

The Tension between Tolerance, Harmony of Religions and Freedom of Religion



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Preface

“The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.” This is how the American philosopher, Founding Father, and 4th President of the United States James Madison described freedom of religion in 1785. Thus, the idea is not new. The question of religious freedom is linked to the complex relationship between state and faith; and the debates and conflicts in that regard are even older. The issue of separating state and religion is deeply grounded in the thinking of the Enlightenment. Today, the basic human right of freedom of religion is under pressure nearly everywhere – regardless of whether one considers Christianity, Islam, Judaism, Hinduism, Buddhism or any other faith for that matter: “We are dealing with a truly global challenge,” says Ahmed Shaheed, UN Special Rapporteur on freedom of religion or belief. According to a long-term survey of the Pew Research Center, government restrictions on religion as well as social hostilities involving religion increased significantly around the world in the last decade: the number of governments that impose “high” or “very high” levels of restrictions on religion has risen from 40 in 2007 to 52 in 2017; and the number of countries that experience the highest levels of religiously fuelled social hostilities has increased from 39 to 56 states. Whether in regard to China’s mistreatment of Uighur Muslims or the abuse of the Rohingya in Burma, the rising anti-Semitism in Europe or the persecution of Christians around the world, to name just a few striking examples, religion is still one of the principal sources of societal differences and conflicts. Mainly, this is because their respective claim to truth strains the relationship between believers and nonbelievers: if I believe that my religion is the only truth, how can your religion be true as well?

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What is more, religions are usually characterized by a rather ambiguous interpretation of tolerance towards others: they often teach in theory what they deny in practice. And what about states – protecting or pretending to keep religious values and traditions? This booklet aims to broaden our understanding of freedom of religion – in respect to the concept of tolerance, but also in regard to Singapore’s model of “harmony of religions” and its significance in Asia.

As is so often the case, a look back to the past may prove helpful: In Europe, the development of the idea of tolerance and the question of religious freedom are closely connected. Tolerance is certainly not a dominating feature of the history of Christianity, rather the Inquisition, witch-hunts, and religious wars are. Things changed for the better, however, with the Age of Enlightenment in the 18th century: philosophers introduced the world to the idea of individual freedom vis-à-vis the state and the churches. One key result was the understanding of tolerance and freedom as siblings – without the willingness to tolerate differences there cannot be real freedom of religion.

Freedom of religion, however, is more than just tolerance – at least if it is defined as a restrictive concept. In the light of this, Johann Wolfgang von Goethe once wrote: “Tolerance should only be a passing attitude; it should lead to appreciation. To tolerate is to offend.” Contrary to this, freedom of religion does not just mean to acknowledge the existence of other religions because you cannot change the situation anyway; rather, it means to accept them with their interests, opinions, and needs. Admittedly, this is demanding, it can be quite exhausting as well, and, frankly, it can hurt sometimes; and yes, there are certainly limits. Opinions or beliefs contrary to ours often challenge us, and this usually makes us uncomfortable. This, however, is a key part of a democratic civil society: one has not only to cope with other beliefs, but also to engage with them in a serious and nonetheless sober fashion.

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For the Universal Human Right to Freedom of Religion

*Otmar Oehring**

When we talk of freedom of religion we often refer first and foremost to Article 18 of the Universal Declaration of Human Rights (UDHR)¹ proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

Article 18 of the Universal Declaration of Human Rights (UDHR) states that:

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

The Universal Declaration of Human Rights is regarded as part of United Nations law and as customary international law and is acknowledged by new member states when they join the United Nations. However, the Universal Declaration of Human Rights is not binding under international law – member states of the United Nations are thus not obliged ipso facto to comply with its requirements.

The International Covenant on Civil and Political Rights (ICCPR), by contrast, which was adopted by the General Assembly of the United Nations on 19 December 1966 and came into force in accordance with Article 49 of the Covenant on 23 March 1976, is a voluntary commitment under international law.

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The human right to freedom of thought, conscience and religion outlined in Article 18 of the Universal Declaration of Human rights was formulated in detail and given a binding definition in Article 18 of the ICCPR.

Article 18 of the International Covenant on Civil and Political Rights reads as follows:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. 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 concept of freedom of thought, conscience and religion had come a long way before the Universal Declaration of Human Rights (UDHR) comprising Article 18 on the right to freedom of thought, conscience and religion was proclaimed on 10 December 1948.

From the Enlightenment to freedom of religion

The concept of freedom of religion began to gather momentum in Europe as far back as the Middle Ages. One factor was the Investiture Controversy (1076-1122) between spiritual and temporal powers over the investiture of priests. Another was the notion in mediaeval theology of tolerance towards adherents of other religions or non-believers.

However, the history of religious freedom as such only began in the age of the Reformation (1517 to 1648), which resulted in the division of Western Christianity into different denominations (Catholic, Lutheran,

Reformed). A crucial role was played by religious wars, especially the Thirty Years War, which ended with the Peace of Augsburg (1555), the Treaty of Westphalia (1648) and the Edict of Nantes (1598).

The Peace of Augsburg recognised two denominations – Lutheran and Catholic – and permitted anyone to emigrate who belonged to a denomination other than that of the ruler but who did not wish to embrace the ruler's faith.

The Treaty of Westphalia recognised three denominations – Lutheran, Catholic and Reformed – and even permitted adherents of a belief other than that of the ruler to continue practising their personal faith in private.

The Edict of Nantes confirmed Catholicism as the state religion in France, but it also granted Protestant Huguenots full civil rights, freedom of conscience and freedom of worship in limited, predefined areas.

As a result of church and state opposition, the Edict of Nantes was partially revoked by the Edict of Alès (1629) and then fully revoked by the Edict of Fontainebleau (1685)². While the Huguenots were tolerated after 1629 and continued to enjoy freedom of worship, after 1685 they lost all their religious³ and civil rights and were also expelled from the country if they refused to convert. Hundreds of thousands consequently fled to Prussia and other places.

The Great Elector Friedrich Wilhelm issued the Edict of Potsdam in 1685 permitting 20,000 Huguenots to settle in Prussia and granting them extensive privileges. Fifty Jewish families expelled from Austria after 1660 were welcomed in Brandenburg in 1671, although their civil and religious rights remained severely curtailed. In both cases the Great Elector expected a contribution to an economic upswing in Brandenburg, which was still suffering from the effects of the Thirty Years War (1618-1648).

In England there was religious persecution in the second half of the 16th century under Mary I (1553-1556) and Elisabeth I (1558-1603). Mary I attempted to re-establish Catholicism as the state religion – and was prepared to use force to do so. Her Protestant half-sister Elisabeth I thwarted her plans and subordinated the (Anglican) Church of England to the crown.

The Toleration Act of 1688, passed by William III on 24 May 1689, granted freedom of worship to Nonconformists (dissenting Protestants), who had formed their own denominations (Baptists, Congregationalists and English Presbyterians) between the 16th and 18th century and refused to comply with religious rules laid down by the official Anglican Church,

but they had to register their meeting rooms and their pastors required a licence. Catholics, Non-Trinitarians and atheists remained outside the scope of the Act.

A campaign (1772-1774) launched by Edward Pickard (1714-1778) was designed to modify the Toleration Act (1779). The profession of faith in the Thirty-nine Articles of the Anglican state church, the Church of England, was replaced by a profession of faith in the scripture. The sanctions imposed on Non-Trinitarians by the Blasphemy Act (1697) were not lifted until the passing of the Doctrine of the Trinity Act (1813). This granted Non-Trinitarians freedom of worship. The Blasphemy Act (1697) itself – and with it the Doctrine of the Trinity Act – was not repealed until 1967.

Crucial for these developments was the work of the philosopher and guiding intellectual force of the Enlightenment John Locke, whose *A Letter Concerning Toleration*, which advocated religious toleration, was published in 1689⁴. He advocated coexistence between the Church of England and the Protestant denominations (including Congregationalists, Baptists, Presbyterians and Quakers) but excluded Catholics from toleration.

In the age of confessionalisation caused by the division of Western Christianity the Catholic Church and the Protestant and Reformed communities supported the persecution of dissenters by the state.

The partly (very) limited toleration practised by the state, in other words the real and/or legal toleration of religious minorities, meant that religious freedoms were only granted as a reflex. While tolerance became a key concept during the Enlightenment, it suffered severe setbacks and only gradually led to religious freedom for the individual after the Enlightenment.

The Enlightenment effected profound changes in intellectual and social life. Immanuel Kant answered the question “What is Enlightenment?”⁵ as follows: “Enlightenment is man’s emergence from his self-imposed nonage. Nonage is the inability to use one’s own understanding without another’s guidance. ... Dare to know! (*Sapere aude.*) ‘Have the courage to use your own understanding’ is therefore the motto of the Enlightenment.”

Demands for reason, freedom and virtue now gained prominence. Absolutism as the prevailing ideology was called into question. The concept of religious freedom as a fundamental human right which is not limited to Christians slowly began to assert itself. In contrast to tolerance,

freedom of religion is a subjective right which has prominent legal status as a fundamental right and is universally valid as a human right.

In contrast to France and England, Germany was not yet a centralised state in the 18th century. The Holy Roman Empire was divided up into over 300 absolutist principalities in which different denominations prevailed. An exception was Brandenburg-Prussia, where Friedrich II, who was interested in the theories of Voltaire, the French philosopher of the Enlightenment, and wished to put them into political practice, introduced domestic reforms with a view to ushering in an enlightened absolutism.

In France, the absolutist monarchy reached its high point under Louis XIV (1643-1715). It was only after his death that the persecution of Protestants abated and the ideas of the Enlightenment were able to gain a foothold. The philosopher Pierre Bayle (1647-1706) had denounced religious intolerance and the union of state and church in 1668 in his work *The Condition of Wholly Catholic France Under the Reign of Louis the Great*⁶ and called for their separation. The constitutional theorist Charles de Montesquieu (1689-1755) called for a separation of powers in the state – now the foundation on which constitutional thinking rests.

The abolition of the absolutist state and the implementation of fundamental Enlightenment concepts as aims of the French Revolution (1789-1799) – especially human rights – had a decisive influence on the modern-day understanding of democracy and were instrumental in bringing about the far-reaching changes which swept the whole of Europe.

The concept of religious freedom was first documented in Article 10 of the Declaration of the Rights of Man and of the Citizen of 1789⁷: “No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.”⁸

Even though the constitutions of the French Revolution of 1791⁹, 1793¹⁰ and 1795¹¹ guaranteed general legal equality, freedom of speech and the freedom of religion, there were massive attacks at first on the Catholic Church and the Christian religion in general. Only after the concordat between Napoleon and Pope Pius VII in 1801 were any tangible improvements introduced. However, Catholics, Lutherans and members of the Reformed Church were all subjected to state control in the exercise of their religion. Not until the *Code civil* of 1804 was equality of citizens before the law guaranteed. The “*Décret infâme*”¹² excluded Jews for a further ten

years, however. In the constitutions adopted in the following decades the right to worship freely was confirmed – in some cases with reference to the Declaration of the Rights of Man and of the Citizen of 1789.

Article 1 of the Law on the Separation of Church and State of 1905¹³ guaranteed the principle of freedom of conscience (*liberté de conscience*) – but expressly not freedom of religion – and of freedom of worship¹⁴. In the constitutions of 1946 and 1958 there is no catalogue of human rights, although reference is made to the Declaration of the Rights of Man and of the Citizen of 1789.¹⁵

France is one of the signatory states of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Human Rights Convention and is thus committed to guaranteeing freedom of religion.

In contrast to developments in France, progress in Great Britain towards religious freedom in the 19th and 20th century followed an evolutionary and not a revolutionary path. Laws bequeathed rights irrespective of religious affiliation, and religious requirements for the exercise of rights were generally abolished.

The Sacramental Test Act of 1828 removed the requirement for civil servants to be members of the Church of England, which had been stipulated in the Corporation Act of 1661. The law was repealed by the Roman Catholic Relief Act of 1829¹⁶ which did away with far-reaching restrictions on the access of Catholics to public office – with the exception of offices related to the Church of England – and also granted them access to the British parliament.

Like France, Great Britain is one of the signatory states of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Human Rights Convention and is thus committed to guaranteeing freedom of religion. However, the sovereignty of parliament in Britain was at odds with the validity of the rights arising from the conventions. Not until the Human Rights Act was passed in 1998¹⁷ were the rights enshrined in the conventions finally incorporated into British law in the year 2000.

In Germany, the French Revolution and its Declaration of the Rights of Man and of the Citizen of 1789 influenced constitutional developments in individual German states. They first found expression in the constitutions of Bavaria (1818)¹⁸, Baden (1818)¹⁹ and Württemberg (1819)²⁰, these

states joining 36 others in the Confederation of the Rhine founded in Paris in 1806 on the initiative of the French Emperor Napoleon.

The constitutions of Bavaria (Article 9), Baden (Article 19) and Württemberg (Article 27) granted the three Christian denominations (Catholics, Lutherans, members of the Reformed Church) freedom of conscience and religious worship as well as civil and political rights. These were extended to Greek Catholic and Greek Orthodox Christians in Bavaria in 1834 and to Israelites (i.e. Jews) in 1854. In Württemberg rights of citizenship were conferred in principle on other “fellow Christians and non-Christians” but these rights were only authorised if the persons concerned “are not hindered by their religious principles in the fulfilment of their civil duties”. Other German states followed the example set by these three states.

The Constitution of the German Empire adopted in Frankfurt after the revolution of 1848²¹ guaranteed all Germans full freedom of conscience and religion (Article 144), freedom of religious worship (Article 145) as well as civil and citizenship rights (Article 146) and, for the first time, also recognised negative religious freedom (Articles 144, 148). However, non-Christians were still barred from certain state offices.

The Imperial Constitution of 1871 did not comprise a catalogue of human rights, responsibility for which rested with the individual German states.

In the Second German Empire a dispute arose between the state and the Catholic Church over their respective spheres of influence (*Kulturkampf*), which only ended in 1878 and was resolved by diplomatic means in 1887.

Progress towards full freedom of religion in Germany was concluded with the adoption of the Constitution of the German Reich (Weimar Constitution) of 1919 which referred extensively to the Frankfurt Constitution. In respect of religious freedom the Basic Law of 1949 in turn explicitly referred to the Constitution of the German Reich (Weimar Constitution).

Like France and Great Britain, Germany is one of the signatory states of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Human Rights Convention and has reiterated its commitment to guaranteeing freedom of religion.

The Enlightenment not only exercised decisive influence on the concept of religious freedom in Europe, but also supplied the necessary theoretical foundation for the American Revolution, which began in 1763 and ended with the formal Declaration of Independence of the United States on 4 July 1776. The American independence movement was the first political manifestation of the concepts of state and society developed during the Enlightenment. The First Amendment to the Constitution of the United States of America passed in 1791 is part of the Bill of Rights, the catalogue of fundamental rights enshrined in the Constitution of the United States of America. It emphasises absolute non-interference by the state in matters of religion and thus grants citizens full freedom of religion.

However, not only states but churches, too, as key players in the disputes over religious freedom, have finally come to a reassessment of their approach to this issue. Heiner Bielefeldt, the former Special United Nations Rapporteur on Freedom of Religion or Belief, writes with reference to the Catholic Church: "In his *Syllabus Errorum* (1864) Pope Pius IX condemned religious freedom as leading to 'the pest of indifferentism', i.e. the dissolution of all truth claims, binding norms, religious values and ecclesiastical hierarchies.²² Although the Roman Catholic Church changed that negative attitude thoroughly when adopting the Second Vatican Council's declaration *Dignitatis humanae* (1965),²³ conservative scepticism towards freedom of religion or belief still persists in many religions and denominations."²⁴

Freedom of religion today

The ICCPR – and thus Article 18 of the Convention cited at the beginning – has been signed and/or ratified by most of the member states of the United Nations, including by states which might not have been expected to do so. The Democratic People's Republic of Korea (North Korea) ratified the ICCPR in 1981, Vietnam in 1982 and Eritrea in 2001; Cuba acceded to it in 2008, while the People's Republic of China signed it in 1997 and ratified it in 2001. Most of the states of the Organisation of Islamic States (OIS) have also joined the convention, although Qatar, the United Arab Emirates, Oman and Saudi Arabia have not.²⁵ Not one of the states which have joined or ratified the International Convention on Civil and Political Rights is on record as having any reservations about Article 18 of the Convention²⁶ –

they have, therefore, all made a binding commitment under international law to adhere to the provisions of Article 18 of the ICCPR.

However, this is no guarantee that the state concerned will actually take responsibility for complying with the provisions of the ICCPR. A quick glance at the constitutions of many states in Asia, Africa and the Middle East often does not make it immediately obvious how marked the discrepancies are between the provisions of Article 18 of ICCPR and the content of their national constitutions. Terms such as freedom of religion or belief and/or freedom of worship are interpreted differently. Application of the relevant provisions in everyday practice frequently looks completely different. Hence it is often only through additional consideration given to the cultural/religious context and/or historical (colonial) conditions that it is possible to establish what significance really attaches to the chosen terminology in the respective constitutions.

In the few remaining communist states the issue of religious freedom is essentially about the state's claim to power. Believers, and above all a community of believers, are seen as rivals and a threat to the claim to power asserted by the ruling party and thus by the state. This applies all the more if, from the point of view of the state in question, the granting of freedom is seen as opening the door to the supposed threat of outside influence. At best, therefore, the state is only prepared to grant as much freedom as will allow it to retain control at all times.

When it comes to religious freedom in Islamic states, the key issue is the understanding of freedom of religion in Islam. In Islamic law that means the freedom of Muslims to practise their faith and the freedom of everybody else to embrace Islam. The Islamic legal system is unfamiliar not only with important aspects of negative religious freedom, i.e. that nobody can be forced by the state or a third party to exercise a certain religious belief or perform religious acts, join a religious community, change their religion or remain in a religious community against their will; it is also unfamiliar with such aspects of positive religious freedom as the right to choose one's own religion or belief, to join a denomination of one's choice or deliberately not to belong to any religious community at all.

Approaches to religious freedom

It has already been pointed out that a superficial glance at the constitutions of many states in Asia, Africa and the Middle East often does not make it immediately apparent how marked the discrepancies are between the provisions of Article 18 of the ICCPR and the content of these national constitutions. However, the issue here is not just one of terminology or the different interpretation of concepts such as freedom of religion or belief and/or freedom of worship.

In many states – not just in the Islamic world – which have signed the ICCPR – and in some cases in those which have not – the focus continues to be placed on tolerance, as if “tolerance” were equivalent to freedom of religion.

European history shows how hard many rulers in Europe found the exercise of tolerance and how narrowly they occasionally interpreted the concept. European history also shows that even where tolerance is exercised it can subsequently also be restricted or completely negated. And European history also shows how hard it was to move from tolerance to religious freedom – and above all how long it took before full freedom of religion was implemented.

Seen against this historical backdrop it is quite obvious that the concept of tolerance is not equivalent to that of freedom of religion. It is at best a preliminary stage on the path to freedom of religion.

With this in mind Nazila Ghanea raises the question in her contribution: Does the concept of tolerance have meaning with regard to freedom of religion or belief?

It is not only the concept of tolerance which still plays a role today in the debate on the context of religious freedom. In Singapore, for example, discussions revolve around the model of the “harmony of religions”. Here again the question naturally arises as to the extent to which the model of the “harmony of religions” is in accordance with the concept of the freedom of religion.

Mathew Mathews deals with this question in his contribution entitled “Of Religious Freedom and Harmony: State-Driven Compromise in Singapore”.

In view of Singapore’s importance in the region, the model of the “harmony of religions” is of significance beyond the country’s borders. Dian

A. H. Shah will deal with this aspect in her paper on “Managing Religious Harmony in Asia: Challenges from Law and Politics”.

It is becoming increasingly clear how necessary and important it is to stand up for the universal human right to freedom of religion. Wherever the concept of tolerance is marketed as being equivalent to freedom of religion. Wherever the harmony of religions is emphasised. But also wherever freedom of religion has become everyday practice. For history has shown time and time again that even positive developments can be relativised and reversed.

Wherever freedom of religion has not been implemented we must work to put it into practice. Wherever religious freedom has been implemented, but there is the risk of it being relativised or of achievements being reversed, we must counteract that risk.

Our common efforts to secure freedom of religion are crucial – all over the world!

* Otmar Oehring is, since 1 August 2016, Coordinator International Religious Dialogue within the Team Political Dialogue and Analysis of Konrad Adenauer Stiftung. Before that he had been since December 2012 the foundations representative in Jordan. Born in 1955, he lived from 1955 to 1971 in Ankara, Turkey. From 1975 to 1981 he studied Middle Eastern Culture and History in Munich, where he also read Law. He spent 1981 and 1982 in Istanbul on a scholarship. In 1983 he obtained his PhD from the Ludwig Maximilian University, Munich, with a thesis on "Turkey in the Crossfire of Extreme Ideologies (1973-1980)". Since late 1983 he has been in the foreign department of mission, the Pontifical Mission Society in Aachen, where he was initially Desk Officer for the Islamic countries. He was in charge of the Africa/Middle East Desk from 1991 to 2000 and has been head of the Human Rights Office since 1 January 2001 with a special focus on freedom of religion and belief. During that period he was authoring a number of articles for FORUM18. In 2009 he became a member of the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief. He has also been an expert witness in asylum hearings since 1981.

Notes

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3. Op. cit., II, III.
4. Translated by William Pople - <http://www.constitution.org/jl/tolerati.htm>.
5. Translated by Mary C. Smith - <http://www.columbia.edu/acis/ets/CCREAD/etscc/kant.html>.
6. Ce que c'est que la France toute catholique sous le règne de Louis-Le-Grand, Rotterdam, 1686.
7. «Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi.» Déclaration des Droits de l'Homme et du Citoyen de 1789 - <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>.
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10. Constitution du 24 juin 1793, Déclaration des Droits de l'Homme et du Citoyen - <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-du-24-juin-1793>.

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15. Préambule de la Constitution du 27 octobre 1946, 1 - <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/preambule-de-la-constitution-du-27-octobre-1946>; Constitution du 4 octobre 1958, PRÉAMBULE - <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur#preambule-589>.
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3

Introduction to FoRB: What Does It Mean, What Does It Not Mean*

What is FoRB?

Freedom of religion or belief should be interpreted broadly and protects individuals who profess and practice different kinds of religions, i.e. traditional, non-traditional and new religions, atheism and agnosticism. It also protects the right to have no confession at all.¹ As previously mentioned, FoRB gives everyone the right to have a religion or belief; change his/her religion or belief; and practice his/her religion or belief as he/she likes.²

As with all other human rights, individuals are the primary holders of FoRB. The government is the primary duty bearer. At the same time, FoRB has certain collective aspects where the religious community as a group enjoy certain rights, e.g. the right to obtain legal recognition as a religious community, the right to decide over internal affairs, like choosing suitable leaders, the right to create religious schools and to provide services to the public.³

Seven dimensions of FoRB

What does freedom of religion then mean in practice? The state has the responsibility to respect, protect and promote the following seven dimensions of FoRB:⁵

1 - The freedom to have, choose and change a religion or belief

As mentioned before, FoRB gives everyone the right to freely have, choose and change a religion or belief. This is sometimes called the inner freedom,

and can never be legitimately limited by anyone or by any means whatsoever. It is, according to human rights documents, absolutely protected without exceptions or conditions.⁶ Still, the right to change one's religion is debated and challenged. Religious identity is often viewed as connected with ethnic or national identities. However, this becomes problematic when people are restricted from changing their religion or belief to a faith that is not traditionally associated with one's ethnic group or nationality. Numerous governments and groups ban people from belonging to, changing or leaving a particular religion. In many countries, people who choose to leave a religion face threats and violence from society. Requirements to reveal one's religion, such as on ID-cards or other required government forms, are often used to discriminate and persecute.

2 - The freedom to practice a religion or belief

The outer freedom includes the right to manifest, practice and express one's belief in private or public, alone or in community with others.⁷ It contains, among other things, the right to:

- Worship or assemble in connection with a religion or belief, and to establish and maintain houses of worship.
- Establish and maintain charitable and humanitarian institutions.
- Make, acquire and use necessary articles and materials related to the rites or customs of a religion or belief.
- Write, issue, publish and distribute religious literature.
- Teach a religion or belief in suitable places.
- Ask for and receive voluntary financial donations or other gifts from individuals and institutions.
- Train, appoint and elect suitable leaders and teachers according to the requirements and standards of any religion or belief.
- Establish and maintain communications with individuals and communities in matters of religion or belief at national and international level.
- Observe days of rest; celebrate holidays and ceremonies in accordance with one's religion or belief; dress and eat in accordance

with the prescription of one's religion; use religious symbols; and to share one's faith with others in non-coercive missionary activities.

3 - Freedom from coercion

Nobody has the right to force another person to have, maintain or change a belief. Force can mean to persuade someone to change a religion against their will by using physical violence or threats thereof, psychological violence, criminal penalties or more subtle forms of illegal influence. UN General Comment 22 on how to interpret Article 18 in ICCPR states that if a government uses material benefits or restricts access to medical care, education and/or employment in order to influence people's choice of religion; this is to be considered as an indirect form of coercion.⁸

4 - Freedom from discrimination

Everyone is entitled to FoRB without discrimination. States are obliged to respect, protect and promote this freedom to all persons within their country. Majority religions should have no advantage over minority religions. It is forbidden to discriminate in any way because of a person's beliefs or the religious community to which a person belongs. The government is obliged to take effective steps in order to prevent this kind of discrimination, whether it occurs in legislation, in implementation or in society.⁹ The state should be impartial and not favor any religion. Unfortunately, discrimination based on religion or belief negatively affects minorities' access to basic services like education and health care all over the world.

5 - Rights of parents and guardians and the rights of the child

Parents or guardians have the right to raise their child in accordance with their own religion or life stance. This should be done in accordance to the developing capacities of the child. As the child matures, he/she must be allowed to make more decisions regarding his/ her own beliefs.¹⁰ The government may not decide what religion parents should pass on to their children. The practice of a religion or belief may never harm the physical or mental health or development of the child. Every child has the right to access to religious education according to the will of their parents or guardians and should never be forced to participate in such education

against these wishes. If religious education in public schools is not impartial nor objective, the government should make it possible for students to opt out or to attend alternative classes. Exemptions from these lessons must be implemented in a non-discriminatory and non-stigmatizing manner. Internationally, millions of minority children are forced to participate in biased education in favor of the majority religion or belief.

6 - The right to corporate freedom and legal recognition

Religious or belief groups have the right to be officially recognized as communities, and those who seek for it should be given legal entity status in order to have a formal body representing their interests and rights as communities. Nevertheless, official registration or legal entity status should never be a requirement for religious or belief groups to exercise FoRB or their right to decide over own affairs. Even though the primary right holders are individuals, existing standards highlight the importance of the collective dimension of FoRB, held in common by the many members of religious communities.¹¹ Unfortunately, strict laws regarding registration are used in many places in the world to discriminate, harass and persecute communities of religious believers.

7 - The right to conscientious objection

FoRB also protects people from being forced to act against their conscience and the core of their beliefs, especially regarding the use of weapons or deadly force. Therefore, those who genuinely hold beliefs that forbid military service should be given an alternative national service. In many countries, this is not possible and refusing military service on religious grounds can be punishable.¹²

What about limitations?

Some rights are absolute rights, which means that they may never be limited or suspended under any circumstances. The right to freedom from torture is one example. Other rights are qualified rights, which means that they may be limited under certain well-defined and narrow circumstances, defined by limitation clauses.¹³

FoRB has both an absolute part (the inner freedom, i.e. the right to have, choose and change religion or belief) and a qualified part (the outer freedom, i.e. the right to practice a religion or belief).¹⁴

Any limitation of FoRB can only apply to the outer freedom, i.e. the right to manifest, practice and express a religion or belief. The limitation should never be applied in a discriminatory way. Any restriction or limitation must meet all of the following three requirements:¹⁵

- Grounded in national law.
- Necessary in order to protect one of the following public goods:
 - Public security
 - Public order
 - Public health
 - Public morals (the claim of what is public morals must be based in more than one religious tradition)
 - Basic human rights and freedoms of others

If the state can obtain the goal sought by the limitation in another way, it must choose the solution that does not limit FoRB.

- Proportionate and non-discriminatory. Proportionate means that if the state really has to limit FoRB in order to obtain one of the above mentioned goals, the extent of the limitation needs to be in balance with the actual danger that the religious practice constitutes. In addition, the limitation must be applied equally to followers of different religions or beliefs.

Common misunderstandings

Freedom of religion or belief challenges and is challenged both nationally and internationally. There are several common misunderstandings about what FoRB is and is not. It is therefore useful to look at some of these misunderstandings.¹⁶ Contrary to what many may think, **FoRB is not:**

- About enforcing interreligious harmony nor preserving the existing religious patterns in society. FoRB allows people to freely

choose and change their religion or belief, even if it would change the religious map of a country and be perceived as threatening by the authorities. Just like protecting the rights of followers of main-stream interpretation of religions or beliefs, FoRB also protects minorities, minorities within minorities, converts and re-converts, reformers and dissidents. FoRB makes religious pluralism and diversity possible and enables different religious groups and interpretations to co-exist peacefully. Therefore, the former UN Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt (Between 2010 to 2016) calls FoRB a non-harmonious peace project.

- An exclusively Western/Christian concept. One can find elements of FoRB in many different religious and philosophical traditions. Leaders from many of the world's major religions have advocated for religious tolerance and elements of FoRB long before it was enshrined in modern human rights documents.¹⁷
- The removal of religion from the public sphere nor an enforced privatization of religion. FoRB assumes that the state is impartial with regard to all worldviews and life stands, both religious and non-religious, and does not privilege any particular religion or belief. However, this does not justify suppressing all visible manifestations of religious practices or symbols in order to create a religion-free public sphere.
- Protection of religions themselves, nor their gods, prophets or sacred texts, from ridicule and criticism. As with other human rights, FoRB protects human beings, i.e. the person holding religious beliefs or worldviews. It does not protect ideas or doctrines. Nevertheless, one cannot use religion to propagate religious hatred that leads to incitement of violence or discrimination.¹⁸

* The text in this chapter has been adapted from *Freedom of religion or belief for everyone*, Produced by: Stefanus Alliance International, Fourth edition 2017 (First published 2012), Contributors: Ed Brown, Kristin Storaker, Lisa Winther.

For a more in-depth reading, you can download the publication at: <https://d3lwycy8zkggea.cloudfront.net/1510921391/forb-booklet-2017-english.pdf>.

The publication is also available in other languages at: <https://www.forb-learning.org/written-resources.html>.

Notes

1. United Nations Human Rights Committee, General Comment No. 22 (2).
2. UDHR, art. 18, General Comment 22 (5).
3. Rapporteur's Digest on Freedom of Religion or Belief: excerpt of the reports from 1986-2011 by the Special Rapporteur on Freedom of Religion or Belief.
4. Ghana, N., Lindholm, T., Durham, C., Tahzib-Lie, B. G., 2004. Introduction. In: Lindholm, T., Durham, C., Tahzib-Lie, B. G (eds), 2004. Facilitating Freedom of Religion or Belief: A Deskbook.
5. Swedish Mission Council, 2010. What Freedom of Religion involves and when it can be limited. A quick guide to religious freedom.
6. UDHR, art. 18; ICCPR art 18 (1); ECHR, art 9 (1), General Comment 22 (3, 5).
7. ICCPR, art. 18; General Comment 22 (4); 1981 Declaration art. 6.
8. ICCPR, art. 18 (2); General Comment 22 (5); 1981 Declaration, art. 1 (2).
9. UDHR, art 2; ICCPR, art 2, 5, 26 and 27; 1981 Declaration art. 2-4; General Comment 22, art. 2; ECHR, art 14.
10. CRC, art 14 (2); ICCPR 18(4); General Comment, art 6; 1981 Declaration, art 5.
11. Ghana, N., Lindholm, T., Durham, C., Tahzib-Lie, B. G., 2004. Introduction. In: Lindholm, T., Durham, C., Tahzib-Lie, B. G (eds), 2004. Facilitating Freedom of Religion or Belief: A Deskbook; ICCPR 18(1).
12. General Comment 22 (11).
13. <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSectorGuidanceSheets/Pages/Absoluterights.aspx>.
14. ICCPR, art. 4(2); General Comment 22, art. 3 and 8.
15. ICCPR, art. 18(3); ECHR, art. 9(2); General Comment 22, art. 3, 8.
16. H. Bielefeldt, 2013, Misperceptions of Freedom of Religion or Belief in Human Rights Quarterly, Volume 35 no 1.

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17. Lindholm, T., 2004. Philosophical and Religious Justification for Freedom of Religion or Belief. In: Lindholm, T., Durham, C., Tahzib-Lie, B. G., (eds), 2004. *Facilitating Freedom of Religion or Belief: A Deskbook*.
18. ICCPR, art. 20.

4

Does the Concept of Tolerance Have Meaning with Regard to FoRB?

*Nazila Ghanea**

Human beings suffer. As human beings we experience joy, bereavement and loss. There are times in life when we are pained and confused, reassured or betrayed, where we see immense kindness or barbarity around us. In all of this we may want to discuss with each other the meaning of it all, to pray about it, to ponder it with others, to assemble and reflect on it. This is not just a Protestant phenomenon, it is not just a Western phenomenon, it is a human phenomenon and it is global. Human rights is also concerned with the law and politics which can guarantee a zone of protection for such pondering, exchange and investigation. This is not just something that should concern us in the political sphere, it is not just a matter of foreign policy and it is not something that the law should take on as being, you know, the possessor of and having ownership of. All of these fields, all of these actors, have a role to play, but we should not make it purely political, we should not make it partisan, we should not make it something that we possess and exclude others from. It is truly a multi-stakeholder concern that we need to approach with some humility, and as a shared concern.

States have a role in enabling the space within which the suggested space to discuss, pray, ponder, re-evaluate, reject, assemble and reflect is to be enjoyed. It is precisely for these reasons that freedom of religion or belief (FoRB) is upheld in international human rights law and the duty of states to enable its full enjoyment is laid out. In this short article we will first trace out the parameters of FoRB before exploring and contrasting

it with the policy of tolerance which some states rely on either in parallel with the pre-existent duties with regard to FoRB or as an alternative.

What is FoRB?

There was a notable multilateralism and diversity that was involved even back in 1947 and 1948 in the crafting of the Universal Declaration of Human Rights. We should be grateful that it was agreed in 1948 because in every decade that has passed since then, the chances of coming to an agreement unfortunately have likely diminished.

At that time there was diversity, though, of course, it was a much smaller world in terms of the number of states. Many states were still colonized and had not yet gained independence. It was a post-war world and it was affected definitely by that experience and also by the Cold War that was going to follow. However, in the drafting of the Universal Declaration of Human Rights, we had notable diversity in persons such as Charles Habib Malik from Lebanon, Peng Chun Chang from China, and then also Eleanor Roosevelt from the United States. In the later drafting there were representatives also from the Soviet Union, from Chile, and from Australia, so there was notable diversity there.

Then, at the time of the adoption of the Universal Declaration of Human Rights we know that 48 states agreed to the adoption of this Declaration. They included Iran, Iraq, Mexico, Brazil, Egypt, Ethiopia, Afghanistan, Venezuela, Turkey, Pakistan and Mexico. Eight states did not object to the adoption of the Universal Declaration of Human Rights, but they abstained from the adoption of the Declaration. All were Soviet States plus South Africa and Saudi Arabia.

Turning now to the text of Article 18 of the Universal Declaration of Human Rights, we see that “everyone” is assigned as the bearer of this right. “Everyone” includes those that believe in one God, those that believe in many gods, those that do not believe in God, and those who have not decided yet, whether they believe in religion or want to follow an organized religion or are ambivalent or are yet undetermined as to what path they want to follow. As with all human rights, this right too is universal and it is for everybody. The text’s reference to “thought, conscience and religion” is also indicative of the breadth that is covered. Sometimes religious people get uncomfortable and they may say: Well, how come there are

legal judgments relating to FoRB that address climate change? Why do they address veganism? Why do they concern themselves with pacifism? These might be important moral and ethical choices in life, but they are not religious.

In understanding these legal judgements we need to understand that the determination of what falls within the scope of “thought, conscience and religion” is not being based on theological grounds. If it were, then which of the theological grounds would it be legitimate to base it on? The determination is a legal one, of whether a particular claim falls within the scope of “thought, conscience and religion”. The question rests on whether it is held seriously, coherently and with cogency? If so, an independent adjudicating body may determine that it falls under the umbrella of the freedom of religion or belief in international human rights law. That does not mean that the lawyers concerned and the politicians concerned are saying that veganism is a religion. They are not. They are just saying that it is a deep matter of conscience for that particular person, with the facts of that particular case, and therefore it too should be protected. No offence needs to be taken.

We have in the language of the Universal Declaration of Human Rights that a change of religion or belief is included and that change includes from atheism to polytheism, to non-theistic belief, and from any religion to another religion or to non-religion. It goes in all directions. This change should not be a result of coercion and undue inducements pressuring people to change their religion or belief. It is merely recognition of a social and legal fact that individuals are able to change their religion or belief – freely arrived at, and not in a closed hierarchical environment where there might be promotion or financial inducement coercing it, nor for example in a humanitarian context of dire need where you have to convert to get aid. If it is not in those kinds of pressured unequal coercive environments, the fact is that human rights law recognizes that some may choose to change their religion or belief in such free and equal environments.

Some state authorities claim that they protect freedom of religion or belief, whereas all that can be enjoyed is that a person can be a believer in the privacy of their home if they do not tell anybody about that and if they do not practise with others; this is not sustainable. This is not recognized as a freedom of religion or belief according to the Universal Declaration of Human Rights. Even at the outset in 1948 it was clear that FoRB is to

be enjoyed not only “alone”, but also “in community with others”, not only in private, but also in public, and that this freedom is not only to have, adopt or change religion or belief, but also to be able to manifest it. We get already some indications in 1948 that it can be manifested in public, with others, in teaching, practice, worship and observance. The international standards upholding FORB now not only include Article 18 of the Universal Declaration of Human Rights, but also Article 18 of the International Covenant on Civil and Political Rights and General Comment 22 of the UN Human Rights Committee interpreting this, the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and regional instruments.

After the Universal Declaration of Human Rights, the international community decided that the declaration, which is a political declaration, needed to be adopted in legally binding instruments. Therefore it was followed by the drafting, adoption and coming into force of the International Covenant on Civil and Political Rights. In the 20 years that it took between the adoption of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the consensus around change of religion or belief waned. Therefore in these subsequent binding instruments we have references to “having” or “adopting” a religion or belief of one’s choice. In interpreting and understanding this language, all the international supervisory mechanisms and experts have always said that implicit in “having and adopting” is the fact of recognition of change of religion or belief. If you choose to have or adopt a religion or belief that does not mean that you have chosen to be born by a particular father or mother, because we do not have that choice. It means that you may have the possibility again in an un-coerced, free, equal environment to change your religion or belief. However, it remains the case that the language that was explicitly recognized and could be recognized by the political actors at this stage was to “have and adopt” thought, conscience and religion.

We also have more clarity in the International Covenant on Civil and Political Rights of the fact that there should be no coercion and that is a unique term in all the international human rights law instruments, that there should be no coercion in matters of religion or belief, in having, adopting or changing a religion or belief. Whether there is coercion to maintain your religion or belief or to change your religion or belief or to become atheistic, all of this is prohibited in the International Covenant on

Civil and Political Rights. Article 18 of this Covenant also gives clarity on whether there can be any limitations imposed on manifestation of religion or belief.

It would be impossible to imagine a world where everything that is claimed in the name of religion or belief would enjoy a complete immunity and complete freedom in all circumstances. We are clearly witnesses to many concerning developments around the world in the name of religion or belief. Therefore, of course, human rights law rightly recognizes that manifesting religion or belief may be limited, but in very clear circumstances and we would go about that in some detail in a moment. It also recognizes the rights of the parents in the upbringing of their children, but even here the best interest of the child should be taken into consideration and also the fact that with the increasing capacity of the child, they should be involved, you know there is a big distinction between age 0 and age 18.

Non-coercion is also explained further by the monitoring body, the body that monitors the International Covenant on Civil and Political Rights, the Human Rights Committee. They explain that coercion means that there should be no penal sanctions, that there should be no physical force. And also even in the field of economic social culture rights, if there is a pressure on you regarding your pension, regarding the housing, regarding your job, regarding who you can marry, regarding inheritance, regarding the possibility of divorce or otherwise, regarding exclusion from medical care, if there are those kinds of pressures on you, are you really free to have or to adopt or to change your religion or belief if all the instruments of the state and all the social security and welfare are dependent on you having a particular religion or belief? Can we really say that the freedom of religion or belief is really enjoyed?

It is not only at the international level that freedom of religion or belief is outlined and detailed. We see freedom of religion or belief in numerous other instruments, ranging from the American Convention that was adopted the day before the Universal Declaration of Human Rights, to the European Convention on Human Rights, to the African Charter and also the Cairo Declaration on Human Rights in Islam. All of them, in different language, also seek to protect freedom of religion or belief.

Freedom of religion or belief does not stand alone. What is core to all the international human rights instruments is non-discrimination. Non-discrimination provisions in all international human rights instruments

specify non-discrimination on the basis of religion, that there should be no discrimination on the basis of religion for women, for children, and that it should not serve as a way of discriminating in any sphere of life.

What is interesting is that the International Covenant on Civil and Political Rights specifies that even in times of public emergency that endangers the existence of the state, there cannot be any derogation from Article 18, from freedom of religion or belief. In a state of emergency, where the existence of the state is at stake, the state cannot say: "We suspend all enjoyment of Article 18 rights and FORB because there is a national emergency." Why is this so? This is due to recognition of the fact that the enjoyment of Article 18 is not a threat to the existence and the continuity of the state even at a time of emergency. Interestingly enough the same Covenant recognizes that freedom of opinion and expression can be suspended or derogated from in these conditions, but freedom of religion or belief cannot. This gives some centrality in the recognition of the importance and the need for continuity in freedom of religion and belief. We could think about it at a sociological level that actually in times of public emergency many people might be resorting to their temples, their houses of worship and their churches to survive and to maintain some level of social cohesion. Such context helps us to better understand this.

Due process rights, equality before the law, peaceful assembly, freedom of association and the rights of minorities, these are also other articles in the International Covenant on Civil and Political Rights that reinforce freedom of religion or belief. Freedom of religion or belief does not stand alone. If we think about individuals and groups around the world, minorities that suffer discrimination and sometimes persecution, it is not only their freedom of religion or belief that is being violated, they may be tortured, they may be under house arrest, they may be denied freedom of movement. When there is discrimination and persecution, the victim of religious discrimination and persecution does not only need Article 18, they do not just need freedom of religion or belief, they need the right to have equality before the courts, they need to not be tortured, they need to educate their children. They should be able to enjoy all their rights, not just those under Article 18.

The international community was not successful in adopting a stand-alone binding treaty on religion or belief. We have a declaration that was adopted after 21 years of efforts, but in it, we have its Article 6, which

details manifestation of religion or belief. It is a good response to states that say: "all our people enjoy freedom of religion or belief". Do they? Are they able to give to charity? Are they able to worship together? Are they able to raise funds? Are they able to engage in charitable and educational activities etc.? Please refer them to Article 6 of the 1981 Declaration to see whether that is actually the case.

We noted that manifestation of religion or belief can be limited, but only if it is enshrined in law, if it does not result in discrimination, and if it is applied in a proportionate manner. Can there be limitations to everybody's right to have, adopt or change religion or belief? No, it is only in regard to the manifestation of religion or belief that the states may impose limitations, but only if it has not a discriminatory process, purpose or result and if it is being strictly interpreted.

We have observed the cross-national support from 70 years ago to this date for freedom of religion or belief. We have seen that it is upheld in many instruments, not only the international instruments but also regional and national instruments. We have clarified that there should be no coercion in this matter and limitations must be strictly interpreted and only applied to manifestation of religion or belief.

In what ways does the concept of "tolerance" have meaning with regard to FoRB? In what ways does it support, contrast with, overlap with, or depart from FoRB?

The language of international human rights instruments invests everyone with freedom of religion or belief, rather than extending "tolerance" to them. Furthermore, as the Universal Declaration of Human Rights upholds in its Preamble, the international community has understood the fulfilment of human rights to be integral to peace: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Since "tolerance" is arguably concomitant with "freedom, justice and peace", then perhaps tolerance offers at least a subset or partial capture of FoRB?

FoRB rights are upheld with respect to individuals who, in the language of the International Covenant on Civil and Political Rights, can found families, may manifest religion or belief in community with others, may

assemble peacefully, may together constitute “peoples”, and may constitute minorities in community with other members of their group. In short, these individuals in whom rights are invested are not atomized and disconnected from others. However, it is held that it is through the fulfilment of the rights of individuals that families, groups, communities and peoples thrive. Is tolerance sufficient to fulfilling the full scope of their FoRB rights?

In the above we therefore see that the standalone objective of “tolerance” may not be *incongruent* with human rights and, in policy terms, they may share some common policy responses. However, it is important to recognize the distinct foundational understandings and rights bearers. Human rights are aimed at “freedom, justice and peace”, rather than utilizing the language of “tolerance”. Additionally, human rights are invested in individual persons and not communities. Though, on the surface, these may appear linguistic distinctions, the differences can be substantial. As detailed in the section on FoRB, freedom of religion or belief allows for change of religion or belief, allows for diverse manifestations by individuals of religions and beliefs, allows for lively debates of religions and beliefs, puts priority on self-definition – for example in terms of membership or non-membership of particular religious communities – and includes non-belief as necessarily included in “thought, conscience and religion”. As noted earlier, these religion or belief standards are complemented by other freedoms, since all human rights are universal, indivisible, interdependent and interrelated. These may relate, for example, to freedom of opinion and expression, freedom of assembly, freedom of association, and indeed the specific aspects of FoRB: worship, observance, practice and teaching – which are detailed further in Article 6 of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and also in General Comment 22 of the Human Rights Committee. It is certainly possible to envisage steps that might be taken to uphold “tolerance” which would run short of the guarantee of these freedoms.

In other human rights context where the term “tolerance” is utilized, it is coupled with terminology that has human rights definition and interpretation in norms and jurisprudence. This is the case, for example, in the programme of work of the OSCE, where reference is made to tolerance and non-discrimination.¹ UNESCO also calls for activities in relation to tolerance and non-violence.²

A more extensive detailing of “tolerance” is given by UNESCO in its 2005 Declaration of Principles on Tolerance. Its Article 1 on “Meaning of Tolerance” gives meaning to the term and specifically references freedom of religion or belief, outlines a broad set of duty bearers and, importantly, specifies that tolerance “is the responsibility that upholds human rights” (1.3) and that it should be “consistent with respect for human rights” (1.4). Because of its importance in grounding itself clearly in human rights, it is given in full below:

1.1 Tolerance is respect, acceptance and appreciation of the rich diversity of our world’s cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication, and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.

1.2 Tolerance is not concession, condescension or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human rights and fundamental freedoms of others. In no circumstance can it be used to justify infringements of these fundamental values. Tolerance is to be exercised by individuals, groups and States.

1.3 Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the rule of law. It involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments.

1.4 Consistent with respect for human rights, the practice of tolerance does not mean toleration of social injustice or the abandonment or weakening of one’s convictions. It means that one is free to adhere to one’s own convictions and accepts that others adhere to theirs. It means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are. It also means that one’s views are not to be imposed on others.³

Scholars have long emphasized that if states or institutions *depart from* the defined and interpreted terminology from the human rights sphere in their policies – for example the term *equity* rather than *equality* in the women’s rights field – then, at the very least, the term needs clear definition

in relation to the obligations set out in human rights instruments. This is so that the obligations are not deflected from with the use of new terms that are not well understood in human rights law. In the Declaration above, UNESCO sets out the term “tolerance” as upholding human rights and consistent with respect for human rights. Therefore it cannot be taken as an alternative to rights obligations, including in relation to FoRB. In making reference to tolerance, other instruments, and especially those promulgated by states, need to specify the relationship with human rights when reporting to human rights mechanisms, introducing laws and policies, adjudicating violations, or impinging on human rights in any way.⁴ This is especially important in relation to the duty bearers and rights bearers. If the obligation of tolerance is with respect to religious communities, then the rights of “everyone” to FoRB could be sacrificed for it and the rights to self-identify, change religion or belief, engage in debates and manifest religion or belief in non-conformist ways could be violated.

Preliminary Conclusions

While some initiatives towards tolerance may be compliant with legal obligations towards the protection of freedom of religion or belief, the discussion above has outlined how other understandings of it may run counter to these human rights duties and understandings. The focus on the rights bearers, their freedoms, and the freedoms guaranteed to them, must neither be sacrificed in relation to this new term nor obfuscated. As a principle to guide higher standards, channel human rights guarantees and education, and inspire human rights respect, however, it is a welcome pillar for further volition in the guarantee of FoRB and other rights.

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Nazila's doctorate addressed the impact of the UN human rights treaty mechanisms on the human rights situation of the Baha'is in Iran, research that she defended in 1999 imagining that the persecution of Baha'is in Iran may be slowly reducing in intensity. Sadly, this has not been the case. That doctorate set the scene for her research in the decades since – freedom of religion or belief, minority rights, the efficacy of UN human rights mechanisms, and identity-based protections in human rights more generally. Her research is oftentimes informed by praxis and engaging with international fora regarding the realisation of human rights in practice.

She serves on the Board of Governors of the *Universal Rights Group*, is a Trustee of *Freedom Declared*, is on the Board of the *Institute for International Health and Education* and the Advisory Board of the *Oxford Journal of Law and Religion*, and is an Associate of the *Oxford Human Rights Hub*. She was a member of the OSCE Panel of Experts on Freedom of Religion or Belief (2013-2019).

She has authored and edited a number of academic and UN publications and is co-author, along with Heiner Bielefeldt and Michael Wiener, of the Oxford University Press publication *Freedom of Religion or Belief: An International Law Commentary* and was commissioned to also produce the following report: <https://www.uscirf.gov/sites/default/files/WomenandReligiousFreedom.pdf>.

Notes

1. <https://www.osce.org/tolerance-and-nondiscrimination>.
2. <https://en.unesco.org/commemorations/toleranceday>.
3. http://portal.unesco.org/en/ev.php-URL_ID=13175&URL_DO=DO_TOPIC&URL_SECTION=201.html.
4. See, for example, <https://www.pcinterreligious.org/document-human-fraternity-translations>.

5

Of Religious Freedom and Harmony: State-Driven Compromise in Singapore

*Mathew Mathews**

Introduction¹

Singapore is a Southeast Asian multi-ethnic and multi-religious city state located at the southern tip of the Malay Peninsula. Practically all of the world's main religions are represented among its resident population of four million (Department of Statistics 2019); of which 43% identify as Buddhist, Taoist, or practise some form of syncretic Chinese folk religion, 19% identify as Christian or Catholic, 14% identify as Muslim, and 5% identify as Hindu (Department of Statistics 2015).

Most religions in Singapore overlap or conflate with race or ethnicity (Tong 2007; Mathew 2018). Based on the most recent population census, 55% of Chinese Singaporeans (who form 77% of the population) adhere to Buddhism, Taoism, or Chinese folk religion, a term used by scholars to denote the sometimes unrecognisable practice of these two world religions coupled with folk beliefs. Virtually all Malays, comprising 12% of the Singaporean population, are Muslim. Sixty percent of Indian Singaporeans, who make up 8% of the total population, identify as Hindus (Department of Statistics 2015). Christians now constitute 19% of the population; with

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the religion having grown substantially from 5% in 1930 – and that mostly among the British colonial administration residing in Singapore at that time (Tong 2007; Department of Statistics 2015). About 19% of Singaporeans profess to have no religion, although this does not preclude them from religious practice or belief (Department of Statistics 2015).

In keeping with the highly pluralistic social fabric, there is also substantial variety vis-à-vis the denominations of the major religions in Singapore, as well as new religious movements which are often spin-offs of broader religious traditions. For instance, Anglican, Baptist, Catholic, Evangelical, Pentecostal, and other forms of Christianity are actively practised within the island-state (Goh 2009). Similarly, distinctive Buddhist traditions including Theravada, Mahayana, and Vajrayana co-exist and interact with each other (Chia 2009). It should hence be no surprise that Singapore is considered to be the most religiously diverse country in the world (Pew Research Center 2014).

The fundamental issues of religious freedom in Singapore are often situated within broader questions of the nation-state's stance on religion. Similar to other contemporary secular nation-states which endeavour to curtail religion to the private sphere and use it for nation-building purposes (Madsen and Strong 2003; Brubaker 2012), the Singapore state has actively engaged in this process since the nation's independence from colonial rule (E Tan 2008). While prominent studies such as Pew Research Center's annual study of restrictions on religion often call out Singapore for its "very high government restrictions on religion" (2018), the state – often referred to as a soft authoritarian, paternalistic regime – justifies its intrusion into and leveraging of religion based on the mandate of its citizens to ensure security, economic development, social resilience and cohesion (Means 1996; Hill and Lian 2013; Nasir and Turner 2013). The satisfactory performance of the state in delivering on its mandate thus far has conceivably played a role in leading a significant majority of its citizens to support a paternalist posture in managing religion, such as restricting the expression of extremist views, for instance (Mathew *et al.* 2019).

In the next few sections, this article will explicate how the Singapore state perpetuates a more 'nuanced' notion of religious freedom tailored to its pluralistic socio-political landscape; in contrast to broader conceptions seen in Western contexts. This will be illustrated with key instances where the state intervened to curtail religious liberties over the past few decades,

and justifications for these actions. The article concludes with how some religions have varied their practices to thrive within state-imposed constraints, and a discussion of the path ahead for Singapore as it continues to uphold religious harmony and (relative) freedom amid bountiful diversity.

Conceptualising Freedom in the Singapore Context

The quintessential notion of freedom of religion or belief is encapsulated in Article 18 of the United Nations' Universal Declaration for Human Rights (UDHR):

'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance'. (1948)

The International Covenant on Civil and Political Rights (ICCPR) was passed in the UN and came into force a few decades later, lending legal enforceability and expanding the scope of individual rights to religious freedom. The ICCPR and UDHR, alongside the International Covenant on Economic, Social and Cultural Rights (ICESCR), together make up the International Bill of Human Rights. The full accession and implementation of these rights have been controversial across a plethora of polities – especially non-liberal or non-democracies – as they impact the power distributions within societies, and the obligations and limits of political authority.

The management of religious freedom in Singapore is one instance of such controversy – where the curtailment of certain individual rights vis-à-vis religion is deemed necessary by the state to uphold the 'greater' societal good. Such a contention is a subset of a greater 'Asian Values' debate (see Kausikan 1993; Mauzy 1997; Peerenboom 2003 for overarching summaries) where 'Western'-centric human rights are viewed to foster excessive individualism which would compromise existing social order, and disrupt economic imperatives. This line of reasoning is motivated by the belief that the needs of the state and larger community should take precedence over the individual, as they essentially embody collective interests and identity. The non-ratification of the ICCPR and ICESCR for a

plethora of reasons ranging from death penalty retention to deter would-be criminals, and constraining free speech and public protests to preserve social peace, attests to how Singapore prioritises security and social order over individual rights.

In the case of religious freedom, an 'Asian' conceptualisation predicated on Asian Values applies – in contrast to what Western societies may be acquainted and comfortable with. Despite the homogenising tendencies of values in the wake of globalisation, the Singapore populace continues to value the cohesiveness of society rather than individual rights. For instance, a large majority (73%) of respondents in a recent survey agreed that religious extremists should not be allowed to express their views in public and publish their views on online or social media (Mathews *et al.* 2019). This signals that most Singaporeans agree with the state in prioritising social harmony amid a multi-religious, multi-cultural setting, as opposed to a more 'liberal' Western notion of religious freedom. The following illustrates this inherent difference in viewpoints:

'Many Singaporeans find it hard to accept why the United States was not able to stop a pastor threatening to burn a copy of the Qur'an [in 2010, resulting in violent protests]. They are similarly confused as to why Danish authorities were unable to censor derogatory comic sketches of Mohammad [resulting in deadly attacks on embassies and publishing offices]. That some religious liberties will need to be guarded at the expense of social unrest does not seem to be acceptable to Singaporeans.' (Mathews 2013)

In the next section, key instances since Singapore's independence where the state curtailed religious freedoms will be explicated.

Curtailing Freedom

Limiting Property and Praxes

In the decade following Singapore's independence, concerns related to the curtailing of religious freedom focused on the free exercise of religious rites. Post-independence, all policies were geared towards survival, modernisation, and nation-building. The Western-educated, post-colonial elite were wary of religious traditions and practices which could hamper the pursuit of rapid development. This prerogative demanded that many

sacred sites, venerated by folk Chinese and Indian religious practitioners, were removed to make way for urban redevelopment projects. These alongside limitations imposed on religious ownership of land and property – while essentially a restriction on religious freedoms – were seen by the state as integral to efficiently managing the use of resources in a land-scarce Singapore committed to economic development.

The regulation of religious land use in Singapore continues till today. It is executed in a robust fashion to ensure that a) financially better-endowed religions or religious organisations do not dominate the use of allocated space; and b) religion does not grow at the expense of the physical and social common space. Religious land zoning is done for each individual religion, with pricing of the land differing by group to counteract the advantages better-funded religions have over others; for instance, 'land for Christian churches cost 50 percent more than Buddhist/Taoist temple land, whereas land for mosques was typically sold three to four times below market value' from 2000 to 2010 (Woods 2018, 539). Other considerations for land zoning include population growth, the distribution of existing places of worship, ease of access to the community, and potential impact on surrounding area.

Other than physical space, the state has also exerted its influence on religious practices deemed antithetical to the maintenance of social order. Religious festivals such as the Hindu celebration of Thaipusam had to be modified so that the music and dancing associated with it did not feed an impression of hooliganism – counter to the state's interests in presenting a highly-ordered society (Babb 1976). The US Department of State's 2018 Report on International Religious Freedom in Singapore reports that dissatisfaction over such limitations on the use of live music for Hindu public processions remain, though there have been substantial concessions made in the last few years to allow at least some music accompaniment to the otherwise total ban of musical instruments for the procession (US Department of State 2019). While some have been vocal about restrictions to religious observances, a population wide survey in 2018 examining racial and religious harmony showed that less than 15 percent of ethnic Indians felt that there was insufficient accommodation for religious celebrations that required road closures (Thaipusam being the most obvious example of such an event) (Mathew *et al.*, 2019b).

In addition, the state has maintained a decades-long ban on groups with doctrines running counter to national interests. These include Jehovah's Witnesses, who object to mandatory conscription into military service, singing the national anthem, and taking the national pledge; and the Unification Church which was considered a cult with detrimental effects on Singapore society. The Islamic Religious Council of Singapore also seeks to caution new religious movements among the Muslim population, counselling one couple who had begun their own religious movement and warning the public about such "deviant" teaching (Straits Times, 2018).

Curating Religious Content in Education and Activism

Soon after, the theme of economic survival shifted to that of managing the effects of Westernisation. State leadership decried the excesses of Western individualism with its lack of familial obligations, hedonistic lifestyles, and disrespect of social and cultural norms. The move to retain a Confucian society, which emphasized order, social stability, and hierarchical relationships, was affirmed in the form of religious education for "cultural ballast" (Hill 2000). In the 1980s, compulsory religious education was offered at the secondary school level; but provided only selective coverage of religious texts deemed consistent with state priorities (Tamney 1996). Thus neither Chinese folk religion nor Taoism, commonly practised among many Chinese Singaporeans, were offered as part of this religious education programme. Buddhist education textbooks under this programme negatively portrayed the devotional aspects of the religion, and instead championed ethics and values 'to suit the secular context' (Kuah 1991, 34). This state-sponsored religious education effort, rather than providing religion-free access to the secular space, became an 'instrument for securing social control as a sustainer of social values or more accurately, state ideology' (Thio 2005, 221).

The greatest concern regarding limitations on religious freedom in the later part of the 1980s was the arrest of a group of Roman Catholic social workers and lay leaders in 1987 (see Means 1996). In their advocacy for migrant worker rights, these Catholic workers were alleged to embrace a form of liberation theology where violence against perceived state injustice was condoned. Not only were the supposed conspirators detained without trial under the state's Internal Security Act (ISA), the Roman Catholic Church had to concede that its prerogatives to support its pastoral

workers and uphold its teachings of social justice could be restricted by the state. While the government affirmed that its actions were not against religion but a group of people who had used religion for their own agenda, it did not stop commentators from concluding that the state was signalling that religion was not to act as a pressure group against the government. It was all too evident that the overthrow of the dictatorial Marcos regime in the Philippines was greatly aided by the Roman Catholic Church, which essentially gave power to common folk in their struggle to realise a better nation. The Singaporean state was opposed to any such revolution spear-headed by men of the cloth (Kuah 1998).

The Marxist conspiracy of 1987, augmented religious fervour worldwide, and increased conversions among the better educated to Christianity led the Singaporean state to pass the Maintenance of Religious Harmony Act (MRHA) in 1991. This bill gave discretionary powers to the relevant state authority (in this case the Minister of Home Affairs) to restrain religious leaders who made statements which were perceived to cause ill-will between religious groups or who had entered into the political terrain. Scholars argued that the latter consideration may have been of greater priority for the state, considering its concerns stemming from the involvement of Roman Catholic Church workers in pushing for migrant worker rights (Tey 2008). Nevertheless, the state argued that religion needed to be better controlled and that existing legislation was unlikely to provide the normative basis for positive inter-religious relations.

The turn of the 21st century saw religion rise from its relative obscurity in public discourse. Religious groups became more vocal, articulating their moral positions in public statements – for example, by objecting to the government’s proposal to legalise casinos in Singapore and to any increasing rights for LGBTs. The *tudung* (Muslim female head-covering) episode of 2002 is one interesting case of religion being perceived as transgressing into the public space. Two Muslim families’ decisions to send their children to school wearing *tudungs* met with resistance from school authorities, who suspended the girls from school. A subsequent court judgement sealed the government’s decision – that public schools had to champion social integration, and that allowing for religious head-coverings would unnecessarily cause distinctions among students. Ministerial speeches also noted the conditions post-9/11 and the concerns that pursuing Muslim rights would pose for national security considerations (Law 2003).

In 2009, the AWARE saga, where a group of conservative Christians attempted to take over the leadership of a secular feminist organisation which had pro-LGBT leanings, resulted in substantial public opposition. State officials publicly called for religion to keep to its domain of providing for the spiritual well-being of citizens rather than usurping the secular public space (Chong 2011). Symbolically, this was done by restricting the public space of religious groups, an issue that was already a concern to religious groups in the previous decades because of the ambiguity of obtaining permits for premises to be re-zoned for religious purposes. New rulings further limited religious groups from owning such spaces and required that landlords who lease commercial spaces for religious activities restrict such use to two meetings a week and ensure that no religious symbolism be erected in these public spaces.

Other restrictions have centred on the appropriateness of religious content and other media in the context of a multi-religious social fabric. For instance, the Ministry of Communications and Information regularly works with religious bodies to evaluate potentially inflammatory publications and media, and issue advisories or circulation prohibitions if necessary (see for instance, MUIS 2018 for recent bans on books promoting enmity and hatred). The Ministry of Home Affairs regularly assesses foreign religious preachers and denies their entry into Singapore if they are deemed to have made inflammatory comments against other religions prior to their visits.

In the recent amendment to the Maintenance of Religious Harmony Bill presented by the government in Parliament on 2 September 2019, there are new restrictions directed at foreign actors who may use religious organisations to exploit religious fault lines through the imposition of values which may run counter to Singapore's vision of religious harmony. The amendments which are likely to be adopted by Parliament, require religious organisations to disclose to the authorities any foreign funding of \$10,000 or above or foreign affiliations. Religious organisations are also expected to have Singapore citizens as the majority of their management boards (see Ministry of Home Affairs 2019).

In general, reactions to such efforts have ranged from ambivalence to assent. However, other calls for the proscription of content deemed debased have provoked controversy. This is exemplified by a recent 2019 incident, where a death metal band's gig was cancelled by the state due to feedback from Christians who were deeply offended by the band's

music and content. This move was met with concerns vis-à-vis the state's paternalistic handling of the issue, and the potential amplified influence of a single religion on the avowedly secular, non-aligned state.

The above mentioned instances of the state seemingly curtailing religious freedom from independence to the turn of this century are instructive in terms of shedding light on the motivations of the state in setting up legal and policy-level apparatuses to deter interreligious conflict and prevent social strife. Alongside the ISA, MRHA, and the Sedition Act which criminalises actions promoting feelings of ill-will or hostility between different races or religions, it is useful to note that the state has also employed more 'subtle' measures to compel individuals to toe the line and keep the peace. For instance, the state employs more community-based measures – such as closed-door discussions and visits by the Internal Security Department beyond the public eye – to send a message that religious mobilisation and politicking, rather than civic participation, were their main concerns (Chong 2011).

Justifying Limits to Freedom

Scholars have carefully examined state religious policies, speeches of government officials, and court cases to provide an analysis of how the state is able to justify giving and restricting religious freedom. Essentially, as Thio (2010, 35) argues, the Singaporean model of religion-state relations can best be described as an accommodative secularist model. The state greatly esteems the contribution of religion since it prides itself as a conservative Asian society. Religion, being the main repository of traditional values, provides much-needed cultural ballast (Tamney 1996). Religious organizations are also viewed as an important contributor of social welfare and philanthropy (Thio 2009) with many religious organisations well involved in a range of social service provision (Mathew 2008). However, the state limits religious freedom due to two broad considerations: the need for social harmony amidst diversity, and its survivalist ideology advanced by its authority to govern.

Maintaining Religious Harmony amid Diversity

Amid a highly pluralistic social fabric, the Singapore state contends that an environment of religious harmony is crucial for religious freedom. The PAP

government has been generally unwavering in its religious neutrality since independence, reminding the populace that 'religion in a secular state like Singapore must never become a source of friction and animosity between the different religious groups' (Kuah 2018, 46; see also Hill 2004). In pursuing the cause of maintaining religious harmony, the state has to inevitably place restrictions on the exercise of some religious liberties which may threaten broader religious freedoms. Singaporeans generally accept this line of reasoning – that absolute freedom would not serve the interests of the nation-state in the context of religious pluralism.

Managing such religious diversity and creating peaceful coexistence in a context where religion can be a significant fault line is hence a role shouldered by the secular state; a role which it believes resonates with the interests of citizenry (Sinha 2005, 35). Scholars also seek justification for state action in the dilemmas and conflicts that could result from the multiple duties and loyalties a religious believer faces as a citizen of a country while also belonging to the broader faith community (Tan 2008, 138). The current climate of religious revivalism in Southeast Asia heightens such tension, the state thus needing to "promote a conception of 'good citizens' that takes into consideration the multiplicity and complexity of religion and citizenship" (Tan 2008, 140; see also Kuah 2018).

Legal scholars have written extensively about a number of court cases which involved prosecutions over actions which were deemed to rouse religious sensitivities. While two of these prosecutions were over insensitive statements made about Muslims online, another was the case of a Christian couple who had given out tracts which were considered offensive to the sensibilities of Muslims. In her analysis of this landmark court hearing, Thio noted that 'in prosecuting religious propagation as sedition, the state clearly signalled a "red-line" dividing sociable and anti-social conduct, which the Protestant couple transgressed, inviting legal sanction' (2012, 13). Like other scholars, Thio has been concessionary on the government's right to prosecute such infringement despite the fact that freedom to propagate one's religion is a fundamental part of the Singaporean constitution. In her words, 'in our multi-racial and multi-religious society, distributing tracts with callous, denigratory, offensive and insensitive statements on religion with aspersions on race do have a tendency to cause social unrest thereby jeopardizing racial and religious harmony' (Thio 2012, 13).

While no legislation disallows the propagation of faith, there has always been greater sensitivity to such efforts directed towards Muslims. Interestingly, as early as Singapore's independence in 1965 the then Prime Minister Lee Kuan Yew, addressing the Inter-Religious Council, noted:

'I have assured the Christians that Singapore has many people with no religious guidance whatsoever, no religious beliefs whatsoever... I would say more than 70 percent are either vaguely agnostic or iconoclasts.... And there is a very wide field of operation. I see no need for going around looking for the 12 percent Muslims to try and convert them because I think there are 60 to 70 percent of people who are in need of some form of religious and moral guidance'. (Lee 1965)

The Internal Security Department, the Singapore state agency which is tasked to address security threats including those which pertain to racial and religious tensions, has reported that it advised Christian leaders who had been proselytising Muslims "to avoid activities which could cause misunderstanding or conflict" (Thio 2005, 203). Singapore's geographical location in the Muslim-dominated Malay world makes such conversions problematic since it evokes sentiments from these neighbouring countries that Singapore has failed to protect its Muslim citizens from these incursions against their faith.

Further efforts to promote religious harmony can be seen in several soft-law measures. By definition, these measures are not enforceable. However, they seek "a collaborative mechanism of norms, institutions, and structures (which) can buttress the framework to sustain religious harmony" (Tan 2009, 362). The Declaration of Religious Harmony, one such initiative, was developed by a working committee which engaged all local religious groups to structure a commitment towards mutual respect of each other's religious freedom and fostering inter-religious communication. The development of this declaration in 2003 was followed by the establishment of the Inter-Racial and Religious Confidence Circle, a state-sponsored network of religious leaders within a neighbourhood. By strongly encouraging religious leaders to become part of these networks and accept the declaration, the state sought to enable religious leaders to self-police their behaviour. This would be achieved when leaders of different faiths were in constant dialogue, which would heighten their sensitivity to religious peace interests (Latif 2011; Mathew and Hong 2016)

and potentially seek to redefine how they conduct their religious practices, particularly those related to evangelization (Mathew 2009b).

In 2019, in a move similar to the Declaration of Religious Harmony, 250 religious organisations from a variety of religious traditions became signatories to a Commitment to Safeguard Religious Harmony. The commitment which was presented to the President of Singapore while upholding the freedom of religion including the freedom to “profess, practise, and propagate beliefs...including not having religious beliefs” also affirms the importance of keeping strong social bonds between people of different faiths and a sensitive approach to propagating faith. The commitment statement also highlights the importance of “maintaining social cohesion as [the] overriding goal” and supporting national institutions that work to promote religious harmony (Inter-racial and Religious Confidence Circles 2019).

Upholding State Ideology amid Survivalist Necessity

Scholars have also noted the concerns that the Singaporean state has with religion, particularly since it can be a potent political force. Throughout Southeast Asia, “religion has played a key role in the construction of political states, their political legitimization, national integration, and internal tension” (Tan 2007, 443). Unfettered religious institutions can serve as a competitor to the nation-state, since religious forces have an “underlying influence on nuptiality, fertility, and the population” (Saw 2012, 41) as well as exercise influence on many aspects of personal and public morality (Mathew 2008). Religion can also detract from the larger nation-building project since it can contradict national interests, especially those focused on urban and economic development.

Perhaps a consideration of the history upon which Singapore gained independence in 1965 and its geographical neighbourhood will help to generate meaningful insights, on what motivates the state to institute a distilled version of religious freedom, and a majority of its citizens to defer to this state discourse. Singapore emerged from the union of Malaya in 1965 due to diverging views of treating all races and religions equally, and with a national identity defined with implicit distinctions to its Muslim-majority neighbours, Malaysia and Indonesia. Both these countries had established national ideologies crowning Islam as the official religion of the land.

The PAP government in multi-religious Singapore conversely pursued religious neutrality, as it felt that ‘the only way to prevent sectarian strife from destroying the fragile ethno-religious fabric of the nation was to spell out clearly the roles and responsibilities of each religion and their organisations in Singapore’ (Kuah 2018, 46). This would also ensure that the state would have the ability to retain a ‘moral high ground’ in its even-handed approach of asserting control over *all* religions – as opposed to favouring one majority religion. To this regard, scholars have noticed how the state oversees the religious realm by administering at least some practices of Islam, Sikhism, and Hinduism; and sanctioning religious bodies such as the National Council of Churches of Singapore (NCCS). Various statutory bodies have also been formed which manage aspects of these minority faiths such as its places of worship and nation-wide religious observances (Kong 2010). A recent survey showed that a majority of Singaporeans continue to support such restraints on religion by the state to ensure fair and effective governance (Mathews *et al.* 2019).

On a related note, the threat of foreign influence on religious harmony in Singapore is another key consideration for the state’s heavy hand in restricting religious freedoms and development. For instance, the state requires all foreign religious preachers and teachers to be registered and vetted prior to their arrival, to limit the potential of their content inciting religious tensions or even fuelling conflict or violence. Two recent 2018 cases illustrate the veracity of such threats to the social peace. In the first case, an American Protestant pastor invited to speak at a local church conference reportedly told his audience that he would ‘raise up the church in Spain to push back a new modern Muslim movement’ as the latter ‘took over the south of Spain’ (Mathews and Lim 2018). In the second, a foreign Muslim imam recited an Arabic prayer in his sermon deemed offensive against Christians and Jews. In both cases, the state acted swiftly via legislative and informal instruments to resolve these issues – ensuring public apologies made by relevant parties and prompting religious communities to participate in a public display of conflict resolution and a pledge to better relations.

The state has also in the last few years banned several well-known religious leaders, ranging from Zimbabwean Mufti Menk to Indian-born Dr Zakir Naik; as well as unnamed Christian preachers. The Minister of Home Affairs, Mr K Shanmugam, has publicly cited the reasons for these bans in

a 2019 Ministerial Statement in Parliament. These banned preachers have for instance encouraged segregationist or divisive ideas elsewhere, such as Mufti Menk who has advised his followers to not offer festive greetings such as “Merry Christmas” to non-Muslims; Zakir Naik who teaches Muslims to only vote Muslims in elections and various Christian preachers who have questioned the peacefulness of Islam or the veracity of other religions.

As the Minister stated in his speech,

“We disallow foreign preachers even if they may not say something offensive in Singapore. We disallow them if they have been offensive elsewhere, or if their offensive teachings are available online. By allowing them into Singapore, we would allow them to build up a following. Eventually, we will have a society where there are members who believe in not shaking hands, or not greeting people of different faiths, or not voting for candidates of another race or religion. If this takes root and becomes widespread, what happens to racial and religious harmony?” (Shanmugam, 2019)

These geopolitical considerations and the need to cement the government’s political authority feed into an overarching theme that the Singapore state has leveraged to great effect – a deep-seated sense of its own vulnerability. The state ideology is based primarily on the need to ensure Singapore’s survival despite its limitations as a tiny city-state devoid of any resources, located amidst larger and at times adversarial neighbours. Coupled with potential tensions and divides that could unfold due to its highly pluralist society, the state espoused the primacy of economics and development to cope with its vulnerabilities (see Chew 1994; Leifer 2000 for what this entails). Essentially, the state saw the curtailment of certain rights as integral to ensuring social order and stability – which would in turn provide an amenable environment for jobs creation and foreign investment, driving economic growth and prosperity. Unfettered religious freedom in this context was seen to potentially hinder this narrative, as social conflicts could easily result in myriad differences between distinct groups in a multi-religious society.

Since independence, Singapore has risen to become a leading economic power in the region, with stellar performances across a multitude of socio-economic indicators of success and progress. Disturbances to the domestic peace such as riots or strikes are few and far between – providing

a reliable environment for businesses to thrive. These achievements seem to validate the state's narrative that certain rights need to be curtailed to ensure social harmony and drive (continued) economic progress.

Religious 'Innovations': Circumventing the State

In the context of Singapore's state-imposed restrictions on religious freedom, religious groups have found ways to circumvent state restrictions to practise their faith. Essentially, religious groups accommodate the demands of the state, modifying their practices to conform to them. One instance of this would be the overcoming of spatial distinctions by religious groups to accommodate high growth amidst limited land zoned for religious purposes. Christian groups for instance have used commercial premises such as movie theatres and convention halls to host religious services, as well as schools and industrial spaces. The use of secular spaces has however resulted in concerns that the secular character of the city may be compromised. The state has responded with restrictions on the use of such spaces by religious groups to maintain the common space (Woods 2018).

Some groups have also modified their religious praxes in order to conform to the state's directions; this has particularly been the case with groups which in other countries can be more harsh and bold in their proselytising strategies such as evangelical Christian groups and Buddhist reform movements such as Soka Gakkai (Teng 1997; Tong 2007; Mathew 2009b).

Lim (2012) discusses the case of the Baoguang Jiande, a syncretic faith fusing Confucianism, Taoism, and Buddhism along with other religions. The movement was banned in 1981 from operating in Singapore, partly because of its unorthodox teachings which were disliked by local Buddhist groups and also because of being labelled as a dangerous cult in China. When the movement's members returned to operate in Singapore, they registered the religious group as an institution concerned with social welfare, moral cultivation, and traditional Chinese culture (Lim 2012). Their focus on welfare concerns resonated with state interests for religious groups and as such, this allowed their participation in the social space. Yiguan Dao, a related sect, similarly has circumvented the state's policing mechanisms because they do not operate as a religion with a religious

building unlike other Taoist or Buddhist groups. By transforming public houses into temple halls, Yiguan Dao adherents could practise their faith in numerous homes on the island without state intrusion (Lim 2012).

Another example is Soka Gakkai, a Buddhist religious group best known for their frequent participation in Singapore's annual National Day Parade (NDP) where their large-scale, well-choreographed performances captivate national audiences at the widely advertised and televised event (Finacane 2014; Cornelio 2018). While the state is avowedly neutral in its management of all religions and pushes for the practice of religion to be confined mainly to the private sphere, Soka Gakkai is the only religious group regularly partaking in the NDP. This is illustrative of the success the group has in terms of working around state constraints on aggressive proselytisation. While Soka Gakkai in Singapore once fervently advanced the latter as part of its core objectives, it has instead embraced the state's pluralist values on religious tolerance, and used these values alongside other 'putatively universal humanist values about difference' to instead 'gently encourag[e] the conversion of others' (Finucane 2014, 104). In practice, this has meant that the public 'manifestations' of its followers have been neutered to toe the state requirements.

The Hare Krishna movement – considered deviant in the 1970s and not allowed to be registered or hold their activities because of their association with cult-like gurus embroiled in a variety of scandals – was able to find recognition in Singapore by emphasizing that they were a Hindu sect, concerned with Krishna worship. This has subsequently allowed them access to temple spaces. They have also adopted methods that do not provoke state authorities and wherever possible have tried to discard their robes to wear casual clothing, especially at immigration checkpoints. They have also decided not to have an official relationship with the movement ISKCON, the global Hare Krishna movement which at least in the past was the cause for some concern (Sebastian and Ashvin 2008).

Summary and Discussion

Thus far, this review attempts an understanding of conceptual underpinnings of religious freedom in Singapore, and what this entails in practice. The extent of state intervention in the religious sphere is clearly copious; since state management forms the core of the paternalist state and life

in the city-state, such an emphasis seems inevitable. This emphasis also sheds light on Singapore's perspectives on the freedom of religion, which is conceptualised within the context of state ideology founded on a) the primacy of religious harmony amid diversity, and b) economic growth amid survivalist necessity.

To this effect, the state has engineered a variety of mechanisms across the policy, legal, and community spheres to ensure that religion does not compromise social harmony and the economic imperative. While the practice of religion would understandably encounter limitations within such a socio-political landscape, various groups have adapted to the needs of the state by ensuring their practices do not infringe on the public space of others.

If the 'Western-centric' lens of the archetypal notion vis-à-vis freedom of religion or belief is employed, the state's various interventions in the religious sphere would undoubtedly be seen as antithetical to this basic freedom. In the Singapore context, the freedom to manifest one's religion in practice, teaching or observance is checked by broader national and community ideals of preserving harmony within a highly pluralistic society – such as the curtailment of aggressive proselytisation and restrictions on offensive media.

While critics of the state contend that such intervention is primarily to ensure that its hold on power to govern remains entrenched, the Singapore state has at the same time delivered on its promises over the past decades – of bringing about rapid development and economic progress. The status of Singapore as one of the world's most dynamic and competitive global economies (IMD 2019), alongside the continued support of a vast majority of its citizens of state policies that would be deemed authoritarian by others (see for instance, Mathews *et al.* 2019), is illustrative of state success. In the context of religion, an 'Asian' freedom of belief prioritising the needs of the community over the individual seems to have worked in the multi-religious Singapore context to prevent potential societal fissures from forming.

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6

Managing Religious Harmony in Asia: Challenges from Law and Politics

*Dian A H Shah**

Introduction

Asia presents an intriguing laboratory for studies on state-religion relations and religious harmony. At the societal level, the region not only boasts rich religious diversity, it is also ethnically, linguistically, and culturally heterogeneous, and these identity markers often overlap with one another. This vibrant social fabric is accompanied by a variety of legal frameworks that seek to regulate religion and promote religious harmony. It is now common to find freedom of religion guarantees in national constitutions, and these guarantees mirror provisions in international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR). There is also a diverse range of state-religion arrangements: some countries espouse preference for the majority religion or express adherence to the principles of a specific religion, while others prefer explicit provisions that uphold the separation of state and religion. In some cases, these arrangements reflect the religious demographic of the state; in others, they do not. For example, the Philippines and India adopt a secular arrangement in their constitutions, despite the presence of a strong Catholic and Hindu majority, respectively. Indonesia, despite having an overwhelming Muslim population (approximately 88 percent), embraces religion in its national ideology (*Pancasila*)¹ but it does not explicitly privilege Islam.²

However, this diversity, while often celebrated, has also presented challenges. In the past two decades, many countries in Asia have witnessed

events that left standing societies that are increasingly polarized. For instance, in Indonesia, the recent elections showcased the increasing salience of religion and ethnicity in politics, along with its divisive implications. As political elites jostled for influence by appealing to particular religious and/or ethnic sensitivities and interests,³ inter- and intra-religious tolerance has been compromised, leaving particular groups – especially minorities – alienated. While the government has taken various measures to combat intolerance and safeguard religious harmony (for example, by revising the Law on Mass Organizations to pave the way for the banning of *Hizbut Tahrir Indonesia* (HTI) – an organization advocating the establishment of a caliphate), the writings have been on the wall for intolerance to rear its ugly head.

One might recall the prosecution of the former Jakarta governor, Basuki Tjahaja Purnama, for blaspheming Islam and the mass demonstrations in the streets of Jakarta that accompanied his trial and conviction in 2017. The deadly riots that emerged in Jakarta soon after official release of the election results in May 2019 provide a grim reminder of intolerance and violence driven by undercurrents of ethnic and religious animosities. Police investigations later revealed the involvement of hard-line Islamic organizations that had pledged support for Prabowo Subianto, who was one of the candidates in the presidential elections. All this took place against the backdrop of increasingly strained religious relations, fuelled – in part – by growing populism and anti-minority discourse as the political space opened up following the fall of Suharto's New Order in 1998. Prosecutions for blasphemy have, ironically, multiplied during Indonesia's transition to democracy⁴ and these have often been justified – directly or indirectly – as a means of protecting religious harmony. In other districts and provinces, discriminatory by-laws that purport to regulate morality and public order have proliferated.⁵

Indonesia is, of course, not alone in its quest to address these problems and manage religious harmony. Similar patterns have emerged elsewhere – Myanmar, Malaysia, India, Pakistan, and Sri Lanka, to name a few examples – illustrating the ways in which religion competes for authority in the public sphere, and how it is co-opted and contested in these countries. To understand these issues and their implications for religious harmony, it is important to contextualize – that is, to recognize the conditions that generate or facilitate them. In this contribution, I shall sketch

two issues – the regulation of religion and religious freedom and identity politics – to demonstrate the interplay of religion, law, and political calculations and compromises in defining policies that impact religious harmony.

Regulation of Religion: Protecting Religious Harmony and Public Order?

In the past twenty years, various Asian states have undergone political change and democratic transitions or sought to strengthen democracy and the democratic culture. A freer political space allows the proliferation of (competing) ideas, opinions, and discourses about religion, social identities, as well as the fundamental norms that govern (or ought to govern) a polity. At the same time, what has accompanied this is the struggle to define the parameters of fundamental rights such as free speech and religious freedom and, by extension, to manage competing rights claims. In countries where religion continues to be highly salient, policy-makers and political elites have had to grapple with a common question: how far should the state step in to manage and regulate religious affairs?

Consider, as a starting point, how selected countries in the region have fared according to the Pew Research Centre's Government Regulation of Religion Index (GRI), which measures the level of government restrictions on religion.⁶ 'Restrictions' may include regulations on public preaching, bans on particular religious groups, as well as limitations on proselytism, conversion, and the wearing of specific religious dress or symbols. In a five-year period, from 2012 to 2016, India, Singapore, Vietnam, Malaysia, Pakistan, Indonesia, Brunei, and Myanmar have consistently recorded 'very high' or 'high' GRI scores.

A common justification for pursuing restrictions on religion is the need to maintain public order and religious harmony. This is not surprising, given the realities and complexities of enforcing religious freedom guarantees in countries where different groups – often possessing profound insecurities and suspicions against one another – advance competing visions on religious freedom. A clear example is proselytism. For adherents of certain religions, proselytizing and propagation efforts are deemed fundamental religious duties and thus, central to the freedom to practise and express their religion. Yet, others may claim that religious freedom also entails freedom *from* religion and that such activities threaten their

freedom from the influence or doctrines of other religions. In fact, this was precisely the argument submitted in several cases in the early 2000s, where Buddhist-interest groups and individuals challenged the legal incorporation of Christian organizations in Sri Lanka.⁷ It was thought that these organizations were engaging in unethical or 'fraudulent' conversions, that is, securing new converts through the allure of economic benefits.

There is a wealth of specific case studies reflecting this type of competing claims and the ways in which the state invokes 'public order' to resolve them. The holding of religious gatherings and the construction of houses of worship are two issues that have triggered social unrest (in some cases, to the point of deadly violence) in various Asian states. In a case in Ende (East Nusa Tenggara, Indonesia), local residents in a predominantly Catholic area objected to the construction of a mosque. A series of compromises between the contesting groups led to Muslims agreeing – among other things – to refrain from building a dome and using loudspeakers.⁸ Although the Ende case did not result in violence (Catholic residents in the area reportedly responded, instead, by putting on loud music during the Muslim call for prayers), it illustrates deep societal tensions in what some might regard as routine exercises of religious freedom.

One might also recall the package of 'Race and Religion Protection Laws' passed in Myanmar in 2015, which grew out of apprehensions about conversion (particularly to Islam) and the perceived rapid Muslim population growth.⁹ Similar anxieties and battles over conversion pervade countries like Malaysia, India, and Sri Lanka. In Malaysia, for instance, the 'Allah' case embodied the tension between the right of Catholics to use the word 'Allah' in their Malay language publications, versus the concerns amongst the Malay-Muslim community about proselytization and conversion.¹⁰ The government had imposed restrictions on the use of 'Allah' by the Catholic Church, arguing the need to prevent religious 'confusion' amongst the Malay-Muslims and public disorder. From the state's perspective, protecting religious harmony meant that it should step in to avoid aggravating majority religious sensitivities, even at the expense of the fundamental rights of other (minority) groups. Malaysia's apex courts have endorsed these arguments, stressing that: (1) threats to the 'sanctity' of Islam as the state religion was a public order concern;¹¹ and (2) the government need not wait for actual violence to occur in order to exercise its discretion to protect public order.¹²

Some of these arguments resonated with the justifications proffered for the Blasphemy Law in Indonesia, which had its roots in the state's aim to safeguard public order and national unity. The Law recognizes only six religions (Islam, Protestantism, Catholicism, Buddhism, Confucianism, and Hinduism), and although other 'unrecognized' religions such as Judaism and Zoroastrianism are not explicitly sanctioned, the Elucidation (*Penjelasan*) highlights the state's concerns about spiritual or belief groups whose teachings or doctrines run contrary to established religious principles and pose a threat to national unity.¹³ A law that prevents the abuse or desecration of religion, it was believed, would further religious harmony and ensure that Indonesians are free to worship according to their own religion.¹⁴

Two challenges against the constitutionality of the Blasphemy Law have failed. On both occasions, the Constitutional Court approved the view that the Law furthers, rather than restricts, religious freedom by protecting religious adherents from the desecration of their religion,¹⁵ and that outlawing blasphemy would ensure religious harmony, tolerance, and public order in the context of Indonesia's plural society.¹⁶ As in the 'Allah' case in Malaysia, there was a preventive motivation behind the public order justification as the Court stressed the threat of societal conflicts if the interpretation of religious doctrines and religious practice are left unregulated. But there appears to be a more striking undercurrent: that religious harmony hinges on the protection of majority religious sensitivities.¹⁷

This brief sketch of cases and controversies presents useful lessons in managing religious harmony. First, it is crucial to recognize that contestations involving religion masks broader social, economic, and political grievances among different religious groups in the society. The growing apprehension about the spread of minority religions and insecurities about the 'survival' of the majority community of believers, for instance, have generated expectations that the state must intervene to protect majority interests. This belief is sometimes amplified or facilitated by legal regimes that explicitly or implicitly privilege the dominant religion.¹⁸ In any case, the history and experiences in Asia have shown that these anxieties could spin out of control and can trigger violence. Some countries have, by and large, been spared the kinds of societal violence we see in India, Pakistan, Myanmar, Indonesia and Sri Lanka, but poorly-managed tensions may evolve into deadly outcomes. In this respect, there is some reason to take

the Indonesian Constitutional Court seriously when it expressed concerns that striking down the Blasphemy Law would spur religious vigilantism.

Yet, under certain conditions – particularly, when states wish to retain control over the religious discourse, or as I shall explain below, where identity politics prevail – ‘public order’ or even ‘religious harmony’ may become a mere euphemism for authoritarianism, or majoritarian or populist policies. For example, a ministerial ban on an academic publication examining the role of Islam in the context of Malaysia’s constitutional democracy was rationalized on the basis that the book propagated ideas associated with liberalism and pluralism – ideas that were deemed a threat to public order.¹⁹ In other countries, minority religions or non-mainstream religious denominations are either completely outlawed or restricted, as states seek to quell mainstream (majoritarian) apprehensions about the existence of such groups. In these instances, ‘public order’ is secured only up to a certain extent, and it could well prove to be counter-productive for religious harmony. In the long run, there is a serious risk of alienating sections of the society and reinforcing existing societal divisions. But even in the short run, there is no guarantee that restrictions alone could prevent disorder. An immediate example that springs to mind is the deadly attacks against the Ahmadiyah community in Cikeusik, West Java, Indonesia, which took place less than a year after the Constitutional Court upheld the Blasphemy Law.

The Salience of Identity Politics

Asia is home to at least two of the biggest democracies in the world. A vast majority of countries in the region now undergo routine elections, but in some countries, these democratic processes have been marred by the politicization of ethno-religious identities as a means to gain or consolidate power. This is an important consideration to bear in mind, because legal norms and policies often reflect and respond to prevailing socio-political realities.

I have briefly alluded to the Indonesian example at the beginning of this contribution – aside from the popular mobilization along religious (and ethnic lines) that contributed to Basuki Tjahaja Purnama’s loss in the 2017 gubernatorial elections in Jakarta, there were similar attempts to weaken Joko Widodo’s electability in the 2019 presidential elections. To be sure,

identity politics was not the only (or determinative) game in town. But the fact that his opponents strove to exploit traditional Muslim antipathy toward communism by reinforcing claims that Widodo was of Chinese descent, anti-Islam, and a communist, illustrates the belief that invoking the ethnic and religious cards could lead to favourable electoral outcomes. Widodo of course campaigned on the message of pluralism, but the choice of vice presidential candidate in the form of Kyai Ma'ruf Amin – an influential leader from *Nahdlatul Ulama* (Indonesia's biggest Muslim organization) and a former Chairman of the Indonesian Ulama Council – demonstrates the recognition that he needed to appeal to the traditionalist Muslim masses. There are other comparable examples across the region.

In India, the recent elections were regarded by many analysts as a crucial test for India's future as a secular and pluralist republic. Harassment, denigration, and intimidation of minorities (particularly Muslims) featured prominently in political campaigns and speeches, particularly those of the Bharatiya Janata Party (BJP). The underlying rhetoric was familiar: that Hindus, who comprise 70 percent of the Indian population, are under threat from the growing Muslim minority who are 'immigrants' from neighbouring states and they need to reclaim 'ownership' of their land.²⁰ Similarly, in Malaysia, for many years the former ruling coalition (*Barisan Nasional*) dominated by UMNO, a Malay nationalist party, rode on the wave of Malay-Muslim support by selling itself as the champion of Malay-Muslim interests. This has certainly been UMNO's guiding ethos, but it became magnified in response to the religious revival movement in the 1980s, the fierce political rivalry with PAS (an Islamic political party), and the realization – particularly after 2004 – that the coalition as a whole had lost significant electoral support amongst the non-Malays.

The Malaysian scenario provides a compelling story of how identity politics could be counter-productive to inclusive nation-building and social harmony. The desire to maximize Malay-Muslim votes and maintain political power has led the former ruling coalition – at various points in time – to take a majority-centric approach in dealing with politically-charged issues implicating religion. To respond to the groundswell of Islamic revivalism in the 1980s, the government pursued, among others, state-sponsored Islamic symbolism, established public institutions to support the development of Islam, used state-sponsored media to propagate the 'official' Islamic doctrine and praxis, and embarked on reforms of Islamic laws

nationwide. There was also the declaration in 2001 – in response to PAS' continuous attacks against UMNO's religious credentials and the government's commitment to Islam – that Malaysia was already an Islamic state.²¹ Though instituted to serve the then government's political agenda, the point here is that these initiatives have significantly shaped public psyche and expectations about the constitutional role and force of the majority religion vis-à-vis other religions. At the height of the 'Allah' case, for instance, it became apparent that the government could not ignore public pressures bent on ensuring that 'Allah' remained a term exclusive to Muslims. At stake was the continued political support of the Malay-Muslim community, which hinged on whether the government was willing to address its concerns and interests. Even as the battle went to the country's highest courts, majoritarian pressures were evident – pressure groups assembled outside the courts to remind judges that they had the duty to protect Islam. The emergence of plans to table a bill to expand the punitive powers of the syariah courts, and sometimes tacit tolerance for organizations inciting bigotry, are all manifestations of how identity politics could inform policy-making on religion and the direction of religious harmony. In short, identity politics or the politicization of religion oils the gears of a vicious cycle of privilege, discrimination, and alienation.

Conclusion

By now it should be obvious that protecting rights and managing religious harmony are delicate tasks implicating power balance and dynamics. Although there are broadly parallel issues and outcomes across different countries, in Asia, how they emerge, evolve, and sustain themselves are intricately tied to local contexts.

In many societies where religious identities are socially and politically salient – in the sense that they provide a sense of trust, security, and mutual benefit – competing rights claims may be seen as a matter of group survival.²² The question of survivability is often painted as a game of numbers tied to political survival: as I have suggested in the case studies above, the conventional story is that the majority (for instance, the Sinhala-Buddhists in Sri Lanka, Hindus in India or Malay-Muslims in Malaysia) are vulnerable in the face of the growing population of minorities, be it through biological reproduction or through proselytism efforts backed by

superior financial strength. This strong undercurrent of mistrust against the 'other' is also fuelled by the view that the majority community – the 'hosts' or original 'owners' of the land – were significantly disadvantaged and discriminated by colonial policies. Hence, the anti-Muslim campaign in Sri Lanka, for example, has not only targeted Muslim practices that are deemed offensive to Buddhist principles and values, but is also driven by fears that Muslim population growth and the building of mosques will eventually displace the country's Sinhalese-Buddhist character.²³ The perceived Muslim dominance in business and trade are seen as a threat to the economic prosperity of the Sinhala-Buddhists.²⁴ Just as religion is an easy tool for politicians to strike the hearts of their supporters (compared to, for example, debating on pressing issues such as corruption or systemic governance problems), religion is often a convenient mask for deeper socio-economic competition and grievances between majority and minority groups.

But as we think about managing religion and religious harmony, it is worth reflecting on yet another facet to the socio-economic story. It is that the bureaucratization of religion or regulation of religion increasingly presents opportunities for economic benefits. As a corollary, religious observance and the enforcement of religious obligations have become entangled with monetary incentives. In Indonesia, for example, research on laws regulating *zakat* and *Hajj* illustrates that even though there are various problems with state intervention to regulate such matters, it has been defended on the grounds of promoting efficiency, coordination, and organization.²⁵ Thus, there is more beyond the state responding to pressures to proactively manage Islam and enforce Islamic duties upon Muslims; enforcing religious obligations is also a lucrative economic enterprise that raises further questions about accountability, good governance, and the redistribution of wealth.²⁶

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Notes

1. The first principle of the *Pancasila* provides that 'the State shall be based on the belief in the one and only God'.
2. Compare, for instance, with the Federal Constitution of Malaysia 1957, which states that 'Islam is the religion of the Federation but all other religions may be practiced in peace and harmony' (article 3(1)), and the Constitution of the Islamic Republic of Pakistan 1973, which stipulates Islam as the 'state religion' (article 2) and that all laws shall conform to the injunctions in the Holy Quran and Sunnah (article 227(1)).
3. See, e.g., Dian A H Shah, 'Indonesia's *Pesta Demokrasi* in the Face of Regressing Constitutional Democracy' (*I-CONNECT*, 17 April 2019) <<http://www.iconnectblog.com/2019/04/indonesias-pesta-demokrasi-in-the-face-of-regressing-constitutional-democracy/>>; Vedi Hadiz, 'Oligarchs, money and religion: the Indonesian elections' (*Indonesia at Melbourne*, 2 April 2019) <<https://indonesiaatmelbourne.unimelb.edu.au/oligarchs-money-and-religion-the-indonesian-elections/>>; Nadirsyah Hosen, 'The presidential election: communism vs caliphate?' (*Indonesia at Melbourne*, 5 April 2019) <<https://indonesiaatmelbourne.unimelb.edu.au/the-presidential-election-communism-vs-caliphate/>>; Andreas Harsono, *Race, Islam and Power: Ethnic and Religious Violence in Post-Suharto Indonesia* (Monash University Publishing 2019).
4. Rafiqia Qurrata 'Ayun, 'Blasphemy on the rise', (*Inside Indonesia*, 20 January 2019) <<https://www.insideindonesia.org/blasphemy-on-the-rise>>.
5. See, e.g., Michael Buehler, *The Politics of Shari'a Law: Islamist Activists and the State in Democratizing Indonesia* (Cambridge University Press 2016).
6. The Pew Research Center's Forum on Religion and Public Life has published a series of studies on the restrictions on religion. A complete set of the reports can be found here: www.pewforum.org/category/publications/restrictions-on-religion/.
7. See, e.g., A Bill Titled 'Provincial of the Teaching of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)', Supreme Court of Sri Lanka Special Determination, S.C.S.D. No. 19/2003 (25 July 2003). In order to operate, religious organizations must be incorporated under the Societies and Trust Ordinance or registered as companies under the Companies Act.
8. Rizal Panggabean and Ihsan Ali-Fauzi, *Pemolisian Konflik Keagamaan di Indonesia (Policing of Religious Conflict in Indonesia)* (PUSAD Paramadina, 2014), pp. 276-277.
9. Shameema Rahman and Wendy Zeldin, 'Burma: Four "Race and Religion Protection Laws" Adopted' (*The Library of Congress*, 14 September 2015) <www.loc.gov/law/foreign-news/article/burma-four-race-and-religion-protection-laws-adopted/> accessed 10 June 2019.

10. See *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Anor.* (2009) 2 Malayan Law Journal 78. For a comprehensive discussion of the case, see Dian A H Shah, *Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka* (Cambridge University Press 2018), ch 5; Jaclyn Neo, 'What's in a Name? Malaysia's Allah Controversy and the Judicial Intertwining of Islam an Ethnic Identity', 12(3) *International Journal of Constitutional Law* (2014) 751; and Tamir Moustafa, *Constitutionalizing Religion: Islam, Liberal Rights, and the Malaysian State* (Cambridge University Press 2018), ch 5.
11. *Menteri Dalam Negeri & Others v. Titular Roman Catholic Archbishop of Kuala Lumpur*, (2013) 6 Malayan Law Journal 468, 493.
12. *Ibid.*, 506-7.
13. See Elucidation on Law No. 1 of 1965 on the Prevention on Abuse and/or Desecration of Religion, online: <<http://www.kemenag.go.id/file/dokumen/UU1PNPS65.pdf>> (translated from Bahasa Indonesia).
14. *Ibid.*
15. Constitutional Court of Indonesia, Decision No. 140/PUU-VII/2009, Examination of Law No. 1, Year 1965 on the Prevention from Abuse of and/or Desecration of Religion (Arts. 1, 2(1), 2(2), 3 and 4(a)) (19 April 2010), p. 241.
16. *Ibid.*, pp. 292-93. In the 2014 challenge, the government maintained that the public dissemination of religious interpretations that 'lacks sound methodological basis' can provoke public disorder. Constitutional Court of Indonesia, Decision No. 84/PUU-X/2012, Examination of Law No. 1, Year 1965 on the Prevention from Abuse of and/or Desecration of Religion (Arts. 1, 2(1), 2(2), 3 and 4(a)) (9 April 2013), pp. 116-117.
17. *Ibid.*, p. 287.
18. See, e.g., Shah (n 9) 147-156, 160-164; Benjamin Schonthal, 'Securing the Sasana through Law: Buddhist constitutionalism and Buddhist-interest litigation in Sri Lanka' (2016) 50(6) *Modern Asian Studies* 1966; and Gehan Gunatilleke, 'The Constitutional Practice of Ethno-Religious Violence in Sri Lanka' 13(2) *Asian Journal of Comparative Law* 359 (2018).
19. The book entitled 'Breaking The Silence: Voices of Moderation - Islam In A Constitutional Democracy' was published through an initiative of 'G25' - a social organization founded by 25 prominent Malaysian Malays, most of whom had illustrious careers in the public service. The ban was issued by the Ministry of Home Affairs in 2017, but this was overturned by the High Court in April 2019. See 'High Court lifts ban on G25 book' (*The Star*, 10 April 2019) <<https://www.thestar.com.my/news/nation/2019/04/10/high-court-lifts-ban-on-g25-book/>>.
20. See, e.g., Soma Basu, 'Manufacturing Islamophobia on Whatsapp in India' (*The Diplomat*, 10 May 2019) <<https://thediplomat.com/2019/05/manufacturing-islamophobia-on-whatsapp-in-india/>>.
21. See generally, Joseph Liow, 'Deconstructing Islam in Malaysia: UMNO's Response to PAS' Religio-Political Dialectic' (Working Paper Series No. 45, Institute of Defence and Strategic Studies Singapore, March 2003).
22. Donald L Horowitz, 'Democracy in Divided Societies' (1993) 4(4) *Journal of Democracy* 18.

23. See Center for Policy Alternatives (CPA), 'Attacks on Places of Religious Worship in Post-War Sri Lanka' (CPA March 2013) 60 <www.cpalanka.org/attacks-on-places-of-religious-worship-in-post-war-sri-lanka/> accessed December 2018.
24. Gunatilleke (n 17) 375.
25. Alfitri, 'Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?' (2008) 13(2) *Asian Journal of Comparative Law* 389, 398-401, 405-406.
26. Melissa Crouch, 'Constitutionalism, Religion, and Inequality: Perspectives from Asia', (2008) 13(2) *Asian Journal of Comparative Law* 233, 239.

7

Rethinking Freedom of Religion and Belief in Singapore: An Afterword Looking Forward

*Paul Hedges**

The contributors to this volume have covered a wide-ranging set of issues that provides some much-needed background information, and contextual framing, on the current practices, legal regulations, and discourse on freedom of religion and belief (FoRB). I will avoid covering ground already well-trod, rather I will seek to expand upon a number of themes that have arisen to help tie connections between the papers and to extend some thoughts further. As I see it, this can usefully be done by mentioning four key points. These are:

- Toleration and/versus FoRB.
- Belief, thought, conscience, and religion in relation to FoRB.
- Legitimate and illegitimate restrictions on FoRB.
- The secular and religious framing of FoRB.

In relation to all of these issues two main questions will be raised. First, how do they relate to the context of South East Asia, specifically Singapore? Second, how do they relate to the concept of social and religious harmony?

On the first of these issues, tolerance, Nazila Ghanea's paper has already rehearsed some issues. However, as she rightly notes, the terminology can be slippery. People may insert new words to subvert the potential impact of FoRB. It is therefore useful that we think more fully what it means to tolerate something. In relation to social and religious harmony, many have promoted tolerance as an inherent good. That we can accept

those different from ourselves is imperative. However, writers on interreligious relations and social cohesion often suggest that mere toleration is not enough and that we must move beyond it.¹ While the word is used variously, in both its etymological sense and in much popular usage, toleration concerns putting up with something that is not innately good. Going back to medieval European pharmacology, your “tolerance” was the amount of poison that your body could accept without harm or death. Hence, to merely tolerate the other, to accept their existence but begrudgingly, or as a necessary evil, is hardly an attitude conducive to social harmony.

Readers of Ghanea’s paper may note that what I am talking about here is very different from what she was talking about. From a legal perspective, whether I merely tolerate another or lovingly accept them is besides the point, as long as I do not infringe upon their rights within the law. I can hate my neighbour without violating their FoRB. Certainly, I am not decrying the importance – or even the priority – of legal frameworks to regulate our social conduct. Rather, what I want to suggest is that if we really want FoRB built into the way we run a society, we need to move beyond simply a legal discussion. It may not be the role of the law, but I hope that these wider questions will be seen as of equal relevance. How we treat, regard, and live alongside our neighbours is about more than simply not infringing upon their rights. A legal framework, and acceptance of FoRB would be, in these terms, merely a starting point. How this relates to what may be varied perceptions of religious harmony is open to debate.²

Just as Ghanea suggested that tolerance does not always match up to FoRB, tolerance does not match up to expectations of social cohesion and acceptance of difference. An inclusive, some would say “pluralist”, openness to the other accepts, even delights, in the diversity around us.³ This contrasts with a closed exclusive mindset which begrudges difference, and may at best tolerate diversity. Many would suggest that, in South East Asia, the former has been typical, or an ideal being aimed for, in this region.⁴ In many ways, South East Asia, through much of history, has been a region where acceptance and living harmoniously alongside one’s neighbours was practiced without the record of religious strife and internecine conflict that has affected other regions; though we should not romanticise this, nor paint out the problems.⁵ But, the important point is that South East Asia may be able to draw on its own resources for going beyond mere tol-

erance, in ways not beholden simply to following the paradigms of FoRB, in providing the necessary social context for religious coexistence.

Our second point concerns the wider question of belief, thought, conscience, and religion in relation to FoRB. This, again, has been discussed in the foregoing text. In Singapore, around 18% of the population now claim to belong to no particular religion. Of course, what this means is contested, and it is unlikely that a majority of these have no form of what we would typically term religious or spiritual beliefs or practices.⁶ From this, two further initial remarks should be noted, which we will unpack as we proceed. Firstly, these freedoms are not simply about religion. Serious forms of thought, matters of conscience, and many belief systems – from Humanism to veganism – may and have been deemed to come within what is meant legally by the various regulations. These have been mentioned and documented above, so I will not reiterate here; though I will return to this question below. Secondly, when we come to religion it is not always entirely clear exactly what is, and is not, included. Indeed, even where FoRB has been seen to exist in almost paradigmatically ideal ways, certain forms of “religion” have been, and continue to be, excluded. We will start by reflecting more on this second point.

In Otmar Oehring’s paper, France, Great Britain, Germany, and the USA were picked out as almost exemplars of well-established places where FoRB is found. However, in the USA, where what became FoRB first began to flourish around Philadelphia, it was envisaged that this was primarily about forms of Protestantism. Catholicism, Judaism, and Islam were not included, and only came in due course to be generally seen to fall within the remit of FoRB. However, from these early beginnings, it took nearly two hundred years for the traditions of the indigenous American peoples to be covered, with their FoRB only being accepted in 1978. Prior to this, the religious practices of these people were typically classed as “superstition” and so not granted protection.⁷ We should note that FoRB has never been clear-cut and universally granted to all. Today, the British sociologist and theorist of secularism Tariq Modood believes that Islam, particularly in France, is often discriminated against because it does not meet the cultural standards of that society.⁸ Again, in the USA, there are movements from what are, at the moment, primarily fringe groups, but increasingly vocal and noticed groups who argue that FoRB should not extend to Islam because it is not a religion, but rather a legal or political ideology. One

American lawmaker has even posited that Islam is only 16% a religion, the rest being composed of these other parts.⁹ Now, my aim in raising these issues is not to disparage the whole notion of FoRB, or to argue that a cultural determinism or relativism determines what gets protected within its remit, notwithstanding the strong local and contextual aspects of protection under this law, even within states wholly committed to FoRB. Rather, I wish to draw attention to the problematics of definition, and the way that these can be utilised, even weaponised, in certain contexts to deny FoRB to certain traditions.

The question of definition moves, again, beyond what may be solely a legal question. Nevertheless, ultimately, it is normally down to the courts to determine what – in any jurisdiction – gets to count as a religion; indeed, we note a few examples below. Rather, it raises the perceptions, both scholarly, popular, and broadly cultural, of what gets to be included.¹⁰ In the UK, recent decades have seen FoRB extended to go beyond what we may say are the usual suspect such as Hinduism, Sikhism, Islam, Judaism, etc. to such minority, or new, traditions as Wicca, Druidism, and Paganism.¹¹ Germany has accepted Scientology as a tradition covered by FoRB. It would be my suggestion that a basic broad acceptance and openness to recognising many potential traditions, including new ones, is part of the healthy functioning of FoRB. Terms such as “cult” or “superstition” tend to be markers of religions which the person using the terminology does not approve of, and tell us little about the tradition so defined.¹² This is not, of course, to suggest that any and everything can and will be protected under FoRB, and claims for it as a cover for abuse, illegality, fraud, or otherwise should be strongly clamped down upon.

The corollary of the argument that I have made of this would extend to the first issue noted, that of belief. As noted in this text already, the original UNDHR covered “thought and conscience” alongside “religion”, which is often glossed as “belief”, hence the usage of FoRB. Ghanea noted the case of veganism, which refers to a recent UK tribunal case where a man argued that he was unfairly discriminated against because of his strong ethical and ecological beliefs which were framed in relation to veganism.¹³ Considered in UK legislation as covering what is termed “serious” beliefs, there are reasons why a person’s beliefs about veganism and its ethical imperatives can as protected within this. A lot of media comment saw this as somewhat absurd, even crazy, because they thought that veganism was recognised as

a “religion”. However, this merely demonstrated an ignorance of the legislation and process. But, its importance here, is that it shows that within the legal framework a narrow interpretation of what may be protected is not how the law operates, nor is it how – I would argue – it should operate. An attitude of openness to diversity and difference is imperative. This would accord with what I have already argued regarding the social cohesion and harmony issues raised. In other words, that we should not merely be tolerant of difference, but accepting more widely of various diverse forms of belief and lifestyle choices.

A side note coming from this, but one that is absolutely crucial, is the right not to have a religious belief. In short, to be an atheist or agnostic.¹⁴ While, in certain Asian jurisdictions, this is well enshrined in law, in others, including in South East Asia, protections for those who leave religion behind are not well enforced if they exist at all.¹⁵ This should be a matter of serious concern.

To some extent, the third point to be raised here, that of what may be considered legitimate and illegitimate restrictions on FoRB, may be seen to follow as a necessary caveat. In advocating an openness in interpreting FoRB does not mean, as I stressed above, an unrestricted acceptance of everything. As the paper by Ed Brown, Kristin Storacker, and Lisa Winther has already noted, there are a well-accepted set of criteria for situations within which FoRB may be limited. As an addition to these, though, Ghana notes it as a fundamental right, which even in times of national emergency may not be restricted although, at such times, other rights may be curtailed. As a further note to this, the Organization for Security and Cooperation in Europe (OSCE) has spoken about what it terms the “margin of appreciation” by which it means that for historical and cultural reasons it is to be expected, and accepted, that how FoRB is operationalised in any jurisdiction will be different based on this heritage.¹⁶

Much of the debate resides with lawyers and politicians. By this I mean that, in any jurisdiction, what is or is not recognised as a religion, or is permissible or not permissible, is decided either in the courts, is covered by international regulations and norms on FoRB, or is in related national legislation. However, within any country that has some degree of freedom, these are neither fixed nor beyond the limits of reasonable disputation. As such, neither court rulings nor legislation are fixed, and certainly they are far from infallible. For instance, although operating similar legal

systems, both Hong Kong and Singapore came to different conclusions on the question of whether Falun Gong could be considered a religion, and so potentially being protected in terms of FoRB. The former determined it was a religion, and the latter determined it was not.¹⁷ Certainly, within the pages of this volume we have seen differences of opinion between what is said to be correct or successful application of laws surrounding FoRB. Singapore, as Mathew Matthews noted, is a jurisdiction in which “Asian Values”, at least historically, have been vaunted as taking precedence over human rights legislation, and many of the key FoRB declarations are ones to which Singapore is not a signatory.¹⁸ Saying, therefore, that while FoRB is in Singapore’s constitution that its operationalisation of this does not accord with certain standard interpretations of, for instance, the ICPCR is arguably a moot point. Rather than pursue what may not be a fruitful discussion, I will change tack. My focus will be an issue raised by Brown et al. that while personal, or internal, beliefs are sacrosanct in FoRB terms, what may be restricted are the outer manifestations; what is often termed as the *forum externum* as opposed to the *forum internum* of religion.¹⁹

Central to much standard discourse on FoRB, is the right to proselytization. This is considered, within the literature and within the standard protocols, as a basic right. However, it may also reflect an assumption stemming from the context in which it was written that this is a normative part of what religions do. Many religious traditions do not regard missionary activity as part of their standard repertoire of activities. Indeed, it is not possible to find any religious tradition, with a substantial history, that has understood mission as a central tenet in every manifestation; equally, though, almost every tradition has had missionary trends at various times. Indeed, from other contexts, a right not to be proselytized to, and to go about one’s religious and cultural life without accusations that one’s own teachings are false, or that one’s eternal future depends upon conversion – with such suggestions often couched in quite aggressive and derogatory language – might be considered a cultural norm. As Dian Shah notes, this has been a matter of contention in some Asian contexts, with state regulation being seen as excessive or heavy handed where it tries to restrict aggressive missionary activity. A question we may raise is whether we see here a certain bias in the way that FoRB is framed to certain religious norms at the expense of others. I leave this as a question for reflection. I will note, though, that it is a question that will bump up against various

aspects of the legal framing of FoRB. For instance, Brown et al. noted that FoRB is not intended to protect religions from just criticism or to defend religion *per se*. People must be free to air their views, but how, when, and where any form of proselytising may take place, and what may count as aggressive proselytization is worth exploring further. This is a matter related to religious harmony, which Oehring suggests may conflict with FoRB. It must be noted, though, that there is not only one conception of harmony and what this means in relation to religion, and how it may be understood as a concept, as a legal principle, or as a constitutional standard.²⁰ China and Singapore, for instance, have distinct perceptions of harmony and its relationship to religion,²¹ moreover, Jaclyn Neo points out that in one ruling the Grand Chamber of the European Court of Human Rights makes reference to the concept of “religious harmony.”²² Nevertheless, Brown et al. clearly state that the “FoRB is not.... [a]bout enforcing interreligious harmony.” Here the role of the Maintenance of Religious Harmony Act (MRHA), as discussed by Mathews, feeds into the Singapore discourse on this.²³ This sits alongside other legislation, for instance the Seditious Act, which is a key part of Singapore’s legal framework that has regulated its conception of “religious harmony” and also determined what may be considered a part of aggressive proselytization. We will turn to this issue again below, but we may raise a question that Neo draws from this and will also be part of our further discussions: the suggestion that some ideas are only “Western” or only “Asian” may rely upon a stereotyped or essentialist notion of these regions that is not based in a more nuanced understanding of their wider principles and actual practices.

A further point which may be noted, and sits in relation to this, is freedom of speech. Mathews suggests that disparaging language and extremist views are something which Singaporeans wish to be curbed, and which he sees as contrary to Western standards. However, it is certainly not the case that every form of expression is permitted elsewhere. Hate speech, for instance, is clearly curbed. Meanwhile, there are good reasons to suppose that things like the Muhammad cartoons published in Denmark and elsewhere may infringe upon basic rights, and so may be seen as being legitimately restricted in ways which are not incompatible with freedom of speech.²⁴ As others have argued, there is not a clear divide between whatever we imagine Asian Values to be, and values which may seem more universal or are based in supposed “Western” standpoints.²⁵

Certainly, a recent survey has suggested that young people in Singapore may be more open to letting more extreme views be aired and discussed.²⁶ What does society consider acceptable? This is never static. One example, the resulting effect of which is controversial for some, surrounds the court case which saw Professor Deborah Lipstadt defend herself against an accusation of libel after she accused a Holocaust denier of being, in effect, a liar.²⁷ After winning her case, and proving effectively that the Holocaust occurred, there have been moves to criminalise Holocaust denial in some jurisdictions. Does this, as some may argue, put limits on free speech, or is it arguably a case where the denial becomes a form of hate speech and Anti-Semitism? The limits of free speech, religious hatred, and the relationship of this to FoRB are not things which simply differ between Singapore and elsewhere, nor are they immutably fixed in stone, but are negotiated and understood in relation to ongoing court cases, scholarly disputes, and social and political realities.

We turn now to our final point, and it raises an issue touched upon already, the secular and religious framing of FoRB. This is not the place to start upon a detailed exposition or examination of what secularism is. Suffice it to say here, that despite some stereotyped or prejudiced accusations, secularism *per se* is not innately hostile to religion, which is not to say that certain manifestations of secularism may not be hostile to any or all religions.²⁸ Secularism itself primarily rests upon two branches which, I would argue, are fundamental to FoRB. These are: the freedom from religion; and, the freedom of religion. The latter, essentially, when also taken to include the FoRB, is what we have been discussing here. Though, as a secular principle, it means that the state does not prohibit or restrict the rights of the individual in this regard, and also seeks to ensure that no others do so. Freedom from religion, on the other hand, informs the stance in which religious beliefs, doctrines, or authorities are not arbiters of the laws of the land. Notwithstanding, of course, that some may wish to limit themselves in respect to certain religious laws and practices in as far as these do not harm others nor restrict their essential rights in other ways.

Indeed, by making the state separate from such religious authorities, social cohesion and interreligious relations may be said to then be most possible within the secular system, because no one tradition is favoured in any way over the others. An important point in this is not a simple equality. The needs of some may differ from the needs of others. For instance, in

Europe most Christians do not need special food in school canteens, but this does not mean that FoRB is obtained by saying that nobody is given it. For Muslims, halal meals will be part of the equality, while for many Buddhists, Hindus, Jains, and others vegetarian options may be needed. FoRB (and its framing in a secular context) should recognise diversity, it is not simply a flattening of difference, which may happen in some conceptions of secularism. The danger often being that majoritarian norms are enforced as a universal norm.²⁹ Here, as with much human rights legislation, the protection of minorities comes very much to the fore. FoRB is often not needed so much for the majority, as for the minority; with majority-minority dynamics being a key concern in many areas.³⁰ The distance of the state from all communities, and even to stand above any enforcement of majority cultural norms must be part of this. It is, though, something of an ideal that is rarely, if ever, done adequately in practice.

Before drawing to a close, we may reflect here upon the relationship of legal discourse, secularism, religious harmony, and human rights. This, in part at least, relates to the difference between what Neo terms “liberal” and “non-liberal” states. While she argues that both may have ideas of religious harmony within them – and beyond what was noted above, she suggests that an ideal of peace or harmony goes back as far as John Locke in Western thought related to FoRB – she sees the modality by which it is seen to be reached or understood as different:³¹ the non-liberal state typically sees individual rights subsumed under communal or group needs, while the liberal state stresses the individual’s rights as paramount. Indeed, partly for this reason, she notes the way that Laura Nader has spoken about “harmony ideology” by which the powerful control the less powerful. For Nader, it is often about how the colonials controlled the colonised, subsuming the interests of some to a dominant hegemonic voice that seeks to stop any voices disrupting the social harmony.³² In part at least, such an analysis would fit Singapore, because legislation such as the Sedition Act maintains a colonial British era law that was part of an attempt to keep peace, or harmony, by having an arguably draconian intervention measure if anybody was perceived to be disrupting the fabric of the colony. However, as Neo notes, Nader’s analysis of “harmony” rests upon a particular reading of it, and she argues that as it operates currently in Singapore, the conception of harmony allows communities also to insist upon the government enforcing it. Therefore, it is not just a top-down,

but also a bottom-up principle.³³ Whatever the merits of this, it is clear that Singapore's practice of religious harmony is not simply an ideology of control by a ruling class or elite. This does not, though, relate to the relationship of harmony to the individual, and Singapore does appear to have a more communitarian conception of harmony where the social and group welfare is placed above the rights of any individual. However, even this does not appear to be entirely at odds with at least some potential readings of FoRB. As we have noted, there are times at which FoRB may be placed in abeyance, and one aspect of this relates to social and communal conflict and interests. To what level, with reference to the OSCE's "margin of appreciation", may we see this operate differently in more communitarian as opposed to more individualistic societies is a matter of interpretation within the legislation. However, it is certainly the case that we are seeing situations, surrounding social media and wider concerns, where particular actors, or groups of actors, may through fake news, the spreading of attitudes that border on hate speech, or misreporting/sensationalising of incidents, stoke feelings of communal antipathy and ill will that could have potentially dangerous consequences. I would posit that many traditional liberal assumptions about free speech and individual rights have allowed various forms of toxic speech and illiberal worldviews to spread in ways that may need new thinking to curb them.³⁴ The balance of the unquestioned good of individual rights and the social responsibility and practical outworking of social and religious harmony and questions of individual duties need to be given careful consideration. No simple answers appear to offer themselves, and what may be ideal and what is a practical necessity may at times appear to be in conflict.³⁵

An important caveat should be inserted here: what has been stated above does not mean that FoRB, or human rights in general, are contrary to the desires and teachings of any particular religion. I will not enter into the detailed debates here, but it has certainly been argued that human rights can readily be grounded within various religious traditions.³⁶ Indeed, while it is true that the particular trajectory of disputes and legislation that we see grew up within a Western context, especially concerning disputes between various Protestants and Catholics, and often including Jews, there is no Christian, or even Judeo-Christian (whatever we take that term to mean) grounding or distinct rationale that leads to rights. Arguments that individualism or rights grew from the biblical texts or some special

Greco-Roman or Christian genius tend to be deeply flawed.³⁷ Certainly, the evidence is shaky at best. For instance, Locke when seeking ways to found a new theory of religious freedom sought inspiration in the Islamic Ottoman empire and its millet system, which derived from the previous system of *dhimmitude*.³⁸ While neither the *millet* nor the *dhimmi* system would be considered equivalent to the current system of FoRB, at least in ways they were traditionally understood and practiced, they are also part of the history of the development of our theories of FoRB. Likewise, traditional Islamic thought teaches that there shall be “no compulsion” in religion, which may be seen as a traditional basis in Islamic tradition for basing contemporary FoRB on.³⁹ However, as noted, I do not wish to pursue the details here, and the important point to note is that we do not simply need to look to a secular system as the only possible foundation for FoRB. We must note that FoRB has drawn from, and can still draw from, resources and support in various religious narratives. Of fundamental significance here is also the interpretation of the religion. No religion, despite various claims made by what we may term “fundamentalist” forms of religious narrative,⁴⁰ has a single or standard form. Every religious tradition has manifested differently at various times and in differing contexts. As such, while certain manifestations of religion may be contrary to FoRB, this does not mean that they are inherent or essential to the religion, and teachings, practices, and interpretations – which may be considered mainstream or orthodox ones – can be found that can be seen to accord with the principles of FoRB. As such, in engaging religious communities and authorities, narratives of religion which emphasise the compatibility with FoRB can and must be found, and are key to embedding these teachings within communities to be widely accepted.

To conclude, I have drawn upon four areas developed in the foregoing papers and sought to draw out some further issues. This has been with particular reference to notions of social cohesion and religious harmony. Bringing us to the Singapore context, Mathews has argued that the cohesion achieved within the local contexts provides a justification for what may be seen as prescriptions on standard interpretations of FoRB. This strongly relates to the role of the MRHA, amongst other legislation, as an arbiter of harmony.⁴¹ Mathews’ argument is essentially pragmatic,⁴² it has worked and therefore delimiting FoRB has been shown to be justified. However, at the same time, notwithstanding the successes of

the Singapore model, we must think about how social cohesion may be maintained and nurtured moving forward. What has worked in the past may not simply ensure that this will always work. In an age marked by unprecedented access to information in a global context, and with growing identity politics, FoRB may need to be dealt with in new ways.⁴³ At the same time, there are certainly dangers, seen in regional and global contexts, when populist demagogues can utilise ethno-religious discourses to sow ferment. A free rein for any comment on religion by all parties may be harmful. As Shah notes, what may seem to be done for short-term gains may have long-term consequences for religious harmony; I suggest this would apply either to permitting socially divisive discourse, but also to delimiting open discussion and curbing the FoRB. Yet, if secure social cohesion is to be maintained, it will require dialogue and a more robust harmony between the religious traditions in which difficult questions must be addressed about disagreements and potential fault lines.⁴⁴ These cannot simply be swept under the carpet, or placed behind OB (out of bounds) markers where they may simmer and breed resentment. As we enter the third decade of the twenty-first century, new thinking about how FoRB is approached in Singapore, as well as South East Asia and wider Asian and global contexts, may be needed. This will need to be negotiated between the various stakeholders including government, the courts, civil society, religious communities, and others. This may require compromise and adjustment from all sides, as well as a recognition that existing patterns and comfort zones may need to be stepped beyond to ensure Singapore's future social and religious harmony and economic prosperity – the two of which surely go hand in hand.

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Notes

1. See, for instance, Perry Schmidt-Leukel, *Transformation by Integration: How Inter-faith Encounter Changes Christianity*, London: SCM, pp. 30-45.
2. See Jaclyn Neo, "Dimensions of Religious Harmony as Constitutional Practice: Beyond State Control," *German Law Journal* 20.7, 2019, forthcoming.
3. The notion of exclusivism, inclusivism, and pluralism as attitudes to religious diversity and social values is outlined in Diana Eck, *Encountering God: A Spiritual Journey from Bozeman to Benares* (Boston, MA: Beacon Press, 1993), 166-99. There are various usages which can be seen as either theological categories or simply sociological markers, on this see Paul Hedges, *Understanding Religion: Method and Theory for Studying Religiously Plural Societies*, Berkeley, CA: California University Press, 2020.
4. Paul Hedges, "Framing Cohesive Societies: Some Initial Remarks and Ways Ahead," in Jolene Jerard, ed., *International Conference on Cohesive Societies*, Singapore: RSIS, 2019.
5. The history of religious interactions in pre-modern history in South East Asia remains underexplored, however, indications are that waves of change happened more organically than through direct violence. For a survey, see Robert Winzeler, *Popular Religion in Southeast Asia*, London: Rowman and Littlefield, pp. 24-34, and on the normativity of coexistence, see Paul Hedges, "Religion and Conflict: The Myth of Inevitable Collision," *RSIS Commentary* 18094, 2018, available at: <https://www.rsis.edu.sg/rsis-publication/rsis/co18094-religion-and-conflict-the-myth-of-inevitable-collision/#.XWX9ly2p011>.
6. No extensive study on the so-called "nones" in Singapore exists, but there is an examination of this phenomenon in other contexts, see Becka Alper, "Why America's 'nones' "

don't identify with a religion," *Pew Research Center* (8 August 2018), available at: <https://www.pewresearch.org/fact-tank/2018/08/08/why-americas-nones-dont-identify-with-a-religion/>.

7. See Hedges, *Understanding Religion*.
8. Tariq Modood, *Essays on Secularism and Multiculturalism*, London: Rowman and Littlefield, 2019.
9. Asma Uddin, "When Islam is Not a Religion" (interview with Benjamin Marcus), *The Religious Studies Project*, 24 June 2019, available at: <https://www.religiousstudiesproject.com/podcast/when-islam-is-not-a-religion/>.
10. There is a growing literature, within the scholarly study of religion, that specifically questions whether the term/concept "religion" even has any meaningful application. Contesting some radically deconstructive scholarship that suggests we should abandon the term as too infused with meaning to be in any way analytic or worth maintaining, the current author has – with others – argued robustly that it retains a usage in at least contemporary social, and it should be added legal, contexts, see Hedges, *Understanding Religion*. For further background, the following two articles are part of journal special editions which debate these questions, see Paul Hedges, "Deconstructing Religion: Where we go from Here – a Hermeneutical Proposal," *Exchange* 47.1, 2018, pp. 5-24, and Paul Hedges, "The Deconstruction of Religion: So What Next in the Debate?," *The Journal of Implicit Religion* 20.4, 2018, pp. 385-96.
11. See Frank Cranmer, "Paganism, religion, and human rights," *Law and Religion UK* (blog), 20 October 2014, available at: <http://www.lawandreligionuk.com/2014/10/20/paganism-religion-and-human-rights/>.
12. See Hedges, *Understanding Religion*.
13. See Jonathan Seglow, "Should veganism receive the same legal protection as a religion," *The Conversation*, 1 April 2019, available at: <https://theconversation.com/should-veganism-receive-the-same-legal-protection-as-a-religion-114243>. See also, The Lawyer, "Vegan rights in the UK courts," *The Lawyer*, 18 July 2017, available at: <https://www.thelawyer.com/vegan-rights-uk/>.
14. See Iain Benson, "Getting Religion and Belief Wrong by Definition: Why Atheism and Agnosticism Need to Be Understood as Beliefs and Why Religious Freedom Is Not 'Impossible': A Response to Sullivan and Hurd," *SSRN* 20 April 2017), available at: <https://ssrn.com/abstract=2955558> or <http://dx.doi.org/10.2139/ssrn.2955558>.
15. Tom Batchelor, "Malaysia government minister calls for atheists to be 'hunted down' and 're-educated'," *The Independent*, 9 August 2017, available at: <https://www.independent.co.uk/news/world/asia/malaysia-government-minister-atheists-hunted-down-reeducated-religious-freedom-shahidan-kassim-a7884766.html>.
16. Office for Democratic Institutions and Human Rights, "Guidelines for Review of Legislation Pertaining to Religion and Belief," *OSCE* (2004), 9, available at: <https://www.osce.org/odihr/13993?download=true>.
17. See Hedges, *Understanding Religion*.

18. On the Asian values debate, see Donald Emmerson, "Singapore and the 'Asian Values' Debate," *Journal of Democracy* 6.4, 1995, pp. 95-105, and Michael D. Barr, "Lee Kuan Yew and the 'Asian Values' Debate," *Asian Studies Review* 24.3, 2000, pp. 309-334.
19. See Hedges, *Understanding Religion*, and Paul Hedges, "The Secular Realm as Interfaith Space: Discourse and Practice in Contemporary Multicultural Nation-States," *Religions* 10, 498, 2019, pp. 1-15.
20. See Neo, "Dimensions of Religious."
21. On Singapore and religious harmony, see Vineeta Sinha, "Theorising 'Talk' about 'Religious Pluralism' and 'Religious Harmony' in Singapore," *Journal of Contemporary Religion*, 20.1, 2005, pp. 25-40, and also for a wider discussion of types of harmony including in Confucian thought, see Neo, "Dimensions of Religious."
22. See Neo, "Dimensions of Religious," citing *Lautsi and Others v Italy*, App No. 30814/06, para. 60, 18 March 2018, available at: <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-104040&filename=001-104040.pdf>.
23. See Sinha, "Theorising 'Talk'", and on the wider question of interreligious relations and notions in Singapore, see also Paul Hedges and Mohamed Imran Mohamed Taib, "The Interfaith Movement in Singapore: Precarious Toleration and Embedded Autonomy," in John Fahy and Jan-Jonathan Bock, eds, *The Interfaith Movement* London and New York: Routledge, 2019.
24. See Paul Hedges, *In Defence of Freedom of Speech and Against the Publication of Certain Cartoons*, RSIS Working Paper 294, 2015.
25. See Emmerson, "Singapore and the 'Asian,'" which raises wider debates about cultural relativism and the universalism of rights which go beyond the scope of this paper to discuss.
26. Louisa Tang, "The Big Read: Open to extremist views, youth want diverse voices and honest talk — but at what cost?" *Today*, 28 August 2019, available at: <https://www.todayonline.com/big-read/big-read-more-open-religious-extremist-views-sporean-youth-want-diverse-voices-and-honest>.
27. See Deborah Lipstadt, *History on Trial: My Day in Court with a Holocaust Denier*, New York: Harper Perennial, 2005.
28. See Modood, *Essays on Secularism*, and Paul Hedges, "The Secular Realm."
29. Modood, *Essays on Secularism*.
30. For a reflection on some issues relating to interreligious relations, see Peter Phan and Jonathan Tan, "Inter-Religious Majority-Minority Dynamics," in David Cheetham, David Thomas, and Douglas Pratt, eds, *Understanding Interreligious Relations*, Oxford: Oxford University Press, 2013, pp. 218-40.
31. Neo, "Dimensions of Religious."
32. Neo, "Dimensions of Religious," citing Laura Nader, "Harmony Coerced is Freedom Denied," in Roberto Gonzalez, ed., *Anthropologists in the Public Sphere: Speaking out on War, Peace, and American Power*, Austin, TX: University of Texas Press, 2004; see also

Laura Nader, *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*, Stanford, CA: Stanford University Press, 1990.

33. Neo, "Dimensions of Religious."
34. The debate on this goes back at least as far as Karl Popper's classic definition of what he termed the "paradox of tolerance" where giving free speech to all means allowing it to even those who wish to destroy free speech and deprive others of their rights. Should we therefore see limits to tolerance, where it does not tolerate the intolerant? See Karl Popper, *The Open Society and Its Enemies*, Vol. 1 "The Spell of Plato," London: Routledge, 1945. Others have again raised this question in recent years, see for instance, Denis Lacorne, *The Limits of Tolerance: Enlightenment Values and Religious Fanaticism*, translated by C. Jon Delogu and Robin Emlein, New York, NY: Columbia University Press, 2019.
35. On a theoretical note, one is reminded of Jacques Derrida's conception that "justice" is an impossibility because my rights or wants will, at some stage, always be in conflict with somebody else's rights. For a reflection on this in relation to interreligious relations, see Paul Hedges, "The Ethics of Comparative Religious Reading: Approaching the Sacred Space of another Tradition," in Ulrich Winkler, Lidia Rodriguez, and Oddbjørn Leirvik, eds, *Contested Spaces, Common Ground, 'Currents of Encounter' series*, Leiden: E. J. Brill, 2017, pp. 18-32.
36. See, for instance, Abdullahi An-Na'im, Jerald Gort, Henry Jansen, and Hendrik Vroom, eds, *Human Rights and Religious Values: An Uneasy Relationship?*, Amsterdam: Rodopi, 1994, and Nazilea Ghanea and Farrah Ahmed, "Religion and Human Rights: Conflicts and Connections," in Paul Hedges, ed., *Controversies in Contemporary Religion*, vol. 2, Santa Barbara, CA: Praeger, 2014, pp. 77-100.
37. For instance, such a lineage is traced in a work such as Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism*, London: Penguin, 2014, but it is an argument full of flaws often taking cherry-picked aspects of an imagined tradition as defining of some great movement through history, see the partial review by Paul Hedges, "An Unsystematic Reader's Review of Larry Siedentop *Inventing the Individual: The Origins of Western Liberalism* (London: Penguin, 2015 [2014]) Part 1," *Logosdao* (blog), 18 August, 2019, available at: <https://logosdao.wordpress.com/2019/08/18/siedentop-inventing-the-individual-an-in-progress-review-of-thoughts/>.
38. See Reza Shah-Kezami, *The Spirit of Tolerance in Islam* (London: I.B. Tauris, 2012), and "Erasmus", "Christianity, Islam and Locke: Unlocking Liberty," *Economist* (3 February 2015), available at: www.economist.com/blogs/erasmus/2015/02/christianity-islam-and-locke. On *dhammitude* and questions of how it relates to religion and religious diversity, see Hedges, *Understanding Religion*.
39. Niaz Shah, "Freedom of Religion: Koranic and Human Rights Perspectives," *Asia-Pacific Journal on Human Rights and the Law*, 1 & 2, 2005, pp. 69-88.
40. Whether "fundamentalist/m" is a useful analytic term is debated by scholars, but I hope its employment here as a shorthand for various rigid, often literalist, and conservative strands of thought will be readily understood. On the debates, see Hedges, *Understanding Religion*.

41. See Sinha, "Theorising 'Talk'", and Hedges and Mohamed Taib, "The Interfaith." The MRHA it may be noted, is currently being revised, see Adrian Lim, "Changes to 30-year-old religious harmony law to be introduced in Parliament next week: PM Lee Hsien Loong," *The Straits Times*, 26 August 2019, available at: <https://www.straitstimes.com/politics/changes-to-30-year-old-religious-harmony-law-to-be-introduced-in-parliament-next-week-pm>. Initial suggestions relate to limiting religious leadership to Singaporeans and also needing to disclose foreign donations of over 10,000 SGD. This relates to the bill put forward in Parliament on 2 September, 2019 which is due for discussion before being finally being voted on for potentially passing into legislation, see Malavika Menon, "Changes proposed to Maintenance of Religious Harmony Act: 5 things to know about the law," *The Straits Times*, 2 September 2019, available at: <https://www.straitstimes.com/politics/changes-proposed-to-maintenance-of-religious-harmony-act-5-things-to-know-about-the-law>.
42. A number of sources have suggested, in a way that accords with an insider self-representation of the Singapore government, that its approach is never simply dogmatic, but pragmatic, something which is said to be true in, for instance, the way it implements secularism. See, for instance, Hedges and Mohamed Taib, "The Interfaith," and Alami Musa and Mohamed Alami Musa, *Engaging Religion with Pragmatism: The Singapore States' Management of Social Issues and Religious Tensions in the 1980s*, RSIS Working Paper no. 305. Singapore: RSIS, 2017.
43. On identity politics and related issues, see Modood, *Essays on Secularism*, Hedges, "Framing Cohesive," Ni Komang Erviani, "We're witnessing identity politics in extreme, violent forms: Deputy foreign minister," *The Jakarta Post*, 18 March 2019, available at: <https://www.thejakartapost.com/news/2019/03/18/we-witnessing-identity-politics-in-extreme-violent-forms-deputy-foreign-minister.html>, and Tham Yuan-C, "Singapore to update law on religious harmony to address spread of hate speech, identity politics," *The Straits Times*, 24 July 2019, available at: <https://www.straitstimes.com/singapore/singapore-to-update-maintenance-of-religious-harmony-act-shanmugam>.
44. It may be hoped that in ventures such as the Studies in Interreligious Relations in Plural Societies Programme (SRP) at RSIS, Nanyang Technological University and in the recent International Conference on Cohesive Societies (ICCS) that the Singapore government is opening platforms for more robust and open dialogue in civil society alongside increasing religious and interreligious literacy, see Paul Hedges, "The International Conference on Cohesive Societies – How to Build Cohesive Societies," *RSIS Commentary* 19123, 2019, available at: <https://www.rsis.edu.sg/rsis-publication/rsis/the-international-conference-on-cohesive-societies-how-to-build-cohesive-societies/#.XWYF-y2p01I>, and Stephanie Neubronner, "After the ICCS – Building Social Cohesion: Committing to a Participatory Approach," *RSIS Commentary* 19149, 2019, available at: <https://www.rsis.edu.sg/rsis-publication/nssp/after-the-iccs-building-social-cohesion-committing-to-a-participatory-approach/#.XWYGVi2p01I>. On harmony including potentially more robust forms of relationships between traditions, see Neo, "Dimensions of Religious."

