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## Individual Religious Freedom and National Security in Europe After September 11

*Silvio Ferrari*

### I. INTRODUCTION

Since the early 1990s, scholars have written about the “*revanche de Dieu*”<sup>1</sup> and the “deprivatization of religion.”<sup>2</sup> Many stressed that religion, which had been confined to the private sphere of human life, was reacquiring an important role in the public sphere of human life. Citing as examples Iran under Khomeini, Poland under Walesa, and the liberation theologies supporting the revolutionary movements in Central and South America, these scholars have explained how religion, by “leaving its assigned place in the private sphere, had thrust itself into the public arena of moral and political contestation . . . challenging in the name of religion the legitimacy and autonomy of the primary secular spheres, the state and the market economy.”<sup>3</sup>

Violent conflicts are inevitable when religion enters the public arena. Once it became clear what an important role religion could play in the public arena, politicians began using religion to motivate and mobilize people for political, national, and ethnic struggles. The events in the Balkans during the 1990s demonstrated the role religion can play when religious divisions overlap with national and ethnic differences and also showed how eager religious authorities were to exploit religion for political reasons.<sup>4</sup>

Religiously motivated political struggles provided the foundation for religious terrorism to develop. In the past, religion had occasionally been a component of political, ethnic, or national secular terrorism. In Northern Ireland, religion had been one

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1. *See, e.g.*, GILLES KEPEL, *LA REVANCHE DE DIEU [THE REVENGE OF GOD]* (1990).

2. *See, e.g.*, JOSÉ CASANOVA, *PUBLIC RELIGIONS IN THE MODERN WORLD* 3–6 (1994). The “deprivatization” of religion is the central thesis of Casanova’s work.

3. *Id.* at 3–5.

4. *See generally* *RELIGION AND THE WAR IN BOSNIA* (Paul Mojzes ed., 1998).

component, but rarely the central component, of terrorism.<sup>5</sup> However, in the last ten to twenty years a new breed of terrorist has appeared: terrorists who are religiously motivated and kill in the name of God.<sup>6</sup> In many cases, hope of a supernatural reward makes “religious” terrorists indifferent toward their own lives; they are prepared to die because they are persuaded God will reward their sacrifice with eternal life.<sup>7</sup> The most hideous form of violence, directed against defenseless civilians, is inextricably related to religion.

Scholars debate whether religion is the true motivation for terrorism or whether it is a ploy for recruiting followers and a medium by which to amplify the impact of terrorist actions.<sup>8</sup> For example, scholars debate whether Osama Bin Laden’s agenda is actually religious or whether he uses religion to disguise a political agenda.<sup>9</sup> To fight terrorism, it is essential to understand the terrorists’ motivations. But the debate about the motivations of terrorist leaders should not make us forget that there are people who are convinced it is legitimate, even compulsory, to kill in the name of God. This conviction on the part of some religious adherents—that religion legitimizes violence—distinguishes modern terrorism and is at the crux of how to balance individual religious freedom and national security.

Many important questions have been raised by the post-September 11 approach to religion and security. Thus, we cannot simply argue that religious liberty is an inviolable right or that basic human rights can only be enjoyed in a secure environment. Both

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5. For a general overview of Northern Ireland and of hostilities in Ireland, see *Northern Ireland*, at <http://www.infoplease.com/ipa/A0108101.html> (last visited Mar. 5, 2004).

6. See generally BRUCE HOFFMAN, *INSIDE TERRORISM* (1998); MARK JUERGENSMAYER, *TERROR IN THE MIND OF GOD: THE GLOBAL RISE OF RELIGIOUS VIOLENCE* 87–129 (3d ed. 2003).

7. For example, the number and determination of the Palestinian *shahid* (“martyrs”), who perform suicidal terrorist attacks in Israel, has shocked Europeans. Many of them were religiously motivated and left messages where the religious motivation of their terrorist act was clearly stated. See Jean-François Mayer, *Religion et terrorisme: La question des attentats suicides: tactique ou théologie?* [*Religion and Terrorism: The Question of Suicide Attacks: Tactic or Theology?*] (May 14, 2002), at [http://www.religioscope.com/info/articles/009\\_attacks.htm](http://www.religioscope.com/info/articles/009_attacks.htm).

8. See *Religion and Terrorism: Interview with Dr. Bruce Hoffman* (Feb. 22, 2002), at [http://www.religioscope.com/info/articles/003\\_Hoffman\\_terrorism.htm](http://www.religioscope.com/info/articles/003_Hoffman_terrorism.htm).

9. See generally BBC News, *Who Is Osama Bin Laden?* (Sept. 18, 2001), at [http://newsvote.bbc.co.uk/1/hi/world/south\\_asia/155236.stm](http://newsvote.bbc.co.uk/1/hi/world/south_asia/155236.stm).

statements are correct but are of little help in finding a balance between the values of freedom and security. Instead, we must determine how we can reconcile religious freedom and national security in a way that makes it possible to simultaneously enjoy them both.

I am convinced that, in the long run, religious liberty helps develop the integration and tolerance that lie at the foundation of a stable and safe society,<sup>10</sup> but a democratic society must also ensure that religious liberty does not exploit fundamental human rights.<sup>11</sup>

Religious movements that have threatened public safety and security have raised similar concerns in the past two decades, and past experience with these types of problems has provided guidance in dealing with post-September 11 security issues. Mass suicides (in Switzerland, for example) and violence (in Waco, Texas, and elsewhere)<sup>12</sup> persuaded people that some religions can be evil. However, because they believe that some religions can be evil, a few European states have overreacted and behaved as though all new and nonmainstream religious movements are dangerous sects.<sup>13</sup> Fortunately, a more measured approach is gradually emerging in the West,<sup>14</sup> where the consensus is that more must be learned about

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10. This concept was expressed in a speech given by Pope John Paul II on January 13, 2003: "Believers who feel that their faith is respected and whose communities enjoy juridical recognition will work with ever greater conviction in the common project of building up the civil society to which they belong." Pope John Paul II, Address of His Holiness Pope John Paul II to the Diplomatic Corps § 7 (Jan. 13, 2003), available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2003/january/documents/hf\\_jp-ii\\_spe\\_20030113\\_diplomatic-corps\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2003/january/documents/hf_jp-ii_spe_20030113_diplomatic-corps_en.html).

11. The U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief declares in its preamble that "the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible." *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, G.A. Res. 55, U.N. GAOR, 36th Sess., 73d plen. mtg. ¶ 5, U.N. Doc. A/RES/36/55 (1981), available at <http://www.un.org/documents/ga/res/36/a36r055.htm>.

12. See, e.g., CNN, *Mass Suicides in Recent Years* (Mar. 27, 1997), at <http://www.cnn.com/US/9703/27/suicide.list>.

13. The lists of sects prepared in France and Belgium, which combine truly dangerous movements and perfectly legitimate groups, are a good example of this overreaction. For France, see generally Vincente Fortier, *L'encadrement législatif du phénomène sectaire en France*, 51 REVUE DE DROIT CANONIQUE 21 (2001); FRANCIS MESSNER, LES "SECTES" ET LE DROIT EN FRANCE (1999). For Belgium, see Rik Torfs, *Sekten en Recht*, 4 COLLATIONES: VLAAMS TIJDSCHRIFT VOOR THEOLOGIE EN PASTORAAL 385 (1998).

14. But this is not yet so in the East. In some countries of Eastern Europe, for example,

these “new” religious movements so that generalizations are avoided.

Today’s crisis of balancing religious liberty and national security must also be approached with deliberation. An emotional and uncontrolled reaction to the events of September 11 could reproduce the same scenario that has prevailed in the West during the last twenty years, with Islam playing the role that the “new” religious movements had previously filled. To avoid repeating mistakes, we must consider the events of September 11 rationally by (1) assessing the legal provisions that have been taken (or may be taken) to reconcile the demands of national security and religious liberty,<sup>15</sup> and by (2) assessing the impact the events of September 11 will have on the long-term processes that shape the relationship between religion and civil society throughout the West.<sup>16</sup>

Before starting this analysis, one point should be made clear. Religious terrorism is not confined to Muslims; it concerns many religions, including Christianity. In the West, however, the debate on religion and security primarily focuses on Islam. Some people are convinced that Islam is an inherently violent religion.<sup>17</sup> I do not share this opinion. The Qur’an does not contain more violent passages than other sacred books, such as the Bible. During the nineteenth and twentieth centuries, Islam was a peaceful religion. Today, most Muslims do not support violence. Finally, violence—both in the past and present—is common to the followers of other religions. Thus, Islamic terrorism should be studied by analyzing Islam’s historical roots, which can explain why some Muslim groups justify their violent acts by claiming those acts are the result of a religious obligation. The same approach can also help explain non-Muslim religious terrorism. By understanding the historical roots of religious violence, we may be able to remove the social and cultural motivations for terrorism and break the link between religion and violence.

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a generalized diffidence toward all “new” religious movements still prevails and provides a strong foundation for the enactment of severely restrictive provisions. *See generally* LAW AND RELIGION IN POST-COMMUNIST EUROPE (Silvio Ferrari et al. eds., 2003). I make use of the expression “new religious movements” because there is no better definition, although a number of these movements are not new at all.

15. *See infra* Part III.

16. *See infra* Part IV.

17. *See* William Pfaff, *Stop Calling Islam the Enemy*, INT’L HERALD TRIB., Dec. 5, 2002, at 6.

This Article explores how modern, religiously motivated terrorism—and in particular, the terrorist attack on the World Trade Center in New York City on September 11, 2001—has affected the delicate balance between individual religious liberty and national security. In particular, this Article focuses on how new legislation intended to protect national security after September 11 threatens the religious liberty of nontraditional religions, most notably Islam, in Europe. It argues that, while states must pass legislation to protect national security, states can temper this new legislation to minimize intrusions into religious liberty. Religious organizations themselves, however, provide the best hope of spreading the message of tolerance and reconciliation that will help ensure an individual's right to practice his or her religion in peace in whatever country he or she resides.

This Article will begin its discussion of the relationship between individual religious liberty and national security by first examining religion and security after September 11. Part III then discusses legal provisions affecting religion. Part IV examines the long-term impact that the events of September 11 will have on church-state relations. Part V contains a brief conclusion.

## II. RELIGION AND SECURITY AFTER SEPTEMBER 11

Before September 11, 2001, lawmakers in some European states were aware of the emerging link between religion and violence. However, the terrorist attack on the twin towers of the World Trade Center in New York City changed the balance between security and liberty. Religion was identified as one of the forces behind that attack. Consequently, post-September 11 enhanced security measures have affected religious liberty. National security exigencies as a result of the September 11 attack have restricted religious freedom in at least three ways: (1) in a general way, in which governments create new laws restricting fundamental rights; (2) indirectly, in which governments scrutinize religious organizations; and (3) directly, in which governments intrude into an organization's religious beliefs. These three new restrictions on religious freedom are discussed below.

*A. Government Creation of New Laws  
Restricting Fundamental Rights*

In response to September 11, many states have enacted, or are in the process of enacting, laws restricting fundamental rights: freedom of movement, freedom of association, and so on.<sup>18</sup> These laws also restrict religious liberty. For example, missionary activities in foreign countries have become increasingly difficult because of more stringent provisions regarding obtaining visas, transferring funds over foreign borders, registering foreign organizations, and other related conduct. The right to disseminate a religious belief—already under attack in many countries<sup>19</sup>—has inevitably been affected.<sup>20</sup>

*B. Government Scrutinization of Religious Organizations*

Religious organizations are now scrutinized because some terrorist groups use a religious cover to exploit the broad freedom many states guarantee to religious organizations. State authorities no longer refrain from examining the internal operation of an organization simply because it has an alleged religious character; state authorities want to be able to ascertain whether a religious organization is endangering national security. United States Attorney General John Ashcroft acknowledged this changed attitude toward

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18. For information on the status of anti-terrorism laws in Australia, Canada, the United States, France, India, Hong Kong, Japan, and the United Kingdom, see Bob Burton, *Proposed 'Anti-terrorism' Law Flouts Rights*, ASIA TIMES, Apr. 23, 2002, at <http://www.atimes.com/oceania/DD23Ah01.html>; Margaret Ng, *Hong Kong: Proposed Anti-terrorism Law: Obstructing Rights Through Legislation*, HUM. RTS. SOLIDARITY, May 2002, available at <http://www.ahrchk.net/hrsolid/mainfile.php/2002vol12no03/2221.htm>; *World Anti-terrorism Laws*, <http://www.jurist.law.pitt.edu/terrorism/terrorism3a.htm> (last visited Dec. 30, 2003).

19. Concerning the prohibition of proselytism, see SHARING THE BOOK: RELIGIOUS PERSPECTIVES ON THE RIGHTS AND WRONGS OF PROSELYTISM (John Witte Jr. & Richard C. Martin eds., 1999); Silvio Ferrari, *Globalization, Postmodernism and Proselytism*, 1999 FIDES ET LIBERTAS 13; Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 BYU L. REV. 251, 267 (discussing discrimination in restrictions on proselytizing).

20. The impact of the September 11 events on religious liberty is not limited to missionary activities but extends to many other areas. For example, the rise of the insurance costs of religious buildings could consume critical funds and reduce the scope of religious activities. See Rachel Pomerance, *United States: Jewish Groups Feeling the Pinch After Post-9/11 Hikes in Insurance* (Aug. 14, 2002), at [http://www.religioscope.com/articles/2002/015\\_insurance.htm](http://www.religioscope.com/articles/2002/015_insurance.htm).

religious organizations,<sup>21</sup> and a few provisions embodying this new attitude have been enacted in the United States<sup>22</sup> and other nations. More state control over the inner life and organization of religious communities is therefore to be expected.

### *C. Government Intrusion into Religious Beliefs*

Post–September 11 legal provisions that enhance national security threaten to intrude into religious beliefs. There is a need to prevent people from considering that violence can be religiously justified and to break the bond uniting religion and violence once that bond has been established.<sup>23</sup> However, the state’s need to separate religion and violence also endangers religious belief and doctrine. If a religious doctrine advocates the subversion of the state, is tainted with intolerance, and opposes the democratic fundamentals of civil society, can state authorities require it to be changed and enforce this change? Can state authorities outlaw the religious group that upholds a subversive doctrine, although no crime has been committed? Political parties have been banned on this ground.<sup>24</sup> The question is whether the same attitude applies to religious organizations.

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21. See Associated Press, *Ashcroft: We’ll Watch Religious Groups*, (Dec. 2, 2001), <http://www.foxnews.com/story/0,2933,39924,00.html>.

If a religion is hijacked and used as a cover for killing thousands of Americans, we’re interested in that . . . We will respect the rights of political freedom and religious freedom, and we are deeply committed to that. But for so-called terrorists to gather over themselves some robe of clericism . . . and claim immunity from being observed, people who hijack a religion and make out of it an implement of war will not be free from our interest.

*Id.* (statement by John Ashcroft).

22. The new FBI guidelines widen an agent’s power to monitor religious institutions. See Susan Schmidt & Dan Eggen, *FBI Given More Latitude: New Surveillance Rules Remove Evidence Hurdle*, WASH. POST, May 30, 2002, at A01.

23. It is undeniable that religion can motivate terrorist acts and that violence is an integral part of many sacred texts. It is a fact that a number of terrorists regard what they do as fulfilling God’s will. We are right, however, to consider the behavior of such people as a perversion of religion and to deem such people misled by bad teachers, but we must nonetheless acknowledge that many of these terrorists believe they are acting in good faith.

24. For a recent example, see the European Court of Human Rights’ decision in the case of *Refah Partisi [The Welfare Party] v. Turkey*, Eur. Ct. H.R. 3 (2003), available at <http://www.echr.coe.int>.



## III. LEGAL PROVISIONS AFFECTING RELIGION

Immediately following—and, in some cases, prior to—September 11, 2001, a few European states approved laws enhancing national security. Some of these laws dealt explicitly with religion. Examining these legal provisions provides important insight into the new balance between religious liberty and national security.

*A. U.K. Terrorism Act 2000: Fighting Religious Terrorism*

The most important European legal provision affecting religion is the U.K. Terrorism Act 2000 (“the Act”), which proscribes terrorist groups.

The Act defines terrorism as “the use or threat of action . . . designed to influence the government or to intimidate the public or a section of the public . . . and . . . made for the purpose of advancing a political, *religious*, or ideological cause.”<sup>25</sup> An action falls within the scope of the Act if it

- (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person’s life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system.<sup>26</sup>

Listing religion as a motivation for terrorism was uncommon in previous European antiterrorism legal provisions, although a reference to “religious fanaticism” as a motivation for terrorism appeared in the 1997 E.U. Resolution on Combating Terrorism in the European Union.<sup>27</sup> Following the example of the U.N.

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25. Terrorism Act, 2000, c. 11, § 1(1) (Eng.) (emphasis added).

26. *Id.* § 1(2).

27. See Nicola Vennemann, *Country Report on the European Union, in* TERRORISM AS A CHALLENGE FOR NATIONAL AND INTERNATIONAL LAW, pt. III, § 1 (Christian Walter et al. eds., 2003) [hereinafter TERRORISM AS A CHALLENGE] (proceedings of the conference organized by the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Jan. 24–25, 2003). For the text of the resolution entitled Combating Terrorism in the European Union, which was adopted January 30, 1997, see <http://www3.europarl.eu.int/omk/omnsapir.so/calendar?APP=PDF&TYPE=PV2&FILE=19970130EN.pdf&LANGUE=EN> (last visited Mar. 10, 2004). The same reference to religious fanaticism is included in the Recommendation on the role of the European Union in combating terrorism adopted by the European Parliament on September 5, 2001. See the above URL address for the text.

Declaration on Measures to Eliminate International Terrorism,<sup>28</sup> terrorism was usually defined in connection with “political purposes,” and religion was only mentioned as a force that could never justify terrorism. However, the new, modified definition of terrorism in the U.K. Terrorism Act, which identifies religion as a possible motivation for terrorism and which is followed by laws approved in Australia, Canada, and New Zealand,<sup>29</sup> means the lawmaker knows that terrorism can be inspired by religion and he will no longer grant religious organizations a presumption of innocence.<sup>30</sup>

The U.K. Terrorism Act is a complex piece of legislation and requires a more extensive examination than it is possible to provide in this Article. This Article is limited to two observations: the Act’s

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28. G.A. Res. 60, U.N. GAOR, 49th Sess., 84th plen. mtg., U.N. Doc. A/RES/49/60 (1994), *available at* <http://www.un.org/documents/ga/res/49/a49r060.htm>. Section I, paragraph 3 of the Declaration states that

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.

The Declaration was approved with U.N. General Assembly Resolution A/RES/49/60 on December 9, 1994. See also the definition of terrorism in *Measures to Eliminate International Terrorism*, G.A. Res. 210, U.N. GAOR, 51st Sess., 88th plen. mtg., U.N. Doc. A/RES/51/210 (1996), *available at* <http://www.un.org/documents/ga/res/51/a51r210.htm>.

For an extensive discussion on the definition of terrorism, see NATHAN HANCOCK, *TERRORISM AND THE LAW IN AUSTRALIA: LEGISLATION, COMMENTARY AND CONSTRAINTS* (Parl. of Austl., Research Paper No. 12, 2001–2002), *available at* <http://www.aph.gov.au/library/pubs/rp/2001-02/02rp12.htm>; NATHAN HANCOCK, *TERRORISM AND THE LAW IN AUSTRALIA: SUPPORTING MATERIALS* (Parl. of Austl., Research Paper No. 13, 2001–2002), *available at* <http://www.aph.gov.au/library/pubs/rp/2001-02/02rp13.htm>.

29. See the definition of terrorist activities in Criminal Code Act, 1995, § 100.1 (Austl.), *as modified by* Security Legislation Amendment (Terrorism) Bill, 2002 (Austl.); CRIMINAL CODE, R.S.C., ch. C-46, § 83.01(1)(b) (1985) (Can.), *as modified by* Anti-terrorism Act, ch. 41 (2001) (Can.), <http://laws.justice.gc.ca/en/A-11.7/1860.html>. For an analysis of this act, see Markus Wagner, *Country Report on Canada*, in *TERRORISM AS A CHALLENGE*, *supra* note 27, at 1; Terrorism Suppression Act, No. 34, pt. 1, § 5 (2002) (N.Z.). For an analysis of this law, see JOHN E. SMITH, *NEW ZEALAND’S ANTI-TERRORISM CAMPAIGN: BALANCING CIVIL LIBERTIES, NATIONAL SECURITY, AND INTERNATIONAL RESPONSIBILITIES* (2003), *available at* <http://www.fulbright.org.nz/voices/axford/docs/smithj.pdf>.

30. The previous definition of terrorism did not mention religion. See Prevention of Terrorism (Temporary Provisions) Act, 1989, c. 4, § 20(1) (Eng.).

definition of terrorism and the power it grants to proscribe religious organizations.

*1. The Act's definition of terrorism is too broad*

The Act's definition of terrorism is very broad<sup>31</sup> and invites dangerously broad interpretations. This is best illustrated by an example. Let us imagine that, at the time of the Salman Rushdie affair, Muslims opposing the protection granted Rushdie by the government of the United Kingdom disrupted the electronic mail system of a government office by sending a large number of protesting e-mails. Today this action could be considered a terrorist act. We can therefore agree with those people who fear that the law will criminalize expressions of dissent and who request inclusion of some clauses, along the lines of those appearing in the Canadian Bill, to prevent this risk.<sup>32</sup>

In spite of its broad definition of terrorism, the U.K. Terrorism Act is founded on a sound principle: resorting to violence to advance a religious cause is never legitimate. This is a minimal statement, but it identifies the border dividing what is acceptable and what is not, it applies to believers of any religion, and it creates a platform on which it is possible to build a large consensus.

*2. The Act gives a government the discretionary power to proscribe terrorist organizations*

The second observation about the U.K. Terrorism Act regards the British Secretary of State's discretionary power to proscribe a terrorist organization. According to the Act, once he is convinced an organization is involved in terrorism, the Secretary of State may by order proscribe it without a court decision.<sup>33</sup> Although it is difficult

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31. However, they are not as broad as those contained in the U.S. Homeland Security Act of 2002, approved on January 23, 2002. Homeland Security Act of 2002, Pub. L. No. 107-296, § 2(15), 116 Stat. 2135 (2002).

32. The Canadian Act, *see supra* note 29, explicitly exempts from the definition of terrorism those acts that cause "serious interference with or serious disruption of an essential service, facility or system" but are "a result of advocacy, protest, dissent or stoppage of work that is not intended" to endanger the life, health, or safety of persons. *See* CRIMINAL CODE, R.S.C., ch. C-46, § 83.01(1)(b)(ii)(E) (1985) (Can.).

33. Terrorism Act, 2000, § 3(4) (Eng.). According to the Act, "an organisation is concerned in terrorism if it (a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism, or (d) is otherwise concerned in terrorism." *Id.* § 3(5).

to object to action against terrorist organizations, we must remember that proscribing a religious organization involved in terrorist activity can interfere with the free practice of that religion by its guiltless members. Consider the case where the proscribed organization “is the sole organisation legitimised within the religious system” and cannot be replaced by another.<sup>34</sup> In this case, it is reasonable to require that “organisations that are the sole vehicles of a particular belief system should be subject to especial scrutiny before proscription is permitted.”<sup>35</sup>

### *B. Banning Extremist Religions in Russia and Germany*

Russia has focused on ways to combat religious extremism. The 2002 federal law On Counteracting Extremist Activity<sup>36</sup> forbids “the founding and activity of [a] public organisation[] whose goals or actions are aimed at carrying out extremist” activities.<sup>37</sup> The statute defines the following activities as extremist activities: (1) inciting religious enmity and propagandizing exclusivity, and (2) superiority or inferiority of citizens on account of their attitude towards religion.<sup>38</sup> Article 15 of the Russian law establishes that an extremist statement made in public by a leader of an organization that is not denounced by the organization, as well as the conviction of one of its leaders for extremist activities, may be evidence of extremism in the entire organization.<sup>39</sup> Article 15 further adds that extremist activity carried out by a subdivision of an organization exposes the entire organization to prosecution.<sup>40</sup>

Extremist religious associations have also been banned in Germany. In December 2001, the law on associations was amended and the religions privilege—that is, the prohibition on banning

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34. PETER EDGE, LEGAL RESPONSES TO RELIGIOUS DIFFERENCE 120–21 (2002).

35. *Id.*

36. On Counteracting Extremist Activity, Fed. Law No. 114-FZ (July 25, 2002), *Sobr. Zakonod. RF*, 2002, No. 30, Item 3031. For a general overview of this law, see J. Brian Gross, Comment, *Russia’s War on Political and Religious Extremism*, 2003 *BYU L. REV.* 717.

37. See Togran B. Beknazar, *Country Report on Russia*, pt. III § 7.a, in *TERRORISM AS A CHALLENGE*, *supra* note 27, at 16 (citing art. 9 of the law).

38. See, e.g., Gross, *supra* note 36, at 728 (noting that the Russian law prohibits organizations from propagandizing exclusion or advocating supremacy or inferiority based on factors such as religion or race).

39. E.g., *id.* at 725 (providing an overview of a provision in Article 15 of the Russian law).

40. See Beknazar, *supra* note 37, at 18.

religious associations—was abolished.<sup>41</sup> As a consequence, the German government can now ban religious associations whose objectives or activities conflict with the criminal laws or that oppose the constitutional order or the concept of international understanding. In fact, a few days after this legislative change, the German government banned an association called the Kalifstaat on the grounds of internal state security.

Although the significance of the new German provision is largely symbolic,<sup>42</sup> it conveys a clear message: the lawmaker regards religious extremism as the first step toward religious terrorism and will no longer grant immunity to extremist religious doctrines.

These provisions illustrate the growing tendency to punish an entire organization for the crimes committed by some of its members, and they also repeat a pattern that can be found in many antiterrorism laws.<sup>43</sup> These provisions inevitably extend to innocent people the prosecution and repression that should be reserved for the crimes of some extremists.

Fighting religious extremism is not the same as fighting religious terrorism. While the latter consists of actions and facts, religious extremism focuses on ideas and teachings. These ideas may be dangerous ones that could help develop terrorism, but when we are in the realm of ideas (and not of facts) a more careful and restrained approach is required.

### *C. Statutes Repressing Religious Hatred*

Not only have states taken steps to prevent religious terrorism, but they have also legislated against religious conflict. State officials

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41. See Erstes Gesetz zur Änderung des Vereinsgesetzes [Amendment to the Law of Associations] v. 12.4.2001 (BGBl. I S.3319). About this law, see Kathrin Groh, *Das Religionsprivileg des Vereinsgesetzes*, 85 KRITISCHE VIERTELJAHRESSCHRIFT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT 39 (2002); Ralf Poscher, *Vereinsverbote gegen Religionsgemeinschaften?*, 85 KRITISCHE VIERTELJAHRESSCHRIFT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT 298 (2002); Markus Rau, *Country Report on Germany*, pt. III § 1, in *TERRORISM AS A CHALLENGE*, *supra* note 27, at 1.

42. Before the new German law was passed, it was possible to ban religious associations performing activities in conflict with criminal law or the constitutional order.

43. See the remarks devoted to the U.K. Terrorism Act of 2000, *supra* Part III.A. But the trend is not confined to antiterrorism laws. Another example is the antisects law recently approved in France. Law No. 2001-504 of June 12, 2001, J.O., June 13, 2001, p. 9337. The law makes possible the dissolution of a sectarian association when its leaders have been condemned for violation of the criminal legislation.

in charge of national security increasingly focus on interreligious confrontations and conflicts, because these disputes degenerate into violence more frequently than they had in the past. Preventing religious strife is considered an effective way of enhancing security. For this reason, many states now pay more attention to their obligations under Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR)<sup>44</sup> and have enacted new laws that repress religious hatred. For example, the United Kingdom Anti-terrorism, Crime and Security Act of 2001 extends the provisions concerning incitement of racial hatred to also include religious hatred.<sup>45</sup>

There is some criticism of these new provisions.<sup>46</sup> Similar laws have been approved in other Western European states<sup>47</sup> and their enforcement has not created particular problems. However, events that have occurred elsewhere, especially in the central Asian countries, indicate that enforcing religious tolerance through state laws can be dangerous. It is not difficult for us to imagine a malevolent state official picking an appropriate passage of the Bible or the Qur'an and then construing it as condoning religious strife or violence.

Religious organizations could repress religious hatred more effectively than the states. Religious organizations could develop codes of religious harmony<sup>48</sup> or common guidelines that are then

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44. "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, art. 20(2), U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

45. Moreover, the Act extends the racially aggravated offenses of assault, public order, criminal damage, and harassment to cover attacks aggravated by religious hostility. See 2 OPEN SOCIETY INSTITUTE, *The Situation of Muslims in the UK*, in MONITORING THE EU ACCESSION PROCESS: MINORITY PROTECTION 406-09 (2002).

46. See Ralph Smyth, *The Real State of Emergency: Is the UK About to be Turned into a Police State?*, pt. 5 (Nov. 22, 2001), at <http://www.urban75.com/Action/terror2001.html>.

47. For an example in Italy, see *Misure urgenti in materia di discriminazione razziale, etnica e religiosa*, Gazz. Uff., June 26, 1993, n.205, Le Leggi 205/1993, June 25, 1993 (Italy). For an example in Spain, see Ley Organica 8/1983 (B.O.E., 1983, 152), arts. 137, 165 (Spain). For an example in Portugal, see CRIMINAL CODE art. 240 (Port.).

48. For an example, see the religious harmony declaration prepared by the religious authorities of Singapore, following an invitation by the Singapore Prime Minister. For the text and some comments, see DECLARATION ON RELIGIOUS HARMONY, at <http://www.seuteck.org/religiousharmonyenglish.html> (last visited Dec. 30, 2003); *Declaration of Religious Harmony Becomes Part of Singapore Life*, RADIO SING. INT'L NEWSLINE (June 10, 2003), at [http://archive.rsi.com.sg/en/programmes/newsline/2003/06/10\\_06\\_01.htm](http://archive.rsi.com.sg/en/programmes/newsline/2003/06/10_06_01.htm); *Religious*

applied to controversial issues.<sup>49</sup> Currently, too few of these codes and guidelines exist, and they are not always effective. But fighting religious hatred is primarily the responsibility of religious communities. If religious organizations are unwilling or unable to fight religious hatred, states take the problem into their own hands, although the states' approach inevitably focuses on political rather than religious interests,<sup>50</sup> which could result in further repression of religion.<sup>51</sup>

*D. Construing National Security as a  
Legitimate Limitation to Religious Liberty*

National security is not identified as a legitimate limitation to religious practice in the international covenants,<sup>52</sup> nor is it identified as a limitation in most European constitutions.<sup>53</sup> However, because of the increase in religiously motivated terrorism, we can expect

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*Harmony Declaration Calls for Greater Social Cohesion Among Singaporeans* (June 11, 2003), at [http://www.hrwf.net/html/singapore\\_2003.html](http://www.hrwf.net/html/singapore_2003.html).

49. Proselytism is an example of this. See the guiding principles listed in Bert Beach, *Proselytism in the Context of Globalization, Religious Liberty and Non-Discrimination*, 2001 FIDES ET LIBERTAS 85, 85–87.

50. The definition of “religion” and “religious” is of crucial importance in deciding whether a group is entitled to protection. The state would have the power to refuse protection to a group by denying its religious character. The topic has been raised, with reference to Scientology, in connection with the United Kingdom Anti-terrorism, Crime and Security Act of 2001. See BRIEFING ON THE ANTI-TERRORISM CRIME AND SECURITY BILL, HOUSE OF LORDS SECOND READING 13–16 (Nov. 2001), available at <http://www.justice.org.uk/images/pdfs/anti-terrorismbill.pdf>.

51. An example of these dangers is the Maintenance of Religious Harmony Act enacted in Singapore in 1990, ch. 167A, available at [http://statutes.agc.gov.sg/non\\_version/html/homepage.html](http://statutes.agc.gov.sg/non_version/html/homepage.html) (last visited Dec. 30, 2003). In order to protect religious harmony, the Act gives the state authorities the power to issue a restraining order against any religious representative who excites “disaffection against the President or the Government while, or under the guise of, propagating or practising any religious belief.” *Id.* art. 8(1)(d). The order can restrain the religious representative from addressing a congregation or publishing any text without the prior permission of the state authorities. *Id.* art. 8(2).

52. See ICCPR, *supra* note 44, art. 18(3); European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 9(2), E.T.S. 5, 213 U.N.T.S. 222 [hereinafter ECHR]. The Human Rights Committee of the United Nations explicitly excluded invoking national security as a legitimate limit to Article 18. See U.N. Human Rights Comm., Gen. Comment No. 22(48) ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993).

53. Poland is the only member state of the European Union to list national security among the limitations to religious freedom. POL. CONST. art. 53.

political pressure on states to include national security among the legitimate limitations to religious practice.<sup>54</sup>

To assess the impact of national security as a limitation on religious liberty, we must consider the meaning, scope, and aim of the national security clause of the ICCPR.<sup>55</sup> According to the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, “[n]ational security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation, its territorial integrity or political independence against force or threat of force.”<sup>56</sup>

Until now, international court case law on national security has dealt only with secular matters,<sup>57</sup> but some issues certainly have a religious profile. For example, imagine that a religious authority, basing his statements on the sacred books of his religion, asks part of the population of a country to secede because that population is not entitled to live according to its religious law, or urges soldiers professing a particular religion to desert so they are not obliged to fight against soldiers belonging to the same religion but residing in a

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54. The new Bulgarian law on religions, approved on December 20, 2002, already lists national security among the limitations of religious freedom. *See* Law on Religions, art. 7 (2002) (Bulg.).

55. *See* ICCPR, *supra* note 44, arts. 19(2), (3b) (regarding freedom of expression); ECHR, *supra* note 52, art. 10(2) (regarding freedom of expression); *see also* ECHR, *supra* note 52, art. 11(2) (regarding freedom of assembly and association); ICCPR, *supra* note 44, arts. 21, 22(2) (regarding freedom of assembly and association).

56. U.N. ESCOR Comm’n on Human Rights, 41st Sess., Annex ¶ 29, U.N. Doc. E/CN.4/1985/4 (1985), *available at* <http://www.article23.org/hk/english/research/ICCPR.doc>. The Siracusa definition of national security is specified in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. According to principle 2(a),

[a] restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

Johannesburg Principles on National Security, Freedom of Expression and Access to Information 2(a), U.N. Doc. E/CN.4/1996/39 (1995) [hereinafter *Johannesburg Princs.*], *available at* <http://www.article19.org/docimages/511.htm>.

57. Secular matters regarding security have involved disclosure of classified secrets, prohibition of reporting interviews with representatives of proscribed political organizations, banning of associations because of their totalitarian program, and so on. *See* MARK W. JANIS ET AL., *EUROPEAN HUMAN RIGHTS LAW* 185–89 (2000); JACQUES VELU & RUSEN ERGEC, *LA CONVENTION EUROPÉENNE DES DROIT DE L’HOMME*, BRUXELLES, BRUYLANT 618–19, 657–59 (1990).



different state, or demands that a “holy” war be waged against another state. These examples illustrate how national security can be affected by religion, and they illustrate how any attempt to curb such actions on the part of a religious leader could interfere with religious freedom.

Articles 18(3) of the ICCPR and 9(2) of the ECHR may already provide some grounds for restricting these manifestations of religion,<sup>58</sup> but they do not address this hypothetical, religiously motivated behavior, which clearly endangers national security. As episodes of this kind become more frequent, it would not be unreasonable to include national security among the limitations on religious liberty, provided the limitation is framed in a way that minimizes the risk of unjustly restricting the right to practice religion. However, in many countries where religious liberty is limited in the name of national security—for example, Uzbekistan<sup>59</sup>—this limitation on religious liberty has been exploited to establish regimes where legitimate and peaceful religious communities have been denied religious liberty.<sup>60</sup>

While the usual safeguards ensuring the legitimacy of laws limiting religion must be met—that is, any restriction should be prescribed by law, aimed at protecting a legitimate national security interest, and necessary in a democratic society—the main guarantee that national security is not abused resides in establishing a definite link between repressible manifestations of religion and violence:<sup>61</sup>

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58. On the point whether the examples made in the previous paragraph can be regarded as manifestations of religion, see MALCOLM D. EVANS, *RELIGIOUS LIBERTY AND INTERNATIONAL LAW IN EUROPE* 304–14 (1997).

59. See Grant Garrard Beckwith, *Uzbekistan: Islam, Communism, and Religious Liberty*, 2000 BYU L. REV. 997, 997–1039. Article 3 of this law states that “[t]he freedom of worship or any other conviction are [sic] subject only to the restrictions necessary to ensure national security and public order, and life, health, morals, rights and freedoms of other citizens.” *Id.* at 1040–41. Article 5 further expounds on this issue by declaring “[t]he use of religion for anti-state and anti-constitutional propaganda, and to incite hostility, hatred, inter-ethnic discord, to undermine ethical norms and civil accord, to spread libelous, and destabilizing ideas, to create panic among the people and for other actions against the state, society and individual is inadmissible.” *Id.* at 1042. Such vaguely worded and dangerously general legal provisions are not restricted to Uzbekistan but are common to other central Asian states.

60. See UN News, *Anti-terrorism Used as an Excuse to Clamp Down on Religion – UN Report* (Sept. 29, 2003), [http://www.hrwf.net/html/un\\_2003.html](http://www.hrwf.net/html/un_2003.html) (stating that the attacks of September 11 have become “an excuse for a crackdown on religion”).

61. For more information, see Lee Boothby, *International Law Principles Applied to National Security and Religious Expression: A Report, Some Observations and Suggestions*, 2003

manifestations of religion may be repressed only if they are intended to and are likely to incite imminent violence.<sup>62</sup> This guarantee should list a number of religious manifestations that are explicitly protected and that cannot be restricted on grounds of national security. Examples of religious manifestations that should be listed as protected include any manifestation that (a) “constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes”;<sup>63</sup> (b) “is directed at communicat[ing] information about alleged violations of international human rights standards or international humanitarian law”;<sup>64</sup> (c) “advocates non-violent change of government policy or the government itself”; or (d) “constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials . . . or a foreign nation, state or its symbols, government, agencies or public officials, unless the criticism or insult was intended and likely to incite imminent violence.”<sup>65</sup> A provision including these limits might satisfy the need for more national security and minimize the restriction of religious freedom.

If national security is further threatened—as a consequence of a war, for example—then other more radical measures may be taken. Depending on the situation, such measures might include stricter control over places of worship<sup>66</sup> and foreign religious personnel;<sup>67</sup>

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FIDES ET LIBERTAS 36. Boothby explores the possibility of applying the Johannesburg Principles to religious expressions and manifestations.

62. The formulation proposed by Boothby is

Religious manifestation may be punished as a threat to national security only if a government can demonstrate that:

- (1) The manifestation is intended to incite imminent violence;
- (2) It is likely to incite such violence; and
- (3) There is a direct and immediate connection between the religious manifestation and the likelihood or occurrence of such violence.

*Id.* at 40.

63. *See id.*

64. *Id.*

65. *See* Johannesburg Princs., *supra* note 56, at princs. 7(a)(i), 7(a)(ii), 7(b); Boothby, *supra* note 61, at 38 (paraphrasing the Johannesburg Principles in the context of religious manifestation).

66. Places of worship enjoy a particularly strong protection in the legal systems of many European states. In Italy, for example, police cannot enter a church unless a crime is being committed. *See* Legge 25 marzo 1985, n.121, Ratifica ed esecuzione dell’Accordo, con protocollo addizionale, firmato a Roma il 18 febbraio 1984, che apporta modificazioni al Concordato lateranense dell’11 febbraio 1929, tra la Repubblica Italiana e la S. Sede (Law of

exceptions to the respect of religious privacy,<sup>68</sup> including the religious secret;<sup>69</sup> and tightening the registration procedure of religious organizations, particularly those that have their headquarters abroad. In the worst cases, even the right to change religion could be affected.<sup>70</sup>

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March 25, 1985), art. 5, in *Supplemento ordinario alla Gazz. Uff.*, April 10, 1985. In any other case, the religious authority in charge of the church must be notified in advance. After September 11, these restrictions on police control of places of worship (and particularly mosques) might easily be lifted. Recently the military advisor of the Italian Prime Minister has suggested closing down the mosques where Muslim religious authorities incite religious hate. See Sarzanini Fiorenza, *Meno diritti per combattere il terrorismo*, *IL CORRIERE DELLA SERA*, Dec. 4, 2003, at 5. For a non-European example, see Emad Mekay, *88,000 Mosques, One Sermon* (July 28, 2003), at [http://www.hrwf.net/html/egypt\\_2003.html#mosquesermon](http://www.hrwf.net/html/egypt_2003.html#mosquesermon) (describing state censorship of sermons delivered in Egyptian mosques).

67. In the Netherlands, for example, new imams are required to attend compulsory classes where they are given courses on topics like freedom of speech and religion, non-discrimination, women's rights, homosexuality, and so on. If they refuse, they will not get a residence permit. See Andrew Osborn, *Muslims Told to Speak Dutch in Mosques* (Oct. 2, 2002), at <http://www.hrwf.net/html/netherlands2002.htm>.

68. In consideration of the increasingly significant link between terrorism and religion, knowing the religious affiliation of a person, particularly if he or she is an immigrant, could be considered a legitimate interest of security officers. A proposal in this sense was made by the Ministry of Interior of the German Land of Bavaria: immigrants should declare their religion when they enter a country and this information should be fed into a central database. See the interview given to Lindner Claudio, *Beckstein, lo "sceriffo" della Baviera: "Copierò le norme italiane sulle impronte"*, *IL CORRIERE DELLA SERA*, Sept. 21, 2002.

69. The protection traditionally enjoyed by the attorney-client relationship was one of the first casualties of the post-September 11 regulations enacted in the United States. See David W. Hendon & Lee Canipe, *Notes on Church-State Affairs*, 44 *J. CHURCH & ST.* 383, 395-96 (2002). The erosion of the right to privacy could also affect the confidentiality of the religious minister-member relationship. This confidentiality is strongly protected by the laws of many European states. See, e.g., James Casey, *State and Church in Ireland*, in *STATE AND CHURCH IN THE EUROPEAN UNION* 147, 165 (Gerhard Robbers ed., 1996); Richard Potz, *State and Church in Austria*, in *STATE AND CHURCH IN THE EUROPEAN UNION*, *supra*, at 229, 254; Gerhard Robbers, *State and Church in Germany*, in *STATE AND CHURCH IN THE EUROPEAN UNION*, *supra*, at 57, 71. Similar provisions are in force in Italy, Spain, Portugal, etc., but the confidentiality of the minister-member relationship was recently weakened by some court decisions (notably in France) connected to cases of pedophilia involving religious ministers. See Olivier Echappé, *Le secret en question*, in *XLIII L'ANNÉE CANONIQUE* 285-300 (2001) (regarding the Court of Caen decision of September 2, 2001). The issue of pedophilia was perceived as so sensitive that the religious or professional secret was not regarded as a sufficient exemption from the obligation to report a crime. A similar result could occur when equally sensitive issues—security, for example—are at stake.

70. Recently, the most important Italian newspaper gave prominence to an article stressing that conversions to Islam frequently contain "an implicit or explicit refusal of the liberal civilization of the West." Angelo Panebianco, *I crociati al contrario [It Crosses You to the Contrary]*, *IL CORRIERE DELLA SERA*, Aug. 19, 2002, at 71 (author's translation). Therefore, these conversions cannot be considered exclusively in a religious perspective, as they have relevant political implications. The article does not draw the conclusions that logically descend

Enacting laws such as these would shift the balance between religious liberty and national security and would affect church-state relations even more deeply than the limited measures that have been taken. Yet, as significant as the effect of September 11 has been on new legislation, the events of September 11 affect the balance between religious liberty and national security at another, more indirect but more extensive level. Part IV explores this topic.

#### IV. LONG-TERM IMPACT ON CHURCH-STATE RELATIONS

The effects of the events of September 11 will extend beyond enacting the new legal provisions this Article examined in Part III. The new balance between security and freedom will affect basic principles that define the place religion has had in European society. It is unlikely that the September 11 events will be strong enough to significantly change the fundamental features of the European system of church-state relations, but they may provide an impetus to already ongoing processes that particularly concern the separation of church and state and the notion of traditional religion.

##### *A. Lowering the Wall of Separation Between Church and State*

In Europe, the wall of separation between church and state began lowering many years ago, but the need for greater national security may accelerate this trend.

Separation of church and state is based on the idea that the state is not competent to intervene in religious matters. Terrorist groups' recourse to religion will make people question the idea that the state is not competent to intervene in religious affairs. Religions are no longer "beyond the cognizance" of civil government, as James Madison once said.<sup>71</sup> The civil government has a legitimate interest

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from this statement, but this line of reasoning paves the way to the introduction of some limitations to the freedom of conversion on the model of the laws already existing in some Middle East and Asian countries. On this topic, see *supra* note 19. For some recent developments in this field, see *Gujarat to Ban Faith Conversion* (Feb. 25, 2003), at [http://www.hrwf.net/html/india\\_2003.html#GujaraHoban](http://www.hrwf.net/html/india_2003.html#GujaraHoban); see also Joshua Newton, *India Prepares National "Anti-conversion Rule,"* (Sep. 15, 2003), at [http://www.hrwf.net/html/india\\_2003.html#Indiapreparesnationalanticconversion](http://www.hrwf.net/html/india_2003.html#Indiapreparesnationalanticconversion).

71. Derek H. Davis, *Editorial: The Dark Side to a Just War: The USA PATRIOT Act and Counterterrorism's Potential Threat to Religious Freedom*, 44 J. CHURCH & ST. 5 (2002). Davis adds that "[t]he PATRIOT Act . . . could have the harmful result of striking down the veil that has obscured religious belief and, to a lesser extent, religious practice from the cognizance of governmental authority." *Id.* at 8.

in what religions affirm and practice.<sup>72</sup> More importantly, the state may intervene to prevent religions from being turned into instruments of violence. Religions have lost their innocence:<sup>73</sup> they no longer live in a Garden of Eden. They need to prove they can benefit civil society or at least prove they are harmless.

Lowering the wall separating church and state will affect majority and minority religions in Europe in different ways. Minority religions,<sup>74</sup> particularly those whose tenets question the secular character of the state, the respect of its symbols, and so on, can expect an increase in state control and in interference with their practice and possibly their belief.<sup>75</sup> As a result of September 11, Islam will be scrutinized most heavily by the state, but other minority religious groups may also be affected. Governments may be tempted to exploit the national security issue in order to control not only violent and dangerous religious groups, but also “unpopular” religious communities, that is, groups that believe and behave in a way that is inconsistent with the principles and practices of the majority of citizens. If this attitude prevails, security concerns will legitimize the increasing mistrust of some religious minorities in Europe, both in the West (laws regarding “new” religious movements are a good example of this) and in the East (for example,

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72. See Robert A. Seiple, Religious Liberty on the Global Stage, Address Delivered at the Spirit of Liberty Symposium (Nov. 13, 2001), available at <http://www.globalengagement.org/issues/2001/11/rseiple-philly.htm> (“[W]e need to know our enemy. Our enemy claims to be working from a religious base. We need to know the values of that enemy in order to defeat him, to understand his motivation for what he has done and, most importantly, what he might be planning to do next.”).

73. The lost innocence of religions is not something absolutely new. The Aum Shinrikyo gas attack on the Tokyo subway or the mass suicide of the Solar Temple followers, and so on, had alerted public opinion to the existence of dangerous or destructive sects. However, these events involved small and borderline groups (the term “sect” found in popular language concerning these groups shows they were not regarded as “true” religions). What is new about the September 11 events is that they involved Islam, the second largest religion in the world. On the difference between the violence coming from groups that are or are not part of a historical tradition, see Jean-François Mayer, *Violence et nouveaux mouvements religieux: quelles leçons pouvons-nous tirer?* (Aug. 22, 2002), at [http://www.terrorisme.net/analyse/2002/005\\_nrm.htm](http://www.terrorisme.net/analyse/2002/005_nrm.htm).

74. It is not easy to identify “minority religions” because each religion is a minority religion somewhere in Europe. What makes the difference is that some religions (such as Islam, Judaism, and the so-called “new” religious movements) are minority religions practically everywhere; other religions (Roman Catholicism or Russian Orthodoxy, for instance) are minority religions in some countries but are the majority religion in others.

75. On the forms this control could assume, see *supra* Part III.

the treatment of non-Orthodox religions in Russia). Models for more restrictive legislation may be provided either by the French law on “sects”<sup>76</sup> or by the legal provisions in some post-Communist European countries.<sup>77</sup> The second option is more likely to occur, due to the enlargement of the European Union by adding a number of these countries in 2004. Thus harmonizing different legal systems may strike a balance between Western and Eastern European standards on religious liberty and equal treatment of religious groups, raising the Eastern standards but lowering the Western ones.<sup>78</sup> But whichever option prevails, this process of using national security concerns to control religious groups may abuse national security, using it to stop religious practices that have little to do with religiously motivated violence.

Ensuring separation of church and state is more complicated when we consider majority religions. In Europe, the fear of terrorism joins up with the fear of immigration, and particularly of Muslim immigration. The growing presence of immigrants from Asia and Africa has spread the conviction that Europe is on the point of losing its identity, of being transformed into a multicultural continent without a soul. An increasing number of people think that security cannot be effectively granted without social cohesion and a strong collective identity. Christian churches, as a central part of the European identity, will be called on more and more to help preserve the European cultural heritage and to provide the principles and values for building some kind of European “civil religion”—that is, a set of values shared by a large segment of Europeans and that unites believers and nonbelievers, Catholics as well as Protestants and Orthodox, and so on.<sup>79</sup>

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76. Law No. 2001-504 of June 12, 2001, J.O., June 13, 2001, p. 9337.

77. See generally LAW AND RELIGION IN POST-COMMUNIST EUROPE, *supra* note 14.

78. At a much deeper level, the problem the European Union will have to face is striking a balance between the conception of religious liberty prevailing in the Orthodox Church on the one hand and in the Catholic and Protestant churches on the other. According to Grace Davie and other scholars, this difference is only the emerging part of a much larger division that is deeply rooted in history. See GRACE DAVIE, RELIGION IN MODERN EUROPE: A MEMORY MUTATES 3-4 (2000); see also Lawrence Uzzell, *Russians and Catholics*, FIRST THINGS, Oct. 2002, at 21 (examining religious divisions in Russia).

79. See DAVIE, *supra* note 78, at 193-94. Davie stresses that the European Union cannot progress from a merely economic to a complex sociopolitical entity without some kind of European civil religion taking shape.

It is dangerous to associate Christianity with the European heritage. One may wonder how non-Christian religions—and particularly Islam—can help shape the European civil religion. Muslims' contribution will likely be marginal at the beginning. This might exacerbate the Muslims' feeling of exclusion, raising precisely the security problems that should be avoided. Thus, civil religion may be either truly inclusive and play a cohesive role or divisive and create new divisions.

Let us take the issue of the crucifix in classrooms as an example of the potential problems associated with a civil religion.<sup>80</sup> Supporting the presence of the crucifix in classrooms as a symbol of European identity and culture could easily convey the idea that non-Christians are not fully part of European history and tradition and have no place in today's Europe. The issue would separate not only the faithful of different religions but also citizens, separating those who are "real" Europeans from those who, their opponents would contend, do not share the European soul. Such a division would make it more difficult to conceive of the European Union as a common house where everybody can feel at home irrespective of his or her religious convictions.

These same remarks regarding placement of the crucifix in classrooms could be repeated regarding the proposal to mention the Christian roots of Europe in the future constitution of the European Union.<sup>81</sup>

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80. The question of the crucifix in the classrooms was discussed in Switzerland. See Vincenzo Pacillo, *Decisioni elvetiche in tema di crocifisso e velo islamico nella scuola pubblica: spunti di comparazione*, 110 *IL DIRITTO ECCLESIASTICO* 210–29 (1999). The question of the crucifix in the classroom was also discussed in Germany after the decision of the Constitutional Court of May 16, 1995. See Joseph Listl, *The Development of Civil Ecclesiastical Law in the Federal Republic of Germany, 1995/1996*, 3 *EUR. J. FOR CHURCH & ST. RES.* 11, 13–14 (1996); see also Jörg Müller-Vollbehr, *Positive und Negative Religionsfreiheit*, 20 *JURISTENZEITUNG* 996 (1995). And now it is debated in Italy. See ANDREA GUAZZAROTTI, *GIUDICI E MINORANZE RELIGIOSE* 237–41 (2001).

81. See, e.g., Pope John Paul II, *supra* note 10; see also Constant Brand, *EU Constitutional Convention Divided over Powers, Religion* (Jan. 22, 2003), at [http://www.hrwf.net/html/europe\\_2003.html](http://www.hrwf.net/html/europe_2003.html); *Vatican Finds "Gaps" in European Constitution Draft* (Feb. 10, 2003), at [http://www.hrwf.net/html/europe\\_2003.html](http://www.hrwf.net/html/europe_2003.html).

*B. Reinforcing the Distinction Between Traditional and  
Nontraditional Religions*

A second long-term consequence of September 11 could be that the European inclination to distinguish between traditional and nontraditional religions—that is, to distinguish between religions that are part of the historical, cultural, and social heritage of a country and religions that are not—is strengthened.

Sometimes this distinction is openly expressed in legal provisions. In Lithuania, for example, Article 43 of the constitution separates traditional from nontraditional religions, and a law states which ones are placed in the first or in the second class.<sup>82</sup> In Greece, Article 3 of the constitution proclaims that the Orthodox religion is the prevailing religion of the country.<sup>83</sup> In addition, a number of northern European countries still have a state or a national church.<sup>84</sup>

Sometimes the distinction between traditional and nontraditional religions is not explicitly stated in a country's legal provisions but it can easily be detected by analyzing the legal system of that country. For example, in Poland, Italy, Spain, and in other predominantly Catholic countries, the traditional character of Catholicism is seen in the concordats these countries have concluded with the Catholic Church. Although there are exceptions,<sup>85</sup> concordats are almost always concluded with states where Catholicism is the traditional religion or at least, as in Germany, one of the traditional religions of the country.

This rough description of the European system of church-state relations would require many more distinctions and nuances: a national church cannot be equated with a church that has concluded a concordat, nor can a dominant religion be confused with a traditional religion. But at least one point is clear: there are some

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82. Law on Religious Communities and Associations, No. I-1057, arts. 5–6 (1995) (Lith.).

83. GREECE CONST. art. III(1), available at <http://www.hri.org/MFA/syntax/artcl25.html> (last visited Mar. 5, 2004) (“The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ.”).

84. For more information regarding these systems of church-state relations and the reasons for their decline, see Ferrari, *supra* note 19.

85. Concordats have been concluded with countries where Catholicism is by no means traditional, as in Israel and Kazakhstan. See, e.g., F. Michael Perko, *Toward a “Sound and Lasting Basis”: Relations Between the Holy See, the Zionist Movement, and Israel, 1896–1996*, in 2 ISRAEL STUDIES, No. 1, at <http://www.iupjournals.org/israel/iss2-1.html> (last visited Mar. 5, 2004) (discussing the Fundamental Agreement of 1993 between Israel and the Vatican).



religions that are not traditional religions anywhere in Europe. These nontraditional religions are Islam<sup>86</sup> and the so-called “new” religious movements.<sup>87</sup> Islam, however, as opposed to the “new” religions, has played a role in Europe that no “new” religious movement can even remotely claim. Nevertheless, Islam is not perceived, in today’s Europe, as a traditional religion.

Islam and the “new” religious movements are the religions raising the most acute security worries. “Radical Islam” and “dangerous sects” are regarded as potentially troublesome groups. Nearly everybody will admit that not all Muslim communities are radical and not all “new” religious movements are dangerous, but when security is discussed in the media, Islam and the new religions are always mentioned in the newspapers and television talk shows.

Drawing more distinctions between traditional and nontraditional religions may address security issues without isolating Islam or a specific “new” religious movement; isolating a religious movement, however, might be prohibited by international and constitutional provisions preventing states from discriminating among religions. For example, registration requirements for nontraditional religions could be more stringent than those for traditional religions. Screening the practices and doctrine of nontraditional religions could also become part of their registration procedure. A whole set of legal restrictions could easily be applied to nontraditional religious groups on the basis that they are foreign or not rooted in the history and tradition of a country.

Two dangers are inherent in creating more stringent registration requirements for nontraditional religions, however. First, more stringent registration requirements for nontraditional religions would widen the gap between “first class” and “second class” religions. This gap must be narrowed, not widened, to achieve true religious liberty in Europe. If the gap between the state support offered to traditional and nontraditional religions is too wide, both equality and individual religious freedom suffer. Indeed there is a relationship between individual freedom and equality among religious groups: the greater the inequality between them, the greater the risk that the

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86. Except in some parts of the Balkans and of Russia.

87. It could also be argued that Judaism is not a traditional religion in today’s Europe, but Judaism contributed considerably toward shaping the European identity through the medium of Christianity. References to the Judeo-Christian roots of Europe are frequent in the political language of the European institutions.

freedom of each member of a less-favored group will be limited.<sup>88</sup> Because individual religious liberty lies at the foundation of the relationship between law and religion in the West, this danger cannot be overlooked.

Second, excessively differentiating between traditional and nontraditional religions would increase the distance that divides the legal systems prevailing in Europe and in the United States, where such a distinction is currently unknown. Greater distance between the two legal systems would in turn result in more friction and tension, similar to that which has already emerged in relation to French and German policy regarding “new” religious movements,<sup>89</sup> and would further weaken the Western model of the church-state relationship.

#### V. CONCLUSION

Religious violence may not be an ephemeral phenomenon. It has deep roots that go beyond the tensions dividing the Christian West and part of the Islamic world. Some scholars stress that we are living at a time of declining secular ideologies; religion is one of the motivating forces that is left, and, in a world devoid of other strong systems of belief, it is exploited to mobilize people for political objectives.<sup>90</sup> Other scholars point to the growing fear that the West, and particularly the United States, is leading the world into onrushing economic, technological, and ecological forces that require uniform values. Thus, some people are tempted to “resort to religious identity to wage a total war against this universalism, to amplify their appeal and to obtain spiritual justification.”<sup>91</sup> It will take a long time to remove these deep-seated causes of religious violence.

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88. See Silvio Ferrari, *Separation of Church and State in Contemporary European Society*, 30 J. CHURCH & ST. 533, 543–47 (1988).

89. See the reports on International Religious Freedom published annually by the U.S. Department of State. The latest issues are available at <http://www.state.gov/g/drl/rls/irf> (last visited Jan. 2, 2004).

90. See Mayer, *supra* note 7.

91. Bob S. Hadiwinata, *Terrorism, Religion and Global Politics* (Dec. 6, 2002), at <http://mail2.factsoft.de/pipermail/national/2002-December/011474.html>.

Meanwhile we cannot sit and wait for a better time to come. Religious violence must be fought. So, what can be done? The task of the states and secular organizations is simple: they must emphasize the fact that religiously motivated violence is unacceptable. Of course, legal provisions embodying this message must draw careful distinctions as discussed in Part III of this Article. If careful distinctions are not made, then religion, instead of religious violence, and religious freedom, instead of religious extremism, may be criminalized. Such a result would damage precisely the security exigencies that must be protected.

Once this message that religiously motivated violence is unacceptable has been conveyed, states and secular organizations have completed their task. As Lord Lloyd of Berwick observed, "It is an illusion to believe that the fanaticism and determination of well established terrorist organizations can be defeated by laws alone, even of the most severe and punitive kind. . . . [T]here is no legislative 'fix' or panacea against terrorism."<sup>92</sup> Thus, once states have done what they can to combat religiously motivated violence, religious communities and their leadership must complete the rest of the task. The religious communities' difficult task requires them to interpret religious texts in a way that transcends the texts' violence; requires them to carefully reconsider the dignity afforded the "other," the nonfaithful or the faithful of another religion; and requires advocating a political theology that looks sympathetically to the secular character of the state and civil society. As John Paul II recently said, "Ecumenical dialogue between Christians and respectful contact with other religions, in particular with Islam, are the best remedy for sectarian rifts, fanaticism or religious terrorism."<sup>93</sup>

There is no guarantee religious organizations will perform this task successfully, but there is no alternative. It would be unwise to rely solely on the states, which are not equipped to deal with religious violence beyond the limited task of granting public security and order and developing a social and political context favorable to religious tolerance.<sup>94</sup> Religions must handle this huge responsibility;

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92. Hancock, *supra* note 28, pt. 2.2.1.

93. Pope John Paul II, *supra* note 10, § 7.

94. A step in this direction has been taken by the Ministers of the Interior of the European Union member states who approved a common declaration on interreligious dialogue. Regarding this uncommon initiative, see *EU: Interreligious Dialogue Against*

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it could be an opportunity for them to help shape the civil society of the third millennium or risk the possibility of their own marginalization.

