

9-1-2005

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### Recommended Citation

Rosalind I.J. Hackett, *Rethinking the Role of Religion in Changing Public Spheres: Some Comparative Perspectives*, 2005 BYU L. Rev. 659 (2005).

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## Rethinking the Role of Religion in Changing Public Spheres: Some Comparative Perspectives

Rosalind I.J. Hackett\*

### I. INTRODUCTION

Until the early 1990s, there was a clear disparity between the growing significance of religion on the world stage and the literature one could read on this score in either scholarly or popular publications. Historian Scott Appleby stated candidly that “Western myopia on this subject of religious power has been astounding.”<sup>1</sup> Former ambassador Robert A. Seiple, the first-ever U.S. Ambassador-at-Large for International Religious Freedom, criticizes the academic disciplines that address international affairs for giving religion “short shrift.”<sup>2</sup> For a long time, scholars assumed that religions were the carriers of tradition and predicted that they would enter into decline because of secularization and privatization.<sup>3</sup> The recent increase in claims for the recognition and implementation of religious ideas, identities, values, practices, and institutions in the governance of nation-states and the lives of their citizens, however, indicates that these predictions were wrong.<sup>4</sup> In the words of Talal

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\* Professor of Law, Moritz College of Law, The Ohio State University. My thanks to E. Gary Spitko, Douglas R. Cole, June Carbone, Ruth Colker, Ned Foley, David Goldberger, Brad Joondeph, Ron Krotoszynski, Marc Spindelman, Stephen J. Ware, and the participants in a faculty workshop at the Moritz College of Law, The Ohio State University, for their helpful comments on earlier drafts of this Article. Additional thanks to Kristen Blankely, Sabrina Riggs, and Natalie Hostacky for their research assistance.

1. R. Scott Appleby, *Retrieving the Missing Dimension of Statecraft: Religious Faith in the Service of Peacebuilding*, in FAITH-BASED DIPLOMACY: TRUMPING REALPOLITIK 231 (Douglas Johnston ed., 2003).

2. Robert A. Seiple, *Why Brandywine Review?*, BRANDYWINE REV. FAITH & INT’L AFF., Spring 2003, at 1.

3. See, e.g., Daniel H. Levine, *The News About Religion in Latin America*, in RELIGION ON THE INTERNATIONAL NEWS AGENDA 122 (Mark Silk ed., 2000).

4. Migrant populations and religious revivalism are openly challenging the Western paradigm of the secular state and privatized, individualized religion in post-colonial states, as well as in the United States. See, e.g., Dale F. Eickelman & Jon W. Anderson, *Redefining Muslim Publics*, in NEW MEDIA IN THE MUSLIM WORLD 1 (Dale F. Eickelman & Jon W.

Asad, “a straightforward narrative of progress from the religious to the secular is no longer acceptable.”<sup>5</sup>

Spurred by globalization, democratization, and the rise of modern media, this remarkable religious resurgence is evident in a variety of places—from scholarly work and popular interest to the increased awareness of the importance of religion in diplomacy and peacebuilding.<sup>6</sup> Debates and publications regarding the appropriate role of religion in both emergent and longstanding democracies increasingly inform political will and public policy.

However, religious resurgence brings new problems for both emergent and established nation-states. This Article contends that nation-states can achieve successful governance only through careful management of religious and cultural differences and through respect for religious minorities and non-conventional religious groups in increasingly multi-religious and multicultural national contexts.<sup>7</sup>

Part II of this Article discusses the heightened role of religion, and the concomitant recognition of this role, in the public sphere.

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Anderson eds., 1999) (stating that much of the public sphere is “[s]ituated outside formal state control”).

5. TALAL ASAD, FORMATIONS OF THE SECULAR: CHRISTIANITY, ISLAM, MODERNITY 1 (2003).

6. Many would rightly argue that these debates about religion in the public sphere cannot be understood in isolation from religion-state relations and constitutional and international human rights perspectives; the literature in this area now abounds. *See, e.g.*, JOHN ANDERSON, RELIGIOUS LIBERTY IN TRANSITIONAL SOCIETIES: THE POLITICS OF RELIGION (2003); W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES (Johan D. van der Vyver & John Witte, Jr. eds., 1996); CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS (John Merrills ed., 2001); Malcolm D. Evans, *Religion, Law and Human Rights: Locating the Debate*, in LAW AND RELIGION IN CONTEMPORARY SOCIETY (Peter W. Edge & Graham Harvey eds., 2000); FACILITATING FREEDOM OF RELIGION OR BELIEF: A DESKBOOK (Tore Lindholm et al. eds., 2004); INTERNATIONAL PERSPECTIVES ON FREEDOM AND EQUALITY OF RELIGIOUS BELIEF (Derek H. Davis & Gerhard Beiser eds., 2002); REGULATING RELIGION: CASE STUDIES FROM AROUND THE GLOBE (James T. Richardson ed., 2004). For additional resources, see Religion and Law Research Consortium, <http://www.religlaw.org> (last visited Mar. 22, 2005); Center for the Interdisciplinary Study of Religion, <http://www.law.emory.edu/cisr/> (last visited Mar. 22, 2005); J.L. & RELIGION, available at <http://www.hamline.edu/law/jlr/index.html> (last visited Mar. 22, 2005); *Human Rights and Freedom of Religion or Belief Links*, in UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY, <http://www1.umn.edu/humanrts/links/religion.html> (last visited Mar. 22, 2005).

7. On the plight of religious minorities in particular, see PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE (Pete G. Danchin & Elizabeth A. Cole eds., 2002).

Part III addresses the new prominence of religion in American public life and the critical role religious activism is now playing in contested social issues. Part IV deals with the tension between secularism and religion and offers a glimpse of some of the problems associated with religious diversity and competition. Part V offers a brief conclusion.

## II. BACKGROUND: THE INCREASED RECOGNITION OF RELIGION IN THE PUBLIC SPHERE

### *A. Academic Recognition of Religion in the Public Sphere*

Prior to the early 1990s, literature had been lacking in the area of religion in the public sphere, notably at the international level. This lack of recognition of religion caused scholars and observers to downplay the significance of religion in domestic and global affairs.<sup>8</sup> The early 1990s marked an upsurge in literature recognizing the role of religion in the public sphere.

One of the most influential and controversial of these writings was Samuel Huntington's piece, *The Clash of Civilizations?*<sup>9</sup> Huntington argued that the world would be shaped, in large measure, by the interactions among seven or eight major civilizations, namely, Western, Confucian, Japanese, Islamic, Hindu, Slavic-Orthodox, Latin American, and possibly African. The article provoked criticism by suggesting that the most important differentiating feature was religion and that post-Cold War optimism would be shattered by dangerous and deep-rooted cultural conflict.<sup>10</sup> Many scholars felt that Huntington oversimplified the mapping of

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8. For example, scholars and observers missed the religious roots of the civil rights movement in the United States and misread the surge of the Iranian revolution. Levine, *supra* note 3, at 122.

9. Samuel P. Huntington, *The Clash of Civilizations?*, FOREIGN AFF., Summer 1993, at 22; see also SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996). See also Huntington's latest work, SAMUEL P. HUNTINGTON, *WHO ARE WE?: THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* (2004), on the erosion of America's Anglo-Protestant culture by the problems of massive immigration, bilingualism, multiculturalism, etc.

10. Robert D. Kaplan, *Looking the World in the Eye*, 80 ATLANTIC MONTHLY 68 Dec. 2001, at 68. For a critique by eminent scholars of Islam regarding Huntington's suggestion that Islam and the West were on a collision course, see *THE NEW CRUSADES: CONSTRUCTING THE MUSLIM ENEMY* (Emran Qureshi & Michael A. Sells eds., 2003). See also Akeel Bilgrami, *The Clash Within Civilizations*, DAEDALUS: J. AM. ACAD. ARTS & SCI., Summer 2003, at 88.

the contemporary world by declaring that “[t]he fault lines between civilizations will be the battle lines of the future.”<sup>11</sup>

Prescient or not, Huntington’s work stimulated a flood of long overdue studies on the role of religion in international affairs. It sent die-hard secular political scientists and social critics into a tailspin, as evidenced by the flurry of publications more attentive to the influence of religion in the last decade.<sup>12</sup> A landmark study entitled *Religion, the Missing Dimension of Statecraft*<sup>13</sup> demonstrates that religion has been absent from the analysis of many international conflicts and their resolutions. This study advocates the reconsideration of religion as an important factor in international diplomacy.

Other published works have also helped focus attention on the growing importance of religion on the international scene. One of these publications was Jose Casanova’s influential study, *Public Religions in the Modern World*.<sup>14</sup> This book reconsiders the relationship between religion and modernity and argues that many religious traditions have been making their way, sometimes forcefully, out of the private sphere and into public life at an increasingly transnational level.<sup>15</sup> This movement of religion into the public sphere, notes Hent de Vries, is also facilitated by the radical transformation of “the functions ascribed to modern subjectivity, to the political, the economy, the nation, the state, the public sphere, [and] privacy.”<sup>16</sup>

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11. Huntington, *The Clash of Civilizations?*, *supra* note 9, at 22.

12. See Daniel Philpott, *The Challenge of September 11th to Secularism in International Relations*, *WORLD POL.*, Oct. 2002, at 66, for a discussion of this body of literature. Of particular note is *Religion and International Relations*, 29 *MILLENNIUM: J. INT’L STUD.* No. 3, 2000. See also JONATHAN FOX & SHMUEL SANDLER, *BRINGING RELIGION INTO INTERNATIONAL RELATIONS* (2004).

13. *RELIGION, THE MISSING DIMENSION OF STATECRAFT* (Douglas Johnston & Cynthia Sampson eds., 1994).

14. JOSÉ CASANOVA, *PUBLIC RELIGIONS IN THE MODERN WORLD* (1994).

15. Additional key works in this area are ROLAND ROBERTSON, *GLOBALIZATION: SOCIAL THEORY AND GLOBAL CULTURE* (1992); TRANSNATIONAL RELIGION AND FADING STATES (Susanne Hoeber Rudolph & James Piscatori eds., 1997); and Peter Beyer, *The Modern Emergence of Religions and a Global Social System for Religion*, 13 *INT’L SOC.* 151 (1998). See also STEPHEN ELLIS & GERRIE TER HAAR, *WORLDS OF POWER: RELIGIOUS THOUGHT AND POLITICAL PRACTICE IN AFRICA* (2004) (arguing that religious and spiritual beliefs persist and flourish amidst the vagaries of social and political life).

16. HENT DE VRIES, *RELIGION AND VIOLENCE: PHILOSOPHICAL PERSPECTIVES FROM KANT TO DERRIDA* 19 (2001).

Moreover, the mass media dimension of these developments has been well articulated by sociologist Manuel Castells, who argues that we have passed from Giddens's era of "late modernity" into the age of the "network society."<sup>17</sup> The information technology revolution and the restructuring of capitalist economies have generated this new form of society. In Castells's opinion, these societal changes have led to a disjunction between the local and the global, as well as a disjunction between power and experience for most individuals and social groups.<sup>18</sup> Consequently, he states, "[t]he search for meaning takes place . . . in the reconstruction of defensive identities around communal principles."<sup>19</sup> These new forms of communal resistance or "cultural communes," as Castells terms them, are at the base of the new primacy of identity politics in today's network society and information age.<sup>20</sup> He sees the resurgence of religious fundamentalism as reflecting the contestations of the new global order.<sup>21</sup> Given their reactive nature, these movements constitute a social barometer aiming to construct "social and personal identity on the basis of images of the past and projecting them into a utopian future, to overcome unbearable present times."<sup>22</sup>

With that background, the September 11th terrorist attacks spectacularly demonstrated the effects of religious ideology on the public sphere. In the words of Philip Jenkins, a prominent academic commentator on contemporary religious affairs, "the twenty-first century will almost certainly be regarded by future historians as a century in which religion replaced ideology as the prime animating and destructive force in human affairs, guiding attitudes to political liberty and obligation, concepts of nationhood, and, of course,

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17. 2 MANUEL CASTELLS, *THE INFORMATION AGE: ECONOMY, SOCIETY, AND CULTURE: THE POWER OF IDENTITY* 10–11 (1997).

18. *Id.* at 11.

19. *Id.*

20. *Id.* at 65–67.

21. Peter van der Veer prefers to designate these movements as "religious nationalisms," since many of them "articulate discourse on the religious community with discourse on the nation." Peter van der Veer, *The Victim's Tale: Memory and Forgetting in the Story of Violence*, in *VIOLENCE, IDENTITY AND SELF-DETERMINATION* 186, 195 (Hent de Vries & Samuel Weber eds., 1997).

22. CASTELLS, *supra* note 17, at 25; Chidi Anselm Odinkalu, *Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa*, 47 J. AFR. L. 1, 15 (2003) (tracing the "pathologies of suffering, conflict and systematic violations of human rights that Africa has suffered" back to colonial patterns of exclusion and ethnic discrimination). *See also* van der Veer, *supra* note 21.

conflicts and wars.”<sup>23</sup> The production of works on Islam, on religion and violence generally, and on peace and tolerance has escalated exponentially since September 11th. Additionally, September 11th brought home to many not only the need to know more about other religious interpretations of the world, but also a stronger sense of the ambivalence of the sacred<sup>24</sup> and our global connectedness. One human rights scholar poignantly calls this “our shared vulnerability.”<sup>25</sup>

*B. Popular Recognition of Religion in the Public Sphere*

Interestingly, while journalists and academic analysts have rushed to catch up with global religious resurgences, books promoting religion, more religion, or better religion are bestsellers in many parts of the world. Books on religion or spirituality now feature regularly on *The New York Times* bestseller list, ranging from religious reflections and spiritual guides to modern interpretations of ancient, sacred wisdom.<sup>26</sup> One can also find histories and contemporary accounts of religious traditions, concepts, and holy places written for the general reader, such as *A History of God* and *The Battle for God* by popular British author Karen Armstrong.<sup>27</sup>

Once President Bill Clinton started singing the praises of Yale law professor Stephen Carter’s works, such as *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*,<sup>28</sup> sales went up exponentially.<sup>29</sup> Explaining how preserving

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23. Philip Jenkins, *The Next Christianity*, ATLANTIC MONTHLY, Oct. 2002, at 54.

24. R. SCOTT APPLEBY, *THE AMBIVALENCE OF THE SACRED: RELIGION, VIOLENCE, AND RECONCILIATION* (1999). The phrase, ambivalence of the sacred, refers to the idea that religion can serve as a vehicle for either violence or peace. *Id.*

25. Abdullah A. An-Na’im, *Consciousness of Vulnerability*, in A HUMAN RIGHTS MESSAGE 16 (1998).

26. For instance, on the Hardback Non-Fiction list for March 9, 2005, one could find *Secrets & Mysteries of the World*, by Sylvia Browne, a self-proclaimed psychic who tries to explain the inexplicable, and *God’s Politics*, by Jim Wallis an evangelical Christian who argues that Democrats must “take back the faith” and not allow conservative Republicans to hijack the Bible. At the top of the Hardcover Advice list was *Your Best Life Now*, by Joel Osteen, who advocates a faith-based approach to living with enthusiasm. This was closely followed by *The Purpose-Driven Life*, by Rick Warren, who seeks to find the meaning of life through God.

27. KAREN ARMSTRONG, *THE BATTLE FOR GOD* (2000); KAREN ARMSTRONG, *A HISTORY OF GOD: THE 4000-YEAR QUEST OF JUDAISM, CHRISTIANITY AND ISLAM* (1993).

28. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* (1993).

a special role for religious communities can strengthen democracy, Carter criticizes contemporary American law and politics for marginalizing religious faith such that it cannot be a resource for political action.<sup>30</sup> In his more recent book, *God's Name in Vain: The Wrongs and Rights of Religion in Politics*,<sup>31</sup> Carter expresses his concerns about the risks and limitations of political involvement for religious people and communities. He writes,

We must never become a nation that propounds an official religion or suggests that some religions are more American than others. At the same time, one of the official religions we must never propound is the religion of secularism, the suggestion that there is something un-American about trying to live life in a way that puts God first. Quite the contrary: Preserving the ability of the faithful to put God first is precisely the purpose for which freedom of religion must exist.<sup>32</sup>

Carter worries about religious voices losing their prophetic edge by being co-opted by political forces and about the antireligious politics of the political elite. He suggests that without an independent religious conscience there might never have been an abolitionist movement, a movement for the rights of industrial workers, or the civil rights movement.<sup>33</sup> In the book, he lays out what he considers to be the basis of “principled and prophetic religious activism.”<sup>34</sup> Incidentally, Carter has been criticized for propagating a version of religion which is “self-evidently personalistic, moralistic, and experiential, and most definitely of the monotheistic variety;” which sustains the misleading dichotomy of “church-state;” and which prevents people from seeing how values

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29. See Franklin Foer, *The Stephen Carter Moment: Will the Provocative Yale Law Prof. Save Us from Our Culture of Disbelief?*, BELIEFNET, [http://www.beliefnet.com/story/50/story\\_5093\\_1.html](http://www.beliefnet.com/story/50/story_5093_1.html) (last visited March 22, 2005) (reviewing STEPHEN L. CARTER, *GOD'S NAME IN VAIN: THE WRONGS AND RIGHTS OF RELIGION IN POLITICS* (2000) [hereinafter *NAME IN VAIN*]).

30. CARTER, *supra* note 28.

31. *NAME IN VAIN*, *supra* note 29.

32. *Id.* at 4.

33. *Id.* In a similar vein, *THE CHRISTIAN CHURCHES AND THE DEMOCRATISATION OF AFRICA* (Paul Gifford ed., 1995), critically examines the contribution of the African churches in several countries to the processes of democratization.

34. CARTER, *supra* note 28, at 7.

may be cultivated in the “secular” realm.<sup>35</sup> Another critic describes Carter’s book as “a product of the very culture it purports to criticize,” saying that it advances a view of religion as legitimate only when in service of democracy.<sup>36</sup> Even this criticism indicates the stakes of the debate about religion’s role in the public sphere.

*C. Diplomatic Recognition of Religion in the Public Sphere*

As an extension of the greater recognition of the role of religion on the international stage, a number of new initiatives to extend the scope of faith-based organizations to the diplomatic realm are notable. A number of recently published works realistically address the religious dimension of specific diplomatic efforts such as conflict transformation and peacebuilding.<sup>37</sup> A new book, *Faith-Based Diplomacy: Trumping Realpolitik*,<sup>38</sup> gives shape to this emerging field. The editor, Douglas Johnston, calls for religious imperatives to be “incorporated as a major consideration in U.S. foreign policy,”<sup>39</sup> and for greater consideration to be given to the peace-building capacity of religion at the diplomatic level.<sup>40</sup> Additionally, a new journal, *Faith and International Affairs*, encourages interfaith dialogue, provides resources for those wanting “to build bridges of understanding within faith and international affairs,” and a forum for analysis and opinion that “sharpens both spiritual and political discernment.”<sup>41</sup> In a recent article in this journal, for example, one

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35. RUSSELL T. MCCUTCHEON, CRITICS NOT CARETAKERS: REDESCRIBING THE PUBLIC STUDY OF RELIGION 131 (2001).

36. KENNETH R. CRAYCRAFT, JR., THE AMERICAN MYTH OF RELIGIOUS FREEDOM 156–57 (1999).

37. APPLEBY, *supra* note 24; JAYNE SEMINARE DOCHERTY, LEARNING LESSONS FROM WACO: WHEN THE PARTIES BRING THEIR GODS TO THE NEGOTIATION TABLE (2001); FROM THE GROUND UP: MENNONITE CONTRIBUTIONS TO INTERNATIONAL PEACEBUILDING (Cynthia Sampson & John Paul Lederach eds., 2000); MARC GOPIN, BETWEEN EDEN AND ARMAGEDDON: THE FUTURE OF WORLD RELIGIONS, VIOLENCE, AND PEACEMAKING (2000); *see also* JOHN L. ESPOSITO, UNHOLY WAR: TERROR IN THE NAME OF GOD (2002); MARK JUERGENSMAYER, TERROR IN THE MIND OF GOD: THE GLOBAL RISE OF RELIGIOUS VIOLENCE (3d ed., rev. & updated 2003).

38. FAITH-BASED DIPLOMACY: TRUMPING REALPOLITIK, *supra* note 1.

39. *Id.* at 3.

40. *Id.* at 5–6.

41. Seiple, *supra* note 2, at 1.

can read about the rituals of prayer and fasting that led to a breakthrough in difficult peace negotiations in the Kashmir region.<sup>42</sup>

Along with practical analysis in journals and books, new organizations are sprouting up to encourage a place for religion in diplomacy. For instance, the International Center for Religion and Diplomacy in Washington, D.C., works “[t]o address identity-based conflicts that exceed the reach of traditional diplomacy by incorporating religion as part of the solution.”<sup>43</sup>

The Center’s mission statement says:

Regardless of one’s spiritual persuasion, there are two compelling reasons why the Center’s work is important: (1) the need for more effective preventive measures to minimize the occasions in which we have to send our sons and daughters in harm’s way and (2) the need for a stable global environment to support continued economic growth that can benefit an expanding percentage of the world’s population.

By linking religious reconciliation with official diplomacy, the ICRD is creating a new synergy for peacemaking that serves both of these needs. It also provides a more fruitful approach for dealing with ethnic conflict, tribal warfare, and religious hostilities.<sup>44</sup>

Other organizations with a specific focus on peacebuilding through religious understanding include the program on Religion and Conflict Resolution at the Tanenbaum Center for Interreligious Understanding,<sup>45</sup> PeaceMakers International,<sup>46</sup> and the Program in Religion in Conflict and Peacebuilding at the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame,<sup>47</sup> which seeks to strengthen the potential for peacebuilding within

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42. Brian Cox & Daniel Philpott, *Faith-Based Diplomacy: An Ancient Idea Newly Emergent*, BRANDYWINE REV. FAITH & INT’L AFF., Fall 2003, at 31.

43. The International Center for Religion and Diplomacy, <http://www.icrd.org> (last visited Mar. 13, 2005).

44. The International Center for Religion and Diplomacy, *Mission*, <http://www.icrd.org/about.html> (last visited Mar. 22, 2005).

45. Tanenbaum Center for Interreligious Understanding, <http://www.tanenbaum.org> (last visited Mar. 6, 2004).

46. PeaceMakers International, Inc., <http://www.peacemakers.net> (last visited Mar. 6, 2004).

47. The Joan B. Kroc Institute for International Peace Studies, *Program in Religion, Conflict and Peacebuilding*, <http://kroc.nd.edu/research/religion.html> (last visited Mar. 6, 2004).

religious traditions in addition to exploring the complex roles of religion in contemporary conflicts.<sup>48</sup>

While the burgeoning of organizations that treat seriously the religious dimensions of domestic and foreign policy clearly indicates a trend, there is no obvious consensus at this early stage regarding the merits or outcomes of this trend.

### III. RELIGION IN U.S. PUBLIC POLICY

The increased presence of religious belief and practice in the public arena is due in part to the evolution of the Supreme Court's Establishment Clause and Free Exercise Clause jurisprudence, as well as the growing intervention of religious communities in contested social policy debates. What remains unclear is exactly what role religion should take in policymaking and how these new manifestations of religious activism may contravene First Amendment doctrine.

John Witte, legal scholar and director of the Interdisciplinary Study of Religion at Emory Law School, sees the shift to more public religion in the United States as both inevitable and necessary. He notes that over the last fifteen years the U.S. Supreme Court has abandoned much of its earlier separationism.<sup>49</sup> The metaphorical "wall of separation between church and state," envisaged by Jefferson,<sup>50</sup> no longer looms large in the Court's opinions, and privatization of religion is no longer the bargain that must be struck in order to attain religious freedom.<sup>51</sup> According to Witte, there are two principles that emanate from the recent cases. First, public manifestations of religion must be as free as private religious practice

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48. See also U.N. Educ., Sci. & Cultural Org. [UNESCO], *Interreligious Dialogue*, [http://portal.unesco.org/culture/en/ev.phpURL\\_ID=11680&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.phpURL_ID=11680&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last visited Mar. 22, 2005).

49. John Witte, Jr., *The New Freedom of Public Religion*, Editorial Opinion, Center for the Interdisciplinary Study of Religion, Emory University, <http://www.law.emory.edu/cisr/pressreleases/Editorialjohnwitte.htm> (last visited Mar. 25, 2005). On the Supreme Court's treatment of religion, see WINNIFRED FALLERS SULLIVAN, *PAYING THE WORDS EXTRA: RELIGIOUS DISCOURSE IN THE SUPREME COURT OF THE UNITED STATES* (1994).

50. Letter from Thomas Jefferson to the Danbury Baptist Association of Connecticut (Jan. 1, 1802), available at <http://www.usconstitution.net/jeffwall.html>.

51. On the growing tendency of the Supreme Court to favor equal treatment of religion with other forms of expression and activity, see Derek H. Davis, *A Commentary on the Supreme Court's "Equal Treatment" Doctrine as the New Constitutional Paradigm for Protecting Religious Liberty*, 46 J. CHURCH & ST. 717, 717-38 (2004).

because religious groups, in his words, “provide leaven and leverage for the polity to improve.”<sup>52</sup> Second, the freedom of public religion sometimes requires the support of the state because it is impossible for religious bodies to avoid contact with today’s modern welfare state and all its ramifications in the educational, welfare, legal, social, and health care sectors.<sup>53</sup>

Such developments, in part, explain the rise of what Dennis Hoover calls “an activist center in American public life.”<sup>54</sup> The new mobilization of predominantly conservative Christians exemplifies this resurgence of an active, religious public sphere. The activism of conservative Christians has manifested itself in two principal ways: first, they have called on certain politicians and writers for religion to assume a more prominent role in public life; and second, they have advocated the “charitable choice” provision of the welfare reform law, whereby government support is provided for faith-based organizations to address social problems.<sup>55</sup> In addition, conservative Christians played a major role in persuading the U.S. government to make religious freedom a central aspect of its foreign policy with the International Religious Freedom Act of 1998.<sup>56</sup> As a result of this law, there is now an Ambassador-at-Large for International Religious Freedom, an office in the State Department, an Advisory Commission, and an annual report on the state of religious freedom worldwide.<sup>57</sup> In addition, the President is required to resort to a range of disciplinary actions against countries that are major violators of religious freedom.<sup>58</sup>

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52. Witte, *supra* note 49.

53. *Id.*

54. Dennis R. Hoover, *Charitable Choice and the New Religious Center*, RELIGION IN THE NEWS, Spring 2000, available at [http://www.trincoll.edu/depts/csrlpl/RINVol3No1/charitable\\_choice\\_2000.htm](http://www.trincoll.edu/depts/csrlpl/RINVol3No1/charitable_choice_2000.htm); see also STEPHEN P. BROWN, TRUMPING RELIGION: THE NEW CHRISTIAN RIGHT, THE FREE SPEECH CLAUSE, AND THE COURTS (2004).

55. See Mark Silk, *From the Editor: A Different Spiritual Politics*, RELIGION IN THE NEWS, Summer 1999, available at <http://www.trincoll.edu/depts/csrlpl/RINVol2No2/spiritualpolitics.htm>.

56. International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (1998); see also U.S. Dep’t of State, *International Religious Freedom*, <http://www.state.gov/g/drl/irf/> (last visited Mar. 25, 2005); ALLEN HERTZKE, FREEING GOD’S CHILDREN: THE UNLIKELY ALLIANCE FOR GLOBAL HUMAN RIGHTS (2004).

57. U.S. Dep’t of State, *supra* note 56.

58. RELIGIOUS PERSECUTION AS A U.S. POLICY ISSUE (Rosalind I. J. Hackett et al. eds., 2000); T. Jeremy Gunn, *American Exceptionalism and Globalist Double Standards: A More Balanced Alternative*, 41 COLUM. J. TRANSNAT’L L. 137, 137–52 (2002); T. Jeremy Gunn, A

Moreover, President George W. Bush has talked openly about the influence of his religious faith, particularly in the aftermath of September 11th.<sup>59</sup> This has occasioned numerous articles in leading news magazines and newspapers regarding the President's personal religious beliefs and practices.<sup>60</sup> While statistics show that the majority of Americans like their leader to be God-fearing, they are not so keen about public professions of faith.<sup>61</sup> Some journalists have criticized statements by politicians that there could be no morality without religion.<sup>62</sup>

Religion's influence in U.S. politics is obvious in recent debates about school prayer, abortion, and homosexuality, as well as in the success of grassroots religious organizations in mobilizing voters.<sup>63</sup> Many liberal secularists decry this trend, rejecting any interaction between politics and religion. But in *Why I Am Not a Secularist*,<sup>64</sup> political theorist William E. Connolly argues that secularism needs refashioning to be more inclusive of the complex range of viewpoints now active in public life, including those predicated on religious belief.<sup>65</sup> Through its narrow and intolerant understandings of public reason, secularism draws fire from its mainly Christian critics for not recognizing "the sources of morality most citizens endorse."<sup>66</sup>

Along similar lines, philosopher and ethicist Jeffrey Stout, in his latest book, *Democracy and Tradition*,<sup>67</sup> makes a cogent case for greater inclusion of religious voices in a multicultural democratic

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*Preliminary Response to Criticisms of the International Religious Freedom Act of 1998*. 2000 BYU L. REV. 841; Eugenia Relaño Pastor, *U.S. International Religious Freedom Act of 1998: A European Perspective*, 2005 BYU L. REV. 711 (2005).

59. See, e.g., Alan Cooperman, *Openly Religious, to a Point*, WASH. POST, Sept. 16, 2004, at A01, available at <http://www.washingtonpost.com/wp-dyn/articles/A24634-2004Sep15.html>.

60. See, e.g., Jane Lampman, *New Scrutiny of Role of Religion in Bush's Policies*, CHRISTIAN SCI. MONITOR, Mar. 17, 2003, available at <http://www.csmonitor.com/2003/0317/p01s01-uspo.html>.

61. *Id.*

62. See, e.g., Stephen Carter et al., *Roundtable on Religion in Politics*, TIKKUN MAG., Nov.-Dec. 2000, 24.

63. This is well evidenced in the publication *Religion in the News* from the Leonard E. Greenberg Center for the Study of Religion in Public Life, Trinity College, Hartford CT, available at <http://www.trincoll.edu/depts/csrpl/RIN.htm> (last visited Aug. 25, 2005).

64. WILLIAM E. CONNOLLY, *WHY I AM NOT A SECULARIST* (1999).

65. *Id.* at 19.

66. *Id.* at 23.

67. See JEFFREY STOUT, *DEMOCRACY AND TRADITION* (2004).

context. Indeed, he begins his book with an epigraph from John Dewey: “Democracy is a form of government only because it is a form of moral and spiritual association.”<sup>68</sup> Seeking to negotiate a way beyond the current impasse between secular liberalism and the new traditionalism, Stout examines the roots of modern democracy. Drawing on American pragmatist philosophy, he argues that democracy’s achievements are predicated upon a vision of allowing a multitude of claims to be heard.<sup>69</sup>

For political philosopher Paul Weithman, any questions regarding the role religion may play in citizens’ decision making are essentially moral questions because a society’s commitment to liberal democracy necessarily entails certain moral and normative commitments for its citizens. Weithman has produced two well-argued books on this subject, *Religion and the Obligations of Citizenship*, and an earlier, edited volume, *Religion and Contemporary Liberalism*.<sup>70</sup> He identifies two main sets of questions that arise with regard to the proper role of religion in democratic politics. The first set asks how religion may affect political outcomes and how those outcomes square with the commitments of liberal democracy. In other words, he asks whether state support for a religion, all religions, or religious codes of conduct can be consistent with liberal democracy.

In exploring this first set of questions, Weithman demonstrates how attention to political outcomes can illuminate what he calls the “puzzles” that arise in a liberal democracy.<sup>71</sup> For example, in the much debated case of whether prayer should be permitted in public schools, he demonstrates that if prayer is permitted because the majority favors it, the liberty of the minority is compromised in the name of a democratic commitment to majoritarianism.<sup>72</sup> But if prayer is not permitted, he explains, the liberal commitment to freedom of religion and the protection of minorities can thwart

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68. *Id.* at vi.

69. *Id.* at 4–6. For a thoughtful review, see David Reidy, *Speaking for the State, in* SOUNDINGS (2005). See also the debate on this topic between two distinguished philosophers, ROBERT AUDI & NICHOLAS WOLTERSTORFF, RELIGION IN THE PUBLIC SQUARE: THE PLACE OF RELIGIOUS CONVICTIONS IN POLITICAL DEBATE (1997).

70. PAUL J. WEITHMAN, RELIGION AND THE OBLIGATIONS OF CITIZENSHIP (2002); RELIGION AND CONTEMPORARY LIBERALISM (Paul Weithman ed., 1997).

71. WEITHMAN, *supra* note 70; RELIGION AND CONTEMPORARY LIBERALISM, *supra* note 70, at 2.

72. WEITHMAN, *supra* note 70, at 2.

measures the majority would like to enact. In another example, Weithman explores whether some citizens should be allowed to make ritual use of drugs that are generally proscribed. If so, he argues, the commitment to the equal treatment of all before the law can, under some circumstances, cede to religious liberty. If not, he states, it is rather that “religious liberty can be restricted in the name of treating all as equals before a law that the state has an interest in enforcing.”<sup>73</sup> Such are the dilemmas of a liberal democracy.

The second set of questions highlighted by Weithman pertains to religious political inputs. This line of inquiry concerns the use of religious arguments in the political sphere either as a basis for voting, for political preferences, or for policymaking. As he rightly notes, “[l]iberal democratic commitments to religious toleration and church-state separation are sometimes thought to be incompatible with citizens’ taking their religiously based political views as the basis of important political decisions.”<sup>74</sup> He asks whether there is a difference between religious and political leaders and ordinary citizens, or between fora, in terms of the appropriateness of religious political inputs.<sup>75</sup>

Weithman’s contentions force citizens to think more critically and more deeply about the nature of citizenship. Because voting and advocacy are collective enterprises, they must be conducted responsibly and reasonably. He notes that citizens in liberal democracies, such as the United States, are deeply divided on the nature and demands of citizenship.<sup>76</sup> Sometimes these disagreements stem from the political activities of religious organizations; in those societies where the political role of such organizations is more valued however, this is less of an issue. Weithman feels that religious organizations may be instrumental in facilitating people’s political participation and in developing their sense of citizenship; they may also generate debate regarding the conditions of participation and the goods that should be conferred by various levels of participation. Consequently, he argues that “citizens may offer exclusively religious arguments in public debate and that they may rely on religious reasons when they cast their votes.”<sup>77</sup> Importantly, Weithman

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73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 3.

77. *Id.*

underscores the need to distinguish between those who violate the obligations of citizenship and those whose politics we dislike. In other words, restrictions on religious political argument are sometimes based on assumptions about what religious citizens stand for, when in reality there may be considerable diversity of opinion. Weithman employs empirical data and contextual differences to query presumptions and to assess what he calls the “reasonability of deep disagreement.”<sup>78</sup>

Thus, the current debate over the proper role of religion in the public sphere indicates a reexamination of the traditional conception of a proverbial wall between church and state. This debate indicates that religion should play a new, yet still undetermined, part in public policy.

#### IV. MANAGEMENT OF RELIGIOUS AND CULTURAL DIFFERENCE AND THE TREATMENT OF MINORITIES

##### *A. Tension between Religion and Secularism*

While some writers have sought ways to popularize religion for the Western consumer or have tried to find cogent historical and theoretical arguments for a greater public role for religion, other observers approach these issues by addressing the tensions, and as will be shown, the misunderstandings, between secularism and religion. They see growing antagonism in modern democratic states between secularism, with its focus on individual rights, and the resurgence of religion, with its communitarian emphasis. As a case in point, the summer 2003 issue of the prestigious journal *Daedalus: Journal of the American Academy of Arts and Sciences* is devoted to the topic of secularism and religion.<sup>79</sup> Several of the writers address the possibilities of religious pluralism and freedom in various national and regional contexts. Others, such as renowned religion analyst Martin Marty, search for new paradigms, such as “religio-secular world,” to represent these changing global dynamics.<sup>80</sup>

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78. *Id.* at 5; see also Mark Chaves et al., *Does Government Funding Suppress Nonprofits' Political Activities?*, 69 AM. SOC. REV. 292 (2004).

79. DAEDALUS: J. AM. ACAD. ARTS & SCI., Summer 2003.

80. Martin Marty, *Our Religio-secular World*, DAEDALUS: J. AM. ACAD. ARTS & SCI., Summer 2003, at 42, 42.

One of the best scholarly approaches to the contested place of religion in the public sphere is anthropologist Talal Asad's latest book, *Formations of the Secular: Christianity, Islam, Modernity*.<sup>81</sup> In keeping with his understanding of modern anthropology, he explores the phenomenon of secularism across different time periods, cultures, and regions. By so doing, Asad shows how embedded concepts, such as religion and secularism, are supported or challenged by a variety of "sensibilities, attitudes, assumptions, and behaviors."<sup>82</sup> Asad contends that the modern idea of a secular society involves a "distinctive relation between state law and personal morality, such that religion became essentially a matter of private belief."<sup>83</sup> Translating the individual's ability to freely express and practice his or her beliefs into a legal right brings religion back into the public domain.<sup>84</sup>

One of Asad's most important conclusions is that a "secular state is not one characterized by religious indifference, or rational ethics—or political toleration. It is a complex arrangement of legal reasoning, moral practice, and political authority. This arrangement is not the simple outcome of the struggle of secular reason against the despotism of religious authority."<sup>85</sup> To get beyond the notion that religion and secularism are competing ideologies, Asad avers that it behooves us to look at "what people do with and to ideas and practices,"<sup>86</sup> and why meanings and concepts change. He also argues that religion has always been a factor in the world of power, and that "the categories of 'politics' and 'religion' turn out to implicate each other more profoundly than we thought."<sup>87</sup> In other words, modern

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81. ASAD, *supra* note 5. For a review, see Robert W. Hefner, *Rethinking Religion and the Modern*, H-NET REVIEWS, H-GENDER-MIDEAST, Mar. 2004, <http://www.h-net.org/reviews/showrev.cgi?path=89361083559676> (reviewing ASAD, *supra* note 5).

82. ASAD, *supra* note 5, at 17.

83. *Id.* at 205.

84. *Id.* These ideas developed in Western Europe in tandem with the formation of the modern state. In the final chapter of the book, "Reconfigurations of Law and Ethics in Colonial Egypt," Asad probingly examines how the secular was thought about and absorbed in Egyptian culture prior to its ascendance to a modern state. He finds that the reconfigurations of law, religion, and ethics in colonial Egypt created new social spaces in which secularism could grow. *Id.* at 208.

85. *Id.* at 255.

86. *Id.* at 194.

87. *Id.* at 200.

state power is highly pervasive, and it seeks to regulate all aspects of individual and social life, including religion.<sup>88</sup>

Similarly nuanced analysis of the concept of the secular is provided by historian Nikki Keddie, who emphasizes the fact that the word secular has had a far greater variety of meanings than current usage may suggest.<sup>89</sup> For centuries in Europe, it referred to the change in clerical status whereby a monk became a secular priest.<sup>90</sup> It was only in the nineteenth century that secularism became known as the independent doctrine that religious institutions and values should play no role in the affairs of the state.<sup>91</sup>

Keddie compares the rise and fall of secular and religious politics in various parts of the world and notes the contextual factors that influence these trends.<sup>92</sup> For example, Muslim countries have negative views of secularism because they associate it with autocratic rule and western influence.<sup>93</sup> This is well evidenced in the case of Nigeria, where Nigerian Muslims commonly critique the purported neutrality of the secular state as a western Christian conspiracy to undermine Islam.<sup>94</sup> By comparison, Islam as a force for mobilization still seems relatively untainted. Yet somewhat paradoxically, Keddie notes, the Islamic country where anti-clerical feelings run highest and secularist reforms have been successful is present-day Iran.<sup>95</sup>

Keddie contends that constant battles in South Asia—namely in India and Sri Lanka—between religious nationalism and secular movements serve to weaken support for secularism in the region.<sup>96</sup> So too does the imposition of secularist ideas from the top down,

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88. *Id.* at 199.

89. Nikki R. Keddie, *Secularism and Its Discontents*, DAEDALUS: J. AM. ACAD. ARTS & SCI., Summer 2003, at 14, 14.

90. *Id.* at 15.

91. *Id.* at 15–16.

92. *Id.* at 18.

93. *Id.* at 25.

94. See David Westerlund, *Secularism, Civil Religion or Islam: Islamic Revivalism and the National Question in Nigeria*, in RELIGION, STATE AND SOCIETY IN CONTEMPORARY AFRICA: NIGERIA, SUDAN, SOUTH AFRICA, ZAIRE, AND MOZAMBIQUE (Austin Metumara Ahanotu ed., 1992).

95. Keddie, *supra* note 89, at 25.

96. *Id.* at 28; see also RICHARD FRANCIS GOMBRICH & GANANATH OBEYSEKERE, BUDDHISM TRANSFORMED: RELIGIOUS CHANGE IN SRI LANKA (1988); MARK JUERGENSMEYER, THE NEW COLD WAR?: RELIGIOUS NATIONALISM CONFRONTS THE SECULAR STATE (1993); STANLEY JEYARAJA TAMBIAH, BUDDHISM BETRAYED?: RELIGION, POLITICS, AND VIOLENCE IN SRI LANKA (1992).

without ensuring support for them at the popular level or from religious leaders.<sup>97</sup> Since Western political hegemony is less of an issue in India than it is in the Muslim world, there are many Indian intellectuals who defend secularism even if they may criticize its application.<sup>98</sup> In fact, Keddie states that contemporary India has probably produced the largest body of writing in the modern world debating the merits of secularism.<sup>99</sup> With the controversial efforts of the previous Indian government (the Bharatiya Janata Party or BJP) to promote Hindu nationalism to the detriment of religious minorities,<sup>100</sup> a number of recent publications advocate the need to move beyond current understandings of secularism in order to effectively protect minority interests.<sup>101</sup>

The writings of scholars like Asad and Keddie teach that there is a need to put the concepts of secularism and religion in their appropriate historical and cultural contexts. Seen in context, these concepts are not always as unequivocal or as polarized as is commonly assumed.<sup>102</sup> Furthermore, secularization has been in progress around the world for far longer, and its success has been far more partial, than is often known. This comparative and historical knowledge could help mitigate some of the current tensions and misunderstandings over secularism, notably in states such as Nigeria.<sup>103</sup>

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97. Keddie, *supra* note 89, at 28.

98. *See, e.g.*, SEBASTIAN KIM, IN SEARCH OF IDENTITY: DEBATES ON RELIGIOUS CONVERSION IN INDIA (2003); MODERN MYTHS, LOCKED MINDS: SECULARISM AND FUNDAMENTALISM IN INDIA (T.N. Madan ed., 1997); SECULARISM AND ITS CRITICS (Rajeev Bhargava ed., 1998).

99. Keddie, *supra* note 89, at 28.

100. *See* MADHU KISHWAR, RELIGION AT THE SERVICE OF NATIONALISM AND OTHER ESSAYS (1998); A.G. NOORANI, THE RSS AND THE BJP: A DIVISION OF LABOR (2000).

101. *E.g.*, NEERA CHANDHOKE, BEYOND SECULARISM: THE RIGHTS OF RELIGIOUS MINORITIES (1999); JAMES MASSEY, MINORITIES AND RELIGIOUS FREEDOM IN A DEMOCRACY (2003).

102. *See, e.g.*, Abdullahi A. An-Na'im, *The Synergy and Interdependence of Human Rights, Religion and Secularism*, 3 POLYLOG: F. INTERCULTURAL PHIL. 13 (2001), available at <http://them.polylog.org/3/faa-en.htm>; *Consciousness of Vulnerability*, in A HUMAN RIGHTS MESSAGE 16–19 (Gov't of Sweden ed., 1998).

103. *See* SIMEON O. ILESANMI, RELIGIOUS PLURALISM AND THE NIGERIAN STATE (1997); Simeon O. Ilesanmi, *The Myth of a Secular State: A Study of Religious Politics with Historical Illustrations*, 6 ISLAM & CHRISTIAN-MUSLIM REL. 105–17 (1995).

*B. Religious Pluralism*

Accompanying the increased role of religion in the public sphere is the challenge and opportunity of religious diversity. In some parts of the world, such as Latin America, the concern is less about secularization and the marginalization of religion and more about the rise of new religious groups competing for power, recognition, and resources. Disestablishing state religions and dismantling the complicities between dominant religions and state power have changed the stakes of coexistence between religious communities. Against the backdrop of the forces of democratization, mediatization, and the global market, religious groups are compelled to justify their existence to the state and consumers alike. These processes are clearly visible in many Latin American countries, where the powerful Roman Catholic Church now has to compete in the marketplace along with burgeoning evangelical groups and indigenous revival movements.

Political scientist Dan Levine, who has been conducting research on religion and politics in this region for many years, observes:

Latin America is now approaching a state of pluralism (among Christian groups) for the first time in its history. This religious pluralism entails not only a multiplicity of voices speaking ‘in the name of religion’ but also a conflict for voice *within* specific groups. The spread of literacy and the access to mass media have diffused the tools of religious expertise into many hands.<sup>104</sup>

Local and international scholars are working to interpret this new plurality of religious identities and formations. Levine offers a positive reading of the politicization of religion in Latin America:

A story that not long ago could be told with confidence about how Catholicism supported and reflected the established order became a story in which religion (Protestant as well as Catholic) has become a source of new ideas about how to organize society and politics, and how to lead the good life. It is no exaggeration to say that many of the region’s most significant movements for change would

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104. Levine, *supra* note 3, at 135. The three presidential candidates in the December 2003 elections in Guatemala reflected this plurality: one was a Catholic, another was an evangelical Protestant, and the third was a priest of the Mayan indigenous religion.

have been unthinkable without religious participation and legitimation.<sup>105</sup>

Levine also points out that the pluralization of religious voices, leading to greater religious activism and public presence, has immediate consequences for democracy.<sup>106</sup> He states that “in a plural environment, it is to everyone’s interest to maintain open civil society with guarantees of free speech and equal access to institutions and to public spaces.”<sup>107</sup> This is especially important as these societies leave behind the dictatorships and religious monopolies which characterized the Latin American scene up until the late 1980s. Levine points to the emergence of discourses on the human and civil rights of the person, which have been helpful in modernizing the state.<sup>108</sup>

Efforts to accommodate religious and cultural diversity in transitional states and new democratic dispensations are naturally subject to extensive scrutiny. South African law withstands this scrutiny because of its explicit recognition of religious and cultural minorities and celebration of the country’s diverse heritage after decades of neo-colonial repression. South Africa has implemented these changes primarily through its constitution,<sup>109</sup> religious broadcasting,<sup>110</sup> and religious education.<sup>111</sup> The new government

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105. *Id.* at 123–24.

106. *Id.* at 135.

107. *Id.*

108. *Id.* at 136.

109. Johan D. van der Vyver, *Constitutional Perspectives of Church-State Relations in South Africa*, 1999 BYU L. REV. 635–72 (1999).

110. Rosalind I. J. Hackett, *Mediated Religion in South Africa: Balancing Air-time and Rights Claims*, in *MEDIA, RELIGION AND THE PUBLIC SPHERE* (Birgit Meyer & Annelies Moors eds., 2005).

111. See *RELIGION AND POLITICS IN SOUTH AFRICA* (Abdulkader Tayob & Wolfram Weisse eds., 1998); *RELIGION AND THE RECONSTRUCTION OF CIVIL SOCIETY*, (J. W. de Gruchy & S. Martin eds., 1995); *RELIGION IN PUBLIC EDUCATION: OPTIONS FOR A NEW SOUTH AFRICA* (David Chidester et al. eds., 2d ed. 1994); H. Christina Steyn, *The Role of Multi-religious Education in the Transformation of South African Society*, in *RELIGION AND THE TRANSFORMATION OF SOUTHERN AFRICA* 131–42 (Thomas G. Walsh & Frank Kaufmann eds., 1999). Similarly, Professor Abdelfattah Amor, the former Special Rapporteur of the Sub-Commission on Freedom of Religion and Belief of the United Nations Commission on Human Rights, has launched meetings and publications since 1995—several organized by the Oslo Coalition on Freedom of Religion and Belief—to explore the role of school education in relation to religious tolerance and intolerance. See U.N. High Commissioner for Human Rights, *Interim Report Prepared by Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief*, U.N. GAOR, 58th Sess., Annex, Agenda Item

has, for the most part, resisted efforts to continue to privilege South Africa's Christian majority (over seventy percent of South Africans are Christians according to the most recent census).<sup>112</sup> Many of the religious leaders who fought for liberation from the brutal apartheid regime have become officials of the new government.

Interestingly, many European countries seem regressive in terms of honoring the rights of minority religious groups in their territories. Alarmed at the growth of immigrant populations, particularly Muslims (there are now an estimated four to five million Muslims in France, for example),<sup>113</sup> some European governments have taken draconian measures to curb the activities of non-conventional and unpopular religious groups.<sup>114</sup> Sects are feared for their purported negative psychological effects and undue American influence.<sup>115</sup> The wearing of the Muslim veil in the workplace and schools has been fiercely contested in France and Germany.<sup>116</sup> French President Jacques Chirac contends that the veil or scarf is a sign of "aggressive proselytism" and has introduced controversial new legislation banning the wearing of religious symbols in public schools.<sup>117</sup> In eastern Europe, Russia, and central Asia more

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119(b), U.N. Doc. A/58/296 (Aug. 19, 2003), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/0/DFDC01ED0062E4C8C1256DB1004EB2C8/\\$File/N0347258.doc?OpenElement](http://www.unhchr.ch/huridocda/huridoca.nsf/0/DFDC01ED0062E4C8C1256DB1004EB2C8/$File/N0347258.doc?OpenElement); see also TEACHING FOR TOLERANCE AND FREEDOM OF RELIGION OR BELIEF (Lena Larsen & Ingvild T. Plesner eds., 2002); The Oslo Coalition on Freedom of Religion and Belief, Teaching for Tolerance for Freedom of Religion or Belief, [http://www.oslocoalition.org/html/project\\_school\\_education/index.html](http://www.oslocoalition.org/html/project_school_education/index.html) (last visited Mar. 25, 2005).

112. ZAR.co.za, Statistics, <http://zar.co.za/stats.htm> (last visited on March 25, 2005). This is a promotional website providing general statistics and information about South Africa.

113. Katherine Pratt Ewing, *Legislating Religious Freedom: Muslim Challenges to the Relationship Between Church and State in Germany and France*, in ENGAGING CULTURAL DIFFERENCES: THE MULTICULTURAL CHALLENGE IN LIBERAL DEMOCRACIES 63-80 (Richard Shweder et al. eds., 2002); see also An-Na'im, *supra* note 102.

114. See, e.g., REGULATING RELIGION: CASE STUDIES FROM AROUND THE GLOBE, *supra* note 6; Symposium, *Freedom of Religion or Belief in the OSCE Region: Challenges to Law and Practice, Concluding Seminar Statement by the Moderator* (June 28, 2001) available at [http://www.osce.org/documents/odihr/2001/06/1523\\_en.pdf](http://www.osce.org/documents/odihr/2001/06/1523_en.pdf).

115. Thomas Robbins, *Combating "Cults" and "Brainwashing" in the United States and Western Europe: A Comment on Richardson and Introvigne's Report*, 40 J. SCI. STUDY RELIGION 73 (2001).

116. Mastafa Malik, *A Woman's Head Scarf, a Continent's Discomfort*, WASH. POST, Mar. 13, 2005, at B02.

117. BBC News, *France Awaits Headscarves Report*, <http://news.bbc.co.uk/1/hi/world/europe/3307995.stm> (last visited Mar. 25, 2005). For a comparative analysis, see T.

generally, there are similar patterns of cultural preservation and animosity toward competing religious options.<sup>118</sup>

The rise of religion among immigrant and diasporic communities and in the public debates about multiculturalism has given culture, particularly cultural practice, a new prominence in regional, national, and international politics. Frequently the disputes over symbols, resources, recognition, and access are resolved in the legal sphere.<sup>119</sup>

This ongoing controversy over religious identity is manifest in the possible inclusion of references to God or Europe's Christian heritage in the new constitution of the European Union.<sup>120</sup> Another pertinent example is the battle in international politics over family values.<sup>121</sup> Similarly, women often find themselves at the center of conflicts over the public expression of identity, as Martha Nussbaum has cogently demonstrated in her writings.<sup>122</sup> As these examples illustrate, religious symbols can become flashpoints for the problems of religious pluralism.

Bill Moyers, a respected and popular commentator, asks what possibilities exist for new and more equitable conversations about

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Jeremy Gunn, *Under God But Not the Scarf: The Founding Myths of Religious Freedom in the United States and Laïcité in France*, 46 J. CHURCH & ST. 7 (2004).

118. Human Rights Without Frontiers International contends that the overt or covert denial of the rights of religious minorities should be part of the test for admission to the European Union. See generally Human Rights Without Frontiers Int'l, <http://www.hrwf.net> (last visited Mar. 25, 2005); see also Igor Rotar, *Kyrgyzstan: Chinese Pressure Achieves Falun Gong Deregulation*, FORUM 18 NEWS SERVICE, Mar. 22, 2005, [http://www.forum18.org/Archive.php?article\\_id=529](http://www.forum18.org/Archive.php?article_id=529).

119. See BRIAN BARRY, *CULTURE AND EQUALITY: AN EGALITARIAN CRITIQUE OF MULTICULTURALISM* (2001); BHIKHU PAREKH, *RETHINKING MULTICULTURALISM: CULTURAL DIVERSITY AND POLITICAL THEORY* (2002); WINNIFRED FALLERS SULLIVAN, *THE IMPOSSIBILITY OF RELIGIOUS FREEDOM* (2005). See generally Rosalind I.J. Hackett & Winnifred Fallers Sullivan, *Law and Human Rights*, *CULTURE & RELIGION* (forthcoming March 2005).

120. Terrence Murray, *Europe Debates God's Place in New Constitution*, CHRISTIAN SCI. MONITOR, Apr. 10, 2003, available at <http://www.csmonitor.com/2003/0410/p07s01-woeu.html>.

121. See DORIS BUSS & DIDI HERMAN, *GLOBALIZING FAMILY VALUES: THE CHRISTIAN RIGHT IN INTERNATIONAL POLITICS* (2003).

122. MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* (2000). Cf. Rosalind I.J. Hackett, *Is Religion Good News or Bad News for Women?: Martha Nussbaum's Creative Solution to Conflicting Rights*, SOUNDINGS, Fall/Winter 2002, at 615-25. See also Bahia Tahzib-Lie, *Applying a Gender Perspective in the Area of the Right to Freedom of Religion or Belief*, 2000 BYU L. REV. 967-88.

religious difference and conceptions of the good life.<sup>123</sup> Moyers wants to learn from difference but not be alienated by it nor expect it to be glossed over by liberal common denominators.<sup>124</sup> Similarly, a team of renowned North American legal and cultural experts has recently published their extensive deliberations on how to balance communitarian demands (of which religious identity is a dimension) with the standards of modern liberal democracies.<sup>125</sup> Others rightly point to the challenges of moving from a “rampant diversity to a culture of pluralism,”<sup>126</sup> and balancing the alternatives of homogeneity and heterogeneity.<sup>127</sup>

Negotiating multiculturalism has ceased to be a trivial issue, particularly when now associated with security questions.<sup>128</sup> It is further compounded by what Talal Asad terms the collision of “overlapping patterns of territory, authority, and time . . . with the idea of the imagined national community”—in other words, the difficulty of allowing “multiple ways of life” to flourish in ever-complex space and time.<sup>129</sup> Harmonious pluralism will require rethinking on a number of levels and an honest dialogue among all parties involved in each particular context, informed by constitutional and international human rights standards as well as a judicious sense of history. Academics should not be forgotten in these processes, as there is good evidence that their intervention in France and Germany, for example, has served to lessen the moral panic over so-called sects and cults.<sup>130</sup>

123. See BILL MOYERS, *GENESIS AND THE MILLENNIUM: AN ESSAY ON RELIGIOUS PLURALISM IN THE TWENTY-FIRST CENTURY, INCLUDING EIGHT ECUMENICAL RESPONSES* (Derek H. Davis ed., 2000).

124. Compare Jean Bethke Elshtain’s rejection of “liberal monism” for postulating a “single vocabulary of political discussion.” Jean Bethke Elshtain, *Against Liberal Monism*, *DAEDALUS: J. AM. ACAD. ARTS & SCI.*, Summer 2003, at 78, 78–79.

125. See *ENGAGING CULTURAL DIFFERENCE: THE MULTICULTURAL CHALLENGE TO LIBERAL DEMOCRACIES*, *supra* note 113.

126. RICHARD E. WENTZ, *THE CULTURE OF RELIGIOUS PLURALISM* 118 (1998).

127. *TRANSNATIONAL RELIGION AND FADING STATES*, *supra* note 15, at 8.

128. *Id.*

129. ASAD, *supra* note 5, at 179–80.

130. Massimo Introvigne & James T. Richardson, *Western Europe, Postmodernity, and the Shadow of the French Revolution: A Response to Soper and Robbins*, 40 *J. SCI. STUDY RELIGION* 182 (2001).

## V. CONCLUSION

The eruption of religion into changing political landscapes the world over indicates two important findings. First, the management of religious and cultural difference and the treatment of minorities have emerged as key elements of successful governance. Second, these issues necessitate public debate and dialogue, with educational and media sites emerging as significant popular locations for this purpose, supplementing initiatives by political and religious leaders.

It is heartening to learn that the awareness of heightened risks of religious conflict, or the threats to peace posed by extremist religious groups, has engendered an upsurge in inter-religious dialogue in many parts of the world. However, we must be vigilant concerning the forces of deregulation and liberalization that inevitably accompany democratization and globalization. While the new opportunities afforded religious individuals and communities to represent themselves and to participate in the public sphere are undeniable, and indeed long overdue in many instances, they can equally lead to new forms of separatism and demonization of religious others.<sup>131</sup> The development of civil society values of tolerance, cooperation, and civility can easily be subordinated to the logic of the market or to the pressures of religious and political fundamentalism.<sup>132</sup> It therefore behooves us to play our humble parts, whether as religious or political leaders, educators, lawyers, or media professionals, human rights activists or ordinary laypersons, liberals or conservatives, in ensuring that the call for more public expressions of religion is met in the most equitable way possible.

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131. Rosalind I.J. Hackett, *Discourses of Demonization in Africa and Beyond*, *DIOGENES*, No. 50-3, 2003, at 61-75.

132. *See* R. SCOTT APPLEBY ET AL., *STRONG RELIGION: THE RISE OF FUNDAMENTALISMS AROUND THE WORLD* (2003).