FORIS Policy Report

May 2021

America's International Religious Freedom Policy Must Account for Competing Local Definitions of Religion and the Common Good

Freedom of Religious Institutions in Society Project

RF
I
RELIGIOUS FREEDOM INSTITUTE

Foreword

I am honoured to be writing this foreword for two key policy reports of the Religious Freedom Institute's (RFI) Freedom of Religious Institutions in Society Project (FORIS), which aims to clarify the meaning and value of institutional religious freedom. I pay tribute to the work of RFI and all other NGOs working to champion freedom of religion or belief around the world.

Religious freedom is a defining part of my life, as someone who came to the United Kingdom from Pakistan at the age of six to join my father, who was an Imam in Gillingham, Kent. Gillingham, a predominantly Christian community, was a place where my family and I could practise our Muslim faith freely and openly. Even more, we felt accepted and respected. It is this same community that has elected me to serve as their Member of Parliament for the last ten years.

I recognize that my experience is not a reality for most people. According to a Pew Research Center study in 2018, 83% of the world's population live in countries where the right to freedom of religion or belief is restricted or banned. In this context, I believe we have a moral obligation to work towards building a world where everyone can freely practise their faith, without undue restrictions or any fear of persecution.

These RFI policy reports provide conceptual clarity and concrete recommendations needed to advance religious liberty. The report entitled, "America's International Religious Freedom Policy Must Account for Competing Local Definitions of Religion and the Common Good" starts by focusing on how a good society is understood and the role religion plays in shaping and advancing that understanding. Policy makers, diplomats, and campaigners for religious liberty will be more effective in their work if they recognize and appreciate differences in how the common good is defined and advanced. Simply put, there needs to be awareness of how religion or belief impacts the way people see the world and the way their society's common life should be ordered.

Expanding on this theme, the complexity of world religions, especially the diversity within religions, requires specific training and education efforts aimed at diplomats, advocates, and policy makers alike. During my time as the UK Special Envoy for Freedom of Religion or Belief, religious literacy was a key focus area, and I led efforts to provide specific training on how religion is defined and the variations within religions. As the FORIS report states, *"it is often the case that religious minorities within a country's dominant religion may be even more severely restricted than adherents of other religions. Advocacy for religious freedom, then, necessarily entails advocacy for religious majorities as well (particularly minorities within the majority)."* Understanding these complexities will enable advocates to work more effectively towards cultivating religious liberty.

Furthermore, the report asserts that a purely individualistic view of religious freedom is not enough. We must work to build institutional freedom of religion or belief. This is achieved by working collectively through multilateral fora, including the International Religious Freedom of Belief Alliance (IRFBA), the UN Human Rights Council, the OECD, and other organizations. These partners must cooperate to take decisive action to hold perpetrators of abuses to account. We have seen this recently with the United Kingdom, United States, Canada and European Union imposing sanctions on Chinese officials over abuses in Xinjiang. In Sudan, international partners, including the United States, United Kingdom, Canada, the Archbishop of Canterbury, and the Holy See, have worked together to bring about reforms to improve freedom of religion or belief, such as the removal of the death penalty for apostasy and blasphemy. Similarly, the IRFBA worked together in the wake of the pandemic to successfully secure the release of prisoners detained for their religion or beliefs in countries including Yemen, Eritrea, and Uzbekistan.

In different parts of the world, we see how rapidly religion-state relations can change, shaped by political actors and global conditions. Over the last year, we have seen a worrying uptick in discrimination against religious minorities. While change can be achieved through advocacy and diplomacy, the effectiveness of these efforts depends on whether the approaches are nuanced and tolerant of different forms of religious regulation. This policy report, and RFI's work more broadly, set out a number of guiding principles to ensure that advocacy efforts accomplish the goal of religious liberty for all, in line with Article 18 of the Universal Declaration of Human Rights.

A key challenge with this work is understanding how public policies, such as blasphemy laws, can lead to the persecution of religious minorities. As discussed in the second policy report entitled, "The Intersection of Blasphemy Laws & Institutional Religious Freedom: Egypt, Indonesia, Pakistan, and Turkey" these laws are often used to target individuals from a minority faith to settle individual conflicts. I saw this firsthand during a campaign with other UK parliamentarians to bring attention to the case of Asia Bibi, which highlighted the devastating effects of blasphemy laws in Pakistan. This policy paper from RFI looks at how legislation impacts religious minorities around the world. It examines how existing laws can be repealed or their enforcement mitigated and how to prevent new restrictive or discriminatory laws from being introduced.

I want to thank diplomats, policy makers, scholars, and faith leaders around the world for taking forward this critical work. When we all work together for the common good, we can achieve so much in ensuring religious freedom for all, and these FORIS policy reports will be an important resource for those striving toward this vital goal.

Rehman Chishti MP (Gillingham & Rainham)
Former UK Prime Minister's Special Envoy for Freedom of Religion or Belief
(2019 – 2020)

Introduction

The Religious Freedom Institute's (RFI) Freedom of Religious Institutions in Society (FORIS) Project is a three-year initiative funded by the John Templeton Foundation that aims to clarify the meaning and value of institutional religious freedom, examine how it is faring globally, and explore why it is worthy of public concern.

FORIS seeks to advance scholarship, inform policymakers, and influence cultural understandings on institutional religious freedom in the United States and around the world. Religious liberty is not an individual right alone, but rather includes the right of religious communities to gather in synagogues, churches, mosques, temples, and other houses of worship. Freedom of religion also includes the right of faith communities to establish religious institutions such as schools, hospitals, ministries to the poor, universities, and countless others that seek to embody the teachings of their respective religious traditions. Institutional religious freedom encompasses this full range of congregational and organizational expressions of religious faith. FORIS critically engages with both the proper meaning and scope of that freedom as well as its contributions to a society's common good.

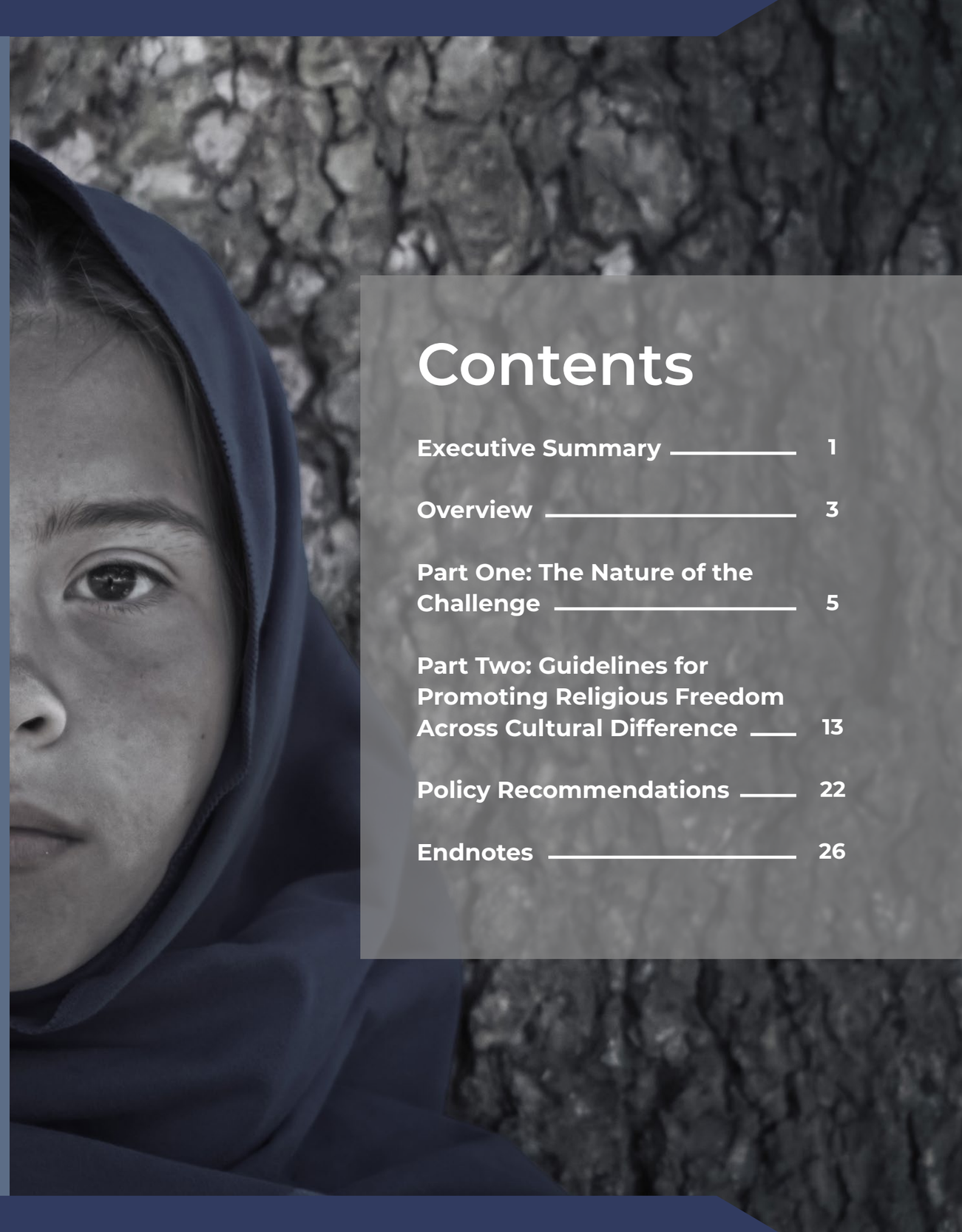
About the Religious Freedom Institute

A non-profit organization based in Washington, D.C., RFI is committed to achieving broad acceptance of religious liberty as a fundamental human right, a source of individual and social flourishing, the cornerstone of a successful society, and a driver of national and international security. RFI seeks to advance religious freedom for everyone, everywhere.

Acknowledgements

Produced as part of the FORIS Project, this report was co-authored by Chad Bauman, Robert Hefner, Timur Kuran, and Thomas Berg, each of whom is an associated scholar with FORIS. Byron Johnson and Jeremy Barker, both also FORIS scholars, contributed to the development of key themes and reviewed and commented on the report. Nathan Berkeley, RFI's communications director and research coordinator, served as the report's editor, with the assistance of Michaela Scott, RFI's development and communications assistant, and Justin Lombardi, RFI's research assistant. Linda Waits served as the report's copyeditor.

FORIS
Freedom of Religious Institutions in Society



Contents

Executive Summary — 1

Overview — 3

Part One: The Nature of the Challenge — 5

Part Two: Guidelines for Promoting Religious Freedom Across Cultural Difference — 13

Policy Recommendations — 22

Endnotes — 26

1 Executive Summary

Executive Summary

> *We encourage policymakers to advocate boldly for the preservation and expansion of religious liberty for the largest number of religious individuals, communities, and institutions possible, while also advocating for the least intrusive and least coercive forms of religious regulation possible, even in cultural contexts where social harmony is valued as much as, if not more than, religious liberty.*

Proponents of religious freedom who work in U.S. foreign affairs must carefully consider how conceptions of religion and the common good vary across countries. U.S. diplomats, policymakers, and advocates for religious liberty will be less effective if they are unaware of these differences across societies or try to engage at the level of policy only without addressing these more fundamental issues.

Distinctive local understandings of religion help explain various ways governments intervene in internal religious affairs in order to: 1) promote progressive (as opposed to regressive or radical) religion, 2) restrict the political activities of religious actors, particularly insofar as such activities are perceived as competing with or undermining the state, and 3) consolidate religious orthodoxy.

In countries where the state intervenes in favor of what it defines as progressive, non-political, and/or orthodox religion, the institutions of legally disfavored groups are especially vulnerable to discrimination or other maltreatment and merit special consideration. These institutions act in society and can be acted upon. They are inescapably visible and public in nature and, thus, test the limits of religious freedom in a manner that is both deeply complex and urgent.

Local definitions of "the common good" also influence conceptions of the nature and limits of religious liberty. Diverse peoples imagine the good society differently and such differences lead to competing conclusions as to how ideals like liberty and social harmony should be balanced. Countries that privilege religious harmony as a social ideal are inclined to regulate religion in ways that are not consistent with the relatively open religious market in the United States.

The following guidelines can help to promote religious freedom across cultural difference by limiting and orienting state regulation of religion in key ways. Accordingly, religious regulation:

- **Must be evenly and transparently constructed and applied.**
- Should emanate from the principle that **religion and its embodiment in religious institutions are a public good.**
- Should generally **avoid regulating *internal* institutional and *private* religious affairs.**
- Must be **chastened by formal recognition of religious freedom as a basic human right** (counted among an array of other fundamental rights), and the goal of **ensuring maximum freedom for religious individuals *and* institutions.**

The following policy considerations follow from the report's key observations and guidelines:

1. In devising policy recommendations for the strengthening of personal and institutional religious freedom, U.S. diplomats, policymakers, and advocates must always begin by critically **assessing the ways in which different countries and their citizenry define religion.**

2. Any effort to promote individual and institutional religious freedom in a specific national setting must begin with a careful **mapping of the movements and coalitions most intent on and capable of consolidating religious freedom in a socially effective way.**

3. **The precise policy terms of institutional religious freedom must be continuously recalibrated and refined** in respectful dialogue with citizens and believers across religious communities, and specifically within those societies to which American governmental and non-governmental policy efforts are directed.

4. We encourage policymakers to advocate boldly for the preservation and expansion of **religious liberty for the largest number of religious individuals, communities, and institutions possible**, while also advocating for the **least intrusive and least coercive forms of religious regulation possible**, even in cultural contexts where social harmony is valued as much as, if not more than, religious liberty.

> *"Favoritism towards one or more religious traditions, as well as strong religious regulation, restriction, or support, is the norm rather than the exception even among the world's Christian-majority democracies...*

2 Overview

Proponents of religious freedom among foreign affairs officials in the United States and those who work with and around them (e.g., in diplomatic offices, political think tanks, lobbying firms, etc.) must carefully consider how conceptions of religion and the common good vary across countries. This variation shapes public conversations and state policies about which religious communities deserve recognition and rights, the appropriate degree of government intervention in religious affairs, and—more generally—the articulation and practice of institutional religious liberty (i.e., the freedom of religious institutions in society). Advocacy and diplomacy that fails to recognize this dynamic will, at best, fail to grasp key elements of complex international situations and, at worst, be perceived as culturally intrusive or imperialistic. With regard to the latter point, if the regnant definitions of "religion" and the "common good" prevailing in the United States are presumed, without argument, to be universally operative or superior, they will be seen as highly suspect or rejected altogether.

In fact, it is important to stress that the United States is an outlier even among Western democracies and among Christian-majority democracies more generally. No country in the West adopts anything like the American libertarian policy in terms of the legal definition and recognition of religions. Some Western democracies still have a state religion, of course, and the pattern seen in countries like Germany, Switzerland, Belgium, and elsewhere is to grant full state recognition only to a few long-established religious communities (i.e., Christians and Jews), extend partial recognition and/or state support to some additional faith communities, and deny equal recognition to those traditions seen as not meeting long-established norms.

As Jonathan Fox has shown, favoritism towards one or more religious traditions, as well as strong religious regulation, restriction, or support, is the norm rather than the exception even among the world's Christian-majority democracies: "[I]n all categories of Christian democratic states, *including Western*

democracies, a significant majority of states do not practice SRAS [separation of religion and state] because some religions are privileged over others."[1] Moreover, Fox states that "... even under the most leniently applied definitions that take into account only religious legislation, a large majority of Christian democracies do not practice SRAS based on the definition of no preference for any religion and of no government entanglement with religion."[2]

Outliers come in both problematic and admirable varieties, of course, and there is much to appreciate about how the United States regulates religious diversity, as is evident from the continued attractiveness of the United States as a destination for emigrants around the world,[3] particularly emigrants propelled from their natal lands because of religious oppression. However, as we argue below, while Jeffersonian separation of religion and state, as a model, has served the United States well, it is unrealistic and will likely be counterproductive for U.S.-based advocates of religious freedom to approach policymakers abroad with an *a priori* presumption that SRAS is necessarily the only viable (and therefore normative) model for regulating religious diversity.

The first part of this report describes the nature of the challenge, and in doing so makes reference to particular historical and contemporary contexts. The second provides recommendations about how to move forward, carefully and effectively, with regard to advocacy around religious liberty. This section argues against the "entrenched assumption in some religious freedom discourse that *any* state regulation of religion is inimical to religious liberty,"[4] and instead prescribes a set of three standards by which the legitimacy of religious regulations may be judged.

We do not argue for an entirely relativistic view of national and cultural differences, but rather strive to underscore the obvious but often ignored fact that at the popular level people frequently approach issues of religious liberty from the vantagepoint of competing definitions of religion and the common good. Policy analysts and advocates who understand this reality will inevitably have greater success crafting and implementing effective policies for the promotion of both personal and institutional religious freedom.

One final introductory note is necessary. This report takes the additional step of explicitly addressing issues of institutional religious freedom, in recognition that securing the freedom of individuals to join one another based on their shared faith to form congregations, schools, social service organizations, and more may require something different or more, culturally and legally, than that which is necessary to safeguard an individual's exercise of religion.

3 Part One: The Nature of the Challenge

A

Locally normative definitions of "religion" influence conceptions of the nature and limits of religious liberty, including which religions are recognized as legal and deserving of such liberty and when and how it is appropriate for the state to intervene in internal religious affairs.

Notions about the nature of religion and its purpose contain implicit norms about the nature of *good* and *desirable* religion. For example, Hindus often conceive of religion as the pursuit of *spiritual progress* and accept that such progress can be made within any religious tradition. Those who understand religion this way are mystified or even offended by proselytization, particularly in its more aggressive varieties. In this view, because conversion is not necessarily conducive to spiritual growth, proselytization is understood as a superfluous act—more about numbers than true spirituality. If proselytization is *unnecessary*, it is also *undesirable* because it has the potential to cause offense or disharmony. Moreover, because conversion is unnecessary in the pursuit of "true" spiritual goals, those who engage in proselytization—which requires the rejection of other religions as false—are viewed as intolerant and lacking respect for people of other faiths. For all of these reasons, then (and continuing to speak from this relatively common Hindu perspective), it may be reasonable to regulate or restrict conversion and proselytization to encourage tolerance and preserve social harmony.

Views such as these obviously contrast with what, to simplify again, is a common Western Christian view that salvation is available only within Christianity. This view is generally accompanied by the equally strong assertion that salvific faith requires more than mere external conformity; rather, salvation is the result of an *inward* transformation that results from the free and uncoerced embrace of the gospel of the Kingdom of God. Thus, in this view, proselytization and conversion are central to religious freedom.

"Ours is not an argument that one or the other of these competing definitions of religion is superior; rather, we make the simpler and more direct observation that U.S. diplomats, policymakers, and advocates for religious liberty will be less effective if they are unaware of the differences...

Such differences in the definition of good and desirable religion extend far beyond the issue of proselytization. In Muslim-majority countries, religion is often characterized, legally and socially, in ways that reflect two historical legacies that are either absent or less common in Western, and especially American, conceptions of religion. First, the category of religion is understood by many Muslims to apply not to any and all ethical traditions that recognize some transcendent or supernatural entity. Rather, it applies only to those traditions that specifically recognize a monotheistic deity and a literate scriptural tradition bequeathed by the Almighty to a prophet or seer, and that, on the basis of those traditions, prescribe rituals and devotion for the regularized worship of the divine. Although Muslim-majority countries differ significantly in the precise ways in which their constitutions and laws characterize religion, most are reluctant to extend formal recognition to all spiritual traditions, especially those of recent inspiration or those lacking these formal and largely Abrahamic qualities of religiosity.

A second and quite different, but no less important, legacy that has affected state policies and societal attitudes toward religion and religious activity in Muslim-majority societies has to do with the memory of Western colonialism. From the nineteenth to the mid-twentieth centuries, the great majority of Muslim societies were colonized by Western powers. A key feature of imperial rule in most (if not all) Western colonies was the forced opening of Muslim lands to proselytization by Western-based and (in significant part) colonially financed Christian missions. However well-intended some of its aims were, which often included education and literacy programs, this Western policy neither made comparable state funding available to Muslim or other indigenous religious traditions nor extended state recognition to all local religions. This latter fact meant that Western governments were not seen as, and in fact did not engage in, promoting religious freedom for all faith traditions. Together these two legacies have led many in Muslim-majority societies to look with apprehension at contemporary Western policies on religious freedom. Moreover, even where states and societies subscribe to international norms on religious freedom, they are often reluctant to extend the category of "religion" to *all* faith traditions.

The point, then, is that different conceptions of religion lead to divergent formulations of the nature and limits of religious liberty. These differences have consequences in the realm of policy, and help explain, for example, why other governments might consider it acceptable to regulate proselytization and conversion, while many in the United States would consider such regulation anathema.

Ours is not an argument that one or the other of these competing definitions of religion is superior; rather, we make the simpler and more direct observation that U.S. diplomats, policymakers, and advocates for religious liberty will be less effective if they are unaware of the differences or try to engage at the level of policy only without addressing these more fundamental differences about the definition of religion.

Locally normative definitions of "good" and "proper" religion also help explain distinctive ways various governments intervene in internal religious affairs as well as the purposes such interventions are meant to serve. Here we discern three primary aims of these interventions: 1) to promote progressive (as opposed to regressive or radical) religion, 2) to restrict the political activities of religious actors, particularly insofar as such activities are perceived as competing with or undermining the state, and 3) to consolidate religious orthodoxy.

Interventions in Favor of "Progressive" Religion

Interventions in favor of progressive or liberal religion can be found throughout the world, particularly where local definitions of desirable religion exclude religious traditions and movements deemed "radical," "regressive," or even "activist." In Egypt, for example, President Abdel Fattah al-Sisi has attempted to pressure and manipulate Muslim leaders to undergo a religious reformation that would undermine and marginalize varieties of Islam involved in social activism or mobilization—not merely those in extremist form, but even those seeking the expansion of social equality and justice. He has also pressured clerics to legitimize his policies against social media freedoms and issue pro-regime *fatwas* in favor of regime policies, including policies (relevant to the next section of this policy paper) making it a crime to oppose the regime.

Similarly, the "Draft Law to Strengthen Republican Values,"[5] recently proposed by French President Emmanuel Macron, purports to defend the state's secular

values against the putative threat of "Islamist separatism" by restricting foreign funding for mosques, banning gender segregation in swimming pools, prohibiting homeschooling after the age of three, and clamping down on "fundamentalist" speech online. In combination with calls for Muslim organizations to sign on to a charter of republican values and existing laws banning 'burkinis' and the conspicuous display of religious symbols by civil servants, the proposed law indicates a desire not only to prohibit "radical Islam," but also, more generally, to restrict even many mainstream expressions of the faith.

India's judiciary also intervenes regularly in the internal religious affairs of its citizens, both to ensure competent, non-corrupt management of religious institutions (like temples) and to enforce ideals of non-discrimination (e.g., against women and lower-caste communities) under the presumption, as one justice put it in a verdict declaring a Hindu temple's prohibition of women visitors unconstitutional, that "It is a universal truth that faith and religion do not countenance discrimination," and that, therefore, "the exclusion of women...could [never] be regarded as an essential practice" of Hinduism.[6] The fact that the government is more willing to enforce progressive ideals within Hindu institutions than within minority institutions is often a cause for Hindu consternation; nevertheless, the regulation, by various Indian state governments, of religious proselytization and conversion may be interpreted as an intervention in favor of what is perceived as desirably "tolerant" religion (that is, religion which does not engage in the denigration of other religions).

Even in the United States, disagreements about whether desirable religion is by definition non-discriminating inform debates about how far the government should go to enforce anti-discrimination law. For example, while there is now relatively widespread support for the view that the government can and should prevent racial discrimination within religious institutions, there is far more contentious debate on whether and how it should do so in the case of gender and sex-based discrimination. These debates concern both *which* forms of discrimination require government intervention, and in *what contexts* anti-discrimination law should be enforced (e.g., not at all, only in the activity of religious individuals and institutions in the public sphere, or even within religious institutions themselves). As the French, Indian, and U.S. examples indicate, progressive ideals of freedom in sexual and gender-identity expression often motivate state interventions in internal religious affairs.

Interventions in Favor of Non-Political Religion

In some contexts, local definitions of "good" religion (whether widely accepted or enforced by authoritarian states) exclude religious institutions that engage in politics, advocate for particular policies, or criticize the state. In the French Revolution, to provide an historical example, the Roman Catholic Church was disassembled and reconstituted to serve the interests of the state and ensure that the Church would thereby be unable to challenge the new Republic.[7] Contemporary French prohibitions against displays of "religious" symbols like the hijab or "ostentatious" necklace crucifixes in public schools, libraries, and government buildings[8] may be seen as a similar (though less thorough-going) attempt to defend state *laïcite* from religious rivals.

Two examples from Asia demonstrate similar dynamics. The Chinese government is among those that periodically restrict religious institutions deemed overly political. In 2011, for example, the state-owned *Global Times* justified a government crackdown on the Chinese Shouwang house church (which had publicly protested its legal inability to purchase property), on the grounds that "[A] church should not become a power which can promote radical change... Otherwise, the church is not engaged in religion but in politics, which is not allowed for a church."[9] Nearby, in Singapore, the Maintenance of Religious Harmony Act (MRHA) prohibits the mixing of religion and politics and allows the government to restrict and censure religious leaders who speak on political topics in public sermons or talks. While such laws are infrequently enforced, as Jaclyn L. Neo argues, they serve an important "expressive role" that helps shape public opinion and build consensus around the idea that desirable religion is non-political.[10]

Interventions in Favor of Orthodox Religion

While thus far we have been discussing definitions of religion *in general*, it is worth noting that definitions regarding the limits of *particular* religions also influence which religious institutions and communities receive legal recognition and protection. Perhaps the most obvious example is in Pakistan, where Ahmadis have been declared '*non-Muslim*' by constitutional amendment, despite their own self-understanding as Muslims. In this way, Ahmadis have been stripped of protections granted to Muslims and placed in an untenable situation—unwilling to assent to being defined as non-Muslim, but being forbidden, by the government, to identify themselves as Muslim, or even (in some cases) to call their places of worship "mosques" or greet others with the Muslim greeting, "As-Salaam-Alaikum." While the situation of Ahmadis is problematic enough, the government's willingness to intervene to define the limits of Islam is also concerning because of the way it opens the door to progressively more exclusive definitions of Islam. (Movements to exclude Shi'as and Isma'ilis had begun almost as soon as Pakistan's constitution was amended to exclude Ahmadis from the definition of "Islam".)

Similar processes have taken place in other Muslim-majority lands. In Malaysia, the state has also defined Shi'as and Ahmadis as non-Muslims and thus banned them from the free exercise of worship. The most populous Muslim-majority country in the world, and its third largest democracy, Indonesia, has taken a more accommodating attitude toward Shi'as, but has drastically curtailed Ahmadi social freedoms without banning the community outright. In Turkey, the Religious Affairs Directorate (RAD) refuses to recognize Alevis, about one-sixth of all Turkish Muslims, as a separate branch or sect of Turkish Islam. Alevi practices differ from those of orthodox Sunni Muslims (they don't fast, they don't do the pilgrimage, they don't do the five daily prayers, etc.) and they prefer to worship in their own temples, which they call *Cemevi* (as

opposed to *Cami*), but the RAD refuses to recognize them as separate. State schools teach RAD's version of Sunni Islam, even to children of Alevis.

Interventions and the Unique Challenges of Religious Institutions

In each of these countries in which the state intervenes in favor of what it defines as progressive, non-political, and/or orthodox religion, the institutions of legally disfavored groups are especially vulnerable to discrimination or other maltreatment and merit special consideration. These institutions—whether worship congregations, faith-based schools, or religious organizations—occupy tangible social space. They act in society and can be acted upon by the state and other social actors. They are inescapably visible and public in nature. Securing institutional religious freedom, thus, tests the limits of religious freedom in a manner that is both deeply complex and urgent. States understandably have interests in the configuration and activities of civil society institutions within their jurisdiction, many of which are religiously motivated. Moreover, religious communities often seek to establish and maintain religious institutions as a necessary means of fulfilling their deepest faith convictions. They may be created in response to religious imperatives around communal worship, service to the poor, and educating the next generation—to name a few pursuits among many others that religious persons are often called by their faith to undertake. Put in theoretical terms, ultimately, the purposes of the state and the priorities of religious communities when it comes to religious institutions converge to make institutional religious freedom an especially fraught, yet indispensable, dimension of religious freedom.

B Locally normative definitions of "the common good" influence conceptions of the nature and limits of religious liberty.

Diverse peoples imagine the good society differently, not only cross-nationally, but even within the context of specific countries. Such differences lead to competing conclusions regarding how ideals like liberty and harmony are most appropriately balanced. It is often difficult for those socialized within the United States—where a distinctively strong libertarian predisposition cuts across all political parties—to recognize that liberty does not elsewhere dominate among social ideals and goals as decisively as it does in the United States.

Anyone who engages in advocacy or diplomacy in Asia, however, is likely well-aware of the importance given, in many Asian nations, to social harmony and communitarian ethics. Perhaps the best-known case is Singapore, where the MRHA, passed in 1990 and recently amended, restricts the liberty of religious people (particularly religious *leaders*) with the goal of promoting interreligious harmony. The maintenance of religious harmony also informs the existence, across the Middle East and Asia, of laws prohibiting blasphemy or insulting other religions with the intent to cause offense. (Many of these laws were originally drawn by newly independent states from British colonial law codes, as is evident from the fact that they appear under the same section number, 295, of the penal codes of Myanmar, India, Pakistan, Singapore, etc.)

Countries that privilege religious harmony as a social ideal are inclined to regulate religion—e.g., Pakistan, India, and Indonesia legally restrict proselytization—in ways that are not consistent with the anomalously libertarian and deregulated religious market found in the United States, nor even with the pattern of greater regulation and/or support for religion found in many European democracies. An overemphasis on harmony at the expense of liberty is not without cost, however, and can lead to enforced orthodoxy or homogenization.

Securitization represents another species of the overemphasis on social harmony, which can lead to abuse in the regulation of religion. Quite frequently, oppressive regulation is couched within or justified as a response to security concerns or anti-terrorism efforts, whether in the suppression of Muslim Uyghurs in China, the Rohingya in

> *"It is often difficult for those socialized within the United States—where a distinctively strong libertarian predisposition cuts across all political parties—to recognize that liberty does not elsewhere dominate among social ideals and goals...*

Myanmar, Muslims in France, Christians in Algeria, or religious teachers in the United Arab Emirates.

However, such outcomes are not the *necessary* result of legal frameworks emphasizing religious harmony, and it bears mentioning again that no country declines to regulate religion entirely. Rather, the differences among countries lie in how thoroughly and to what end religion is regulated, as well as in who is privileged by the regulations (e.g., majority versus minority communities, individuals versus communities/ institutions, etc.).

Here again, it behooves those engaged in religious liberty and advocacy on behalf of the U.S. government or institutions to recognize that regnant notions of religion and the good society in the United States are, from a globally comparative perspective, an aberration. Moreover, as Jonathan Fox has demonstrated, many countries commonly considered stable liberal democracies do not practice SRAS, suggesting "that either SRAS is not a necessary condition for liberal democracy or many states commonly considered to be liberal democracies are not."[11] Divergent conceptions of religion and the good society help explain differences in the articulation and practice of religious liberty around the world. We argue here for humility, not relativism, and for a willingness to make, rather than merely presume, the argument for religious liberty as imagined in the United States.

In the discussion above, the inclusion of examples from the United States should help make two points particularly clear. First, no country or culture is monolithic—including the United States. There are differences of opinion on the nature of religion (and desirable religion) not only between, but also *within* countries; and those divergences shape national debates and policy on matters pertaining to religious liberty not only abroad, but in the United States as well, where these debates in recent years have been deeply polarized.

Second, as the United States seeks to promote and encourage protection of religious freedom around the world, it must pay attention to its own record in order to bolster the credibility of its assertions. The International Religious Freedom Act of 1998 makes it American policy to promote religious liberty throughout the world as a fundamental human right and source of stability for all countries.[12] The United States must follow this lesson at home, too.

Religious institutions are one key way that a faith community's tenets take form in society and interact with that society. Not surprisingly, then, disputes over how to balance liberty and social harmony in order to promote the common good will materialize around these institutions and the extent of their freedom.

4 Part Two: Guidelines for Promoting Religious Freedom Across Cultural Difference

In the first section we outlined the ways that contrasting conceptions of religion, good religion, and the common good help explain divergent international formations of religious liberty law and practice, and in particular divergent practices with regard to government regulation of institutional religious affairs. It is our hope that better understanding these contrasting conceptions will lead not only to better informed and more effective advocacy and diplomacy around religious liberty issues, but also to a kind of humility and tolerance in the face of diverse national practices. This is not to say, however, that all formations are equally desirable, or that all regulation of religion should be tolerated. In this section, then, we first outline the pitfalls inherent in the overregulation of religion (with a special focus on institutional religion), before closing with an attempt to provide a sort of litmus test for acceptable regulation that remains humble and respectful of cultural differences like those described in the first section.

Religious institutions should be free to act like religious institutions, while governments should be free to act like governments. An institution is a particular kind of thing—a school, mosque, government agency, hospital, or something else—and it will also pursue a mission based upon certain principles, some of which may be religious. Protecting the freedom of religious institutions demands proper recognition of the type and mission of the institutions populating a society. To provide an example to illustrate this point, a government that intrudes on theological matters or the appointment of clergy would be acting like a religious institution while preventing religious institutions themselves from fully acting like religious institutions.

From this perspective, Pakistan's constitutional and definitional exclusion of Ahmadis from the fold of Islam is clearly problematic. Farahnaz Ispahani writes, "the constitutional proviso that attempted to define 'Muslim' in Article 260 transformed a theological issue into a question of law. The language of the second amendment of the constitution put the Ahmadis in a religious predicament, effectively depriving them of their freedom of religion."[13]

Ahmet Kuru convincingly argues that, in Europe, what allowed for the emergence of normative church-state separation was not the particularities of Christian theology so much as the strength of the Roman Catholic Church, which—because it could rival nations in authority and influence, required a negotiated separation of powers.[14] Paul Marshall underscores the point: "[T]he Church…has had the right to own land, carry out ecclesiastical trials, choose or appoint leaders, determine doctrine, grant academic credentials, and perform multifarious functions related to the lives of its members or constituents." Marshall continues, quoting Harold Berman, "The competition between the ecclesiastical and the secular court had a lasting effect on the Western legal tradition. Plural jurisdiction and plural legal systems became a hallmark of Western legality … Underlying the competition … was the limitation of the jurisdiction of each."[15] Conversely, for Kuru, the fact that an ideal of church-state separation did not develop in a widespread way among Muslim countries of the Middle East is largely the result of Muslim rulers progressively undermining and usurping the formerly more autonomous role and authority of the *ulema* and religious schools, particularly after the 11th century (but beginning even earlier).[16]

These arguments suggest that the existence of strong and substantially free religious institutions creates a certain kind of momentum towards greater freedom, and serves as a bulwark against future encroachments on the freedoms of religious individuals and institutions. Whereas, stringent government regulation of religious affairs creates momentum towards greater regulation, and risks weakening religious institutions to the point where governments are tempted to subsume and co-opt them as laborers in the nation-building project (as is perhaps the case in China). There are potentially serious and deleterious consequences, then, of the overregulation of religion, not to mention the fact that attempts to eliminate particular religious beliefs or practices often produce a reactionary backlash that *entrenches* those very religious beliefs and practices. French and British colonial discouragement of Muslim women's veil-wearing in the Middle East and North Africa, for example, turned the veil into a symbol of national identity and resistance to colonization and westernization, arguably thereby provoking more widespread veiling. Iran's Unveiling Decree of 1936 had a similar effect.

Kuru and Marshall remind us, however, that there is a great deal of historical contingency in the construction and development of normative notions of the common good, religious freedom, constitutionalism, and liberalism. Indonesia, a Muslim-majority country, deliberately opted not to incorporate classical Islamic characterizations of religion into its constitution and state statutes. However, over time, the resurgence of Muslim observance across most of Muslim society made the extension of equal citizen rights to all faith communities increasingly difficult, challenging the country's proud tradition of an equal and religiously undifferentiated citizenship. We must not, therefore, essentialize any religion or culture as inherently predisposed for or against religious liberty and religion-state separation. Debates about whether religion should be mixed with politics (again, a matter of how to define the limits of religion) are not merely intellectual, but are often settled at least in part through historical accident, as described above.

In all lands, then, religion-state relations are variable and fluid, shaped by particular political actors and conditions that change (and can *be* changed) over time. There is therefore reason to hope that change can be achieved through advocacy and diplomacy. However, for such advocacy to be effective, it must adopt a humble and reasonably tolerant approach to nations' distinctive approaches to the regulation of religion. What, then, should guide the assessment and work of advocates for religious liberty? We recommend three guiding principles:

4.1 Religious regulation must be evenly and transparently constructed and applied.

> *"To achieve what we describe here as 'generous neutrality,' great effort must be made by governments to ensure that their country's dominant religion(s) do not become the explicit or implicit standard by which the reasonability of exemption requests is judged.*

An important principle of religious regulation is that it should reject the political dominance of any particular religious group while also ensuring that all religious communities have equal access to government representation and benefits. So, for example, if a state offers privileges to one religious community (e.g., state-funded clergy, worship space, or religious pilgrimage), it should work to ensure other communities receive benefits in similar (if not always identical) ways.

Similarly, if the state offers exemptions from otherwise generally applicable law to one or some religious communities, it should be prepared to offer them to other religious communities as well. Since different religious communities will request different kinds of exemptions, the goal should be a generous neutrality, not absolute uniformity. One community may request exemptions allowing them to wear religious garb in situations where such garb would be otherwise prohibited (e.g., in the military). Another may seek exemption from general education requirements (as the Amish do in the United State). Still another may seek exemption to use generally prohibited substances in ritual contexts, or to serve regulated substances to minors when such service would be otherwise prohibited. To achieve what we describe here as "generous neutrality," great effort must be made by governments to ensure that their country's dominant religion(s) do not become the explicit or implicit standard by which the reasonability of exemption requests is judged.

A related principle is that all religious communities should be similarly affected (positively or negatively) by religious regulation. The problem with uneven application of religious regulations is that they either privilege certain groups or enshrine the dominance of some groups over others. There are a variety of ways in which the regulation of religion may be applied unevenly to different religious institutions and communities. Generally, however, the uneven application of religious regulations occurs either in situations where there is differential legal recognition of various religions (i.e., the differential treatment is built into the law itself by singling out certain religions for special privileges or burdens), or in situations where there is differential treatment under uniform legal recognition (i.e., the law is basically neutral toward religion or equitable across religions, but those administering and enforcing it selectively apply it to certain religions).

Differential Treatment Under Differential Legal Recognition

As noted previously, differential treatment can be the result of differential legal recognition (or lack thereof). We have already mentioned the case of Pakistan several times, where those deemed "Muslim" (whatever their self-understanding) have a different legal standing than those groups deemed as non-Muslims. Similarly, Sri Lanka's constitution grants Buddhism the "foremost place" among all religions, a designation that has been used to justify the privileging of Buddhism in this otherwise self-identified "secular" nation. Iran denies equal protection to Sunnis, while Saudi Arabia denies equal protection to Shi'as. In Malaysia, Sunni Islam is identified as the religion of state, and neither Muslim nor non-Muslim religious minorities are accorded equal state support or protections. In Indonesia, the practitioners of religions and spiritual traditions beyond the six officially recognized by the state face significant challenges in securing access to state services, including the registration of births and weddings, the building of houses of worship, and the securing of passports. In Theravada Buddhist Thailand and Myanmar, too, the state extends full rights of religious freedom only to Buddhists. In these cases, religious minorities are disprivileged by the legal regulation of religion.

Such differential treatment often clearly disadvantages the religious institutions associated with minority or disfavored religions. In France, for example, state funding subsidizes the academic institutions and places of worship associated with Catholicism, Protestantism, and Judaism, but not Islam. State religious taxes collected in Germany subsidize Catholic, certain Protestant, and Jewish (but again, not Muslim) congregations. The aforementioned differential treatment in Thailand and Myanmar results in Muslims having more restricted access to state funds for schools, houses of worship, and hospital chaplaincies.

In India, different religious traditions are granted their own, distinct personal law codes (e.g., governing inheritance, marriage, divorce, etc.). On the one hand, this allowance may be understood as protecting the religious freedom of minority communities. On the other hand, however, the existence of multiple personal codes invites different levels of regulatory intervention in different religions and provokes debate about who gets to speak for minority religious traditions. In addition, because the Hindu personal law code is also the default *national* law code for those who are not Christian, Jewish, Muslim, or Parsi (Zoroastrian), political and judicial officials have generally been more willing to revise it (than they have minority law codes) in the direction of progressive values like gender equity, etc. (for example in matters of divorce and inheritance). Hindus therefore complain that while religious minorities enjoy the right to retain their traditional values and practices, Hindus have been forced to accept the judiciary's reformist agenda, as in the Supreme Court's 2018 decision (which is currently under review) to strike down as unconstitutional a prohibition against women of child-bearing age visiting the famous Sabarimala Temple while similar prohibitions remain in place at some Muslim and Parsi sites.

A similar dynamic is at play in Middle Eastern countries that enforce state-defined standards of Muslim orthodoxy (thereby disadvantaging Muslims deemed heterodox) while leaving Jewish and Christian minorities largely to themselves to manage their own internal affairs related to theology, liturgy, and governance. In Turkey, for example, twelve million Alevis are not free to establish legally recognized temples using their own liturgy or opt out of Islam-oriented educational institutions, while a hundred thousand Turkish Christians are able to move freely among fifteen recognized churches, alter their liturgy as they desire, and opt for their own educational institutions. The difference is that Christians do not threaten the government's standing, while Alevi autonomy could encourage schisms within Turkish Sunni Islam and generate a backlash within conservative Sunni circles. As these examples demonstrate, it is often the case that *religious minorities within a country's dominant religion may be even more severely restricted than adherents of other religions. Advocacy for religious freedom, then, necessarily entails advocacy for religious majorities as well (particularly minorities within the majority).*

Differential Treatment Under Uniform Legal Recognition

Disparate application of religious regulations also occurs in situations where there is differential treatment despite uniform legal recognition. Indian government interventions enforcing gender equity in access to Hindu temples are controversial among some Hindus not primarily due to the intent of these measures, but rather because they are not universally applied to all religions and religious situations.[17] Similarly, India's state "religious freedom laws" (deemed "anti-conversion laws" by their critics) restrict conversion and proselytization, particularly if conducted through "force, fraud, or inducement." Theoretically, these laws apply to all religious traditions; however, in practice they have been applied almost exclusively to Christians (and even here, rather capriciously so), while they have never been applied to Hindus, even in cases where the evidence suggests Hindus have offered direct bribes to induce Muslims or Christians to convert to Hinduism. Furthermore, poorly defined terms such as "force, fraud,

and inducement," invite abuse of such laws as a tool of harassment.[18] These laws are therefore both unevenly and capriciously applied. Many countries regulate or restrict Christian missionizing even more aggressively. Since the "return to democracy" under the recently deposed Aung San Suu Kyi, for example, Myanmar has provided support to Buddhist missionaries while restricting Christian proselytization.

Regulation of religion that favors one or some religious communities over all others, or religious over non-religious citizens (or vice versa), are obviously problematic. The point is not to reject, in an *a priori* fashion, all regulation of religion, but rather to insist that any regulation be applied clearly, transparently, and evenly both within and among religious traditions. In fact, any regulation applied to religion should also apply to all of society, if relevant. Laws forbidding insulting other religions or causing religious offense, therefore, would seem more appropriate if such things were forbidden in more secular contexts as well (e.g., politics).

4.2 Religious regulation should emanate from the principle that religion and its embodiment in religious institutions are a public good.

The regulation of religion may be intended to suppress or eliminate it (or certain forms of it). Such regulation may also have the goal of creating a well-functioning and harmonious marketplace of religious ideas. The latter is obviously a preferable motive for those who care about religious liberty. Many western forms of secularism, emerging as they did after the religiously inflected European wars of the 17th-century, presume that while private religion is a valued freedom and a *public* good, public religion is prone towards conflict and even violence, and therefore in need of at least some regulation and restriction.[19] Still, even among western countries one can discern diverse appraisals of the contribution of religion to society. The U.S. government is animated by widespread social consensus that religion is a public good, whereas in France, a greater proportion of the population considers more conservative and publicly pious forms of faith a challenge to *laïcite*.

Not surprisingly, the range of approaches expands even further if we take into account the entire world. Communist China and North Korea suppress religion as a potential adversary of the state, and therefore appear at one end of the spectrum. At the opposite end lie nations that evince greater confidence in the value of religion. India's form of secularism acknowledges the centrality and value of religion in Indian society—the essential *publicness of religion*—and intervenes to regulate and sometimes even manage religious institutions, not with the aim of undermining their power and authority but because of the presumption that religious institutions, as public endowments, should be effectively managed for the public good. As Robert Hefner shows, Indonesia's policy is similar: Indonesia officially defines itself as a religious state, and the six religions recognized by the Ministry of Religious Affairs are all regarded as providing a vital public and, especially, moral service to the nation.[20]

4.3 Religious regulation should generally avoid regulating *internal* institutional and *private* religious affairs.

Drawing upon Paul Marshall's insistence, discussed above, that religious institutions should be free to act like religious institutions, we suggest, as a general rule, that government regulation of religion should avoid intervening in *internal* religious affairs. Here, by "internal affairs," we refer to matters related to belief and practice; to the collection and distribution of funds; to self-understanding and self-identification; and to the appointment, payment, and supervision of religious leaders. By contrast, the regulation of "external affairs" involves the functions of religious institutions one might also find in secular institutions as well as activities religious institutions undertake in social spaces populated by people who overwhelmingly do not belong to their faith community. Regulation of "external affairs" therefore might include government requirements that religious institutions register themselves, report certain kinds of institutional information, identify leaders, follow zoning laws and building requirements, report income, satisfy safety standards, and pay taxes. Such regulation is generally not controversial, if applied transparently and evenly (and without the intent of using it to undermine religion or persecute religious people). It should also be stated that there may be circumstances in which religious accommodation is warranted even in the "external affairs" of religious institutions.

While religious institutions' external affairs tend to be more apt for state regulation, their internal affairs are not zones of absolute autonomy. Regulation of internal religious affairs may be appropriate when justified by some greater goal, such as the eradication of racism or caste discrimination. Few in the contemporary United States, for example, would question the appropriateness of government intervention to prevent racism in religious institutions. (This example is instructive, however, since it derives from a near consensus—to return to our earlier definitional discussion—that true and desirable religion could not possibly involve racial discrimination, a consensus not yet duplicated in public opinion, or in law, with regard to discrimination based on gender or sexual identity, expression, behavior, and/or relationships.)

Regulation of internal religious affairs may also be appropriate in certain limited circumstances when guided by well-articulated and widely accepted social ideals considered equal to liberty in significance. In Indonesia, for example, the country has at various times, including the first years of the democracy era (post-1988), experienced outbreaks of severe religiously based communal violence. As a result, state policy and public opinion favor efforts to balance the interests of religious freedom with those of interreligious social harmony.

In Singapore, in order to preserve interreligious harmony and promote the state's understanding of the ideal of pluralism, religious leaders are prohibited from criticizing or insulting other faiths when speaking publicly. Such restrictions clearly reflect a state-

communitarianism orientation that privileges social harmony as a whole over the liberties of individuals or even religious institutions. While such an orientation can lead to enforced homogenization or delegitimize criticism of the social order,[21] we urge those engaged in religious liberty to consider whether such regulations may serve the common good without transgressing some of the three general principles we articulate here.

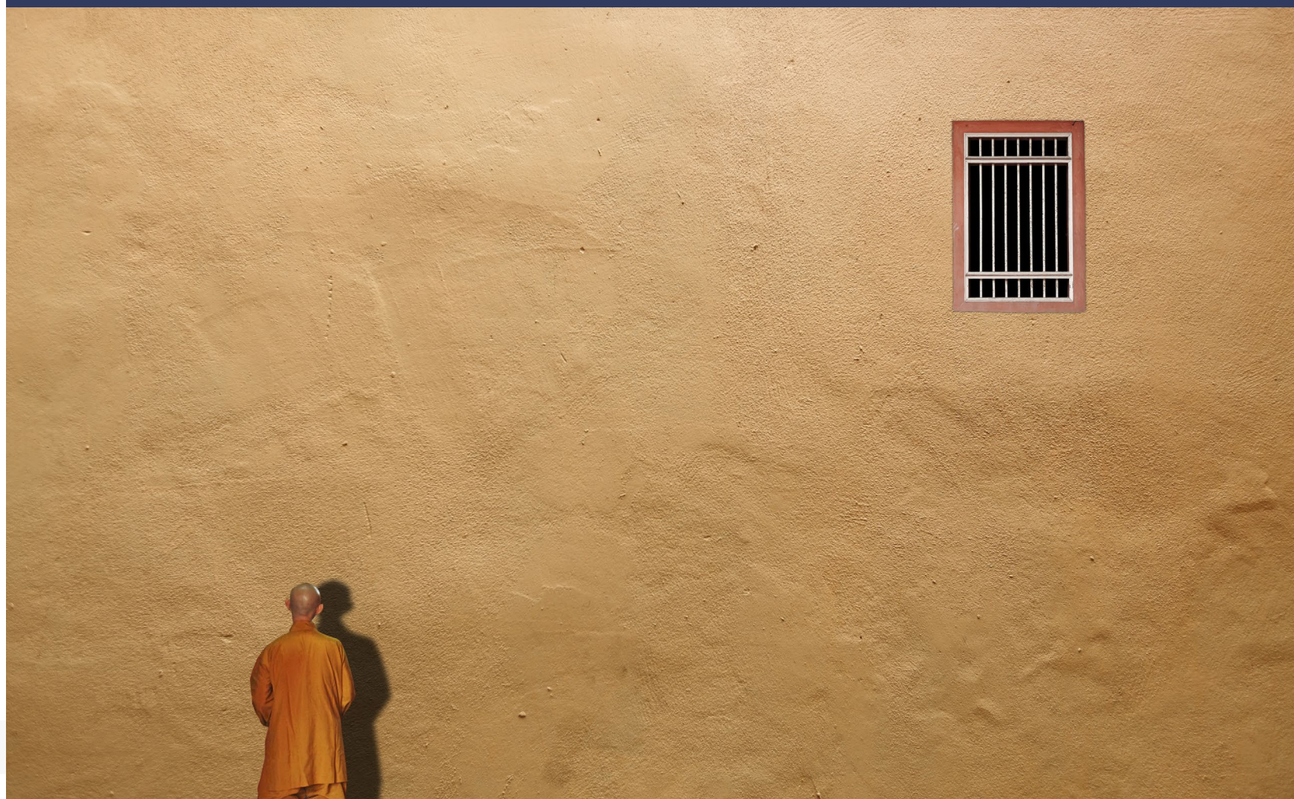
While it may in some cases be appropriate to restrict the activities of religious institutions for reasons articulated earlier, such regulations should avoid impinging upon private religious practice. As the Indonesian legal scholar, Zainal Abidin Bagir, has argued,[22] in certain circumstances it may be acceptable for the state to restrict individual rights to defame, insult, or otherwise degrade the practices and beliefs of another community. But such deliberate denigration of another faith community should always be distinguished from practices that merely deviate from those of the majority faith community. Under the "Blasphemy Laws" implemented in countries such as Pakistan, the practices of religious difference or non-conformity are sometimes subject to draconian punishments, including the death penalty. The consequence of such state meddling in religious ideas and observance is to severely degrade the religious freedoms of all citizens.

Singapore's MRHA provides an interesting additional case here. While it restricts the right of religious leaders to criticize other religions or the government when speaking in institutional spaces, it does not restrict the right of individuals (or even religious leaders) to express such opinions privately. This makes the institutional regulation somewhat more palatable. Still, other laws in Singapore, such as the Sedition Act, have been used to prosecute individuals for proselytizing, and critics may justly point out that the state's willingness to file suit against and jail large numbers of its opponents creates a situation in which the mere threat of legal intervention by the state is enough to coerce compliance, and the kind of "religious preference falsification," as described by Timur Kuran.[23] Compliance that can be achieved without direct legal oppression, therefore, may be more a function of the broader context of widespread repression of dissent.

Finally, any religious regulation must be chastened by formal recognition of religious freedom as a basic human right (counted among an array of other fundamental rights),[24] and the goal of ensuring maximum freedom for religious individuals *and* institutions. As a corollary to this general principle, we recommend that the regulation of religious affairs be achieved as much as possible through negotiation and consensus, rather than through the heavy-handed or punitive application of law. Here again, the situation in Singapore may be instructive. While the MRHA allows the government to discipline religious leaders who speak ill of other religious traditions in their capacity as institutional leaders, it has never been formally invoked. Threats of invoking the Act, however, have been used to inculcate the norm of pluralistic harmony and motivate and encourage restitution, in cases of social discord, through community remedial initiatives and rituals of apology or reparation (rather than through the law's disciplinary provisions).[25]

The goal, in the end, is to avoid, as much as possible, creating situations in which religious people are pressured into combining public religious (or irreligious) behavior that appears to conform to state-determined norms with a different kind of behavior in private. This mode of bifurcating one's life is often self-defeating, since it obscures the actual state of affairs and encourages attempts to upend the social order. The history of many Middle Eastern countries – characterized by alternating cycles of religious and secular repression that compel people to exaggerate or conceal their religiosity – is instructive in this regard.

> ***"These arguments suggest that the existence of strong and substantially free religious institutions creates a certain kind of momentum towards greater freedom, and serves as a bulwark against future encroachments on the freedoms of religious individuals and institutions.***



Recommendations

"We encourage policymakers to advocate boldly for the preservation and expansion of religious liberty for the largest number of religious individuals, communities, and institutions possible, while also advocating for the least intrusive and least coercive forms of religious regulation possible, even in cultural contexts where social harmony is valued as much as, if not more than, religious liberty.

5 POLICY RECOMMENDATIONS

Our shared efforts to recognize the varied circumstances of states and societies around the world with regard to religious freedom lead us to several basic conclusions and policy recommendations.

5.1 In devising policy recommendations for the strengthening of personal and institutional religious freedom, U.S. diplomats, policymakers, and advocates must always begin by critically assessing the ways in which different countries and their citizenry define religion, and how that definition reflects both the strengths and limitations of certain national traditions. Even in Western democracies, there is no single policy definition of religion, and no country extends full and equal rights and recognitions to all communities that self-identify as religious. Rather, distinctive, and always shifting local definitions of religion, developed discursively and through the sedimented accumulation of legal precedent and bureaucratic procedure, determine the nature of true and desirable religion, as well as which kind of religious communities and institutions are deserving of recognition and full freedom. As a result, a single religion may be treated differently in different national contexts. To take just one example, the Church of Scientology has nearly full freedom to function (with tax-exempt status) in some countries (e.g., the United States and Canada), while being labeled a "cult" and restricted in various ways in other countries (e.g., Germany and France), and is nearly completely prohibited elsewhere (e.g., Greece, which at one point liquidated the church's assets and barred it from operation as a religion).[26]

5.2 Related to this first recommendation, any effort to promote individual and institutional religious freedom in a specific national setting must begin with a careful mapping of the movements and coalitions most intent on and capable of consolidating religious freedom in a socially effective way. Although American and other policy analysts do not have to defer entirely to the social and cultural legacies of all countries, all effective policy efforts must work to understand those legacies so as to scale up their strengths and neutralize their defects.

5.3 Inasmuch as these contingencies weigh in our policy analyses and recommendations, the unexpected but essential truth at the heart of the ideal of institutional religious freedom is that, rather than absolutization, its precise policy terms must be continuously recalibrated and refined in respectful dialogue with citizens and believers across religious communities, and specifically within those societies to which American governmental and non-governmental policy efforts are directed.

5.4 Finally, nothing in this report should be taken to encourage the end of U.S. advocacy for the ideal of religious liberty, or to suggest that all regimes of religious regulation are equally desirable. We recommend humility, not passivity, and encourage policymakers to advocate boldly for the preservation and expansion of religious liberty for the largest number of religious individuals, communities, and institutions possible, while also advocating for the least intrusive and least coercive forms of religious regulation possible, even in cultural contexts where social harmony is valued as much as, if not more than, religious liberty.

Endnotes

1 Jonathan Fox, "Separation of Religion and State in Stable Christian Democracies: Fact or Myth?" *Journal of Law, Religion and State* 1, no. 1 (2012): 73. Emphasis added.

2 Ibid., 82. See also, Jonathan Fox, "World Separation of Religion and State into the 21st Century," *Comparative Political Studies* 39, no. 5 (2006): 537-569.

3 See, for example, Neli Esipova, Anita Pugliesem, and Julie Ray, "More Than 750 Million Worldwide Would Migrate If They Could," *Gallup,* December 10, 2018, https://news.gallup.com/poll/245255/750-million-worldwide-migrate.aspx.

4 Jaclyn L. Neo, "Regulating Pluralism: Laws on Religious Harmony and Possibilities for Robust Pluralism in Singapore," *The Review of Faith & International Affairs* 18, no. 3 (2020): 3.

5 See James McAuley, "France unveils draft law to boost 'republican principles' as debate over Islamism rages," *The Washington Post*, December 9, 2020, https://www.washingtonpost.com/world/france-islamist-separatism/2020/12/09/13c5e43a-3996-11eb-aad9-8959227280c4_story.html.

6 Significant excerpts of the decision in *Indian Young Lawyers Association vs. The State of Kerala* (2018) can be found at: https://indiankanoon.org/docfragment/163639357/?big=3&formInput=thanthri%20%20doctypes:%20supremecourt&__cf_chl_jschl_tk__=befb1905d03c9a2ca433f50aaa81e1b204121158-1615226479-0-AQGk3-AKqb0hwWMAQtbrRXpJV_3clMxLUy9IY_DqdLJ9_oejwUAK-2YedXreRLTs9VPTcZYojMBs7jsOAhxQOHJ6jaCuw2UU4QEBSp4Mc_nUN_FSDRNnkejw620DUysDudiKf4uLe5DFMo07KTzxCS-6nVhAd2eX41r8DNSxPp4MFn4-9XT7CQjeLLrqZF-R3NYfgIYepTjGDBIrgtQUNkAsq-SNgPHTYkqHxn9NjSWTZREarYaVEQkd9iYvXLix1qbyPY7Qh0t15y2OoqUpPJSThMWKldLE2hHAZDLZH-JCZ_j6NMD8yNN0mRhO4__8ikf_-jfaGkZywAR5pbe0-DQDl6ZYALn_8eCUda3i7SjCeagf9fpS9UzkMrrQn6TKohPGFUI08r1uXDSZDLhsoMuOxDe0BwhMNoRI8ztVsklv1ysHkQ_xNxLUkiM5wbOvT2hWx4jfrzq2y7P1gFiZsxDYwZbbnpxbZS7nXnnegLa7, Accessed August 14, 2020.

7 Timothy S. Shah, "Institutional Religious Freedom in Full: What the Liberty of Religious Organizations Really Is and Why It Is an 'Essential Service' to the Common Good," *Journal of Christian Legal Thought* 10 (2020): 29.

8 See "French move to extend ban on religious symbols sparks fears of 'radical' secularism," *France 24*, October 30, 2019, https://www.france24.com/en/20191030-french-move-to-extend-ban-on-wearing-religious-symbols-sparks-fears-of-radical-secularism.

9 Brian Spegele, "China's Banned Churches Defy Regime," *Wall Street Journal* (July 28, 2011), https://www.wsj.com/amp/articles/SB10001424052702304567604576451913744126214; and Timothy S. Shah, *Religious Freedom: Why Now? Defending an Embattled Human Right*, ed. Matthew J. Franck (Princeton, New Jersey: Witherspoon Institute, 2012), 21.

10 Jacyln L. Neo, "Regulating Pluralism: Laws on Religious Harmony and Possibilities for Robust Pluralism in Singapore," 8. See also, Jaclyn L. Neo, "Dimensions of Religious Harmony as Constitutional Practice: Beyond State Control," *German Law Journal* 20, no. 7 (2019): 966-985; and Cass R. Sunstein, "On the Expressive Function of Law," *University of Pennsylvania Law Review* 144, no. 5 (1996): 2021-2053.

11 Jonathan Fox, "Separation of Religion and State in Stable Christian Democracies: Fact or Myth?" *Journal of Law, Religion & State* 1, no. 1 (2012): 60.

12 22 U.S.C. §§ 6401-6483.

13 Farahnaz Ispahani, "A Cautionary Tale from an 'Islamic' Republic," *Cornerstone Forum*, no. 269, March 27, 2020, https://www.religiousfreedominstitute.org/cornerstone/a-cautionary-tale-from-an-islamic-republic.

14 Ahmet T. Kuru, "Islam, Catholicism, and Religion-State Separation: An Essential or Historical Difference?" *International Journal of Religion* 1, no. 1 (November 2020): 98-104, https://journals.tplondon.com/ijor/article/view/982/865.

15 Paul Marshall, "Rights, Institutions, and Religious Freedom: Toward Clarity in the Midst of Controversy," *Cornerstone Forum* (September 26, 2019), https://www.religiousfreedominstitute.org/cornerstone/rights-institutions-and-religious-freedom-toward-clarity-in-the-midst-of-controversy. Marshall also quotes Harold Berman, *Law and Revolution: the Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 393.

16 Kuru, "Islam, Catholicism, and Religion-State Separation: An Essential or Historical Difference?" 100.

17 K. A. Robertson, "Key Challenges to the Freedom of Religious Institutions in India," *Providence*, May 26, 2020, https://providencemag.com/2020/05/key-challenges-freedom-religious-institutions-india/.

18 Chad M. Bauman, *Pentecostals, Proselytization, and Anti-Christian Violence in Contemporary India* (New York: Oxford University Press, 2015).

19 William T. Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (New York: Oxford University Press, 2009); and William T. Cavanaugh, "The Invention of Fanaticism," *Modern Theology* 27, no. 2 (2011).

20 Robert W. Hefner, "The Clash of Institutional Religious Freedoms in Indonesia," *Cornerstone Forum*, no. 292, January 14, 2021, https://www.religiousfreedominstitute.org/cornerstone/the-clash-of-institutional-religious-freedoms-in-indonesia.

21 Neo, "Regulating Pluralism: Laws on Religious Harmony and Possibilities for Robust Pluralism in Singapore," Op cit., 9.

22 Zainal Abidin Bagir, "Defamation of Religion in Post-Reformasi Indonesia: Is Revision Possible?" *Australian Journal of Asian Law* 13, no. 2 (2013): 1-16.

23 On "religious preference falsification," see Timur Kuran, *Private Truths, Public Lies: The Social Consequences of Preference Falsification* (Harvard University Press, 1995), 6-9.

24 Jaclyn L. Neo, "Secularism without Liberalism: Religious Freedom and Secularism in a Non-Liberal State" *Michigan State Law Review* 1 (2017).

25 Neo, "Regulating Pluralism: Laws on Religious Harmony and Possibilities for Robust Pluralism in Singapore," 8-11.

26 For some examples of the treatment of Scientology, see: Douglas Frantz, "Scientology's Puzzling Journey from Tax Rebel to Tax Exempt," *New York Times*, March 9, 1997, https://www.nytimes.com/1997/03/09/us/scientology-s-puzzling-journey-from-tax-rebel-to-tax-exempt.html; Clea Calcutt, "France labels Scientology a fraud, not a church," *The World*, February 3, 2012, https://www.pri.org/stories/2012-02-03/france-labels-scientology-fraud-not-church; and Lucy Morgan, "Critics public and private keep pressure on Scientology // ABROAD," *Tampa Bay Times*, July 6, 2006, https://www.tampabay.com/archive/1999/03/29/critics-public-and-private-keep-pressure-on-scientology-abroad/.

Religious Freedom Institute
The Religious Freedom Institute is a 501(c)(3) non-profit organization committed to achieving broad acceptance of religious liberty as a fundamental human right, the cornerstone of a successful society, and a source of national and international security.

John Templeton Foundation
Providing the funding that made this report possible, the John Templeton Foundation (JTF) serves as a philanthropic catalyst for discoveries relating to the deepest and most perplexing questions facing humankind. JTF encourages civil, informed dialogue and provides grants for independent research that advances its mission. JTF helps people worldwide engage the fruits of that research and explore the Big Questions.

Layout & Design

Element Media
www.element.ps

Photography Credits

Page iv: Alina Reviakina / Shutterstock
Page v: Rawpixel.com / Shutterstock
Page 2: benjaminec / Shutterstock
Page 6: Abdul_Shakoor / Shutterstock
Page 11: Christopher Penler / Shutterstock
Page 21: Gwoeii / Shutterstock
Page 22: Koldunova Anna / Shutterstock
Page 25: Jahangir Alam Onuchcha / Shutterstock

Copyright © 2021 by The Religious Freedom Institute. All rights reserved.

316 Pennsylvania Ave. SE, Suite 501
Washington, DC 20003
Tel: 202-838-7734
rfi@religiousfreedominstitute.org
www.rfi.org