Challenges and Opportunities Facing Religious Freedom in the Public Square

Judge J. Clifford Wallace
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In this opening address, I highlight several reasons why I feel our conference topic—the challenges and opportunities facing the free exercise of religion in the public sphere—merits our enthusiasm and careful consideration. I begin by pointing out some of the many ways in which religious freedom can invigorate and reinforce democratic government. I then propose a simple metaphor—the public square—that may be useful in evaluating how well various nations have nurtured the freedom of religion. By framing the inquiry in terms of the public square, we can also identify some of the challenges to free exercise both in this nation and abroad. I briefly examine the views of the Founders of the United States Constitution and then consider two of the obstacles faced in other countries in ensuring that diverse individuals can choose, embrace, or altogether reject different religions in the public square.

I. THE SECULAR VALUE OF RELIGIOUS FREEDOM

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 and 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. As one comes to understand

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1. 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
that others are equally subordinated, there exists a greater likelihood of involvement with other members of society. One becomes 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. A greater horizontal and vertical sense of society creates a “turning out,” or a turning away from self toward society. This “turning out” phenomenon increases the possibility of genuine concern for others and is important to a society that cares for those in need.  

Second, most religions promote civic virtue and influence believers to be law abiding. Democratic societies generally function because the vast majority of people are willing to obey the law without enforcement action by the state. 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 people to exercise religious beliefs that tend to encourage acceptance of legal norms can therefore further a law-abiding culture, which is essential to democracy.

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 possibilities of a better way of living, and by cultivating respect for 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.

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

3. 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 . . . .”).

4. 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 & n.2 (3d ed. 2000). See also Gedicks & Hendrix, supra note 1, 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.”).

5. 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 4, at 321 & n.13.
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. There is a profound liberty interest in being able to choose something as fundamental and personal as religion. Thus, with freedom to thrive, religions can help elevate the political process in society to a higher plane of democracy and individual freedom. Freedom to choose a religion that best fits individual needs will also result in a more stable, satisfied society.

Finally, just as our collective viewpoint is enriched by ethnic and racial diversity, so too can diversity in religious cultures contribute to

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

Id. at 17.

7. 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 1, at 1602.


9. See, e.g., JOHN LOCKE, A LETTER CONCERNING TOLERATION 19–21 (Encyclopedia Britannica, Inc. 2d ed. 1990) (1689) (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).
our political and social discourse. It is important to consider diverse perspectives in dealing with new challenges facing our society.

II. FREEDOM IN THE PUBLIC SQUARE—A METAPHOR FOR EVALUATING RELIGIOUS LIBERTY

With this background, we can turn to assessing how well various nations have been strengthening and protecting 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: while the topic of our conference is religion in the public sphere, I propose we examine the extent to which a country has nurtured the free exercise of religion by focusing on whether it has promoted religious 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 a good example of such a public square. The communication and debate that took place in these forums is vital to the free exercise of

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10. 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.”); Martin v. City of 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 (1986). Karst explained:

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.”

Id. at 336.

11. See Dan Hunter, Cyberspace as Place and the Tragedy of the Digital Anticommons, 91 Cal. L. Rev. 439, 488 (2003). Hunter noted the following about public squares:

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.

Id.
religion. If we visited the town squares of various 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?

These broad “public square” questions may help us focus on particular restrictions on religion and then critically evaluate these restrictions in order to determine whether they are justifiable.¹² Clearly, a sensible approach to promoting religious freedom must be principled, pragmatic, and flexible, while maintaining a keen eye toward ferreting out pretextual restrictions that are designed to suppress unpopular religious beliefs.

Perhaps some specific questions will further refine the public square examination:

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

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¹² Consider, for example, the analysis of the European Court of Human Rights in Serif v. Greece, 9 Eur. Ct. H.R. 73 (1999), available at http://www.echr.coe.int/Eng/Judgments.htm. In that case, Serif claimed his conviction for “usurping the functions of a minister of a ‘known religion’ and publicly wearing the uniform 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 77. Article 9 provides:

   Freedom 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.

    Id. at 84. 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.”

    Id. at 87 (internal citations omitted). After weighing the competing interests at stake in the case, the court concluded that Serif’s Article 9 rights had been violated. Id. at 89.
religious institutions and their adherents freely distribute such materials?

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 those restrictions are arguably justified by balancing 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?

4. Are the religious restrictions aimed at silencing unwanted religious views?

By focusing on specific facets of free exercise in the public square, we can develop a general sense of where various nations have drawn the line between establishing a national religion, tolerating all religions equally, and, at the other end of the spectrum, wiping religion out of the public square. Let us consider some examples.

III. A BRIEF EXAMINATION OF ILLUSTRATIVE PUBLIC SQUARES

The challenges to religious freedom will vary among countries and regions based on differences in culture, history, structure of government, and myriad other factors. Applying the public square metaphor to varying nations, we can evaluate how well they have encouraged and established freedom of religion. The experience of the United States provides one of many possible starting points, which I briefly discuss here only for comparative purposes.

A. United States: Non-Discriminatory Encouragement of Religion

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 two hundred years—the longest life of any
written constitution in the history of the world.\textsuperscript{13} Examining the views of the Founders of the Constitution can shed light on why even today we feel religious freedom is so integral to the social and political fabric of our nation as well as inform us about the challenges to religious freedom that have nonetheless been a part of this 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.”\textsuperscript{14} 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.\textsuperscript{15} They did not create an impenetrable wall to prevent any relations between government and religion. Nowhere in the Constitution are the words “wall of separation”\textsuperscript{16} to be found.\textsuperscript{17} However, subsequent misinterpreters of the Constitution and its Founders have embraced the now-proverbial “separation of church and state,”\textsuperscript{18} with some advocating a government that is indifferent to the role of religion in our society.

History seems to support the argument that the Establishment Clause was not meant to be interpreted as anti-religious, but only as

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  \item \textsuperscript{14} 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. \textit{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.”).
  \item \textsuperscript{15} J. Clifford Wallace, \textit{The Framers’ Establishment Clause: How High the Wall?}, 2001 BYU L. REV. 755, 769.
  \item \textsuperscript{16} Philip Hamburger, \textit{Separation of Church and State} 161 (2002). See \textit{infra} note 21 and accompanying text for the historical context of the phrase.
  \item \textsuperscript{17} Hamburger, supra note 16, 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.”).
  \item \textsuperscript{18} 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.”).
\end{itemize}
a prohibition on preferential treatment for a particular church.\textsuperscript{19} I believe the Chief Justice of the United States had the better of the argument on this issue when he wrote the following 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.\textsuperscript{20}

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.”\textsuperscript{21} 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.\textsuperscript{22} Indeed, his earlier history demonstrates, and his actions verify, that he did not embrace a governmental position of anti-religion; rather, he merely conditioned government assistance on equal access by all sects.\textsuperscript{23}

Thus, the Establishment Clause was not meant to be anti-religious. It was adopted only to be sure that no national religion

\textsuperscript{19} See, e.g., HAMBURGER, supra note 16, at 13–14. Hamburger states that 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.


\textsuperscript{21} HAMBURGER, supra note 16, at 161; see also id. at 155–62 for a discussion of the historical context of Jefferson’s letter to the Danbury Baptist Association.

\textsuperscript{22} Wallace, supra note 15, at 767–68.

\textsuperscript{23} See id. at 768; see also HAMBURGER, supra note 16, 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.

\textit{Id.}
was established and that no preferential treatment would be given to a particular church, thereby assuring all religions a voice in the public square. At its inception, there was no “wall of separation” but rather a principle of encouragement of religions without discrimination—under 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 in the public square would have the fertile ground it needs to thrive.

My point today is not to reassess the debate between proponents of these differing constitutional interpretations. Rather, I highlight this dilemma 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 square altogether. I suggest the Framers embraced a position 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. Challenges Abroad

Further applying this public square inquiry, we can now turn to identifying and evaluating some of the challenges to free exercise abroad. By way of example, I call to your attention two specific obstacles: 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.

First, Metropolitan Church of Bessarabia v. Moldova illustrates the view held by some that religious pluralism disrupts stable societies. In this case, 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 of Human Rights and Fundamental Freedoms
Pursuant to the Religious Denominations Act, only religions recognized by the government could be practiced. The government contended, among other things, that because the Republic of Moldova had been recognized as an independent state only 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.” 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.”

The court recognized that protection of public order was a legitimate aim, but it nonetheless held that the refusal to recognize 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.

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.” Thus, as this case demonstrates, one challenge facing religious freedom in the public square 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. But put in context, such instability is an unavoidable

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25. Id. at 110. 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 116.
26. Id. at 111.
27. Id. at 112.
28. Id. at 119.
29. Id. at 113.
30. See also Serif v. Greece, 9 Eur. Ct. H.R. 73 (1999), available at http://www.echr.coe.int/Eng/Judgments.htm. In Serif, the Greek government contended that “the authorities had to intervene in order to avoid the creation of tension among the Muslims in Rodopi and between the Muslims and the Christians of the area as well as Greece
aspect of democracy. Democratic elections cause instability. Even when a political leader is democratically elected, various voices strongly advocate their positions, and there are ordinarily adherents in more than one political camp. This instability and pluralism is a basic value within a democratic society; it is the liberty interest of choice that is the basis of democracy. Accordingly, it is important to ask why religious differences should be singled out for discrimination. With so much natural and expected instability in a democratic society, how can special restrictions on religion be justified?

Yet another obstacle to religious freedom—the stifling influence of a dominant religion—was at issue in *Kokkinakis v. Greece.* Article 13 of the Constitution of Greece provides: “There shall be freedom to practise 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 and Turkey.” *Id.* at 88. *See also* *Buscarini v. San Marino,* 1 Eur. Ct. H.R. 605, (1999). In *Buscarini,* members of Parliament were required to take an oath on the Holy Gospels, and the government attempted to 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.” *Id.* at 616–17.

31. As one commentator has remarked, rather than assuming that instability is undesirable, “we 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) (citation omitted). Madison stated that

[i]n 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.

THE FEDERALIST NO. 51, at 270–71 (James Madison) (George W. Carey & James McClellan eds., 2001); *see also* LOCKE, supra note 9, at 20 (“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.”).


33. *See,* e.g., Smith, *supra* note 6, at 97 (suggesting that many of the most divisive social issues in the United States 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”).

Interestingly, the European Court of Human Rights observed that the ban on proselytism 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.’” This ban was eventually codified as a criminal offense.

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

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.” Whereas “the 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

35. Id. at 11.
36. Id. at 12.
37. Id.
38. Id. at 8–9 (omissions in original). The criminal court sentenced Kokkinakis to four months in prison, 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.
39. Id. at 21.
people in distress or in need,” “offering material or social advantages” to gain new members, or even “the use of violence or brainwashing.” The court concluded the Greek courts had failed to specify how Kokkinakis’ proselytizing was improper, and therefore held that his conviction violated Article 9.

This case illustrates how governments may be influenced by a dominant church to impose restrictions on minority religions. The motivation of a 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, to eliminate less powerful religious organizations, thereby hindering the free practice of religion in the public square.

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 present 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 basic rules in order to keep the public square in good repair and the marketplace of religious 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

40. *Id.*

41. *Id.* at 21–22.

42. See *id.* at 11 (explaining that under Article 3 of the Constitution of Greece “[t]he dominant religion in Greece is that of the Christian Eastern Orthodox Church”); see also Manoussakis v. Greece, 4 Eur. Ct. H.R. 1346 (1997) (describing events in which 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), available at http://www.echr.coe.int/Eng/ Judgments.htm.

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 the following: government refusal to recognize certain religions, restrictions on the availability of visas for religious missionaries, unnecessary restrictions on building houses of worship, governmental designation of a religion as a “sect” and imposing special restrictions on “sects,” and discrimination against religions with headquarters in a different country. Any one of these obstacles serves to hinder the development of a true public square of religious freedom.

IV. CONCLUSION

The societal and individual value of the free exercise of religion in the public square is vital to our continuing effort to provide the best in the democratic institution. It is a topic that deserves our individual and joint attention. At this conference, we will identify and examine obstacles to religious freedom, with the goal of developing a strategy for change. In undertaking this project, we must take advantage of the opportunity to learn from the individual experiences and perspectives that we each bring to the discussion. I now turn the challenge over to you for your participation in this exciting conference: “Religion in the Public Sphere: Challenges and Opportunities.”