

# Religious Freedom and Religious Violence: Contributing to Structures of Peace

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## Serif v. Greece (ECtHR)

- [While] it is possible that tension is created in situations where a religious or any other community becomes divided, . . . this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other . . . . § 53.

# Overview

- The relationship of religion and violence
- The features of FoRB necessary for securing peace in the context of deep pluralism
- Mechanisms enabling FoRB to contribute to social peace

# Violence in the Name of Religion



- Complex phenomenon
- Can take many forms.
- Many types of perpetrators
- Disproportionate targeting of dissidents, minorities, and converts
- Can also affect followers of same religion
- Gender impact

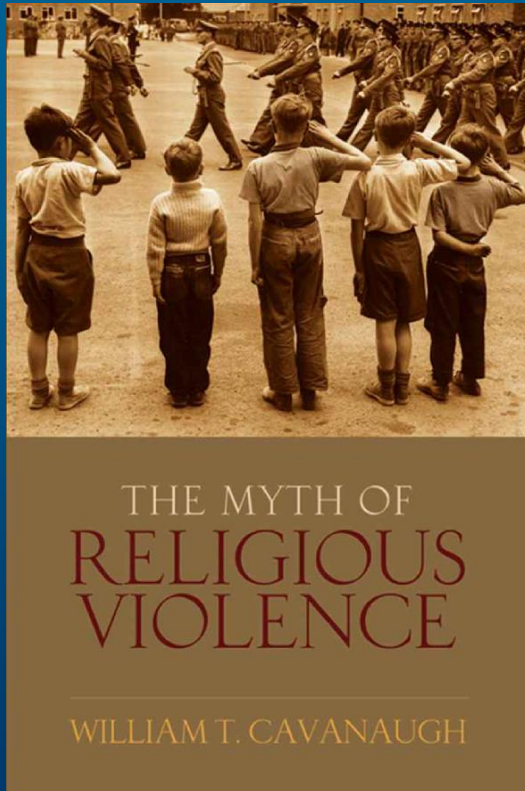
# Overcoming Simplistic Interpretations

- Imputation of blame to religion
  - In civil wars, communal violence, terrorist acts or other violent conflicts, label of “religion” is used to describe conflict
  - non-religious factors at play.
- Instrumentalization of religion
  - Religion not really at fault; just being instrumentalized by other ‘bad’ players
  - Avoids holding religious leaders responsible and involving them in solutions
  - Contributes to inadequate understanding of conflict

# Standard Account

- Sociological pluralism rooted in divergent religious views.
- Religion involves transcendent values treasured more than life itself. It generates loyalties that run deeper than ties to any earthly sovereign.
- Because religious differences are deep and non-negotiable, they lead to intractable conflicts.
- Religious freedom as a tool that emerged from the cauldron of post-Reformation religious wars to quell the violence.

# The Myth of Religious Violence



- The “Ambivalence of the Sacred” must be recognized.
- Like romantic love, religion is deeply implicated in much that is highest, but also much that is lowest, in the human condition.
- But the “Myth of Religious Violence” skews analysis.

# Elements of the Myth

- Religion has essential transhistorical and transcultural features distinct from secular features of society.
- Part of this essence, rooted in the irrationality of religion, is a peculiarly dangerous inclination to promote violence.
- Religion must thus be tamed by submitting it to, and restricting its access to, public power.



# The Enlightenment Narrative

- The myth is part of a broader Enlightenment narrative that:
  - invented a dichotomy between the religious and the secular and
  - constructed religion as an irrational and dangerous impulse that must give way in public to rational, secular forms of power.

# Debunking the Myth

- Religions are no more inclined to violence than secular ideologies and institutions such as nationalism, Marxism, capitalism and liberalism.
- Religions are not more absolutist, divisive or irrational than secular counterparts.
- There is really no convincing way to separate religious and secular violence.

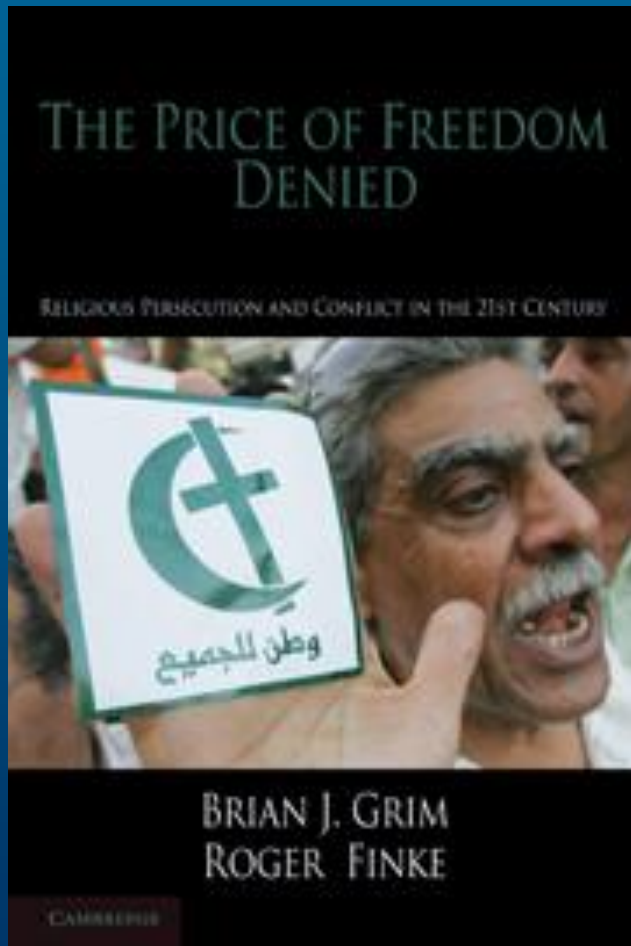
# The Hazard of Religious Warfare

- Wars of religion typical cited as the cauldron that called for the secular state as a solution.
- Founding myth of the secular state: modern state born as a peacemaker, resolving religious intransigence of Catholics and Protestants.

# Problems with the Religious Warfare Narrative

- The wars certainly occurred, but the battle lines were often not drawn along religious divides.
- The much more typical pattern was that conflicts emerged to resist the state-building efforts of centralizing monarchs.
- State restrictions on religion flowing from state-building initiatives were often the real cause of conflict.

# Empirical Research



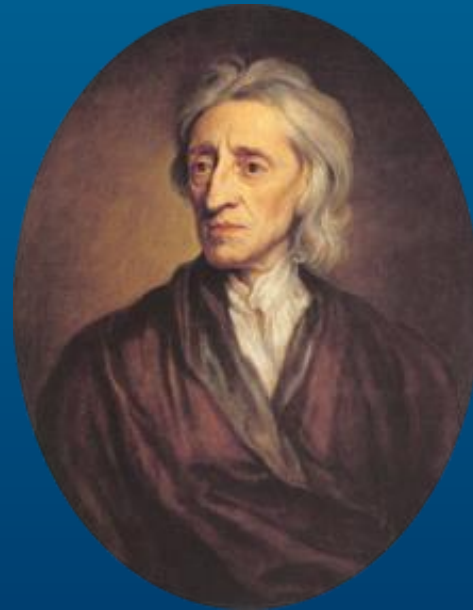
- Grim and Finke book summarizes extensive empirical research
- Key finding: restrictions on religious freedom are highly correlated with and appear to be a significant factor in causing religious violence
- Religious freedom in contrast correlates with peace and stability

# Fundamental Conditions for Peace

- Homogeneity not required
- Fundamental problems:
  - Fear of loss of position
  - Threatened majorities
- Fundamental need: assurance that one's own dignity and world view will be protected and that one can live in peace.
- Equal treatment is an added benefit

# The Lockean Revolution

- Locke rejected the pre-modern assumptions
- *A Letter Concerning Toleration* (1689)
- State coercion ineffective
  - Cannot force someone to heaven
  - At best extracts hypocrisy
- Coerced toleration is a source of religious violence rather than peace
- Respecting difference breeds loyalty, stability and peace



# Locke Plus Accommodation

- Intrinsic justice and stability-strengthening potential of religious freedom if law is construed to avoid conscientious conflict, except where there is a compelling need to override conscience that cannot be achieved in some less restrictive way.
- European and American Consensus



# Further Revisions to Locke

- Accommodation is not really about exceptions, but about deeper integration of constitutional and human rights principles that require respect for conscience.
- Rule of law constraints alone not enough. Locke came early, and had not focused on possibilities of legislative manipulation.

# Tightening of Limitations

- Strict necessity / proportionality
- Conscience claims taken seriously
- Tolerance of (truly) intolerant.
  - Militant democracy
  - Stable societies can include Catholics, Muslims, Atheists, and various exclusivist beliefs.
- Temporal/spiritual divide.
  - Not to be confused with public/private divide.
  - Importance of religions as mediating institutions.

# Secularism v. Secularity

- Ideology
- Neutralizing
- French *laicite*
- Freedom *from* religion
- Religion consigned to private sphere
- Rigid
- Formal Equality
- Framework
- Neutrality
- American Separation
- Freedom *of* religion
- Religion accepted in open public sphere
- Flexible
- Substantive Equality

# Peace-Building Mechanisms

- Freedom of Religion as Filter
  - Limitation provisions define the filter, protecting legitimate exercise of religion, but excluding “dark side” practices of religion
- Freedom of Religion or Belief as Part of Stable Background
  - Applicable at contemporary constitutional moments
  - International law today constitutes an important starting point for peace-building

# Proliferation of Religious Peacemakers

- Greater numbers of peacemakers
- Greater diversity
- Religious leaders may be able to assume peacebuilding roles as trusted conflict mediators
- Protection not only of worship and ritual, but also of religious institutions to provide needed social services.

# Securing Protection of Religious Communities

- “Religious communities are most likely to support democracy, peace, and freedom for other faiths, and least likely to take up the gun or form dictatorships, when governments allow them freedom to worship, practice, and express their faith freely and when religious communities in turn renounce their claims to permanent offices or positions of policy-making authority.”
- Shah, Stepan and Toft, eds, *Rethinking Religion and World Affairs*, 18, 216.

# Cultivation of Socially Productive Virtues

- Tolerance
- Reflective thinking
- Generosity
- Altruism
- Law-Abidingness
- Honesty
- Helpfulness to others
- Social Trust

# Opening Channels of Dialogue and Negotiation

- Religious freedom is not a static end, but an ongoing process for negotiating societal tensions involving religion.
- Religious freedom encourages discourse in a society that engages individual believers, religious communities, and the state in a holistic process that cuts across ethnic, cultural, and religious lines.
- Engages striving for social justice, ending violent conflict, and building healthy cooperative relationships in conflict-ridden societies.



# Providing Peacekeeping Personnel

- Making key mediating personnel available.
- Both personnel and other organizational resources.

# Promoting Altruism

- Charitable contributions
- Provision of humanitarian aid—often vital for recovery from conflict situations.
- 30% of global health care
- In general: contributing to material foundations of stable society

# Conclusion

- Religious freedom has an important role to play in the structure of peacebuilding.
- Complex interrelationship of religion and violence. Avoid oversimplified assumptions.
- FoRB is a vital filtering mechanism
- There are profound positive ways that religion can contribute to conflict resolution and stability.

# Religious Autonomy in Employment

- Hosanna-Tabor
- European Court Cases
  - Obst
  - Schüth
  - Siebenhaar
  - Sindicatul “Pastorul cel Bun”
  - Fernandez Martinez ?

# Challenges for Scope of Religious Autonomy

- Vertical extension
  - Ministerial exemption constitutionally anchored in U.S.
  - Parallel protections in Europe, except that scope of substantive review open to interpretation (Prof. Valero)
- Horizontal extension
  - Religious communities (church, synagogue)
  - Teaching institutions (theological faculties, schools)
  - Non-profit organizations
  - Religiously motivated for-profit institutions

# Hobby Lobby

- 10<sup>th</sup> Circuit rejected argument that there is an inherent limit on collective religious freedom claims to the non-profit sector.
- Congress did not exclude for-profit corporations from RFRA protections.
- For-profit corporations can be “persons” exercising religion for purposes of the statute.

# Hartz, J., concurring

- “The constitution does not require compartmentalization of the psyche, saying that one’s religious persona can participate only in nonprofit activities. As Justice Brennan wrote, ‘[A] State may [not] put an individual to a choice between his business and his religion.’ Braunfeld, 366 U.S. at 611.”
- “Although a corporation takes on a legal identity distinct from the sole shareholder, First Amendment jurisprudence is based on the substance of the constitutional protections, not matters of form.”

## Matheson, J., dissenting in part

- “I am thus far unconvinced that for-profit, secular corporations can so easily seize upon the religious beliefs of their owners to demonstrate a corporate religious conviction. The structural barriers of corporate law give me pause about whether the plaintiffs can have their corporate veil and pierce it too.”
- Response: corporate veil defense is a defense against liability, not a constraint on potential corporate purposes.



# Value of Religious Groups

- **Buffering value:** protection of individuals from the state
- **Identity forming value:** religious groups provide a context for the development of individual personality important for those significantly committed to religious groups
- **Meaning conferring value:** Source of meaning and guidance in life; sense of belonging, community
- **Envisioning value:** in the context of a neutral state, religious groups are part of a larger collection of necessary social institutions that create, advocate and maintain values