Whose God? A Human Rights Approach

https://www.e-ir.info/2015/12/23/whose-god-a-human-rights-approach/

J. PAUL MARTIN, DEC 23 2015

**This is an excerpt from *Nations under God: The Geopolitics of Faith in the Twenty-First Century*.
Available now on Amazon (UK, USA), in all good book stores, and via a free PDF download.
Find out more about E-IR's open access books here.**

This article[1] argues (a) that secularism, understood as the range of theories and practices calling for the separation of state and religion, has become too amorphous and culture-bound a concept to guide religion-related policies in contemporary domestic and international affairs; (b) that secularism needs to be replaced by the more widely accepted and tested standards and institutions of the modern international human rights regime that define substantial legal obligations and practices developed and accepted through treaties by the world's states; and (c) that the human rights framework calls not merely for state neutrality but also for state engagement with religion and thus for national and international institutions able on a systemic basis both to protect the rights associated with freedom of religion and to minimise inter-religious discrimination and conflict.

The Limits of Secularism

When Bismarck set about building a unified Germany in the middle of the nineteenth century, he found he had to work with numerous small political entities in which rulers and citizens generally espoused common religions, typically Lutheranism, Calvinism or Catholicism. This fragmentation reflected the solutions adopted in the 1648 treaties of Westphalia that had ended the Thirty Years War. Through these treaties, the principle*cujus regio, eius religio* was established*,* that is, that citizens should share the religion of their ruler, although the treaties also provided some protection for minority religions. Two hundred years later Bismarck sought to unify these diverse, still religion-conscious, entities into a single German state without arousing religious animosities. With the exception of the Catholics, he achieved his goal through pragmatic devices and motivations, short conflicts and individualised negotiations with the different parties. In each he pointed out the political and economic benefits of the union as well as the ideals associated with German nationalism and culture. His biggest challenge was incorporating Catholic Bavaria, for which he developed more aggressive policies under the rubric of *Kulturkampf or culture fight.*[2] The core of his strategy was to insist that all schools be without a religious presence and that the state control clergy education and ecclesiastical appointments.[3] In fact, state control of clergy appointments was not achieved as Bismarck soon found it necessary to seek as an ally in the legislature the large Catholic Centrum party. Nevertheless as German chancellor from 1871 to 1890, the separation of religion and the state was a consistent component of his strategy to unite Germany. His answer to the God question was simple: 'No one's God in the public sphere!'

Theories and practices of secularism have had a long history in the West as a political paradigm to define separation of religion and state.[4] Within Christianity its roots can be traced back to Jesus' words: 'Render to Caesar the things that are Caesar's and to God those that are God's'.[5] A form of separation of civil and religious powers was formalised politically in the fourth century of the Common Era under the Roman Emperor Constantine.[6] However, separation and pure secularism have never been fully implemented. With the exception of a few states committed to atheism such as North Korea and for periods, other communist states, virtually all other political systems retain signs of their respective religious heritages.[7] The continuing signs of these heritages include physical artefacts, national calendars and official holidays as well as the forms of national observance enforced by the civil authority that have roots in religion. This blurring of the lines between civil and religious elements is now being undermined by the

Whose God? A Human Rights Approach
Written by J. Paul Martin

growing presence in the West of Islamic communities. Islamic patterns of religious observance challenge traditional Western customs in ways that expose the former's bias in favour of the West's Christian heritage. One example which has received much media attention is the way in which France, which has long valued its form of secularism as part of its shared national identity, has engaged in debates about the legality of Muslim women wearing one or other form of the veil. In question is to what degree France's national identity and public culture retain Christian characteristics and, thus, whether a new consensus is called for. These challenges highlight the degree to which an erstwhile assumed common identity and practices might not give equal status to those of new or other minority citizens. Either way, such conflicts undermine the presumption that official secularism in the West assures, and even can ensure, a neutral state and equal treatment for all religions.

Bismarck's experience is important because it was a classic application of the concept of secularism as a necessary means to build unity among communities with strong but different religious affiliations. His approach provides a useful contrast for those now seeking to address religious diversity in our increasingly religiously plural societies. On the one hand, Europe has seen the increasing secularisation of its societies in the sense that religious observance among Europeans has diminished substantially during the course of the last hundred years.[8] On the other hand, many of these same communities have been challenged by the increasing presence within them of Muslim immigrants turned citizens whose faith and its religious observances are critical to their social identity. In the process, traditional conceptions of the secular state have been called into question both by the degree to which Islamic communities are not part of the dominant *modus vivendi* and by the need for states to put in place institutional arrangements that enable them to deal directly with tensions between religious communities.[9]

While Bismarck dealt easily with states that had allegiance to one or other of the Protestant traditions and met greater resistance from Catholic Bavaria, they were all Christian communities, sharing many common roots, beliefs and practices. While Christianity and Islam are both monotheistic religions and share many beliefs and traditions, fifteen centuries of political, cultural, military and economic interaction have sculptured many wounds and mental constructs. Today the communities are no longer so segregated geographically and politically. The explosions in communications and worldwide migration have created new patterns of interaction between them. This is both a global and a local phenomenon. In Nigeria, for example, the multiple patterns of past interaction between the largely Islamic north and the largely Christian south have been disturbed by an increasing awareness of differences, especially in access to wealth, between the two regions and by the aggravation of these tensions by the militant Islamists, notably Boko Haram, who have adopted violence as the way to achieve their religious and political goals. In question is the ability of existing Nigerian public and private institutions to minimise the violence and assure peaceful relations between the two, roughly equal in size, religious communities in a nation of around 170 million people. This and similar problems point to the urgent need for states to develop the national policies and the institutions needed to assure peaceful and non-discriminatory relations among its citizens of different faiths. Traditional forms of secularism, such as that implemented by Bismarck, which rely on separation of religion and the state do not provide an adequate theoretical basis for the state actions and institutions needed to assure peaceful relations among religious communities as diverse as Christianity and Islam.

This brief overview of new social conditions, combined with the findings of many recent academic studies,[10] shows that secularism, understood as the range of theories and practices calling for the separation of state and religion, has become too amorphous and culture-bound a concept to guide religion-related policies in contemporary domestic and international affairs. Its answer to the God question was: 'No one's God—but states have and continue to tolerate some of the relics.'

Recent Changes

Today, the various conflicts that arise between Islamic communities and the West draw on many more elements than religious beliefs. One fundamental principle of Islam is the unity of civil politics and religion, enabling Muslim civil leaders to link specific political goals with religious and moral imperatives. Muslim fundamentalists, for example, frame their mission as a jihad, a fight to bring the rest of the world into the Muslim Ummah or community under the guidance of Sharia, namely the complex of Muslim beliefs and practices based on the Quran and the Hadith or sayings of the Prophet. Within this perspective the West is not necessarily defined as Christian. Rather it is defined

Whose God? A Human Rights Approach
Written by J. Paul Martin

as evil, anti-Islamic and exploitative. This political and cultural dichotomy is reinforced by the Islamic tradition that eschews any division between the religious and political in public affairs. Both in principle and practice, political (religious or civil) authorities incorporate their (Shia, Sunni, etc.) interpretation of Sharia into public life. This perspective does not exclude human rights but it redefines human rights by placing their interpretation exclusively within the parameters of Sharia. This is well illustrated in the 1990 Cairo Declaration on Human Rights in Islam developed by the Conference of Islamic States. This and other statements seeking to incorporate human rights into Islamic thought and practice preclude a secularist approach to civil life by insisting on the primacy of the 'civilizing role of the Islamic Ummah which God made the best nation and has given mankind a universal and well-balanced civilization … .'[11] Similarly, throughout the Declaration's 25 articles there is the frequent repetition of principle that 'all the rights and freedoms are subject to Islamic Sharia'. Thus, the good news is that this document accepts the notion of human rights. However, Islam's answer to the God question is: 'Allah's law is supreme in the public sphere.'

In the face of such a strong position, the question facing the rest of the international community is to what degree is there space for a new shared or common future enterprise defining human rights.[12] The problems arising between religions and the state in the public sphere are both vertical—that is, between the state and religion—and horizontal—that is, relations between religions within the state. Bismarck and most other Western political systems found solutions to both dimensions through the privatisation of religion and religious differences. in the West, common educational and health systems, for example, have been successfully developed on this basis without infringing individual religious liberties. As indicated above, the model is now being challenged in at least two ways by the growing Islamic presence in the West. Moreover, Islam's model for multi-religious communities—that is, relations between different religious communities living within the same spaces—is one based on the primacy of Sharia and the Muslim community's laws and practices, which define a reduced status for *dhimmis*, people of the book, namely Jews and Christians, and an even more reduced status for those professing other beliefs and religions.[13] In comparison, the Western tradition has accepted secularism as an adequate principle to assure peace among different communities. The secularist and separation paradigms, however, have not historically provided the institutional forms and tools necessary to address tensions among religions.

In the modern world, states like Nigeria with serious tensions between religious communities are obliged to engage the parties and devise institutional provisions that assure peaceful inter-religious relations over time. In other words, they need solutions that are systemic and acceptable to both communities. Within the international human rights tradition they must be committed to non-discrimination on all grounds. Moreover, this is an urgent agenda as a number of regional conflicts have strong religious characteristics, such as those between the north and south of Nigeria and in different parts of the Middle East. In other words, religious affiliation has become a strong component of threats to international and regional security. In such situations where one of the two largest religious communities in the world defines itself and all its public domestic and international politics as God-given, the answer to the God question is truly problematical.[14]

Human Rights Standards and Institutions

The modern international human rights movement offers an alternative to secularism because it establishes specific standards and institutions that have been crafted and refined by the world's community of states, including most Islamic states, at both a global level under the auspices of the UN and through regional level treaties and inter-governmental organisations. In addition to Article 18[15] of the Universal Declaration of Human Rights (UDHR), religious freedom is supported by other articles in the same document and in subsequent covenants. Among the most notable are those prescribing non-discrimination (Article 2), inequality before the law (Article 7) and arbitrary arrest and exile (Article 9), and those promoting privacy (Article 12), freedom of movement (Article 13), the right to marry and found a family (Article 16), and freedom of expression and opinion (Article 19). These rights and freedoms have been incorporated into treaties that have in turn been ratified by many of the world's states[16] and incorporated into their national constitutions and legal systems. The Convention on the Rights of the Child, for example, which has been signed and ratified by all but three of the world's states, specifically protects the right of parents to determine the religious education of their children.[17] Another example, Article 27 of the International Covenant on Civil and Political Rights states that persons belonging to minorities 'shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own

Whose God? A Human Rights Approach

Written by J. Paul Martin

language'.[18] As a result of subsequent practice and problems, various UN entities, notably the Human Rights Committee, have helped to build and apply a body of international case law governing religious practice.

At first sight these international standards and institutions appear to have followed a secularist approach to religion in public affairs. There is, for example, no international treaty on religious freedom, only a UN Declaration or general statement of values without any legal force, although the related individual articles noted above have acquired legal obligation through subsequent treaties. The 1976 UN Covenant on Civil and Political Rights, for example, protects religious belief as one of a select few non-derogable rights that those that must be protected even in states of emergency. Together with gender, ethnicity and other such criteria, in treaties and legal documents religious affiliation and practice are identified as illegitimate and thus proscribed grounds for discrimination.[19] Moreover, the practices and interpretations associated with religion by the different states are increasingly being scrutinised by international bodies committed to international standards of non-discrimination.[20] In question is not so much religious freedom as whether a given state favours one religion over another. The human rights perspective calls for the state to be neutral but also to take positive action to assure non-discrimination and freedom of religion to all its citizens, rather than simply separate itself from religion. In fact, unlike in theories of secularism, state neutrality may often call for positive state actions such as providing the equitable support to all educational and health institutions run by religious agencies within its jurisdiction. The human rights perspective calls for equal treatment, but also for states to take all actions necessary to ensure non-discrimination and freedom of religion for all its citizens, rather than simply to separate itself from religion as implied in the secularist tradition. This approach assumes that religious institutions are legitimate social entities that deserve treatment equal to that enjoyed by other social entities, whether God enters the picture or not. The human rights perspective does not address the question 'Whose God?' but asks whether citizens' and communities of citizens' religious and belief rights are protected.

Within the human rights framework the answer to the God question is first of all to provide criteria by which to identify all forms of discrimination and any social consequences for those who wish to believe and practice their beliefs, whether a God is involved or not. Second, the human rights regime is shown to promote changes in a given society's culture by providing an alternative set of norms requiring actions that ensure equality among religions. Success is not guaranteed. It depends on both the internal logic and persuasiveness of the principles and institutions and the ways in which it encourages people suffering from discrimination to organise themselves and redress the balance. Whereas in the initial years of the human rights movement, especially in the 1960s and 1970s, the emphasis was on experts developing the principles and practices and outsiders coming to the aid of victims, since then the emphasis has been on empowering the victims to become agents of their betterment. In the specific case of religion and its various social forms and problems, human rights principles and practice offer criteria and institutions to identify and define all forms of discrimination such as persecution, coerced conversion or hate speech. The current regime also offers still limited avenues to remedies as they depend heavily on relevant institutional powers and encounter popular resistance to social and culture change. One of the most important of these remedies is popular human rights education through both schools and other informal educational mechanisms. This is important because unless people know their rights they cannot claim them and mobilise to get them.

Human rights principles may not answer the God question, but they do provide rules of engagement that focus more on the rights and freedoms of citizens. In doing so, the treaties and principles define obligations on the state to protect those rights and freedoms of all citizens—Christians, Muslims and others. They place the God question and its responses within a protection framework but refrain from judgement with respect to the object or content of those beliefs. Human rights protect the right to hold those beliefs but not the beliefs themselves, provided they do not impinge on the rights of others. It also protects the subsequent actions of believers provided the beliefs and actions do not infringe those of others or cause other forms of social disorder. In this sense it spells out the obligations of states to ensure religious tolerance among its citizens. Thus the role of the state is not only to avoid it or its agents infringing the religious beliefs and related actions of its citizens but also to ensure that those rights are known by all and not impinged upon by any social forces within its jurisdiction.

Engaging Religions

In international human rights law, the state has special obligations to protect minority religions.[21] There are two

Whose God? A Human Rights Approach
Written by J. Paul Martin

especially difficult problems in the context of religion, namely proselytism and the hate speech to persecution spectrum. These concern relations between religion and other members of the society rather than actions by the state.

While each of the three main monotheistic religions believe in a single, all-powerful God who is active in human history, many in each tradition are reluctant to discourse on whether it is the same (i.e. shared) God. The single 'common' monotheistic God is portrayed in culture-bound images, defined by each community's interpretation of its history and its interpretation of the ongoing mission that God has assigned to them. Thus, any answer to the question 'Whose God?' is culture-specific. For Muslims, Christians and Jews, their respective images of God are of one who actively guides the lives of their community. In both the Islamic and Christian traditions in particular there is a God-ordered proselytising mandate to win converts to one's faith.[22] Most traditions of Islam also strictly forbid leaving the faith but welcome those leaving other faiths. These practices and any related sanctions are typically enforced by the civil government in Islamic states. They have become increasingly problematical in regions where Muslims and Christians are mixing more and thus making intermarriage and changing one's faith more likely. Conditions in the resulting newly mixed communities vary from those created by Pakistani immigrants in England and Algerians in France to the situation of migrant workers in the construction and domestic servant industries in the Middle East. If the building of mosques is resisted in England and France, the construction of churches is completely forbidden in Saudi Arabia. While not so tangible as the physical relocations, modern communications, by increasing the flow of information across communities, have also enabled an undetermined amount of religious proselytization and propaganda. These new conditions place a real strain on prior policies and practices with regard to peaceful co-existence.

The other challenge faced by the human rights regime is that of hate speech. This is especially challenging for human rights on account of its historical commitment in the West to free speech.   However, even with the rules and some enforcement mechanisms, the human rights regime is not a stand-alone system. It needs enabling institutions and practices in both the international and domestic fora. Thus, from the point of view of the question 'Whose God?', the human rights regime offers rules for fair and just action and interaction but it does not determine the outcome. In order to protect such rights as freedom of expression, assembly, belief and movement where the need is greatest, international and domestic regimes need supportive national and international institutions.

Whose God?

If we agree that neither secularism nor human rights theory and practice answer the question 'Whose God?' while at the same time religions remain powerful if very different political forces, it is incumbent on each jurisdiction to develop the institutions and personnel necessary to assure peaceful relations among the different religious communities. However, while I have argued that religious communities ought to possess the same rights as other organisations within civil society, at the same time states must recognise the degree to which religious communities are composed of members espousing comprehensive worldviews and social loyalties to which all else, including their own life and death, are subordinated. Moreover, these loyalties often extend to worldwide systems whose events or decisions can also demand responses on the part of individual members. This characteristic separates religious and some other ideology-based communities from most other members of civil society whose loyalties are less comprehensive or demanding.

These dimensions have to be understood by the state and at the same time the state needs institutions and qualified personnel with the capacity to assure peaceful relations among potentially hostile communities, such as between Muslims and Christians in Nigeria. Such institutions might (a) monitor all forms of discrimination and social animosity on religious grounds, (b) identify emerging problems and tensions as well as design early-warning systems, (c) maintain a database covering both domestic relations and information about remedies that have worked elsewhere, (d) prepare and monitor curricula[23] which address religious issues, and (e) develop specialised public officials able to work closely with religious groups. The forms and size of such institutions will depend on a state's history, culture and current problems. This leads to the final conclusion, namely that the human rights framework calls not merely for state neutrality but also for state engagement with religion and thus for national and international institutions able both to protect the rights associated with freedom of religion and to minimise inter-religious discrimination and

Whose God? A Human Rights Approach
Written by J. Paul Martin

conflict.

Notes

[1] This article builds on earlier articles by the author, notably 'Re-Thinking Secularism: A Paradigm based on Non-Discrimination', in Jaime Contreras and Rosa Maria Martinez de Codes, Eds., *Trends of Secularism in a Pluralistic World,* (Madrid, Iberoamericana/Vervuet*,* 2013), 145-162; and 'Religions in a Globalizing World', in William A Barbieri Jr., Ed. *At the Limits of the Secular, Reflections on Faith and Public Life* (Grand Rapids Eerdmans 2014), 331-360*.* In the first he argued that there are no continuing reasons to exclude religion from public spaces and in the second that international human rights offers a needed alternative normative framework to move beyond outdated uses of concepts of secularism and the separation of religion and the state. This chapter seeks to define the civil/shared norms and institutions needed to assure both religious freedom and peaceful inter-religious relations in modern pluralistic societies.

[2] Jonathan Steinberg, *Bismarck, a Life*, (Oxford, Oxford University Press 2013), 320

[3] The last provision illustrates how secularism's vaunted 'separation' is rarely perfect. Seeking state control of clergy appointments is hardly separation of state and religion.

[4] Charles Taylor, *A Secular Age* (Cambridge, Belknap, Harvard, 2007)

[5] Gospel of Mark 12, 17.

[6] Pierre Lanares, Constantine, *Worldwide Human Rights and Religious Liberty,* Vol. I*,* (International Association for the Defence of Religious Liberty, Bern Switzerland, 2013), 134-139

[7] Alfred Stepan, *Arguing Comparative Politics*, Oxford, Oxford University Press, 2001) Chapter 13, 'The World's Religious Systems and Democracy'.

[8] This analysis is disputed by scholars such as in Peter Berger, Ed., *The Desecularization of the World* (Grand Rapids Eerdmans, 1999).

[9] Stepan, ibid.

[10] In addition the works of Charles Taylor, Alfred Stepan and William Barbieri listed above: Jose Casanova,*Public Religions in the Modern World* (Chicago, University of Chicago Press, 1994), *Secularisms*, Janet R. Jakobsen and Ann Pellegrini Eds. (Durham and London, Duke University Press 2008); *Varieties of Secularism in a Secular Age*, Michael Warner, Jonathon VanAntwerpen and Craig Calhoun, eds (Cambridge, Harvard University Press, 2010)

[11] Organization of the Islamic Conference, 1990, Preamble to the Cairo Declaration.

[12] See Michael Freeman, 'The Problem of Secularism in Human Rights Theory', *Human Rights Quarterly*, 26 (2004), 375-400; J. Paul Martin, 'The Three Monotheistic World Religions and International Human Rights',*Journal of Social Issues*, 61, 4 (2005), 827-845

[13] A more detailed discussion can be found in Adnan Aslan, *Religious Pluralism in Christian and Islamic Philosophy, The Thought of John Hick and Seyyed Hossein Nasr,* (Richmond Curzon 1998).

[14] A survey of the Muslim/Christian landscape in Africa can be found in *Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa*, (Philadelphia, Pew Forum on Religion and Public Life, April 2010).

[15] Article 18, 1, reads: 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to adopt a religion or belief of his choice, and freedom, either individually or in community with

Whose God? A Human Rights Approach

Written by J. Paul Martin

others, and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.'

[16] The right to change one's religion, found in the UHDR Article 18, was omitted in the subsequent Covenant of Civil and Political Rights.

[17] Article 28, UN 1989 Convention on the Rights of the Child. It also includes other articles affirming freedoms and rights shared with all human beings.

[18] A similar article protecting minority rights is to be found in the Convention on the Rights of the Child, Article 30.

[19] 'Religions in a Globalizing World', Chapter XIII in William Barbieri.

[20] Notably in Europe. See Peter G. Danchin and Elizabeth Cole Eds.,*Protecting the Rights of Religious Minorities in Eastern Europe* (New York, Columbia University Press, 2002).

[21] See 'Introduction', Danchin and Cole

[22] Tad Stahnke, 'Proselytism and Freedom to Change Religion in International Human Rights Law',*Brigham Young University Law Review,* 1 (1999). 251-350

[23] See, for example, *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (OSCE, Office of Democratic Institutions and Human Rights, Madrid, 2007)

About the author:

J. Paul Martin is Director of Human Rights Studies at Barnard College, Columbia University. Professor Martin's professional experience has been built around his 29 years as Executive Director of Columbia's Center for the Study of Human Rights, of which he was a co-founder, along with Law and University Professor Louis Henkin. Previously, and later simultaneously, he was Director of the Earl Hall Center at Columbia University; a lecturer in the School of International and Public Affairs; and Adjunct Professor at Teachers College. He has also served as Director of the Human Rights and Humanitarian Affairs concentration at the School of International and Public Affairs, as well as Academic Advisor for the human rights concentration in the master's program of the Graduate School of Arts and Sciences. Professor Martin's early publications were on moral education. More recently he has focused on human rights and human rights education. He has edited three collections of human rights documents and contributed to the *Oxford Encyclopedia on Political Science* and *Encyclopedia of the Modern Middle East*.