

A Surprisingly Provocative Human Right: Freedom of Religion or Belief

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23rd Annual International Law and Religion Symposium Opening Address
BYU Law School
2 October 2016

Good evening, everybody. Let me start with expressing my very profoundly felt gratitude to all those who have brought us together here—organizers of the conference, the many people who made that possible. And then, of course, Cole-- I have to say, you have been such a blessing. Now I'm trespassing? Human rights is the secular language, but I'm saying it, yeah? I am saying-- I'm trespassing. This is not U.N. terminology any longer. A blessing to the issue of freedom of religion, I believe. And I personally have felt it over all these years. And I mean, I think there are many in the room who know you well and who appreciate your commitment, but a commitment always in that spirit of modesty, never imposing, always trying to be serviceable. And this has been a tremendous, wonderful experience, and I'm sure that our friendship will continue. Thank you very much.

Working for freedom of religion, I believe, is actually very easy because this is the most fascinating task the U.N. can give. The pay is perfect. It's tantamount to what a Mormon missionary gets. I'm not giving any details. But it's perfect because it adds also to the degree of independence as special rapporteurs are in and out. Sometimes I use almost biblical language. I'm saying I'm in the U.N. not of the U.N., no? OK, yeah. So an independent person and this is a sometimes crazy position. But freedom of religion, I believe, is actually the most fascinating task. Why? I think you know it all. But this right brings together the human rights approach and religion. The human rights approach that really focuses on human beings and then religion-- religion. So some people say, oh, this is not easy. Some people would go a step farther and say, this is a paradox. And some even say, it's impossible. Some of you might know there is a book out-- I'm not mentioning the author, because I don't want to be too nasty on anyone in particular—but the book is titled *The Impossibility of Religious Freedom*-- stupid stuff. It's pretty fashionable in academic circles nowadays. I don't know why. So there's nothing paradoxical about freedom of religion. I believe there's nothing impossible. But one thing I can tell you, it's highly provocative. It's highly provocative, right? For good reasons. And I would say these provocations can be pretty healthy. So maybe this is also what I like with freedom of religion. I believe it holds a lot of provocations for governments-- I will go into that part in less than a minute-- but then also for religious

communities. But also for societies abroad, including Western societies, and maybe even for human rights. So a number of provocations.

Now let me start with healthy provocations for governments. Government's states are the ones signing up international covenants, so they have signed up the Universal Declaration on Human Rights. You have Article 18, Freedom of Religion or Belief, then the International Covenant on Civil and Political Rights, again Article 18. And I could, of course, enumerate countless documents that testify to a broad agreement. So at the surface, we have a broad agreement on freedom of religion, I believe, as a basic human right. But if you scratch the surface a little bit, a little bit, what you discover is a rhetoric in many governments, in many states, that can succinctly be summarized-- yes, but. Freedom of religion I believe, yes, but. And it can be a big but. So let me give you three examples. So some say, yes, freedom of religion, but only for the real religions. And then the states define legitimate religious options, maybe limiting those to the divinely revealed religions, or to classical religions, including more recent religious movements. And in some constitutions you find, OK, freedom of religion, but limited to six options, five options, three options, two options, one option. What is that? It's not a joke. It's very sad. Because the government does not have the authority under freedom of religion or belief to define legitimate options, but has to recognize human beings. They are the ones who define what they believe. The self-understanding of human beings in questions of religion or belief is the starting point. It's not always the end of the story. Things can be more complicated. But it must always be the starting point. So I don't believe if governments tell me we have 16 religions, or we have 22, let alone we have only three. I mean this cannot be true. I mean, this is really a slap in the face of realism, of religious diversity as it exists in virtually all countries. Another yes, but.

Freedom of religion, fine. But first you have to seek recognition. What is that? Recognition— administrative recognition, and that can take time. Sometimes it can take ages, an eternity. Once you've got it, you have to renew it. It's already expired. And this is actually happening in many countries- - recognition. But apart from the bureaucratic hassle, the very term is strange because read the first words of the Universal Declaration of Human Rights. The first words of the preamble of the ever first International Human Rights document-- it's recognition—recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family. Wonderful. Recognition is the first word. But recognition not in terms of an administrative procedure, no, recognition as a basic insight. Because otherwise recognition could not be given to an inherent dignity. This is the starting point of all recognition procedures. It's the axiomatic precondition. It's the unconditioned precondition of any

meaningful human interaction whatsoever. It's the source of law, and morality, and normativity-- recognition of human dignity. So it's the starting point.

We start with recognition as something given and not that people have to work for, to apply for. I mean, what is that? Certainly not a human rights approach. Another example-- yes, freedom of religion is great, but only within the limits of the law. What does that mean, within the limits of the law? OK, it's true. Limitations are not entirely precluded. Again, human life, human society can be complicated. And this can be a truism, actually an invitation for governments to impose all sorts of limitations, stipulations. And sometimes they read the International Covenant on Civil and Political Rights, but they seem to ignore one little word that has a lot of weight-- one little word-- when it comes to limitations. That little word is only, only limitations on freedom of religion-- with only if, if, if-- there are a number of ifs, only if. Which means-- this is not a balancing exercise-- a little bit of freedom, a little bit of public order, so we-- the weighing scales. And if we have a serious public order issue, whoop, then freedom goes away. So the blame. It's a justification logic. At the starting point, you have freedom. And if limitations are deemed necessary, then the burden of justification falls on those who argue for limitations. But they have to really prove it empirically, make it plausible, and go through all the criteria. This is not a weighing logic. It's something different. Even the limitation should, in the end, be in the service of an order that gives freedom, that gives breathing space. So why are so many governments across the world, in various regions, anxious to limit, restrict, or even twist freedom of religion or belief? Twisting it to such a degree that you may sometimes wonder what is left. Is there anything left? Some governments want to preserve an existing religious hegemony. I mean, this is pretty much the case in the MENA region. We all know it, Middle East. Where states stage themselves as custodians of religious truth, of religious purity, waging wars against heretics, against non-believers. You know it all. But then it also happens in many formerly secular states under the auspices of national identities.

So protecting national identity within then religion is a basic ingredient. You see that happening in Russia, in India. But sometimes also under the auspices of Buddhism, so in many, many countries-- or Hungary. Today we had the referendum on closing the borders for refugees. And there is certainly an element of religious xenophobia in that. And yet there's another pattern in which religion itself does not even play the main role because freedom of religion or belief is not about religion only but also about freedom. So it's a right to freedom. And this one right to freedom somehow encapsulates many other rights to freedom. You cannot have freedom of religion without freedom of expression. You cannot have

freedom of religion without freedom of assembly. So it's somehow the gateway to freedom. And the more authoritarian a government is-- be it a theocratic government with an official state religion, or secular-- the more authoritarian the government, the more afraid they are of freedom-- freedom. Especially one-party systems always have to nourish the illusion that there's a seamless identity between the people and the party, a seamless identity. It's an illusion. That in order to keep that illusion, then communication must be placed under strict surveillance. And therefore, also, freedom of religion is dangerous because it brings people together. It brings people together who convene, who start talking, and who knows what happens. So authoritarian regimes really threaten freedom of religion or belief-- or the other way around. Freedom of religion or belief, in conjunction with other rights to freedom, is a provocation, is a challenge. It's a necessary provocation, thwarting authoritarian control policies.

So much about governments. Now let me turn to religious communities. So, you may think religious communities benefit from freedom of religion or belief. I wholeheartedly agree, yes. But the problem is all religious communities benefit, yeah, also my rivals, competitors, dissidents, schematics-- all the people that I don't really like so much. So I mean, taken seriously as a universal right held by all human beings in that broad area of freedom of religion and belief, convictions, yeah, OK, it can trigger uneasiness also among religious communities. On top of that-- on top of that, the human rights approach may have a disturbing component for religious people. Maybe-- especially if it's not an entirely, correctly understood, the human rights approach means human beings are the right holders also in the sphere of religion-- human beings. Not only as individuals, also in conjunction with others, in community with others, and, of course, then, also infrastructural, institutional aspects come on top of all of that. So it's the human-- it's human beings broadly speaking. And religion is approached from the lens of human beings, who are the right holders. The question though, doesn't this turn the order of things upside down? Doesn't this mean human beings-- men rising above God? And religion being turned into an item of personal, spiritual satisfaction, maybe even an item of personal preference, of personal whims, of personal choices. And the term choice seems to come from the shopping malls, maybe also the shopping malls of spirituality. So isn't this really a perversion of how things should be? No. No. Human rights take religion very seriously. But if you take religion seriously, you will discover religion exists only in the plural. So you have to take religions seriously. Taking religions seriously means taking seriously a plurality of very different religions, maybe even irreconcilably different religions. So what is sacred for one religion-- maybe it's totally comprehensible from the viewpoint of another.

So what can the law do with that plurality? I mean, if you want to protect religion by law directly—you have to single out one religion, or a number of religion, or a type of religions because of that huge diversity. So I would say the only common denominator, the only plausible common denominator, what all religions have together in belief systems, they are believed by human beings, practiced by human beings, as individuals and in community with others. So this is a common denominator. And that's why legal protection is not given to religions themselves, not to religious identities, religious truth claims, purity claims, but to human beings, empowering human beings to stand up for what they believe, and also to organize their lives in accordance with their profound convictions. I mean, this is an insight. It's an insight. So protecting religion indirectly, but really human beings are the ones who have to do that work, who have to do the business. Protecting human beings in their dignity, in their freedom, in their equality. And then if you talk about freedom, you cannot avoid maybe the term choice. I agree it's a misleading term. I mean, many of you today were in the congregation in Salt Lake City. I heard all the sermons. The term "choice" never came up. But the term "calling" came up in quite a number of these speeches. So now how can you reconcile choice and calling? At the surface, it looks like they're totally different. Choice is your personal preference. Calling is, OK, you are being called upon. But there's not the slightest contradiction. There's not the slightest contradiction. You have merely to take into account that the term choice should really be limited to its legal use. It's a legal term. It's a legal term, not a term of religious phenomenology. Doesn't make much sense. Doesn't really capture the existential experiences of human beings. So it's a legal term. There it has its function, and I would say an indispensable function. Because what choice means, protecting a space in which religious beliefs, religious convictions, can unfold, protecting that space against coercive interferences. So giving that space means you give choice, but the experience that people have when it comes to profound convictions, it's not really a matter of choice. You can invoke—in order to say this is not something totally mysterious-- let's invoke the analogy of marriage. Choosing a spouse, maybe from a catalog as an item—maybe some people do that-- but certainly most of us would not really appreciate that attitude. So racial choice-- no—I mean, the existential questions of human life are always questions that move beyond choice. But what the law can provide is actually make sure no robustly arranged marriages, no forced marriages, no forced conversion, no forced prevention of conversion. Yet so preventing coercion, in those existential dimensions, giving a space, giving that space, this is the specific role of law. We have to take that into account. And maybe sometimes to translate this function into other language, into non-legal languages. And then we will discover, no, this is not the man-- the human being rising above God and turning religion into just an instrument of personal satisfaction, well-being. It's not-- it's something

more seriously. It's about freedom. It's about freedom, and freedom is the precondition of any authentic faith, any authentic religious or non-religious belief.

So there's also a provocation for religious communities. Now societies. And after mentioning authoritarian governments, which may mainly be located outside of the West. OK, it's debatable. Let me now turn to the West, now also criticizing societies, in particular Western societies. Here again freedom of religion or belief holds a provocation. But it's a different provocation. It's not the freedom component, which threatens authoritarian control obsessions. Freedom is taken for granted, rightly or wrongly, in many Western societies. No, it's not the freedom component. Now here it's the religion component. So the question-- what has religion to do with a free modern society? Is there any serious role left for religion? In Germany, we had a rather disquieting discussion four years ago on ritual male circumcision. Complicated issue, I don't want to go into that issue. During that discussion, I was frequently interviewed. And believe it or not-- I'm not telling you a joke-- the first question usually was the following-- what prevails-- what should prevail, freedom of religion or human rights? Just imagine-- freedom of religion or human rights. I mean, that either or. By which then freedom of religion is, by implication, removed from the list of legitimate human rights. Those interviewers may know there is an Article 18. I mean, they are not uneducated, but they question the legitimacy of that. Maybe for historical reasons, it happened that freedom of religion made it into human rights document, but is it legitimate? Is that legitimate? And so there are many people who have questions, who have their doubts. And in a volume that recently appeared-- and again, I don't want to name authors or editors. They are not sitting here, not on this bench certainly. A volume titled, *The Politics of Religious Freedom*. I found the following quote. I mean, this is the only quote I'm giving you. "To be religious is not to be free but to be faithful." Let me repeat that. "To be religious is not to be free but to be faithful." OK, it's ridiculous, isn't it? Shockingly shallow. Shockingly shallow. So it creates a dichotomy between having a serious conviction and being a free person. I mean, what would be left of freedom? And this really betrays a shallow understanding of freedom, a total misunderstanding, in fact, of the multidimensional aspects of human freedom. Because human freedom, on the one hand, you have the legal aspects. Law can create space. I said that a few minutes ago, can create space. And that is creating freedom. But then, human beings also have to fill that space, which is also an act of freedom. You fill it with convictions. And creating the space means you open up choices. But filling the space can mean you move beyond choices. So here, if you have a serious conviction, you will not say, this is my choice. So for instance, a Jehovah's Witness, refusing the military service, will, maybe, invoke a phrase that Brett cited earlier. I think you cited it from Joseph Smith, "following the dictates of my conscience." This is a word--

you can trace it to the European Middle Ages-- so following the dictates of your conscience. And this is the most intensive experience of human freedom. If it's really the dictates of your conscience, not any coercive authorities mixed with that, mingled with that. So the same Jehovah's Witness can insist when talking to the government, Give me my choice. There's no contradiction, not the slightest contradiction, between insisting on choice and saying, No, this is not my choice. These are different levels of human freedom experience, of freedom experience. And in order to fully understand human rights, sometimes we have to complement the legal, technical language, which is very important because otherwise we will never get the degree of precision needed for human rights to be applicable. But we have to move beyond it. And also remind ourselves there is something existential at stake. And the existential dimensions are always the dimensions beyond choice and also beyond what the law can really provide. But the law can provide the preconditions for this to be a matter of respected personal responsibility. So I think in our Western societies, if I read also academic stuff, this sort of statement-- to be religious is not to be free but to be faithful. Sometimes I fear we are in danger of losing the sense of why freedom is important, why it has existential significance. Why we cannot-- rights to freedom to-- we should not reduce this to just a lifestyle matter. We take it for granted, something nice to have. There is more at stake. And that's why we need people who consider working for freedom as their calling.

OK, now let me conclude. Freedom of religion or belief is a provocative right. And I would say it's provocative in a healthy way, in a necessary way. For governments, freedom of religion or belief serves as a reminder that respect for human rights—including freedom of religion or belief, of course-- lies at the heart of democracy, lies at the heart of rule of law. It's a reminder that respect for human rights enhances, rather than undermines, political legitimacy. Although it no doubt challenges party monopolies, political corruption, and authoritarian structures. For religious communities, freedom of religion or belief serves as a reminder that authentic belief is free belief, and that we also need guarantees, legal guarantees, for free believing. And freedom of religion or belief is not only important for religious minorities. I mean, this is something we take for granted, for minorities that can also be sometimes very important remedy. For minorities, violation of freedom of religion or belief may even become a life and death issue. That's freedom of religion or belief. I would say it's equally but differently-- but not less. Important for religious majorities because majorities are sometimes in danger of calling for state authorities to protect their hegemony. And that can lead to this pernicious equation-- my territory, my turf, my identity, my religion. And the possessive pronoun is what brings it all together-- my, our. It leads to a territorialization of religion by which everything that religion has to offer, in terms of attractiveness, persuasiveness, spirituality, actually gets lost. It's corrupted.

So freedom of religion or belief is important. It's a challenge. It's a provocation for religious majorities, in particular. So they should take it up. They have to get on board. And freedom of religion or belief is a healthy provocation for societies at large, including in the West. And here, it serves as a reminder that freedom is not just a lifestyle matter, something nice to have. That there's something more existential at stake, and that a free society needs that awareness. The awareness that in order to remain sustainable, also in situations of crisis, freedom needs real conviction. So it's not only faith needs freedom, but also freedom needs real convictions—not faith in the narrow sense but real convictions. Let me add one little thing. This morning when sitting in the bus next to Jarrod [? Filson, ?], we had a discussion. And I want to take one point from that discussion that freedom of religion or belief is also a provocative reminder for the human rights community, reminding us that human rights are not a religion. Human rights are very important. They are becoming more and more important in our complicated world. They are the only way of really shaping coexistence in respect for everyone's human dignity. I mean this is a high task. It's a very high task, but it's not a religion. If we turn freedom of religion or belief-- sorry, if we turn human rights into another religion-- I mean, we could not really develop that function of coordinating pluralism. It would be just another belief system. Either next to religions or on top of religions, maybe reducing traditional religions then to sub-confessions of an overarching worthwhile civil religion. I mean, this is never going to work. It would be a total misunderstanding. It would erode the legitimacy of human rights. And also the U.N. High Commissioner is not the high priest of an international civil religion. I am sure he would agree. I'm very sure. My concluding sentence-- freedom of religion or belief is a surprisingly provocative right. It warrants all our commitment-- intellectual, political, and emotional. So let us be provoked. Thank you very much.