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## With an Even Hand: The Call for Pakistan's Executive Task Force for Religious Tolerance

*Hon. J. Clifford Wallace\**

There are times when the right person is in the right position to cause a dramatic change in the course of the history of a country and its people's rights. I believe, and others may also, one of those times was June 19, 2014. It was on this day that former Chief Justice Tassaduq Hussain Jilani of Pakistan filed his authored opinion on behalf of the Supreme Court of Pakistan, blazing a new trail in his country's decades' long struggle dealing with minority religious rights.

It may seem odd that this has been such a problem in Pakistan. After all, Pakistan was divided off from India to protect the rights of the minority Muslims. Now, decades later, few are left of the courageous minority religion who were willing to divide a country to gain the freedom to practice peacefully their belief in Islam. As pointed out in Chief Justice Jilani's opinion, "The protection of the freedom of religious belief and practice of all communities was indeed the predominant right asserted in several propositions and resolutions passed by the All India Muslim League," and "the ide[o]logy underlying the Pakistan Movement was the creation of a separate nation state for the protection of the interests of the Muslim minority in India. . . . [T]he very genesis of our country is grounded in the protection of the religious rights of all, especially those of minorities."<sup>1</sup>

But Pakistan is not alone in the quest to be fair with minorities. It is an unfortunate frequent occurrence that majorities fail to provide appropriate safeguards for minority rights. It has happened in the United States of America. Perhaps observing this parallel

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1. (2014) S.M.C. No. 1 of 2014 (SC) paras. 2-13 (Pak.) (suo moto actions regarding suicide bomb attack of 22.9.2013 on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailies in Chitral), [https://www.supremecourt.gov.pk/downloads\\_judgements/smc\\_1\\_2014.pdf](https://www.supremecourt.gov.pk/downloads_judgements/smc_1_2014.pdf).

experience can be of help in the present situation in Pakistan after Chief Justice Jillani's important opinion.

### I.

The preamble to the 1973 Islamic Republic of Pakistan Constitution specifically directs that the principle of tolerance, "as enunciated by Islam, shall be fully observed."<sup>2</sup>

Thus, the courts of Pakistan, in keeping with their duty to protect and enforce the Constitution, are required to ensure tolerance is "fully observed."

Chief Justice Jillani rightly called to our attention in his address to the Karachi Bar Association in 2014 the words of the Pakistani founder when Mr. Muhammad Ali Jinnah first addressed the Constituent Assembly:

You are free: you are free to go to your temples. You are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the State.<sup>3</sup>

This foundational promise was powerfully reaffirmed by the Pakistan Supreme Court in its June 19, 2014, opinion, written by Chief Justice Jillani, reminding citizens that "the very genesis of our country is grounded in the protection of the religious rights of all, especially those of minorities," and declaring that "[i]t is imperative that the right to freedom of religion be restored as an individual and infeasible right."<sup>4</sup>

It is interesting to compare the similarities between the founding of Pakistan and the United States. Further insight can be drawn from comparing Justice Jillani's opinion with the United States' experience implementing court orders enforcing constitutional rights that challenged existing societal views. Can these insights assist Pakistan through implementation of the Pakistan Supreme Court's June 2014 order reaffirming the constitutional right to religious liberty for all?

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2. PAKISTAN CONST. pmb1.

3. Justice Tassaduq Jilani, Speech at the High Court of Sindh (Feb. 27, 2014) (quoting President Muhammad Ali Jinnah, Address to the Constituent Assembly of Pakistan (Aug. 11, 1947), [http://www.pakistani.org/pakistan/legislation/constituent\\_address\\_11aug1947.html](http://www.pakistani.org/pakistan/legislation/constituent_address_11aug1947.html)).

4. S.M.C. No. 1 of 2014, at paras. 9, 17.

## A.

Over 200 years ago, the United States of America was debating whether to accept our proposed Constitution. Religious tolerance became an issue. The result was the adoption of the first Ten Amendments after the Constitution was approved. The First Amendment prevented the Congress from adopting any legislation which would interfere with the free exercise of religion – meaning all religions: Islam, Judaism, Christianity, or others. Thus, the United States too has a similar constitutional requirement as to religious tolerance.

There was an important religious tolerance requirement directed toward Islam when the Prophet Muhammad signed a document with a delegation from the St. Catherine Monastery, which included the following:

Verily I, the servants, the helpers, and my followers defend them, because Christians are my citizens; and by Allah! I hold out against anything that displeases them.

No compulsion is to be on them.

Neither are their judges to be removed from their jobs nor their monks from their monasteries.

No one is to destroy a house of their religion, to damage it, or to carry anything from it to Muslims' houses.

Should anyone take any of these [belongings], he would spoil God's covenant and disobey His Prophet. Verily, they are my allies and have my secure charter . . .<sup>5</sup>

It is true that Pakistan has chosen through the democratic process to adopt Islam as a foundation of government. It appears from the words written in the St. Catherine Monastery document, however, that tolerance on religious issues is mandatory – that is, a Christian may freely practice his or her religion without interference so long as it does not violate the law of the land.

Cases arise in all courts that challenge a religion or a religious practice. In the United States, we are guided by our First Amendment. In Pakistan, judges are guided by the preamble to the Constitution.

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5. A. Zahoor & Z. Haq, *Prophet Muhammad's Charter of Privileges to Christians: Letter to the Monks of St. Catherine Monastery*, ISLAMIC CIVILIZATION, [www.cyberistan.org/islamic/charter1.html](http://www.cyberistan.org/islamic/charter1.html) (last visited Aug. 21, 2020).

Both require the same tolerance of religious belief and practice so long as it does not violate the duly enacted law of our countries.

This brings me to the recent proceedings at the Supreme Court of Pakistan where the principle of religious tolerance was highlighted as a critical human right protected by Pakistan's constitution—a right that the judiciary must take a proactive lead to promote. The opinion addressed a series of complaints in which religious minorities were abused and their places of worship attacked.<sup>6</sup> Attacks on minority religious groups, and their places of worship, are protected by Pakistan's blasphemy law, a provision of the penal code.<sup>7</sup> In its decision, the Pakistan Supreme Court held that not only was relief necessary, but that the federal government must take steps to promote a culture of religious and social tolerance through law enforcement and education on a national scale. The court held that the anti-blasphemy laws protect all religions.

Sometimes cases present difficult issues—such as whether to accommodate religions which use drugs as a sacrament.<sup>8</sup> However, guidance on how to decide those issues stems not from our personal beliefs, but from our Constitution. Both the Pakistani and United States judiciaries are enjoined to be religiously tolerant.

The result is that whether I am in San Diego or Islamabad, I am allowed to practice my religion. I highlight this point because religion excites so many in both our countries. Yet court decisions in Pakistan as well as the United States must show, by our constitutional direction, religious tolerance. This understanding assists the judiciary in promoting a culture of tolerance.

## II.

Although the judicial branches of our countries may take the first step in elucidating and implementing constitutional directives through the issuance of orders, realization of the constitutional guarantees are often hindered by cultural or political resistance to those orders. As a result, successful implementation of court orders often relies on assistance from the executive or legislative branch of government. For example, in order to rectify the found constitutional

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6. S.M.C. No. 1 of 2014, at paras. 2-8.

7. PAK. PENAL CODE 295-A.

8. *See, e.g., Emp't. Div. v. Smith*, 494 U.S. 872 (1990).

violation, the Supreme Court of Pakistan's June 2014 order called for an Executive Task Force to develop a strategy of religious tolerance to meet the requirement of Pakistan's 1973 Constitution.<sup>9</sup> The task force was to work to ensure that actions are taken to enforce minority rights and to educate law enforcement, judges, and Pakistan's citizens on the right to liberty of conscience secured in its Constitution. The Supreme Court of Pakistan described what will be necessary to protect these rights and ensure compliance with its order. The court specifically mentioned, but did not limit its analysis to, the need for revised curricula in schools, discouragement of hate speech on social media, a National Council for minorities' rights to monitor progress of the practical realization of these rights and safeguards, a Special Police Force to protect places of worship, and appropriate law enforcement to ensure the court's judgment is carried into effect.<sup>10</sup>

The court's opinion seems to indicate that now is a critical time for Pakistan to engage its government and citizens in a galvanized movement to recognize the fundamental rights of religious minorities guaranteed by its own Constitution. I suggest that the declaration of the Supreme Court of Pakistan marks a watershed moment in the country's history and development as a powerful nation in a globalized world of interdependence. But effective movement toward national religious tolerance, a value essential to Pakistan's founders, will require government leadership. The required executive supervisory task force can implement the court's direction in a comprehensive and evenhanded manner for all of Pakistan's people.

Change will not happen overnight as a result of one court order, but the Pakistan Supreme Court's recent decision, if supported and guided by the required Executive Task Force, will likely provide the necessary catalyst to accomplish lasting reform. An Executive Task Force would oversee efforts in all sectors – education, media, law enforcement, places of worship – and would monitor the progress of those efforts throughout the country.<sup>11</sup> Although implementing an edict of the judicial branch is often a difficult task

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9. S.M.C. No. 1 of 2014, at para. 37.

10. *Id.*

11. *Id.*

in any diverse nation, it has been done successfully when supported by the will of the people and the rule of law.

The Pakistan Supreme Court's order cites a case decided by the United States Supreme Court in 1954, *Brown v. Board of Education of Topeka*.<sup>12</sup> That case called upon the government to protect minority rights as guaranteed by the United States Constitution. In this instance, the Court interpreted the Constitution's right to equal protection under the law to require racially integrated public school systems. Implementation of that judicial decree, however, required the support of the United States Congress, the President, and federal law enforcement agencies to ensure that the Court's ruling would have full force and effect in those geographical areas where the ruling contradicted centuries-long cultural mores, which viewed racial segregation as the natural order.

Although *Brown* concerned constitutional protection for racial minorities, its principles are analogous to other social minorities – even religious minorities. The Pakistan Supreme Court recognized this in its reliance on *Brown*.<sup>13</sup> Indeed, Pakistan's 1973 Constitution, together with its amendments, was ratified by Pakistan's Parliament and became the supreme law of the land. Pakistan's Constitution grants equal protection of the rights of conscience to all citizens of all religious persuasions.<sup>14</sup> The Pakistan Supreme Court's June 2014 order recites these constitutional protections and calls for the federal government to act to enforce the rights to freedom of individual and community religious tolerance and freedoms.<sup>15</sup> As the United States' *Brown v. Board of Education* decision demonstrates, a supreme court may decree, but the rest of the country's government must carry out the court's judgment to make a lasting impact. Thus, the United States' experience under *Brown* has some relevance to Pakistan's upcoming experience with the religious tolerance opinion.

#### B.

The civil rights movement in the United States was highlighted by the Supreme Court's decision in *Brown v. Board of Education*, but

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12. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

13. See S.M.C. No. 1 of 2014, at para. 30.

14. PAKISTAN CONST. arts. 20, 25.

15. S.M.C. No. 1 of 2014, at paras. 10-12.

did not end there. That case concerned equal education rights for school children, but the judgment taught a principle of equal treatment for minorities beyond the scope of America's schools. The thrust of the Court's decision called attention to the need for a fundamental change in the socioeconomic structure and political atmosphere of American society that could ensure equal rights for all races. It was a turning point, especially for certain geographical regions, where communities had long-standing practices of racial segregation and separate, unequal public facilities for different races. Those communities were resistant to change. To implement the Supreme Court's directive, more than a court order was needed. The support of the United States' President and Congress, the sword and purse of the country,<sup>16</sup> were needed to oversee those changes not only to integrate racial minorities into historically white schools, but also to begin the process to ensure that racial minorities were afforded equal opportunity in other public accommodations as well. In other words, the executive and legislative branches of national government, armed with a comprehensive strategy, were needed to ensure full acceptance of the court's guarantee.

Although many communities and schools followed the Court's directive peacefully, others resisted. This resistance, in some cases, was violent, despite the Supreme Court's directive. As a result, the Court's order was not immediately enforceable in many communities, and others were hesitant to proceed. After one year of confusion and inaction, the Court issued a second opinion in *Brown v. Board of Education* to deliver a more directive strategy to implement its edict.<sup>17</sup>

The impact of *Brown v. Board of Education* was not limited to racial integration in public schools. The Court's order struck at the heart of longstanding cultural discrimination that impinged upon constitutional guarantees. This could not be resolved overnight. It took time, work, and the influence of the executive and legislative leadership to ensure that protection for minorities would endure. The effort continues today.

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16. THE FEDERALIST NO. 78 (Alexander Hamilton).

17. *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

## C.

Perhaps the example of the United States' progress in this area can inform the movement for religious tolerance that is beginning in Pakistan. Even when presented with legal authority, acceptance of change at the individual and community levels requires a comprehensive strategy and the full backing of a nation's government to implement it. Based on the United States' experience, a Pakistan Executive Task Force will play a key role in implementing the constitutional guarantee of freedom of religious conscience and observance in Pakistan following the June 2014 Pakistan Supreme Court decision.

As was the case after *Brown*, Pakistan will confront some difficulties in implementing the June 2014 order. For many communities, it will affect a cultural paradigm shift that likely will struggle for acceptance even with the support of an Executive Task Force to support and monitor progress toward religious tolerance. Pakistan has a law that prohibits blasphemy against any religion. Historically, the law has not been enforced to protect the views or practices of religious minorities. Following an attack on a Christian church, as discussed in the court's June 2014 order, police conceded that it believed the law did not protect from attack or desecration places of worship for religious minorities.<sup>18</sup> A common view was that the blasphemy law only applies to attacks on Islam.<sup>19</sup> Even though the law was made clear by the Supreme Court of Pakistan, the prevailing misunderstanding will take time to correct. It is difficult to reconcile a common view that attacks on religious minorities are not blasphemous, although they were indeed unlawful under the Pakistan Penal Code, with constitutional provisions that require liberty of religious belief for all citizens.

Like the United States, Pakistan was founded on values that embraced religious diversity. At the time of Pakistan's founding, the Muslim faith was a minority in India, so protections for liberty of belief and worship for all religious minorities took center stage in the framing of Pakistan's Constitution. Although today Islam is the primary religion in Pakistan, where it enjoys a special status both in practice and politics, it should not be overlooked that Pakistan became an independent nation following a movement to

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18. S.M.C. No. 1 of 2014, at para. 8.

19. *Id.* at paras. 8-9.

protect a religious minority – the Muslim minority in northern India in the early twentieth century. Pakistan’s founders intended to form a country that would be tolerant of all religious beliefs. Pakistan is an Islamic nation that can strive for religious tolerance. Such a course will strengthen Pakistan’s government, its citizens, and its place in a globalized world that so often struggles to accommodate religious diversity. It is clear from the court’s June 2014 order that government and law enforcement agencies are not fully informed of the Constitution’s protections for religious minorities, or they are unable to enforce them in some cases due to societal pressures. Education and training will be a critical aspect of the Executive Task Force’s strategy for religious tolerance. Training is necessary for local leaders and law enforcement agencies, particularly in regard to desecrators of places of worship and unlawful attacks on minorities that have long gone without penalty because government officials believed it to be legally permissible. Education is critical not only for those in leadership, but in Pakistan’s schools where an unbiased curriculum will be a great step forward for the country’s future.

A central Executive Task Force can bring local organizations together to address issues of religious freedom that are uniform – or varied – across the country. The court’s order provides additional direction that will allow Pakistan to take a step forward, and the efforts toward these goals are essential for religious tolerance. A National Council for Minority Rights will monitor progress, and a special police force will protect places of worship of religious minorities.<sup>20</sup>

### III.

It is a critical time for Pakistan to show its respect and support for its apex court and the Constitution it follows. Pakistan can be a leader in a region of the world that has had religious diversity for thousands of years, yet tolerance for religious minorities has weakened and led to ongoing struggles for independence and peace. If a country’s people are continually exposed to judicial outcomes without force due to political or financial pressures, lack of tolerance, or other illegitimate influences, they will not expect to be treated fairly when bringing their complaints to the judicial

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20. *Id.* at para. 37.

system. Corruption in, and distrust of, the legal system will breed more of the same. When the public perceives that either the government or those individuals or groups who are favored by the government are receiving special treatment from the judiciary, the government and judiciary lose authority. Particularly in a republic, the government is legitimated by the support of its people. A judiciary that does not independently review the actions of the other branches detracts from the people's belief in their government's legitimacy. As United States constitutional supporter Alexander Hamilton stated, "where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former."<sup>21</sup> The strictures placed on the government by the Constitution are meaningless if the branch that is to determine whether actions are within those limits is not supported and followed by its political leadership.

In countries seeking to develop or strengthen an independent judiciary, the public must be made aware of both the move toward and need for judicial independence. In order to raise public awareness, occurrences of the judiciary fairly meting out justice with tolerance to all who come before it should be publicized. In order to demonstrate that the country's laws apply fairly and equally to all, the public should be informed when bringing to account the government officials who are corrupt or otherwise violate the law. Focusing on making the judiciary more independent assists in creating a culture of tolerance and promotes religious tolerance.

Thus, the action of the executive and legislative powers in Pakistan in response to the Pakistan Supreme Court's June 2014 order is vital not only for the issue of the case, but also for showing the support for and response to the constitutionally based direction.

Citizens' desire for religious tolerance will be heightened if citizens can expect timely justice when the judicial process is used to resolve conflicts. Pakistan can deliver justice by carrying out the Pakistan Supreme Court's June 2014 order to ensure that protections for religious minorities, both in religious belief and worship and in representation, are observed and enforced. As clearly stated in the 1973 Pakistan Constitution, "the right to religious conscience is

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21. THE FEDERALIST NO. 78 (Alexander Hamilton).

a right equally granted to all citizens, religious denominations and sects.”<sup>22</sup>

#### IV.

But what is the benefit to the majority of Pakistan’s citizens if the government follows the Pakistan Supreme Court’s directions and minority religious rights are protected? One such benefit is the promotion of democratic values.

There are many ways in which the free exercise of religion can invigorate and reinforce democratic government. We may glean some insights on how to realize these benefits by examining briefly the views of the Founders of the United States Constitution. I will then turn to some of the challenges we all face in ensuring that diverse individuals can choose, embrace, or altogether reject different religions. I propose a simple metaphor – the public square.

As I see it, religious freedom and democracy go hand in hand; each strengthens and reinforces the other in several ways. First, many believe the free exercise of religion can promote a more humanitarian, tolerant society. For example, most religions teach the importance of a power greater than one’s self. The very nature of this belief puts an adherent in a position where he or she believes that the beginning and end of all creation, and the importance of life, transcend individual needs and wants.<sup>23</sup> As one comes to understand that others are equally subordinated, there is a greater likelihood of involvement with other members of society. One can become more attuned to the horizontal equality that knits a community together, as well as the vertical belief in a higher power which instills a sense of humility. This “turning out” phenomenon increases the possibility of genuine concern for others and is important to a society which cares for those in need.<sup>24</sup>

22. S.M.C. No. 1 of 2014, at para. 11.

23. See Frederick Mark Gedicks & Roger Hendrix, *Democracy, Autonomy, and Values: Some Thoughts on Religion and Law in Modern America*, 60 S. CAL. L. REV. 1579, 1588 (1987) (“The religious link between the mundane here and now of physical existence and the possibility of a transcendent, enduring reality beyond, instills in many religious people the desire and duty to improve their own lot and that of their fellows by suggesting the moral possibilities of a better way of living, and by cultivating respect for the law, including a greater willingness to restrict one’s own choices and actions to benefit others. Thus, religious consciousness is an important positive influence on the substance of societal values.”).

24. In addition to the *individual* “turning out” effect, religious *institutions* also provide various humanitarian services. See, e.g., *Walz v. Tax Comm’n*, 397 U.S. 664, 687 (1970)

Second, most religions – but not all – promote civic virtue and influence believers to be law abiding.<sup>25</sup> Democratic societies generally function because the vast majority of people are willing to obey the law without enforcement action by the state.<sup>26</sup> Even if possible, it does not make sense to allocate limited government resources to a police force capable of enforcing all laws in a non-law abiding society. Allowing, without impediment, people to exercise religious beliefs which tend to encourage acceptance of legal norms can therefore further a law-abiding culture, which is essential to democracy.<sup>27</sup>

Third, religious freedom preserves an important opportunity for choice, which is a key component of liberty. When each religious community is free to proclaim its tenets and teach others, there will be a wider landscape of varying religious views and a broader spectrum of choices. As a result, each individual has a greater opportunity to make a choice that best fits his or her personal needs. Religious freedom is therefore both an important end in itself as well as one of the cornerstones of self-determination, individual choice, and pluralism.<sup>28</sup> There is a profound liberty interest in being

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(Brennan, J., concurring) (observing that religious organizations “contribute to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens that would otherwise either have to be met by general taxation, or be left undone, to the detriment of the community”).

25. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 222 (1972) (“[T]his record strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional ‘mainstream.’ Its members are productive and very law-abiding members of society . . .”).

26. President John Adams remarked, “[W]e have no government armed with power capable of contending with human passions unbridled by morality and religion.” DAVID BARTON, *ORIGINAL INTENT* 319 (3d ed. 2000); see also, Gedicks & Hendrix, *supra* note 23, at 1595 (“Because even a relatively small number of dissenters can render law enforcement ineffective, an overwhelming majority of persons must be willing voluntarily to restrict their personal choices and actions to those not prohibited by law if law is to have significant force and effect.”).

27. In the words of Benjamin Franklin, “[O]nly a virtuous people are capable of freedom. As nations become corrupt and vicious, they have more need of masters.” BARTON, *supra* note 26, at 321.

28. See Michael E. Smith, *The Special Place of Religion in the Constitution*, 1983 SUP. CT. REV. 83, 10–08, for a discussion of personal freedom as a justification for the special constitutional treatment of religion. See also *Kokkinakis v. Greece*, 260 Eur. Ct. H.R. (Ser. A) at 12–13 (1993), <http://www.echr.coe.int> (“[F]reedom of thought, conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Convention [for the Protection of Human Rights and Fundamental Freedoms]. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the

able to choose something as fundamental and personal as religion.<sup>29</sup> Thus, with freedom to thrive, religions can help elevate the political process in society to a higher plane of democracy and individual freedom.<sup>30</sup> It can also lead to a more stable society because freedom to choose a religion which best fits individual needs will result in a more satisfied society.<sup>31</sup>

Finally, just as our collective viewpoint is enriched by ethnic and racial diversity, so too can diversity in religious cultures contribute to our political and social discourse.<sup>32</sup> It is important to consider diverse perspectives in dealing with new challenges facing our society.

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unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.”).

29. See, e.g., *McGowan v. Maryland*, 366 U.S. 420, 461 (1961) (Frankfurter, J., concurring) (“By its nature, religion—in the comprehensive sense in which the Constitution uses that word—is an aspect of human thought and action which profoundly relates the life of man to the world in which he lives.”); Gedicks & Hendrix, *supra* note 23, at 1602.

30. “Respect for the exercise of conscience and religion is a fundamental aspect of a universal understanding of human rights.” Orrin G. Hatch, *Religious Liberty at Home and Abroad: Reflections on Protecting This Fundamental Freedom*, 2001 BYU L. REV. 413, 413–14.

31. See, e.g., JOHN LOCKE, A LETTER CONCERNING TOLERATION (1689), reprinted in TWO TREATISES OF GOVERNMENT AND A LETTER CONCERNING TOLERATION 211, 230–32 (Ian Shapiro ed., 2003) (recognizing that the legitimacy and stability of a political regime can be enhanced by tolerating a range of religious outlooks); cf. THOMAS I. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 6–9 (1970) (positing that in a democratic society, the system of freedom of expression is based on, *inter alia*, the principle that freedom of expression is essential as a means of assuring individual self-fulfillment and is a method of achieving a more adaptable, stable community).

32. See, e.g., *Walz v. Tax Comm’n*, 397 U.S. 664, 689 (1970) (Brennan, J., concurring) (“[R]eligious organizations . . . uniquely contribute to the pluralism of American society by their religious activities. . . [E]ach group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society.”); *Sch. Dist. v. Schempp*, 374 U.S. 203, 306 (1963) (Goldberg, J., concurring) (“[M]any of our legal, political and personal values derive historically from religious teachings.”); *Martin v. Struthers*, 319 U.S. 141, 150 (1943) (Murphy, J., concurring) (“[U]nity and strength are best accomplished, not by enforced orthodoxy of views, but by diversity of opinion through the fullest possible measure of freedom of conscience and thought.”); Kenneth L. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 303, 336 (1986) (“Today’s constitutional doctrines of equal citizenship, freedom of religion, and freedom of expression mediate cultural conflict by opening our public life to the participation of cultural minorities. By defending against cultural subordination and the coercion of cultural conformity, the same doctrines also promote tolerance for cultural difference. Together, these guarantees promise individuals broad freedom to choose for themselves among ‘the varieties of ethnic experience.’”).

## A.

The challenges facing religious freedom will vary among countries and regions based on differences in culture, history, structure of government, and myriad other factors. The experience of the United States provides one of many possible examples of these challenges, which I briefly discuss here only for comparative purposes.

The success of the United States Constitution as an authoritative document of governance can be observed by the fact that it has now existed for more than 200 years, the longest life of any written constitution in the history of the world.<sup>33</sup> Perhaps looking at the views of the Founders of the Constitution can shed light on why even today U.S. citizens feel religious freedom is so integral to the social and political fabric of their nation, as well as inform them about the challenges to religious freedom that have nonetheless been a part of their nation's history.

The Founders sought to protect the important societal and individual values of free religion in part by means of the Establishment Clause: "Congress shall make no law respecting an establishment of religion."<sup>34</sup> As I have explained elsewhere, the Founders' primary concern was to prevent the establishment of a dominant religion, the power of which would squelch the voice of smaller religions.<sup>35</sup> They did not create an impenetrable wall to prevent any relations between government and religion. Nowhere in the Constitution are the words "separation of church and state" to be found.<sup>36</sup> However, subsequent misinterpreters of the Constitution and its Founders have embraced the now-proverbial "separation of church and

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33. See, e.g., David A. J. Richards, *Constitutional Legitimacy and Constitutional Privacy*, 61 N.Y.U. L. REV. 800, 811 (1986).

34. U.S. CONST. amend. I. This prohibition has been enforced against the States by incorporation of the First Amendment into the due process guarantee of the Fourteenth Amendment. See *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) ("The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws.").

35. J. Clifford Wallace, *The Framers' Establishment Clause: How High the Wall?*, 2001 BYU L. REV. 755, 769.

36. *Id.* at 756 & n.16 ("[N]one of the twenty drafts of the religion clauses generated by the state ratification process and the First Congress contained this or similar phrases.").

state,"<sup>37</sup> and some advocate a government that is indifferent to the role of religion in our society.<sup>38</sup>

It has been argued, and history seems to support the argument, that the Establishment Clause was not meant to be interpreted as anti-religious, but only as a prohibition on preferential treatment for a particular church.<sup>39</sup> I believe former Chief Justice of the United States William Rehnquist has the better of the argument on this issue when he wrote in his dissent in an Establishment Clause case:

The evil to be aimed at, so far as those who spoke [during the First Congress' debates on the First Amendment] were concerned, appears to have been the establishment of a national church, and perhaps the preference of one religious sect over another; but it was definitely not concerned about whether the Government might aid all religions evenhandedly.<sup>40</sup>

It is true that in a letter to a small religious group, Thomas Jefferson, in the later years of his life, did state that the Establishment Clause erected "a wall of separation between church and state."<sup>41</sup> But as I have argued elsewhere, there can be no "legislative history" from this statement as Mr. Jefferson was out of the country at the time the amendments were debated and adopted.<sup>42</sup> Indeed, his earlier history demonstrates, and his actions verify, that he did not embrace a governmental position of anti-

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37. See, e.g., *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) ("The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."); *Zelman v. Simmons-Harris*, 536 U.S. 639, 686 (2002) (Stevens, J., dissenting) ("Whenever we remove a brick from the wall that was designed to separate religion and government, we increase the risk of religious strife and weaken the foundation of our democracy.").

38. *Lee v. Weisman*, 505 U.S. 577, 607 (1992) (Blackmun, J., concurring) ("When the government arrogates to itself a role in religious affairs, it abandons its obligation as guarantor of democracy.").

39. See, e.g., PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* 14-15 (2002); Wallace, *supra* note 35, at 756. The First Amendment has often been understood to limit religious freedom in ways never imagined by the late eighteenth-century dissenters who demanded constitutional guarantees of religious liberty. Not least, the dissenters sought the First Amendment and other constitutional provisions to prevent government from discriminating on account of religious differences. See Wallace, *supra* note 35, at 756.

40. *Wallace v. Jaffree*, 472 U.S. 38, 99 (1985) (Rehnquist, J., dissenting).

41. HAMBURGER, *supra* note 39, at 161. See also *id.* at 155-62 for a discussion of the historical context of Jefferson's letter to the Danbury Baptist Association.

42. Wallace, *supra* note 35, at 767-68.

religion; rather, he merely conditioned government assistance on equal access by all sects.<sup>43</sup>

Thus, the Establishment Clause was not meant to be anti-religious. It was adopted only to be sure that no national religion was established and that no preferential treatment would be given to a particular church. At its inception, there was no “wall of separation” but rather a principle of encouraging religion without discrimination. By the First Amendment, Congress was enjoined from “prohibiting the free exercise” of religion. With no nationally recognized religion and a prohibition on governmental interference with and discrimination against different religious practices, freedom of religion would have the fertile ground it needs to thrive.

This dilemma is worth highlighting because it illustrates one of the challenges faced by all societies, namely, the difficulty of drawing a sensible line between establishing religion and wiping it out of the public sphere altogether. I suggest the Founders embraced a position in between these two points: non-discriminatory encouragement of all religions. Reasonable minds can certainly differ on precisely where the line should be drawn in particular cases, and much of the debate about the role of religion vis-à-vis government boils down to this fundamental question.

#### B.

With this background, we can turn to assessing how well a nation has been strengthening and protecting the free exercise of diverse religious cultures. One measure of a country’s success is how well it treats all religions and how freely its people are able to openly practice their beliefs. In this regard, our focus can be more precise. I propose examination of the extent to which a country has nurtured free exercise of religion by focusing on whether it has promoted freedom in the public square.

In earlier days, and to some extent still, communities had a block of land in the center of the city where open communication and debate would occur. Hyde Park Corner in London, England, is

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43. See *id.* at 768; *cf.*, HAMBURGER, *supra* note 39, at 181 (“After writing to the Danbury Baptist Association in 1802, Jefferson himself apparently did not again directly advocate separation. He continued to denounce the union of church and state, but he seems not to have expressly urged separation. For example, when . . . he denounced political preaching in 1815, he did not do so in terms of the separation of church and state.”).

a good example.<sup>44</sup> If we visited the town squares of the various Pakistani communities, would we find religions free to advance their causes openly without fear of government interference? Does freedom of religion grow and develop in the town square unmolested by dominant religions?

Perhaps some specific questions might assist our dialogue:

1. Can all churches proffer their religious beliefs?
2. Are all religions treated equally by the state?
3. Can religious groups teach others their beliefs openly and encourage acceptance?
4. Are there government restrictions on open and free religious dialogue?
5. Are there restrictions on the distribution of written materials used to explain one's religious views, or can these materials be distributed freely?
6. Are there visa restrictions placed on visitors entering the country who wish to teach religion?

After identifying restrictions on religion, we should ask whether they are arguably justified and weigh the importance of free exercise against other societal goals. For example:

1. Does a religion adopt terrorism as a tenet or practice of its sect, or does it advocate violation of generally accepted criminal laws?
2. Does a religion teach concepts that are in violation of basic human rights?
3. Is a restriction on religion necessary to ensure that others can freely exercise their religious beliefs or is it aimed at silencing unwanted religious views?

Clearly, a sensible approach to promoting religious freedom must be principled, pragmatic, and flexible, but with a keen eye toward ferreting out pretextual restrictions which are designed to suppress unpopular religious beliefs. In this respect, specific "town square" questions may help us focus on particular restrictions on

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44. See Dan Hunter, *Cyberspace as Place and the Tragedy of the Digital Anticommons*, 91 CALIF. L. REV. 439, 488 (2003) ("The ideal of the public forum suggests a place where citizens can congregate, air their grievances, debate public policy, and be confronted with new thoughts and arguments. Archetypal public forums include the Athenian Senate and Hyde Park's Speaker's Corner, and the myth of their influence and importance is hard to dispel.").

religion, and then critically evaluate these restrictions in order to determine whether they are justifiable.<sup>45</sup> Furthermore, by focusing on specific facets of free exercise in the public square, we can develop a general sense of where a nation has drawn the line between establishing a national religion, tolerating all religions equally, and, at the other end of the spectrum, wiping all religion out of the public square.

### C.

Applying this “public square” inquiry, we can now turn to identifying and evaluating some of the obstacles to free exercise. By way of example, I call to your attention two specific challenges—the view that religious pluralism must be suppressed in order to promote a more stable society, and the stifling influence of a dominant religion. Two cases decided by the European Court of Human Rights are illustrative, and I discuss each in turn.

#### 1.

First, in *Metropolitan Church of Bessarabia v. Moldova*, the European Court of Human Rights considered whether the Moldovan authorities’ refusal to recognize the Metropolitan Church of Bessarabia unlawfully infringed on freedom of religion and association, in violation of Article 9 of the Convention for the Protection

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45. Compare, for example, the analysis of the European Court of Human Rights in *Serif v. Greece*, App. No. 38178/97, Eur. Ct. H.R. (1999). In that case, *Serif* claimed his conviction for “usurping the functions of a minister of a ‘known religion’ and publicly wearing the dress of such a minister amounted to a violation of his rights” under Article 9 of the Convention for the Protection of Fundamental Rights and Freedoms, *id.* at 1; which provides that

[f]reedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Convention for the Protection of Fundamental Rights and Freedoms art. 9, Nov. 4, 1950, Eur. T.S.

The court reasoned that while

[i]t is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups . . . any such restriction must correspond to a ‘pressing social need’ and must be ‘proportionate to the legitimate aim pursued.’

*Serif*, App. No. 38178/97 at 11. After weighing the competing interests at stake in the case, the court concluded that *Serif*’s Article 9 rights had been violated. *Id.* at 12.

of Human Rights and Fundamental Freedoms (Convention).<sup>46</sup> Pursuant to Moldova's Religious Denominations Act, only religions recognized by the government could be practiced.<sup>47</sup>

The government contended, among other things, that because the Republic of Moldova had only been recognized as an independent state since 1991, it "had few strengths it could depend on to ensure its continued existence, but one factor conducive to stability was religion, the majority of the population being Orthodox Christians."<sup>48</sup> Therefore, the government argued, if the Metropolitan Church of Bessarabia was officially recognized the "tie was likely to be lost and the Orthodox Christian population dispersed among a number of Churches."<sup>49</sup>

The court recognized that protection of public order was a legitimate aim, but it nonetheless held:

[T]he Court considers that the refusal to recognise the applicant Church has such consequences for the applicants' freedom of religion that it cannot be regarded as proportionate to the legitimate aim pursued or, accordingly, as necessary in a democratic society, and that there has been a violation of Article 9 of the Convention.<sup>50</sup>

The court also stated that "the role of the authorities . . . is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other."<sup>51</sup>

Thus, one challenge facing religious freedom is the belief that religious pluralism will lead to societal instability. Proponents of this view contend that if there are fewer choices – or perhaps only one choice – there will be fewer or no differences in religious views, thus resulting in a more stable society.<sup>52</sup> But put in context, such

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46. *Metro. Church of Bessarabia v. Moldova*, App. No. 45701/99, Eur. Ct. H.R. (2002).

47. *Id.* at 24. In addition to being unable to practice their religion, unrecognized churches could not defend their rights in the courts. As a result, members of the Metropolitan Church of Bessarabia were unable to defend themselves against physical attacks and persecution, and the Church could not protect its assets. *Id.* at 29–30.

48. *Id.* at 25.

49. *Id.*

50. *Id.* at 32.

51. *Id.* at 27.

52. *See also*, *Serif v. Greece*, App. No. 38178/97, Eur. Ct. H.R. (1999) (the government contended that "the authorities had to intervene in order to avoid the creation of tension among the Muslims in Rodopi and between the Moslems and the Christians of the area as well as Greece and Turkey"); *Buscarini v. San Marino*, 6 B.H.R.C. 638, 9 (1999) (members of Parliament required to take an oath on the Holy Gospels, and government attempted to

instability is an unavoidable aspect of democracy. Democratic elections cause instability, and even when a political leader is democratically elected, various voices strongly advocate their positions, and there are ordinarily adherents in more than one camp. This instability and pluralism is a basic value within a democratic society;<sup>53</sup> it is the liberty interest of choice which is the basis of democracy.<sup>54</sup> Accordingly, it is important to ask why religious differences should be singled out for discrimination.<sup>55</sup> With so much natural and expected instability in a democratic society, how can special restrictions on religion be justified?

2.

Yet another obstacle to religious freedom was at issue in *Kokkinakis v. Greece*.<sup>56</sup> Article 13 of the Constitution of Greece provides: "There shall be freedom to practise [sic] any known religion; individuals shall be free to perform their rites of worship without hindrance and under the protection of the law. The performance of rites of worship must not prejudice public order or public morals. Proselytism is prohibited."<sup>57</sup>

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justify this requirement by arguing the oath was needed to "preserve public order, in the form of social cohesion and the citizens' trust in their traditional institutions").

53. As one commentator has remarked, rather than assuming that instability is undesirable, "[w]e should instead be fostering dissent, and we should be recognizing that religious dissent has much to contribute to the creation of a more progressive society." Steven Shiffrin, *Propter Honoris Respectum: Religion and Democracy*, 74 NOTRE DAME L. REV. 1631, 1634 (1999). See also, THE FEDERALIST NO. 51 (James Madison) ("In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects."); LOCKE, *supra* note 31, at 40-41 ("It is not the diversity of opinions (which cannot be avoided), but the refusal of toleration to those that are of different opinions (which might have been granted), that has produced all the bustles and wars that have been in the Christian world upon account of religion.").

54. See J. Clifford Wallace, *The Jurisprudence of Judicial Restraint: A Return to the Moorings*, 50 GEO. WASH. L. REV. 1, 5 (1981) ("[T]he same respect for human autonomy that underlies liberty underlies democracy as well and establishes its intrinsic value.").

55. See, e.g., *Smith*, *supra* note 28, at 97 (suggesting many of the most divisive social issues have not involved religion, such as "the completion of industrial unionization in the late 1930s; McCarthyism in the early 1950s; the campaign for racial equality from the middle 1950s onward; prolongation of the Vietnam War; and perhaps the Watergate scandal").

56. *Kokkinakis v. Greece*, App. No. 14307/88, Eur. Ct. H.R. (1994).

57. *Id.* at 6.

Interestingly, the European Court of Human Rights observed that the ban on proselytizing was originally enacted after the Orthodox Church, “which had long complained of a Bible society’s propaganda directed at young Orthodox schoolchildren on behalf of the Evangelical Church, managed to get a clause added to the first Constitution (1844) forbidding ‘proselytism and any other action against the dominant religion.’”<sup>58</sup> This ban was eventually codified as a criminal offense.<sup>59</sup>

Kokkinakis was a Jehovah’s Witness who visited the home of a woman whose husband was a cantor at a local Orthodox church, and Kokkinakis engaged in a discussion with her about religion. He was convicted of proselytism after a criminal court determined that Kokkinakis

attempted to proselytize and, directly or indirectly, to intrude on the religious beliefs of Orthodox Christians, with the intention of undermining those beliefs, by taking advantage of their inexperience, their low intellect, and their naïvety. In particular, [he] went to the home of [Mrs Kyriakaki] . . . and told her that they brought good news; by insisting in a pressing manner, they gained admittance to the house and began to read from a book on the Scriptures which they interpreted with reference to a king of heaven, to events which had not yet occurred but would occur, etc., encouraging her by means of their judicious, skilful [sic] explanations . . . to change her Orthodox Christian beliefs.<sup>60</sup>

In considering whether Kokkinakis’ conviction violated Article 9 of the Convention, the European Court of Human Rights distinguished between “bearing Christian witness and improper proselytism.”<sup>61</sup> Whereas “[t]he former corresponds to true evangelism, which a report . . . describes as an essential mission and a responsibility of every Christian and every Church,” improper proselytism entails, for example, “exerting improper pressure on people in distress or in need,” “offering material or social advantages” to gain new members, or even “the use of violence or

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58. *Id.* at 7.

59. *Id.* at 7.

60. *Id.* at 3–4 (omissions in original). The criminal court sentenced Kokkinakis to four months’ imprisonment, which was convertible into a pecuniary penalty, as well as a fine of 10,000 drachmas. The court also ordered the confiscation and destruction of four booklets that Kokkinakis had been hoping to sell. *Id.*

61. *Id.* at 16.

brainwashing.”<sup>62</sup> The court concluded that the Greek courts had failed to specify how Kokkinakis’ proselytizing was improper, and, therefore, his conviction violated Article 9.<sup>63</sup>

This case illustrates how governments may be influenced by a dominant church to impose restrictions on minority religions.<sup>64</sup> The motivation of the dominant church is not benign: it wishes to eliminate competition. When a church achieves monopoly power, it is in a position to restrict and, in some cases, eliminate less powerful religious organizations.

Similar problems of monopoly arise in the context of capitalism and market control. While it is true that economic monopolies can provide certain services and have some advantages, experience has demonstrated that the free enterprise system is far more valuable in providing the best climate for economic growth, consumer satisfaction, and individual prosperity. There are examples of countries that have made the dynamic swing from central organization (government monopoly) to the free enterprise system, with resulting benefits and economic progression for its citizens.

Likewise, when a religious monopoly has the strength to squelch other religious views, it diminishes or eliminates the growth opportunities for religions generally. Just as some regulation is necessary to ensure the smooth operation of markets, so it may be necessary for the government to enforce a few ground rules in order to keep the public square in good repair and the marketplace of ideas vibrant. However, when a dominant religion monopolizes the public square, the opportunity for individual choice, the cross-fertilization of ideas, and other benefits of a religiously diverse democracy are jeopardized. Thus, just as economic monopolies can ultimately undermine capitalism, so too can religious monopolies weaken democracy.

The influence of a dominant religion and government concerns about stability are but two of the many obstacles to religious freedom today. Other examples include:

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62. *Id.* at 16–17.

63. *Id.* at 17.

64. *See also, id.* at 6 (Article 3 of the Constitution of Greece provides that “[t]he dominant religion in Greece is that of the Christian Eastern Orthodox Church”); *Manoussakis v. Greece*, App. No. 18748/91, Eur. Ct. H.R. (1997) (The Greek Orthodox Church made a complaint about the use of a room by Jehovah’s Witnesses and a prosecution was instituted for establishing and operating a place of religious worship without authorization from the proper authorities).

1. Government refusal to recognize religions;
2. Restrictions on the availability of visas for religious missionaries;
3. Unnecessary restrictions on building houses of worship;
4. Governmental designation of a religion as a "sect" and imposing special restrictions on "sects"; and
5. Discrimination against religions with headquarters in a different country.

D.

How does a member of a dominant religion or a non-believer in any faith also benefit if religious pluralism and protection of minority religions are established? As my prior analysis demonstrates, everyone *gains* from religious pluralism and protection of minority religions. The process is one that supports and energizes democracy, encourages free choice in all areas of society, and provides a framework for improvement of society. *All* citizens will benefit from this process.

What better legacy could be left to future generations of Pakistanis than a truly free and open society, with no restrictions on choice so long as no laws are broken? These would be the building blocks to a society where all will have real choice and democratic pluralism.

*All* will benefit.

V.

But is there evidence that protecting religious minorities' rights will have a real effect on improving the lives of all citizens of Pakistan? A recent study by American scholars concludes that religious freedom has a positive impact on the strength of a nation's economy.<sup>65</sup> The study's findings are supported by an analysis of data related to global economic competitiveness from the World Economic Forum, as compared with country data from the Pew Foundation on government restriction of religion and social hostilities related to religion.<sup>66</sup>

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65. Brian J. Grim, Greg Clark, & Robert Edward Snyder, *Is Religious Freedom Good for Business?: A Conceptual and Empirical Analysis*, 10 INTERDISC. J. OF RES. ON RELIGION 1 (2014).

66. See generally *id.*

The data comes from twelve fields, or “pillars,” that are indicators of economic strength and utilized to measure global competitiveness. The pillars include success markers such as primary education and health, higher education, technological innovation, market efficiency and size, and business sophistication.<sup>67</sup> In this particular study, scholars compared these measures of economic competitiveness with data on governments’ restrictions of religion. The comparison revealed that countries with a low level of government restriction on religion had stronger indicators of global economic competitiveness in almost all of the pillars used to measure global competitiveness.<sup>68</sup> For example, the pillar of “primary education and health” was ranked strongly for 16 percent of countries that had low (as compared to moderate or high) government restrictions on religion, while no country with high government restrictions received a strong score in that pillar for global competitiveness.<sup>69</sup> The same connection was found with technical training, higher education, and technological readiness.<sup>70</sup> Overall, the percentage of countries with low religious hostilities or government restriction on religion surpassed high-level religious suspension countries in almost every pillar of competitiveness.<sup>71</sup>

In addition to the pillars of global competitiveness mentioned above, the research includes a study on the relationship between government restrictions on religion and economic growth, as measured by gross domestic product (GDP) growth per country.<sup>72</sup> In this study, the researchers prepared a statistical model to demonstrate the effects of various socio-economic factors on GDP growth. The model included factors such as population, monetary and business freedom, tax rates and burdens, inflation, and foreign direct investment, as well as religious restrictions. On a model using twenty-five of these factors, it was discovered that only five

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67. *Id.* at 7.

68. *Id.* at 9.

69. *Id.* at 8.

70. *Id.* at 9.

71. *Id.* Measured against the pillars of macroeconomic growth and market size, the percentage of countries with high hostilities and government restrictions surpassed those countries with “low” hostilities and restrictions. The researchers conclude that this is due to a recent economic downturn in large Western countries, and the large market sizes in China, with a high level of government restriction of religion, and India, with high social hostilities. *Id.* at 11-12.

72. *Id.* at 11-14.

of the factors were significant as either positive or negative predictors of a country's GDP growth.<sup>73</sup> The most positive significant factor was previous five-year GDP growth.<sup>74</sup> Monetary freedom and religious restrictions were the most significant negative predictors of GDP growth in 2011, the latest year of data available to the study. Thus, restriction on religion in a country was a better predictor of economic growth, or lack of growth, than were typical economic factors such as foreign investment, tax rates, and inflation.

There is a great capacity for additional research in light of the clear statistical correlation between religious freedom and a country's economic strength, and yet, standing alone, the numbers already reveal that bolstering religious rights and freedoms will not have a negative impact on global economic competitiveness or success, and may even have a positive effect on growth.

## VI.

This brings me back to the Pakistan Supreme Court's June 2014 opinion authored by Chief Justice Jilani. He persuasively shows how religious minorities are protected by the constitution. So far, so good. But, similar to what was faced by the Supreme Court of the United States in *Brown*, there is a gap between announcement of the constitutional right and the reality of its application due to changes required in the actions of government, law enforcement agencies, and traditional feelings of many of the citizens. As in *Brown*, change of rights from parchment to reality requires government action.

Thus, the Supreme Court of Pakistan, among other things, ordered that "the Federal Government should constitute a taskforce tasked with developing a strategy of religious tolerance,"<sup>75</sup> and that curricula in schools and colleges should "promote a culture of religious and social tolerance"<sup>76</sup> and discourage "hate speeches in social media."<sup>77</sup> The court also ordered "a National Council for [M]inorities' [R]ights" to monitor the practical realization of the rights and safeguards "provided to the minorities" and "to

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73. *Id.* at 13.

74. *Id.*

75. (2014) S.M.C. No. 1 of 2014 (SC) para. 37(i) (Pak.), [https://www.supremecourt.gov.pk/downloads\\_judgements/smc\\_1\\_2014.pdf](https://www.supremecourt.gov.pk/downloads_judgements/smc_1_2014.pdf)

76. *Id.* at para. 37(ii).

77. *Id.* at para. 37(iii).

frame policy recommendations for . . . the Provincial and Federal Government.”<sup>78</sup> Finally, it ordered the creation of a “Special Police Force” to protect places of worship.<sup>79</sup>

The court has done its job: it has found a constitutional violation. The court has outlined, as best it can at this time, the steps which must be taken by provincial and federal governments to overcome the constitutional violations.

As with the U.S. Supreme Court in *Brown*, the Pakistan Supreme Court can do no more.

Under a traditional constitutional democracy, it is now up to the executive and legislative branches to comply.

## VII.

It is vital for societies and individuals to value free exercise of religion in our continuing effort to provide the best in the democratic institution. It is a topic that deserves our individual and joint attention. The June 2014 order from the Pakistan Supreme Court signals a pivotal moment in which the fundamental rights of religious worship and conscience may achieve their full expression in the country. As the Pakistan Supreme Court expressed, an Executive Task Force is likely needed to guide this effort through the cultural paradigm shift and education that will be crucial to lasting change. Pakistan’s efforts at this critical time will allow it to be a leader in a region that desperately needs an example of how religious pluralism can benefit society as a whole.

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78. *Id.* at para. 37(iv).

79. *Id.* at para. 37(v).