CHAPTER 1

Freedom of Religion and Religious Pluralism: An Introduction

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1 Introduction

Freedom of religion is one of the most important rights in the catalogues of fundamental rights and freedoms that have been expressed throughout history. Authors such as Georg Jellinek (1851–1911) and Francesco Ruffini (1863–1934) have demonstrated how the idea of religious freedom was closely linked to the development of the democratic state under the rule of law, as it eventually materialised in the modern state.

In Die Erklärung der Menschen- und Bürgerrechte1 (1895), Jellinek stated that the French Declaration of the Rights of Man and of Citizens, as enacted by the National Constituent Assembly on August 26, 1789, was based not on Jean-Jacques Rousseau’s Du Contract Social as was commonly held, but rather on the bills of rights of American states after the Declaration of Independence of 1776. Jellinek’s ideas later returned in his Allgemeine Staatslehre (1900).2 In particular his thesis that the rights declarations originated in the great conflicts over religion was much discussed. Another influential work, Religious Liberty,3 by the Italian theorist Francesco Ruffini, illustrates the importance of freedom of religion to the development of the Western state.

The freedom of religion initially found expression in the human rights declarations which were proclaimed since the Enlightenment and in the various codifications of higher law in the constitutions of national states since the 18th and 19th centuries.

Despite the fact that the tradition of natural law goes back to antiquity, and declarations of fundamental rights were presented throughout the ages,\(^4\) it took until 1948 for human rights to be recognised at the global level. The most important worldwide text concerning the freedom of religion came about in the post-war period: the Universal Declaration of Human Rights (UDHR), as proclaimed by the United Nations. This declaration was prepared by two other documents. Prepared, not in the sense that these authors were directly involved in drafting the Universal Declaration, but their initiatives influenced the plan to create a universal declaration of human rights. We refer, first of all, to an initiative of the British writer and historian H.G. Wells, *The Rights of Man* (1940).\(^5\)

What were the aims of Wells? On the eve of the second world war, Wells formulated a list of human rights as ‘war aims’, which were instrumental in creating the Universal Declaration and, two years later, the European Convention of Human Rights (ECHR).

A second initiative that should be mentioned in preparation for the UDHR, is the statement by U.S. President Franklin Delano Roosevelt that came to be known as ‘The Four Freedoms speech’ (1941).\(^6\)

In both documents, the underlying idea was that when citizens are expected to put their lives at risk in a devastating war, the state must be able to express the values it stands for. Those values were labelled the ‘rights of man’ that distinguish a free democratic society from the dictatorship one was fighting. Initially, this dictatorship was that of Nazi Germany, and from the 1950s on the Soviet Union, which, under the influence of Marxism-Leninism, had an entirely different approach to human rights than Western Europe and the United States of America.

In Art. 18 of the UDHR, the freedom of religion is phrased as follows:

> 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.

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At least three important dimensions of the freedom of religion can be deduced from this provision. First, the freedom to have a religion is proclaimed as a universal right, together with the other rights in the Declaration. This freedom to have a religion includes the freedom to change your religion or belief. The freedom of religion belongs not to a happy few, not to members of some nation states, not to inhabitants of a certain jurisdiction, but to ‘everyone’, wherever, whenever. Second, the (universal) freedom of religion may be experienced by believer(s), in a public context; the freedom to manifest a religion. One may experience one’s religious freedom together with others; by prayer, by following religious rituals, by learning and teaching. In short, everyone must be allowed to express religious convictions in public settings. A third dimension of religious freedom is a typical 20th century achievement. That is to say, it would take until the 20th century before this important aspect of the freedom of religion was noticed. As said, in the first sentence, after the semicolon, it is proclaimed: ‘this right includes the freedom to change his religion or belief’.

This right to change religion or belief is an important asset. The reason is obvious: the right to have an opinion is hardly worth mentioning, if it does not include the right to change one’s opinion. The same applies to religious opinion: the right to have a religion necessarily implies the right to change one’s religious belief or life stance. At the time of the UDHR, the United Nations were aware that freedom of religion can only genuinely be experienced when this includes the freedom to adopt a different faith or even to distance oneself from a particular religion. And, one may assume, it also implies the freedom to renounce all religions. Interpreted this way, the ‘right to apostasy’ (as it is commonly labelled) is protected by the very same fundamental right to freedom of religion.

At the regional level, the freedom of religion was subsequently adopted in the ECHR (1950), a common human rights treaty for the Member States of the Council of Europe. The text of the freedom of thought, conscience and religion in the Convention is largely similar to that in the UDHR, including the right to change one’s religion. Even though in legal scholarship the latter

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8 Per September 2022, the Russian Federation is no longer Member State to the ECHR: Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5a5a51 The Council of Europe now includes 46 Member States.
9 Article 9 ECHR: 1. ‘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 worship, teaching, practice and observance.’
right received scant attention, from the very beginning the European Court of Human Rights (ECtHR) made it clear that the importance of the freedom of religion transcends only the interests of religious believers.

In a classic judgment about Article 9 ECHR, the case of *Kokkinakis v. Greece*, the Court expressed a number of values that are intimately connected to the freedom of thought, conscience and religion in a democratic society – a society which presupposes the existence of pluralism. Freedom of religion is not only pertinent to religious believers, the Court says in this case, but its importance goes way further:

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

In this one (part of a) paragraph, the Court expresses the extensive meaning of the freedom of religion. It indicates that the freedom of religion is (self-evidently) a critical right for the individual religious believer. Moreover, the Court underlines that Article 9 also offers protection to those who are not adherents to a religion, to those who are critical of religions, to those who outright reject the theist religions, and to those who are indifferent towards religious belief. This diversity of religious and non-religious beliefs and life stances is what makes up the pluralism of a democratic society: you have the right to worship; you have the right to doubt and you have the right to reject religion. Those are the requirements of a pluralistic democratic society.

Yet in 2020, at the global level, the General Assembly of the United Nations expressed its concerns about the limited progress that has been made in the elimination of intolerance and discrimination based on religion or belief. In

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10 With the exception of B.M. van Schaik’s thesis, see: Schaik, “Defaming the Freedom of Religion or Belief”.
12 The cited paragraph is a statement rather than an explanation and the Court itself does not clarify why it interprets Article 9 the way it does. All the same, as was pointed out above, there is a clear basis for this interpretation in text of the provision, which is largely similar to its counterpart in the UDHR.
a resolution on this freedom, the extensive interpretation by the European Court is being reiterated. In this document, the General Assembly:

1. Stresses that everyone has the right to freedom of thought, conscience and religion or belief, which includes the freedom to have or not to have, or to adopt, a religion or belief of one's own choice and the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in teaching, practice, worship and observance, including the right to change one's religion or belief (...)13

It is stating the obvious when we observe that the freedom of thought, conscience and religion in today's societies will continue to raise critical questions. Some of these questions and how to deal with this preeminent right in various pluralist societies are addressed in the present volume.

2 The Content of This Book

The first part of the book concerns ‘Religious freedom from the perspective of religions.’ Three religions and their approach to religious freedom and pluralism receive special attention: Hinduism, Islam, and Christianity. In her chapter, Neelima Shukla-Bhatt discusses the ability of bhakti to encourage intra and interreligious harmony. In ‘Bhakti and its Songs: Hindu Devotion as a Gateway to Religious Harmony’, Shukla-Bhatt mentions that bhakti, which means ‘devotion’, is a vital Hindu practice. She argues that in the medieval period, the initial individual spiritual discipline of bhakti slowly became highly participatory, its innate inclusiveness expanded, and it was expressed in the songs of regional saint-poets. In this form, bhakti highlighted the marginalised voices of Hindu society, creating the means to integrate the distinct traditions in their setting. These intersections enabled the development of a common cultural heritage to continue bringing intense moments of harmony for several South Asians. Many people, including Gandhi, have integrated these songs that have inspirational messages on equality, love, and inclusiveness into contemporary social reconstruction and peace-building processes. The ability of bhakti to encourage intra and interreligious harmony has not been fully understood. Shukla-Bhatt argues that bhakti was never a singular social resistance, nor a religious movement. However, it kept shifting through various regions,

13 Resolution adopted by the General Assembly on 16 December 2020, 75/188, N2037353. pdf (un.org)
religious communities, and media in its musical form, and touched the hearts of numerous individuals who indulged in interreligious exchanges throughout the centuries.

Despite being contemporary concepts, religious pluralism and freedom can be examined from varied perspectives; for example, those that concentrate on theological and ethical ideas presented in the Qurʾan and the interpretations derived from commentaries. Thus, Muhamad Ali states in his chapter 'Religious Pluralism and Freedom in Islam'. In evaluating contemporary ideas of religious freedom and pluralism in Islam, Ali claims we should review Qurʾanic passages that mention Islam and Muslims along with religions and communities, and which refer to ethical doctrines explained by various Muslim scholars from the earliest period of Islam to today. Muslim scholars mostly refer to Qurʾanic terms about belief, disbelief, Muslims and people of the book, in formulating the identity of Islam and non-Muslims, in their attitudes and beliefs regarding the fate of non-Muslims. Ali further asserts that the diversity of views and opinions among Muslim scholars indicate that the Qurʾan alone does not create a single view on the salvation of the other. Rather, there is a diversity of ethics. The multi-dimensionality in the views and attitudes of Muslims regarding other religions resides in this variety of norms.

The Christian views on religious diversity are being discussed in the next chapter. S. Mark Heim asserts in 'Religious Pluralism, Religious Freedom, and Christianity' that a universal formulation is required for religious freedom in today's globally interlinked world, where no majority religion prevails. Chronological in nature, this chapter examines the burgeoning elements that have shaped Christian views on religious diversity. As part of a religiously pluralistic empire in the formative early centuries, Christians were a frequently persecuted minority; consequently, religious freedom was needed for survival. There was an evident institutional separation between the church and state in western Christianity in the Middle Ages, while modes of adaptation were identified under the governance of non-Christian powers by churches in Central, South and East Asia, and in Africa. The Reformation and break-up of the church in the West in the early modern period brought about confessional wars and, ultimately, political and philosophical justifications for religious toleration. The modern global mission movement thus strives to eradicate religious diversity. Re-evaluating theological interpretations of those religions has recently created a closer link between religious diversity and the core practice and views of Christianity. Heim argues that by integrating more recent theological approval for the specific content of each religion in its own right, all these features may be included within the fundamental practice of Christianity.
Part 2 on ‘Concepts and Dimensions in Religious Freedom and Religious Pluralism’, opens with Göran Gunner’s chapter on religious freedom as a Human Right. In his contribution, Gunner presents an overview of the different treaties, comments by the Human Rights Committee and case-law by international courts on the freedom of religion and belief, showcasing the many aspects of this freedom. In Gunner’s view, there is agreement about the first four aspects: internal freedom, external freedom, protection from coercion and protection from discrimination. In the chapter ‘Religious Freedom as a Human Right’, Gunner asserts that believers typically wish to come together and unite in faith communities, congregations, etc. Premises like mosques, houses of prayers, temples, churches, and synagogues were built to support this need. But human rights do not protect a religion, belief, or religious community; rather, they establish the right to endorse and express beliefs. Thus, freedom of religion or belief safeguards believers, not the beliefs. Gunner believes the right is individual, but the protection is provided to them ‘either on their own or together with their community’. Various states have presented distinct requirements to legally acknowledge a religious organization. However, the individual’s freedom of religion should not be determined by whether a group has acquired legal status. Yet an overlap exists between freedom of religion or belief and other rights, such as freedoms of movement, freedoms of expression, etc. According to Gunner, this may generate controversies regarding how to link the various rights. He also asserts that a key challenge for freedom of religion or belief emerges from established religions that consider their culture, religious practice and tradition to be critical, even when they oppose religious freedom presented through human rights.

In their chapter ‘Pluralism, Pastafarianism and the Scope of the Freedom of Religion’, Paul Cliteur and Carla Zoethout claim that Article 18 of the UDHR and Article 9 of the ECHR offer freedom of religion to individuals, along with the freedom to change their religion. Pastafarianism considers itself a new religion. Dutch authorities rejected this claim, accepted by the ECtHR, on the basis that pastafarianism lacked the four attributes of religion: namely, ‘cogency, seriousness, cohesion, and importance’. It is also not recognised as a religion by the ECtHR due to its satirical nature. However, Cliteur and Zoethout assert that this is incorrect because the ECHR does not define religion comprehensively and is not specifically intended to safeguard officially recognised religions. Moreover, in De Wilde v. the Netherlands, the apostasy clause (that is part of Article 9 ECHR) did not get the attention it deserved. Cliteur and Zoethout assert that the Dutch authorities restricted themselves to the question of whether pastafarianism can be considered a serious religion, when they
should have questioned whether it can be considered a serious repudiation of religion.

In Part 3 on ‘Issues in Religious Freedom and Religious Pluralism’, both a diversity of viewpoints, of countries and of issues are being discussed. In her chapter, ‘The Turn to Belief and How the Discourse of Religious Freedom Marginalises Minority Religions in Australia’, Elenie Poulos analyses key public statements made by religious leaders, politicians, and media analysts on religious freedom. She concludes that ‘religion’ in Australian public debate refers to ‘belief’ and represents few religiously framed perspectives on ‘morality’ issues. Consequently, the public discussion in Australia regarding religious freedom steers away from controversial issues like displaying religious symbols, creating places of worship, freedom to gather, and the freedom to wear religious clothes. Rather, it concentrates on how much permission the state has given to allow religious organisations to act on declarations regarding moral issues. Poulos asserts that in the modern public discourse on religious freedom, the focus is not on the prejudice and discrimination faced by individuals from minority religions but on the expression of a few traditional/conservative Christian beliefs regarding sexuality, gender, euthanasia, and marriage and abortion that every religious tradition challenges. Poulos referred to Fisher who claimed that safeguarding this type of religious freedom will ensure that in Australian society, the church-state relationship continues to be privileged. She asserts that shifting to belief in the discussion on religious freedom has helped propagate Christian privilege in the public domain, despite the shortcomings of religious freedom legislation.

A similar development can be observed in the US, as appears in ‘The U.S. Supreme Court’s New Religious Discrimination Doctrine and the Privileging of “Majoritarian” Religions’. In this chapter, Frank S. Ravitch asserts that under the Free Exercise Clause of the First Amendment to the United States Constitution, the United States has expanded what it deems as discrimination. This was because socially conservative Christians frequently claimed they were victims of discrimination, therefore it benefitted the wider Christian groups. According to Ravitch, certain examples are palpable, like not giving a stay of execution for a Muslim prisoner in Alabama as an Iman was not permitted to attend the execution, even though Christian ministers were permitted inside the execution chamber. Other instances are more subtle, like extending the concept of discrimination under the Free Exercise Clause to make states incorporate religious schools into funding mechanisms that could easily involve vouchers. This can adversely affect religious minorities and non-believers who are frequently unable to benefit from school vouchers as vouchers and other private school aid programs typically benefit more subsidised, mainly Catholic religious schools that charge less fees. This chapter shows how the doctrine
shifts from an approach curtailing intentional discrimination usually aimed at religious minorities to one that does not involve a similar intent to discriminate, and which is more advantageous for dominant Christian groups.

A much-disputed topic in contemporary pluralist societies is the ‘Protection against religious hatred’. What does this actually mean in theory and in practice? In their chapter with the same title, Luca Farrow and Paul Hedges state that this protection can either be comprehended narrowly as legally regulating expressions of religious hatred that forbid speech provoking discrimination, violence or hostility; or broadly as involving extensive practices that safeguard against religiously hateful attitudes and also the expression of such attitudes. Their focus is mainly on the narrow understanding. This chapter discusses different definitions of religious hatred, stressing international legal, or quasi-legal, rights to religious freedom and safeguarding against religious hatred. It then argues that these international measures are often of limited efficiency as it mostly depends on the way they are integrated, or not, into national legal frameworks. According to Farrow and Hedges, even though there are international laws that offer security against religious hatred, these protections are not as strong as they appear to be. This is because not all nation states have adopted international legal and quasi-legal protections against hate speech, and in those states that have, individuals may not be able to domestically use their rights. In addition, these protections against religious hatred are interpreted differently in different jurisdictions, depending on the priority awarded to the protection of freedom of speech.

In his chapter ‘Church Autonomy in the United States’, Christopher C. Lund evaluates the concept of religious group autonomy (‘church autonomy’) by examining its development in American law. Being an American lawyer and academician, he is only modestly familiar with the European system. However, church autonomy is clearly a highly robust and complex concept in America. This is not surprising as America is an extremely religious as well as highly litigious society; therefore, it offers several instances for reviewing the concept of church autonomy and its rationales, scope, shortcomings, and limitations. Lund asserts that the perspective of religious group voluntarism can be applied to all of the United States Supreme Court’s church autonomy cases. Recently, cases have exhibited the ‘ministerial exception’ – the idea that churches are immune from employment discrimination claims made by their ministers. In these cases, the minister makes an assertion of right, but this threatens religious group voluntarism. According to Lund, there have been limited cases for the United States Supreme Court to extensively review the idea of church autonomy. However, the few disputes in the lower courts demonstrate that church autonomy is an extraordinarily powerful idea with broad application. Lastly, Lund asserts that being a comparatively new concept, church autonomy
is highly uncertain. Yet it is firmly rooted in American history and should therefore be evaluated more extensively.

What is the role of religiously expressive business corporations in society? In his chapter ‘Religious Freedom and the Business Corporation’, Ronald J. Colombo discusses this phenomenon. He asserts that the ‘religiously expressive business corporation’, which represents for-profit companies that have a pronounced religious identity and align their activities accordingly, is controversial. This is because it tries to combine (1) the perpetually challenging issue of creating a balance between the individual’s right to religious freedom in a society presumably based on ordered liberty; and (2) the business organisation’s role, rights and responsibilities. According to Colombo, the controversy has increased the gap between American citizens who adhere to conventional religious views and those with more secularised views consistent with the majority of the contemporary West. Thus, regulation is becoming more reflective of progressive, secularised perspectives on ‘social issues’. A conflict of rights exists when a business corporation asserts its religious liberty interests against adherence to the rights and protections provided by legislation to customers and employees. Colombo argues that religiously expressive corporations have focused on conventional understandings of religion that are inconsistent with contemporary progressive values. This is why their existence, active involvement in society, and proclamation of religious liberty rights against those who would benefit from progressive legislative measures, are disputed and considered with suspicion in the media and the academy.

Andrew Hambler states in his chapter ‘Legal approaches to the individual manifestation of religion in the workplace: a study of England and Wales’ that religious views at work are typically exhibited through: 1) certain dress requirements; 2) requests to take time off for religious duties; 3) requesting exemptions for particular tasks due to conscientious objections; and 4) giving religious speeches. Hambler examines the issues experienced with different forms of religious manifestation in terms of possible hostility from employers and the reaction of courts and tribunals. Hambler believes courts have positively shifted towards particular kinds of manifestations. For example, regarding prohibitions on religious dress and grooming, courts are not persuaded by employers’ justifications. Regarding taking time off for fulfilling religious duties, courts afford less importance to religious obligation than to employer inconvenience. Courts have given less support to conscientious objections to work-related activities and generally supported employer restrictions on proselytism and religious speech. Thus, despite positive efforts in certain areas, the approach presently adopted by courts and tribunals shifts further away from accepting employer restrictions. This may occur because courts still view
religious practices as having an element of ‘choice’, which means employees can exhibit self-restraint. However, a few individuals have no choice; religious manifestation is an obligation and hence non-negotiable.

The relationship between freedom of expression and religious sensibilities has been delicate ever since the adoption of the ECHR. In the chapter entitled ‘Walking on a high wire – The European Court of Human Rights and the challenge of balancing the rights of freedom of expression and the protection of religion/belief under the ECHR’, Peter Cumper and Tom Lewis discuss some of the reasons why disagreements have increased. These include: prohibiting certain religious groups from restricting their religion to the private domain, transforming Europe into a multi-faith continent, and the close relationship between state and religious institutions, where abusing such institutions amounts to ‘blasphemy’. The authors discuss the case law of the ECtHR, stressing major cases that have been identified by this primary human rights court. Creating a balance between the rights of those seeking to denigrate religion/belief and those opposing such disapproving attacks is intimidating, and requires judges to possess the metaphorical skills of a high-wire walker. The ECtHR now has a vital role to perform in providing directives on the parameters of the right to freedom of expression, where the feelings of religious followers have been offended. Cumper and Lewis state that distinct responses are incited in the way ECtHR should deal with the metaphorical wire. For some, the ECtHR, mindful of extremely emotive attacks on religious sentiments, is inclined to safeguard religious freedom. Others favor a more robust free speech/public interest approach, where the ECtHR exhibits higher confidence in walking the ‘wire’. Cumper and Lewis prefer the latter.

In his chapter ‘Liberalism, Religious Pluralism, and the Environment’, Paul Babie examines religious views on making a choice with respect to goods and resources involved in private property. He examines the concepts of community and obligation prevalent in the three monotheistic cultures of Judaism, Christianity and Islam, and two polytheistic faiths, i.e., Buddhism and Hinduism. The relationship between the global community and global environment is demonstrated here. When we are not aware of private property, the relationship between human activities and environmental outcomes remain hidden under the liberal pretense of freedom and choice. Climate change presents an excellent example of the relationship produced through individuals choices, as it involves ‘physical-spatial’ and ‘temporal’ elements. The former includes the immediate implications of climate change while the latter pertains to future generations who must face the consequences of current choices. According to Babie, in contrast to the liberal theory that stresses the individual, Christian theology distinguishes the ‘person’ from the ‘individual’.
In this view, the liberal *individual* is only concerned about oneself, whereas the *person* is relational and hence also concerned about others. Babie asserts that like liberalism, Islam considers property a combination of rights. Islam identifies any choice to use a thing should be made in the context of unity and community. Jewish tradition considers obligation an issue of justice that the individual owes to the community.

3 Conclusion

The chapters in *Freedom of Religion and Religious Pluralism*, range from Hinduism to Islam, and their approaches to other religious and non-religious beliefs; from topics related to the current Australian debate on ‘religious belief’, to the case-law of the ECTHR on freedom of expression and freedom of religion. The chapters bear witness to the crucial role played by the freedom of religion (including the freedom to denounce religion) in contemporary societies all over the world. We hope this volume may contribute to recognising that freedom of religion in a pluralistic democratic society is demanding. It requires (of course) toleration of a great variety of religious beliefs, and of non-religious beliefs, but it also requires toleration of criticism of religion and of (non-)religious beliefs. That is a major challenge for pluralist societies all over the world.

Bibliography

**Books**


**Book Chapter**


**Thesis**

**Resolution**

**Case**

**Legal Instruments**