CHAPTER 13

Religion in Schools: A Human Rights Contribution to the Debate

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Introduction

The challenges facing those who wish to find a place for religion in public schools are many and various; and, within these, the dominant concern has been how to do this without interfering in the freedom of thought of pupils and parents. Historically, for many Western countries the line of tension in debates on education and religious liberty has run between various Christian denominations. Today, the tensions are more typically located between Christian and non-Christian belief systems and, in particular, between those holding theistic beliefs and those holding non-theistic beliefs. Nevertheless, despite the change in the identity of the stakeholders, the essential challenge remains the same: how to include and teach religion in schools while protecting the right of an individual to freedom of thought, conscience and belief?

International human rights law has a role to play in shaping responses to this challenge. In so doing, it draws upon principles and practices established by societies over time to treat situations where individuals of differing beliefs share a common space or service. The aim of this chapter is to identify the contemporary norms set down by human rights law when it comes to the teaching and place of religion in schools. A secondary aim is to highlight the difficulties that arise when religion is incorporated into a learning environment, in this instance by using these standards to appraise the treatment of religion in the Irish education system. This examination focuses on two points in time: when the Irish education system was originally established in the early nineteenth century and then today in the twenty-first century. The chapter also presents the conundrum in which the principles and practices of the earlier system are seen to be more closely aligned with contemporary human rights standards than those of the present-day Irish education system.

Human Rights Standards

The role of human rights law in public debates—such as the one on the place of religion in schools—is not a prescriptive one in the sense that it will propose
to a state how it should set up and run its various services. It will not tell a state, for example, how to structure its criminal justice system, its health system, its education system nor, indeed, what to teach as part of its school curriculum. Instead the task of human rights law is to set out certain normative standards—derived from the range of human rights found in a particular convention, covenant or treaty—that the state must protect in whatever kind of system it chooses when delivering a service such as education. In the context of religion in schools, it will not tell a state which approach to take when dealing with the question of the teaching and place of religion in schools, but it will set out standards that must be protected in whatever approach is taken. If the state cannot protect those standards in its chosen approach, then it must rethink that approach if it wishes to uphold its international legal obligations.

When looking at the issue of religion in schools the right that is of particular interest and concern—and therefore the right that provides the most relevant norms—is the right to freedom of thought, conscience and religion. Other rights such as the right to freedom from discrimination, the right to employment and the right to education are also relevant to the debate. However, for the purpose of this chapter the focus will be on the normative standards that flow from the right to freedom of thought, conscience and religion.

**The Right to Freedom of Thought, Conscience and Religion**
The key international human rights provision dealing with the right to freedom of religion or belief is found in Article 18 of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR). Article 18(4) specifically deals with religion in schools and provides that:

> The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The right is framed as a parental right rather than as a right belonging to the pupil or student. When issues to do with freedom of religion in schools arise, the issue is typically examined under Article 18(4) rather than under the more general right to freedom of religion or belief found in Article 18(1).

A similar approach occurs at the European regional level. The European Court of Human Rights typically chooses to examine the issue of religious liberty in schools under the education article of the European Convention on Human Rights—Article 2 Protocol 1—rather under the general right to