Religious Cults, Human Rights, and Public Policy: The Secular Perspective

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Abstract[1]

I argue in this paper, situated in the field of comparative public policy, that a focus on freedom of religion in fundamental laws, at the expense of the notion of freedom from religion, marginalizes the secular perspective in favor of the religious lobby, thus helping to empower cults, sects, and new religious movements (NRMs) alongside mainstream religion. I note that the United States' First-Amendment religious clauses, taken together, constitute a secular approach that was intended to guard against religious and state-sponsored sectarianism. It is therefore a mistake to conflate the free-exercise and nonestablishment clauses with the popular expression "freedom of religion" per se, an erroneous interpretation generally promoted by the religious lobby, and one that holds some sway in US policy decisions. Because of the influence of US thinking and jurisprudence on international-rights regimes, it is important to guard against globalizing a multifaith expansion of the old "Christian commonwealth" argument in favor of special religious privilege, as opposed to the genuinely secular approach encapsulated in an interpretation of the US First Amendment embodied in the phrase "separation of church and state."

Preamble: Rights As Weapons

We usually think of rights as protections, or shields, but sometimes shields can be used as weapons against critics or claimants for competing rights. This use can upset the balance that rights regimes mean to achieve and sometimes undermines the noble purpose of human rights. Freedom of religion is a long-recognized right that is capable of misuse in this way, and such misuse can be particularly problematic in the field of cultic studies.

One of the special tracks for the 2013 International Cultic Studies Association (ICSA) conference in Trieste was "Human Rights, the Law, and New Religious Movements: Finding a Balance." The organizers noted that "the challenge is to identify a balanced public-policy approach that respects freedom of religion, freedom of expression, freedom of thought, and other basic rights."[2] I too believe the real challenge is to find the correct public-policy approach, but sometimes this also means balancing freedom *of* religion with freedom *from* religion. To do this, we need to challenge the *laissez-faire*-inspired rationale behind reverentially recited but hard-to-define notions such as *freedom of religion*. That phrase can be misused, especially when entrenched in fundamental laws. It can provide a shield for little tyrannies and an excuse, particularly for governments of so-called *liberal* democracies, to sit on their hands and do little to protect the victims of cultic abuse.

If governments can defend their neglect by relying on superficially noble expressions such as *freedom of religion*, then so much the better for them to avoid accountability.[3] Government

[1] Based on an oral presentation at the ICSA Annual Conference, Trieste, Italy, July 4–6, 2013, and read at the ICSA Annual Conference, Washington, DC, July 3–5, 2014.

[2] ICSA International Cultic Studies Association, Human Rights and Cults, para. 9 [go to ICSA.org, search on "Human Rights and Cults," and then select the "Human Rights and Cult" option].

[3] An Australian government response to a 2010 Senatorial report is revealing: "The Government recognises the financial, psychological and emotional impact that the activities of cult-like organisations can have on individuals and their families and considers that religious observance should not be regarded as a shield behind which breaches of the law can be hidden," but it concluded that "it is not the Governments' role to interfere with the religious beliefs or practices of individuals, unless they are in

neglect can sometimes serve to turn the tables on oppressed victims in favor of the more politically savvy and financially secure oppressors. The irony of odious groups being able to claim victim status by using the trump card of religious freedom can be devastating to their victims and critics. Yet this is one of the dangers we face when we entrench in fundamental laws a notion that can readily be interpreted as guaranteeing a privileged position for a particular individual, the religious observer; for religious organizations[4]; and by extension, for a particular interest grouping, the religious lobby. Indeed, unintended consequences of well-meaning rights regimes may present an existential threat to cult critics generally.

Those who exercise religion and the groups that facilitate religious exercise are deemed to be deserving of special protection and often privileges. Despite some attempts to exclude cults by definition, cults, sects, and new religious movements (NRMs) can easily claim religious status in order to access these protections and privileges.[5] However, benefits granted to an ever-widening spectrum of religious groups are not so readily granted to competing interest or ideological groups, under either fundamental laws or ordinary laws that reflect government policy.

Competing groups might include those that promote equivalent or opposing belief systems, such as humanism or atheism. They also can include groups that represent victims of religion, including those that focus on problematic NRMs (often labelled *cults*). To rebalance the power equation, these groups might try to play catch-up in the human-rights roulette. They may find ways to gain or discover equivalent rights (perhaps encapsulated in the words *religion* or *belief*),[6] or to utilize existing rights found in provisions that protect the rights of children, free speech, and so on. However, in this endeavor, victims of cultic abuse, cult critics, and politically secular atheists can be very much behind the eight ball.[7]

Freedom of Religion: A Basic Human Right?

One can take issue with the idea that there is such a thing as a basic human right or a natural law, which Jeremy Bentham called "nonsense on stilts."[8] These things are artificial human constructs. Rights invented to date have usually been qualified in some way, either by sensible exception or by the invention of another competing right.

Yet it is common for liberals of various styles, many social democrats, and a great many religious observers to claim that freedom of religion is a basic human right. Indeed, the *International Bill of Rights* (the popular term for the *Covenants on Civil and Political Rights and Economic, Social and Cultural Rights*) is said to be "anchored in the Western liberal tradition,"

breach of Australian laws" [Australian Government. *Government Response: Senate Economics Legislation Committee Inquiry into Tax Laws Amendment (Public Benefit Test) Bill 2010*, pp. 2–4 (Canberra, Australia: Australian Government, 2011)].

.[4] In the case of complaints to the European Court of Human Rights, standing is granted to any private individual or legal entity, including associations and companies, which has a genuine grievance under the European Convention on Human Rights 1953, against states which are party to the convention.

[5] Stephen Mutch, "Cults, Religion and China: Policy Frameworks for the Regulation of Religious and Quasireligious Groups," *International Journal of Cultic Studies, 3* (2012), pp. 4–5.

[6] As found in international human-rights regimes and in the European convention, for example. This avenue would probably not be available to cult-watch groups, which, as groupings of philosophically disparate individuals, would not qualify as ideological equivalents to faith groups, but which might be able to lodge a complaint under the grounds of free speech.

[7] Although equivalent policy benefits to those given to religious groups may sometimes be granted to noncritical, nonreligious philosophical groups (such as the right of humanists to teach scripture classes in Australian and English public schools), assertive, antireligious atheists can still attract the pariah status accorded to them by Locke. "Those are not at all to be tolerated who deny the being of a God … those that by their atheism undermine and destroy all religion, can have no pretence of religion whereupon to challenge the privilege of a toleration" [John Locke, "A Letter Concerning Toleration 1690," in *Great Books of the Western World, Robert Maynard Hutchins* (Ed.), Vol. 35, p. 18 (Chicago, IL: Encyclopaedia Britannica, 1952)].

[8] Joseph Gerard Brennan, *Foundations of Moral Obligation: A Practical Guide to Ethics and Morality* (Novato, CA: Presidio Press, 1992), p. 101.

which proclaims "classic liberal freedoms of religion, expression, peaceful assembly, association and movement within a country" and is focused particularly on civil and political rights.[9] It seems that only some politically committed secular atheists, old-time socialists, neo-Marxists, and iconoclastic religious observers are prepared to openly challenge the prevailing ideological assumptions inherent in the politically correct expression *freedom of religion*.

A leading light of the "Western liberal tradition" after the Great War (Woodrow Wilson and his 14 points) and again after World War II (the *UN Charter* and the *Universal Declaration of Human Rights*) has been the United States. The United States has ratified the first convention (on civil and political rights) but not the second (on economic, social, and cultural rights), in part because it is a nation with a strong liberal but weak social-democratic tradition.[10] Such cherry picking is also an implicit recognition that there is nothing universal or natural about human rights. Nations pick and choose between those rights they wish to promote, reject, or downplay. I suspect that interpretation of the *Covenant on Civil and Political Rights* is also influenced somewhat by a US *laissez-faire* interpretation of liberalism generally, which in the field of cultic studies informs a *caveat emptor* response rather than a regulatory approach aimed at protecting victims.

Philosophical and Practical Objections to Rights Regimes

Those who argue from different philosophical perspectives often hold very different ideas about what they have in mind when they invoke the mantra of religious freedom. So definitional vagueness is perhaps the first valid criticism of rights regimes, including claims made for religion. Another practical objection is that the more so-called rights we have, the less meaningful they become.

A further practical objection is the generally nonbinding nature of international rights instruments.[11] Governments regularly sign and ratify international human-rights instruments with little intention of implementing them in domestic law. This lack of intent is both an indication of political cynicism and an acknowledgment that the instruments themselves are often impossibly vague statements of high-sounding principle that can be interpreted subjectively. The pronouncements of impressively titled UN rapporteurs should sometimes be taken with a grain of salt, as they compare domestic-policy actions against a set of legally interpreted standards that are very much open to challenge.

There are also said to be four main philosophical objections to regimes incorporating the idea of universal, natural human rights. The conservative objection, in response to the excesses of the French Revolution, is that claims for moral absolutes heighten political animosities, and that people would label everything they want as a natural right. (We see this today in just about every policy debate, from gay marriage to disability services).[12] The Marxist objection is that natural rights are just another instrument of oppression used by the powerful propertied class to dupe the poor. The relativist objection is that claims to rights are

[9] Stewart Firth, *Australia in International Politics: An Introduction to Australian Foreign Policy,* 3rd. ed., p. 313 (Sydney: Allen & Unwin, 2011)

[10] Firth, *Australia in International Politics*, p. 313. In general, the term *liberal* is used in this paper to indicate classic eighteenth-century liberalism or contemporary neoliberalism. There is a tendency in the United States for Republican neoliberals to use the phrase "tax and spend liberal" against Democrats, who generally embrace a fusion of social democratic and liberal principles, but who often share with Republicans a penchant for neoliberalism in both its economic and social dimensions. It should also be noted that the National Liberal League, founded in the United States in 1876 to campaign for a constitutional amendment to ensure the separation of church and state, was in fact a politically secularist grouping "insisting upon a purely secular version of separation that would segregate government not only from any one church but also, more broadly, from all distinct religions" [Philip Hamburger, *Separation of Church and State,* pp. 296; 287–288 (Harvard University Press, 2001)].

[11] Even in Europe, where judgements of the European Court of Human Rights are said to be binding, the Court cannot overturn domestic court decisions or legislation.

[12] Intrepid lawyers have even extended the concept of human rights to animal rights.

context dependent. Each society develops a different sense of what is right and wrong, so therefore we need to tolerate diversity and respect sovereign claims to differ from the imposition of so-called universal values. The realist objection is that rights regimes are interpreted and used by powerful countries to impose their values on weaker states—they are just another forum for power politics.[13]

I suggest that all of these objections are valid, and we should approach the area of human rights with scepticism. Yet the post-WWII regime of international human rights persists and promotes selectively interpreted ideas that can be of some influence on domestic laws. In Europe, where judgments of the European Court of Human Rights result in political pressure by the Council of Europe for changes to domestic laws, the policy nature of rights-based decisions bring the Court into controversy. The judgments can be subject to strong resistance by signatory governments. Whenever judges are placed in a position to effectively replace or challenge elected legislatures (which are arguably better equipped and mandated to make policy decisions), the effect can be to stymie state initiatives aimed at good policy outcomes. In places affected by binding constitutional rights at the domestic level only, rights provisions can be an even greater impediment to good governance because they also place jurists in a position to usurp policy decisions.

Human-rights lawyers,[14] who often subscribe to liberal internationalism, sometimes argue that popularly elected representatives are incapable of making good policy—that majority legislatures are inherently biased against minorities.[15] Therefore, unelected lawyers and their selected academic advisers (enclosed epistemic communities of self-accredited experts)[16] should be able to veto legislation on the basis of vague rights provisions[17] and impose their own policies instead.[18]

The Case for Freedom From Religion

It is arguably wrongheaded to insert into fundamental laws a special right for a particular interest grouping, such as religion, at the expense of other interests.[19] In addition, if we are forced to play the game of cards whereby one right is used to trump another (or even to balance another), then there is no reason we should not enshrine *freedom from religion* as a basic human right. It is becoming increasingly fashionable to argue that freedom *from* religion is just as important to Western heritage as freedom *of* religion. Freedom from religion is surely as much a child of the Enlightenment, if not more so, than freedom of religion. A. C. Grayling argues that

> Freedom from coercive ideology is both a human right and a fundamental civil liberty, which is why freedom from religion should figure in any codification of human rights alongside the freedom to have a religion. The right to freedom from religion also means freedom from proselytisation or coercive demands to belong to one, or harassment and punishment for not belonging to one, and—very importantly—from the requirement to

[13] Firth, *Australia in International Politics,* pp. 310–311.

[14] …and others who earn a living as human rights advocates and lobbyists…

[15] To the contrary, note that "political scientist Mancur Olson showed that cohesive minorities with a clear message fare significantly better in the legislature than do amorphous majorities—a political fact that is now widely accepted" [Marci A. Hamilton, *God Vs. the Gavel: Religion and the Rule of Law,* p. 285 (New York, NY: Cambridge University Press, 2005)].

[16] While epistemic communities in the hard sciences can be very useful, the creation of expert communities in the soft or social sciences should be treated with more caution. A wider base of varying opinions is probably required as a sounding board for policy makers.

[17] …which are recited with reverence and imbued with a near religious sanctity…

[18] There can be a strong streak of antipopulist, arguably antidemocratic paternalism among liberals, an intellectual elitism shared with some conservatives.

[19] Even if the right is aimed at protecting individuals, it is usually agreed that certain rights can only be exercised freely in association with others. If any right is to be claimed as an integral component of democracy, it should be freedom of association as a natural corollary to political free speech, which is arguably the one and only basic right that needs to be enshrined in democratic societies, but which may be a different creature from free speech *per se.*

> live according to the tenets or demands of a religion to which one does not subscribe. As it happens, this right is entailed by the right to self-determination, a fact which is insufficiently recognised and acted upon.[20]

Although Grayling sees self-determination as an existing, balancing right in contemporary human-rights regimes, it can be noted that a form of freedom from religion is already implicit in some fundamental laws, including those dating to the eighteenth-century flowering of Enlightenment ideals. I argue that there is recognition of the concept of freedom from religion inherent in the US First Amendment[21] (in particular the nonestablishment[22] clause, but also in the conjoined free-exercise clause), which is essential to a proper understanding of the concept of separation of church and state underpinning the amendment.[23] This politically secular interpretation has always been under attack from the freedom-for-religion lobbying coalition in US domestic policy.

United States Versus French Approaches to Human Rights and the Regulation of Cults

Although the United States and France are both said to embrace a form of political secularism (manifest in the concept of separation of church and state), the policy outcomes can be quite different. In essence this is because the former *is* still influenced by eighteenth-century *laissez-faire* liberalism (the neoliberalism of today), while the latter retain**s** some affection for twentieth-century socialism and the welfare state.[24]

By any reasonable standard, France can be seen as a bastion of religious freedom. However, following public concern about some appalling events involving a cult known as the Temple of the Sun, the French government made some genuine effort to deal with what the French term *sectarian abuses*—in other words, protecting the victims of cultic abuse. For this regulatory response, the government has been criticized for infringing religious freedom (or exhibiting religious intolerance), most stridently by religious cults and their apologists (as one would expect)[25]; but it has also been chided by the US State Department and by UN-appointed rapporteurs.

The French response includes the establishment of a dedicated agency tasked to consider issues of sectarian (cultic) abuse and to provide advice to the government. This is hardly a remarkable response to a problem policy area, but the cult-watch agency and its successors have been attacked, sometimes with missionary zeal. The French also fund citizen anticult watch groups and on occasion take advice from these groups. This arrangement and the groups involved are also attacked with vigour.

The original cult-watch agency was castigated for publishing a list of groups about which it had

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[20] A. C. Grayling, *The God Argument: The Case Against Religion and for Humanism,* pp. 17–18 (London, England: Bloombury, 2013).

[21] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…," (US Const., amend. I (ratified 1791).

[22] "The idea of 'establishment' is open to a variety of interpretations, but essentially it involves the endorsement of a church as representing the true religion and securing for it a connection to the temporal governance of the state, by which it will be both protected and privileged" [Andrew Lynch, "The Constitutional Significance of the Church of England," in Peter Radan, Denise Meyerson, and Rosalind F. Croucher (Eds.), *Law and Religion,* p. 181 (New York, NY: Routledge, 2005)].

[23] § 116 of the Australian Constitution 1900 also states "the Commonwealth shall not make any law for establishing any religion…," but this has been interpreted narrowly to date and consequently the theory of separation arguably underpinning § 116 (as it somewhat copies the US First Amendment religious clauses) has been largely ignored.

[24] …along with religious skepticism dating back to the French Revolution.

[25] A near diatribe against the French is led by some cult-apologist scholars of religion and/or sociology, along with the ever-present lawyers. Cult apologists are dismissive of the term *brainwashing* (an expression that perhaps incorporates the legally well-known concepts of undue influence, duress, unconscionable behavior, or the tort of intentional infliction of emotional distress *inter alia*— some elements of which the French have codified as *mental manipulation*). One wonders how scholars of religion (or sociologists) can be so dismissive of psychological manipulation when they are not trained in psychology or psychiatry.

some concerns. The criticism was made on the basis that this action could stigmatize ordinary members of these groups. Indeed, it might not be good practice for governments to publish lists of groups on an *a priori* characterization that they are a cult or a *secte*; and the French Prime Minister quite properly changed this procedure. However, the publication of levels of complaint made about groups purportedly serving members or the public in general[26] is very much in the public interest.[27] Such action relates to the fundamental issue of transparency, along with issues of consumer protection, which lie at the heart of any modern democracy.

It is entirely valid and in accordance with good public policy to publicize and condemn harmful practices, and to publish reports on complaints received about groups and the nature of those complaints. If doing that then results in the publication of the names of groups that have been the subject of a quantified and qualified level of complaint to an officially recognized entity, then so be it. At the same time, information about the size of groups and other relevant material should also be published to provide balanced, transparent reports. Information of this nature can only enhance religious freedom and individual choice.[28]

The complaint that the French government funds and takes advice from cult-watch groups comprising unlikely bedfellows (believers in mainstream faiths who are allegedly biased against NRMs and antireligious secular atheists) seems somewhat churlish. Even if some in the cult-watch fraternity are partly motivated by sectarianism, this does not mean that the government itself acts from sectarian motivation (which it should avoid), or that information and advice it receives is wrong (it can be rejected). In addition, most religious believers are capable of discerning the difference between harmful behaviors and theological differences. These criticisms are even less relevant to atheist cult critics, whose scepticism should be appreciated as a neutral, valuable forensic position, and who are likely to point out the failures of mainstream religions, as well.[29] So perhaps the contretemps between cult apologists and cult critics can be seen for what it is: a turf war between groups seeking to monopolize advice to governments.

Apart from the basic difference between socialism and neoliberalism, the French are more prepared to act because they are still influenced by a more pronounced secular outlook than that which is now fashionable in the United States. It is worth noting that constitutionally the French have a *secular, democratic and social Republic,* which respects *all beliefs*. There is an injunction to "ensure the equality of all citizens before the law, without distinction of origin, race or religion." Use of the word *secular* balances the right to religious freedom; and *other beliefs* are accorded the same level of constitutional recognition as religious beliefs.[30] So the secular approach is somewhat enshrined at the constitutional level and is

[26] …whether they be cults, sects, NRMs. or mainstream religious groups, and which receive government support through grants, contracts, tax-exempt status, or they solicit money from citizens…

[27] I note here that, in fashioning policy responses, a greater degree of sensitivity might be shown toward the sincere, victimized followers of cult leaders (who need protection and support) as opposed to the oligarchs who run the groups and benefit from their positions.

[28] It does not really matter whether this task is run by or on behalf of government, so long as the arrangement produces accurate, useful advice; and it should not be allowed to monopolize avenues of advice.

[29] There is no particular problem with a government agency being tasked to focus on cults, sects, and NRMs; and it should be noted that the phenomenon of cults in mainstream religions is also a focus of legitimate inquiry. Governments are sometimes advised to refrain from issuing specific warnings about particular groups (it is even postulated that government-watch agencies and warnings are illegal under international law), but if evidence of another Aum Shinrikyo were to emerge, arguably a responsible government would be morally deficit not to issue some sort of warning. Perhaps hard-and-fast policy prescriptions based on naïve interpretations of allegedly universal standards should be avoided.

[30] *French National Assembly Constitution* (1958). Some argue that the nondiscriminatory neutrality this imposes on the French government also means it must be impotent when it comes to addressing issues of harm perpetrated by religious cults. My argument is that neutrality (a loaded word) with respect to religious groups might merely oblige governments not to act from sectarian motivations. Other connotations are debatable, but it is often wise to read down provisions such as neutrality, which can lead to impractical policy constraints or lack of action entirely.

reinforced by a philosophically secular outlook known as *laïcité*.[31]

In contrast, the US First Amendment explicitly acknowledges freedom of religion but not other beliefs, which must rely upon judicial support to raise them to an equivalent position. In addition, although the First Amendment contains conjoined nonestablishment and free-exercise provisions, the philosophical outlook of separation that underpins the provisions is capable of alternative interpretations. These include an argument inspired by the religious lobby that *free exercise* should be interpreted widely, whereas the secular impulse should be construed more narrowly. This argument seems to be gaining ascendency in the United States today.

A saving grace of the US First Amendment is the further-enjoined right to free speech, which is also given a wide, *laissez-faire* interpretation. This allows greater latitude for cult critics to expose the activities of problematic groups.[32] In contrast, the French and other European nations apply a regulatory approach to free speech that can impede criticism of cults in the public square, and perhaps makes it more necessary for the government to expose unsavory practices and act upon complaints itself.

Therefore, it is always important to consider the suite of measures at play, at both the constitutional and legislative level, that set the framework for policy action in any particular national context. We must keep this in mind when criticizing the practices and policies adopted in another country. For example, trans-Atlantic criticism by contemporary US liberals (along with others who embrace the US liberal agenda) can lose a sense of the nuances involved. Criticism should be tempered with a greater recognition of context and the legitimacy of alternative conceptions of how to achieve a functioning democracy.

In this respect the term *liberal democracy* is perhaps unfortunate in that it tends to elevate one philosophical tradition above others,[33] and in particular the version propagated by many contemporary US liberals. How that particular version emerged can be the source of endless fascination, but we need to consider it because of the global impact of contemporary US liberal ideas.

Conflicting Perspectives in the United States: A Christian Commonwealth Versus the Secular State

Following the War of Independence, the founding fathers in the United States attempted to address in their federal constitutional arrangements the problem of tyrannical alliances between sovereign state power and established religion. They had in mind the convergence of this power in England and the political role the papacy played in Europe. The First Amendment provisions (combined with the earlier Article 4 no-religion test for public office) proscribed establishment and protected the rights of dissident religion from persecution perpetrated by a state acting as the agent of the established religion. The provisions, taken together, were crafted not to promote unfettered freedom of religious practices (except to the extent mandated by *laissez-faire* liberal ideas), but to eliminate sectarian motivation in legislative action. The rationale behind the provisions was to prevent persecution of minority sects by an

[31] "A strongly positive commitment to exclude religion from State Institutions and, in its place, to inculcate principles of nonreligious rationality and morality" [James A. Beckford, "Laicite, Dystopia, and the Reaction to New Religious Movements in France," in James T. Richardson (Ed.), *Regulating Religion: Case Studies From Around the Globe,* p. 32 (New York, NY: Kluwer Academic/Plenum Publishers, 2004)].

[32] "Financially powerful groups sometimes popularly characterized as *cults* can be quick to threaten volunteer cult-watch organisations with litigation over the mere use of the word *cult*" (Michael Bachelard, "Scientology Says 'Cult" Tag Defames the Church," *Sydney Morning Herald,* July 10, 2011). While litigation may still be instigated to harass critics, at least in the United States a defendant has recourse to the strong protection of free speech under the First Amendment.

[33] There is no reason we shouldn't be able to promote a secular, a socialist, a nationalist, or a conservative democracy *inter alia*— which might take very different forms to a liberal democracy. Indeed, some political secularists argue that rather than merely granting to atheism and other nonreligious ideologies the status of equivalent belief, it is fitting that rational thought should constitute a whole of government position in a truly secular democracy.

establishment motivated by sectarianism, and consequently to keep the peace between competing religious groups.

Founding fathers such as Jefferson and Madison were of the view that nonestablishment did not just mean a prohibition on a single state church such as the Church of England (the Christian commonwealth advocated by Edmund Burke). They felt it also applied to the establishment of a wider Christian commonwealth that incorporated various Christian sects, as opposed to other exotic, non-Christian sects. They promoted the concept of separation between church and state, even a metaphoric wall of separation. To the anticlerical Jefferson, the intent was to promote a secular state that in fact prohibited state support for and promotion of any religion, lest this lead to an establishment of one sect. This one sect might have been Anglicanism or an emerging dissenting establishment (such as had occurred in some of the American colonies),[34] or a grouping of Christian sects, a truly Christian commonwealth.

Arguably the intention of the free-exercise provision was to reinforce the "no religious test" provision and to protect dissenting sects from limitations imposed by any establishment. In that sense, we can view the underlying purpose of even the free-exercise clause as embracing a "freedom from religion" rationale because the clause was part of a formula designed to defeat establishment sectarianism. One should bear in mind that the founding fathers did not view free exercise by dissenters as threatened by the then practically nonexistent public atheists, but by other religionists. Religion was the problem, not disbelief.[35]

Toward the end of the eighteenth century, religion was a controversial issue as a result of the tyranny identified in unholy alliances between church and state. In addition, religion was a particularly prevalent form of association in the nascent United States to which dissident groups had fled. Jefferson and others absorbed the new intellectual fashion commending the idea of bills of rights, and the religious question was addressed specifically in fundamental law.

However, to the intellectual designers, the religion provisions in the US Constitution were not founded on some naïve rationale that religious freedom should be promoted because religions are beneficial. Rather, the conjoined twins of nonestablishment and free exercise were seen as a way of overcoming the observable harm caused by sectarianism. A policy solution was proposed to overcome a policy problem, a problem of such abiding concern that the solution was deemed suitable for inclusion in fundamental law.[36]

Many in the US religious lobby attempt to this day to separate the free-exercise provision from the nonestablishment provision. On the one hand, they argue for virtual church autonomy and near absolute freedom from state intrusion. It is even argued that religions need governmental financial support to facilitate free exercise. On the other hand, they argue for a dilution of the nonestablishment clause so that all religious groups can enjoy neutral state sponsorship wherever it can be facilitated.

These arguments go beyond the policy intention of the First Amendment, which was to keep the peace between competing sects by prohibiting the establishment of any particular religion. This

[34] Episcopal in southern states and Congregationalist in New England states, such that "the religious liberty demanded by most dissenters was a freedom from the laws that created these establishments" and to "prevent government from discriminating on account of religious differences" (Hamburger, *Separation of Church and State,* pp. 10, 14). Hamburger (p. 9) also cites Norman, that separation "was a device to prevent the supremacy of one sect over another" [E. R. Norman, *The Conscience of the State in North America,* p. 4 (London, England: Cambridge University Press, 1968)].

[35] In *Federalist No. 10*, Madison notes that "'zealous pursuit of religious opinions' causes [men] to hate each other and disposes them 'to vex and oppress each other'" [Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness,* p. 31 (New York, NY: W.W. Norton, 1996)].

[36] "The Framers made a conscious decision that religion and the state could not be co-sovereigns … Leading … scholar … Bernard Lewis explained … separation … was designed to prevent two things: the use of religion by the state to reinforce and extend its authority and the use of state power by the clergy to impose their doctrines and rules on others" [Hamilton, *God vs. the Gavel*, p. 277; citing Bernard Lewis, *Islam and the West* (1993), p. 186].

policy had the consequence of safeguarding religious diversity by guaranteeing free exercise to the extent necessary to defeat an establishment. The First Amendment, taken in the appropriate historical context, speaks in particular to the external relations of, and between, groups, and to the role of the state as neutral peacekeeper.[37]

The eighteenth-century approach to this debate was grounded in the *laissez-faire* liberal philosophy, which held that an individual should be able to exercise maximum freedom through voluntary associations, with minimal interference from the state—except where the state was obliged to intervene to prevent harm to others.[38] There is no compelling reason why an updated approach should not involve greater state regulation of religion resulting from a more advanced understanding of harm, along with the further development of legal remedies. However, with respect to US jurisprudence, the essential caveat remains. The state should not act from sectarian motivation and should preserve the basic right of any religious group to exist. This position reflects the general right to form and to participate in any association (implicit in the ideal of democratic free speech and explicit in the US Constitution[39]), which is safeguarded with particular vigour in the United States.[40]

I should also note that the "no state aid" injunction the US Supreme Court found to be necessary under of the theory of separation of church and state,[41] and the continuing legal validity of this proposition in the United States, means that religious groups there are treated differently than other nongovernment associations. Religionists claim that in this respect they are operating at some funding disadvantage in the United States.[42] So it seems that both secularists (who espouse a form of separation that seeks to protect the state from the demands of religions, and to protect individuals from religion)[43] and religionists (who attempt to conflate free exercise to an expanded concept of freedom of religion), seek to elevate religion to a place of special significance in constitutional arrangements—with opposite intent. The former see religion as potentially malignant and persistently troublesome, while the latter see religion as an intrinsic part of the human condition and generally beneficial.[44]

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[37] Appropriate regulatory control of religious groups (along with other third-sector [nonprofit or volunteer] groups) accords with the spirit and intention of the First Amendment so long as religious groups (and arguably all ideological groups) are not banned (prohibited) or, by extension, regulated out of existence. To proscribe harmful conduct wherever it occurs might in fact be the best way to guarantee religious freedom for all. A whole line of US decisions giving special privileges to the religious lobby, and numerous exemptions to generally applicable laws (sometimes bestowing upon religious groups a status approaching legal immunity), were arguably never mandated by the policy rationale behind the First Amendment religious clauses.

[38] Jefferson wrote in his first inaugural address of "a wise and frugal government which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement" (Kramnick and Moore, *The Godless Constitution*, p. 107). The authors also refer to Jefferson's "spiritual laissez-faire" (p. 107).

[39] "The right of the people peaceably to assemble" [US Const., amend I (ratified 1791)].

[40] …to the extent, for example, that there is no government list of domestic terrorist groups in the United States, although the US government is free to designate and proscribe foreign terrorist organizations.

[41] It is sometimes claimed that "separation has historically gone much further in implying limits on government than did the liberty sought by dissenters and protected by the First Amendment" (Hamburger, *Separation of Church and State,* p. 13).

[42] The prohibition is on direct funding only. Religious groups enjoy easy access to tax-exempt status in the United States, an ease of access not necessarily afforded to other groups organized on the basis of ideas or beliefs.

[43] Both motivations might be attributed to Jefferson (Hamburger, *Separation of Church and State,* p. 5).

[44] There are shades of opinion in between, but the tendency to think either way is important. For example, legal scholar Marci Hamilton notes that "religion is about the search for the meaning of existence itself. History and fact show that it is capable of engendering the most passionate and the most violent positions. For this reason it is accorded specific attention in the First Amendment, and needs to be addressed specifically." Hamilton discloses that she is a religionist, arguing that the hard sciences acknowledge the benefits of religion. Her position is that religious belief is a "potent and distinctive drive in every human society and [has] distinctive value for society." This leads to the policy that religious groups should be granted "separate treatment"

Opposing Perspectives on Cults and Religious Freedom: Cult Apologists Versus Cult Critics

Many in the field of cultic studies today embrace a dated eighteenth-century *laissez-faire* philosophy for religious groups but see no problem in applying government oversight and regulatory control to activity in other nongovernment organizations. Religiously motivated liberals or even social democrats who covet the *progressive* label and view the spiritual quest in a positive light (as being both allegedly intrinsic to human nature and generally beneficial) can easily translate the idea of a Christian commonwealth into a multifaith commonwealth. They see all religions as deserving of especial protection, support, and even exemption from laws generally applicable to other nongovernment organisations; so they sometimes inadvertently tend to the promotion of a multireligious establishment.

Often, religionists who are inspired by the US Bill of Rights promote one half of the US constitutional formula, free exercise, beyond its due. Their nod to the nonestablishment clause is to insist on their interpretation of a neutral approach to all religions, such that all members of the religious lobby can partake of governmental protection and largess where available. Many in this category adopt a benign view of cults, which they can welcome as minority religions, on the basis that it is easier to expand the club than to exclude those knocking at the door.[45]

Where the expression "religion or belief" has some currency, those taking an expansive position on religion might also accept into the club those groups that espouse "equivalent" ideological positions. With this approach, which Christian Smith labels "structural pluralism,"[46] proponents have taken time to accept antireligion, or freedom from religion, as a legitimate position to be taught to school children as an alternative to religious instruction. Although noncritical secular humanism is acceptable, the stridently secular, antireligious perspective advocated by the new atheists has been deemed a bridge too far.[47]

It is harder to explain the position of contemporary nonbelievers who fall into the camp of cult apologists, and who might normally be considered secularist. Some are ideologically pure *laissez-faire* liberals or neoliberals. Others take a libertarian stance on social issues but not necessarily on economic issues. Even atheistic social democrats can be opposed to the state regulation of religion, selectively applying a *caveat emptor* rationale to this area of consumption, yet seek to regulate free speech, for example, in the interests of social harmony.[48]

(meaning favourable exemptions) by legislatures and to reject the argument that "secular entities" should be given "the same exemptions as the religious" (Hamilton, *God vs. the Gavel,* pp. 294, *xv*, 4, 275, 295). It is sobering to think that these exemptions are provided to religion, an "illogical belief that defines an individual's entire worldview" (p. 294), particularly when "conflicts are heightened as religious entities are given more power to trump the laws that govern everyone else" (p. 289).

[45] Many clerics are also susceptible to political correctness. Fashionable interfaith dialogue leads many to refrain from criticizing cults lest they be tainted with accusations of bigotry against minority faiths.

[46] Where the state "does not privilege or disadvantage any religious or nonreligious perspective" [Christian Smith, *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* p. *x* (University of California Press, 2003).

[47] Signs of change are afoot. In Canada a ruling of the Human Rights Tribunal has noted that "if a school board is prepared to distribute permission forms proposing the distribution of Christian texts to committed atheists, it must also be prepared to distribute permission forms proposing the distribution of atheist texts to religious Christians" (Tristin Hopper, "Atheism a Creed That Needs the Same Religious Protections of Christianity and Islam: Ontario Human Rights Tribunal," *National Post,* August 27, 2013).

[48] Atheistic cult apologists and even apologists of faith can exhibit a bewildering paradox in their outlook, sometimes being highly critical of established religions yet turning a blind eye to the transgressions of cults. This might be explained as support for the underdog (established religions are powerful and minority religions are among the powerless), ignoring for the most part the even-less-powerful victims of cults, whether these be standalone groups or part of long-established religion. The same potentially flawed "power imbalance" rationale is used to justify potentially

I suspect many progressives are duped into allowing the religious lobby special privileges and protections. This outcome simply reflects that the lobby has been successful at promoting a virtually unbridled concept of religious freedom. The concept is liberally sprinkled throughout human-rights instruments and tends to prevail at the expense of any secularist idea about freedom from religion. Religion generally (including cults) is the main beneficiary, even when the idea is extended to the expression "religion or belief" because the list of equivalent beliefs is only slowly beginning to materialize in different jurisdictions. It seems that the post-WW II human-rights regime reflects an agenda to which any fashionable Western liberal or even social democrat (the old distinction having become blurred) must now adhere, and the agenda tends to favor religion over disbelief.[49] Freedom *of* religion has become a politically correct mantra, whereas freedom *from* religion can be typecast as an antireligious expression of bigotry, allegedly equivalent to virulent fundamentalism.[50]

Unfortunate consequences can occur when the one-sided lobby for the promotion of religious exemptions and freedoms prevails over competing or conflicting interests. In policy contests, where these ideas really matter, religion can prevail over other rights that are supposed to be of paramount concern to us, none of which should be more important than the rights of the child.

Conflicting Views Focused on Rights: Rights of the Child Versus Parental Religious Rights

It is difficult to see how a satisfactory balance can be achieved between irreconcilable policy positions supported by competing rights. The debate can result in a winning and a losing position, an unsatisfactory compromise, or a policy conundrum that leads to government inaction (a wicked policy problem). This is sometimes the case when the rights of children are up against parental religious rights. A debate about infant male circumcision in Germany provides an interesting illustration of this dilemma.

In June 2012, the regional court in Cologne, Germany ruled on the case of a 4-year-old Muslim boy, whose circumcision led to severe bleeding, that the practice on nonmedical religious grounds is an assault causing bodily harm. The court ruled that the practice involved intolerable health risks, that the "fundamental right of the child to bodily integrity outweighed the fundamental rights of the parents."[51]

Somewhat of a policy firestorm ensued as a result of the court decision. Chancellor Angela Merkel of the Christian Democratic Union immediately weighed into the debate, stating, "I do not want Germany to be the only country in the world in which Jews cannot practice their rituals. Otherwise we will become a laughing stock."[52] On the secular side, Free Democrat MP Heiner Kamp maintained the view that "children's rights to bodily integrity should trump religious convention."[53] The conference of European Rabbis did not hold back, leading with their trump card that this incident was "the worst attack on Jewish life since the Holocaust."[54] Opposition to the court ruling received official support from Israel, with

oppressive hate-speech laws, which can potentially be used as a weapon against cult critics.

[49] Although cult apologists are happy to use the "freedom of religion" cliché as an excuse to turn a blind eye to genuine harm perpetrated by religious cults, even the cult critics they castigate must genuflect to political correctness and give lip service to freedom of religion. In Europe, cult apologists can revel in the use of hate-speech laws to oppress cult critics, yet in the same breath pretend to support freedom of speech.

[50] This can be seen in the way in which the new atheist movement is labelled *fundamentalist* by some religious scholars, which places it into the same category as fundamentalist religious groups advocating hatred from a sectarian perspective. Such labelling is a false defamation and intellectually dishonest.

[51] "Jewish Groups Condemn Court's Definition of Circumcision as Grievous Bodily Harm," *Telegraph* (UK), June 27, 2012.

[52] Gareth Jones, "Circumcision Ban Makes Germany 'Laughing Stock'—Merkel," *Reuters,* July 17, 2012.

[53] "German Parliament Requests Law Approving Circumcision," *DW Deutsche Welle Top Stories,* July 20, 2012.

[54] "European Jewish Leaders on Circumcision Ruling," *Spiegal Online International,* July 12, 2012.

President Shimon Peres writing diplomatically to German President Joachim Gauck, that "the value of religious freedom for the Jewish community must be preserved."[55] In the broader debate, the religious lobby representing Jewish and Muslim groups in particular complained that the Court ruling was part of a trend restricting religious minorities in Germany (tantamount to religious discrimination), and part of growing religious intolerance in Europe.

There are no points for predicting which way this debate would be decided, notwithstanding reports that polling revealed a majority of Germans supported the Court's decision,[56] or a majority with an opinion did so.[57] The power imbalance is clear-cut. The German parliament quickly passed a resolution that foreshadowed an overturn of the Court ruling. A policy accommodation of some sort was soon achieved, where male circumcisions can be performed for religious reasons alone, provided a medical practitioner is present. Those who argue for a so-called balanced approach to human rights might applaud this result. Religious groups have at least officially given some ground, permitting the presence of a medical practitioner as an observer.[58] Others would argue with some justification that the religious card (and parental rights) simply trumped the conflicting rights of baby boys, who had no voice of their own in this debate.

Imagine if a NRM decided to introduce the practice of lopping off the earlobes of all infants born into the faith as a religious branding exercise. There would be an outcry, even though some courts and rights advocates suggest that no discrimination should be allowed, against NRMs. So assault is allowed in supposedly modern secular states in the name of religious liberty when it is practiced in the name of long-standing religious traditions.[59] Of course this religious liberty is for the parents only; there is no choice for the infant boys.

Conclusion

In dealing with policy problems, policy makers need to come to grips with the nature of the harm involved and ascertain appropriate evidence-based measures that they might take to address the issue. They might propose a wide variety of solutions, and they need to make choices to find the correct fit between problem and solution in a variety of geographical, cultural, and political settings. Accomplishing this is often an extremely difficult task under the best of circumstances. The perceived need to accommodate interpretations of overriding rights regimes (even if they are nonbinding and contestable) can complicate the policy process and inhibit government action, sometimes providing an excuse for inaction. Rights regimes can pose barriers to the implementation of appropriate policy remedies and can be used as weapons by lobby groups to achieve their agendas. In the field of cultic studies, where policy problems flare on an intermittent basis to become matters of public interest, the priority of cults and apologists is often to ensure that governments do nothing.

The conflicting perspectives I have outlined in this paper, (between the religious and the secular or between competing rights) can often lead to seemingly irreconcilable positions on policy options, but positions which must be resolved in the public square in any functioning democracy. The result will sometimes be a win for one side at the expense of the other; but it also may result in a flawed compromise that reflects the relative

[55] "Peres Calls on German President to End Circumcision Row" *The Jerusalem Post,* August 23, 2012.

[56] "European Jewish Leaders on Circumcision Ruling," *Spiegal Online International,* July 12, 2012.

[57] A survey by Cologne-based YouGov research institute "suggested that 45% of respondents supported a ban on circumcision, with 42% opposing the ruling and 13% professing no opinion" ("German Parliament Requests Law Approving Circumcision," *DW Deutsche Welle Top Stories,* July 20, 2012.)

[58] This puts to one side the fact that the circumcision giving rise to the controversy had been performed by a medical practitioner.

[59] This provides an interesting question for those advocating free exercise along with a wide view of what constitutes nondiscrimination against NRMs. Would it not be discriminatory merely to allow the latter to adopt the practices of long-standing religions such as circumcision, but to prohibit them from devising their own distinctive forms of branding by mutilation? The answer is that the term *discrimination* would be refined to mean whatever the prevailing opinion wants it to mean in order to achieve the desired policy result.

power of competing interest groups, notwithstanding the moral imperatives argued in the process.

My concern in this paper has been to focus awareness on what one can perceive as an upset in the power ratio between ideologically opposing camps—between the religious versus the secular perspectives—and the impact this imbalance can have in the field of cultic studies. Although sociologically many countries have become more secular, in political terms there is a growing awareness that governments are becoming much more attuned to the demands of the religious lobby.[60] In large part one may explain this proposition by a revived influence of the old Christian commonwealth lobby. This historic lobby has segued into a loose multireligious faith coalition seeking concessions and privileges that can lead to multireligious establishments.[61] The influence of the religionists' coalition on twentieth-century rights regimes has led to the codification and interpretation of rights that tend to favor freedom *of* religion at the expense of the secular position that advocates freedom *from* religion. Achieving satisfactory compromises between these seemingly irreconcilable positions is a policy challenge for the twenty-first century.

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[60] 'During most of the period between 1789 and 1967, political secularism put religious actors and ideologies on the defensive in much of the world. During most of the period between 1967 and the present, the situation has reversed, with politically engaged religious actors of all kinds, in every part of the world, putting secular regimes and ideologies on the defensive', Monica Duffy Toft, Daniel Philpott, and Timothy Samuel Shah, *God's Century: Resurgent Religion and Global Politics* (New York. London: W W Norton & Company, 2011). 79

[61] Non-establishment provisions guarding against this are noticeably absent in 20th century rights regimes

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