

Marco Ventura\*

**Religious freedom and social stability**

**The key place of human agency in the interaction of law and religion**

22nd Annual International Law and Religion Symposium

BYU International Center for Law and Religion Studies

J. Reuben Clark Law School  
Brigham Young University  
Provo, Utah, USA  
5 October 2015

**Abstract**

The challenge inherent in the coexistence of diverse nations, cultures, religions and beliefs in the post-colonial, global world is increasingly central in the debate on the interaction of law and religion. This paper intends to address such challenge in two steps.

The first descriptive step points at global dynamics of dialogue and conflict as prompting the redefinition of the encounter between law and religion. Two examples will be offered. The proclamation by the United Nations of the First International Day of Yoga in 2015 witnesses the rise of a de-westernised global religion, meeting the demands of spirituality, practices connecting the mind and the body, and instances of religious marketing and consumerism, while reminding of controversies over the State's problematic endorsement of majority religious practices and symbols in the name of their cultural implications for the whole nation as well as over the legal distinction between the religious and the non-religious, and the religious and the cultural. The adoption in 2013 of the European Union 'Guidelines for the protection and promotion of freedom of religion or belief' witnesses the growing concern for a supranational protection of religion, while responding through the category of 'religion or belief' to the increasing share of people in Western countries who do not identify with any given

---

\* PhD Strasbourg, Full Professor of Law and Religion, Law Department, University of Siena (Italy). Associate researcher of DRES, Center for Droit, Religion, Entreprise et Société, University of Strasbourg (France). Email: [marco.ventura64@gmail.com](mailto:marco.ventura64@gmail.com). Last book: *From Your Gods to Our Gods. A History of Religion in Indian, South African and British Courts* (Eugene OR: Cascade Books, 2014).

religion or reject religion as such. If global dynamics modify the interaction of law and religion, it is because they first of all modify, each in its own sphere, the law on the one hand and religion on the other. Globalisation transforms the very structure of the law, strengthening global legal infrastructures such as international law and religious laws. Religion is no less undergoing a process of redefinition, both in its reality and in its perception. In his ‘top ten facts about Buddhism’ for the blog of Oxford University Press, Pr. Damien Keown acknowledges that ‘Buddhism is the fourth largest religion in the world’ (fact number 6), but warns from the outset that ‘The term “Buddhism” was coined by Western scholars in the 1830s. Buddhists don’t actually refer to their religion as “Buddhism” ’ (fact number 1). The first ever non-European Pope is leading the Roman Catholic Church to a deeper understanding of itself, this prompting significant legal reform such as in the area of marriage nullity. Global Islam is equally engaged in reviewing its self-understanding, and practices, in the post-colonial era.

Here comes the second prescriptive step of this paper. Faced with such a wide and deep process of transformation, both in reality and in perceptions, the global society seems to find a common denominator in two largely endorsed principles, religious freedom and social stability. Very few are those in the international community and in the global civil society who are not ready to embrace the global claim for freedom, religious and otherwise, and stability. This paper argues that such an agreement is likely to turn religious freedom and social stability into a liability if the two are too light, empty shells with which actors agree for the sake of expedient strategies, or too heavy, whenever I endorse ‘my religious freedom’ or ‘my social stability’ instead of engaging in a genuine research of a common notion and practice.

On the contrary, religious freedom and social stability can be an opportunity if human agency, however religiously articulated, is placed at the very core of them. In his reflection on violence in the name of religion of 2014, the United Nations Special Rapporteur Prof. Bielefeldt has vigorously underlined the importance of human agency: ‘Although most religions claim a transcendent — and in this sense “trans-human” — origin, religious sources and normative codes of conduct always accommodate different readings that are actively undertaken by human beings. Thus, human agency is inevitably involved in interpreting religious traditions, dogmas, laws or identities. Open-minded interpretations that encourage tolerance, empathy and solidarity across boundaries may exist alongside narrow-minded interpretations of the same religion, which lead to polarized worldviews and a militant rejection of people holding other

persuasions. Whatever the ultimate origins of a religious belief are thought to be, human beings bear in any case responsibility for the practical consequences that they draw from the interpretation of their faith' (n. 24). This paper seeks to apply this observation to religious leaders and organizations when they understand and implement both religious freedom and social stability, and indeed to extend Heiner Bielefeldt's analysis to governments and NGOs with regard to their inspiring principles in the pursuit of religious freedom and social stability.

If global dynamics of dialogue and conflict redefine religion, the law, and the very encounter of law and religion, and if religious freedom and social stability can fruitfully combine in responding to the resulting challenge, human agency has to be placed at the very heart of the interaction of law and religion. Instead of being used a mantra condoning individuals and communities which do not discharge their duties, religious freedom and social stability should be the realm of responsible choice and action.