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## Freedom and Religious Tolerance in Europe

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# FREEDOM AND RELIGIOUS TOLERANCE IN EUROPE

PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE. (Peter Danchin & Elizabeth Cole eds.). New York: Columbia University Press, 2002. xii + 546.

*Reviewed by Peter Juviler\**

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Religions best flourish when human rights are respected. And human rights flourish best when religion respects them. “[R]eligion and human rights need each other,” in the view of Donald Shriver, President Emeritus of the Union Theological Seminary.<sup>1</sup> The European Court of Human Rights has recognized that freedom of religion is “one of the foundations of a ‘democratic society.’”<sup>2</sup> To the extent that political communities can contain religious differences while respecting human and constitutional rights, religion helps to energize and enrich civil society and its deliberations.<sup>3</sup> Religious tolerance and pluralism made great gains in Western Europe after World War II and in Eastern Europe after the Cold War. But where these gains fall short of human rights standards on freedom of religion and belief, religion often plays a part. Indeed, religions do not all, or always, pray for the human rights of other religions. Religion is an ambivalent force.<sup>4</sup>

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1. Donald W. Shriver, *Religion and Human Rights: The Capacity to “Swear to One’s Own Hurt”*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE 511, 519 (Peter G. Danchin & Elizabeth A. Cole eds., 2002).

2. Kokkinakis v. Greece, 17 Eur. Ct. H.R. (ser. A) at 418 (1994).

3. See Gaylen J. Byker, *The Religious and Moral Foundations of Civil Society and Free Market Economy*, 13 J. INTERDISCIPLINARY STUD. 1 (2001); Anna Greenberg, *The Church and the Revitalization of Politics and Community*, 115 POL. SCI. Q. 377 (2000).

4. See Jimmy Carter, *Preface to RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES*, at ix, ix (John Witte, Jr. & Johan D. van der Vyver eds., 1996) (noting that “religion can be such a powerful force for good and evil . . .”); Desmond M. Tutu, *Preface to RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES*, at ix, xiii (John Witte, Jr. & Johan D. van der Vyver eds., 1996) (noting that religion “is not often in and

Rights to freedom of religion and belief are spelled out in the Universal Declaration of Human Rights,<sup>5</sup> the United Nations (U.N.) Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief,<sup>6</sup> and in both U.N. and regional treaties. For example, article 9, part 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is almost identical to the provision in the Universal Declaration of Human Rights, affirms that

[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.<sup>7</sup>

The pioneering 1959 report of the first U.N. Special Rapporteur on Religion and Human Rights, Arcot Krishnaswami, recognized the problems for these rights posed by their purported holders, religions themselves. Krishnaswami began his report with a contrast between the religious ethics of human mutuality and the "horrors and excesses . . . committed in the name of religion or belief."<sup>8</sup> Minority religions provoke ostracism and outright discrimination, sometimes even violence, especially when the new groups proselytize.<sup>9</sup> Kevin Boyle and Juliet Sheen reached similar conclusions thirty-six years later in their world survey of religious freedom.<sup>10</sup> A year before that, similar indications appeared in the symposium on *Religious Diversity and Human Rights* compiled by Irene Bloom and colleagues,<sup>11</sup> and the two-volume compendium, *Religious Human Rights in Global Perspective*, edited out of the Emory

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of itself necessarily a good thing"); Peter Juviler, *Ambiguities of the Divine*, in RELIGION AND HUMAN RIGHTS: COMPETING CLAIMS? 3 (Carrie Gustafson & Peter Juviler eds., 1999).

5. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., Supp. No. 13, at 71, U.N. Doc. A/810 (1948).

6. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, G.A. Res. 36155, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981).

7. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 9(1), 213 U.N.T.S. 221, 230 [hereinafter European Convention on Human Rights].

8. ARCOT KRISHNASWAMI, STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES 8 (1959).

9. *Id.* at 35.

10. See FREEDOM OF RELIGION AND BELIEF: A WORLD REPORT (Kevin Boyle & Juliet Sheen eds., 1997).

11. See RELIGIOUS DIVERSITY AND HUMAN RIGHTS (Irene Bloom et al. eds., 1996).

University Law School Program on Religion and Law.<sup>12</sup> Its co-editor, John Witte, head of the Emory program, a friend rather than foe of religion, writes that religious organizations' "internal policies and external advocacy have helped to perpetuate bigotry, chauvinism, and violence as much [as] they have served to propagate equality, liberty, and fraternity."<sup>13</sup>

When religion becomes a marker of ethnic identity in culturally divided societies it is a component of the identity differences that can be manipulated by the leaders of countries, groups, and religions for their own purposes. In the extreme, the resulting tensions have escalated into violence and war. The wars which have ravaged former Yugoslavia, Nigeria, India, Pakistan, Sri Lanka, and Indonesia provide examples of this unfortunate phenomenon.

### I. NON-SEPARATION OF CHURCH AND STATE

The principle of separation of church and State in the United States traces back to the Bill of Rights itself. Namely, the disestablishment clause of the First Amendment declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." <sup>14</sup> Disestablishment of course does not mean in reality an entire separation of religion from politics and policy. Constitutional affirmations of the separation of church and State where they appear in European countries seem to mean only the absence of an established religion, not an absence of considerable State involvement in the religious sphere. The meaning of that involvement for the human rights of minority religions and what to do about violations of those rights provides the leitmotifs for *Protecting the Human Rights of Religious Minorities in Eastern Europe*.<sup>15</sup>

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12. See RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES, *supra* note 4; RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES, *supra* note 4.

13. John Witte, Jr., *Introduction* to RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES, *supra* note 4, at xvii, xx.

14. U.S. CONST. amend. I.

15. The book originated in a series of Pew-financed conferences organized through the Columbia University Center for the Study of Human Rights. Conference proceedings were edited into the book under review by Peter Danchin and Elizabeth Cole. Between 1995 and 1999, Dr. Cole coordinated the program on Religion, Human Rights and Religious Freedom at the Columbia University Center for the Study of Human Rights. As a member of the executive committee of the Columbia University Center for the study of Human Rights, the author of this Book Review attended several of the Pew-financed conferences which formed the basis of *Protecting the Human Rights of Religious Minorities in Eastern Europe*.

Across Europe, to varying degrees, as this book highlights, States actively engage with and support religions, and also discriminate among them with respect to support and degrees of recognition and freedom. The effects of nonseparation in Europe seem paradoxical. Countries with established churches to the North, for example the United Kingdom's Anglican Church and Scandinavia's Lutheran Church, by and large manifest fewer violations of religious freedom and equality than do the countries without established churches in much of the rest of Europe, including those proclaiming the separation of church and State.<sup>16</sup>

## II. INDIVIDUAL AND GROUP RIGHTS

Human rights to freedom of religion and belief in Europe are often qualified to the effect that States may restrict the behavior of religious associations and their members "in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."<sup>17</sup> Interpretations by the European Court of Human Rights and the Human Rights Committee formed under the International Covenant on Civil and Political Rights (ICCPR), Tad Stahnke notes in the book under review, support a narrow reading of the grounds for possible exceptions to religious freedom.<sup>18</sup> Accordingly, David Little, in his wide-ranging overview of relevant theory, cautions that hate speech, permissible in the United States, may be prohibited under article 20 of the ICCPR.<sup>19</sup> Specifically, article 20 declares that "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."<sup>20</sup>

How should the law reconcile the rights of religious groups with those of individuals as members within the groups? Little and Danchin both point to article 27 of the ICCPR as key to the blending of individual

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16. See generally FREEDOM OF RELIGION AND BELIEF: A WORLD REPORT, *supra* note 10, at 259–413 (providing a State by State examination of the state of religious freedom in Europe); DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2001 [hereinafter COUNTRY REPORTS], available at <http://www.state.gov/g/drl/rls/hrrpt/2001>.

17. European Convention on Human Rights, *supra* note 7, art. 9(2), 213 U.N.T.S. at 230; see also International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 18(3), 999 U.N.T.S. 171 [hereinafter ICCPR].

18. See Tad Stahnke, *Equality and Religious Preferences: Theoretical, International and Religious Perspectives*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 106–09.

19. See David Little, *Religious Minorities and Religious Freedom: An Overview*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 36–37.

20. ICCPR, *supra* note 17, art. 20, 999 U.N.T.S. at 178.

and group rights.<sup>21</sup> Article 27, spelling out the right of an individual to cultural self-determination together with others in their ethnic, religious, or linguistic minority group, states “[i]n those States in which ethnic, religious or linguistic majorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”<sup>22</sup> By balancing the free choice of individuals to join and leave religious groups with the right to share faith with others in their group, Little and Danchin reason, international law balances group and individual rights.<sup>23</sup> Rights of religious groups, Johan van der Vyver points out, do not extend into a collective right of the groups to secede from the States within which they find themselves.<sup>24</sup>

### III. MUCH FREER, THOUGH WITHIN LIMITS

The end of the Cold War in 1989 “liberated” religions in Eastern Europe from Communist restraints. It opened up new possibilities for minority religions. Compared with the Nazi and Communist eras, Europe today, East and West, harbors unprecedented freedom of religion and conscience. This general freedom has raised intergroup and interreligious tensions and competition to the surface. These tensions played a detrimental role in destabilizing the former Yugoslavia and have prevented a fully realized freedom of religion and belief even in the peaceful, consolidated democracies of Western and Eastern Europe (excluding the less free, newly independent States of the former Soviet Union).

Balázs Schanda describes the relative freedom for minorities in Hungary, alongside its main churches: Catholic, Lutheran, and Reform.<sup>25</sup> According to a more recent report, the government provided subsidies to as many as ninety religious groups in 2001 compared with seventy-six in 2000.<sup>26</sup> The report cites some infringements on religious freedom and nondiscrimination, but these violations are well within the range for Western Europe. Moreover, the Hungarian Parliament has introduced tax

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21. See Peter G. Danchin, *Introduction to PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE*, *supra* note 1, at 13; Little, *supra* note 19, at 37.

22. ICCPR, *supra* note 17, art. 22, 999 U.N.T.S. at 179.

23. See Danchin, *supra* note 21, at 13; Little, *supra* note 19, at 37.

24. See Johan van der Vyver, *Self-Determination and the Right to Secession of Religious Minorities Under International Law*, in *PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE*, *supra* note 1, at 267–68.

25. See Balázs Schanda, *Protection of Minority Religions in Hungary: A Comparative Analysis*, in *PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE*, *supra* note 1, at 345–62.

26. COUNTRY REPORTS, *supra* note 16.

deductions, but only for contributions to fourteen of the more than one hundred recognized religions.

Several chapters in *Protecting the Human Rights of Religious Minorities in Eastern Europe* pass over extremist manifestations of anti-Semitism in the countries they cover, including Schanda's chapter on Hungary. The Commission Against Racism of the Council of Europe has criticized Hungary for "blatant anti-Semitism in some media, in Parliament, and in society."<sup>27</sup> Acquiescence or even involvement in anti-Semitic action on the part of some churches merits a closer examination.

As Serhii Plokyh writes in his chapter on Ukraine and Russia, the relative freedom of religion in Ukraine compared with its neighbor Russia is connected to the absence in the Ukraine of a predominant single church, such as the Russian Orthodox Church (ROC).<sup>28</sup> Rather, in the Ukraine there is a plurality of three contending Orthodox churches, of which Plokyh mentions the two largest, in addition to the Catholic, Greek-Rite, Uniate Church.<sup>29</sup> This diversity contributes to the relative freedom of other, non-Orthodox minority religions in the Ukraine.

Bulgaria's main church is Orthodox. Krassimir Kanev, the very active Helsinki Watch's founder and chair in Bulgaria, refers to some successful efforts before Bulgarian courts and the European Court of Human Rights to limit State interference with religion under the still extant but partially neutralized, communist-era Denominations Act of 1949.<sup>30</sup> The treatment of the Turkish minority and Islamic religious activities leaves them much freer than they were under the coercively assimilationist Bulgarian communist regime. At this writing, the 1949 law is being replaced by a more rights-oriented one.

The situation in Russia broadly resembles that in Bulgaria, with a predominant church, the ROC. The 1997 Law on Freedom of Conscience and Religion, passed under great pressure from the ROC Patriarchate, replaced a liberal 1990 law. Plokyh says,

[t]he introduction of the new law initiated a campaign of legal and administrative discrimination against non-Orthodox churches and Orthodox rivals of the Moscow Patriarchate, and it is the Russian Orthodox bishops and clergy who have been trying to influence local authorities . . . to implement the new law

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27. *Id.*

28. See Serhii Plokyh, *State Politics and Religious Pluralism in Russia and Ukraine: A Comparative Perspective*, in *PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE*, *supra* note 1, at 297-315

29. See *id.* at 298.

30. See Krassimir Kanev, *Law and Politics Toward the Muslims in Bulgaria*, in *PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE*, *supra* note 1, at 339-40.

in such a way as to make life most difficult for the minority churches and religious groups.<sup>31</sup>

The ROC's "amalgam of nationalism and religion" is drawn on by the authorities to bolster their legitimacy.<sup>32</sup>

Like the Western European provisions mentioned below, one should add that the 1997 law violates equality provisions of the 1993 Constitution by setting up three levels of religions' status, with the ROC at the top with respect to political influence.<sup>33</sup> Specifically, the 1997 law recognizes "the special role of the Orthodoxy in the history of Russia."<sup>34</sup> It expresses respect for "Christianity, Islam, Buddhism, Judaism, and other religions" as "an integral part of the heritage of the peoples of Russia."<sup>35</sup> The law reduced to a third, unfree level those religious groups, including Christian churches, that could not prove fifteen years existence in Russia as of October 1, 1997.<sup>36</sup> To them, the law denied the right to own property, publish, educate, distribute literature, create mass media, maintain seminaries, and have access to public institutions, until they have reregistered every year up to the proven fifteen years of their existence.<sup>37</sup> New associations created after October 1, 1997, when the law went into effect, had to exist fifteen years in Russia before registration is possible.<sup>38</sup>

To expand on Ploky's account, one should add that lawyer-advocates like Galina Krylova and Ekaterina Smyslova and their supporters have gained some small recent victories for religious freedom in Russia. For example, with respect to the fifteen year requirement for registration, the Constitutional Court of the Russian Federation, on November 23, 1999, in a case brought by a congregation of Jehovah's Witnesses in Yaroslavl, ruled that the fifteen year requirement does not apply to religious organizations that had registered before the law's effective date.<sup>39</sup> To the extent that the Court's decision is respected, only

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31. See Ploky, *supra* note 28, at 299.

32. See *id.* at 299–301.

33. See KONST. RF (1993) art. 14, translated in CONSTITUTIONAL FOUNDATIONS OF THE CIS COUNTRIES 421 (William E. Butler ed., 1999).

34. Federal Law on the Freedom of Conscience and on Religious Associations, translated in RUSSIAN LEGAL TEXTS 117 (William E. Butler & Jane E. Henderson eds., 1998).

35. *Id.*

36. See *id.* at 124, 125.

37. See *id.* at 130–34; see also Ploky, *supra* note 28, at 299.

38. Federal Law on the Freedom of Conscience and on Religious Associations, *supra* note 34, at 124, 125.

39. Decision of the Constitutional Court of the Russian Federation, *On Freedom of Conscience and Religious Associations* (Nov. 23, 1999), <http://www.jw-russia.org/eng/other/99nov23ConstCourt.htm>.



religious organizations which first registered after the 1997 law's enactment face a fifteen year waiting period.<sup>40</sup>

Additionally, on February 7, 2002 the Constitutional Court annulled borough and city court orders to liquidate the Moscow office of the Salvation Army.<sup>41</sup> This new ruling held that once a religious organization is registered, subsequent changes in registration procedures under the 1997 law may not bar reregistration of previously registered organizations without other than formal grounds.<sup>42</sup> Moreover, local courts sometimes rebuff attempts by the authorities to shut down religious communities such as Lutherans, Hare Krishnas, Baptists, Pentacostalists, and Catholics.<sup>43</sup> For example, Jehovah's Witnesses' right to function has been upheld by an Orel Court.<sup>44</sup>

However, the ROC wins victories of its own, too. Patriarch Alexy cited alleged proselytizing by the Catholic Church as grounds for an estrangement that ruled out a visit by the Pope. Any hopes for such a visit have been further postponed after Rome upgraded to dioceses four apostolic administrations in Russia. In response, the Russian government revoked the reentry visas of foreign Catholic priests seeking to return to their congregations in Russia. Lawrence Uzzell, then director of the Keston Institute in Oxford, U.K., observed that "Russian nationalists like to depict Roman Catholicism as an almost completely novel presence in Russia, introduced by 'proselytizing' clergy from the West only after the collapse of the Soviet Union . . . ."<sup>45</sup> In reality, the Catholic Church's presence in Russia dates back into tsarist times, considerably more than a century ago.<sup>46</sup> It dates even further back than that in Western Russia.

The ROC also enjoys the recent cooperation of the State with respect to the introduction of Orthodox religious education into public schools.<sup>47</sup> The focus is on "Orthodox morality." Apparently that morality does not

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40. *Id.*; see also Peter Juviler, *Political Community and Human Rights in Postcommunist Russia*, in HUMAN RIGHTS: NEW PERSPECTIVES, NEW REALITIES 115, 129-30 (Adamantia Pollis & Peter Schwab eds., 2000).

41. Decision of the Constitutional Court of the Russian Federation, *Moscow Division of the Salvation Army* (Feb. 7, 2002), <http://stetson.edu/~psteeves/relnews/0202f.html>.

42. *Id.*; see also Geraldine Fagan, *Russia: Landmark Constitutional Court Decision Vindicates Salvation Army*, KESTON NEWS SERVICE, Mar. 4, 2002, <http://www.keston.org>.

43. COUNTRY REPORTS, *supra* note 16 (stating that "[in] some cases, religious organizations successfully enlisted the assistance of the judiciary to overcome bureaucratic resistance to their reregistration").

44. *Id.*

45. Lawrence Uzzell, *Russia's Growing Religious Repression*, <http://www.whitefieldsintl.com/news2.html>.

46. See CHRISTEL LANE, *CHRISTIAN RELIGION IN THE SOVIET UNION: A SOCIOLOGICAL STUDY* (1978); HUGH SETON-WATSON, *THE RUSSIAN EMPIRE 1801-1917*, at 215 (1967).

47. COUNTRY REPORTS, *supra* note 16 (stating that "the Russian Orthodox Church has made special arrangements with government agencies to conduct religious education and to provide spiritual counseling").

include taking a stand against violent manifestations of religious and racial bigotry directed toward synagogues and burial grounds, sexual minorities, dark-skinned residents (from the Caucasus and adjacent regions), and some of the black foreigners in Russia. Nongovernmental organizations continue to report such violations.<sup>48</sup> One chapter of *Protecting the Human Rights of Religious Minorities in Eastern Europe* does address Jewish-gentile relations. Specifically, Stanislaw Krajewski reflects on gains from dialogue between ecumenical Poles and a tiny Jewish remnant of the Holocaust and the anti-Zionist campaign of 1968.<sup>49</sup> While in Cracow, this writer was similarly struck by the dedicated non-Jewish Polish leadership of Jewish studies at Jagelonian University and the Jewish Cultural Center in Cracow.

#### IV. "CLASH OF CIVILIZATIONS"?

Peter Danchin shares Cole Durham's opinion that violations of the rights of religious minorities places them and their adversaries on opposite sides of what Samuel Huntington calls "cultural fault lines" in the global "clash of civilizations."<sup>50</sup> Here the fault line divides western Christian civilization and eastern Orthodoxy and Islam. In an endnote, however, Danchin cites Amartya Sen's argument "that Huntington's thesis on the clash of civilizations provides inadequate recognition of the heterogeneities *within* each culture and does not survive historical scrutiny."<sup>51</sup> Indeed, the Danchin-Cole book contains evidence of widespread clashes between "belief groups" of shared ethnicity and ethnic groups of shared religion, *within* western Christianity.

Timothy Byrnes delves into the ethnic divisions between Catholics, for example in Romania's Transylvania region, where Hungarian Catholics cleave to the Roman Catholic Church while the Romanians, a minority in the region, worship in the Greek (Eastern Rite) Catholic

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48. See, e.g., 10 EAST-WEST CHURCH & MINISTRY REP. Nos. 1-2 (2002) (discussing religious education); MOSCOW HELSINKI GROUP, HUMAN RIGHTS IN RUSSIAN REGIONS: REPORT 2001 (I. Sergeeva et al. eds., 2002) (discussing bigotry and xenophobia), available at <http://www.ihf-hr.org/reports/Russia/Report%202001/Section%204.pdf>; UNION OF COUNCILS FOR JEWS IN THE FORMER SOVIET UNION, ANTI-SEMITISM, XENOPHOBIA AND RELIGIOUS PERSECUTION IN RUSSIA'S REGIONS (2001), available at <http://www.fsmonitor.com/russiabook2001/RussianReport2001.html>.

49. See Stanislaw Krajewski, *Catholic-Jewish Dialogue in Poland: A Difficult Road to Tolerance*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 490-507.

50. See Danchin, *supra* note 21, at 2-3.

51. *Id.* at 24 n.8.

Church.<sup>52</sup> Rome does not mitigate the Hungarian-Romanian estrangement in Transylvania any more than it does among the divided flocks of Roman Catholic Slovaks and Roman Catholic Hungarians in Slovakia.<sup>53</sup> Byrnes wonders whether interchurch diplomacy counts more for Rome than does intra-Catholic rapprochement.

Two- or three-tiered systems of religious rights exist on both sides of the East-West divide. These systems favor "traditional" religion or religions, followed sometimes by a second level of traditional but not quite so privileged religions, and a third level of least privileged religions deprived of State benefits, and experiencing a variety of limitations. In the West, for example, Little mentions privileges of main churches in Austria under Austria's new law of 1997.<sup>54</sup>

Although not identical with Russia's law, Austria's similarly sets up three categories of religious organizations: "religious societies," "religious confessional communities," and "associations."<sup>55</sup> "Religious societies" benefit the most from State patronage, including the reception of religious taxes. They also may conduct religious education in schools. The nine "confessional communities" must have at least three hundred members. Many associations are smaller than that. Recognition as a top-ranked "religious society" requires a twenty year waiting period, at least ten of them as a "confessional community" and membership equal to at least 0.2 percent of the national population, a requirement met only by Jehovah's Witnesses. The Jehovah's Witnesses have sued in both the Austrian courts and the European Court of Human Rights to have the ten year rule declared unconstitutional.<sup>56</sup>

Rosa María Martínez de Codes surveys the "concordat tradition" of church-State agreements in Spain and elsewhere.<sup>57</sup> Spain's constitution declares it to be a secular State.<sup>58</sup> There is no State religion. Rosa María Martínez de Codes reports that Spain is committed to equality regardless

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52. See Timothy Byrnes, *The Catholic Church in Post-Communist Europe*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 467-74.

53. *Id.* at 467, 478.

54. See Little, *supra* note 19, at 47.

55. See DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT OF 2002 [hereinafter 2002 IRF REPORT], available at <http://www.state.gov/g/drl/rls/irf/2001/5544.htm>; see also Carolyn Wah, *European Parliamentary Enquete Commissions: Justifications of a Two-Tiered System of Religious Freedoms*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 379.

56. See 2002 IRF REPORT, *supra* note 55.

57. See Rosa María Martínez de Codes, *The Contemporary Form of the Relationship Between Religious Minorities and the State in Spain*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 389-407.

58. C.E. art. 16 (1978); see also Martínez de Codes, *supra* note 57, at 397.

of religious beliefs.<sup>59</sup> But Martínez's account does not quite convey the Spanish version of a three-tiered system. Catholicism enjoys closest relations with the government. Jews, Muslims, and Protestants have official status, and are pressing for changes in their agreements with the State to give them privileges comparable to those enjoyed by the Catholic Church. These privileges would include public financing through a voluntary income tax deduction, now credited only to the Catholic Church; greater gift tax exemptions and media access; and fewer barriers to opening new temples, churches, and mosques. Some religions, including the Church of Scientology, have neither agreements with the government nor the recognition accorded other faiths.<sup>60</sup>

## V. RELATING TO CULTS

Proselytizing is a human right, albeit a controversial one. The adversaries of minority religions dub them "sects" and "cults." Eileen Barker suggests "new religions" as a less invidious appellation.<sup>61</sup> The "administrative discrimination" directed against "sects" and "cults" in Western Europe is based on ill-documented and biased parliamentary reports, and supported by various secularist and anti-new religion partisans. This discrimination is described in some detail by Barker on Eastern as well as Western Europe,<sup>62</sup> Evelyn Wah on Germany and beyond,<sup>63</sup> Willy Fautré on Belgium,<sup>64</sup> and David Little in his overview on religious freedom.<sup>65</sup> The biases reflected in the reports on cults, and nurtured by them, contribute to the inequities associated with the two- or three-tiered systems scattered across Europe. Barker concludes "[w]hen national identity becomes associated exclusively with a particular religion, and other beliefs are treated not as alternative religions contributing to the richness of a nation's culture but as treacherous ideologies, we are likely to see prejudice, discrimination, and, possibly, bloodshed."<sup>66</sup> Opposition to minority religions grows out of intergroup competition and crises of identity. "Pushed into a corner from all sides

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59. See Martínez de Codes, *supra* note 57, at 397.

60. COUNTRY REPORTS, *supra* note 16.

61. See Eileen Barker, *The Protection of Minority Religions in Eastern Europe*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 58–59.

62. Barker, *supra* note 61.

63. Wah, *supra* note 55.

64. Willy Fautré, *The Protection of Religious Minorities in Belgium: A Western European Perspective*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 429.

65. Little, *supra* note 19.

66. See Barker, *supra* note 61, at 82.

. . . ,” Baker writes, “it is not surprising that the national churches should be fighting back.”<sup>67</sup>

The protection of communal or collective identities does not legitimize discrimination or attempts by some States of Europe to ban proselytizing. There were no accepted international defenses of Greece’s prosecutions for proselytizing.<sup>68</sup> The 1975 Greek Constitution, passed after the military junta collapsed, states in article 3 that “the prevailing religion in Greece is that of the Eastern Orthodox Church of Christ.”<sup>69</sup> The Greek Orthodox Church (GOC) receives State tax-supported funding for clerical salaries and church building maintenance. All other “known” (that is, not recently imported) religions have liberty, but no subsidies. As a check on them and newcomers, proselytism is banned by the Constitution<sup>70</sup> and in the law of “Necessity Acts” dating back to 1938–39.<sup>71</sup> Article 16 declares that the State must ensure the “development of the national and religious consciousness.”<sup>72</sup> Greece does not get a separate chapter in *Protecting the Human Rights of Religious Minorities in Eastern Europe*. However, Danchin and Forman report recent gains in freedom to proselytize in Greece promoted by decisions of the European Court of Human Rights.<sup>73</sup> More recently, the government’s elimination of “religion” from identity cards marks a further step away from a virtual religious monopoly for the Orthodox Church.<sup>74</sup> This action reflects the growing acceptance of pluralism in Greece, a decoupling of religion from national identity.

The identification of religion and nationality in Greece is epitomized in Eileen Barker’s conversation in Armenia.

My landlady in Yerevan is a well-educated woman and one of the kindest people I know . . . . One evening I returned home slightly later than usual and she asked me where I had been. “To the Hare Krishna temple,” I responded. “Oh--they’re not Armenians,” she told me . . . . “Look,” I said “they have all lived in Yerevan all their lives—they don’t speak any other language than Armenian—and their names all end in -ian.” “They’re not

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67. *Id.* at 74.

68. See Kokkinakis v. Greece, 17 Eur. Ct. H.R. (ser. A) at 418 (1994); see also Peter G. Danchin & Lisa Forman, *The Evolving Jurisprudence of the European Court of Human Rights and the Protection of Religious Minorities*, in *PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE*, *supra* note 1, at 200–02.

69. Greece Const. art. 13, § 2, cl. 1 (1995).

70. Greece Const. art. 3, § 1, cl. 3.

71. See John Anderson, *The Treatment of Religious Minorities in South-Eastern Europe: Greece and Bulgaria Compared*, 30 *RELIGION, ST. & SOC’Y* 9 (2002).

72. Greece Const. art. 16, § 2, cl. 2.

73. See Danchin & Forman, *supra* note 68, at 200–06, 209–10.

74. 2002 IRF REPORT, *supra* note 55.

Armenian. They're not Christian." "Come off it," I countered, "Your children aren't Christian—they're atheists—aren't they Armenian?" "Yes of course they are," she replied indignantly, "they're Christian Atheists."<sup>75</sup>

## VI. WHAT IS TO BE DONE?

The regional focus on Europe in the Danchin-Cole book permits wide-ranging comparisons of church-State relations across and within cultural "fault lines." Even in democratic Western Europe, as well as in emerging democracies of Eastern Europe, religions and human rights advocates are challenged by a persistent favoritism shown to "traditional" religions at the expense of the others and by the limits of human rights enforcement. Adding to legacies of competition and differences among religions are the further tensions growing out of crises in the Middle East, North Africa, and elsewhere.

Various recent symposia, including the book under review, present evidence of church-State complicity in discrimination against minority religions. Even as religions contribute to discrimination and other violations of religious rights, they also carry some of the keys to lessening and resolving those tensions. Tomás Földesi calls for "dialogue between the churches . . . with persons of other faiths, and with no faith, to realize the values which exist on both sides to the benefit of the individual and society."<sup>76</sup> John Pobee's reflections from Africa could apply to Europe. He concludes that

the quest for human rights must search for models of mission which from start to finish, respect and foster human dignity . . . , righteousness and justice, freedom, reconciliation, and peace. . . . This means a rejection of the temptation to define the other only in one's own terms . . . . [r]eligious human rights will flourish only in a culture of religious pluralism . . . .<sup>77</sup>

What is to be done while waiting for dialogue to bear fruit? Given the interreligious tensions still troubling Europe, the separation of church and State, in leaving churches largely to their own devices, would likely

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75. Barker, *supra* note 61, at 74.

76. Tomás Földesi, *The Main Problems of Religious Freedom in Eastern Europe*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES, *supra* note 4, at 261.

77. See John S. Pobee, *Africa's Search for Religious Human Rights Through Returning to Wells of Living Water*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES, *supra* note 4, at 415.

fuel rather than calm disputes. Even Willy Fautré, incensed though he is at the defamations and harassment of “sects,” sees no workable possibility of separation in the U.S. sense.<sup>78</sup> Rather, he urges more objective reporting on new religions. Also, he joins others who suggest more equitable approaches to State involvement with religion: designating a portion of one’s income tax payment for a specific religion should be either voluntary, naming a religion, or automatically credited to all religions, including minorities, in proportion to their membership. The various religions all would benefit from tax exemptions for donations.

Tad Stahnke, Director of Research at the United States Commission on International Religious Freedom, concludes that the differential treatment of religions does not constitute a violation of human rights as long as the assistance is proportional to size and services.<sup>79</sup> Support to religious organizations can take many forms. Funding for clergy, repairs, and schools should be proportional to the number of adherents. The teaching of religion in schools should be allowed on a nondiscriminatory and voluntary basis. Taxation for religious organizations should be voluntary and in proportion to numbers of adherents, and to services to the general population. Special Rapporteur Krishnaswami suggested in 1959 similar possibilities of equitable support.<sup>80</sup> I would add that recent waves of migration into and among European countries have changed demographic profiles of religion and ethnicity. Proportionality of support now would require a corresponding updating in demographic reporting, especially in the countries where tiered systems of national churches and others less privileged remain.

Danchin, Forman, Gunn, and Little urge the importance of a vigorous international protection of religious human rights by the European Court of Human Rights, Organization for Security and Co-Operation in Europe (OSCE), and nongovernmental organizations.<sup>81</sup> Both Little and Danchin argue for the multilateral protection of human rights, in preference to unilateral protection such as attempted by the United States under the International Religious Freedom Act of 1998.<sup>82</sup> The OSCE is the descendant of the 1975 Helsinki Final Act which sparked civil society activity and helped prepare countries, or at least some of their elites,

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78. See Fautré, *supra* note 64.

79. See Stahnke, *supra* note 18, at 114–15.

80. KRISHNASWAMI, *supra* note 8, at 74.

81. See PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 131, 192, 222, 33.

82. See Peter G. Danchin, *External Monitoring and the International Protection of Freedom of Religion or Belief*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 51–52; Little, *supra* note 19, at 177; see also International Religious Freedom Act of 1998, 22 U.S.C. 6431 (2003).

for the move toward a more open society.<sup>83</sup> T. Jeremy Gunn depicts an OSCE that is now wide ranging, its networking considerable.<sup>84</sup> But the OSCE's conclusions are declarative and admonishing, rather than judicial and substantive.<sup>85</sup> Its impact is hard to gauge, but is likely to further the cause of human rights to freedom of religion and belief.<sup>86</sup> That is true also of the U.N. system of monitoring through its treaty-based and Charter-based organizations. Both the need for and the promise of advocacy provide the basic lesson from the experience of Europe and elsewhere that, in Donald Shriver's words, "[r]eligion and human rights need each other."<sup>87</sup>

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83. See T. Jeremy Gunn, *The Organization for Security and Co-operation in Europe and the Rights of Religion or Belief*, in PROTECTING THE HUMAN RIGHTS OF RELIGIOUS MINORITIES IN EASTERN EUROPE, *supra* note 1, at 222–25.

84. *Id.* at 240–43.

85. *Id.* at 225–26.

86. See *id.* at 243.

87. Shriver, *supra* note 1, at 519.