
LIBERTY

THE FORUM INTERNUM OF FAITH AND BELIEF

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Abstract

Through this presentation I want to highlight a few essential aspects on the issue of freedom of religion and belief, aspects standardized from an ethical perspective that is fundamental to the whole debate.

Starting from the reality of our pluri-religious contemporary society increasingly threatened by religiously motivated conflicts and international crisis generated by religious fundamentalism. Our world is undergoing a profound transformation process, rewriting its operating and networking principles taking major security risks, with various options and preferences, often conflicting, but it needs to adapt to the structure of a multi-ethnic and pluri-religious society given by the accelerated globalization process.

Freedom of religion and belief led over time not only to extensive debates and welcomed democracies, but also to bloodshed, wars and social convulsion. The lives that were cut short during the efforts for freedom of religion, the shattered dreams and the disastrous consequences of violating freedom of religious and belief are records that I consider relevant in understanding why this freedom is a paramount value in the society.

I want to begin by establishing that freedom of religion and belief is not the same with spiritual freedom (described by the Greek word *eleutheria* that Paul was talking about: „do not let yourselves be burdened again by a yoke of slavery” (Galatians 5.1)), but it is a matter of social and civil order, included in the dimension of temporality. Therefore, we talk about state and political implications, but also about the civic responsibility of each of us. Diametrically opposed to religious freedom is religious idealism that says that only the truth supported by a certain denomination can be right and without error, regardless of the circumstances.

Keywords: religious freedom, faith, belief, forum internum, human dignity

Liberty is generally established in the midst of agitation, it is perfected by civil discord, and its benefits cannot be appreciated until it is already old.
(Tocqueville)

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1. The moral character of freedom of religion and belief

Common humanity and the overlapping of the existing moral codes (along with human dignity there are also saying the truth and keeping one's promises [D. Gherman, *Curs Etică*, unpublished university course used at Theological Baptist Institute, 2006, 15]) highlight the fact that human dignity is the basis for any moral code. The various features of the human being, its *ipostasis*, does not change the essence of human nature, but goes beyond this framework because its existence is expressed through individuality and freedom [1]. The individual cannot be treated separately, but only in a social context where he establishes relationships. L. Feuerbach argued that an individual is not a complete human being without a proper relationship with others [2]. In this context, intervene different social arrangements given by the various political perspectives that are also based on an ethical debate over the social construction. The individual receives value *per se*, through his human dignity, that becomes central in debating the moral principles of religious freedom. Kant thinks that the normative dissociation from religious parochialism and the focus on personal autonomy contributed significantly in establishing an attitude of respect for the faith of each individual. For Kant, the purpose of morality consists the life and humanity of each individual that introduce the perfect moral duty (of non-suicide) and the practical imperative that leads to considering each individual as an end in itself, and the rule is: "Act in such a way that you treat humanity, whether in your own person or in that of another, always at the same time as an end and never merely as a means." [3]

The relevance of this axiomatic reference point is found in the universality of human rights. Including religious freedom among human rights would represent the recognition of this moral principle. The principle of equal consideration for any human being and the principle of consent are consequences of Kant's practical imperative [M. Miroiu and G. Blebea Nicolae, *Etică Profesională*, unpublished university course used at National School of Political Science and Administration, Bucharest, 20]. Kant argues that "pure respect for this practical law" means "complying with such a law even if it infringes all my inclinations" [3]. Equal treatment, non-discrimination and the impartiality of the state towards people with different beliefs fall in this approach of practical actions of the state towards each individual. The State that violates the individual will in consenting freely to a belief, commits a deeply immoral act. Any manipulative act regarding autonomous religious choices is immoral. The same treatment should be given to all individuals, being treated as an end in themselves on the basis of common humanity. The Golden Rule in its positive form says "treat other people the way you want to be treated yourself" [online at <http://www.eusebiu.me/?tag=ce-tie-nu-ti-place-altuia-nu-face>, accessed on September 14, 2009]. This can be found in different forms in most of the world religions. Here are some examples: *in Christianity*: "Do to others as you

would have them do to you” (Luke 6.31); in *Islam*: “None of you truly believes until he wishes for his brother what he wishes for himself” (Quran); in *Judaism*: “That which is hateful to you, do not do to your fellow. That is the whole Torah; the rest is the explanation” (Talmud); in *Buddhism*: “Hurt not others in ways that you yourself would find hurtful” (Udanavarga, 5.18); in *Hinduism*: “This is the sum of duty. Do not unto others that which would cause you pain if done to you” (Mahabharata, 5.1517); in *Zoroastrianism*: “Refrain from doing unto another whatsoever is not good for yourself”; in *Confucianism*: “Do not unto others what you would not have them do unto you” (Analects 15.23); in *Bahá’i*: “And if thine eyes be turned towards justice, choose thou for thy neighbor that which thou chooseth for thyself”; in *Jainism*: “A man should wander about treating all creatures as he himself would be treated”; a *Yoruba proverb* (Nigeria): “One going to take a pointed stick to pinch a baby bird should first try it on himself to feel how it hurts” [online at <http://www.eusebiu.me/?tag=ce-tie-nu-ti-place-altuia-nu-face>].

The state should not have any liability regarding theological error, in religious discipline or in distributing salvation. The only thing that the secular state does is to apply an equal treatment to each religion, it favors free competition, and to ensure the free expression of faith for each individual. But the state subject to the rule of law operates on the basis of legal norms, norms that are based on moral norms. The rule must be of benefit to all, therefore not to disadvantage anyone. In such a social contract it is imperative to take into account the interests of ‘the minoritarian of the most minority group’ so that the rule does not disadvantage one’s faith.

John Locke in his *Two Treatises of Government* (1690), argues that freedom and property are inalienable. Locke divides opinions and actions into three categories. The first category includes speculative views and forms of worship that should not be part of public policies. The second one includes those who are not evil in themselves, but they are harmful to others, being of public interest. The third category includes those that are in themselves good or bad, being called vices or virtues. Believers are in the first category, thus enjoying absolute and universal tolerance. In the second category is included, for example, the divorce, that could involve the state if it affects other people. The third category involves God’s punishment, and judges only had to watch over peace. The government’s job is to take care of freedom, health and property while the job of the church was to take care of souls. The only ecclesiastical penalty that Locke accepted was the excommunication. So, the thesis of inalienable freedom is of significant importance as a moral principle taken by theoreticians on law.

2. Dimensions of freedom of religion and belief: forum internum vs. forum externum

The theoreticians on law considered the *forum internum* faith to be a non-derogable right. Another essential element is the freedom of religion *from*

the religious group, the individuals cannot be coerced in any way by the group, the individuals are free to change their faith.

Individual freedom has only one limit, the freedom of others. Any interference that restricts one's religious liberty is thus considered an immoral action. Only under certain conditions, freedom of expression *forum externum* has set permissive restrictions that the state can impose.

The negative-protective character of the right to religious freedom is given by the total absence of interference in the *forum internum* faith of the individuals. The positive-protective character refers to equal opportunities for all religions given by the equidistance of the state towards each belief. Discrimination implies treating them as non-citizens. Violation of religious freedom is an act of immorality towards citizens. In a fundamental religious or religious oriented state, whether there is a formally accepted state religion or a dominant religion, there is a high probability that people become victims of a discriminatory treatment of the state. In their fundamental forms, the conservative right-wing politics and the representatives of the left-wing politics challenge the universal rights arguing that they would undermine traditions and customs [E. Burke, *Reflections on the Revolution in France*, 1790]. Religious fundamentalists reject universal rights, claiming that they are trends leading to uniformity, products of the cosmopolitan and individualistic thinking that would destroy traditions and customs [4]. Since they originate in religious dogma, imposing the universal rights would undermine the self-determination and individual autonomy, which consents to the social norms of the community. In this context tolerance means that the collective moral will atrophy. The immorality of such an approach is given by favoring other reasons that do not give the highest value to the human dignity of each individual.

But religious liberty has the privileged status of being considered a non-derogating right by international instruments. But when religion contributes by teaching and urging intolerance, discrimination, prejudice, hatred and violence, it can be a tinderbox in the society. Whether there are internal or interreligious conflicts, they can degenerate so that they become a threat to their followers or to the collateral people. When ethnic and religious criteria coincide, tension and social unrest could lead to unpredictable outcomes. Many of these have resulted in wars, social cleansing or genocide.

The question that arises here is whether the intervention of the state, of international institutions and other external factors is justified or even necessary. It should be noted that the international law mentions religious persecution as one of the major social crimes. The *Charter of the Nürnberg* included crimes against peace, war crimes and crimes against humanity, including "persecution for crimes against peace, war crimes, and crimes against humanity" [5]. Limitations on religious freedom may be included in the following categories: (1) Inherent limitations in order to protect the right itself; (2) Limitations determined by the rights and freedoms of others; and (3) Limitations for the general interest [6].

Both restricting and suspending rights and freedoms may happen in specific situations, such as a state of emergency. For example, the *Basic Law for Germany* considers religious freedom as being one of the non-derogating freedoms (Germany Grundgesetz, art. 4 (1): „Die Freiheit des Glaubens, des Gewissens und die Freiheit des religiösen und weltanschaulichen Bekenntnissen sind unverletzlich”) even in state of emergency. The international law includes the possibility of setting governmental restrictions to the human rights through several means: *inter alia*, exceptions in state of emergency, statements, disqualifications in situations of abuse or limitations [7].

The international law includes two elements that are essential for religious liberty: (1) Freedom to adopt a religion or belief and (2) Freedom to manifest, express and practice a religion or faith.

The first element is interior or *forum internum*, being considered as absolute through its nature; it cannot be limited or suspended, so it is a non-derogable right. Article 9 of the *European Convention on Human Rights (ECHR)* is not included in Article 15 (2) *ECHR*, leading to doubts regarding his non-derogability [8]. But in practice the *ECHR* signatories are also *ICCPR (International Covenant on Civil and Political Rights)* signatories, testifying to the fact that it is a non-derogable right [9]. The states have the obligation of not interfering with *forum internum*, in any way, by any means, be it ideological indoctrination, religious brainwashing or forms of manipulation. Its only obligation is to ensure that someone else, including religious groups, does not engage in fraudulent forms of indoctrination, manipulation and coercion (*The International Covenant on Civil and Political Rights (ICCPR)*, Art.18 (2); *The American Convention on Human Rights (ACHR)* Art. 12(2)). Arcot Krishnaswami (appointed in 1959 as Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations) considers that an “external intervention on the internal realm of consciousness is not only illegitimate but also impossible” [10]. The intervention is justified only in order to protect *forum internum* from inappropriate, fraudulent, coercive and manipulative exterior behaviours. Conflict occurs when one's faith, according to which he has to bring followers [*Kokkinakis v. Greece; Larissis și Alții v. Greece*, 27 EHRR 329, 1999, European Court on Human Rights 1998-I, 1998], harms the *forum internum* of another individual. The proposed middle way was that the two parties should reconcile in order to ensure that each belief is respected. The challenge of distinguishing the line between intervention and non-intervention, between appropriate or inappropriate behaviours or the forms of ‘improper proselytism’ remains a matter of dispute.

According to the human rights international law (Art. 18(4) of the *International Covenant on Civil and Political Rights*; Art. 12(4) of the *American Convention on Human Rights* and the second part of the *European Convention on Human Rights*) which gives for the parents the opportunity to decide regarding the religious and moral education of their children according

to their convictions, even this type of external intervention on the *forum internum* is considered as indoctrinating children without giving them absolute right over their faith [11]. The protection of *forum internum* should be provided from one's own religion when the individual, on his own initiative, decides to leave that religion or to adopt another. Apostasy, an act punished by religious courts even with death penalty [12], is protected by the international law that provides the freedom to adopt or change a religion (*The Universal Declaration of Human Rights* (1948), Art. 18; the *Convention for the Protection of Human Rights and Fundamental Freedoms* (1953), Art. 9; *International Covenant on Civil and Political Rights* (1966), Art. 18; CSCE (1975), Final Act 1 (A); the *American Convention on Human Rights* (1978), Art. 12; *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981); *African Charter on Human and Peoples' Rights* (1986), Art. 8; CSCE, *Vienna Concluding Document* (1989), Principle 16 (a); CSCE *Copenhagen Concluding Document* (1990), Part.5.9, 9.4; etc.).

The second element, *forum externum*, refers to religious expression. The freedom to express religious beliefs through action is, by its nature, relative and may have limitations because it is not an absolute freedom in itself. Limitations occur when: it contravenes the law the individual is subject to (voluntarily or involuntarily); and is imposed in order to protect public security, order, health, or morals or the fundamental rights and freedoms of others (*International Covenant on Civil and Political Rights*, art. 18 (3); the 1981 Declaration, art. 1 (3)).

The limits imposed in manifesting one's religion should be proportional with the contingency that has led to the limitation and only in strictly necessary situations (From the point of view of the European Court, the right of religious freedom can be restricted only in cases of 'pressing social need' and the measure must be 'proportionate to the need' [*Kokkinakis vs. Greek*, 17 EHRR 397 (1994), ECHR, May 25, 1994, par. 49]. In the same time, these limitations should not be discriminating. The core of freedom of belief, religiosity *per se*, cannot be sanctioned or outlawed through the coercive means of the state. Mill concludes his essay *On Liberty* [13] by stating when the state is entitled to interfere and to sanction the acts of the individual. In his opinion, the individual is nor responsible before the society for actions that regard only him. In these cases, the society can only express its disagreement, but it cannot intervene, as the public opinion represents only the opinion of a majority on how an individual should live his life, and the majority cannot take a better decision than the individual regarding his interests and the best way to meet them. In addition, sometimes the majority doesn't even try to serve the interests of the individual, but it just imposes his own view, as many see disagree to any opinion different from their own. The society is not entitled to intervene not even when the actions of the individual affect him, because the freedom to act must come before the temptation of acting in the interest of the individual, even when his decisions are in its own disadvantage. The

intervention is justified only when... the acts harm the interests of others. Only then the individual can be held liable and subject to legal or moral sanctions if the society deems them necessary in order to defend itself [13].

J.S. Mill's harm principle is limited to mature individuals who live in free societies, and this framework limits the scope of freedom.

“The only purpose for which individual is warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. [...] in the part that which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.” [13, p. 17]

Freedom has a clear connection with dignity, self-respect and autonomy. This may conflict with the freedom of another, with the wellbeing of another or even with other social values (Norman E. Bowie, in *The Individual & The Political Order*, addresses some relevant questions like: where is somebody allowed to watch a pornographic film? In the classroom? To the cinema? Only home? Can one extend freedom in order to speak to rasists or tyrans? Does freedom include the possibility to support eliminating freedom [14]). Based on the harm principle one can understand that the only time when it is justifiable to interfere with someone else's freedom is when it is necessary to protect another person from being harmed. Therefore, these are actions that only regard the individual and actions that involve other people, and those could be regulated where this is required by the public interest. According to this principle, even a paternalistic interference has limitations. Norman E. Bowie uses the example of a patient who cannot be treated if he does not give his consent, even if the doctors are saying that he could die without being treated [14]. According to Mill, the consequences of his actions upon himself (self-regarding acts) are his problem. The state can intervene only when his acts regard others (other-regarding acts). According to this principle, the individual is sovereign in the private sphere while the public sphere can be regulated because his individual actions have consequences for others.

3. Distribution spheres: public good and forum internum of faith in society

In the public sphere, an important role is given to the distribution system of the public good. If the state assumes this role, taking religion as a ‘public good’, it will be distributed, leading to some necessary clarifications and to some drawbacks. Throughout history the distributive rule derived from the Christian doctrine: “Give back to Caesar what is Caesar's, and to God what is God's” (Matthew 22.21) was applied according to the interests of the leaders. This served the early purpose of those who opposed persecution.

Two ‘interpretations’, two jurisdictions, two distributive spheres: in one the magistrates are presiding, ‘causing, maintaining and promoting’ as Locke argued, the civil interests of their subjects; in the other, God himself presides through His invisible power, letting His seekers and worshipers to promote their spiritual interests as much as possible and assuring themselves or each other, that they have enjoy the divine favour. This is why they can be organized in any way they want and they can obey the bishops, priests, elders, ministers and so on. But the authority of all these officials is given by the church just how the authority of the magistrates is given by the public good [15].

I want to tell you from the beginning that I support the separation between church and state and I consider it to be not only a healthy principle that favors the society, but also a principle which is coherent from an ethical perspective. The *forum internum* of religious groups, beliefs and collective conscience of a group helps it be protected in the society. The most relevant example is the American model that has survived all this time and is still a good example. The First Amendment of the US Constitution was brilliantly designed in order to stop the interference of the state in the religious sphere: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”. The Establishment Clause can be interpreted in a separationist, non-interventionist or non-preferential manner. In a 1947 case, *Everson vs. The Education Board*, the Supreme Court had the following interpretation of the clause: “The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.” [The Establishment Clause, *Everson vs. The Education*, No. 52/330 U.S. 1 (1947), online at <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=330&invol=1>; www.archives.gov/exhibits/charters/bill_of_rights_transcript.html, accessed on August 28, 2009]. Experience has shown that this separation wall had beneficial effects on both sides. Michael Walzer believes that the two spheres of authority, grace and the state are and must remain completely separated: “This simple sentence stops any attempt for a common stipulation in the sphere of grace. The state is excluded from any kind of concern for the salvation of souls. Citizens can not be charged or compelled, nor for the salvation of their souls, nor for the soul of another. State officials can not regulate initiatives in the sphere of grace. They must look without commenting

the steady spread of sects, even if they offer a cheap or perhaps emotional rescue with huge cash or spiritual costs. Consumers cannot be protected from fraud, because the First Amendment stops the state from detecting fraud (not that it would be easy to be recognized in the sphere of grace, where, as they say, the most unlikely people can do the work of God). All these are called freedom of religion, but also religious egalitarianism. The First Amendment is a rule of complex egalitarianism. It does not distribute equal grace; on the contrary, it does not distribute it at all. Moreover, the raised wall has profound distributional effects. It determines on the religious part, for the priesthood of all believers, the care of every believer for salvation. It can accept any ecclesiastical hierarchy that it will, but it is their duty to accept or reject, is not legally required or legally binding. And the wall from the politics, for the equality of believers and unbelievers, holy or worldly, saved or condemned: all citizens are equal; all have the same set of constitutional rights. Politics should not dominate over grace, nor grace over politics.” [15, p. 245-246]

Michael Walzer sees this separation more in the area of trading and distributing sacred elements, but also as an organizational noninterference. He believes that the separation does not mean a lack of respect from the state towards religion or the religious individual, or a lack of concern for his wellbeing, but rather a care manifested through non-interference. The wellbeing of the individual and the public good are thus achieved by the non-interference of the state in the religious sphere.

“Grace is no doubt a great privilege, but there is no way to give it out to those who disbelieve in its existence, or who adopt a view of it radically different from that of the saints, or who hold the same view but with less fervor; nor is there any way to force upon the saints a more egalitarian understanding of their special gift. In any case, the monopoly of the saints is harmless enough so long as it doesn’t reach to political power. They have no claim to rule the state, which they did not establish, and for whose necessary work divine assurance is no qualification. The purpose of the constitutional wall is the containment, not the redistribution, of grace.” [15, p. 247]

Arrangements, organization and sacred elements, are related to the doctrine and orientation of each religion, representing a *forum internum* that has to be respected and whose protection must be guaranteed by the state. Unlike the case of a fundamentalist religious state, individuals who refuse to be part of any of the religious spheres are not forced to receive the religious ‘property’ distributed by the state. In this way, both faith and conscience are protected and free expression of faith is guaranteed.

4. Conclusions

The state must guarantee and respect the right to freedom of religion. The responsibility of the state towards religious freedom is to go beyond the ‘negative’ dimension of respecting the rights, being responsible in promoting a climate of religious liberty and facilitating religious liberty for all citizens.

Peace and social stability can be guaranteed only when freedom of religion is a real concern to all relevant stakeholders of the society.

The fact is that any kind of attitude that minimizes the importance of religion in the society, whether we talk about indifference, ignorance, rejection, denial, or the like, they do not correspond to a realistic approach of this phenomenon. The revival of the global religious phenomenon requires the international community to recognize it and to treat it in the right way. The transition from the old religious hegemonies to a secular and multi-religious society, has forced the states and the international actors to find ways to adapt to the new global context. The lack of concern inevitably leads to an indirect perpetuation of conflicts and the urgency of such a project has been reported through the recent religiously motivated major events (Kosovo, USA - September 2001, etc.) that shock the contemporary society.

Pushing religion in the private sphere for fear that it might cause divisions in the public sphere are like throwing jewels in the mud by not using the humanistic and cooperative potential of religions. On the other hand, is like putting the garbage under the rug if we become deaf and blind to its potential for division and fanaticism. In a pluralistic society religion is not necessarily a threat, but it can be a potential positive factor for progress and stability when treated properly. The contribution of religion in the society should rather consist in sharing healthy principles and values, views on peace and the harmonious development of the society. By contaminating the relations between religions and between religion, state and citizens with animosity, disrespect, intolerance, hatred and xenophobia, one destroys the social harmony and inner peace of the human beings. This is why it is necessary to cultivate a climate of peace and acceptance, respecting one's belief and the freedom to manifest his religion. Enhancing the 'dialogue of life', of human cooperation, will eliminate the possibility of creating new "ghettos, the horror of religious purges and developing new expressions of religious fanaticism that ultimately lead to another terrible 'dialogue', the 'dialog' of terrorist bombs and missiles of those who are powerful" [16]. Without discussing what we foresee *in potentia* for religion, I think directing the religious potential should be part of the state policy on religion, but also a civic responsibility of every citizen. Therefore everybody's endeavour must facilitate a climate that is favourable for freedom of religion and belief, and this can only be created in a state of freedom of religion and belief.

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