

9-1-2009

Introduction to Symposium: International Protection of Religious Freedom: National Implementation

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Human Rights Law Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Introduction to Symposium: International Protection of Religious Freedom: National Implementation, 2009 BYU L. Rev. 513 (2009).
Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2009/iss3/1>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

Introduction to Symposium:
*International Protection of Religious Freedom: National
Implementation*

The articles in this symposium issue are drawn from the papers presented at the Fifteenth Annual Law and Religion Symposium of the International Center for Law and Religion Studies at Brigham Young University. The theme of the Symposium was “International Protection of Religious Freedom: National Implementation.” The symposium gathered judges, scholars and other national policymakers from more than forty countries to address issues arising from attempts to implement international protections of religious freedom at a national level.¹

The Symposium was launched by keynote addresses from Michael O. Leavitt, former U.S. Secretary of Health and Human Services, and Professor Zhuo Xinping, Director of the Institute of World Religions at the Chinese Academy of Social Sciences and a member of the National People’s Congress. Speaking from practical experience, both from his time serving as governor of Utah and as a cabinet member in the U.S. government, Secretary Leavitt described how, within the bounds of separation of church and state, religious communities can make a tremendous contribution to providing services needed by the citizenry—often in ways that the state acting alone cannot bring about. His address touched on formal programs such as the “faith based initiatives” that were supported by the Bush Administration (and continue under the Obama Administration), as well as a variety of informal examples of cooperation.

Professor Zhuo’s address, the written version of which appears here, provided unique insights into shifting approaches to similar issues that are being explored in the Peoples’ Republic of China. Over the past two years, significant shifts have been occurring in the attitude of the state and the communist party toward religion in China. The notion that religion may have a positive role to play in bringing about a harmonious society is finding new footing.

1. Only a select portion of the Symposium presentations could be published in this issue. Video and audio versions of conference plenary sessions, together with conference papers submitted by participants are available at the website of the International Center for Law and Religion Studies under the Annual Symposium/Past Symposia menus. See http://www.iclrs.org/index.php?content_id=248&link_id=44&page_id=2.

Professor Zhuo himself has been an adviser at the highest levels in Chinese society on these issues. His paper provides a broad historical overview of the evolution of policy and legislation on religion in China. He then describes two basic categories of legal regulation in China today: laws enacted by the National People's Congress and regulations promulgated by the State Council. Within these categories, four "layers" are evident: in addition to constitutional provisions and administrative decrees from the State Council, there are also regulations from the State Administration for Religious Affairs, and decrees and regulations from local legislative and administrative bodies. Professor Zhuo notes that what is striking about this legislation is that there is no comprehensive law on religion in China. He then turns to the most interesting section of his paper, which in effect describes the behind-the-scenes tensions in thinking about how general religion policy in China should be shaped. The essay is short, but well worth study. As one reads this section of Professor Zhuo's paper, one gains a glimpse of the internal dialectic that will have profound implications for religion in China in coming years.

Other sessions of the conference dealt with current approaches to implementing international religious freedom norms in Japan, the Philippines, India, Nepal, Austria, Turkey, Greece, Russia, Nigeria, South Africa, Jordan, and Brazil, to name only some. In this issue, in addition to the paper from Professor Zhuo, we publish contributions from Australia, Ukraine, and several jurisdictions in Latin America.

In *The Protection of Religious Rights Under Australian Law*, Denise Meyerson, Professor of Law at Macquarie University in Sydney, Australia, explores the legal frameworks in place in the Commonwealth of Australia, as well as its states and territories, that protect religious freedom. Professor Meyerson inspects in great detail the constitutional, statutory, and common law protections that one would expect a liberal democracy, such as Australia, to guarantee to its citizens. Meyerson concludes that, while Australians by and large enjoy great religious freedom, the formal legal protections afforded by federal and state governments are surprisingly weak relative to similar liberal democracies.

Gennadiy Druzenko's article, *Svato-Mykhaylivska Parafiya v. Ukraine: A Thing Done by Halves?*, offers unique insights into the recent European Court of Human Rights' decision named in the title of the piece. Druzenko is currently a Fulbright-Kennan Institute

Research Scholar for the Woodrow Wilson International Center for Scholars in Washington, D.C., but he has served in the past as a legal counselor to the Ukrainian Parliament's Committee on European Integration, and he has extensive background working with church-state issues in Ukraine. *Svato-Mykaylivska Parafia* involves a legal dispute about whether a particular congregation could shift its affiliation from one branch of Eastern Orthodox Christianity to another (from the Moscow to the Kiev Patriarchate). Reminiscent in many ways of major church property dispute cases in the United States, the Ukrainian case has broad implications not only for how church autonomy issues will be addressed in Ukraine, but how they will be dealt with in all the countries within the jurisdiction of the European Court of Human Rights, from Ireland to the Russian far east. After exploring the historical and factual background of the case, the article asserts that the Court, by focusing on the more controversial religious freedom aspects of the dispute, underestimated complexities rooted in a long-standing property dispute between two competing Orthodox groups. The article concludes with an analysis of the Ukrainian domestic reaction to the Court's judgment.

Turning to the Americas, Dr. Evaldo Xavier Gomes, a member of the Carmelite Order and an expert on international religious liberty norms, explores *The Implementation of Inter-American Norms on Freedom of Religion in the National Legislation of OAS Member States*. He explains and critiques the efforts of the Organization of American States to ensure religious freedoms within the Inter-American System through the use of international tribunals. Dr. Gomes focuses on two organs of the OAS, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights, which are charged with the duty of promoting religious freedom among states parties to the American Convention on Human Rights. Gomes discusses several distinct examples where these organs have wrestled with problems of religious freedom, giving the reader an understanding of both the challenges and triumphs for religious freedom in the Inter-American System.

The articles that follow focus on developments in particular Latin American legal systems. In their article, *The Long Road to Religious Freedom in Peru*, Dr. Guillermo García-Montúfar Sarmiento and his associate, Dr. Daniel Alegre Porrás, discuss Peru's proposed Religious Freedom and Equality Act, which the authors believe

would enable the full exercise of religious freedoms in Peru. The authors explain that there is a multicultural reality in Peru, which is evidenced by the growth of religious organizations other than the Catholic Church. They recognize that these new religious communities, along with the established Catholic Church, are factors in social development. Thus, the authors argue that the various religious organizations must coexist in harmony so they can successfully perform their charitable functions. To achieve this harmony, legislative efforts, such as the Religious Freedom and Equality Act are necessary. The authors, who have been intimately involved in the process, lament the roadblocks that have impeded passage of the Religious Freedom and Equality Act and warn that further challenges still lie ahead. In the article, the authors explain various provisions of the Act, such as the proposal for secular education, and explain the need for these provisions. The authors conclude their piece with a statement of hope that the Religious Freedom and Equality Act can overcome the challenges it now faces so that human dignity, in the form of religious freedom, can be a reality in Peru.

The next article is by Professor Sergio González Sandoval, who holds posts at the Military University of New Granada and the Free University of Colombia. His contribution, *The Colombian Experience in the Area of Protection of the Freedom of Religion*, contrasts the long history of Colombian involvement in international issues of religious freedom with the precarious internal situation where human rights abuses have led to significant restrictions on the freedom of religion in the country. Professor González explains that Colombia has suffered for decades from guerrilla warfare. Because of this violence, every day hundreds of Colombians are forced to abandon their homes and lands to save their own lives. Professor González notes that the often neglected result of Colombians being forced from their lands is forced abandonment of other values, particularly religious values. Persons displaced from their homes are forced to give up their places of worship, prayer groups, tombs of ancestors, and seminaries. In short, refugees are unable to practice their religion in the place where they learned it as children. Colombia, Professor González argues, does not have the adequate legal structure to guarantee religious rights for refugees, and international organizations rarely denounce this severe violation of freedom of religion. Professor González concludes his article expressing hope

that those who are suffering will hear the voices of encouragement from those who are fighting against the freedom of religion abuses occurring in Colombia today.

Dr. Octavio Lo Prete, Professor at the Catholic University of Argentina, presented a paper on the state of Argentine religious freedom titled *The Protection of Religious Freedom by the National Constitution and by Human Rights Treaties in the Republic of Argentina*. He observed that despite worldwide trends towards secularism, Argentina remains a very religious society and that increasingly, religious expression in Argentina is becoming deinstitutionalized. Still, public confidence in religious institutions remains high. He stated that from the beginning, the Catholic Church has retained a privileged place in Argentina's Constitutional system, while at the same time the earliest Constitution enshrined the right "to profess religion freely." Early Constitutions also contained an invocation to God, reflecting the nation's theistic worldview. The 1994 Constitution further strengthened the right of all Argentine's to "profess freely their religion" by enshrining several human rights conventions and declarations that govern religious freedom into the hierarchy of norms under the Argentine Constitution. Dr. Lo Prete concluded by outlining areas of further development for religious freedom in Argentina.

Finally, Dr. Jorge Precht, Professor of Public Law at the Catholic University of Chile asks the question, "is Chile a secular state?" His article entitled, *Laity and Laicism: Are these Catholic Categories of any Use in Analyzing Chilean Church-State Relations?*, examines whether or not the European conceptions of secularism, i.e., French *laïcité*, can sufficiently account for the state of secularism in Chile's deeply religious society. Professor Precht characterizes Chile as a nation in transition, which paradoxically eliminated the "invocation of God Almighty" from the preamble of its Constitution and then shortly thereafter created new religious holidays. He traces the development of religious freedom in Chile's Constitutional history and identifies the influences of both the Church and of secularism generally on public education in Chile. He further describes instances in which the cause of secularism was strengthened by the Church itself through the actions of two Archbishops of Santiago. He then concludes by observing that Chile has never been subjected to religious strife and that Catholicism in Chile has been very socially minded and furthered the cause of secularism in some cases. Because

of this unusual circumstance, Professor Precht doubts whether French-style concepts of laicism can account for the relation of church and state in Chile.

*The Editorial Board
BYU Law Review*