

HOW CAN A UNIVERSAL RIGHT TO FREEDOM OF RELIGION BE UNDERSTOOD IN THE LIGHT OF MANIFEST DIFFERENCES AMONG RELIGIONS, CULTURES, NATIONS, SCHOOLS OF INTERPRETATION, FORMULATIONS OF RIGHTS, AND MODES OF IMPLEMENTING THEM?

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The challenge

In present times, looking for an adequate regime to materialize freedom of religion means to learn. To learn the very reality of religion and of its freedom in today's globalised world. To become aware of the extremely manifold phenomena which are meant when we speak about freedom of religion. And to see that freedom of religion poses not only a complex problem, but that it poses a vast complex of problems.

I will start by disclosing the central – and perhaps provocative – result of my observations. What we are looking for is – as I presume – an adequate regime for freedom of religion. However, the conclusion I have arrived at is this: the solution cannot be one single regime of freedom of religion. The solution can only be a plurality of regimes. And the huge challenge behind this diversity is a new question: is there a basic concept which the manifold regimes should have in common? We should be able to find a general principle governing the plurality of regimes. That would be a decisive step towards global implementation of freedom of religion. But I cannot see that this regime behind the regimes is known to us.

My project to contribute to an analysis of the problem and thus to approximate visions of a solution is to sketch perspectives and finally to dare some outlines of a regime behind the regimes.

Approaches

1. What is 'religion'?

Religion in itself is understood as a relation between God (or a multiplicity of gods or other metaphysical powers) and men. Religion may (like

in Buddhism) also be experienced as the comprehensive insight into a non-personal metaphysical reality. Religion in itself thus is a phenomenon of transcendent reality. 'Religion' however is also a name for that what men think, feel and do if they live on the basis of their religion. Insofar religion is a phenomenon of earthly reality.

2. Religion as a transcendent and a social phenomenon

Human rights are a central means to regulate human coexistence – in other words: they are a central means to regulate social life. Among human rights however freedom of religion has a very peculiar position. It pertains to human life in its earthly, terrestrial dimension as well as in its transcendent, spiritual dimension. Insofar as social life is human life and the terrestrial dimension of human life cannot be separated from the human potential to participate in transcendent spiritual life, social life also includes the transcendent, spiritual element. But human participation in transcendent life can neither be observed or assessed, nor conditioned or influenced as it can be done with human participation in secular reality. What is thought or done relating to social life has to respect the potential of spiritual life. But it is impossible and even forbidden to presume or to ascertain its reality. For the regulation of human life, the transcendent reality is therefore of very relative relevance.

If freedom of religion is concerned, though, the constellation changes. To be the scope of a right to freedom, religion has to be taken as something which is socially real – as a social phenomenon: constituting and shaping relations between men. But when looking at religion as a reality, we cross a critical boundary. What God (or any other metaphysical power) is, thinks, wants, recommends or commands or what that non-personal metaphysical reality is, is known only through the intermediation of human beings. This makes religion open for uncertainty and variety, but also for any kind of assertion of definitiveness. The possibilities of defining religion are endlessly manifold. And endlessly manifold are also the human beings whose teachings create the large amount of doctrines and advice: the great founders who originally communicate the substance of a religion; the great leaders who develop the doctrine, who perhaps also split up a community and define the peculiarities of new denominations, sects etc.; the bishops, scholars, priests, preachers, ministers who transport the assets of the religion from past to future. But besides all these realities created by various leaders, the reality of a religion also exists by virtue of all the believers who inevitably have their own, their highly individual picture of god as well as their personal selection of the teaching – be that within or without a church or any other form of religious community.

3. The individual right – the right to collectivity and autonomy

In legal terms this means that freedom of religion has two sides: the individual one and the collective one. The individual one is very close to freedom of thought and freedom of conscience. It makes religion potentially omnipresent and the shape of religion endlessly variable – including diminution and disappearance. The public articulation of common convictions or religion-borne interests is amorphous, as mass-actions generally are. The collective side is the basis of religious communities and thus the basis of other extremely important ways of manifestation of religion: the common tradition of belief, the common exchange of avowal, the common implementation of rites and services and so on. Beyond that, collective freedom of religion is borne by an elementary human condition: the desire to experience religion as something that is not restricted to oneself but that we have in common with others – as something that is perhaps universal, that is an inevitable truth. The downside is: religion as a source of truth is a hope; the plurality of religions is a reality. That is the difference between the truth of religion and the truth which can interpersonally govern our practical life.

Realised in a collective way, freedom of belief enters special fields of tension. On the one hand, there is the tension between the individual freedom of religion and the collective freedom of religion. The individual, who is a member of a religious community from a general human point of view, keeps his or her individual freedom of religion. If transgressing certain limits of tolerance the community might blame the dissident for apostasy, for heresy or for schism, might punish or expel or even kill him or her. Or the dissident will split the community or leave it. On the other hand, there is the possible tension between collective freedom of religion and the involvement in other social units – be they kinsmanlike, professional, commercial, political or anything similar.

4. Believers and non-believers

Modern societies do not simply consist of believers and non-believers. There are many variations and facets between. There are, for example, religiously distanced people who want to keep their options open – in order to identify or not to identify themselves depending on the situation. They all share the freedom of religion. In the event of dispute, they claim a ‘negative freedom of religion’. And normally it will not be refused. The reasons are various: it may be due to the intensive connectivity between the freedom of religion, freedom of conscience and freedom of thought; the difficulty to discern between a positive and a negative freedom of religion; the secular improbability of the elements of religion; finally the democratic unintelligibility of an essential legal difference between believers and non-believers.

The social reality of freedom of religion is, however, significantly distinguished and characterised by this equalizing coexistence of freedom of belief and freedom of non-belief – and, what is even more important, an indefinite number of variations between them. Freedom of religion is normally manifested through community membership and community building, a special form of organisation, common rites and services, and finally through the invocation of God or some other transcendent reality as an argument for the solution to profane problems. Freedom of religion applied to non-believers, in contrast, does normally not involve building or joining communities – it is rather a matter of individual life, of families or groups of personal like-minded friends; it is not exercised through a special form of organisation; not through common rites and services; and on the other hand arguments for the solution of social problems are concentrated on secular ones. After all: the social freedom of religion for believers regularly goes along with visibility and constancy; freedom of religion for non-believers, however, primarily means invisibility and a maximum of flexibility.

Exceptions to these rules are not excluded, however. There may be groups sharing common convictions and attitudes, and perhaps also feeling the mission to spread these. And the way to develop and to unfold them may be similar to the way religious groups exercise their rights. Especially militant atheists may choose corresponding paths.

5. Constellations of religious congruencies and differences within common spaces of social life

a) Religion and non-religion as an element of living together

The phenomena of freedom of religion materialize in a confusing diversity of levels, spaces, directions etc.

- As individual relations and collective relations as well as the position of individuals amidst a collectivity.
- In peaceful parallel existence of strangeness and restriction or of harmony, respect and cooperation or in contempt, hostility, strife and war.
- Through the different arenas where groups of people meet: religious arenas formed by disputes between the religious leaders and/or the followers of one and the same denomination; social arenas like the ones constituted by racial or ethnic conflicts, by economic circumstances, by standards of education, by living territory, by the traces left by history etc., if religious differences come along with social differences or cross the latter. Sometimes – and not too rarely – political parties or other systems of political rivalry are arenas for political disputes.

- Through the means of implementing relations. On the positive, peaceful side this involves the exchange of information, becoming acquainted with each other, common enterprises and experiences, mutual assistance. On the negative, hostile side this means the blocking of information, spreading of wrong information or negative arguments and judgements; discrimination and exclusion from access to goods; material aggression turned against churches, temples, houses of priests or followers and vented through destruction; finally personal infringement such as deportation, imprisonment, torture, bodily harm, killing, and the extinction of the believing.
- Distinguishing themselves by the transcendent realities which the followers believe in, by the consequences which they draw for their religious practices and/or for their profane ways of life, or finally by the consequences which they draw for the life of the whole society, the general public, the state and its law.

b) Is freedom of religion only a freedom or also a common good?

Religion and non-religion are an omnipresent potential for conditioning human living together. Freedom of religion therefore could and should include the responsibility for freedom of religion of the respective other ones. Any kind of freedom can only exist within a common order applicable to all the subjects who are able to make use of it. Freedom which is not general, which is not for everyone but reserved for one person or a selection of entitled persons only, is not freedom. It is domination. Think of property right or the freedom of commerce which are a priori to be understood as being subject to legal regulation. Freedom is only possible within the framework of mutuality – multilateral mutuality, reciprocity, a fact that those who make use of freedom of religion are normally not aware of. The background is that religion is felt to be a participation in truth. Thus freedom of religion means responsibility for truth: responsibility for the communication of truth; responsibility for the implementation of truth through the individual and through social life. Freedom of religion thus tends to spread the truth, to make truth generally accepted, to make truth to be followed. That may be similar with freedom of conscience or freedom of thought. But no other freedom shares this essential connection with truth. The use of other freedoms can be subject to compromise. The message of truth is unable to accept a compromise.

That was also true in times, and under circumstances, when in certain societies and states only one religion was present. Then it was normally neglected, however. It disregarded the possibility of individual disagreement. Think of the most elaborated practice of inquisition at the height of the European Middle Ages, when the Church stated the difference between the in-

dividual conviction and the official teaching of the Catholic truth, and the state excluded the dissident from society. The Peace of Westphalia still stuck to this way of thinking – by ‘modernizing’ the implementation. Only when dissidents themselves founded the American states and finally the United States, the soil of a new paradigm entered the ‘Western world’. But until now no mature philosophy of coexistence of different religion-borne ‘truths’ has been generally accepted. The development of a philosophy of pluralism which optimizes the chances of religion-borne ‘truths’ to be respected and listened to is a decisive precondition for the prosperity of freedom of religion.

That means that religious communities and thus also and especially the Catholic Church have to withstand severe tensions within themselves. On the one hand they are the trustees of the truth which they took and continue to take out of their transcendent background. They are responsible for spreading out ‘their’ truth over the whole of mankind. On the other hand they will and cannot expect that freedom of religion can prosper or even only prosper for the message of one religion, of one community. They have to understand that the future of the freedom of religion will only survive and prosper as a common good of all religions. And not only that: they also have to tell the secular part of mankind that freedom of religion is also an integral part of their world – that ‘their’ freedom of thought and ‘their’ freedom of conscience will not survive and even not prosper if mankind is bereft of freedom of religion. To achieve that, it will be essential to differentiate between the transcendent reality of eternal life and the social reality of earthly life.

6. The responsibility of the state

a) Diversities

The greatest responsibility for guaranteeing the freedom of religion and for controlling the conflicts and dangers which go along with it lies with the state. It has the responsibility to arrange a peaceful, free, safe and sufficient life for its citizens or other people who live in its territory. Assuming that not all of the people share the same religion (nor even the same interpretation and/or practice of the respective religions) means: the state has the responsibility to develop a commonwealth on the basis of various contradictions:

- Contradictions between a concept of human life, state and society which is based on purely human reasoning and agreement on the one hand, and a concept of state, society and human life which is also based on the religious message about the state, society and human life on the other hand;
- Contradictions between the different religious messages about human life, state and society;

- And contradictions between the different humanist concepts of human life, state and society.

In addition there is another series of contradictions. It starts with the innermost manifestations of religion: the organisation of religious communities, the common worship and service, the rites etc. Supposed that freedom of religion is accepted, there should normally be no conflict. But exceptions can arise.

- The religious manifestations of one religious community can come into conflict with religious manifestations of one or more other religious communities;
- The religious manifestations of a religious community can come into conflict with individual spheres of freedom of religion, conscience and/or thought;
- Or – and that is the most frequent case – the manifestation comes into conflict with basic values or goods of the state and the civil society.

Apparently, a concept which offsets all these contradictions is not possible, and the conclusion that the religious messages are to be disregarded seems to be obvious to some people. The starting assumption for them is: all men have and experience a relation to earthly reality; but not all men discern and accept a transcendent reality. Thus – that is the conclusion – to be aware of the earthly reality is the common character of men. The consciousness of transcendent reality in contrast is a potential for disturbance. Therefore it should be neglected as an individual, ‘private’ risk. This would, however, disregard the essential meaning of freedom of religion: that human existence can be traced back to a transcendent reality. This is a capacity which no one can be denied and which no one can be supposed to never feel. To view one’s own life against the transcendent background or to deny it, is the true asset of freedom of religion, as well as the corresponding right of individual choice. Thus no solution is allowed that excludes from longing to think about a transcendent reality during one’s life, from longing to feel it. The burden to live with contradictions and to give them a bearable, tolerable structure persists.

b) Essays on solutions

Here we touch upon the core challenge of freedom of religion. It would not be fair to claim the availability of easy solutions. What is most necessary is to get ahead with more satisfying ways to render freedom of religion possible under the condition of diversity and contradiction. Let us look behind the matters of course, which we quickly have in mind when we talk about freedom of religion. These matters of course are mostly shaped by familiarity, by our country, by our time, by the opposition of a general religious public

and non-religious individuals, perhaps also by the opposition of an atheist majority and a religious minority. But in what country are things today as they were when we were children? And we all are afraid that things will have changed even more the day after tomorrow. We need deeper going views, a richer stock of construction elements and a better knowledge of their effects.

I will, however, risk some hypotheses:

- The state is the most general trustee for freedom of religion. As the state does not identify itself with a religion (or a non-religious analogy of that), it is the last resort to protect the individual freedom of religion;
- The state has the responsibility to arrange a peaceful, equal, free, safe and sufficient life for all its citizens and inhabitants. Freedom of religion must not violate these values. Individuals and communities which exist or at least act on the basis of the freedom of religion are obliged to respect the other citizens' and inhabitants' rights to a peaceful, equal, free, safe and sufficient life. They are also obliged to respect other individuals' and communities' freedom of religion;
- Collective freedom of religion must not be bartered for a regime of individual freedom of religion only. Freedom of religion must not be bartered for a regime of freedom of conscience and freedom of thought only. From the very beginning the right was granted as a right to 'freedom of religion' – as a right in favour of the persecuted believers, not as a right to 'freedom from religion' or as a 'right of non-religion'. To see human life not only in its social realness but also in a transcendent realness is an essential human habitus. And there is no other right to protect it in a way that freedom of religion does;
- Freedom of religion does not mean that all religions in one and the same country have the same space to unfold in any context. Culture, the number and distribution of followers and similar social circumstances and particularities may play a role regarding differentiation. History and tradition will certainly be strong arguments. But not only the changes of the present and even more of the past teach us that the future has to stay open. The past is not a downright lawmaker for the future practise of the freedom of religion. Freedom of religion is a vital right of every new generation. Limited imbalances between religions or religious communities are especially tolerable if they improve the peaceful living together of a plurality of religions as well as the living together of religious communities, religious people and the secular population;
- But it certainly means that all religions share a regular basic position which deserves the name 'freedom';
- The autonomy of religious communities gives none of their authorities the unlimited power to condition and to control the life of their members.

The general responsibility of the state for a peaceful, equal, free and sufficient life can limit the autonomy of religious communities;

- In order to achieve equality for all, law is the key competence of the state. To acknowledge law as national law only because it is understood as ‘God’s will’ by one or more religious communities violates the responsibility of the state for all its citizens and inhabitants. That is equally true for the handing over of the administration of the law to authorities of a religious community or a group of religious communities.

c) Ways of implementation

These layers of analysis show how far the way from the legal wording of ‘freedom of religion’ to operational rules is. Judicial work dealing with cases by interpreting some words in a constitution or an international treaty may often be too simple, too undifferentiated, much less open for variety or future development, too surprising to be accepted. On the other hand, political decisions through democratic legislation may, for instance, be too influenced by tactics to keep the political power or to arrive at it and too limited to weigh up the scope of possible solutions. Certainly, laws and court decisions are irreplaceable. But the necessity to complement the instruments is obvious:

- To make the real diversity of circumstances visible by comparative studies;
- To enhance and intensify the stock of experiences by observatories;
- To approximate consensus by discussion and agreement through bargaining;
- To facilitate the acceptance of new arrangements by itinerary approaches;
- To accompany practices by monitoring;
- To accompany developments by counselling, etc.

7. Theocracies and totalitarian states: the absolute problem

States are the most important trustees of human rights. They are especially also the most important trustees of the freedom of religion. And law is the most important means to materialize this responsibility. Taking on this responsibility is impossible for totalitarian states. They refuse freedom of religion. And it can also be impossible for theocracies. In the case of theocracies, however, things may be gradually different.

Totalitarian states negate a transcendent reality – especially if the transcendent reality is a religious one, and even more if it is bound to a religious community which may question the absolute leadership of the ruler or the ruling group. In principle this means that totalitarian states negate the social relevance of a transcendent background of any person’s life. Whoever bases a manifestation of his or her personality on a banned transcendent ground, excludes him or herself from the full participation in the totalitarian common-

wealth. And every inclusion in a totalitarian commonwealth supposes and commands that transcendent aspects are excluded from being relevant. The reactions to resistance may be various and go from killing, deportation and imprisonment to different grades of discrimination. But for followers of a banned belief, of banned believes or – as the circumstances may be – of any socially relevant belief in a transcendent reality, full equality with other citizens and inhabitants is impossible.

Theocracies, on the other hand, privilege one religion and exclude all the others from full participation: both believers of other religions and non-believers. There may also be differences in the intensity and the perfectness of the exclusion as well as differences in the degrees of the exclusion ordered by totalitarian states. But there is one extreme constellation: if law is understood to be directly given by God and if the judges or similar officials who administer the law are understood to be commissioned and authorized by God. Law is man-made. And it should be the rational result of a process of human exchange of opinions. Religious thinking may be one of the sources to find good legal rules and good legal decisions. But as law is man-made and the administration of the law is a human mandate, everyone who is confronted with law and the courts in his or her understanding of the law might follow his own conviction – be it his own religion, his own morale, his own rationality. The supposition that the law is ‘God’s word’ and that the judges or similar officials are God’s commissioners deprives the people concerned of their human independence and compels them to be obedient to a God who is not ‘their’ God and to respect the authority of the judges as a divine mandate which can only be based on a religion which is not ‘theirs’.

Altogether, there is a deep and very important rift between totalitarian states and theocracies on the one hand and more or less liberal, more or less constitutional states on the other hand. This difference is commonly characterised by an essential intolerance against religion and a resolved readiness for a religiously or anti-religiously rooted inequality.

Some consequences for the global world

1. The comprehensive relevance of ‘globality’

a) Territorial ‘globality’ versus historical ‘globality’

To get ahead with materializing freedom of religion in a globalized world, it is urgently necessary to understand ‘global’ not only in terms of a geographical, territorial meaning. And not only as a phenomenon of geography, communication, traffic etc. It is necessary to realise ‘global’ as the ever more complete, more intensive self-detection of mankind: mankind as an entirety;

not only as the entirety of the population living today, but also as an entirety over the history, from the first beings who deserved the name 'man' to this very day. What was religion throughout all these thousands of years? Throughout all the multifariousness of human civilisations and cultures? In present times – unlike any other time in the past – men know so much about their history. Men also know more about religion than before – about the visions of transcendent reality and about the social reality of religion. People know about the manifestations of religion at very different times at very different places. And people ask: is that God's world all together? Are those all God's children? And if not, what then is the meaning of the different ways for the equal children? Or are children a priori unequal? Over the centuries, when thinking of religion, people knew only one religion or a very limited multiplicity of religions. And they knew religion only as one and the same religion, across all eras they experienced or they remembered one step of development or a few steps. Now the world history of religion teaches them how often religions come and go, split up or get unified.

But not only that. They also know about Christianity from Christ's birth onwards: throughout the different times, in the different places, as the many churches, the denominations, the many other particular units. They even know about the many manifestations shown by the Catholic Church over time, in the diverse places, under such various conditions. And they ask themselves again: why so many ways, so many changes? Are not all men God's children? Why should not all their ways be God's ways? And what does that essential challenge mean for freedom of religion? Who is allowed to make a difference between religion and religion, and when? Who is entitled to require sacrifices if the 'right' way was failed?

b) The lessons of history

The lessons taught by the history of mankind are impressive – and unambiguous.

On the one hand there is clear evidence that men have always lived on religious ground. Not all men. But religion in principle has always been important as a framework of human life. Regarding the history of mankind, the secular claim that the religious ground of human life could get lost or become irrelevant looks vain.

On the other hand, we see that the landscape of religions has changed all the time. Even Christianity has changed all the time. And the whole picture of religions has been developing all the time. There is an extreme difference between the self-conception of religions of being absolute and historical reality. And also the self-conception of a religion of being the right one and

the only right one becomes extremely relative. No one can dispute that claim to be legitimate in itself: to be communicated by the community and to be believed by the followers. But no one from outside is entitled to confer this title or to deny it.

Thus we observe a very complex situation. Religion is a human capacity, a human potential, a human habitus, is a *conditio humana*. But religions as phenomena are nothing absolute. Each of them may develop itself and will probably develop itself. The believers experience 'their' religion in a certain situation, at a certain time. But any other believer may experience it in a very different way.

2. International governance

a) The institutional difficulties

There is one consequence which is irrefutable: freedom of religion. Freedom of religion for everybody. And freedom of religion as a common good for the world. But what ways to materialise that are the right ones, and what ways the wrong ones? What can the formulation of one fundamental right mean? One sees how important the concrete situation is: the situation of a state, the situation of a civil society, sometimes the situation of a region, an ethnic community etc. The distance from the formula of a universal formula to the reality of national, regional etc. life is extreme. And so is the distance from one court of human rights to the reality of vernacular reality. Are global minimalia possible? Are global directives possible in order to lead particulate practices and regulations? It is necessary to detect the complexity of situations which jeopardize, violate or cancel freedom of religion; and it is necessary to detect the whole complexity of the ways to grant and to guarantee freedom of religion.

With respect to fostering the stock of knowledge and experiences of the doctrine, the legal regulation and the practice of freedom of religion is therefore also a common responsibility of all states that want to integrate freedom of religion, as well as of all religious communities. Developing the proficiency to interpret and practise freedom of religion in order to improve for instance the regulations and practice or to adapt them to the changing structures and mentalities of the populations, their convictions and their attitudes etc., is likewise a common business for states and religious bodies. This in fact means to also engage in the activities recommended above for the national situation – comparative studies, observatories, reports about procedures like bargaining, itinerary approaches, monitoring of the practice, accompanying developments by counselling – in order to arrange them on a global level. A transnational or an international agency to care for that is to be strongly advocated.

b) The split world

To be honest, however, one important aspect of the reality of this world has to be regarded: the division of the world into ‘liberal’ states on the one hand and totalitarian states and theocracies on the other hand. In the framework of the United Nations the concern for freedom of religion causes a dilemma. Global governance requires an institution in which all nations participate. And that representation is only effective if the nations act through their governments. Thus the United Nations are an assembly of governments regardless of whether the states (and their governments) are in favour of freedom of religion or against it. And in fact in the United Nations theocracies and totalitarian states have a strong vote.

Freedom of religion thus is a value which we cannot trust to be unequivocally developed and defended by the United Nations. A separate Organisation should therefore be discussed. Such a solution is not unusual. There are also other values which to foster and to develop only some of the states and governments are interested intensely enough. For instance the organisations developing the market economy. The organisation could probably not be built within the UN-framework. But there are other ways available. Whether a group of especially involved states arrange a separate international Organisation, whether non-governmental agents (presumably churches and other religious communities) or whether a type of private law corporation is to be used, cannot be reflected here.

An international institution run by the states that really want to arrange for freedom of religion or that at least tolerate it and that, in any case, offer full and equal participation in the commonwealth without any reservation against religious people, could be the basis of an international seedbed for concepts of freedom of religion. It could be a place for collecting materials about facts, regulations, institutions and practices. It could be a framework for scholarly research. Political strategies there could be discussed. Any experiences could be exchanged and discussed. Experts could get acquainted with each other. Thus also personal resources could be developed. The expertise to optimise freedom of religion could be strengthened.

The global challenge of religion requires a global culture of freedom of religion. In this endeavour the Catholic Church should take a strong role – in giving and taking.