Between “Essential Services” and Culpable Homicide

State Responses to Religious Organizations and the Spread of the Novel Coronavirus in 2020

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Abstract

On March 11, 2020, the World Health Organization declared COVID-19—the disease caused by the novel coronavirus—a global pandemic. As this coronavirus spread throughout the world, most countries implemented restrictions on public gatherings that greatly limited religious communities’ ability to engage in collective worship. Some religious leaders objected to these regulations, opining that faith would spare their congregants from illness or that their religious freedom is paramount to public health. Meanwhile, growing numbers of COVID-19 infections were being traced back to religious leaders or gatherings.

This article explores how governments have balanced freedom of worship and public health during the 2020 pandemic. Through the comparison of controversies in South Korea, India, Brazil and the United States, it highlights the paradoxes in debates about whether to hold religious communities accountable for the spread of this highly contagious and deadly disease.

Keywords

coronavirus – Brazil – South Korea – India – United States – religious freedom – essential services

1 Introduction

In mid-March 2020, Rome-based Catholic priest, Richard Onyango Oduor, flew home to Kenya for a family member's burial. Between March 11 and 20, Oduor traveled throughout Kenya on public buses and planes, and "celebrated several Masses."¹ He also gave the Eucharist to attendees at his relative's funeral. In late March, Oduor became ill and was hospitalized. He tested positive for COVID-19—the disease caused by the novel coronavirus—which the World Health Organization had declared a pandemic on March 11, 2020 (the first day of Oduor's travels). Kenyan authorities identified and quarantined at least 130 individuals with whom Oduor had been in close contact during his travels, around 60 of whom "reported to the hospital."² These figures suggest that Oduor could have been a primary source in the spread of the coronavirus in Kenya, which as of mid-April, had only 234 diagnosed cases. Because of his failure to self-quarantine following his arrival from Italy (which had recently become the center of the coronavirus outbreak), Kenyan officials arrested Oduor for "negligently spreading an infectious disease" as soon as he was well enough to leave the hospital.³

Oduor's arrest highlights a critical issue that countries worldwide have had to address during the 2020 pandemic. The nature of collective worship often requires religious leaders to physically interact with large numbers of people. Because of travel and gatherings held on the cusp of the global coronavirus outbreak or after its start, many religious communities have become so-called "super-spreaders" of the virus. Individual faith leaders and religious meetings have been linked to the infection of dozens, hundreds, or even thousands of people in a particular region or nation. As a result, countries that guarantee religious freedom have been forced to weigh that right against the threat that religious encounters would further spread the virus. Religious leaders have often resisted public health regulations, arguing that faith would spare their congregants from illness or that their religious freedom was more important than the lives that might be jeopardized by religious gatherings.

This article explores government responses to religion and the spread of the coronavirus in different parts of the world. Through a comparison of several high-profile cases in South Korea, India, Brazil, and the US, it reveals a striking

1 "Priest arrested in Kenya for spreading coronavirus," *Catholic News Agency*, April 17, 2020, <https://www.catholicnewsagency.com/news/priest-arrested-in-kenya-for-spreading-coronavirus-37621>.

2 *Ibid.*

3 Humphrey Malalo, "Kenyan Court Charges Catholic Priest With Spreading Coronavirus," *Reuters*, April 16, 2020.

paradox. While several religious persons or groups who held large gatherings before official lockdowns have been charged with criminal culpability for the spread of the virus, others who have intentionally defied and contested public health regulations have been given latitude to continue their worship with slight repercussions.

2 Case Studies

2.1 South Korea

One of the first religious groups linked to the spread of the novel coronavirus was the Shincheonji Church of Jesus in South Korea. Lee Man-hee founded the Church in 1984; it has since grown to hundreds of thousands of members in several countries.⁴ Although technically a Christian church, the Shincheonji believe that their founder is Jesus reincarnated, "that the world has already ended and that they are now all in the afterlife."⁵⁶ Because of their fringe beliefs, the Shincheonji have often faced persecution in South Korea and are frequently labeled a "cult."

According to the Shincheonji, they took precautionary measures to prevent the spread of the coronavirus in their churches before the first documented infection in South Korea, on January 20. In early January, they told members that anyone who had recently been to China or who had symptoms of a cold could not attend their services.⁷ Despite this policy, a 61-year-old Church member who had had a fever since February 7, attended two services in Daegu on February 9 and February 16, which put her in contact with more than 1,000 people.⁸ On February 18, this Church member, who would later be known as "Patient 31,"⁹ tested positive for COVID-19. The Shincheonji immediately closed

4 David W. Kim & Won-il Bang, "Guwonpa, WMSCOG, and Shincheonji: Three Dynamic Grass-roots Groups in Contemporary Korean Christian NRM History", 10 *Religions* (2019), 6; Raphael Rashid, "Being Called a Cult is One Thing, Being Blamed for an Epidemic is Quite Another," *The New York Times*, March 9, 2020.

5 Kim and Bang, *supra* note 4, 9.

6 Laura Bicker, "Coronavirus: South Korea sect leader to face probe over deaths," *BBC Reel*, March 2, 2020.

7 Shincheonji Church of Jesus, Statement of Shincheonji Church of Jesus Regarding the Novel Coronavirus Disease (COVID-19)," 2020. Retrieved 23 April 2020, <http://enblog.shincheonji.kr/2020/03/0223-statement-of-shincheonji-church-of.html>.

8 Esther Chung & Alannah Hill, "Debriefing: What is the Shincheonji Church of Jesus and who are its members? And more importantly, what are its links to the coronavirus?" *Korea JoongAng Daily*, March 18, 2020.

9 She was known as "Patient 31" because she was the 31st person infected in South Korea.

down their Daegu building to allow for an “epidemiological investigation and disinfection.”¹⁰ However, the damage had already been done. By the following day, ten additional members had tested positive for the virus.

What happened next is a matter of dispute. In their official statement, on February 19, the Shincheonji reported that they had closed all their churches in South Korea, transitioned to online services, and sent notice to members who had been to the Daegu facility that they needed to self-quarantine.¹¹ The government, however, claimed that they invoked their power under the Infectious Disease Control and Prevention Act¹² to forcibly shut down the Church's temples.¹³

In the following weeks, increasing numbers of coronavirus cases were linked to the Shincheonji. On February 23, 309 of the 556 coronavirus patients in South Korea were connected to the Church.¹⁴ A week later, on March 2, 2020, the documented infections in the country had increased more than six-fold to 3,730, about half of which were connected to Shincheonji members.¹⁵ By March 17, infections had more than doubled again to 8320; at least 5016 cases (60%) were connected to the Church.¹⁶

Part of the controversy over the Shincheonji's involvement in the spread of the virus is that after it became known that some parishioners tested positive, the government demanded a list of all Church members to determine who might have been infected at religious gatherings. The government claims that the Shincheonji refused to release their membership lists.¹⁷ The Shincheonji reported that within 24 hours of the confirmation of the infection of Patient 31, they submitted the names of all members of the Daegu Church to city health officials.¹⁸ They admit, however, that they delayed the release of the names of Church members at other facilities.

10 Shincheonji Church of Jesus, “Notice on the Worship Service of Shincheonji Church of Jesus in Regards to COVID-19,” February 18, 2020. Retrieved 23 April 2020, <http://enblog.shincheonji.kr/2020/03/0218-notice-on-worship-service-of.html>.

11 Shincheonji Church of Jesus, “Statement of Shincheonji Church of Jesus Regarding the Novel Coronavirus Disease (COVID-19),” February 19, 2020. Retrieved 23 April 2020, <http://enblog.shincheonji.kr/2020/03/0219-statement-of-shincheonji-church-of.html>.

12 Infectious Disease Control and Prevention Act, Chapter VIII, Article 49(2), Jan 7, 2016. Retrieved 23 April 2020, <http://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=172762&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>.

13 Brian Kim, “Lessons for America: How South Korean Authorities Used Law to Fight the Coronavirus,” *Lawfare*, March 16, 2020.

14 Shincheonji Church of Jesus, *supra* note 11.

15 Bicker, *supra* note 6.

16 Chung & Hill, *supra* note 8.

17 Rashid, *supra* note 4.

18 Shincheonji Church of Jesus, *supra* note 11.

On February 25, the governor and forty public servants went to the Shincheonji's headquarters to obtain a copy of their complete membership list. As they descended on the Church, the governor declared that "this is a state of war."¹⁹ According to the Shincheonji, they submitted a list of all of their affiliates to health authorities over three days, beginning with their more than 245,000 congregants in South Korea on February 25, over 33,000 international members on February 26, and over 65,000 trainees on February 27.²⁰ The Church averred that their initial hesitation to release the list had to do with the fact that several members had been killed by their families in religiously motivated domestic disputes. Therefore, they wanted to keep their members' identities confidential out of concern for their safety. Their hesitance to release the names was exacerbated by growing intolerance against the Shincheonji, as politicians and the media blamed the Church for the spread of the virus.

After the government received the Shincheonji lists, they announced an unprecedented tactic in combatting the novel coronavirus: —they would test all Church members.²¹ While the federal government was tracking and testing the Shincheonji, the city government of Seoul began taking other unusual steps to penalize the Church. On March 1, the mayor asked prosecutors to charge Shincheonji leaders with "causing harm and violating the Infectious Disease and Control Act"²² and with "murder through willful negligence."²³ Less than two weeks later, on March 13, the city of Seoul held a hearing about revoking the Church's corporate license.²⁴ Around the same time, the mayor also began a tax investigation of the Church.²⁵ Finally, in late March, the mayor of Seoul filed a civil lawsuit against the Shincheonji for over 200,000,000 won (approximately \$161,000).²⁶

The Shincheonji have also faced significant private persecution. In late February and early March, more than 1.25 million people signed a petition on

19 Rashid, *supra* note 4.

20 Shincheonji Church of Jesus, "Letter of Appeal from Shincheonji Church of Jesus in Regards to COVID-19," February 28, 2020. Retrieved 23 April 2020 <http://enblog.shincheonji.kr/2020/03/0228-letter-of-appeal-from-shincheonji.html>.

21 Chung & Hill, *supra* note 8.

22 Bicker, *supra* note 6.

23 Rashid, *supra* note 4. These requests do not mean that a case will be pursued but rather that prosecutors will review the case.

24 Elizabeth Shim, "Report: City of Seoul sues church group Shincheonji," *UPI*, March 24, 2020, https://www.upi.com/Top_News/World-News/2020/03/24/Report-City-of-Seoul-sues-church-group-Shincheonji/8911585049255/.

25 *Ibid.*

26 *Ibid.*

Realmeter demanding the dissolution of the Church.²⁷ In South Korea, the government must review any petition that receives more than 200,000 signatures, therefore this petition has potential legal significance for the Shincheonji.²⁸ Furthermore, the Church claims that they have been subjected to a “witch hunt,” and report that eight days after the coronavirus had been first connected to them, one of their members was killed in an act of “religious persecution.”²⁹ On February 28, they averred that since the infection of Patient 31, “some 4,000 cases of injustice against Shincheonji congregants have been reported already, which include notices of termination of employment, workplace bullying, domestic persecution, labeling, and slandering.”³⁰

Some key elements must be noted about South Korea’s handling of the Shincheonji case. First, at the time the Daegu members became infected, there were few documented coronavirus cases outside China. Furthermore, the South Korean government appears to have placed no restrictions on public gatherings (other than perhaps limits on travelers from China) before the diagnosis of Patient 31. After this infection was reported, the Shincheonji swiftly closed their facilities and warned members to self-quarantine. Yet, the government and the public have criticized the Church for spreading the virus, often focusing on the irresponsible behavior of one member (Patient 31) who interacted with others after developing symptoms.

Furthermore, blaming the Shincheonji for turning over delayed and inaccurate membership lists seems to be an anomaly in government responses to religious organizations during the pandemic. Even when dozens of cases have been connected to a single group or gathering, and even when a religious institution has broken quarantine regulations, other governments have rarely even tracked and quarantined members. Although this approach may be partially attributed to South Korea’s emphasis on contact-tracing to curb the virus, it is important to consider that the Shincheonji leaders are facing criminal charges, including homicide, because their members became infected at meetings that preceded a national outbreak, and for purported delays and discrepancies in submitting lists of hundreds of thousands of members. Subsequent cases reveal that few governments have been willing to place this level of blame and culpability on religious communities.

²⁷ Rashid, *supra* note 4; Chung & Hill, *supra* note 8.

²⁸ Paula Hancocks & Yoonjung Seo, “How novel coronavirus spread through the Shincheonji religious group in South Korea,” *CNN*, February 27, 2020.

²⁹ Shincheonji Church of Jesus, *supra* note 20.

³⁰ *Ibid.*

2.2 India

Another religious institution accused of contributing to the spread of the novel coronavirus is the Tablighi Jamaat, a decentralized Muslim missionary organization, with millions of members across the globe.³¹ Between March 13 and 15, more than three thousand members gathered in the Nizamuddin area of New Delhi, at the Tablighi Jamaat Markaz (Center), which contains a mosque and lodging for up to 5,000 people.³² The day after the meeting ended, on March 16, Delhi introduced a ban on gatherings of 50 or more people,³³ but many of the Tablighi Jamaat remained at the Markaz.³⁴ On March 19, one of the group's religious leaders, Maulana Kandhalvi, told followers that they should not be afraid of the coronavirus and that it was "God's punishment."³⁵

A few days later, on March 24, the federal government implemented a nationwide lockdown, which included the suspension of all forms of transportation. Shortly thereafter, New Delhi authorities found over a thousand people still lodging at the Markaz.³⁶ Tablighi Jamaat leaders and delegates explained that those who could travel had left the compound and no new people had been allowed to enter the Center; however, they had continued to shelter members who were stranded because of flight cancellations and other limitations on transportation.³⁷ The Tablighi Jamaat claim that they notified local police about the individuals sheltering at their site and permitted health officials to "inspect the premises."³⁸

Indian authorities strongly disagreed with the Tablighi Jamaat's suggestion that the massive crowds at their facilities were a reasonable complication of rapidly changing public health and travel regulations in India and across the

31 Jeffrey Gettleman, Kai Schultz, & Suhasini Raj, "In India, Coronavirus Fans Religious Hated," *The New York Times*, April 12, 2020; Pew Research Center, "Tablighi Jama'at" September 15, 2010. Retrieved 21 April 2020 <https://www.pewforum.org/2010/09/15/muslim-net-works-and-movements-in-western-europe-tablighi-jamaat/>.

32 Reports of the exact dates of the meeting vary, but most sources indicate that the majority of the event took place between March 8 and 15. Gettleman, Schultz, & Raj, *supra* note 31; "Tablighi Jamaat: The group blamed for new COVID-19 outbreak in India," *BBC News*, April 2, 2020; "Delhi: 2,000 people attended Nizamuddin congregation," *The Times of India*, March 30, 2020.

33 Gettleman, Schultz, & Raj, *supra* note 31.

34 *Ibid.*

35 *Ibid.*

36 *Ibid.*

37 Sanjeev Miglani & Aftab Ahmed, "India charges Muslim leader with culpable homicide for coronavirus surge," *Reuters*, April 16, 2020; "Tablighi Jamaat," *supra* note 32. "India coronavirus: Tablighi Jamaat leader on manslaughter charge over COVID-19," *BBC News*, April 16, 2020.

38 "India coronavirus," *supra* note 37.

globe. On March 31, the city of New Delhi charged Maulana Kandhalvi with “‘deliberately, willfully, negligently and malignantly’ putting the public’s health at risk”³⁹ and defying social distancing regulations. These charges carried a potential penalty of up to six months’ imprisonment and/or a fine of up to 1,000 rupees.⁴⁰

Around this time, on April 3, attendees at the Tablighi Jamaat’s March meeting represented at least 674 of the 2,567 confirmed cases of COVID-19 in India.⁴¹ A few days later, by April 7, India had documented 4,400 infections, about a third of which were connected to the Tablighi Jamaat.⁴² Amidst these rising numbers, the government began tracking Tablighi Jamaat members using their cellphone data, and placed 25,000 people in quarantine for interacting with the group.⁴³ In New Delhi, they closed down the Markaz and “patrolled the area with their fingers on the triggers of assault rifles.”⁴⁴

By mid-April, India’s overall number of COVID-19 cases had risen dramatically to over 12,000.⁴⁵ As infections increased, the federal government explored new ways to penalize the Tablighi Jamaat. By this time, they had “cancelled the tourist visas of 960 foreign Tablighi Jamaat members for violating visa conditions by engaging in missionary activities while in India,”⁴⁶ and had arrested at least 57 foreign nationals who participated in the March meeting for the same visa violations.⁴⁷ The Enforcement Directorate also filed a case of money laundering against Kandhalvi, investigating the origins of the Center’s funds and whether they were properly reported in tax documents.⁴⁸ Finally, on April 16, 2020, new reports surfaced that authorities had charged Kandhalvi with culpable homicide, an offense punishable by up to ten years’ imprisonment.⁴⁹

In addition to the strict government crackdown on the Tablighi Jamaat, political leaders have openly condemned the group, claiming that they were not

39 Gittleman, Schultz, & Raj, *supra* note 31.

40 Akash Bisht & Sadiq Naqvi, “How Tablighi Jamaat event became India’s worst coronavirus vector,” *Aljazeera*, April 7, 2020.

41 Nishita Jha & Pranav Dixit, “A Cluster of Coronavirus Cases Can Be Traced Back to a Single Mosque and Now 200 Million Muslims are Being Vilified,” *BuzzFeed*, April 3, 2020.

42 Bisht & Naqvi, *supra* note 40.

43 Gittleman, Schultz, & Raj, *supra* note 31.

44 *Ibid.*

45 Miglani & Ahmed, *supra* note 37.

46 Amitabh Srivastava, “Bihar: 17 foreign preachers sent to jail for violating visa norms during COVID-19 pandemic,” *India Today*, April 14, 2020.

47 IANS, “57 Foreigners Related to Tablighi Jamaat in Bihar Arrested,” *Kalinga TV*, April 15, 2020 <https://kalingatv.com/nation/57-foreigners-related-to-tablighi-jamaat-in-bihar-arrested/>.

48 Rashmi Rajput, “ED files money laundering case against Tablighi Jamaat chief Maulana Saad, others,” *The Economic Times*, April 17, 2020.

49 Miglani & Ahmed, *supra* note 37.

just negligent in staying at the Markaz after the lockdown but that they intentionally spread the virus as an attack on the nation. Leaders of the Bharatiya Janata Party (BJP), the Hindu-nationalist ruling party, have referred to the Tablighi Jamaat meeting in New Delhi as an "Islamic insurrection" and "corona terrorism."⁵⁰ Raj Thackeray, the head of the far-right nationalist Maharashtra Navnirman Sena party, suggested to reporters that the Tablighi Jamaat "should be shot."⁵¹ Another politician referred to the Tablighi Jamaat as "human bombs."⁵²

Widespread claims that the Tablighi Jamaat had intentionally spread the coronavirus fueled anti-Muslim violence in New Delhi, where Hindu mobs had already claimed the lives of at least 50 Muslims in February of 2020.⁵³ Allegations circulated on WhatsApp and the internet blaming Muslims generally for the infections in India, claiming that so-called "corona-jihadis" had spread the virus as a bioweapon and an act of terrorism.⁵⁴ Vigilantes have carried out physical assaults on Muslims in India, especially known members of the Tablighi Jamaat. For example, on April 5, in a village near Delhi, a mob attacked Madhya Pradesh, who was returning from the Tablighi Jamaat meeting, demanding to know whether he had intentionally spread the coronavirus. The attackers punched and kicked the young man as well as threatened to set him on fire.⁵⁵ He was transported by ambulance to the hospital.⁵⁶ Over the next two days, rumors that Muslims were spreading the coronavirus led to several other attacks. In one of these, four people fired shots into a mosque because they had read on social media that infected people had been hiding there.⁵⁷

The case of the Tablighi Jamaat demonstrates the extremity of public and government responses to concerns that religious institutions are spreading the novel coronavirus. Although reports indicate that the organization's meeting in New Delhi took place before the city's ban on large gatherings and concluded over a week before the nationwide lockdown, the Tablighi Jamaat have been vilified as terrorists who intentionally spread the virus in an act of biological warfare. Although the group may be criticized for continuing to lodge over a

⁵⁰ Jha & Dixit, *supra* note 41.

⁵¹ Gettleman, Schultz, & Raj, *supra* note 31.

⁵² *Ibid.*

⁵³ Jha & Dixit, *supra* note 41; Gettleman, Schultz, & Raj, *supra* note 31.

⁵⁴ Jha & Dixit, *supra* note 41.

⁵⁵ Gettleman, Schultz, & Raj, *supra* note 31; Sakshi Dayal & Mahender Singh Manral, "COVID-19 rumours linked to 3 attacks in Delhi, Gurgaon," *The Indian Express*, April 7, 2020; "Delhi: Amid coronavirus scare, youth who returned from Jamaat mob lynched in Bawana," *Newsd*, April 6, 2020.

⁵⁶ "Delhi," *supra* note 55.

⁵⁷ Dayal & Manral, *supra* note 55.

thousand members at the Markaz after the nationwide lockdown, one must also take into account how rapidly changing policies about quarantine and travel across the globe in the month of March would have complicated the return plans of many delegates. One must also consider whether the sustained interactions of this group, who had been meeting together for days (or possibly weeks) before assembly and travel restrictions were imposed in India, posed as great a threat in the spread of the virus as their eventual dispersal to their home cities and countries. Therefore, although the Tablighi Jamaat were arguably more negligent than the Shincheonji, one must question whether the level of culpability attributed to the group was commensurate with their actions. This question becomes even more perplexing when contrasted against responses to more defiant religious communities in Brazil and the US.

2.3 *Brazil*

Around the same time that these controversies about the Tablighi Jamaat arose in India, similar discussions about the role of religious institutions in the spread of the novel coronavirus were going in a very different direction in Brazil. On February 26, Brazil became the first Latin American country to report a case of COVID-19.⁵⁸ About two weeks later, states across Brazil began to take action to combat the virus. On March 16, 2020, as the number of infections in the country reached 200, Rio de Janeiro declared a state of emergency.⁵⁹ In this decree, the governor prohibited any public events involving the “gathering/crowding of people” (“aglomeração de pessoas”) for 15 days.

Silas Malafaia, head pastor of the Assembly of God Victory in Christ (“Assembleia de Deus Vitória em Cristo”), refused to close his churches following news of the governor’s order. Malafaia runs more than 70 churches across the state, the largest of which can hold over 6,500 people.⁶⁰ Therefore, the Public Ministry (Ministério Público) of the State of Rio de Janeiro filed an emergency complaint with the Tribunal of Justice, seeking to force Malafaia’s compliance.

On March 19, 2020, Judge Marcello de Sá Baptista ruled in favor of Malafaia, finding that no law or order passed to date actually required churches to

58 World Health Organization, COVID-19 database, 2020. Retrieved 23 April 2020, <https://covid19.who.int/region/amro/country/br>.

59 Wilson Witzel, Decreto Estadual nº 46.973/2020, March 16, 2020, <https://www.legisweb.com.br/legislacao/?id=391908>.

60 Cássio Bruno, “Silas Malafaia diz ser ‘vergonha’ decisão de desembargador sobre cultos,” *Veja*, April 10, 2020. The Assembly’s website actually shows approximately 90 locations in the state of Rio de Janeiro. ADVEC, “Enderecos,” Retrieved 30 April 2020, <https://www.advec.org/enderecos>.

close.⁶¹ According to one of the Assembly’s pastors, more than 1,500 people attended their services on the day of the court decision.⁶² Meanwhile, in the three days between the governor’s order and Baptista’s ruling, documented COVID-19 infections in Brazil had more than tripled, and the country had recorded its first seven deaths.

The Public Ministry appealed Baptista’s decision and on March 20, Judge Sérgio Seabra Varella issued a new ruling ordering Malafaia to refrain from holding services that contravened the governor’s decree.⁶³ Varella observed that freedom of religion was not absolute, and that due to the “speed and lethality of COVID 19, it can be seen that, the extent of the damage caused by the non-observance of legal restrictions, presents a great risk to the community.”⁶⁴ Varella imposed a daily fine of R\$10,000 for non-compliance with the decree.

On the same day, Judge Jefferson Zanini heard a similar emergency petition regarding the operation of Malafaia’s churches in the state of Santa Catarina.⁶⁵ On March 17, the governor of Santa Catarina had declared a state of emergency and prohibited all events of any size, including religious services, for 30 days.⁶⁶ Malafaia announced on social media that he did not intend to abide by the state restrictions. Therefore, a state medical association filed an emergency petition, claiming that Malafaia’s refusal to comply posed an immediate risk to the health of the community. Judge Zanini ruled in favor of the association, finding that “the gains from the preservation of public health exceed those possible losses resulting from the restriction to religious services, especially in view of the transience of the restrictive measure.”⁶⁷ Zanini imposed a fine of R\$20,000 for each day that Malafaia violated the decree.

61 Process No. 0059652-42.2020.8.19.0001, Tribunal de Justiça do Rio de Janeiro, March 19, 2020.

62 Dom Phillips, “Brazilian church wins court battle to remain open despite coronavirus,” *The Guardian*, March 20, 2020.

63 Process No. 0060424-05.2020.8.19.0001, Tribunal de Justiça do Rio de Janeiro, March 20, 2020.

64 “Velocidade e letalidade do COVID 19, pode-se aferir que, a extensão do prejuízo causado pela inobservância das restrições legais, apresenta-se de grande risco à coletividade.” *Ibid.*

65 Ação Civil Publica No. 5026669-92.2020.8.24.0023/SC, Tribunal de Justiça do Estado de Santa Catarina, March 20, 2020.

66 Carlos Moises da Silva, Decreto No. 515/2020, March 17, 2020. <https://leisestaduais.com.br/sc/decreto-n-515-2020-santa-catarina-declara-situacao-de-emergencia-em-todo-o-territorio-catarinense-nos-termos-do-cobrade-no-1-5-1-0-doencas-infeciosas-virais-para-fins-de-prevencao-e-enfrentamento-a-covid-19-e-estabelece-outras-providencias>.

67 “Os ganhos advindos com a preservação da saúde pública superam as eventuais perdas derivadas da restrição à realização de cultos religiosos, mormente diante da transitoriedade da medida restritiva.”

Possibly as a result of the way in which the courts interpreted these state decrees, a related controversy soon followed over how religious institutions should be classified under federal emergency decrees. On February 6, 2020, the National Congress of Brazil implemented a law outlining how the country would deal with the “public health emergency” resulting from COVID-19, which gave the President the power to identify “public services” or “essential activities” that could continue to function during the state of emergency.⁶⁸ On March 20, 2020, the same day that the courts in Rio de Janeiro and Santa Catarina reached their decision in the Malafaia cases, President Bolsonaro issued a decree listing more than thirty such “essential activities.”⁶⁹ Religious gatherings were not on the list. However, likely after learning about these court decisions, Bolsonaro issued a new decree on March 25, adding several more “essential activities,” including “religious activities of any nature.”⁷⁰

Concerned that religious institutions might undermine other efforts at physical distancing, a branch of the Federal Public Prosecutor’s office sought to have them removed from the federal list of “essential services.” On March 27, 2020, a federal court judge, Márcio Santoro Rocha, in Duque de Caxias (Rio de Janeiro), suspended the application of Bolsonaro’s order, noting that the freedom of religion was not an absolute right and that large church services would render efforts to curb the spread of COVID-19 ineffectual, leading to a collapse of the healthcare system.⁷¹ Rocha imposed a fine of R\$100,000 if the municipality implemented the President’s decree or adopted any other laws that contravened the World Health Organization recommendations regarding “social distancing.”⁷² On March 31, however, the Federal Court of the 2nd Region overturned Rocha’s decision, finding that it violated the principle of separation of powers for the judiciary to “interfere in political considerations.”⁷³

The controversy about the potential of religious communities to spread the novel coronavirus in Brazil has not been limited to questions about whether

68 Brazil, Lei No. 13,979, February 6, 2020, http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2020/Lei/L13979.htm#art3vi.

69 Jair Bolsonaro, Decree No. 10,282, March 20, 2020, http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2020/Decreto/D10282.htm.

70 “Atividades religiosas de qualquer natureza.” Jair Bolsonaro, Decree No. 10,292, March 25, 2020, http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2020/Decreto/D10292.htm#art1.

71 Ação Civil Publica No. 5002814-73.2020.4.02.5118/RJ, 1ª Vara Federal de Duque de Caxias, March 27, 2020.

72 Nicolás Satriano, “Justiça Federal no RJ suspende trechos de decreto presidencial que prevê atividades religiosas e lotéricas como serviços essenciais.” *G1 Globo*, March 27, 2020.

73 Suspensão de Liminar ou Antecipação de Tutela No. 5002992-50.2020.4.02.0000/RJ, Tribunal Regional Federal da 2ª Região, May 31, 2020.

the government can ban large religious gatherings. In early April, the Union of the Peoples of the Javari Valley (UNIVAJA) petitioned a court in Tabatinga to prohibit two international evangelical groups, the New Tribes Mission and Frontier International, from entering their territory.⁷⁴ The Javari Valley Indigenous Reserve is located in the Amazon on the border between Brazil and Peru. In this reserve, there are at least sixteen indigenous groups who have chosen to "remain isolated."⁷⁵ UNIJAVA was concerned that these missionary groups could expose vulnerable indigenous communities in the Amazon region to the novel coronavirus.

Ethnos360 (formerly known as the New Tribes Mission) is an evangelical missionary organization whose primary goal is to convert "isolated tribes." The group has an unsavory history in the Javari Valley. In the 1980s and 1990s, they spread several contagious diseases in the area, and some of their missionaries were convicted of physically and sexually abusing indigenous people.⁷⁶ In late January 2020, shortly after Brazil documented its first case of COVID-19, Ethnos360 announced that they had acquired a helicopter and planned to use it to proselytize to indigenous groups in the Amazon.⁷⁷ Indigenous people and local health authorities confirmed that Ethnos360 missionaries visited at least one village in the Javari Valley in late February, and made at least three helicopter flights into the region in late March and early April.⁷⁸

The other missionary group named in the UNIJAVA lawsuit was Frontier International. Concerns about this group's activity arose when, around the same time that the most populous states in Brazil began their lockdowns, the leader of Frontier International, Andrew Tonkin, reported that they were planning to send missionaries to the Javari Valley.⁷⁹ Shortly thereafter, the Federal Public Prosecutor's Office "asked federal police to investigate Tonkin's possible plan of

74 "Brazil: Indigenous Peoples Go to Court Against Missionaries," *Telesur*, April 15, 2020.

75 Sam Cowie, "As COVID-19 rages, evangelical pastor may contact remote Amazon tribes," *Mongabay*, March 30, 2020.

76 Sue Branford, "Evangelical Group to Contact Indigenous Peoples in Amazon Amid Coronavirus Pandemic," *Earth Island Journal*, March 18, 2020.

77 *Ibid.* Dom Phillips, "The isolated tribes at risk of illness from Amazon missionaries," *The Guardian*, March 23, 2020.

78 Travis Waldron, "Amazon Tribes Say Christian Missionaries Threaten 'Genocide' During Pandemic," *Huffington Post*, April 20, 2020. Patricia Trigueiro, "Missionários fazem voos por terras indígenas de povos isolados sem autorização," *Portal da Marcela Rosa*, April 14, 2020. The head of the missionary group, Edward Luz, admitted that they conducted several flights to the area, but claimed that they were extracting missionaries, not introducing new ones. But Luz's statements to the press have been highly inconsistent, and many have voiced their suspicions about the true extent of their missionary incursions during the pandemic.

79 Cowie, *supra* note 75.

an illegal expedition to an area known as Igarapé Lambança, populated by isolated Korubo tribespeople.”⁸⁰ Tonkin had previously illegally entered the Javari Valley in 2014 and 2019, and had narrowly evaded arrest by Brazilian forces.⁸¹

On April 16, Judge Fabiano Verli heard UNIVAJA’s complaint against the New Tribes Mission and Frontier International.⁸² He found in favor of the Javari indigenous collective, banning the missionaries from entering the reserve. Verli stressed that he believed that there were “good reasons” to evangelize to indigenous persons; however, Brazil is “a secular state” and has “other priorities.”⁸³ Verli explained that “[e]ven semi-theocratic and tyrannical states like Saudi Arabia emptied their temples because of COVID. Thus, there is no need to talk about religious freedom here. That is not the relevant problem.”⁸⁴ Judge Verli “authorised police and [the] army to expel any of the missionaries found in the reserve.”⁸⁵ He ruled that anyone who violated the order could be fined R\$1,000 per day (around \$200).

There are several notable aspects of these three controversies in Brazil. First, whereas South Korea and India labeled religious organizations who did not respond quickly enough to the growing outbreak as terrorists and murderers, Brazil’s President sought to exempt religious institutions from physical distancing measures. Furthermore, unlike the Tablighi Jamaat and the Shincheonji, Malafaia and his parishioners did not merely hold gatherings on the cusp of an outbreak or stay at a religious site in violation of new lockdown orders; they blatantly disregarded state emergency decrees. Despite the immeasurable threat posed by crowded services at Malafaia’s churches, government officials did not immediately move to shut down the temples, demand membership lists, and quarantine parishioners. Rather, they filed a court case and waited for a judge to decide the issue. The foreign missionaries who threatened to invade the Brazilian Amazon were met with similar leniency. Instead of acting preemptively to protect public health, the government waited until the indigenous peoples themselves brought the matter to court before issuing any clear warnings to missionary groups who had openly publicized their plans

80 *Ibid.*

81 *Ibid.*

82 Travis Waldron, “Amazon Tribes Say Christian Missionaries Threaten ‘Genocide’ During Pandemic,” *Huffington Post*, April 20, 2020.

83 “Mas estamos num Estado laico e temos outras prioridades.” Erick Gimenes, “Em decisão inédita, Justiça proíbe entrada de religiosos em terras indígenas no AM,” *Brasil de Fato*, April 17, 2020.

84 “Até estados semi-teocráticos e tirânicos como a Arábia Saudita esvaziaram seus templos pela COVID. Assim, não há que se falar em liberdade religiosa aqui. Não é esse o problema relevante.” *Ibid.*

85 Phillips, *supra* note 77.

weeks or months earlier. Finally, and perhaps most significantly, even where courts found that religious communities were not exempt from public health regulations, the penalty for non-compliance was merely a fine, albeit at times a hefty one. This is particularly striking in the case of Ethnos360 and Frontier International, who faced a meager \$200 fine for activities that could easily wipe out entire indigenous groups because of the lack of healthcare infrastructure in remote Amazonian regions.

2.4 *The United States*

The US response to the conduct of religious institutions amid the pandemic of 2020 varied substantially from state to state. Across the nation, however, one can witness two trends that resemble the controversies that arose in Brazil in late March and early April. First, numerous pastors throughout the country have openly defied government orders that limit in-person gatherings. Second, states, courts, and Christian churches have grappled with the issue of whether religious institutions are “essential” or “critical” organizations that should be exempt from lockdown measures.

In California, one of the first states with confirmed cases of COVID-19, the governor declared a state of emergency on March 4, 2020. Two weeks later, on March 19, the governor issued an executive order requiring residents to follow state public health directives. One of these directives ordered all residents to stay at home except to maintain “critical infrastructure sectors.”⁸⁶ Religious institutions were not listed among the essential services exempt from the lockdown and, like Silas Malafaia in Brazil, several pastors boldly announced their intent to proceed with religious ceremonies without regard for the law.

One of these pastors was Jon Duncan, leader of the Cross Culture Christian Center in Lodi, California. Duncan refused to comply with the shelter-in-place order, claiming that freedom of assembly took precedence over the governor’s decree.⁸⁷ About a week after the lockdown began, city police arrived at one of Duncan’s Wednesday services and warned the members who were assembled there that they were contravening stay-at-home orders.⁸⁸ Two days later, the Center filed a cease-and-desist order against the city, claiming that police had infringed on their religious freedom by visiting the church, and announcing

86 Governor Gavin Newsom, Executive Order N-33-20, March 19, 2020, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

87 Lisa Fernandez, “Landlord changes locks on California church after pastor said he’d continue to hold services,” *KTVU Fox 2*, April 6, 2020.

88 City of Lodi, “City, County take steps to prevent COVID-19 exposure at Lodi church,” April 3, 2020. Retrieved 22 April 2020, <https://www.lodi.gov/DocumentCenter/View/3347/church-notice-04-03-20?bidId=>.

that they would continue to meet every Wednesday and Sunday.⁸⁹ Shortly thereafter, on April 3, the police returned to the Center and posted a notice from the county public health officer, ordering the closure of the building.⁹⁰ The police also contacted the Center's landlord, Bethel Open Bible Church, to notify them that their tenant was violating stay-at-home regulations.⁹¹ Bethel Open changed the locks on the building to prevent the Center from holding additional services.⁹²

Such disputes have not been limited to California. Tony Spell, the pastor of Life Tabernacle, a megachurch in the Baton Rouge area of Louisiana, has generated even more controversy with his response to public health decrees.⁹³ On March 22, the governor of Louisiana issued a statewide stay-at-home order, shutting down all but "critical infrastructure businesses."⁹⁴ Religious institutions were not on the list of essential organizations. Spell continued to hold church services, and on March 31, he was charged with six misdemeanor offenses for violating quarantine restrictions.⁹⁵ Ever defiant, Spell boasted that his church members would not be infected because "God will shield us from all harm and sickness."⁹⁶ If they did become infected, Spell asserted, "true Christians," "like any revolutionary," would be content to die from COVID-19.⁹⁷

Around this time, confirmed cases had already exceeded 17,000 in Louisiana and 435,000 in the country.⁹⁸ Nevertheless, Spell continued to pack his church with worshippers. On Palm Sunday, Spell filled at least 26 buses and transported them to his services.⁹⁹ The following weekend, on Easter Sunday, Spell

89 Alene Tchek Medyan, Hailey Branson-Potts, & Laura Newberry, "Churches spark outrage by defiantly holding services despite coronavirus orders," *The Los Angeles Times*, April 6, 2020; Hailey Branson-Potts, "Pastor who refuses to cancel Sunday services because of coronavirus greeted by police," *Los Angeles Times*, April 5, 2020.

90 City of Lodi, *supra* note 88.

91 Medyan, Branson-Potts, & Newberry, *supra* note 89.

92 Branson-Potts, *supra* note 89.

93 Hemant Mehta, "Louisiana Pastor Opens Church to 27 Busloads of People to Fight 'the Antichrist,'" *Patheos*, April 5, 2020.

94 John Bel Edwards, "COVID-19 Statewide Stay at Home Order," March 22, 2020, https://gov.louisiana.gov/assets/docs/covid/Essential-Infrastructure_fact-sheet.pdf.

95 Ralph R. Ortega, "'True Christians don't mind dying of COVID-19 if they're infected at church,'" *Daily Mail*, April 8, 2020; Carlos Barria, "God will shield us from all harm and sickness': Louisiana pastor expects 2,000 to attend his Easter Service," *Reuters Insider*, April 11, 2020.

96 Rachel Olding, "Parishioner of Louisiana Church that Defined Virus Lockdown Died From COVID-19, But Pastor Claims It's a Lie," *The Daily Beast*, April 17, 2020.

97 Ortega, *supra* note 95.

98 *Ibid.*

99 *Ibid.*

claims that over 1,300 people attended his church.¹⁰⁰ Reports of members contracting COVID-19 soon followed.

An elderly church member, Harold Orillion, served as a lead usher at Life Tabernacle on Easter Sunday.¹⁰¹ Orillion died three days later, and the coroner determined that the cause of death was respiratory distress, pneumonia, and the novel coronavirus.¹⁰² Pastor Spell asserted that the coroner had lied about Orillion's cause of death and continued to deny that anyone had been infected with COVID-19 at his church.¹⁰³ Around the same time, however, Jeffrey Wittenbrink, church member and attorney for Life Tabernacle, was also hospitalized with COVID-19. Although Wittenbrink admitted that he and Orillion had contracted the disease caused by the novel coronavirus, he argued that they could have been infected anywhere, and that Life Tabernacle should not be blamed. Wittenbrink also claimed that Orillion would "probably have been happy" that one of his last moments was spent in church.

Shortly after the news broke about the hospitalization of his church members, Spell allegedly tried to use a church bus to back over a man who was protesting the continuation of services at Life Tabernacle.¹⁰⁴ A few days later, after Spell was arrested for aggravated assault and ordered to remain under house arrest pending trial, he again held service at his church. He broadcast the service on Facebook Live, and the video showed over a hundred people gathered for worship, mostly without masks or physical distancing measures.¹⁰⁵

As in California and Louisiana, churches in Kentucky have also openly defied state emergency decrees. On March 19, the governor of Kentucky issued Executive Order 2020–215, prohibiting all mass gatherings, including faith-based meetings. Jack Roberts, the pastor of Maryville Baptist Church in Bullitt County, continued to hold services inside his church and publicly stated that he had no intention of complying with the governor's order.¹⁰⁶ The Bullitt county health department sent Roberts an order to cease his services immediately.¹⁰⁷

100 Olding, *supra* note 96.

101 *Ibid.*

102 *Ibid.*; Aila Slisco, "Louisiana Megachurch Pastor Claims Parishioner Did Not Die of Coronavirus," *Newsweek*, April 17, 2020.

103 Olding, *supra* note 96.

104 Dominique Mosbergen, "Arrest Warrant Issued For Louisiana Pastor Who Wouldn't Shutter Church Amid Pandemic," *Huffington Post*, April 21, 2020.

105 The Associated Press, "Louisiana pastor again holds church services, defying house arrest orders," *CBS News*, April 27, 2020.

106 Ben Tobin, "Kentucky Church Leader Vows to Hold Easter Services Even After Getting Beshear Stop Order," *Louisville Courier Journal*, April 8, 2020.

107 *Ibid.*

Shortly thereafter, Roberts held a Wednesday service with approximately forty people in attendance.¹⁰⁸

On April 10, two days before Easter, the governor issued a press release warning that state police would record the license plate information of anyone attending church services over the holiday weekend and anyone who violated the order would be required to self-quarantine for 14 days. Nevertheless, around 50 people attended service inside Maryville Baptist Church on Easter Sunday.¹⁰⁹ Several church congregants as well as Pastor Roberts covered their license plates in an attempt to avoid police tracking.¹¹⁰ When the police arrived and placed notices on parishioners' cars ordering them to self-quarantine, several of them told reporters that they had no intention of complying.¹¹¹ At the time, Kentucky had over 1,800 cases of COVID-19 and nearly 100 deaths.¹¹²

A few days later, on April 17, Maryville Baptist Church filed a lawsuit against the governor. The attorney representing the Church argued that it was a serious violation of their religious freedom for the state "to give someone a notice of quarantine for 14 days to prohibit them from traveling anywhere and requiring them to report to the county board of health everyday [sic] and take your temperature at the same time everyday [sic] when they absolutely have no symptoms at all."¹¹³ The Church claimed that religious groups were being singled out in tracking violations of public gatherings. They also stressed that the presence of the police outside their facility made church members feel criminalized, and claimed that some members left as soon as the notices were placed on their vehicle.¹¹⁴

Kentucky is not the only state to face lawsuits over the closure of religious institutions under stay-at-home decrees. For example, four pastors and churchgoers from two counties in California filed a similar case challenging the county and state restrictions on religious services.¹¹⁵ The plaintiffs' main argument was that if grocery stores, mechanics, and laundromats could operate with social distancing measures, churches should be permitted to remain open using

¹⁰⁸ *Ibid.*

¹⁰⁹ Sarah Ladd, "Easter Churchgoers Defiant after Kentucky Troopers Write Down Their License Plate Numbers," *Louisville Courier Journal*, April 12, 2020.

¹¹⁰ Officers recorded their vehicle identification numbers (VIN) in these cases. *Ibid.*

¹¹¹ Ladd, *supra* note 109.

¹¹² *Ibid.*

¹¹³ Marcus Green & Kristen Shanahan, "Churchgoers sue Kentucky Gov. Andy Beshear over in-person worship ban, continue in-person gatherings," *WDRB News*, April 15, 2020.

¹¹⁴ Complaint, Maryville Baptist Church, Inc. et al. v. Beshear, Civil Action No. 3:20-cv-278-DJH, United States District Court, Western District of Kentucky (April 17, 2020), 15–16.

¹¹⁵ Complaint, *Gish v. Newsom*, Case No. 5:20-cv-00755, United States District Court for the Central District of California, Eastern Division (Filed April 13, 2020).

similar safety guidelines.¹¹⁶ One of the plaintiffs, Pastor James Dean Moffatt, also argued that he has a right to baptize people and “to lay hands on people and pray for them,” including the sick.¹¹⁷

These US cases help underscore the diversity of state responses to religious groups during the 2020 pandemic. Although as of this writing, the US has logged over 3.4 million cases of COVID-19 and more than 138,000 deaths, the country continues to provide some of the most extensive protections to religious groups seeking exemption from quarantine orders, and impose the fewest penalties on people who defy these restrictions. Like the Brazilian federal government, about a dozen states declared religious institutions to be “essential services” who can continue to operate during the outbreak.¹¹⁸ In those that have not, only a few have imposed any punishment on pastors who continue meeting in defiance of stay-at-home orders. Those who are arrested are usually charged with misdemeanor offenses punishable by a minimal fine or perhaps a few days in jail. Before imposing even these nominal penalties, most officials have given repeated warnings to pastors and church members who refused to comply with stay-at-home orders. They have visited their services to explain the law, posted signs on the church and on their vehicles, and asked them to self-quarantine to reduce the effect of their risky behavior on others. Defiant church members have rebuked even these slight limitations on their activities, refusing to quarantine and contending that placing notices on their vehicles or churches infringes on their freedoms.

Even when dozens of infections have been linked to church meetings, authorities are rarely shutting down churches, demanding membership lists, or forcibly quarantining parishioners. This is most pronounced in the case of Life Tabernacle, where 1,300 people reportedly attended services on Easter Sunday and at least two members were subsequently hospitalized with COVID-19. Yet, authorities have instituted only minimal charges against Pastor Spell, and have made no known effort to ascertain how many church members have been infected and whether they have spread the virus in the Baton Rouge area.

3 Comparing Responses

The comparison of some of the most publicized controversies in these four nations suggests significant disparities in the degree to which states have

¹¹⁶ *Ibid.* at 24.

¹¹⁷ *Ibid.* at 6.

¹¹⁸ Madeline Holcombe and Stephanie Gallman, “Here’s a look at what states are exempting religious gatherings from stay at home orders,” *CNN*, April 2, 2020.

limited religious practice in the name of public health during the 2020 pandemic. While South Korea and India demonized and prosecuted some religious leaders and institutions who were known to have spread the virus, some officials in the US and Brazil advocated for religious organizations to be declared essential services that could continue operating during the pandemic. Ironically, the examples herein suggest that as the virus spread across the globe, and as large religious gatherings were increasingly linked to severe outbreaks, governments became more accommodating toward religious institutions. Perhaps even more paradoxically, in these examples, the religious communities who have acted with the most flagrant disregard for public health have been treated with the greatest leniency.

Many experts would seek an explanation of the disparities in how the above cases were handled in the differences between legal protections of religious freedom and systems of governance in each country. However, disparities in the treatment of religious organizations within some countries make it clear that this does not amount to a complete explanation. For instance, while South Korea seems to have limited or closed all religious temples at the height of the outbreak, no reports have emerged suggesting that the public, the media, or the government vilified, persecuted, or prosecuted any religious community other than the Shincheonji.

It is possible that the sensational nature of the Shincheonji story has prevented more mundane disputes between the South Korean government and other religious organizations from being widely reported. However, this was not the situation in India. Around the same time that the Tablighi Jamaat case was unfolding, several other religious organizations held meetings or festivals in contravention of public health recommendations or orders. The state response toward these leaders and communities was often mildly punitive—arresting them on minor charges punishable by a fine or a few months imprisonment.¹¹⁹ It was also often restrictive. Local governments sometimes quarantined tens of thousands of devotees following confirmed exposure of several members.¹²⁰ Occasionally, communities identified as “super-spreaders” were harassed

119 For example, on or around March 19, police arrested at least three Catholic priests for holding prayer sessions and mass in violation of public health orders. The potential penalty for these charges was a fine and up to six months imprisonment. Nirmala Carvalho, “Priests in India face charges for breaking COVID-19 restrictions on mass gatherings,” *Crux*, March 23, 2020.

120 For example, see Anilesh S. Mahajan, “Time to blame or learn: Punjab’s 1st coronavirus death sparks ‘super-spreader’ fears with 40,000 under quarantine,” *India Today*, March 30, 2020.

and vilified.¹²¹ However, few, if any, controversies approached the severity of the response against Tablighi Jamaat. Therefore, one must acknowledge that the differences between individual cases do not always reflect differences between nations.

One significant factor that sets the Tablighi Jamaat and Shincheonji cases apart from the majority of those in Brazil and the US is the sheer size of the religious communities in question and the percentages of the national outbreaks that could be traced back to a single group. Both the Tablighi Jamaat and the Shincheonji are international organizations; the former has millions of members and the latter hundreds of thousands. Farish Noor argues that "transnational movements [such as the Tablighi Jamaat] are summarily put together in the same ranks as smugglers, pirates, gypsies, illegal immigrants, infectious diseases, cross-border environmental disasters and contagions that undermine the sovereignty of the state and threaten the idealised political order."¹²² Therefore, the Tablighi Jamaat and the Shincheonji may have been treated more harshly because India and South Korea viewed these transnational religious organizations as threats to state sovereignty during a public health crisis. This perceived threat may have been amplified by the numbers of infections; about a third of the cases in India and approximately 60% in South Korea were connected to these organizations. Therefore, the disparately punitive government responses to these religious communities may have been based on outcome (the fact that many people were infected), rather than intent (whether they openly defied public health regulations).

The distinct responses in these cases may also have to do with the ways in which each country has sought to contain the pandemic. Recall that both India and South Korea forcibly tested and quarantined members of the Tablighi Jamaat and the Shincheonji after infections had been reported in these communities. Especially in South Korea, such measures were part of a larger scheme of quelling the virus through widespread testing and contact tracing. The US and Brazil, by contrast, have relied more on stay-at-home advisories than on forced quarantine, and their slow acquisition of tests virtually precluded the possibility of relying on contact tracing to stop the spread of the virus. Between late March and mid-April, when churches in these countries began to report outbreaks among their members or started to hold services in defiance of stay-at-home orders, it seems unlikely that either country had the capacity to test

121 For example, see Ip Singh, "Baldev Singh's family gets well, but fights stigma," *The Times of India*, April 14, 2020.

122 Farish A. Noor, *Islam on the Move: The Tablighi Jama'at in Southeast Asia* (Amsterdam: Amsterdam University Press, 2012), 192.

all the members of these religious organizations and the individuals with whom they had contact. It is possible that state and public responses to large church gatherings would have been different if it could be shown that such assemblies were connected to thousands of infections.

It also seems likely that timing played a significant role in state and public responses to the behavior of these religious communities. The Tablighi Jamaat and Shincheonji infections occurred between mid-February and mid-March, when the virus had first begun spreading in India and South Korea, and governments had not yet unveiled plans to contain it. Because there were still few cases, it was easy to witness the effect of these religious gatherings on national infection rates, and government officials likely felt pressured to act in response to public anxiety during these early stages of the outbreak. By late March and April, when the controversies in the US and Brazil took place, the virus was more widespread in these countries and across the globe, making it more difficult to identify the place where someone was infected. Moreover, by this time, many had begun speculating that the virus had been circulating too long for stay-at-home strategies to contain it. For these and other reasons, widespread opposition to quarantine measures had increased by the time most controversies began in Brazil and the US. Religious opposition represented just one of many reasons that people began protesting and defying public health orders.

Finally, and perhaps most significantly, the official status and public perceptions of these religions likely played a role in state responses to them. In Brazil and the US, evangelical churches have been at the center of most coronavirus controversies. In both nations, Protestant Christianity is a mainstream faith that has been gaining political power over the last few years. The presidents of both countries, as well as numerous state and local political leaders, have vocally supported the rights of Christian churches throughout the pandemic.

By contrast, both the Tablighi Jamaat and the Shincheonji were unpopular religions in India and in South Korea long before their association with the novel coronavirus. Little academic study of the Shincheonji has been published in English; however, as noted above, media articles about their role in the spread of the coronavirus often mentioned that they are viewed as a “cult,” and the Shincheonji themselves reported that they suffered widespread discrimination before the coronavirus controversy. A recent scholarly article about the Shincheonji cryptically claimed that they have been “criticized as ‘cs (Christian State) in Korea’ like ‘is (Islamic State)’ in the Middle East.”¹²³

¹²³ Kim & Bang, *supra* note 4, 15.

Similarly, as noted above, Muslims in New Delhi had generally faced growing discrimination and violence from Hindu nationalists in the months preceding the outbreak. The Tablighi Jamaat, in particular, had been denounced for allegedly aiding militant Muslims in moving through Asia undetected. Although the Tablighi Jamaat advocate against political involvement, because of "the ease with which one can join the movement," radical Muslims have posed as members to secure foreign visas.¹²⁴ Due to the preexisting notion that the Tablighi Jamaat sheltered or supported militant Muslims, it is not surprising that Indian political leaders accused them of spreading the novel coronavirus as an act of biological terrorism, and ultimately charged one of their leaders with culpable homicide.

4 Conclusion

Most of the cases discussed in this article are still ongoing, and as lockdowns slowly ease in many parts of the globe, controversies about when and how religious services can be held are increasing. If a second outbreak occurs later this year, as experts have predicted, it is likely that governments and religious communities will again clash over the degree to which in-person worship can or must be limited to contain the spread. As existing cases and controversies are being decided and before a new outbreak begins, it is important to evaluate the successes and failures of attempts to balance religious freedom and the protection of public health.

The rapid spread of infections through the Tablighi Jamaat and Shincheonji meetings demonstrates the dangers of unrestrained religious gatherings. However, the extremely punitive response to these organizations and the forcible detention of members may exceed what was necessary to prevent the spread of the virus. By contrast, in Brazil and the US, efforts to classify religious organizations as critical infrastructures and religious leaders' refusal to comply with public health regulations sets worrisome precedents that mainstream faiths are above the law and will not be penalized for activities that endanger human life. The appropriate balance between religious freedom and public health is not easy to achieve; however, it probably lies somewhere between classifying religious gatherings as "essential services" and prosecuting spiritual leaders for culpable homicide.

¹²⁴ Noor, *supra* note 122, 179.