America in search of a place where they could practice their religion without fear of the persecution they had experienced in Europe.

But those who came for religious freedom had not completely learned the lessons of the past. They sought to protect only their own beliefs. They set out to reproduce the European model of religious establishment and oppression. Thus, in America's early history, the principle of religious pluralism was again rejected. Laws discriminatory of religion were widespread. In Colonial America the very thought of what we now regard as religious pluralism was treated as a disease—a problem that had to be eradicated by government.

Colonial Virginia passed legislation prohibiting Catholics from bearing arms or even owning a horse worth more than five pounds sterling. In 1700 New York Colony enacted a law which labeled any clergyman who practiced or taught Catholic doctrine or rites a “disturber of the public peace and safety and an enemy of the true Christian religion.” Such a clergyman was to be permanently banished from the colony.

In 1704 Maryland, originally established as a haven for British Catholics, passed a law to prevent any Catholic priest from practicing his religion, baptizing a Protestant child, or attempting to proselytize. But by the end of that year, because the law was deemed too strict to enforce, priests were permitted to practice their faith, but only in private.



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Catholics were not the only ones whose religious freedom was denied by the laws of Colonial America. Because they were few in number, Jews in some colonies were prohibited from holding office. Perhaps the most blatant form of anti-Jewish legislative bigotry during the Revolutionary period in Maryland occurred in 1776 following the adoption of the state's constitution. The Maryland Declaration of Rights stated in part:

That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; . . . yet the Legislature may, in their discretion lay a general and equal tax, for the support of the Christian religion. . . .

A notable example of the difficulties arising from the colonies' rejection of the benefits of pluralism is illustrated in the banishment of Roger Williams who declined to minister in a Massachusetts church because it did not formally separate itself from the Church of England. The general court of Massachusetts exiled Williams in 1635. He fled to the territory that was to become Rhode Island. There he formed the first Baptist church in America and began his campaign for freedom of religion and church-state separation.

Because Baptists were champions of church-state separation and opposed to the established Anglican Church in pre-Revolutionary America, they were, particularly in Virginia, victims of great oppression and persecution. Baptist clerics were arrested, fined, whipped, and imprisoned ostensibly for disturbing the peace. But the punishment really resulted from the preaching of their faith.

Thomas Jefferson, author of the Declaration of Independence, and James Madison, primarily responsible for the Bill of Rights, both concluded that while religious disagreement would never be completely eliminated, the negative effect of such conflict on society and its political institutions could be contained through sectarian diversity or, as we call it, religious pluralism. In Jefferson's handy formula, "The several sects perform the office of a *sensor morum* over each other." Jefferson and Madison held that religious pluralism, with each church standing on equal footing, would protect against the abuses of the past. No nation, Jefferson felt, could survive religious turmoil, religious wars, and religious persecution without true religious pluralism. Religious pluralism has the positive effect of (1) removing the excuse for bloody conflicts between neighbor nations justified on the basis of religion, and (2) reducing conflicts within a country resulting from individuals



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being viewed—and viewing themselves—as political outsiders because their religious faith is not that of the established church.

Many in positions of power in various countries, particularly those in Central and Eastern Europe, now view with alarm the prospects of dealing with religious pluralism. While embracing the general concepts of democracy and a free economy, they do not understand the positive effects that can result to society from embracing rather than fearing vibrant religious pluralism. Many of these countries have taken only the first step. They carefully accept the idea that religions other than the historical religions of their country should be given the right to exist. This is mere toleration. But although sometimes claiming to provide equal rights to all religious groups, they then adopt legislation that denies that very principle. I remember a time in the United States when some American citizens, on the basis of the color of their skin, were required to ride in the back of the bus and drink from separate water fountains. Presently—and unfortunately, it appears some countries have concluded that not only must some religions ride in the back of the national “bus,” but in fact have no right to get on the “bus” at all.

True religious freedom for a truly pluralistic society cannot exist when the state continues to support regulations that deny privileges to, or impose sanctions on, specific religious organizations or their members. Just as democracy has brought deregulation of the economic marketplace, religious freedom for a religiously pluralistic nation can only take place in a deregulated religious marketplace.

Baylor University’s distinguished professor, Dr. James E. Wood, Jr., who is president of the International Academy for Freedom of Religion and Belief, has observed:

Although religious pluralism was not something desired by the American colonists, nor was this religious pluralism generally met by toleration in the colonies, the absence of religious uniformity contributed to the guarantee of religious freedom in the founding of the American Republic. It was, in fact, the diversity of “multiplicity,” as James Madison expressed it, that was the best guarantee against the tyranny of a majority, whether that majority be characterized as secular or religious. For this reason, Madison wrote in *The Federalist*, the new country should secure civil and religious rights since both belong to the coin of freedom, guaranteeing “the multiplicity of interests” on the one side and “the multiplicity of sects” on the other side.



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Religious pluralism is not a problem simply to be coped with. Rather, it is a principle protected by international standards. Pluralism is not an aberration to be tolerated, but rather a right to be guaranteed. Those nations that have truly embraced religious pluralism and provided the full course of religious freedom have enjoyed both religious revival and reduction of internal tensions that otherwise exist as a result of such diversity.

The American democratic experience has proven to be successful in a land rich in religious pluralism. It has provided an arrangement whereby religion has flourished with little discord and has brought richness to the lives of its people. Less than ten years ago American leaders in government, religion, and business, representing the widest spectrum of religious and political views, met in Colonial Williamsburg, in Virginia, to celebrate the 200th anniversary of the American Bill of Rights. Each of those attending signed a charter which included the following statements:

(1) Religious liberty, or freedom of conscience, is a precious, fundamental and inalienable right. A society is only as just and free as it is respectful of this right for the smallest minorities and least popular communities.

(2) Religious liberty is founded on the inviolable dignity of the person. It is not based on science or social usefulness and it is not dependent on the shifting moods of majorities and governments. . . .

(7) The religious liberty clauses [of the Bill of Rights] are both a protection of individual liberty and a provision for ordering the relationship of religion and public life. They allow us to live with our deepest differences and enable diversity to be the source of national strength. . . .

(10) Central to the notion of the common good, and of great importance each day because of the increase of pluralism, is the recognition that religious liberty is a universal right joined to a universal duty to respect that right. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

These are commendable thoughts. Without full acceptance of the principles of religious pluralism where each religion is guaranteed equal access to the religious marketplace, religion can bring division and discord to a nation. Religious freedom can, however, bring unity within a country and respect for all of its citizens when religious pluralism is accepted, protected, and respected.

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Mr. Boothby presented this paper to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# Facing Religious Pluralism: Committed to One's Faith and Respecting the Faith of Others

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In western societies, religious pluralism is a social fact protected by legal guaranties. Thus, church and state, or religion and government, are distinguished; they interact on a basis of equality in law and freedom. This process started two centuries ago and is now generally well accepted by citizens.

But in some traditional societies religious pluralism is still not accepted nor even contemplated. Neither state nor society nor the general public is ready to consider it a value in itself. When a religion is the historic structuring element of a civilization, it is likely indeed to claim exclusiveness.

Some countries are experiencing a period of transition from a monistic structure of society to a pluralistic structure. They may move from a system of monopolistic state religion or monopolistic state philosophy of anti-religion towards the unknown realm of religious and philosophical pluralism. This shift may be perceived as a threat to the social order, the cultural inheritance, and the moral value system of the people.

It would not be an exaggeration to assert that the pluralistic model is in accordance with the trend of history. The conditions fostering this situation are at work everywhere: globalization, planetary exchanges in economy, trade, and culture. In the age of the Internet, no place in the world can isolate itself. Now we discover that not only is there a variety of peoples spread over the continents, but that such a variety also exists on the same street and even in the same house. All attempts to preserve ethnic, cultural, or religious ghettos are destined to fail. So the trend is evident.

The transition from religious monopoly to pluralism may occur in different ways. Generally, it is not the dominant religion itself which chooses to be more tolerant towards others. Rather, the initiative comes from society. Public authorities may surrender the principle of an exclusive state religion and decide to recognize



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the equal rights of all citizens. It is not unusual that dominant religions will then cultivate for some time a certain nostalgia of the past, often excessively idealized. Then comes the moment when they enter a process of rethinking their present situation and find in their own system of reference the justification of their new relationship with the cultural environment.

If we look back at European history, for instance, we remember that the main Christian confessions were once state religions and enjoyed a position of dominance in respect to minorities which were at best merely tolerated. It is clear that those communities which have always been minorities under the domination of other Christian churches would be the first to urge for equal treatment. Large churches which shared for centuries the common destiny of a nation would resist change for a longer time, until they realized that a new chapter of history was unfolding. Legal changes often react late to sociological changes.

In all countries, the formal setting of religious pluralism will in most cases bear the tracks of history. The United States, however, could create a new model because it was starting anew when it decided in the First Amendment of the Constitution that there should be no established religion, nor prohibition of religious practice, within the limits prescribed by law. In general, the legislation of religious freedom we are enjoying is a result of the way the transition has been operated. For example, in France some elements of the hostile separation imposed in 1790 and again in 1905 are still observable. Most European countries have a system of recognized churches, combined with freedom for those which do not fit into the legal framework or do not want this status.

The Catholic Church does not claim preferential treatment where it is the majority religion. Nevertheless everyone will understand the difference between the legal equality due to all groups, including minorities, and the sociological importance and impact of those religious communities which express the sentiments of large parts of the population. Accordingly, in our view, there is no need to object when a religious community, because of its continuing link with the identity and history of the nation, receives special recognition by the state, as do the established churches of England, Greece, or Scandinavia, or indeed the states where Islam is a state religion. But in these cases it must be clearly provided in accordance with international norms, that all other religious communities enjoy full freedom to exist and develop under the protection of the law. For instance, the European Court of Human Rights has ruled that the existence of established churches does not contradict Article 9 of the European



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## Convention for Human Rights.

As a basic right to be enjoyed by individuals and their communities, religious liberty is a recognized standard affirmed in international covenants and conventions. The state is responsible by law for the coherent application of this right, in accordance with all other human rights. The responsibility of the state is not to give support to a determined religion, but to guarantee the rights of all and to assure public order and public health. Thus the pluralistic model is supported by international law and tends to be diffused all over the world.

Religious pluralism cannot remain just a simple fact. It has to be integrated in people's consciousness as a value in itself and a condition for genuine citizenship. If religious pluralism is considered an unwanted burden imposed by the evolution of societies and the law of the state, it will be a poor motivation for religions themselves.

The inner process of theologically adapting to a new situation can be a rather long-lasting challenge for churches. The Church of Rome took until the Second Vatican Council (1962-65) to solemnly acknowledge the principles of religious freedom and religious neutrality of the state. Since then, the Catholic church has worked to apply these principles in its relations with states and other religious communities. The church initiated steps to abolish the mention of Catholicism as a state religion in such countries as Argentina, Colombia, Italy, and Spain, and committed itself internationally to defend the principles of religious liberty for all—and this not without success: witness the Helsinki Process with its well-known result.

Now that things are clear, one begins to think back over the transition period and comes to the conclusion that the legal distinction between church and state, the recognition of conscience and religion, is a demand of the Christian faith itself. Why did we resist the request of modern society for so long? The answer cannot be too simple. When you are engaged in the middle of a river, you have no chance to meditate about the general trends of history. You know what you are leaving, but you do not know where you are going to land. Now that the evolution has taken place, we find ourselves closer to the first centuries of the church, when it was developing in a very pluralistic world, without state support, among many other religious communities, enjoying no power of restraint, but only the persuasiveness of its members.

A religious message can only be proposed, never imposed. Vatican II held that the truth comes to the heart of man by its own intrinsic power, not by external means. If we serenely look back to



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the specific contribution of Christianity in creating the conditions for religious freedom, we may acknowledge that it is historically the Bible that proclaims men and women free, created in the image of God, and endowed by God with a dignity that no human power can compromise or annihilate. Christ urged us to maintain a clear distinction between, on the one side, the rule of Caesar, which is subject to reason and natural law, and, on the other side, human destiny, which is subject only to God. We can praise the Lord for having given us life and faith in this time of history, when the very possibility to choose and to follow Him is again free of external constraint. And so our Christian faith is perfectly in accordance with the claims of our pluralistic society for liberty.

Today, even when we seem to have no objection to the social order of pluralism and the freedom we enjoy in democratic societies, we still face some specific challenges: First, from those who still belong to the former monistic model, which does not grant religious freedom to all citizens; and second, from some religious groups within the pluralistic order itself.

Discrimination continues to be practiced on the basis of state ideology or state religions. In Central and Eastern Europe, religious persecutions have ceased with the fall of the communist system. According to international standards, it is not acceptable for states or social groups to legally discriminate among their citizens for reasons of religious belief. Yet, several large countries in Asia still impose restrictions on the free exercise of religion. Some Islamic states do not grant freedom of religion at all. Some are controlled by fundamentalist ideologists who dream of imposing their faith by the sword on their co-nationals, and—why not?—on the whole world, as in ancient times. The new millennium will certainly witness the fall of these two extreme attitudes. They have no future in the world of an open-market economy, of democracy and human rights. To such nations we must not hesitate to issue this reminder: Human rights are binding on everyone by everyone.

Since we are living in pluralistic societies, we cannot continue to think of the relationship between religion and society in terms of past models in which religion and national identity were strongly linked: the Irish are Catholic, the British are Anglican, the Greeks are Orthodox, and so on. During the millennium past, religion was often the cement of national identity. It still is. But we are facing a new period in which, whatever we may or may not prefer, belonging to a nation, a culture, a language, will no longer overlap with membership in a specific religious community. This should not at all shock Christians, because Christ's message is, in



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its essence, border-breaking and universal.

The rapid growth of so-called cults in our societies is a source of concern for traditional religious communities and public authorities. Some of these groups have developed activities which look more like business, mental manipulation, or psychological conditioning than the proposition of religious beliefs. States acting according to the rule of law decline to define religion—what it is and what it is not. Their concern for religious freedom must obviously maintain an open attitude on this subject. But public authorities also must protect and guarantee the free exercise of all human rights and make sure that no abuses forbidden by law are perpetrated under the pretext of religious freedom. A specific feature of cults is that they tend to deprive members of their freedom of judgment and compel them to show blind allegiance to their leaders. Certainly, the fate of religious freedom in the next millennium will depend on the fate of freedom in general. We know how sensitive an area this is when we consider that freedom in society is a relatively recent conquest of civilization, one not yet achieved in many parts of the world.

Pluralism challenges the reluctance of religions to take seriously the faith of other believers. There is no question here of encouraging any attempt at religious relativism or syncretism. The fact is that we must respect the dignity of persons in themselves, irrespective of what they believe or do not believe. We address the conscience of human persons. We do not compete with man-made products on the market. We will always have differences in approach and interpretation of religious truth, even within the same religious tradition, but we must learn to appreciate the earnestness of those who believe differently.

This means that we must find in our own religious tradition the grounds for positively supporting a pluralistic social order and a fair relationship between religious communities. The major challenge we have to overcome is proselytism, understood here as the unfair propagation of one's religious convictions without consideration for the psychological, cultural, and social environment of the person or people addressed. This is quite different from preaching by honest means the faith of one's religion. The message should always be presented positively in its content, not as a form of religious aggression against other believers. Too often religious groups put all their emphasis on what differentiates them from others. In preaching one's faith all forms of prejudice, disrespect, or hatred should be avoided. We know what dramatic episodes religious calumny have generated throughout history. Those who have nothing else to preach than the defamation of



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others have a poor sense of what religion is all about. A religious person should always demonstrate respect for the other person because the other person is also a creature of God. The correct method of explanation of differences with other creeds should emphasize doctrines, concepts, moral conducts, norms, and contents, not indulge in the denigration of the followers of those creeds. We need to learn every day how to make our own faith attractive by itself, not by destroying the faith of others. Where God is involved, something of His universal love for all His creatures should be perceived in all of us.

Here a further step is envisaged. Some inner religious attitudes convey a threat to religious pluralism in society. Consider religious exclusiveness. If in a religious community all non-members are viewed as damned, as excluded from God's salvation, then there is no chance to support from inside the fact of pluralism. The Catholic church solemnly stated at Vatican II that God's gifts and grace are not restricted to Catholics, but flow over its visible borders to other Christian communities and to all men and women who honestly search for ultimate answers and live according to their conscience. The truth about God cannot be appropriated by anyone. It may be approached from different backgrounds. Whatever is good and right in a person or a religion can only converge towards the truth itself, which for us Christians is revealed in Jesus Christ. This theological vision has to be quoted as opposed to the sectarian attitude which pretends to possess all truth and hence rejects and condemns all outsiders to utter darkness. It seems urgent to recall that fanaticism and religious hatred are always based on the denial that others also have a genuine relationship to God's truth.

A final thought. In the proclamation of religious faith, all guaranties of external and inner freedom of the followers must be insured. Freedom of access to, and freedom to depart from, religious communities must always remain open. Religious communities can certainly contribute to improve the standards of human rights all over the world by fostering reciprocity of treatment. Religious minorities in pluralistic societies enjoy a freedom which they often deny in countries where they enjoy special legal protection. It would seem desirable that those national minorities who benefit from religious freedom commit themselves to exercise pressure on their public authorities, urging them to implement international standards at home. Unless religious pluralism is appreciated as a positive value, universally and personally, instead of giving birth to a new era of freedom and hope, the very concept of religious pluralism could become an easy target for those



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who still dream of establishing the reign of God through violence  
(Matthew 11:12).

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Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# A Nordic Perspective of Religious Freedom in a Pluralistic Society

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Is it possible to speak of the Nordic nations as pluralistic societies? What are the real issues of religious freedom in these countries, each of which has a state church system? How is religious freedom understood today? Is there *one* Nordic perspective? Although I have a Nordic perspective in mind, my views do reflect my Norwegian base, which in itself is an assertion that it is possible to have a common Nordic perspective from any one of the five countries comprising Scandinavia.

This article is divided into three parts. First, I wish to discuss the Nordic state church issue. This is the most unifying and commanding historical perspective on religious freedom in a Nordic context. This is often, especially from outside, seen as the very core of the issue of religious freedom in this region. Since a state church system is viewed critically within the membership of the International Religious Liberty Association and regarded to be in contradiction to the IRLA's position on separation of church and state, I believe this point deserves major attention. Then I want to discuss which factors are working for or against the status quo. Commenting on the source of possible future changes, I will focus on the role of the "free churches" (the label used for all the traditional Christian churches outside the state church, i.e., the churches which are "free" from the state), the new religious movements, and the historical old religions (Islam, for example, which is relatively new to Scandinavia). Third, I will offer some recent empirical material illustrating the growth of privatization and secularization as dominant features of the so-called post-modern society and indicate possible consequences of the struggle for religious freedom at the beginning of a new millennium.

These observations are to be seen as a modest contribution to a discussion which has only begun on what could be a Nordic perspective on, and contribution to, the understanding of the complexity and importance of religious freedom fifty years after the Universal Declaration of Human Rights. This discussion is espe-



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cially needed in the Nordic region where religious freedom, compared with other human rights issues, has been a low-profile item on the national and international political agenda. Let me emphasize at the outset that religious freedom is becoming an ever more important issue, understood as both freedom *of* and freedom *from* religion. The religious freedom scenario in the Nordic countries is shifting under the impact of secularization and the strengthened presence of adherents of other living faiths. First, it is a shift from relationships between Christian churches to a relationship among religions, and second, a shift to the relationship between these two groups and a secular, non-religious culture.

### **I. Like-minded nations**

Historically, the five Nordic nations—Denmark, Finland, Iceland, Norway, and Sweden—have been understood to be anything but pluralistic societies. In terms of culture, language, economy, social order, and religion, they form a rather unified corner of the world. Within the United Nations the Nordic countries are often referred to as “like-minded nations,” a reference to their humanitarian concern and their commitment to human rights, development, peace, and justice.

Behind an overall image of unity, there are, of course, national differences. Some of these are due to varying degrees of rootedness in centuries of continental Europe. In recent times new differences have developed in their particular relationships to the continent of Europe. Traditionally, Denmark and Sweden have been seen as more continental in terms of history and culture. Finland’s geocultural and geopolitical situation, through its proximity to Russia, offers a Byzantine element, virtually absent in the other Nordic countries. And while all the other Nordic countries have established Lutheranism as the official religion, Finland has two state churches: Lutheran and Orthodox, the latter connected to the patriarchate in Istanbul.

Danes, Norwegians, and Swedes communicate comfortably with each other in their native languages. Finns use Swedish and Icelanders Danish to participate in the free-flowing Nordic dialogue. Whether it is the existing union in culture and values or the underlying national differences that have made it impossible to form a formal union of some sort is difficult to say. The Nordic Council meets annually to discuss common interests over a wide range of affairs, but it has little impact on day to day politics. It serves more to cement an existing unity than to create binding structures.

Historically, Iceland and Norway are the least integrated into



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continental European culture, traditions, and structures. This is no less true today: Finland and Sweden have followed Denmark in becoming members of the European Union, while, by popular choice, Iceland and Norway have remained outside. This option for an economic and international future outside membership in the EU does not necessarily reflect any anti-Europe bias, as some critics claim; nor does it reflect a general position against what might be perceived as Roman Catholic influence within the European Union, although such arguments have been voiced in the debate.

Norway shares with the other Nordic nations a high degree of consciousness of its Nordic and European heritage and its regional and global commitments within such systems as the North Atlantic Treaty Organization (NATO), the Organization for Security and Cooperation in Europe (OSCE), and the European Council, each of which has important human rights aspects. All Nordic countries are active members of the United Nations and are parties to all its basic human rights and religious freedom conventions.

### **The state church system**

The state church system is so central to the constitutions of the Nordic countries and so massive in membership that in this region we speak of a state religion. Scandinavia thus constitutes a last—if not a lasting—bastion of the established Protestant church. (England's Church of England is similarly established.) In the Orthodox and the Roman Catholic worlds, various arrangements of church and state on a more or less similar formula continue to be unchallenged.

To fully appreciate the situation today, we look back briefly. In all the Nordic countries the Lutheran Reformation was victorious in the 16th century and ever since has been the strongest force in shaping religious history on the principle *cuius regio, eius religio*. The faith of the sovereign became the faith of the nation. The head of the state is the head of the church. Indeed, the secular history of each of the Nordic nations is intertwined with its church history and vice versa. Accordingly, Nordic church history of the past five hundred years is to a large extent, if not exclusively, Lutheran history—history reflecting the dictum that the victor writes the history.

Religious freedom in the modern sense came late to these shores. Norway's Constitution of 1814, which established the Lutheran faith as the religion of the state, barred both Jews and Jesuits from the realm, a blot that took more than a century to be



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totally erased. As other Protestant churches and movements gradually became a reality, Norway's national attitude to them was more hospitable. By 1845 Norway adopted a "Dissenter Law," legalizing the existence and activity of non-Lutheran Christian churches.

On the 150th anniversary of the dissenter law in 1995, church historian Berge Furre addressed the issue at stake: "Maybe freedom of religion is the most important of all civil freedoms and rights—freedom to search and find one's identity, to find oneself. Finally it is this freedom that decides the rise and fall of human worth." Poignantly expressing the cutting edge of the discussion on religious freedom in Scandinavia today, Prof. Furre concluded his speech with these words: "Let this not be the last time we celebrate the memory of a step towards freedom of religion. Maybe the next celebration for religious freedom in this country will be a *multicultural* celebration." The emphasis is mine—and I support Furre's vision.

The state church system has undergone gradual changes from within—changes primarily in the shape of the governance of the state. This has had implications for the rule of the church. An important point in the evolution of the church-state relationship was the introduction of the Parliament in the 19th century. The king became the titular and symbolic head of both state and church. Real political power was transferred to the government which had to reflect the will of the Parliament and, by the same token, subscribe to the programs of political parties.

The sovereign acts with and through the cabinet. This implies that in real terms it is the cabinet or government that is the ruler of the nation and therefore of the church. In Norway the majority of cabinet ministers, but not necessarily the prime minister, must hold membership in the Church of Norway. Only those holding such membership may vote when the cabinet meets on matters directly related to the church, such as appointments of bishops and other clergy and adoption of ordinances regulating church life. Parliament votes the church's laws and annual budget. In this larger legislative body, however, membership in the Church of Norway is not a question. A Muslim member of Parliament would vote on church laws and budgets along with other parliamentarians who are members of the state church, members of other churches, or, perhaps, atheists.

The head of state in each of the Nordic nations—in Denmark, Norway, and Sweden, the king or the queen; in Finland and Iceland, the president—must be a member of the state church. A church-affairs prerogative of the sovereign is maintained in



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Denmark and Norway. Certain areas of decision not subject to Parliament are dealt with by the king or the queen who acts according to the counsel of the government.

### **Democracy and consensus**

The state church is so much part and parcel of the state that it must be understood in the context of the Nordic democratic system, and in the context of a political culture which itself is rather homogenous. The persuasiveness of this political mono-culture is often expressed somewhat jokingly between political adversaries: "We are all social democrats." Under whatever ideological flag, the majority of the political parties continues to support the state church system. In none of the countries would a unilateral break be politically feasible. Not only would a broad political consensus be needed to bring about new legislation, which in fact would be to change the very Constitution of the country, but, to make this politically viable, a broad base of support would have to be found among the rank and file of the membership of the church and within the structures of the church. We are therefore speaking about a long term evolution rather than abrupt and sudden changes.

Sweden will be the first to break the ranks of established churches in Scandinavia. An agreement has been reached between the state and the Church of Sweden, leading to a synodical and parliamentary decision to disestablish by 2000. This does not imply, however, that the former state church will be reduced to the level of all other churches in the kingdom. At home and abroad, the archbishop of the Church of Sweden will still be seen as the archbishop of Sweden.

The process in Sweden is indicative of the fact that legislation and economy have intertwined church and state to the extent that one cannot be excised from the other without a process based on consensus. Also, the centuries-old role of the state church as the vehicle of religious traditions and functions in civil society makes a unilaterally decided change impossible. In this case, it truly may be said that a happy divorce is possible only between two consenting partners.

The only exception to separation by mutual consent would be a situation of massive violation of human rights and religious freedom as was the case during World War II, when the majority of bishops, clergy, and lay leaders of the Church of Norway broke with the Nazi government. It was the legitimate church that suspended relations with an illegitimate state. However, as soon as the war was over the relationship was reestablished. (It may be of interest to note here that since then futile attempts have been



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made to raise the issue of abortion to the same level of *status confessionis* in the Norwegian church.)

What is the situation in the other Nordic countries? In Finland, there is a process underway for new laws to be passed for both the Lutheran Church of Finland and the Orthodox Church of Finland. But this is not interpreted as a radical change in Finland's form of the state church system, which so far has been the least state-dominated system among the Nordic nations.

In Norway in 1996 a church law passed by Parliament crowns years of reform by giving the synodical church leadership more responsibility through decentralization of important elements of church government to diocesan levels, including the appointment of ministers and other administrative personnel. But the very principle of a state church was hardly challenged in this legislative process, neither by the church nor the politicians.

However, in 1997 a proposal by one of the bishops in Norway's Ministry of Church Affairs, that a committee should be appointed to review the whole state church system, was turned down by the ministry, with support from a great majority of the political parties. In fact, the idea did not meet with much enthusiasm in the Bishops Council either. Later, however, the synodical Church Council appointed its own committee with a more open mandate.

If this committee is to bring any new dynamic to the issue, I believe it must base its claim to change on new factors, other than those considered during the last fifty years. It must face in a new, creative, and positive way the multi-religious and multi-cultural realities which are gradually reshaping Norwegian society. And it must interpret the role of the church much more clearly in a global, ecumenical, and religious-freedom context, than has hitherto been the case when discussing church and state in Norway. In other words, if this new initiative is to bear positive fruits we must move into a new agenda of church-state issues in a spirit which takes into account an increasingly pluralistic and a more distinct secular society, where claims on state church privileges belong to the past.

Neither in Denmark nor in Iceland are there processes presently underway to change the state church system.

In all Nordic countries the issue of religious instruction in the public school system regularly raises a state-church, religious-freedom debate. Following a heated debate in the public arena and in Parliament, Norway passed new legislation in 1997. A coalition comprising free churches, the secular humanist movement, and Jewish and Muslim communities rallied against the state-church



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political establishment to stop what the coalition perceived as an incursion on religious freedom. The new legislation attempts to create culturally-based religious and moral instruction in the public school system, albeit with a preferential emphasis on the Lutheran confession, but with an introduction to all major faiths. In the first proposal, there was no possibility for children to be exempted from religious instruction. In the process language was introduced to meet some of the concerns of the opposing coalition. But in my view the new law does not fully take into account the arguments of religious freedom, nor the legitimate need for the Lutheran church to instruct its own children. I believe, therefore, that in the not too distant future this issue will have to be revisited by Parliament, and that a virtual separation of school and church may come before separation of church and state. Any church which falters on the religious instruction of its own children and youth is bound to face decline.

### The folk church

In spite of the striking features of the state church system in the Nordic countries, the deeper identity of the churches is not found in their church-ness, but in their relationship to the majority of the people. It is generally assumed that it is the identification of the majority of the people with Christian faith in the Lutheran tradition and the moral values of the church that form the *raison d'être* of the state church. What then, when erosion is afoot, of faith and traditional values?

In a post-modern society, the general trend towards secularization (which I will discuss below) does not necessarily work against the close relation of church and state. Rather, the opposite may be the case. A more and more secularized population may actually be more comfortable with a church that is somehow managed by the political powers and thus indirectly by the people themselves.

At the same time, the role of folk churches (be they state churches or not) as the bearers of society's religious traditions, also becomes more problematic in an increasingly pluralistic society. The religious census—and consensus—may change so radically that no longer can any church claim a whole nation as its own, and no state can afford to regard one single church as the sole official bearer of its spiritual values, its honors and shames, its joys and griefs.

Among the active church membership, there has always been a considerable force which sees the state church system as the best theological expression of the freedom offered in the Gospel for



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all—worthy and unworthy alike—to be included in the kingdom of grace. Those in this force tend to see the system as a protection of religious freedom—understood in this instance as free access for everyone to the church and to the services of the church. This, I believe, is the most important point for many Scandinavians: the open church or the folk church. Yes, one might even say the democratic church. The state is seen only as an instrument to make secure the church's ability to function as the folk church. Others would maintain that there is a *sine qua non*: without the link to the state there is no folk church. Personally, I believe that if the continuity of the folk church polity and spirituality could be guaranteed, there would be a greater readiness by the people in general to forego the state church system.

There are those who see in the folk church model a more culturally and socially open church rather than one which they fear might be relegated to the status of a religious subculture. This may be illustrated by a recent heated discussion in the Danish press. It centered on what is termed the "privatization" of the church, as opposed to the state church as a peoples' church and as a public church. Defenders of the system saw it as the guarantor of the peoples' voice in a "public church," something which gives the church a legitimate place in the public arena, and which gives the church a voice which cannot be ignored in political discussions on religious and moral issues, exactly because it is the state church, the church of the people. Others contended that it is precisely in the interest of the critical prophetic role of the church that it must leave its comfortable cohabitation with the state.

Discussions in the Nordic countries on the relationship between church, state, and people belong to every generation, from 19th century Danish philosopher Soren Kierkegaard onwards. It may be safely said today that a large majority, including even those who support the system, see the state church system as an anachronism. No one would "invent" the state church today. And very few responsible church leaders or politicians would guarantee the prolongation of the present form of state church relations for more than another generation. This does not necessarily mean that a post-modern society is rushing towards its abolition. Anachronism has by definition a gift of longevity—and nostalgia sometimes serves as its vitamin. My guess is that the Lutheran folk church will survive the Lutheran state church in all the Nordic countries. This certainly does not imply that a solution would be found along the line of the principle of absolute separation of church and state.



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## Facing international conventions on religious freedom

It should be noted that the state church system has not been found by any of the international conventions, such as the European Human Rights Convention, to violate any article on religious freedom. *Darby v. Sweden* (1990) elicited this opinion: "A state church system cannot itself be considered to violate Article 9 of the Convention [the article on freedom of thought, conscience, and religion]. . . . However, a state church system must, in order to satisfy the requirements of Article 9, include specific safeguards for the individual's freedom of religion. . . ."

Cases of religious freedom which have been brought to court on a national or an international level have been very few in number. Not one has disclosed fundamental dissatisfaction with the state church system. The European Human Rights Court's regular review of the human rights standards and performance of member states has, in the case of Norway, brought up for discussion the issue of the state church and its implications for religious freedom, but with no recorded criticism.

This positive appraisal may be due in part to a very advanced body of legislation of equal rights for all citizens which permeates the total legislation of the Nordic nations. But it may also rest upon the liberal system of official recognition as well as the generous financial support of all duly registered churches or communities of faith. In Norway the financial support per member of a registered church is equal to the level of state support for each member of the Church of Norway. The only difference is that in the case of the Church of Norway Parliament disposes of the finances of the church, while the other communities of faith receive the money for their own stewardship. In Finland there has long been a system of economic self-rule by the state churches, and with recent reforms, Sweden is strengthening this trend.

While there exists in the Nordic countries a broad and generous attitude of accepting churches and communities alongside the state church, a difference is maintained in terms of public functions on behalf of the state. Denmark has stopped giving a certain form of official recognition to more churches simply out of civil administration concerns, as this has to do with the right of the church, on behalf of the state, to register births and deaths and to perform marriages. Although the difference between recognized and registered churches is one of terminology, this issue has caused considerable debate in Denmark. It is not perceived as something positive to be labeled a non-recognized church even when recognition does not make a difference. The Danish



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Ministry of Church Affairs is promising a solution that meets the complaints of discrimination. This notwithstanding, the matter of authorization of churches to conduct rites and ceremonies connected with life and death, and to act juridically in these areas on behalf of society, is one of the most complex and sensitive issues in a multi-religious environment. In this area related to the issue of religious freedom we will no doubt face new controversies in the Nordic countries in the coming years. Just consider the difficulties of legislating which names may be used as proper names and family names by way of illustrating the great cultural differences between, for instance, Christian and Muslim traditions.

## II. Changes, yes—but from where?

To a certain extent, the influx of new religious entities into the traditionally homogenous societies of Scandinavia is bound to unsettle the historic balance, and disturb the more or less harmonious, century-and-a-half old *modus vivendi* between the state church and the other churches. Likewise, the feeling of inferiority of most of the traditional free churches has been reduced as their visibility in the public arena has increased, along with the slow but gradual strengthening of their ecumenical commitment. Now minority status is felt most acutely by the new religious communities over against a majority culture which more often than not includes all the traditional Christian churches.

Note should also be taken of a new situation where the traditional free churches are affected by the way, for instance, the Islamic *ummah* appears in the religious arena. At present there are in Oslo close to thirty mosques which are administered by the same legislation as the free churches. In Oslo an amount of 33 million kroner—approximately six million dollars US—is paid out annually to registered communities of faith without any satisfactory control. While there exists a certain transparency and a culture of recognized accountability within the free churches and the Jewish community, this is not yet obvious in the Muslim and Hindu communities. The per capita subsidy from the state is paid out according to the statistical statement of the community itself. Now is heard from public administration and from political groups a demand for an internal register of every community receiving state support and stricter control to account for the taxpayers' money.

There exists today no general rule on the registration of members, nor are there any criteria for what may be registered as a community of faith, save only that the entity does not violate national law and public moral values.



Concerning the present role of the free churches as possible agents for change in the state church relationship, it may be argued that in the Nordic countries church-state separation has never been a broad, grassroots movement, notwithstanding that the free churches not only offer spiritual alternatives to the faith of the state church, but also present a different ethos and a distinct critical position on the church-state issue inherent in their spirituality and piety.

But this is not to suggest the possibility of shifts in membership from the state church to the free churches. In fact, the ratio is fairly constant. State church membership hovers around or just above 90% in all Nordic countries.

Even so, the voices of the free churches will be increasingly important to the life of the state church. The free churches have joined together in ecumenical structures that include the state church. The congregations are working together for Bible-based causes and for international *diaconia*.

What then of the so-called “new religious movements,” which in some ways may be seen as the free church generation of the 21st century? These newcomers to the Nordic religious universe are mostly small groups of charismatic pietists under authoritarian, prophetic leadership. Aggressive in growth and eager for publicity, some of the groups present themselves as rather fundamentalist, with little or no interest in social issues. They are often perceived as strident counter-cultural movements in matters central to the social-democratic ethos so dominant in the civil society of Scandinavia. In the public arena, they are seldom vocal in the discussion of religious freedom. They may, however, have a potential for raising the importance of the issues of religious freedom and freedom of conscience precisely because they represent a minority with distinctly different religious characteristics. This should not be ignored in mapping out the religious freedom issues of the future.

The 80s and 90s saw an upsurge in the number of movements inspired by the “new age,” but these have not normally sought formal recognition as churches or religious entities. Some of these new movements draw on the spiritual resources of other living faiths far from Nordic shores. This is in many ways one of the lasting legacies of the generation of the 60s which, in revolt against all establishments, turned also against the institutionalized church. Their search for an alternative spirituality often ended with gurus of the East.

It goes without saying that these movements proselytize among the membership of the state church. But in contrast to the



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situation in other regions with dominant churches, such proselytism is seldom, if ever, attacked or even resented by the state church rank and file, although they are the likeliest target and the most vulnerable.

The 90s have seen the emergence of small groups devoted to Satanism. They are notorious for their burning of churches, particularly in Norway. Additionally, organized groups identifying with pre-Christian pagan religions of the Viking era have come to the fore. Some are seeking official recognition as church bodies. With success, they invoke the principle of freedom of religion and claim the financial support of the state.

None of these developments is of such impact as to constitute a serious challenge to the status quo. But they have given new impetus to an emerging discussion on freedom of religion in which the issue of the state church may gradually become more important to all. But the discussion does not necessarily have the tone of more religious freedom, but rather the contrary.

#### **Living faiths and secular society**

In terms of religious freedom, I believe two factors are emerging as the strongest catalysts for change in the Nordic religious arena: increasing secularization on the one hand and, on the other, the rising number of adherents of other living faiths, mostly among immigrants. I believe these will greatly affect, if not totally reshape, the Nordic religious geography into the next century. Accordingly, the most burning issue of religious freedom will be the formulation of legislation able to reconcile post-modern secular society and traditionally Nordic Christian people with the increasing number of faithfully practicing Buddhists, Hindus, and Muslims. These have come to stay and to become citizens with full and equal rights. I am pleased to state that there still exists a great readiness on the part of the majority of Scandinavians to welcome these new citizens and to see it as something positive that a multi-cultural and multi-religious society is emerging. To the majority, pluralism is not at all a threat. However, the poison of hatred, of xenophobia, and outright neo-Nazism is creeping up from the dark and evil abyss of human nature resident also in the Nordic nations, and this is being exploited politically by the extreme right. The emergence of such racist attitudes is in itself a matter for any discussion on tolerance and the protection of religious freedom.

But it is not the extremists but the uninformed who today account for the most frequent occurrences of stereotyping, misunderstanding, and mistreating of people of other faiths. To



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encounter other living faiths may create a cultural shock. In this light I see one of the most publicized religious freedom cases in Denmark. It involved the recent expulsion of a Muslim from a state-run education facility because of prayer. This official agency of the Danish Ministry of Works refused to allow a student enrolled in a public continuing-education course to pray to Allah during the breakfast break. The facility directed the young Muslim to use the men's room for his prayers. The student insisted that he would perform his religious duty in the corridor outside the canteen. The facility director defended his attitude by claiming he acted in the best interests of the Muslim in that his prayers provoked other students. In explaining his decision to the press, the director had the gall to refer to Christ's admonition not to pray in public but in private. This matter was taken to court in Copenhagen—and followed with great interest by human rights groups as well as churches, synagogues, and mosques. It would bring little honor to any state to argue before the European Human Rights Court that it is in keeping with respect for religious freedom to deny a Muslim the performance of prayers according to Islam and that offering him a toilet for his devotional exercise is an expression of tolerance.

This unfortunate incident is more than an individual fault. It is indicative of a cultural watershed. When the public prayer of a Muslim is regarded as disturbing, even a provocation, it is a sign suggesting that the greatest challenge to future secularization in the Nordic region may not stem from the state churches, nor from the free churches, but rather from adherents of other living faiths. The influx of Muslims in the larger cities poses, in my view, the sharpest challenge to a weak religious movement and a secularized population. A committed and well-regulated spiritual life confronts secular environment and diluted Christianity.

### **III. A closer look at secularization and privatization**

I believe the “Christian-ness” of the Nordic nations is sometimes overstated, other times grossly underrated. What then is truth and what is myth about secularization in Scandinavia? There is no easy answer. There are, however, a growing number of empirical studies in Europe in general and within each of the Nordic countries. These studies are enlightening.

A major “European Values Study” of 1990, which encompassed Denmark, Norway, and Sweden, reveals that participation in the services of the church, including baptism, marriage, and burial, is rapidly decreasing, even if a majority still hold them to be important. There are differences between and even within each



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of the Nordic countries, but these are insignificant to the overall impression of growing secularization.

This trend is also documented in "Belief and Values in Sweden in the Nineties" (1996), a major study by Kallenberg, Brakenhjelm, and Larsson. The study population numbered 2,003 individuals. They were polled as to faith and values according to five categories: church Christians, church spirituals, private spirituals, agnostics, and atheists. Adherents to other living faiths were not included. It seems likely, however, that those identifying with the new religious movements were defined as private spirituals, the category for those who believe "there exists some sort of spirit or source of life." The project results support the generally held notion that there exists in the Nordic countries an increasingly strong trend to secularization. There were surprisingly few—only 15%—who identified with a concept of God central to Christian faith (that is, faith in God as a person), while 35% responded that there exists a sort of spirit or power of life. (One observes that in the European Values Study, the average for some of the largest countries was 33%, compared to Sweden, 15%; Denmark, 24%; Norway, 29%; and Finland, 32%.)

Susan Sundback, a Finnish sociologist of religion, reviewed the same material from a different aspect, contending that it is important to differentiate between religion in a subjective sense and religion in the sense of a community as expressed in an institution. People may have a positive attitude to God, but not to the church as an institution—and vice versa: "The main comparative study of the meaning of religion among Scandinavians resulted in two ranking lists. The first list describes the meaning of religion on the subjective level and gives the following order: Icelanders, Finns, Norwegians, Danes, and Swedes. The second list, which expresses opinion about the church as a social institution, places the nations somewhat differently: Finland, Norway, Iceland, Sweden, Denmark" (Sundback, 1994).

Iceland, Norway, and Finland rotate on the positive side of the scale, while Sweden and Denmark score low on both the subjective and institutional scales. These two countries have been ranked as the most secularized in the world.

This material bears out that the changing religious map of the Nordic countries is in fact most strongly affected by secularization and privatization, and that this is most clearly observed inside the established churches. Individualism leads inescapably to secularization, and secularization breeds privatization of values. Both imply a growing distance of the majority of the people from the institutions of church and society.



A study by Swedish scholar T. Pettersson affirms the general trend in Europe towards individualization and privatization. He notes that of these two processes, individualization is primary: "Individual self-realization and well-being is given priority partly at the expense of such duties and engagements which previously have been dominant features of a family life and of social life in general. . . . This individualism leads more or less to secularization, which means that an increasing number of the population feel distanced from church and society, and that a reduced number of the population accepts basic Christian tenets" (Pettersson, 1992, p. 51).

In my own international work I have often met people, officials of both state and church, who have had difficulties reconciling their image of the Nordic countries as Christian nations with the reluctance of Scandinavian politicians and diplomats to express positive attitudes to religious faith and to relate their values to the religions of their nations. I may be mistaken, but I believe there is a new trend emerging—a growing understanding for the need to affirm the *value of values and the basis of values* when addressing the human issues of the future. It is perplexing if this emerges at a time when secularization is increasing. Or does the weakened role of institutions of religion offer a greater space for individuals to articulate religious values without the risk of being co-opted by the state church or misinterpreted as being on "a religious mission"? Could it be that the post-modern society sets people free to affirm religiously based values and respect for the role of religion, and to see faith and spirituality as an integral part of the great human project?

### **In conclusion**

There can be no affirmation of religious freedom without also affirming the right to freedom *from* religion. I believe a religious-freedom case should be made for a secular humanist option. In Norway, a strong and well-organized group, Human Etisk Forbund (Norwegian Humanist Association) brings together agnostics and atheists concerned about humanist values. They wish to offer an alternative to religious-passage rites and to religious education. This group, which outnumbers any of the free churches and which receives a per capita subsidy from the state, has increasingly sided with the free churches and the non-Christian religious communities in disputes over issues of religious freedom.

On the horizon there are signs of a new emphasis on religious freedom as both a political issue and a moral-human rights issue. But strong currents work against such an emphasis. Privatization



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of belief does not inspire strong engagement in the arena of religious freedom. Secularization leads to an indifferent attitude toward all religious issues. A shift from religion to religiosity may mean that organized religion evaporates into a mist of spirituality in stark contradiction to the basic understanding of religion as community life. By turning their backs to organized religion, secularization and privatization may lead to an erosion of the value of religious freedom. A virtual declaration of religion as a non-virtual reality to the post-modern human of cyberspace is more difficult to contend with than the antagonism of warring religions and competing confessions of yesterday. And the heralded “longing for religion” as a characteristic of this generation is not necessarily to be interpreted as a longing for true religious freedom for all.

The quest for religious freedom is not limited to concerns about the legal instruments for the protection of religious rights and insistence on their fair and universal application—which, of course, certainly must be given higher priority by church and state alike. It is equally important for the churches to uphold the view that religion and faith belong to the essence of being.

Christianity expresses this essence in the credo that all human beings are created in the image of God. And the affirmation of the dignity of every human being is founded in the belief that through Jesus Christ, at once divine and human, God has identified with each one of us as an image of Himself. This mystery is the source of a genuine Christian contribution to the continuing quest for religious freedom—including freedom from religion. Affirming the richness of a pluralistic society as something God-given, I believe there is a lesson to be learned in and from the Nordic societies as churches and faith communities around the world come together to face the religious freedom challenges of a new millennium.

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Edited from an address by Bishop Staalsett to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# The Contemporary Form of Registering Religious Entities in Spain

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## Introduction

This article is intended to serve as a basis for reflection on both the achievements and the problems that registration of religious organizations currently poses in the administrative practice of the Spanish state. We do not enter into doctrinal debate, but rather try to advance the search for criteria that reconcile religious liberty and cultural values and traditions, following the legal guidelines established in 1978.

It is necessary to begin with an explanation of the fundamental set of rules which serves as a legal frame of reference to the existence in the Spanish legal system of a Register of Religious Entities.<sup>1</sup>

The Spanish Constitution of 1978 substantially changed previous policy concerning religion. Thus, from a traditionally religious state has evolved a pluralistic, non-confessional state. Article 1 of the Constitution designates liberty, equality, and pluralism as higher values.<sup>2</sup> Applied to religious experience, these values are the specific inspiration of the principles of freedom, equality, and religious pluralism provided by Articles 14 and 16.

Article 16 of the Constitution became the basis for the relations the state maintains with individuals and with religions. First, "Religious freedom and freedom of worship of individuals and communities are guaranteed without limitations to religious manifestations other than those necessary to maintain public order as protected by law." Second, "No one shall be forced to state ideology, religion, or belief." Third, the Constitution states that "no religion shall have state character." Notwithstanding this separation between religious confessions and the state, "public authorities shall bear in mind the religious beliefs of Spanish society and shall maintain the resulting relationship of cooperation with the



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Catholic church and the other religions.”<sup>3</sup>

In order to comply with this principle of cooperation or collaboration, public authorities may sign agreements with religious confessions. Accordingly, on January 3, 1979, Spain signed agreements with the Holy See<sup>4</sup>—agreements which followed the path of international treaties regulated by Articles 93 and 96 of the Constitution.

To make effective the fundamental right of religious freedom, Organic Act 7/1980 on Religious Freedom was adopted on July 5, 1980.<sup>5</sup> Article 7 of this law develops the possibility of agreements with other religions: “The State, bearing in mind the religious beliefs existing in Spanish society, shall establish, where appropriate, agreements and accords of cooperation with those churches, religious confessions, and communities inscribed in the Registry which, because of their scope and number of faithful, are clearly established in Spain. In any case, these agreements shall be approved by law in Congress.”

In fulfillment of these provisions, the Agreements of Cooperation Between the State and the Federation of Evangelical Religious Entities of Spain, the Federation of Israelite Communities of Spain, and the Islamic Commission of Spain were signed on April 28, 1992.<sup>6</sup> The signing of these agreements presupposes the existence of a special law that goes beyond the scope of ordinary law to guarantee protection of the religious characteristics of each of these religions, as well as that of their members.

Three fundamental requirements, when met, allow a religious organization to sign agreements of cooperation with the state:

(1) The religious entity shall be legally recognized by entry in the Register of Religious Entities.<sup>7</sup>

(2) The registered religious entity shall be clearly established in Spain by virtue of its scope of action and its number of adherents.<sup>8</sup> Proof of establishment shall be given by the Advisory Committee on Religious Freedom<sup>9</sup> which shall bear in mind the number of members and the territorial range of the particular confession.

(3) Conclusion of agreements “should be studied from the perspective of general interest to Spanish society.”

### **I. Organization and Function of the Register of Religious Organizations**

The Register of Religious Entities was created by Article 5 of the Act of Religious Freedom of 1980, and is heir to the Registers of 1957 and 1967.<sup>10</sup> Entries are presently made in the very different context of a non-confessional state. The record is a constituent registry, i.e., a registry that confers civil legal status to the reli-



gious entities recorded therein.

Royal Decree 142/1981 of January 9, 1981, relating to the organization and regular function of the Register of Religious Organizations, advanced the regulatory process of registering religious entities.

The concept of a religious entity has not been defined in the legal code of Spain.<sup>11</sup> This lack of definition is the cause of problems faced by the state in endowing a particular legal status to minority religious movements often quite different from the dominant culture. It is the dominant religious activity and style of worship which determine the acquisition of special status and the legal authority to operate as a religious entity.

The acquisition of civil legal status for Catholic entities is based on Article 1 of the Agreement on Legal Affairs Between the Spanish State and the Holy See (January 3, 1979; see above). It was further implemented by a resolution adopted March 11, 1982, by the General Directorship of Religious Affairs. Article 5 of the resolution provides that the registration "of religious organizations that are part of the Catholic church shall proceed in accordance with the Agreement on Legal Affairs of 1979."<sup>12</sup>

Non-Catholic religious entities gain legal status through registration in the Register of Religious Entities, as regulated by the Organic Law of Religious Freedom and Royal Decree 142/1981.<sup>13</sup>

## II. Typology of Organizations Eligible for Registration

The Organic Law of Religious Freedom of 1980 provides for the registration of churches, religious confessions and communities, and religious federations.<sup>14</sup> This law also permits these defined major entities to achieve their aims by the creation of associations, foundations, and other institutions. Lesser organizations are governed by general legislation.<sup>15</sup>

A royal decree issued in 1981 allowed the major entities (churches, confessions, communities, and federations) to register their own orders, congregations, religious institutes, and other associations.<sup>16</sup> Another royal decree (1984) authorized the registration of Catholic foundations.<sup>17</sup>

The following is an estimate of the number of registered Catholic entities, as well as non-Catholic religious entities:<sup>18</sup>

CATHOLIC	
Congregations, federations, institutes, orders, and associated entities	3,424
Subsidiary communities, congregations, houses, and institutes	8,556



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Total	11,980
Cancellations	1,025
Active registrants	10,955

#### NON-CATHOLIC

Churches, communities, and confessions	797
Religious federations	27
Associations	64
Total	888

Of these 888 entities, 551 belong to one or another of the general religious federations which have signed an agreement of cooperation with the state:

Member organizations of the Federation of Evangelical Religions of Spain	489
Member organizations of the Federation of Israelite Communities of Spain	11
Member organizations of the Islamic Commission of Spain	51
Non-Catholic entities which do not belong to a general religious federation	337
Non-Catholic creeds or denominations registered (by name):	
Protestant	745
Anglican (16)	
Calvinist (2)	
Churches of Christ (12)	
Church of God (4)	
Evangelical Christian Baptists (130)	
Evangelical Christian Brothers (90)	
Evangelical Christians (423)	
Evangelical (other) (41)	
Lutheran (4)	
Pentecostal (19)	
Philadelphian (1)	
Salvation Army (1)	
Seventh-day Adventist (2)	
Buddhist	11
Jehovah's Witnesses	1
Jewish	15
Mormon	1
Muslim	95
Oriental	7
Orthodox	5
Others	8
Total	888



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## NON-CATHOLIC REGISTRATIONS BY YEAR

<u>Year</u>	<u>Number</u>	<u>Percentage</u>
Before 1970	109	12.3
1970-74	97	10.9
1975-79	45	5.1
1980-84	121	13.6
1985-89	144	16.2
1990-94	246	27.7
1995-97	126	14.2
Total	888	100.0

During the more than 15 years since the Register was established, at least two major insufficiencies have emerged. On the Catholic side, there are organizations that are clearly religious which have not been included: chapters, seminaries, and training centers for the clergy. Nor can non-Catholic religious foundations enroll.<sup>19</sup> Further modification of the system is called for by the fact that religious groups have different forms of organization and operation.

### III. Requirements for Registration

According to the Organic Law of Religious Freedom (LOLR), registration is accomplished by means of an application accompanied by a document certifying that the applicant organization is indeed established in Spain, and a statement of purpose, denomination, operational system and authority, and representative agencies.<sup>20</sup> Regarding registration of minor organizations (congregations, orders, and subsidiary entities), regulations specify new requirements.<sup>21</sup> The major body responsible for the smaller one must certify the religious objectives of the latter.

Apart from these more formal requirements, the LOLR and its implementing regulations limit entries in the Register<sup>22</sup> as follows: (A) To protect the right of all to exercise public liberties and fundamental rights. (B) To safeguard security, health, and public morality (each being an element of public order protected by law in a democratic society). (C) To control the activities of entities whose objectives are related to the study of and experimentation in psychic or parapsychological phenomena or the diffusion of humanist or spiritistic values or other objectives distinct from religious objectives.

Aside from these limitations imposed by law to guide Register administration, no other eligibility requirements exist.

Once the request for registration is presented, the General Directorate of Religious Affairs has six months to decide. Administrative silence is considered positive. The time limit for



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annotations and modifications is two months. The applicant may appeal a negative response to ordinary courts for judicial review and, specifically, the High Court.<sup>23</sup>

Experience has shown that requirements for registration are not fully sufficient to prevent instances of fraud. Under current legislation, it is possible to register a church composed only by its founders (and lacks the minimum number of members) because the LOLR does not define what can be considered a church or a denomination.<sup>24</sup> Neither does the law define religious purpose—which can be confusing. It comes close in the negative sense by, for example, leaving outside its scope of protection those organizations which propose the study of psychic or parapsychological phenomena or the propagation of humanist or spiritist values or similar objectives.<sup>25</sup>

#### **IV. What Does Registration Mean?**

It has already been stated that registration is one of the requirements, although not the only one, by which a religious denomination can arrive at an agreement with the state. It has been shown that religious entities recorded in the Register established at the Ministry of Justice are granted legal status. But legal status is not the only result. The Spanish legal system foresees at least the following additional favorable effects:

(A) Corporate organizations are awarded rights to name, identity, and title over goods and assets, and, among others, the right to legal negotiation.<sup>26</sup>

(B) Deriving from the right of identity is the related right of independent internal organization and management of personnel. Registration thus guarantees independence and safeguards identity and belief.<sup>27</sup> The recognition of denominational autonomy implies a governmental admission that the religious entity does not have its origin in the state. Each denomination can organize itself internally as it sees fit, emphasizing those elements that differentiate it from other denominations and serve to identify it clearly, but always within the bounds of the Spanish legal system.

(C) Registered entities benefit from tax exemptions and receive special treatment with respect to places and activities relating strictly to worship. The general criteria concerning fiscal benefits are based on the legal system's recognition of religious denominations as non-profit or charitable organizations.<sup>28</sup> States the LOLR: "In the agreements or accords, and always respecting the principle of equality, fiscal benefits anticipated in the general legal system for non-profit entities and other organizations of a charitable nature may be extended to . . . churches, denomina-



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tions, and communities” (Article 7, Paragraph 2). Application is, in practice, twofold: (1) The legal system which applies to charitable and non-profit associations; and (2) the specific system for religious organizations that have signed agreements with the state.<sup>29</sup> In sum, fiscal benefits to denominations are based on the manifestations of religious freedom reflected in the constitutional mandate of cooperation. For the sake of constitutional equality, the realization of cooperation is now achieved not only through agreements, but also by other means.

(D) Only registered denominations may participate in advisory agencies of the administration. Example: The designation of representatives of clearly established religions to the Advisory Committee on Religious Freedom.<sup>30</sup>

(E) Those religious organizations that are clearly established (*notorio arraigo*) may participate in agreements of cooperation with the state.<sup>31</sup>

Thus the registration of a religious organization confers rights that a nonregistered denomination does not have.

## V. Problems and Questions

Drawing from experience gathered since January 9, 1981, and the proclamation of Royal Decree 142/1981, the General Directorate of Religious Affairs (DGAR) presently administers, at least in some cases, the Register of Religious Entities on a broader scale of interpretation.

Among the primary objectives of any regulation of religious organizations should be improvement of judicial security in the registration process, this to limit the discretionary power of those in charge. Further, the Register should be a clearly legal tool that manages its task faithfully, accurately noting the realities of the various religious associations to prevent the law from being broken.

One method of minimizing fraud and eliminating bias on the part of administrators would be the recording of a clear legal definition<sup>32</sup> of “confession” and “religious purpose.” Consensus of the registered religious organizations would facilitate this. Confusion rises from the varied terminology used in the legal system relative to religious denominations. The Constitution speaks of “communities” (Article 16.1) and “denominations” (Article 16.3). The Organic Act of Religious Freedom refers to “churches, denominations, and communities (Articles 5.1, 6, 7, and 8). The Royal Decree of January 9, 1981, concerning the Register of Religious Entities, appears to use the term “entity” (Articles 3.1, 7.3, and 8) in a comprehensive sense to include all the various religious



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organizations that may be registered: churches, denominations, communities, orders, congregations, institutes, associations, and federations (Article 2). In its revision of registry regulations, the General Directorate of Religious Affairs contemplates the defining, for the sole purpose of registration, a denomination or a community as an entity comprised of a significant group of faithful, endowed with a stable, internal, and independent structure, and possessed of one or more places of meeting or worship.

Experience in the functioning of the Register of Religious Entities recommends the introduction of standard terminology that adapts denominational terminologies to conform to Article 16.3 of the Constitution and at the same time expands the list of organizational types eligible for registration.

With respect to the duties Spanish law attaches to the concept "religious purposes," we would emphasize (A) contributing to the definition of the scope of application of the LOLR; (B) establishing a requirement *sine qua non* for access to the Register; and (C) constituting for minority religious entities clear and unarguable conditions for access to the Register to be evaluated by the General Directorate of Religious Affairs at the time the document certifying religious purposes is presented.<sup>33</sup>

The DGAR is the administrative authority assigned to respond to petitions for registration. Obviously, its decisions are affirmative or negative.<sup>34</sup> It values the views of the Advisory Committee on Religious Freedom as well other agencies concerned with the registration process.

The most problematic cases arise from the application of a denomination's subsidiary entities.<sup>35</sup> The DGAR may decide that the certification does not adequately establish religious purpose. An analysis of DGAR decisions in the 1980s reveals that mere creation and nurture of social charitable works are not considered a religious purpose. Similarly, organizations that produce goods and services for the market cannot be considered religious either. Nor have judicial decisions revising administrative denials of registration helped in the defining of "religious purpose."<sup>36</sup> Despite not having yet reached a standard judicial interpretation of this concept, the social reality in force and the experience acquired in the years of registry procedure advise a broadening of the idea that goes beyond the purpose of worship.

In its reform of current regulations, the DGAR should include the function of charity. This term is understood to mean the practice of charitable activities of assistance inherent to the religious tradition. Such activities are performed freely and corporately by a major registered organization or by a dependent subsidiary. They



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are subject to the general provisions established in this area.

The importance of the Register of Religious Entities is demonstrated in its value to religious freedom.<sup>37</sup> Registration results in many important benefits flowing from religious freedom. The norms and practices of registration in those states that possess a common cultural tradition (as is the case of countries belonging to the Hispanic world) should facilitate the search for criteria that will help harmonize religious freedom with the values and traditions of our pluralistic societies. The search will help strengthen respect for the fundamental right of religious freedom. And the discovered criteria can be used in the development of provisions to reinforce peaceful cohabitation of the different peoples that make up our society.

<sup>1</sup> Most of the legislation mentioned in this text is in the process of being translated into English. See *Spanish Legislation on Religious Affairs*, Ministry of Justice, Madrid, 1998. Currently only the Spanish version is available. Real Decreto 142/1981, sobre organizacion y funcionamiento del Registro de Entidades Religiosas (Royal Decree [hereinafter RD] 142/1981, Concerning the Registration and Function of the Registry of Religious Entities), Official State Gazette (hereinafter BOE) 198, 27.

<sup>2</sup> See, e.g., J. Amoros: *La libertad religiosa en la Constitucion espanola (Religious Freedom in the Spanish Constitution)* 1984 (166-197); J. Gimenez and M. de Carvajal: "Principios informadores del actual regimen espanol de relaciones entre la Iglesia y el Estado" ("Formative Principles of Current Church-State Relations") in *Iglesia y Estado en Espana (Church and State in Spain)*, Madrid, 1980, (3-51); L. Echevarria: "La nueva Constitucion ante el hecho religioso" ("The Religion Act and the New Constitution") in *El hecho religioso en la nueva Constitucion espanola (The Religion Act in the New Constitution)*, Salamanca, 1979 (43-75); D. Llamazares and G. Suarez Pertierra: "El fenomeno religioso en la nueva Constitucion. Bases de su tratamiento juridico" ("The Religious Phenomenon in the New Constitution. Foundation for Judicial Interpretation") in *Revista de la Facultad Derecho de la Universidad Complutense* 61, 1980 (9-34); A. Molina: "La cuestion religiosa y la Constitucion" ("The Religion Question and the Constitution") in *La Constitucion espanola de 1978 (The Spanish Constitution of 1978)*, Valencia, 1980 (85-110); A. Molina: "La Iglesia y la Constitucion espanola de 1978" ("The Church and the Spanish Constitution of 1978") in *Anales Valentinis* VI/12, 1980 (385-438); A. Mostaza: "El nuevo regimen de relaciones Iglesia-Estado segun la Constitucion espanola de 1978 y calificacion juridica del mismo" ("The New Regime of Church-State Relations Following Judicial Approval of the Spanish Constitution of 1978") in *Aspectos juridicos de lo religioso en una sociedad plural (Judicial Aspects Concerning Religion in a Pluralistic Society)*, Salamanca, 1987 (211); L. Prieto Sanchis: "Las relaciones Iglesia-Estado a la luz de la nueva Constitucion: problemas fundamentales" ("Church-State Relations in Light of the New Constitution: Fundamental Problems") in *La Constitucion espanola de 1978 (The Spanish Constitution of 1978)*, Madrid, 1981 (319-374); P. J. Viladrich: "Los principios informadores del Derecho Eclesiastico espanol" ("Formative Principles of Spanish Ecclesiastical Law") in *Derecho Eclesiastico del Estado espanol (Journal of Spanish State Ecclesiastical Law)*, Pamplona, 1983 (169-262).

<sup>3</sup> D. Llamazares: "El Principio de cooperacion del Estado con las Confesiones



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Religiosas: Fundamentos, alcance y limites" ("State Cooperation with Religious Denominations: Foundations, Scope, and Limits") in *Anuario de Derecho Eclesiastico del Estado* 5, 1989 (69-102); M. Lopez Alarcon: "Relevancia especifica del factor social religioso" ("The Specific Relevance of the Religious Social Factor") in *Relaciones entre la Iglesia y el Estado*, Navarra, 1989 (465-478).

<sup>4</sup>See Instrumentos de Ratificacion de 4 de diciembre de 1979 de los Acuerdos de 3 de enero de 1979, entre el Estado espanol y la Santa Sede, sobre asuntos juridicos; sobre ensenanza y asuntos culturales; sobre la asistencia religiosa a las Fuerzas Armadas y servicio militar de clerigos y religiosos; y sobre asuntos economicos (Instrument of Ratification, December 4, 1979, of the Accords of January 3, 1979, Between the Spanish State and the Holy See, Concerning Judicial Matters, Teaching, Cultural Matters, Religious Participation in the Armed Forces and Military Service of the Clergy, and Economic Matters), BOE 1979 (300). There are two preconstitutional agreements still in force: Instrumento de ratificacion de 29 de mayo de 1962, del Convenio de 5 abril de 1962, entre el Estado espanol y la Santa Sede, sobre reconcimient, a efectos civiles, de estudios no eclesiasticos, realizados en Universidades de la Iglesia (Instrument of Ratification, May 29, 1962, of the Agreement of April 5, 1962, Between the Spanish State and the Holy See Concerning Recognition of the Civil Effect of Ecclesiastical Studies Realized in Church-Sponsored Universities), BOE 1962 (113); Instrumento de ratificacion de 19 de agosto de 1976 al Acuerdo de 28 de julio de 1976, entre la Santa Sede y el Estado espanol (Instrument of Ratification, August 19, 1976, of the Accord of July 28, 1976, Between the Holy See and the Spanish State), BOE 1976 (230). All these agreements imply a revision and they substitute the concordat signed between Spain and the Holy See in 1953. See Alberto de la Hera: "Pluralismo y Libertad religiosa" ("Pluralism and Religious Liberty") in *Anales de la Universidad Hispalense*, Sevilla, 1971 (69).

<sup>5</sup>Organic Law of Religious Freedom (hereinafter LOLR), BOE 1980 (177). See M. J. Ciauriz: *La Libertad religiosa en el Derecho espanol. La Ley Organica de Libertad Religiosa (Religious Freedom Under Spanish Law: The Organic Act of Religious Freedom)*, Madrid, 1984.

<sup>6</sup>Act 24/1992, 25/1992, and 26/1992, BOE 1992 (272). See also P. Lombardia: "Los Acuerdos entre el Estado y las Confesiones religiosas en el nuevo Derecho eclesiastico espanol" ("The Accords Between the State and Religious Denominations in the New Spanish Ecclesiastical Law) in *Nuove prospettive per la legislazione ecclesiastica (New Perspective on Ecclesiastical Legislation)* Milan, 1981; D. Llamazares: *Acuerdos del Estado con las Confesiones Religiosas (FERDE y FCI) (State Agreements with the Religious Denominations)*, Madrid, 1990; J. A. Souto Paz: *Derecho Eclesiastico del Estado (Ecclesiastical Law of the State)*, Madrid, 1992.

<sup>7</sup>See Article 5, LOLR, BOE 1980 (177); RD 142/1981, BOE 1981 (27); Provision 11 de Mayo de 1984 sobre publicidad de Registro de Entidades Religiosas (Provision of May 11, 1984, Concerning Publicity of the Registry of Religious Entities), BOE 1984 (125). See also a selected bibliography on the Registry in M. E. Olmos: "El Registro de Entidades Religiosas" ("The Registry of Religious Entities") in *Revista Espanol de Derecho Canonico* 1988 (97-121).

<sup>8</sup>Article 7.1. LOLR, BOE 1980, (177).

<sup>9</sup>See Article 8, LOLR, BOE 1980 (177); RD 1890/1981, BOE 1981 (213). Concerning the authority and organization of the Commission, see Provision of October 31, 1983, BOE 1983 (311); J. A. Souto: "La Comision Asesora de Libertad Religiosa" ("The Advisory Commission on Religious Freedom") in *Revista de Derecho Procesal*, 14, 1982; J. M. Contreras Mazario: "La Comision Asesora de Libertad Religiosa" ("The Advisory Commission on Religious



Freedom”) in *Revista Espanola de Derecho Canonico* 1987, 131.

<sup>10</sup> See Olmos, *supra* Note 7 (97-100).

<sup>11</sup> See M. Lopez Alarcon: “Entidades Religiosas” (“Religious Entities”), in *Derecho Eclesiastico del Estado Espanol*, Pamplona, 1993 (265-324); S. Bueno Salinas: “Confesiones y entes confesionales en el derecho espanol” (“Religious Denominations Under Spanish Law”) in *Anuario de Derecho Eclesiastico del Estado* 1988 (107-134); I. Zabalza: “Confesiones y entidades confesionales en el ordenamiento juridico espanol” (“Religious Denominations in Spanish Judicial Authorization”) in *Anuario de Derecho Eclesiastico del Estado* 1987 (249-268).

<sup>12</sup> See BOE 1979 (76).

<sup>13</sup> See LOLR 1980 (177); RD 142/1981, BOE 1981 (27).

<sup>14</sup> See Art. 5, LOLR, BOE 1980 (177).

<sup>15</sup> See Art. 6, LOLR, BOE 1980 (177).

<sup>16</sup> See Art. 2, RD 142/1981, BOE 1981 (27).

<sup>17</sup> RD 589/1984, sobre Fundaciones Religiosas de la Iglesia Catolica (Concerning Religious Foundations of the Catholic Church), BOE 1984 (85).

<sup>18</sup> The following tabular data is derived from the database of the Registry of Religious Entities of the Spanish Ministry of Justice.

<sup>19</sup> See RD 589/1984, BOE 1984 (85); Acuerdo de la Comision Permanente de la Conferencia Episcopal espanola sobre procedimiento para la inscripcion de Asociaciones y Fundaciones en el Registro de Entidades Religiosa, XIII reunion del 11 a 13 de julio de 1984 (Agreement of the Permanent Commission of the Episcopalian Spanish Conference Concerning the Process of Inscription for Associations and the Foundation in the Register of Religious Entities, 13<sup>th</sup> Meeting of July 11-13, 1984), Boletin Oficial de la Diocesis de Cartagena, 1984.

<sup>20</sup> See Art. 5 (2), LOLR, BOE 1980 (177).

<sup>21</sup> See Art 3, RD 142/1981, BOE 1981 (27).

<sup>22</sup> See Art. 3, LOLR, BOE 1980 (177).

<sup>23</sup> See Art. 6, RD 142/1981, BOE 1981, (27); Art. 4, LOLR, BOE 1980 (177). See A. Motilla: *Sectas y Derecho en Espana: Un estudio en torno a la posicion de los nuevos movimientos religiosos en el ordenamiento juridico (Sects and Law in Spain: A Study of the New Religious Movements in Judicial Ordination)*, Madrid, 1990 (244-253).

<sup>24</sup> See I. C. Iban (et al., eds.): “Las confesiones religiosas” (“Religious Denominations”) in *Curso de Derecho Eclesiastico (Course on Ecclesiastical Law)*, Madrid, 1991, (217-278); J. M. Gonzalez del Valle: “Confesiones religiosas” (“Religious Confessions”) in *Derecho Eclesiastico del Estado espanol (Ecclesiastical Law of the Spanish State)*, Pamplona, 1993 (227-263); A Motilla: “Aproximacion a la categorica de Confesion religiosa en el Derecho espanol” (“Approximation of the Classification of Religious Denominations Under Spanish Law”) in *Il Diritto Eclesiastico*, 1989 (169).

<sup>25</sup> See Art. 3 (2), LOLR, BOE 1980 (177).

<sup>26</sup> See 2 Spanish Civil Code, Chap. 2, Arts. 35-39.

<sup>27</sup> See Art. 6 (1), LOLR, BOE 1980 (177).

<sup>28</sup> Ley 30/1994 de Fundaciones y de incentivos Fiscales a la participacion privada en actividades de interes general (Disposicion adicional quinta) (Law 30/1994 Concerning the Establishment and Fiscal Incentives for Primate Participation in Activities of General Interest), BOE 1994 (282); RD 765/1995 por el que se regulan determinadas cuestiones del regimen de incentivos fiscales a la participacion privada en actividades de interes general (Disposicion adicional segunda) (Governing Fiscal Incentives for Private Participation in Activities of General Interest), BOE 1995 (123); Real Decreto 589/1984 sobre fundaciones de la Iglesia Catolica (Concerning the Establishment of the Catholic Church), BOE 1984 (85).



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<sup>29</sup> See Instrumento de Ratificación de 4 de diciembre de 1979 de los Acuerdos de 3 de enero de 1979 entre el Estado español y la Santa Sede, sobre asuntos jurídicos (Instrument of Ratification, December 4, 1979, of the Accord of January 3, 1979, Between the Spanish State and the Holy See Concerning Judicial Matter), BOE 1979 (300); Act 11, Act 24/1992, Act 25/1991, and Act 26/1992, BOE 1981 (213).

<sup>30</sup> See Art. 1 (a), RD 1890 (1981).

<sup>31</sup> See Art. 7 (1), LOLR. Concerning the academic debate on *notorio arraigo*, see J. Leguido: "Dos cuestiones en torno a la libertad religiosa: control administrativo y concepto de notorio arraigo" ("Two Questions Relating to Religious Freedom: Administrative Control and the Concept of 'Notorio Arraigo'") in *Revista Española de Derecho Administrativo* 44, 1984, (683-688); M. J. Villa: "Reflexiones en torno al concepto de notorio arraigo en el artículo 7 de la Ley Orgánica de Libertad Religiosa" ("Reflections on the Concept of 'Notorio Arraigo' in Article 7 of the Organic Act of Religious Freedom") in *Anuario de Derecho Eclesiástico del Estado* 1985, (143-184).

<sup>32</sup> See E. Gardia de Enterría and T. R. Fernández Rodríguez: *Curso de Derecho Administrativo*, Madrid, 1990; F. Sainz Moreno: *Conceptos jurídicos, interpretación y discrecionalidad administrativa (Judicial Concepts: Interpretation and Judicial Discretion)*, Madrid, 1976. This is an explanation of the theory of indeterminate juridical construction.

<sup>33</sup> Art. 3 (2), RD 142/1981, BOE 1981 (27).

<sup>34</sup> For a study of administrative resolutions, see M. J. Roca: "Aproximación al concepto de fines religiosos" (*Approximation of Religious Ends*) in *Revista de Administración Pública* 132, 1993 (453-460).

<sup>35</sup> See Art. 1 (3), Act 24/1992, Act 25/1992, Act 26/1992, BOE 1992 (272); Resolución de 11 de marzo de 1982 de la Dirección General de Asuntos Religiosos sobre la inscripción de entidades de la Iglesia Católica en el Registro de Entidades Religiosas (Resolution, March 11, 1982, of the General Directorate of Religious Affairs Concerning the Inscription of Entities of the Catholic Church in the Registry of Religious Affairs), BOE 1982 (76).

<sup>36</sup> A. C. Álvarez Cortina: *El derecho eclesiástico español en la jurisprudencia postconstitucional (1978-1990) (Spanish Ecclesiastical Law in Post-Constitutional Jurisprudence (1978-1990))*, Madrid, 1991.

<sup>37</sup> See S. Bueno Salinas: "El ámbito de amparo del derecho de libertad religiosa y las asociaciones" ("The Full Reach of the Law of Religious Freedom and Association"), in *Anuario de Derecho Eclesiástico del Estado*, 1985 (185-202).



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# Barriers to Religious Freedom in a New and Pluralistic Russia

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Moscow

Religious pluralism is a current issue in many countries, including Russia. Religious pluralism is not easily established; there are many barriers. How did these barriers originate in Russia? Are they to be explained by national history, national psychology, or the social and political circumstances of the day?

History shows that Russia does not differ much from other European countries. During the Middle Ages there was a tendency to confirm a singular confession. Russia had no inquisitional fires, but the schism in Orthodoxy in the 17th century led to severe persecution directed against the old church. But in the next century Peter the Great invited foreigners to Russia and promoted church reform of a Protestant type. Thus was laid the basis for the rise of many confessions. As the 18th century ended, Catherine II called for religious tolerance: "In such a great state, which governs so many different nations, it is unreasonable, and even dangerous for the safety of citizens, to forbid or to persecute different kinds of beliefs. . . ." Thus Buddhists, Catholics, Lutherans, Jews, and Muslims achieved legal status—and poly-confessionalism became a characteristic of the Russian Empire.

But the different confessions were not equal. The Russian Orthodox Church—the state church—dominated. And this domination led to the shameful discrimination of Jews and the cruel persecution of the Old Orthodox church. Despite all this, Russian society was influenced by both Catholic and Lutheran thinkers. Vladimir Solovyev made a great effort to reconcile the Catholic and Orthodox churches. And Leo Tolstoy fought for religious liberty.

Nobody knows how the relationships between the different confessions would have progressed if there had been no 1917. When the Communists came to power they persecuted all religions equally. First, they repressed what eventually became the



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underground Orthodox church. Leaders of other confessions understood that after the Orthodox they would be next—and so they came forward in defense of the Orthodox church. Each passing year it became increasingly obvious that peaceful coexistence of believers and Bolshevik Communists was impossible. In 1927, 17 Orthodox bishops imprisoned in the Solovetsky camp, infamous for its cruelty, declared in a letter to the Soviet government “the irreconcilability of church religious doctrine with materialism and the official philosophy of the Communist Party.” For this courageous letter, its authors and their followers paid with their lives. But the letter became the manifesto of believers of all confessions in the face of an atheistic dictatorship.

Perhaps there are differing explanations as to why the Lord permitted Russia’s trial by communism. In my opinion one is that people came to understand discord among believers is the result of human sin, the burden of which was so real under the cruel, irreligious authority. Why then do people now so easily forget all this? Ten to twenty years ago when I participated in the activity of the newly formed Committee for Defense of the Rights of Believers, most believers felt human sin very acutely. With other defenders of human rights, our committee joined Andrei Sakharov in standing up for the rights of believers of all confessions: Baptists, Jews, Muslims, Orthodox, Pentecostals. We helped each other. We were convinced that believers of different confessions would always find a common language. We had much evidence for this.

Why then this weakened—and almost lost—state of soul and mind among many believers who now live in the territory of the former Union of Soviet Socialist Republics? This did not happen at once.

The Constitution of the Russian Federation declares equality of all religions before the law and forbids the establishment of a state religion or church. The 1990 law titled “On Freedom of Belief” is characterized by a high level of democracy and religious tolerance. It provides a good basis for religious tolerance. But now this law is criticized harshly. What is the reason?

It seems to me that the majority of believers do not fully understand the meaning of that severe trial by communism. But Alexander Solzhenitsyn understood deeply. In his 1974 letter “To Live Without Lies” he stated clearly one of the most important doctrines of Christianity: Sin cannot exist without a carrier. It lives only as we let it live. The Communist lie cannot live if we do not let it enter our minds; unless we reject it, we are participants in the lie. Here was Solzhenitsyn’s call to moral revolution. But



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this call the majority of people did not want to hear. They considered themselves victims of evil, not participants. This was so evident when the USSR collapsed. Adopting the stance of victims, people blamed other people: "Caucasians, Communists, Jews, Russians—they are guilty! But not me!" By contrast, the Germans who researched the Nuremberg materials exclaimed: "What we did to the world and to ourselves!" In chorus, citizens of the former USSR exclaimed: "What *they* did to us!" And this is true. They—the Communists—bear a great and terrible responsibility for what they did to the nation and its population. But they could not have done it alone. They needed translators of their lie, carriers of their sin. We became the translators and the carriers. We let them crush us. We even helped them do it. This is a bitter conclusion, but it is an inescapable one for every believer who lived in what was the USSR, no matter the degree of personal participation in the lie of irreligious ideology. There was no repentance, which means that Russia was not fully purified of totalitarianism. Russia believed that political sovereignty provides not only necessary political freedoms, but also spiritual purification. But there is no spiritual purification when you are forgiven the sins of others.

Regarding the law titled "On Freedom of Conscience and Religious Association" passed by the State Duma in June of 1997, I continue to be opposed. In many places it deviates seriously from the democratic principles laid down in the Russian Constitution as well as in the 1990 law "On Freedom of Belief." The appearance of the new law resulted not only from the situation inside Russia itself, but also from political processes taking place in neighboring countries.

The period of *perestroika* (restructuring) from 1987 to 1992 is characterized by mass anticommunist attitudes and mass pro-western orientation. There was a conviction that as soon as Russia destroyed communist power and entered the market system, she would experience political, economic, and spiritual revival. This view holds that the West simply waits for Russia to take these steps and then will joyfully accept her into its community.

Religious life did develop actively after 1990 and the adoption of the law "On Freedom of Belief." Note these data as of January 1, 1996:

- \* More than 50 confessions registered.
- \* More than 13,000 religious organizations established.

\* The arrival of the Methodist church, the New Apostolic church, the Mormons, the Salvation Army, the Presbyterian church, the Unification church, the Bahais, Hindus, Tantrists, Taoists, Scientologists, Quakers, Zoroastrians, and others.



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For some time this process was rather peaceful. Missionaries to Russia from the West gathered thousands of people. Foreign religious organizations were freely registered, many becoming Russian. But the period of peace came to an end. The relationship between Russian Orthodoxy and Roman Catholicism, complex even before 1917, was aggravated when Catholics started forming churches. And the relationship with Protestant confessions also became tense. This was explained by Russian Orthodox jealousy and fear of increasing proselytization. A new term appeared reserving Russia as “canonic territory.” Orthodox fears and Western expectations were both, I believe, overestimated.

True, the Russian Orthodox church reflects the character of the Russian people. The church is rooted in Russian culture and history. For instance, it is difficult for someone from the West to understand why, in Goncharov’s 19th century novel *Oblomov*, Russians consider as the hero the kind and gentle title character—one who is inactive in every sphere, even in personal life—rather than Stolz who is energetic, industrious, and organized. This phenomenon is pure Russian Orthodoxy. It is reasonable to say that the theme of antinomian human activity—that is, any activity purposed for good inevitably brings evil also—is characteristic of Russian literature. This theme is found in Solzhenitsyn’s *Cancer Ward* where enemies cure the former political prisoner of cancer, but render him impotent, doomed to the torture of loneliness.

Russia’s unfavorable attitude toward Western missionaries has not been exclusive to the church, however. It has become, I think, the attitude of the greater part of society. Why? Surely the main reason is that the painfully slow transfer to a market system has negatively influenced the personal state of many Russian citizens. Economic reform is considered a Western reform. The people’s romantic expectations of Western support for democratic processes in Russia have not been fulfilled. While political, economic, and military spheres of interest were separated at high levels, nobody hurried to bring altruism into the Russian picture. For a great number of Russians, expansion of the North Atlantic Treaty Organization to the East changed the way they think about the West. It is not at all difficult to convince people that NATO’s move does not pose a military threat to Russia, but it is very difficult to assuage their feeling of insult. “When Gorbachev took a risk in helping to unite Germany,” they say, “we were promised that NATO would not expand toward the East.” The wound is deep. As a result, the pro-Western mood of the Russian people declined sharply.

Still and all, Western missionaries themselves played a role.



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Not all of them were like Billy Graham. There were those who came to Russia as to a religious desert. But Russia was not such a desert. Ensuing reaction saw regions urgently adopting laws to limit missionary activity. While these laws violated the Constitution and contradicted the Federal legacy, the fact of their adoption influenced social opinion. Scandals within both registered and unregistered religious organizations did not help the situation. Political leaders entered the scene. Alexander Lebed, then the Russian state security chief, attacked foreign religious organizations. Press reporting on Western evangelism was negative. In time, government agencies, including both the Ministries of Defense and Health, issued documents which discriminated against many religious organizations. (We discussed them at our sessions of the Committee on Human Rights of the President's Political Consultative Council, showing that they were invalid and unconstitutional.) The Committee on Youth Salvation, an anti-cult group, targeted not only foreign religious organizations, but denominations such as the Baptists and the Seventh-day Adventists which have been rooted in Russia for more than a century. I informed the prosecutor general about these facts. Additionally, I addressed the situation in a meeting of the President's Council on Relations with Religious Organizations.

(I worry most of all about persecution of Adventists. In Dagestan, a small region in the Caucasus, west of the Caspian, an Adventist couple falsely suspected of a crime were publicly burned. In the press there were statements that the man had betrayed Islam and that Adventists are a satanic sect. Adventists have been persecuted in other Russian cities including Omsk. But we all know that Seventh-day Adventists have a benevolent attitude regarding the Russian Orthodox Church. Its leadership attends the President's Council on Relations with Religious Organizations. So I consider this outbreak of trouble an example of atheistic hysteria. And this is dangerous for believers of all confessions including the Orthodox.)

Such was the situation during the final stage of preparation of the law titled "On Freedom of Conscience and Religious Associations." Those who oppose religious freedom for all chose an interesting argument based on a Lithuanian law providing official recognition of nine traditionally existing religious organizations. They say it is not at all bad that the law in Lithuania does not list Adventists or Baptists or Pentecostals. While I have not heard of any violation of the rights of believers in Lithuania, I consider the change in legal norms to be of sad consequence. Without copying it word for word (because Russia has a new



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Constitution), the Communist members of the State Duma took this law as their model. They included in the preamble the notion of "traditional" religions. For a religious organization to be accorded the status of an all-Russian religious organization, the law requires 50 years of activity. And there is no possibility for the formation of a foreign religious organization. To be registered, the organization must have existed in Russia not less than 15 years. Non-registered groups are required to notify the state of their activities. (But other social organizations are not required to do so.) Religious groups are prohibited from drawing into their ranks children younger than 14 years without parental consent.

The Patriarchate in Moscow does not interact with other confessions in Russia. This lack of communication was significant in the drafting of the law "On Freedom of Conscience and Religious Associations." A meeting with the Roman Catholic pope was canceled. Many people were waiting for that meeting. Moreover, the Orthodox prelates do nothing to restrain the aggressive behavior of local priests toward Catholics, Baptists, Adventists, and other confessions—behavior which occurs with increasing frequency in different regions of the country.

Compared to the law of 1990 ("On Freedom of Belief"), this new legislation is a step back. Will President Yeltsin sign it? [Editor's note: He did.] The various confessions need to express their opinions. They will be listened to. Unfortunately, they have remained passive. They did not object to the restriction on children joining religious life without parental consent. On the one hand, this creates pressures that disrupt family relations. On the other hand, it provides a basis for prohibiting the very functioning of a religious organization (fortunately, only after a judicial decision). But how can one determine whether a priest has persuaded a boy to enter a monastery or has forced him? How then should government treat all of Christianity which is subject to this teaching of Jesus: "Whoever loves father or mother more than me is not worthy of me . . . and whoever does not take up the cross and follow me is not worthy of me"?

Certainly the new law has many positives for large confessions, but just for their benefit it is not wise to restrict the freedom of conscience for all. We remember that the first violation of human rights was committed on a religious basis. One person did not like how another person established his relationship with God. So he killed him. The killer was Cain and the victim was Abel, his brother. All who choose Cain's way choose destruction for themselves. We must therefore promote dialogue to maintain religious pluralism. This dialogue should be initiated not only by represen-



tatives of government, parliamentary deputies, or defenders of human rights, but also by believers themselves. If believers act decisively to achieve religious pluralism, it will be achieved. We have a great mission. We should be worthy of it.

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# Towards the 21st Century: Religious Liberty and Pluralism in China

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While change is the rule of history, the end of any century might be a time men and women talk more about change, together with their hopes and aspirations for the new era. This is usually the time people become more optimistic. They would very much like to leave behind the yesterdays that saw struggle and sorrow, frustration and failure, and get ready for the success to come. This is the sentiment of humanity as a whole at the turn of the century. China has long been familiar with change in that the country took a dramatic turn in the late 70s and early 80s—a turn in policy which set in motion an economy that continues to expand. With the restructuring of the economy, a profound social change was bound to take place.

The church in China is therefore a church in a changing society. The Chinese society is in every way undergoing remarkable changes that lead to social realities which are pluralistic in nature. Pluralism can be exemplified in many ways in different parts of the world. In China the saying which comes closest is “Let a hundred flowers bloom.” In different historical periods, the word pluralism is spelled out according to its social context. From the end of the 19th century into the early 20th, the cry for political pluralism was expressed in the overthrow of the Manchurian monarchy and the founding of a democratic republic. Cultural pluralism was demanded by intellectuals who saw the dark aspects of a cultural tradition that for some 500 years had been stagnant, inhibiting cultural and scientific creativity. Western culture was generally appreciated. For the second time in this century, the concept of pluralism came to fore. Now the saying went, “Let a hundred flowers bloom, and a hundred schools open.” Although the saying was first put forward by the leading circles of the Communist Party of China in the 50s, it was made true in the early 80s on a much larger scale, and still holds good today. It was taken up as the antithesis to the ultra-left obscurantism of the so-called



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Cultural Revolution which, of course, turned out to be a cultural, political, and economic disaster.

Post-Cultural Revolution pluralism in the 1980s was primarily an economic concept: Social productivity can be raised in a variety of ways, rather than just one way as in a demand economy. During the following 15 years or so, privately run shops, factories, and joint ventures began to dot the country. Today non-government-managed enterprises comprise more than one third of the economy, and this sector continues to grow.

Such economic pluralism brings in its train cultural diversity. Although western culture was still in vogue, Chinese traditionalism, so vehemently attacked in the pluralistic drive of the late 1910s, enjoyed a triumphant comeback, at least in academic circles. However, it was no longer pre-eminent or pre-dominant. It coexisted with other schools of thought. As for religion, it was formerly defined as an opiate by some students of social science who largely missed the Marxist understanding of religion. After much debate, the opiate theory withered away, and one no longer hears it today. Then, in the search for the rationale of Western civilization and the meaning of personal life, some conscientious intellectuals came to see that Christianity played an important role in the formation of western civilization. It influenced some of the imposing figures in history they admire. They began to appreciate the Christian faith, speaking highly of it. While some of them still keep a distance from church life, others have gone so far as to profess Christianity and to be baptized. Such are now called "cultural Christians."

The majority of the people are nevertheless prone to be influenced by popular culture as conveyed by the mass media. For a nation that had been under the ultra-left devaluation of religion for so long, a backlash, as expressed in any cultural genre, would tend not to be anti-religion but pro-religion. When men and women are no longer driven by one thought pattern, but freely seek truth, goodness, and beauty as conscience leads them, they are not likely to show contempt for true religion—which affirms all that is true, good, and beautiful. However, pluralism also poses problems for religion. If religion benefits from pluralism, so also does secularism. But the diseases of secularism are to be cured by religion. In a pluralistic society religion is probably in its natural state, open to opportunities and challenges.

There are in China five main religions: Protestantism, Catholicism, Buddhism, Islam, and Taoism, the last being the only native religion. Since the late 70s all of them are on the increase.

It is generally accepted that social pluralism means a society



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that is more tolerant, that has more space for the exercise of religious liberty. In a pluralistic society people are less burdened with a given thought pattern, making it easier for them to find real answers for themselves. The pluralistic ethos also makes it easy for them, as religious believers, to be recognized socially. It does not necessarily take a rebel or a maverick to follow a religion that may be alien to the majority.

China is led by a political party that is avowedly atheistic, and thus theoretically it should not have any love for religion. But as it is now, the party is not so dogmatic as to work for the extermination of religion. Rather it works with religion for the well-being of the people. Pragmatic Communists are also influenced by pluralistic thinking.

While religious freedom is an inherent human right, it should also have a legal basis. The Constitution of the People's Republic of China stipulates that all citizens are to enjoy the freedom of religious belief. No state organ, no social organization, no individual has the right to force a citizen to believe in religion, or to discriminate against a citizen on grounds of the citizen's belief or lack thereof. The state is to protect all normal religious activities. But nobody should make use of religion to carry on activities which jeopardize order in society, harm physical health, or damage the educational system of the state. Religious organizations and affairs are not to be directed by foreign bodies.

In 1994 the state issued "Regulations on the Administration of Sites for Religious Activities." Formulated in accordance with the Constitution, these regulations protect normal religious activities and the lawful rights and interests of places for religious activities.

Religious liberty should not be based on the favor of any mortal. Emperors and kings come and go, none outliving the sublime ideals of true religion. Sociologically, religious freedom needs necessarily to be secured by law.

With the growth of market-oriented economic reform, state authorities began to talk about socialist democracy. The People's Congress is the nation's highest legislative body. It is playing an ever more important role in Chinese political life. It has, for example, passed a variety of laws on issues concerning life, industry, agriculture, banking, and environmental protection. For a nation that suffered lawlessness and chaos during the Cultural Revolution, it is good news to have life regulated by law. And for a nation that for centuries lived under a feudal system in which patriarchal authoritarianism was the rule, it is a giant step forward.



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Religious freedom is part of the body of legitimate rights any citizen in China should expect to enjoy. However, some local cadres, not eager to implement this principle, try to counter the trend to pluralism. They are still preoccupied with the wrong understanding of religion. This is often due to their prejudice against religion, their misinterpretation of government policy, and their abuse of power. Such cases usually occur in remote and poor rural areas.

On the other hand, religious believers can, by their good behavior, influence the people around them in respecting their freedom. This is not difficult for any sincere follower of religion, because every religion has its moral teachings and ethical demands. In China, where Christians are a small minority, there are nevertheless a good number of Christian workers, teachers, engineers, and housewives who are held in high esteem by others in their workplaces and their neighborhoods. They not only help the people around them know Christ's presence in China, but also form an active evangelizing force through their silent witness to the faith. As the whole society becomes more pluralistic, they are becoming more and more confident in exercising religious liberty with all its implications.

Chinese society may be less pluralistic than Western society. Human efforts in the direction of pluralism are important; however, pluralism alone should not be as much of a goal as should be liberty itself. Human beings long for liberty in every time and in every social system. This is what is noble about humanity. Religious liberty is the crown of other kinds of liberty in that it is about the ultimate concern of men and women. The emergence of religion and its growth in China's post-Cultural Revolution period indicates that it can hardly be suppressed.

We are thankful to live in a society that is becoming increasingly pluralistic. We take great delight in the challenges and opportunities that pluralism brings, for we know with certainty that we have come for this time.

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Edited from an address by the Rev. Bao to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997.



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# Religious Liberty: Legacy to the World

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First, a story. It begins in America's 18th century colonial period. While some of the original thirteen colonies recognized religious diversity and insisted on toleration under the rule of law, others perpetuated a concept the settlers had known in Europe: an officially established church.

The critical period is the mid-1780s. By this time the United States had won its independence. Thomas Jefferson was in Paris as ambassador to France. Jefferson's views on religious liberty and government's role in matters of faith were on record. A bill he authored in 1777—the Virginia Statute for Religious Freedom—proposed to do something no piece of written legislation had done before: To formally separate church and state. But Jefferson himself could not get his bill through the Virginia legislature. So he left it in the guardianship of his friend James Madison.

During this period, increasingly bitter debate over renewal of a general public assessment for support of the official church in Virginia turned the attention of the state's lawmakers to solutions of the kind Jefferson offered in his proposed statute. By the time Madison drew on its text as the answer, the climate was right for a decisive stroke. On January 16, 1786, Virginia enacted "A Bill for Establishing Religious Freedom." (I am pleased, of course, that the efforts of the Council for America's First Freedom have fostered contemporary congressional and presidential recognition of every January 16 as National Religious Freedom Day.)

Jefferson's Virginia statute embodies two principles—related, but quite distinct. One holds that religious belief—or non-belief—is not the business of government, that citizens may neither be compelled to worship nor barred from worshiping however and whenever they wish. The statute states this principle in eloquent language: ". . . [T]he opinions of men are not the object of civil government, nor under its jurisdiction." Here is the premise from which was derived the clause in the First Amendment to the U. S. Constitution that guarantees the free exercise of religion.



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But for Thomas Jefferson, freedom to believe and to worship was not enough. He had seen too much of the established church not to realize that true religious liberty needed another safeguard. So his Virginia statute contains a second guarantee: “. . . [N]o man shall be compelled . . . to support any religious worship, place, or ministry whatsoever. . . .” Here is the corollary premise from which was derived the First Amendment clause barring any law respecting an establishment of religion. What Jefferson and Madison seem to have had in mind was something more than just protecting Baptists and Presbyterians and Catholics and Jews—and, for that matter, non-believers too—from being forced by government to pay for the support of someone else’s church. For them it was no less vital that those who worshiped in the dominant faith be free to decide whether to give at all to their own church, and if so, how much. This was the other side of religious freedom—the side Jefferson, in a classic early sound bite, was to term “the wall of separation between church and state.” And a strong wall it has remained.

Jefferson’s insights may be self-evident, but they are not self-executing. How do we transform his ideals into reality? In coming to grips with this problem, we must face at least four serious questions.

First, how can we expect *reason* to prevail when people contend over articles of *religious faith*?

Jefferson sometimes seemed to assume that religious sensibilities were like other ideas and emotions vying for acceptance in the marketplace—as if religion were on the same plane as architecture or biology or mathematics. He once said that “it does me no injury for my neighbor to say there are twenty gods or no god. It neither picks my pocket nor breaks my leg.” Well, maybe not *his* pocket or *his* leg. But *believers* may not find it so easy to accept his insouciant open-mindedness. Is a Buddhist to take no injury in the claim that the Buddha was wrong in teaching the cessation of all sin, the pursuit of virtue, and the purifying of the heart? Is a Muslim to feel no offense at the charge that Muhammad was no prophet? Is a Jew to react with calm reason when told that God did not speak from the fire to Moses, or that Hitler did not murder and defile with fire in the Holocaust? Is a Christian to be meeky or cheeky when told that Jesus was out of control in the Sermon on the Mount (the poor are wretched, not blessed; and the brazen shall inherit the earth—indeed, they already have!)? Since Jefferson wrote the Virginia statute the world has witnessed two centuries of religious wars. Why should we believe that reason has any chance of success against the tor-



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nadic winds of religious passion?

The second question: How is *spirituality* possible in a society that embraces competition and free enterprise and winning as its driving ethos? Did Jefferson create a society whose only soul is in the marketplace?

Third, in a libertarian society—a society that emphasizes individuality, conscience, and autonomy, how is genuine *community* possible?

And fourth, how is the ideal of religious *tolerance* ever to be collectively internalized? Jefferson wrote a law. Words on paper! How do we get people to genuinely embrace the idea of diversity and tolerance? How do we get them to live it? Can a law do that?

Jefferson knew history. He could look back on centuries of religious war in Europe. He knew from history and from human nature how easy it is to rouse murderous mass passion when religious demagogues cry that God wills it. He resolved that religious war should never tear apart his beloved America. The only way to avoid religious war, he reasoned, was to guarantee religious freedom. And the history of the United States is the proof of Jefferson's wisdom. The fire of religious war has never scorched the land. Instead, from the beginning, refugees from religious persecution have come to America for safety.

Religious bigotry has an inevitable evil consequence on religion itself. Young people growing up in such an environment—in the atmosphere of forced religious practice, come to recognize its hypocrisy. Monolithic religious systems may employ governmental power in an effort to compel allegiance and obedience to orthodoxy. But a union of government and religion cannot compel the assent of mind and heart.

Jefferson was adamantly opposed to the forced imposition of a particular form of religious faith. But this Renaissance man of the 18th and 19th centuries would be surprised that 200-plus years into this experiment in democracy, Americans who speak in the public arena out of a faith tradition may now experience a subtle form of intimidation. Such intimidation is not just against the use of traditional faith language, but against any suggestion that our various religious traditions have something to say about the importance of core value systems shaping how we live together as a people. The answer does not lie in promoting any single faith tradition, but in our willingness to speak frankly of our belief in agreed upon values—principles which reward honesty, honor discipline, advocate truth-telling, and stand for the kind of responsibility that responds to the needs of others. The American identity is not shaped solely by Buddhist, Catholic, Hindu, Jewish,



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Muslim, or Protestant religious traditions. The United States is a nation of people who believe that these traditions and a myriad others contribute to the formation of a set of core values with which we all agree. And we agree to live out our common lives together according to these values.

Americans really do want Americans to practice their faith—to use, in a spirit of conciliation, religious insights in public meetings. The spiritual dimension will illuminate questions that all of society is asking: In our neighborhoods and in our institutions, how do we learn how to respect one another and live in peace and safety? How do we preserve the family? Guard and instruct our children? Protect the weak? Teach restraint to the strong? Make safe our cities? Preserve the environment? How do we allocate our national resources to do the greatest good for the greatest number? To paraphrase Winston Churchill: “One cannot confront evil with appeasement; one must confront evil with a superior force that insures its demise.”

These urgent social and political questions are also religious issues. A dry secularism, devoid of mystery and passion, cannot breathe life into a nation’s values. Our religious consciousness, with its universal sympathy for the afflicted and its reverence for God’s creation, has within it the power to lift up the fallen and bring harmony amid diversity.

We are becoming increasingly aware that the loss of biological diversity threatens our existence. The earth was fashioned by the Creator to uniquely satisfy our survival requirements and our culturally derived wants and needs. Diversity is the hallmark of creation. The Creator knew it and we are finding out about it. We must avail ourselves of its wonders. Certainly this applies to our religious beliefs—or their absence. When we seek to impose singularity on diversity, we threaten that Creator-bestowed quality that makes us different from other forms of life. That quality is *humaneness*. We are soon to be six billion humans on this fragile planet earth. If humaneness departs from our lives, we can only speculate on the consequences. Wrote Jefferson: “. . . I have sworn eternal hostility against all forms of tyranny over the minds of man.” That extended to those who would impose their religious beliefs on others—and take their lives if they resisted. Such intolerance Jefferson would not tolerate—and so he helped found a nation based on true tolerance and respect for diversity. Tolerance is still a necessary part of humaneness. Today, if we cannot or choose not to practice tolerance, then we will take the path of human devolution—a path the Creator did not intend for us to follow.



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The diversity that exists never needs to be a source of bigotry, intolerance, and hatred. I believe the Creator had in mind that our spiritual obedience should be a source of loving, caring, nurturing, sharing, and respecting. As we approach the 21st century, it is incumbent upon all of us to make our religion, or our spiritual beliefs, relevant to life. Relevance implies diversity.

There is now a quickening tempo, a temporal telescoping of forces and events. These strongly suggest—no, make certain—that, individually and collectively, our lives are spinning out of control, propelling us faster and faster toward a future where the magnitude of our global societal ills will vie with the forces of global environmental change for our belated attention. Paramount among these will be the irreconcilable divisiveness of religious intolerance, of bigotry and hatred. Unless they are checked, they will tear away the very fabric of our society—civility and respect. They will deprive us of our humaneness and cast a shadow of darkness over generations whose grandparents are yet unborn.

Edmund Burke reminds us that when good people do nothing, evil triumphs. In behalf of religious liberty, let us always be among those who do something.

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Condensed and edited from Ms. Negus' address to the IRLA's Fourth World Congress on Religious Liberty, Rio de Janeiro, Brazil, 1997. For thoughtful contributions to her article, the author is indebted to Robert M. O'Neil, Director, The Thomas Jefferson Center for the Protection of Free Expression; Richard Marius, writer and lecturer; Rodney Smolla, Allen Professor of Law, University of Richmond; and James Lee, The College of William and Mary.



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# Concluding Statement

## of the Fourth World Congress on Religious Liberty of the International Religious Liberty Association Rio de Janeiro, Brazil June 25, 1997

### INTRODUCTION

The International Religious Liberty Association held its Fourth World Congress on Religious Liberty in Rio de Janeiro, June 23-26, 1997. The IRLA has worked for the cause of religious freedom throughout the world for almost a century. (Its affiliate in Western Europe, Association Internationale pour la Defense de la Liberte Religieuse, active for nearly 50 years, is a United Nations-accredited non-governmental organization.) Representing some 40 nations and numerous denominations, Congress participants included religious leaders, government officials, and religious liberty experts from the academic world.

At the conclusion of the IRLA Fourth World Congress, participants expressed profound appreciation and respect for the recent and significant progress in the development of democratic, pluralistic societies on the South American continent. Experience around the world has shown how difficult it is to remove all intolerance and all religious discrimination and to ensure completely full equality before the law for all individuals and all religious organizations. Is there one society anywhere that holds a perfect record? Therefore, although not every ideal of religious liberty may as yet be fully realized in every South American nation, the participants applauded governmental and religious authorities and other thought leaders in Brazil and in the other countries for their steadily increasing support for freedom of religion and conscience, trusting they will continue to uphold these high ideals and further implement them.

As the prime sponsor of the Fourth World Congress on Religious Liberty, the International Religious Liberty Association states for the record that it stands ready to assist civil and religious leaders in all parts of the world in identifying any problems in the area of religious freedom that yet need to be addressed. The IRLA offers to help in any way possible to find solutions to difficult situations now and in the future.

### CONCLUDING STATEMENT

Participants in the Fourth World Congress on Religious Liberty of the International Religious Liberty Association, Rio de Janeiro, Brazil, June 23-26, 1997, reaffirm the following princi-



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ples and reach the following conclusions:

## **PRINCIPLES**

The participants in the Congress

(1) Recognize the innate and universal human right to religious freedom found in the Charter of the United Nations, and that states have pledged themselves thereunder to promote and encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Charter of the United Nations, Article 1, Section 3).

(2) Reaffirm the principles articulated in the many significant provisions of international instruments addressing religious liberty, including the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the American Convention on Human Rights, the African Charter on Human and Peoples’ Rights, and other related agreements and principles enunciated in the Helsinki Process.

(3) Accept and affirm the provisions of the United Nations Human Rights Committee’s General Comment to Article 18 of the International Covenant on Civil and Political Rights, adopted on September 27, 1993, which has elaborated the meaning of freedom of religion or belief. In particular, the Congress participants concur with the General Comment’s recognition of the broad scope of religious freedom in its determination that “Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community” (General Comment, Paragraph 2).

(4) Recognize the important role that religion plays in human life and society, and that respect for freedom of religion and belief constitutes a fundamental basis for human relations and is accordingly a vital responsibility of states everywhere.

(5) Emphasize that, particularly since in modern pluralistic societies many of the most significant religious freedom problems flow from lack of understanding and from laws and actions of public officials that inadvertently rather than intentionally burden religion, it is critical to make certain that only those limitations on



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manifestation of religion be permitted that are prescribed by law and necessary in a democratic society, that is, are justified by pressing societal needs that can be attained in no less burdensome way.

(6) Reaffirm the principle of the independence of churches and other religious communities in their internal affairs and in carrying out their mission.

(7) Emphasize that freedom of religion or belief includes the right to change one's religion or belief and the right to express those beliefs to and share them with others, while always respecting their rights.

## CONCLUSIONS

(1) During the course of the Congress, various religious groups were given opportunities to voice grievances and to bring incidents of intolerance and religious discrimination to the attention of the IRLA. Their presentations attest the need for continued vigilance in seeking better ways to implement the ideals of religious freedom. The IRLA will do its best to respond to the various requests for monitoring and other follow-up activity made during these presentations. A summary of the reports submitted to the IRLA will be delivered to the United Nations Special Rapporteur on Religious Intolerance.

(2) Among other things, the IRLA will continue to help facilitate productive dialogue between aggrieved groups and pertinent governmental or non-governmental organizations in order to ameliorate situations involving violation of religious human rights.

(3) New religious movements pose challenges as well as opportunities for our increasingly globalized and pluralistic society. This Congress affirms that the principle of religious liberty applies equally to new religions as to established ones. We urge that any concerns regarding social disorder pertaining to new religious movements be handled with special sensitivity for religious minorities. Governments and public officials should exercise caution and sensitivity when characterizing religious groups or religious beliefs, so as to avoid stigmatizing specific groups or contributing to patterns of intolerance. Where criminal conduct occurs, general criminal laws and procedures should be invoked, and those individuals responsible should be held accountable before the law without regard to their religion.

(4) Incidents of religious discrimination and intolerance appear to be increasing in various parts of the world, even in countries with strong human rights traditions. In this regard, the Congress participants applaud the past and welcome the proposed



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visits to various countries of the United Nations Special Rapporteur on Religious Intolerance, Professor Abdelfattah Amor, in order to prepare objective reports to the UN Commission on Human Rights regarding any violations of religious liberty.

(5) Governments, international organizations, and other groups should foster educational efforts in school curricula and other contexts concerning the fundamental importance of religious liberty, mutual respect, and tolerance within the broader framework of human rights.

(6) In the context of modern legal systems, the right of religious believers to have some form of legal personality or entity for purposes of organizing their affairs is vital to the exercise of religious freedom of the group. The precise form of such an entity must necessarily vary from country to country, whether it be a registered association, a trust, a corporation, a not-for-profit organization, or some other form of entity commonly used for such purposes in a particular legal system. The important point is that some type of entity should be available under the auspices of which a religious association can acquire or rent property for purposes of worship services, enter into contracts, establish educational institutions for training its own members and for providing education for youth, carry out charitable purposes, establish contacts with sister organizations in other countries, and, in general, fulfill its religious mission as it sees fit. Such status should be made available upon request, without unreasonable delays. Denial or revocation of entity status should be appealable to the judiciary. Subject to compliance with a country's constitution and laws, which themselves must be in compliance with general international commitments governing religious freedom, the religious organization should be allowed to determine its own ecclesiastical structure in accordance with its own beliefs, including such matters as territorial jurisdiction and ecclesiastical polity, since such matters constitute internal religious affairs. The requirements for obtaining entity status should not be used as a mechanism for obstructing a religious organization's efforts to accomplish its religious mission.

(7) The IRLA calls on leaders of government around the world to respect self-determination as a fundamental right of every individual, including the right to worship or not to worship according to individual conscience, to practice his or her faith in society, and to change his or her religion or beliefs. The IRLA further calls on religious and governmental leaders to seek to implement these fundamental ideals, rights, and duties for all humanity.

(8) In the spirit of the Golden Rule, religious groups who are



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in the majority in a given country should remember to give the minorities in their midst the same high level of respect they would like their co-religionists to receive in other areas where they are in the minority.

(9) Recognizing that legislation in and of itself cannot solve all the problems and challenges of lack of mutual respect and tolerance, the IRLA calls on people of good will everywhere to seek to implement the ideals of religious liberty.



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# When Tomorrow Comes: Religion and the State in the New Millennium

Jonathan Gallagher

Director

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On March 4, 1997, two Seventh-day Adventists were tortured, beaten, and burned to death in the town square of Buinaksk, Dagestan, in the southern Caucasus region of Russia. Hadgimurat Magomedov and his wife Tatyana Dmitrienko were not killed because they were Adventists, but because they were different.

Comes then this question: Were these murders a last example of old intolerance or the presage of a new order? As we look to the future of religion and the role of the state in the coming millennium, we can point out various factors that will impact religious liberty and human rights.

## (1) The decline of state control

Wide approval usually follows the decline of state control. The state should not be intrusive in the personal affairs of its citizens. The decline of the influence of the state means greater individual freedom.

Much of this decline is associated with the explosive impact of communication, which leads to global connectivity. What killed communism was not an ideological battle, but the fax machine. What destroyed East Germany was not a specific assault on the Berlin Wall, but the pervasive impact of West German TV. In the new millennium, religious persecution will not be a primary, state-sponsored ideological activity.

But that is a long way from saying it will not occur. In fact, the reverse. *Because* of the new connectivity, those who are not molded by the world wide web and its value system will be marginalized. Individuals whose religious concepts do not mesh will become the new targets for attack.

Old persecution was state-driven. New intolerance is collective rejection by linked individuals based on a new global identity of humanity. Those who do not fit are rapidly excluded.

I term this “collective individualism”—an agreed personal



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decision by many that still works like a mob, but is based on appeal to individual values. As a consequence, governments will be forced to act against religious minorities, not out of concern for their own concepts of religion and state, but because of the accumulated wishes of the majority.

## **(2) The role of faith**

In a world experiencing change at an exponential level, religious beliefs will have increased value. They provide confidence and stability in a chaotic global society. Instead of becoming less religious, the new millennium will experience increased religiosity.

This religious expression, however, will not be in the manner of the traditional and institutionalized forms of religion, but through a personalized, individualized blending of “useful” religious components. While mutual toleration will be emphasized, heavy penalties will be imposed on those who refuse to conform.

This in turn impacts both the state’s role and religious freedom. Government will be increasingly intolerant of those who refuse to identify with the generic brand of religiosity—a demand not of state ideology, but rather, “popular public demand.”

One example is the official designation of religious organizations and their classification into “approved” or “unapproved” religions. New laws under discussion in Eastern Europe (and, in some instances, already implemented) demonstrate that the demand comes from religious majorities who wish to impose their societal control on the nation state. Even in Western Europe the official governmental disapproval of certain religions, under the guise of identifying dangerous sects, shows how religious discrimination can easily become a reality in historically liberal and pluralistic nations. Add religious fundamentalism to this mix and the prospects for a religiously tolerant new millennium are increasingly bleak.

## **(3) The five freedoms**

Humanity has always struggled with five basic freedoms: The freedom to be. The freedom to do. The freedom to know. The freedom to go. The freedom to believe and to act on belief.

In the new millennium some of these freedoms will be greatly developed. But this does not automatically mean freedom across the board.

The freedom to know, for example, becomes almost limitless with the accessibility, all over the planet, of knowledge, information, and news. For religious liberty, freedom of communication



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has meant that local intolerance quickly and easily becomes a world issue. Absent easy communication, governments could—and often did—do what they liked without fear of any outside reaction. The rest of the world simply did not know. Now and in the future, that possibility becomes increasingly remote. Human rights groups are able to share the information so widely, using the new media of communication, that any abuses can be readily publicized. And as these technologies progress, any state's ability to control information flow will be greatly restricted. The freedom to know generally improves the prospect for religious toleration. But even if everybody knows, what does it matter if nobody cares?

The freedom to go is also much enhanced in a global society. Again, the state's role diminishes as borders are removed and travel opportunities are enhanced. In the new millennium, the freedom to go will advance globalization—which usually translates to increased toleration. But what happens when there is no place to go to? At least the Mayflower's pilgrim fathers had a New World to go to when persecution became intolerable back home. As globalization becomes a reality, so do the accepted norms and values. Those choosing not to accept these norms and values will increasingly find they have no place to run to.

With the new millennium comes wider opportunities to be and to do. The traditional role models decline, employment concepts change. Who you are and what you do are open to an increased ability to choose. And yet, in all of this the freedom to be and to do remain under the control of what others are prepared to tolerate. Again, the state in the future is not so much an autocratic control machine, but an expression of the will of the majority of individuals.

This will be most reflected in the freedom to believe and how the freedom to believe impacts the majority. If your beliefs have minimal impact on society, then you will be tolerated but not accepted. If, however, the implications and impacts of your beliefs are strongly rejected by the majority, the power of the state (read, the combined desire of the agreed majority) will be invoked against you. And as religious organizations become more individualized themselves, expect the results of such intolerance of "unapproved religions" to be even more severe.

#### **(4) The future of religion in the global state**

Ever-widening globalization results in an apparent paradox. Increasing religiosity accompanies decreasing tolerance. For the ultimate question is not what people are permitted to believe, but



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to what extent they are allowed to put their beliefs into practice.

With a more uniform society worldwide in which local governments are less important than the concept of “global humanity,” the ideal of toleration may well be presented as a glowing tribute to progress, but its implementation will be strictly limited: “You can believe anything you want as long as your beliefs do not impact others.”

The idea of society tolerating and granting exclusions has been a positive factor in pluralistic societies. As the world becomes more and more connected, and as many freedoms increase, the irony is that the more similar we all become, the less likely we will be to tolerate those who are different. Consider religion. The common value system of a connected world will work against those with strongly held convictions. Discrimination in the future will not be a matter of mutual religious intolerance, but rather a pragmatic approach that says “Society cannot afford to tolerate such individuals.”

Thus the lynching of the Seventh-day Adventists in Dagestan shows that “being different” in the new millennium brings its own penalties. While the new world order says it values pluralism, this tragic event demonstrates the urge to merge into a common society with a common value system.

We may accept as intriguing different cuisines and different languages. But different religions, strongly believed and practiced, are a threat to a society based on common assumptions. And the more the world moves towards a global perspective, the less it will be able to accept those who see things differently. How ironic that as personal freedoms increase around the world and religiosity is on the rise, the forces that propel us together will be the same forces that discriminate and bring intolerance. Any strange bee in the hive of workers will be quickly stung to death in the millennial hive of global human unity.

### **(5) Millennial conclusions**

A half dozen ideas occur:

- \* Wider individual freedoms may well result in greater intolerance and eventual denial of freedom to those individuals who choose to exercise their religious freedom.

- \* The rise of globalism that, on the surface, should usher in a new golden age, has the inherent capacity to restrict the freedom of religious expression.

- \* Religious minorities may well have more to fear from a unified world that is supposedly more free than the world today.

- \* Faith concepts will be tolerated as they aid individuals and



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resisted as they impact social, political, and ethical paradigms.

\* Religion will be endorsed as an internal concept. Any resulting impacts the state (read, society ) views negatively will be summarily rejected. No exclusions!

\* New intolerance will be based on the fear that people of faith are perceived as a threat to the new golden age.

“What is freedom?” wondered Archibald MacLeish, and then went on to answer the question himself:

“Freedom is the right to choose: the right to create for yourself the alternatives of choice. Without the possibility of choice and the exercise of choice a man is not a man, but a member, an instrument, a thing.”

Only as we recognize this elementary truth will there be hope for religious liberty in the new millennium.



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# The First Word and the Last

*Fides et Libertas*' symposium in print has illuminated the meaning of *eleutheria*, the Koine Greek word for freedom and liberty. More than a few of you actually heard some of our panelists present the oral original of their pieces. In Budapest and Rio de Janeiro, they spoke in French and Russian, in Portuguese and Spanish, but they are published here in an English we hope retains at least a little of the authors' inflectional flavor which made heavy subjects easy, dense discussions clear and light.

Let each presenter/writer now reprise a salient thought about *eleutheria*.

John Graz, Secretary General, International Religious Liberty Association:

"Fifty years [after the UDHR] the world is better. And worse. Consider the status of religious freedom. The present must be revived by the message of tolerance from those who wrote and voted the Universal Declaration."

Carlos Saul Menem, President of the Republic of Argentina:

"A pluralistic society cannot and should not be indifferent to religious and moral values. Without these values the human being is at sea and loses the meaning of his or her existence, ending up a prisoner of self. I underline the importance of peoples and governments to assume with renewed conviction the defense and promotion of religious liberty as essential to the dignity of the human person and for peace in the world on the verge of a new millennium."

Iris Rezende, Senator and former Minister of Justice, Republic of Brazil:

"To put limits on religion and to impede the proclamation of faith, yoking it to the power of the state—these discriminatory acts nullify all other liberties. Sad to say, religious leaders arise from time to time who practice moral injustices that are part of their system. Public power is thus constrained to take a position because of the infringement of irrevocable constitutional principles."

Dwain C. Epps, Coordinator, Commission of the Churches on International Affairs of the World Council of Churches:

"The responsibility for the protection of religious freedom is a shared obligation between church and state, among the churches themselves, between the individual and his or her church, among Christians and people of other faiths, among ethnic and linguistic groups, among majorities and minorities, and among nations and states."

Gloria M. Moran Garcia, Professor, University of La Coruna:  
"Religious liberty is a right *ergo omnes*. It is a right not only



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inherent in the state, but also in the person.”

Abdelfattah Amor, Special Rapporteur on Religious Intolerance, United Nations Human Rights Commission:

“All forms of intolerance and discrimination are born in the minds of people. It is, therefore, at this level that any primary action must take place. I will never tire of repeating that it is of primordial importance to develop education for the rights of man, for liberty, and tolerance.

Jacques Robert, Member of the French Constitutional Council:

“Without doubt there are different interpretations of the concept of public order. But let us not confuse public order and social order with moral order and religious order.”

W. Cole Durham, Jr., Professor, Brigham Young University:

“Too often secular blindness combined with bureaucratic insensitivity cripples the ability of religious groups to provide the kinds of contributions contemporary society needs them to make.”

Gianfranco Rossi, UN Representative of the International Association for Religious Freedom:

“Because of political affinities, economic interests, or other reasons, the [UN] member states tend to be selective in their interventions for religious freedom. They speak about some countries; they do not speak about certain other countries. The NGOs will address matters to UN agencies when the governmental delegations keep silence. The duty of non-governmental organizations is not to speak *against* nations and governments, but *for* human rights and *for* religious freedom in the countries where human rights and religious freedom are violated. Experience has taught me that determination and perseverance are required to change the status quo.”

Lee Boothby, President, International Commission on Freedom of Conscience:

“Claiming to provide equal rights to all religious groups, [many countries] adopt legislation that denies that very principle. I remember a time in the United States when some American citizens, on the basis of the color of their skin, were required to ride in the back of the bus. Presently—and unfortunately, it appears some countries have concluded that not only some religions ride in the back of the ‘bus,’ but in fact have no right to get on the ‘bus’ at all.”

Roland M. Minnerath, Professor, University of Strasbourg:

“Everyone will understand the difference between the legal equality due to all groups, including minorities, and the sociological importance and impact of those religious communities which express the sentiments of large parts of the population.

Accordingly, there is no need to object when a religious commu-



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nity, because of its continuing link with the identity and history of the nation, receives special recognition by the state, as do the established churches of England, Greece, Romania, Russia, and Scandinavia, or indeed the states where Islam is a state religion. But in these cases it must be clearly provided in accordance with international norms, that all other religious communities enjoy full freedom to exist and develop under the protection of the law.”

Gunnar Staalsett, Bishop of Oslo:

“On the horizon there are signs of a new emphasis on religious freedom as both a political and a moral-human rights issue. But strong currents work against such an emphasis. Privatization of belief does not inspire strong engagement in the arena of religious freedom. Secularization leads to an indifferent attitude toward all religious issues. A shift from religion to religiosity may mean that organized religion evaporates into a mist of spirituality in stark contradiction to the basic understanding of religion as community life. A virtual declaration of religion as a non-virtual reality to the modern human of cyberspace is more difficult to contend with than the antagonism of warring religions and competing confessions of yesterday. And the heralded ‘longing for religion’ as a characteristic of this generation is not necessarily to be interpreted as a longing for true religious freedom for all.”

Rosa Maria Martinez de Codes, Vice Director of Religious Affairs, Spanish Ministry of Justice:

“The Spanish Constitution of 1978 substantially changed previous policy concerning religion. Thus, from a traditionally religious state has evolved a pluralistic, non-confessional state.”

Valery Borshev, Member of the Russian State Duma:

“We remember that the first violation of human rights was committed on a religious basis. One person did not like how another person established his relationship with God. So he killed him. The killer was Cain and the victim was his brother Abel. All who choose Cain’s way choose destruction. We must therefore promote dialogue to maintain religious pluralism. This dialogue should be initiated not only by representatives of government, parliamentary deputies, or defenders of human rights, but also by believers themselves. If believers act decisively to achieve religious pluralism, it will be achieved. We have a great mission. We should be worthy of it.”

Bao Jia-Yuan, Associate General Secretary, China Christian Council:

“It is generally accepted that social pluralism means a society that is more tolerant, that has more space for the exercise of religious liberty. China is led by a political party that is avowedly



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atheistic, and thus theoretically it should not have any love for religion. But as it is now, the party is not so dogmatic as to work for the extermination of religion. Rather it works with religion for the well-being of the people.”

Carol O. Negus, Founding Executive Director, Council for America’s First Freedom:

“Religious bigotry has an inevitable evil consequence on religion itself. Young people growing up in such an environment—in the atmosphere of forced religious practice, come to recognize its hypocrisy. Monolithic religious systems may employ governmental power in an effort to compel allegiance and obedience to orthodoxy. But a union of government and religion cannot compel the assent of mind and heart. A dry secularism, devoid of mystery and passion, cannot breathe life into a nation’s values. Our religious consciousness, with its universal sympathy for the afflicted and its reverence for God’s creation, has within it the power to lift up the fallen and bring harmony amid diversity.”

Jonathan Gallagher, Director, Adventist News Network:

“Ever-widening globalization [in the new millennium] results in an apparent paradox. Increasing religiosity accompanies decreasing tolerance. For the question is not what people are permitted to believe, but to what extent they are allowed to put their beliefs into practice. With a more uniform society worldwide in which local governments are less important than the concept of ‘global humanity,’ the ideal of toleration may be presented as a glowing tribute to progress, but its implementation will be strictly limited: ‘You can believe anything you want as long as your beliefs do not impact others.’”

And what shall we more say? Much more, of course, for these who have spoken here do not claim the last word. If the International Religious Liberty Association is to continue to contribute to the global colloquium on religious liberty, *Fides et Libertas* must hear from you. In 1999 we want to deal with the various aspects of proselytism and religious liberty. We invite you to nominate significant speeches you have heard and articles you have read. And we specifically solicit your original contributions to be considered for publication.

We close with a prayer of St. Paul from his second epistle to the church in Corinth (3:17)—a prayer appropriate to every religious tradition in our pluralistic world because it is a prayer for *eleutheria*:

*Now the Lord is the Spirit, and where the Spirit of the Lord is, there is freedom.*

The first word is *fides*. The last is *libertas*.

Richard Lee Fenn



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