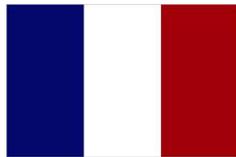


A WHITE PAPER

“SEPARATISM,” RELIGION, AND “CULTS”: RELIGIOUS LIBERTY ISSUES



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TABLE OF CONTENTS

1. INTRODUCTION: FRENCH PECULIARITIES	4
2. A GENERAL BAN ON HOMESCHOOLING?	7
3. “CULTS” AND “HUMAN DIGNITY”	9
4. “CULTS,” “PSYCHOLOGICAL PRESSURES,” AND CRIMINAL RELIGIOUS MOVEMENTS	16
5. SOME CONCLUSIONS	23
REFERENCES	26

1. INTRODUCTION: FRENCH PECULIARITIES

On October 2, 2020, French President Emmanuel Macron announced that he will propose a law against “separatism.” On October 6, Minister of Internal Affairs Gérald Darmanin tweeted a document giving more details about the proposed law (Darmanin 2020). The project created protests in the Islamic world, and a major diplomatic crisis between France and Turkey after the Turkish President Recep Tayyip Erdoğan vehemently criticized the announcement about the future law. Other criticism followed statements by the Minister Delegate in Charge of Citizenship, Marlène Schiappa, that the law will be applied to “cults” (see e.g. Wesfreid 2020). In fact, the French word used was “sectes”: it serves the same derogatory function of the English “cults” and is normally translated by scholars as “cults” rather than as “sects,” a more neutral and non-judgmental word in the English language.

The scholars and human rights activists who have prepared and endorsed this report followed the evolution of this matter with interest and concern. While we believe that real problems of religious liberty may be created by the law, we also understand that France has its own peculiarities, and that proposing models based on the legal and political traditions of other nations to France may both be an irritant and be of limited usefulness. On the contrary, our aim is to propose solutions that may respect the French context, yet protect the human rights and religious liberty of all minorities.

When it comes to the relationship between religion and politics, the French model of *laïcité* is somewhat unique, as evidenced by the fact that all translations of the word into English are not totally satisfactory. *Laïcité* is not simply “secularity,” nor does “separation of church and state” translate the concept clearly. It is an ideal dating

back to the French Revolution, and shaped by the conflicts between the French state and the Catholic Church of the 19th and the early 20th century. It does promote the separation of church and state, but, as French sociologist Danièle Hervieu-Léger observed, it serves a very different purpose from the separation in the American system. In the U.S., separation protects religions from the state; in France, it protects the state from religion (Hervieu-Léger 2001). In short, *laïcité* aims at protecting the French state and society from the possible intrusiveness of religion, and ensuring that the primary loyalty of all French citizens goes to the French Republic.

What was once called “communitarianism,” and now “separatism,” is in direct opposition to *laïcité*. It is the attempt by members of some religions to live “separately,” giving their primary loyalty to their religious community rather than to the Republic. For the French political and cultural tradition, preserving *laïcité* means preserving the Republic itself. This tradition cannot be compared to how religion is regulated in other countries, and is based on a different history (Poulat 2010). Trying to propose to France the American model of religious liberty, or the Italian model of privileged cooperation between the state and the Catholic Church, would simply create a dialogue of the deaf.

A second French problem we cannot forget is that France has been painfully hit by a terrorism invoking as its ideology a form of Islamic ultra-fundamentalism, and this more than any other European country. Although the “separatism” of certain fundamentalist Muslim communities is not the only cause of terrorism, and sociologists also mention the poverty and humiliation of the “banlieues of Islam” (Kepel 1991), it is true that a certain radical Islamic subculture,

with its “separate” schools, ways of life, and cultural institutions may have, in certain circumstances, nurtured extremist ideas and prepared the ground for the terrorists. Any criticism of the French attitude towards “separatism” should consider the deep impact of a terrorism carried out in the name of radical Islam on French society, and the legitimate concerns of the authorities who want to deal with the cultural roots of the extremism.

In this respect, certain provisions of the draft law (to the extent they can be deduced from the Darmanin memorandum) make sense. For example, the proposed law plans to reinforce the provisions against forced marriages and the application of foreign or religious laws depriving women of what, by applying French law, would be recognized as their legitimate heritage; and to prevent doctors from releasing certificates attesting that a woman is virgin. These are good examples of cases where, by fighting “separatism,” the law would protect rather than restricting human rights.

While these are provisions of common sense, it would be equally reasonable that, when promoting them, politicians would avoid what can sound like a blanket indictment of Islam. Surely in Europe there is a problem of Islamophobia, fueled by certain political forces for their own purposes. The legitimate criticism of certain practices within some sectors of French radical Islam should be proposed in terms that would not be offensive to Muslims in general, both in France and internationally. Nor would it be totally possible to impose through legislative measures a “liberal Islam,” or “Islam des Lumières” (Enlightenment-style Islam). It is normal to find within Islam different trends, and pretending to reshape Islam in a form acceptable to the average values of the French politicians may easily degenerate

into orientalism or neo-colonialism. Paradoxically, it may also infringe the very principle of separation between religion and state, as the French state would enter the internal debates of French Islam to make sure that one position would prevail. As long as it does not support terrorism, promotes hate speech against other groups, including Jews, or infringes on human rights of women, a conservative Islam has no less rights to exist and promote its theology than a liberal Islam.

The law goes beyond Islam, as evidenced by the issues of homeschooling and “cults” we discuss in the next chapter. Another general provision is “reinforcing the provision concerning the policy of the

Again, it is understandable that the apology of terrorism, racism, or anti-Semitism should concern the French police, which is already authorized to keep a watch on sermons in places of worship. The formula “statements hostile to the laws of the Republic” seems, however, unduly broad. There is in all religions a prophetic element and a useful criticism of laws perceived as unjust.

worship services, to preserve places of worship from becoming places where practices and statements are spread hostile to the laws of the Republic.”

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There is in all religions a prophetic element and a useful criticism of laws perceived as unjust. Conservative religion of different varieties surely spreads statements hostile to the “laws of the Republic” on abortion and same-sex marriage, and progressive religion is hostile to laws expelling undocumented immigrants. Should places of worship be “purged” from such sermons? Should laws a religion considers unjust for reasons of conscience be mandatorily applauded? These are good examples of how provisions intended to counter radical ultra-fundamentalist Islam may have unintended consequences dangerous for religious liberty in general and for freedom of expression.

All freedoms and rights have some limitations, but these should also apply to the rights and freedoms of those who oppose minority groups, and new religious and spiritual groups they label as “cults.” Their freedom of expression should be guaranteed, but it does not cover hate speech and promotion of discrimination and violence. And the constellation of religious and spiritual entities is so diverse that increasing state control with the aim of limiting the activities of fundamentalist groups may also prejudice liberal communities that, nonetheless, criticize certain features of the French society and certain French laws.



2. A GENERAL BAN ON HOMESCHOOLING?

The new draft law would impose a general ban on homeschooling from age 3 on, except when it is needed due to the health conditions of the pupils. It is one of the provisions that has generated a fair amount of criticism in France.

The stated purpose of the provision is to avoid that schools of extremism and Islamic radicalism may continue to operate. The Darmanin memorial mentions only one example, a “clandestine associative school” in Bobigny, where 40 pupils from 3 to 6 years were indoctrinated into the Wahhabi school of Islam, and allegedly incited to the hatred against all religions other than Islam. Education by “cults” has also been mentioned.

One general problem is that the Wahhabi school in Bobigny is not typical of what is generally intended by the word “homeschooling.” The word designates courses at home for a small number of pupils (certainly not 40), mostly taught by their parents. It seems that in France 50,000 pupils are homeschooled, half of them for health reasons. Among the remaining 25,000, those homeschooled for religious reasons are not the majority (Vieila 2020).

It seems a case of throwing the baby out with the bathwater. Sociologists have observed that in many cases, most of which have nothing to do with religious “separatism,” pupils are homeschooled with excellent results (Briones Martínez 2014). To fight Wahhabi clandestine schools (a different phenomenon from homeschooling), a general and draconian measure is proposed, which is highly problematic with respect to Article 26, no. 3, of the Universal Declaration of Human Rights, stating that, “Parents have a prior right to choose the

kind of education that shall be given to their children.” Art. 2 of Protocol 1 to the ECHR, from which an important case law has stemmed, also states that, “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

We are aware that the European Court of Human Rights has decided repeatedly, in cases opposing Germany to Protestant Evangelical parents who wanted to

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homeschool their children, that the German ban of homeschooling is within the margin of appreciation left to individual countries (e.g. European Court of Human Rights 2006; European Court of Human Rights 2019). However, these decisions have often been criticized by legal scholars. In the United States, in the high-profile Romeike case, a German family who escaped its country because it was not allowed to homeschool its children there, although denied asylum on appeal after a favorable first-degree decision, was finally allowed to remain indefinitely in the USA (BBC News 2014).

Quite apart from any European human rights law consideration, some wonder whether the French government is in a

position to release data on which percentage of homeschooled children live in a context of “religious separatism,” and explain why a law on “separatism” should also target forms of homeschooling that have nothing to do with religion.

We would, however, go one step further. It is unclear whether all forms of religion-based homeschooling should be regarded as negative and dangerous. In the examples of Islamic radicalization offered, it was not the fact of homeschooling that created the problems, but the content of the education. A religious homeschooling that does not promote hatred against other religions and does not support terrorism or

violence may offer a healthy, reasonable, and legitimate alternative to public school, and protect the liberty of education without creating “radicalization” or “extremism.” Only a preconceived hostility to religion and spirituality as such may imply that all forms of religion-based homeschooling automatically produce “extremists,” if not terrorists.

Of course, some religion-based homeschooling may produce extremists or terrorists. To avoid this, it is certainly not unreasonable to reinforce controls and inspections, which is different from eliminating homeschooling altogether.



3. “CULTS” AND “HUMAN DIGNITY”

On October 10, 2020, French Minister Delegate in Charge of Citizenship Marlène Schiappa gave an interview to *Le Parisien* (Wesfreid 2020), followed by similar interviews to other media, stating that, “we will use the same measures against the cults and against radical Islam.” In 2019, the official French anti-cult mission MIVILUDES was moved from being an independent structure under the Prime Minister to becoming a part of the Ministry of Internal Affairs’ anti-radicalization system. Anti-cultists protested that this may lead to the demise of the MIVILUDES, but Schiappa now explained that with the new law it will be reinforced and move from mere “analysis” to a more active role. The former politician and anti-cult activist Georges Fenech and the president of the largest French anti-cult organization, UNADFI, Joséphine Lindgren-Cesbron, will become members of the MIVILUDES. Anti-cult propaganda will be further promoted. Among the main aims indicated by Schiappa is identifying the “cults” that could be legally dissolved and banned because of “attacks on personal dignity” and “use of psychological or physical pressures” under the law against separatism.

France has a peculiar tradition of fighting “cults” (*sectes*), which has often been studied by scholars of new religious movements who, in turn, regard the whole notion of “cult” as problematic (Palmer 2011). Most international scholars of new religious movements do not use the word “cult” because of its derogatory and judgmental connotations. On July 17, 2020, the USCIRF (United States Commission on International Religious Freedom) also published a document on the anti-cult ideology (USCIRF 2020). The USCIRF is a bipartisan commission of the U.S. government, whose members are appointed by the President and designated

by the congressional leaders of both political parties, Democrat and Republican. The document focuses on anti-cultism in Russia, but goes beyond it, to identify the anti-cult ideology in general as one of the most serious threats to religious freedom internationally.

The USCIRF report denounces the ideas of an “anti-cult movement informed by pseudoscientific concepts like ‘brainwashing’ and ‘mind control.’” The anti-cult movement, according to the USCIRF, “described new religious movements as ‘fanatic’ or ‘bizarre,’ and portrayed individual members as helpless victims without their own free will or ability to save themselves.” As the USCIRF notes, while “claiming to be experts in academic fields like religious studies, psychology, and sociology, [the anti-cultists] are rarely qualified in any of them and often rely on discredited theories and methodologies to promote their ideological agenda.”

The report concludes by asking the U.S. government to “counter propaganda against new religious movements by the European Federation of Research and Information Centers on Sectarianism (FECRIS) at the annual OSCE Human Dimensions Conference with information about the ongoing involvement of individuals and entities within the anti-cult movement in the suppression of religious freedom.”

Interestingly, FECRIS is financially supported by the French government, and the already mentioned UNADFI is one of the main member associations of FECRIS. In France, the USCIRF report may be perhaps dismissed as a typical example of the American approach to religious liberty, which is incapable of understanding the French ideas about *laïcité* and tradition of fighting *les sectes* or what is called there

dérives sectaires. However, human rights and religious liberty are not “American” or “French” but universal, and the whole idea of the *dérives sectaires*, as defined by the French official anti-cult mission MIVILUDES, is based on the theory that “cults” are able to create in their members a state of “psychological submission” (*sujétion psychologique*: MIVILUDES 2020). This is the old idea of brainwashing or mind control, which has changed its name but not its essence, a “pseudoscientific” theory, as the USCIRF repeated, and one that has been debunked since the 1970s by scholars of new religious movements (for an overview, see Anthony and Introvigne 2006).

In the next chapter, we will return to the notion of “psychological pressures,” which according to Minister Delegate Schiappa should allow to legally dissolve “hundreds” of “cults” in France (*Le Journal du Centre* 2020). It raises special concerns that this seems to be an administrative or political procedure of dissolution, without all the guarantees for the right of defense in a process before a court of law, and that the law will create a “conservatory suspension of some or all activities of a group, to act quickly without waiting for the formal dissolution.” Here, we propose some comments on the other ground for dissolution of religious movements under the draft law, “attacks on personal dignity.” In the Darmanin memorial, the examples of “attacks on personal dignity” offered are all related to serious issues of discrimination of women in radical Islam.

However, Minister Delegate Schiappa suggests that this will be also used as a rationale to liquidate “cults.” The danger lies in the fact that the notion of “personal dignity” is not legally defined. Generally, in international law, human dignity is affirmed as a fundamental value and principle, and is connected to the respect of human rights.

As German sociologist Hans Joas has noted, however, today the concept of

human rights is not uncontested, and there is a continuous tendency to add or claim new rights in addition to these mentioned in the Universal Declaration of Human Rights, and some of them may conflict with religious liberty (Joas 2011, 2017). Feminists and the LGBT community, or more recently the Black Lives Matter movement, for example, claim “new” rights that may create conflicts with freedom of religion. Feminists claim for women the right to access all positions and offices, while several religions reserve their priesthood and higher offices for males. LGBT activists may see religions teaching that homosexuality is a sin as infringing their rights to be respected and not discriminated. During the Black Lives Matter protests, statues of saints and other religious figures that the movement accused of having supported colonialism and racism were vandalized or destroyed, in incidents that some religionists have in turn perceived as an assault on their religious freedom.

One of the problems, here, is the relationship between individual and corporate freedom of religion. In modern democratic societies, it is generally accepted that individuals have a freedom to believe or not to believe, but it is less accepted that corporate religious bodies have rights of their own (see Introvigne 2012).

Clearly, corporate freedom of religion is limited by other essential human rights. A religion cannot claim that organizing human sacrifices is part of its corporate freedom. But what other human rights should be considered essential? The answer, in turn, is not uncontested.

One important corporate right of religious liberty is the right of religious communities to organize themselves internally as they deem fit. This is important in the discussion of the proposed French law because it can be easily argued that the self-organization of religious communities violates “human dignity,” i.e. violates the individual human rights of their members, particularly in

cases of exclusion from the community and treatment of members that have been excluded.

The Grand Chamber of the European Court of Human Rights discussed these problems in the landmark case *Sindicatul "Păstorul cel Bun" v. Romania*, which affirmed the position of the Romanian government that secular authorities cannot be asked to interfere in the internal procedures of the Romanian Orthodox Church, which had disciplined priests who had joined a non-authorized union. "Disaffected priests, the Romanian government argued, could leave the Church at any time, but as long as they chose to remain, they were deemed to have freely consented to abide by its rules and to waive some of their rights." The ECHR observed that, "religious communities traditionally and universally exist in the form of organized structures. Where the organization of the religious community is at issue, Article 9 of the [European Human Rights] Convention must be interpreted in the light of Article 11, which safeguards associations against unjustified State interference. Seen from this perspective, the right of believers to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organization of these communities as such but also the effective enjoyment of the right to freedom of religion by all their active members. Were the organizational life of the community not protected by Article 9, all other aspects of the individual's freedom of religion would become vulnerable" (European Court of Human Rights 2013).

An important aspect of the *Sindicatul*

decision is that Article 9 of the European Human Rights Convention, which protects freedom of religion and belief, should be interpreted "in the light of Article 11," which protects associations and organizations from state interference. Indeed, any organization is free to discipline and exclude members according to its own principles and by-laws. As mentioned earlier, members are free not to join the organization, to leave it, or to establish a rival organization, but they do not have a right to remain in the organization if the other members believe they are no longer behaving according to its nature and aims. It is, on the contrary, the organization that has a right to exclude them according to Article 11.

When the organization has a religious nature, this right becomes even more incontestable, as the states have no right to interfere in the internal activities of religious communities. It is not even necessary to

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quote Max Weber (1864–1920), one of the fathers of the modern sociology of religion, to argue that the organization of a religious community is in itself theological, and to interfere with its organization is to interfere with its theology and beliefs, which is forbidden by Article 9 ECHR and Article 18 UDHR and Article 18 of the ICCPR.

The principle that states should not stand in the way of the internal organization of religious bodies, including how affiliation and disaffiliation or excommunication are regulated, is uncontested in the case law

of the European Court of Human Rights. It was affirmed by the Grand Chamber in 2000 in *Hasan and Chaush v. Bulgaria*, where the Bulgarian government was prevented from interfering in the internal affairs of the Muslim community in Bulgaria (in this case, appointing and dismissing a Mufti: European Court of Human Rights 2000b).

The ECHR had gone one step further in another case decided in 2000, *Kohn v. Germany*, concerning a member of the Jewish Council of Hannover, who was excluded from the community. Because of the decision, he was told that he was no longer allowed to enter the Jewish community center in Hannover. He protested by barricading himself inside the community center, until the local Jewish leaders asked the Regional Court of Hannover an order directing the police to remove him forcibly from the premises. The court agreed, the expulsion was performed, and the ex-member was ordered to stay away from the community center. He complained to the ECHR, who declared his application inadmissible, since “the internal decisions of a religious community (innerkirchliche Maßnahmen) could not be controlled by the state courts, since the latter should respect the autonomy of the religious organizations (Autonomie der Religionskörperschaften)” (des mesures internes à une communauté religieuse [innerkirchliche Maßnahmen], [...] ne pouvaient être contrôlées par les tribunaux étatiques, car ces derniers devaient respecter l’autonomie des corporations religieuses [Autonomie der Religionskörperschaften]). On the other hand, states have “the monopoly of the use of the force” (le monopole de l’utilisation de la force), and the Jewish leaders could not but ask the secular authorities to use the force to evict Mr. Kohn from the Jewish center’s premises (European Court of Human Rights 2000a).

Some important cases for the proposed French law concerns the rights of the Jehovah’s Witnesses to exclude from

the community (“disassociate”) their members, and to counsel their devotees in good standing not to shun those who have been disassociated (except if they are close members of the family). Anti-cult organizations typically argue that, by doing so, the Jehovah’s Witnesses (and other groups who suggest that their members do not associate in any way with ex-members critical of the movement) violate the “human dignity” or the “human rights” of the former members. Courts of law, however, disagree, and there is a rich case law on this point, not only in the United States but also in Europe.

The first substantial discussion of the practice of “shunning” disfellowshipped members of the Jehovah’s Witnesses is included in the 1987 decision of the United States Court of Appeal for the Ninth Circuit *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, which is quoted in all subsequent American cases. The court acknowledged that the plaintiff has experienced some unpleasant incidents in being “shunned” by close friends who were Jehovah’s Witnesses after she was disfellowshipped. Nonetheless, the court maintained that, “Shunning is a practice engaged in by Jehovah’s Witnesses pursuant to their interpretation of canonical text, and we are not free to reinterpret that text. Under both the United States and Washington Constitutions, the defendants are entitled to the free exercise of their religious beliefs.”

The Jehovah’s Witnesses, the court reported, “argue that their right to exercise their religion freely entitles them to engage in the practice of shunning.” The court observed that punishing shunning would have dramatic consequences for the religious freedom of the Jehovah’s Witnesses. “Imposing tort liability for shunning on the Church or its members would in the long run have the same effect as prohibiting the practice, and would compel the Church to abandon part of its religious teachings. [...] The Church and its

members would risk substantial damages every time a former Church member was shunned. In sum, a state tort law prohibition against shunning would directly restrict the free exercise of the Jehovah's Witnesses' religious faith" (United States Court of Appeal, Ninth Circuit, 1987).

The plaintiff argued that shunning had caused to her emotional distress. This may well be true, the court answered, but the harm was "clearly not of the type that would justify the imposition of tort liability for religious conduct. No physical assault or battery occurred. Intangible or emotional harms cannot ordinarily serve as a basis for maintaining a tort cause of action against a church for its practices—or against its members. [...] Offense to someone's sensibilities resulting from religious conduct is simply not actionable in tort. [...] Without society's tolerance of offenses to sensibility, the protection of religious differences mandated by the first amendment would be meaningless" (United States Court of Appeal, Ninth Circuit, 1987).

In this old decision, we find already a convincing criticism of the anti-cult claims based on "emotional harm." While "physical assault or battery" are clearly not justified by an appeal to freedom of religion, if courts were allowed to sanction religious groups for inflicting "emotional harm," that would be the end of religious liberty as we know it.

Other American courts concurred (e.g. Court of Appeal of Tennessee 2007), and the same happened in the European Union. In 2007, the Justice Court of Bari, in Italy, in a well-publicized case, rejected the claims of a disfellowshipped ex-Jehovah's-Witness who happened to be a lawyer. The court concluded that, even if the principles governing the ecclesiastical system of the Jehovah's Witnesses are different

from those of the Italian law and society, once they have been correctly followed in disfellowshipping a certain individual, secular courts cannot interfere with the decision (Tribunale di Bari 2007; see also Tribunale di Bari 2004).

In 2010 the Administrative Court of Berlin examined a complaint by a disfellowshipped Jehovah's Witness against the public announcement in congregational meetings of the measure against him, since "members of the association should have no social contact with disfellowshipped persons" and it would become impossible for him to "to have a picnic, celebrate, do sports, go shopping, go to the theatre, have a meal at home or in a restaurant" with friends who remained in the Jehovah's Witnesses. The court denied the request, commenting that the Jehovah's Witnesses' policy on these matters "is not subject to state authority" and is protected

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by "freedom of religion, the separation of Church and state, and the right of religious associations to self-determination." How the Jehovah's Witnesses decide to "exercise their constitutionally guaranteed right to self-determination" is something the state should not interfere with. Disfellowshipping policies and the so-called "ostracism" are "internal church measures" (Verwaltungsbericht Berlin 2010).

The Italian Supreme Court (Cassazione) in 2017 ruled that the so-called "ostracism"

is also protected by the principle of non-interference. The decision observed that in this case “ostracism” is “a refusal to associate” with the disfellowshipped ex-member, and “no law requires a person to behave in the opposite manner.” As a conclusion, “no discrimination took place.” Even if one would argue that refusing to associate with disfellowshipped members violate “good manners and civilized behavior,” this would not “constitute a justiciable crime or civil tort.” Individuals, and even a whole “category,” have a right to decide to “break off or interrupt personal relations,” and courts have no business in telling them otherwise (Corte di Cassazione 2017).

In 2018, in *Judicial Committee of the Highwood Congregation of Jehovah’s Witnesses and Highwood Congregation of Jehovah’s Witnesses v. Randy Wall*, a unanimous Supreme Court of Canada reiterated that “secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.” It added that, “even the procedural rules of a particular religious group may involve the interpretation of religious doctrine,” and concluded that, “these types of [religious] procedural rules are also not justiciable” (Supreme Court of Canada 2018 [SCC 26]).

More recently, on March 17, 2020, in *Otuo v. Morley and Watch Tower Bible and Tract Society of Britain*, the Court of Appeal in London, Queen’s Bench Division (Court of Appeal [London], Queen’s Bench Division 2020), upheld a High Court decision of 2019, which found that, “In accordance with Matthew 18:15–17 (the procedural compliance with which is not itself justiciable) it is to be expected that a [Christian] religious body which is guided by and which seeks to apply scriptural principles will have the power to procure that in an appropriate case a sinner can be expelled. Among other things, this is

sensible, if not essential, because someone who is unable or unwilling to abide by scriptural principles not only does not properly belong as a member of such body but also, unless removed, may have an undesirable influence on the faithful.”

Protecting the faithful from such an “undesirable influence” is thus not a violation of the disfellowshipped member’s human rights, but a right of the congregation (High Court of Justice, Queen’s Bench Division 2019). The community’s right to articulate and enforce its code of conduct is also part of its corporate religious liberty.

This body of decisions is now substantial. Critics quote the 2019 *Spiess* decision by the District Court of Zurich (Bezirksgericht Zürich 2019), but the Jehovah’s Witnesses were not the defendants in the case. They had filed a criminal complaint against an anti-cult activist, Ms. Regina Spiess, who had claimed in an interview that their “ostracism” practices and how they handle cases of sexual abuses are dangerous practices contrary to human rights. The judge found the activist not guilty, regarding some statements as true and others as uttered in good faith. The Jehovah’s Witnesses were not on trial in Zurich, were not interrogated, and did not have a chance to defend themselves. We regard the verdict as wrong, but it only establishes that Mr. Spiess did not commit the criminal offense of defamation.

In fact, everything that needed to be said was already said in 1987 in the *Paul* decision. It is true that those who join the Jehovah’s Witnesses surrender some of their human rights. The adherents are aware, and the elders make sure this is the case before baptism, of both the Jehovah’s Witnesses’ moral standards and the consequences for violating them. They are aware that they may be disfellowshipped and shunned, which may be very unpleasant. If they want to avoid this risk, they should simply not join the Jehovah’s Witnesses, or leave them

voluntarily. The human rights involved in being disfellowshipped and shunned are not imaginary—but, unlike, say, the right to life or to sexual integrity, they are alienable rights, in the sense that they can be surrendered in a legally valid matter. Disposing of them may offend certain sensibilities, but “without society’s tolerance of offenses to sensibility, the protection of religious differences [...] would be meaningless” (United States Court of Appeal, Ninth Circuit, 1987).

These cases, we believe, go beyond the specific case of the Jehovah’s Witnesses, also apply to other religious groups, and should be seriously considered when evaluating the French draft law. There is a serious risk that an absolutized notion of the individual “dignity” of the members of a given religion would cause the violation of the corporate religious liberty of that religion and, indeed, make the protection of freedom of religion “meaningless.”



4. “CULTS,” “PSYCHOLOGICAL PRESSURES,” AND CRIMINAL RELIGIOUS MOVEMENTS

Minister Delegate Marlène Schiappa also plans to use the new law against “separatism” to liquidate “cults” guilty of either “physical pressures” or “psychological pressures” on their members. If by “physical pressures” she means physical violence, she is, obviously, right, but no new law is needed. Existing laws already punish physical violence by leaders of a religious group against members—or anybody else.

The question, obviously, concerns “psychological pressures.” Once again, our aim is not a blanket indictment of the French approach to religion. And only in the caricatures propagated by the anti-cult movements, scholars believe that all religious movements are nice, kind, and inoffensive. Obviously, this is not the case. All societies have tried to contain what they saw as dangerous religion, and we believe that a short historical reconstruction of how they dealt with what they perceived as dangerous “heresies” or “cults” is needed in order to understand both the French concerns and how they can be reasonably addressed without creating problems for religious liberty. In the process, we would also offer further clarifications on the ambiguous meaning of words such as “cult” or *secte*. Rather than being merely terminological or linguistic, these remarks would hopefully help identify which problems are dealt with under the label of *dérives sectaires*.

To limit our analysis to the West, although similar dynamics prevailed in Imperial China (Wu 2016, 2017), it was taken for granted in pre-modern Europe that church and state should co-operate to repress heresy, and to persecute it in the harshest possible way. Even such a rational man as Thomas Aquinas (1225–1274) argued that, if the state executes those who spread false money, it should also execute the heretics,

who spread false doctrines that are even more dangerous (Aquinas 2000, *Summa theologiae*, Secunda secundae, quaestio 11, art. 3). After the Reformation, Protestant states, starting with Geneva under John Calvin (1509–1564), changed the definition of heresy but continued to execute heretics (Bainton 1953).

The French Revolution eliminated the last vestiges of the Inquisition and triumphantly proclaimed that the time of religious liberty had come (Shusterman 2014). However, when the dust of the Revolution settled, it became clear that modern states were still punishing heterodoxy, although based on different grounds.

In the early 19th century, we find the words “cult” and “secte” used in official documents to warn against the evil activities of Freemasonry. Catholic authors and authorities used these labels to indicate that Freemasons promoted ideas the Church cannot accept. However, some very secular official and police documents, including in countries whose authorities were officially hostile to the Catholic Church, called Freemasonry a “cult” (*secte*) because they suspected it not of anti-Catholicism but of conspiring against the governments (Martin 2000). Here, a new meaning of “cult” was introduced, and the notion of heresy went through a process of secularization. “Cults” were religious, spiritual, or esoteric organizations regarded as subversive and suspected of conspiring against the state.

Once defined, this notion of “cult” (or, since the process took place mostly in Latin countries, *secte*) was extended to groups very different from Freemasonry, which today would be called new religious movements. And it would be unfortunately untrue to argue that at least modern states

did not kill the heretics. In Italy, in 1878, the military police raided the communal settlement of the Jurisdavidic Religion on Mount Amiata, Tuscany, killing its founder Davide Lazzaretti (also spelled Lazzaretti, 1834–1878) and three of his followers, and leaving another 150 wounded (Tedeschi 1989). In 1896–1897, the government of Brazil launched a military campaign against the communal settlement of rural prophet Antonio Conselheiro (1830–1897) in Canudos, Bahia, killing him and some twenty thousand followers (Levine 1995). The tragedy is the subject matter of Nobel Prize laureate Mario Vargas Llosa's 1984 novel *The War of the End of the World* (Vargas Llosa 1984).

Both the Mount Amiata and Canudos movements did not recognize the authority of the local Catholic bishops and were declared "heretic" by the Catholic Church. But both in Brazil and Italy the governments at that time were anti-clerical and even put some Catholic bishops in jail. They did not care about heresy, but violently eradicated these "cults" regarding them as subversive, in the sense that they did not recognize the authority of the governments and independently controlled portions of territory.

A new criminological definition of "cult" was born, based not on creeds but on deeds. This approach started with the father himself of criminology, Italian physician Cesare Lombroso (1835–1909), ironically himself an advocate of Spiritualism (Lombroso 1909), which in some countries was regarded as a "cult." He obtained and dissected Lazzaretti's body looking for "anomalies." Cults, he suggested, are religious groups conspiring against the public order and following a mentally disturbed leader (Lombroso 1890, 95–99). Obviously, this approach did not particularly focus on the cult's "heresies" or doctrines.

Although Lombroso was very much respected during his lifetime and beyond, in recent years a movement in Italy called for removing statues of the great criminologist from public squares and changing the names of streets and museums named after him (Milicia 2014a). Lombroso was accused of having offered his caution to the bloody repression of revolts in Southern Italy against the newly established Italian state, by arguing that rebel peasants in the South, not unlike "cultists" such as the followers of Lazzaretti, were backward ignoramuses manipulated by mentally disturbed leaders (Milicia 2014b). Worse still, although this happened after his death, just how dangerous Lombroso's theories were became apparent when they were used by both Fascists in Italy and Nazis in Germany to justify the persecution of religious minorities (Petracci 2014).

In the infamous Fascist administrative order of 1935, the Pentecostal "cult" was even accused of "compromising the psychical and physical racial integrity of the Italians"

In fact, the totalitarian regimes went one step beyond Lombroso. While for Lombroso "cults" were groups conspiring against the governments, Nazism and Fascism killed a good number of Jehovah's Witnesses and Pentecostals who, strictly speaking, had no political interests. However, to be labeled as a "cult," it was now enough not to support the government publicly and exhibiting a lifestyle different from the regime's normative model. In the infamous Fascist administrative order of 1935, the Pentecostal "cult" was even accused of "compromising the psychical and physical racial integrity of the Italians," by speaking in tongues and unduly exciting their nervous systems (Rochat 1990, 246).

The fall of the Nazi and Fascist regimes did not mean that criminology abandoned its own use of the word “cult,” which dated back to Lombroso and continued to indicate a religious group that committed serious crimes, by now not necessarily including conspiring to overthrow the government

However, in the meantime, theologians and sociologists had started using the category of “cult” with meanings different from criminologists. Christian theologians started realizing that the word “heresy” evoked the Inquisition and the burning at stake of dissidents. Some of them preferred to use what was once in their literature a synonymous of “heresy,” “cult,” which in the meantime had entered common language. However, they used the word with a meaning different from criminologists. For them, creeds were more important than deeds, and a group who denied the Trinity or the divinity of Jesus Christ was a “cult” even if its members were otherwise good citizens (Martin 1965).

With sociologists, translation problems became even more complicated because a tradition evolved from Max Weber and Ernst Troeltsch (1865–1923), although the second was not a sociologist but a church historian using sociological tools (Weber 1904–1905; 1906; Troeltsch 1912). The tradition went through various stages of development in the United States (a key passage being Niebuhr 1929), used both “cult” and “sect,” and distinguished between them. Without returning to this often-told story, what is important here is that, while they started their careers as contemporaries of Lombroso, who was well-known in German-speaking countries, both Weber and Troeltsch completely ignored his criminological categories. For them, and their successors, “sects” and “cults” were not heterodox, let alone criminal, religious groups, but religions in an early stage of their development, regarded as marginal by, and critic of, society at large, and not, or not yet, fully organized (Richardson 1978;

1979; 1993; Dillon and Richardson 1999).

The overlapping activities of criminologists and sociologists created a confusion, not completely resolved to this day. “Cult,” based on the criminological tradition, and the parallel efforts of Christian critics of “cults” as heresies, became generally understood as a word charged with strong negative connotations, while sociologists used it in a value-free meaning. Deciding what group was really a “cult” became difficult. For instance, millions of Pentecostals, known as Oneness Pentecostals, disagree with the traditional Christian doctrine of the Trinity. Are they part of “cults”? Christian opponents of the “cults” would (and did) answer in the affirmative, as the classic Trinitarian doctrine is one of their key tests to assess whether a group is within Biblical orthodoxy or otherwise. Criminologists would disagree, since Oneness Pentecostals are generally peaceful and law-abiding citizens. Sociologists would distinguish between newly born, small groups of Oneness Pentecostals and well-established denominations that, while keeping the Oneness doctrine, have millions of members and decades of stable organizational history.

This situation went from bad to worse with the “cult wars” of the 1970s and 1980s, when a societal reaction developed against the success in the West of new religious movements, either imported from Asia or domestic. Parents and the media did not understand why youths might be willing to sacrifice their careers to spend their lives in exotic religious organizations, and the modern anti-cult movement was born. Its story has been told in several valuable studies (including Shupe and Bromley 1980; Bromley and Shupe 1981; Shupe and Bromley 1994), and a short summary would suffice for the purposes of this report.

A handful of psychologists imported from Cold War American propaganda against Communism the notion of “brainwashing,”

arguing that these youths did not join the groups voluntarily but were manipulated through mysterious mind control techniques. “Cults” were defined as groups using “brainwashing,” yet another evolution of the criminological definition—but one making reference, rather than to actual crimes such as violence or sexual abuse, to a hypothetical crime (brainwashing) whose very existence was disputed.

In fact, sociologists and other scholars reacted against the “brainwashing” theories, claiming that they were pseudo-scientific tools used to deny religious liberty to unpopular groups labeled as “cults.” The argument, they claimed, was circular. We know that certain groups are “cults” because they use “brainwashing,” and we know that they use “brainwashing” because, rather than persuading young people to embrace “reasonable” spiritual teachings, they spread bizarre forms of belief, i.e. they are “cults” (Kilbourne and Richardson 1984; Kilbourne and Richardson 1986; Richardson 1996).

A good deal of name-calling went on between the vast majority of the academic specialist of new religious movements and anti-cultists during the so-called “cult wars” (Introvigne 2014; Gallagher 2016). Several studies, starting from the seminal *The Making of a Moonie* by Eileen Barker, demonstrated that “cults” accused of using the so-called “brainwashing” techniques obtained a very low percentage of conversions, proving that these techniques, if they existed at all, were not very successful (Barker 1984).

In 1990, in the case *U.S. v. Fishman*, a federal court in California concluded that “brainwashing” was not a scientific concept and that testimony about “cults” based on

the brainwashing theory was not admissible in American courts of law (U.S. District Court for the Northern District of California 1990). Fishman was the beginning of the end for the American anti-cult movement’s social relevance (Richardson 2014; Richardson 2015). The notion of “brainwashing” or “mental manipulation” was still defended by a tiny minority of scholars, and inspired some laws, including in France, but they soon proved difficult to enforce (Anthony and Introvigne 2006).

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Another consequence of the cult wars was that the majority of academic scholars decided not to use the word “cult,” because of its heavy judgmental and criminological implications, replacing it with “new religious movements.” The new label evolved from Japanese and Korean concepts of “new religions,” common in Asia since the 1930s and later applied to Western movements by

Jacob Needleman (Needleman 1970), but was defined and widely adopted thanks to the efforts of Eileen Barker.

In the meantime, public opinion and the media were confronted with a fourth possible test to decide questions such as whether the Oneness Pentecostals belong to “cults”: do they use brainwashing? In fact, the anti-cult movement and the deprogrammers did target some Oneness Pentecostal denominations, leaving others alone, thus reinforcing the scholars’ impression that almost any group could be accused of brainwashing and, consequently, labeled a “cult” (Shupe and Darnell 2006).

Anti-cultists accused scholars of new religious movements of being “cult apologists,” for which all “cults” were inoffensive. This was never the case, as these scholars always acknowledged that some religious movements, both outside and inside mainline religious traditions, created real “social problems,” and advocated and committed very real crimes such as terrorism, homicide, rape, and child abuse, not to be confused with the imaginary crime of “psychological pressures” or brainwashing (Barker 2011, 201–203).

In 1993, the FBI siege of the headquarters of the Branch Davidians in Waco, Texas, ended up in the death of 80 members of the group, including 22 children (Wright 1995; Wessinger 2017). The FBI’s Critical Incidents Response Group (CIRG) started studying what went wrong in Waco, seeking the cooperation of academic scholars of new religious movements. CESNUR, the Center for Studies on New Religions, co-organized with CIRG a seminar for FBI agents in 1998 in Fredericksburg, Virginia (Barkun 2002, 103), where Massimo Introvigne, Eileen Barker, J. Gordon Melton, James T. Richardson, Catherine Wessinger, Susan Palmer and Jane Williams-Hogan (1942–2018) spoke. At the seminar, it was immediately clear to the FBI that scholars would not use the word

“cult,” yet the agents wanted to know which, among thousands of religious groups, were most inclined to commit serious crimes and should be kept under surveillance. Scholars proposed various tentative criteria, and the conversation between the agency and some of them continued for several years, although how much scholars really influenced FBI practice is a matter of dispute (see Johnson and Weitzman 2017).

In 2001–2002, several leading scholars of new religious movements from Europe and United States (including the undersigned) joined in a project called “Cults, Religion and Violence,” led by David Bromley and J. Gordon Melton, which included seminars and sessions at conferences and culminated in 2002 in the publication of a book with the same title by Cambridge University Press (Bromley and Melton 2002). The project did take into account the earlier dialogue between some scholars and the FBI, but was not limited to the issues discussed there.

While the project “Cults, Religion and Violence” was developing, 9/11 occurred, with two important effects: it made somewhat obvious that “bad” groups existed within traditional religions as well, a notion reinforced by the scandals of Catholic pedophile priests, which also extended to other mainline religions (Shupe 1995; 1998; 2007; Shupe, Stacey and Darnell 2000), and created a new urgency in governments all over the world to define the features of “extremist” religious groups, sometimes called, once again, “cults.” Most scholars continued to oppose the use of “cult,” as an expression compromised by its association with the discredited theory of brainwashing, yet recognized that law enforcement agencies did need criteria for identifying the really dangerous groups (Richardson 1978; 1993).

One of the authors of this report (Introvigne) proposed years ago (significantly, or perhaps ironically, in

a dialogue with Chinese police officers specialized in the repression of cults) a policy aimed at identifying and containing “criminal religious movements” (CRM). The label was not entirely new, as it used selectively elements from the criminological tradition. It avoids the word “cult” and tries to disentangle the category from both the folk psychology of brainwashing and theology. It defined a criminal religious movement as a religious movement that either, or both, advocates or consistently engages as a group in major violent or criminal activities, including terrorism, homicide, physical violence against members, dissidents, or opponents, rape, sexual abuse of minors, or major economic crimes.

There are five key elements of this definition. First, the definition refers to religious movements. There are many criminal movements and organizations that are not religious, but this is not the problem we are discussing here. We would favor a broader definition of religion, including spiritual and esoteric groups. The definition does not purport to solve all the problems associated with defining “religion,” but at the same time stays away from attempts to label certain groups as “pseudo-religious,” which are either based on the naïve notion that all religions are benign, or lead to very difficult questions about what is a “genuine” religion (Platvoet and Molendijk 1999). For the functional purpose of the definition, a religious group is a group characterized by religious, spiritual, or esoteric beliefs and practices, without investigating their orthodoxy, quality, or “strangeness.”

Second, the definition refers to crimes committed, advocated, or justified by a group as a group. It is not enough that some members of the movement commit crimes. That some Catholic priests are pedophiles does not make the Catholic Church a CRM, as the institution’s doctrines do not condone pedophilia (although some bishops did), and the overwhelming majority of Catholics and priests abhor it. The definition implies that

the movement as a group, in its corporate capacity, either, or both, advocates in its doctrines or consistently and systematically commit crimes, although it also recognizes that in some cases one single “critical incident,” for example a terrorist attack, may be enough to identify the group as a CRM.

Third, the definition implies that crimes should be major ones, such as terrorism, rape, homicide, child abuse, physical violence, and even serious and consistent economic crimes, such as international money laundering. Many religious groups are accused in some countries of tax elusion or evasion, and minor administrative wrongdoings. This alone should not lead to the conclusion that the group is a CRM.

Fourth, the definition also insists on well-defined crimes, punished by existing laws of general application and not by new laws created for the specific purpose of acting against the so-called “cults.” As such, it focuses for example on physical violence rather than on elusive notions of psychological violence, on beating or murdering opponents in this life rather than on threatening them with the flames of Hell in the next, and so on.

The crimes should be ascertained by courts of law through fair trials, where the defendants should have the opportunity to be assisted by independent lawyers and exert their rights of defense, as opposite to swift administrative proceedings. And the common laws religious movements are accused of violating should be consistent with UN and other international declarations of human rights. This would not be the case, for example, for a law defining any criticism against the national laws as a criminal offense. After all, several religions have a “prophetic” tradition of exposing the governments’ wrongdoings, and the boundary between prophecy and conspiring to overthrow the government was never as clear-cut as it may seem.

The fifth comment emphasizes that definitions never solve all problems, and grey areas would always remain. CRM are groups that either (or both) commit or advocate violence. Advocating or inciting violence is already a form of violence. A religious movement consistently and systematically using hate speech may be eventually recognized as a CRM.

Defining hate speech is not easy, and American and European traditions are different in this respect, with Europe being generally more restrictive. And the peculiarities of religious language and

controversy should be recognized. There is a century-old tradition in many religions of threatening sinners with the flames of Hell, and neither the Bible nor the Quran are models of politically correct language. Efforts by religions to interact between themselves, and with society at large, with more civility should be encouraged and applauded, but it took centuries for some older religions to start seeing these efforts as meaningful and we cannot expect new religions to mature in a few years or decades. Some forms of hate speech obviously generate violence, but the analysis in this field should be conducted with care and restraint.



5. SOME CONCLUSIONS

Nothing in this report should be constructed as an attempt at disparaging the peculiar French tradition of *laïcité* as a century-old framework within which relationships between state and religion have evolved in France, nor legitimate concerns about radical ultra-fundamentalist Islam or terrorism.

However, it would not be the first time that a law intended to contain radical Islam, or “extremism” and terrorism in general, is enforced against quite different and peaceful religious movements, whose only crime is to have a lifestyle different from the majority. A clear example is Russia, where laws against “extremism” were introduced as a necessary tool against ultra-fundamentalist Islam and terrorism, yet ended up being used to “liquidate” the peaceful Jehovah’s Witnesses and to harass other non-violent religious minorities.

This was stated in the Venice Commission’s opinion on the law against extremism in Russia and its enforcement, adopted at its 91st Plenary Session. It stated that, “The broad interpretation of the notion of ‘extremism’ by the enforcement authorities, the increasing application of the Law in recent years and the pressure it exerts on various circles within civil society, as well as alleged human rights violations reported in this connection have raised concerns and drawn criticism both in Russia and on the international level.” The Venice Commission reminded Russia that, “The only definition of ‘extremism’ contained in an international treaty binding on the Russian Federation is to be found in the Shanghai Convention [on Combating Terrorism, Separatism and Extremism of 15 June 2001, ratified by Russia on 10 January 2003]. In Article 1.1.1.3) of the Extremism Law, ‘extremism’ is defined as ‘an act aimed at seizing or keeping power through the

use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties’. The latter clause allows signatory states to prosecute such ‘extremist’ actions according to their national laws. It made clear that the only definitions of ‘terrorism’ and ‘separatism’ that could be used to take action against individuals or organizations require that violence is an essential element (incitement to, or encouragement of, violence or actual violence)” (Venice Commission 2012).

Earlier in 2010, concerning the dissolution or liquidation of a religious organization, and commenting on proposed amendments to laws in Armenia, the same Venice Commission stated that, “It should be borne in mind that the liquidation or termination of a religious organization may have grave consequences for the religious life of all members of a religious community, and for that reason, care should be taken not to terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the organization as a whole for actions which in fairness should be attributed to specific individuals. Any such wrongdoings of individual members of religious organisations should be addressed in personam, through criminal, administrative or civil proceedings, rather than by invoking general provisions on the liquidation of religious organizations and thus holding the entire organisation accountable. Among other things, consideration should be given to prescribing a range of sanctions of varying severity (such as official warnings, fines, temporary suspension) that would enable

organizations to take corrective action (or pursue appropriate appeals), before taking the harsh step of liquidating a religious organization, which should be a measure of last resort” (Venice Commission 2010).

The European Court of Human Rights has already applied this approach to Russia, regarding a case that involved the prosecution of followers of Turkish mystic Said Nursi (1876–1960) who had been accused of extremist activities (European Court of Human Rights 2018), as well as in the earlier case of the Jehovah’s Witnesses’ organization in Moscow (European Court of Human Rights 2010).

“Numerous State authorities have arrested, detained (sometimes incommunicado) and sentenced members of religious and belief minorities for undefined charges such as intent to ‘disturb political, economic or social structures’, to ‘disrupt state sovereignty’ or to ‘overthrow the Government’. Such vague provisions fail to fulfil the principle of legality as enshrined in article 15 of ICCPR”

The UN Special Rapporteur on Freedom of Religion or Belief, in the unedited version of his last report on the Elimination of all Forms of Religious Intolerance (October 12, 2020), stated that, “A concerning number of mandate communications highlight the use of inchoate terrorist offenses that are disproportionately applied to religious or belief minorities. Harassment measures broadly linked to countering terrorism and

protecting national security illustrate that in almost every region of the world religious minorities appear to be at particular risk of being designated ‘terrorist groups’ and of having members arrested under ‘extremism’ or ‘illegal activity’ charges. A number of communications addressed the use of national security imperatives as the stated objective by some governments in criminalizing membership in and/or activities of certain religious or belief groups. Such an approach amounts to targeting, and ultimately criminalizing, the peaceful expression of a person’s identity. Numerous State authorities have arrested, detained (sometimes incommunicado) and sentenced members of religious and belief

minorities for undefined charges such as intent to ‘disturb political, economic or social structures’, to ‘disrupt state sovereignty’ or to ‘overthrow the Government’. Such vague provisions fail to fulfil the principle of legality as enshrined in article 15 of ICCPR and give worrying leeway to States to arbitrarily limit the exercise of freedom of religion or belief of certain groups” (UN Special Rapporteur on Freedom of Religion or Belief 2020).

The OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) recently released a new document called *Freedom of Religion or Belief and Security: Policy Guidance*. It states in its introduction that, “While OSCE participating States have adopted different strategies to ensure that their own security measures are fully compliant with their international obligations and commitments pertaining to freedom of religion or belief, certain laws, security policies and practices have placed freedom of religion or belief and other universal human rights under significant pressure. Such measures, especially those that are very broad or applied arbitrarily,

are often enacted in the name of ‘national,’ ‘state’ or ‘public’ security, or in the interests of preserving or maintaining ‘peaceful coexistence,’ ‘social stability’ or ‘social harmony.’ Experience shows that such limitations can worsen rather than improve security” (ODIHR 2019, 5–6).

Certainly, this does not deny that states have a legitimate right to preserve their security against extremism and terrorism. But the documents warn against uses of provisions against “terrorism” and “extremism” that end up censoring belief rather than behavior, and unpopular religious ideas rather than hate speech or incitation to violence.

Our suggestion is to revise the draft law by:

- Avoiding any appearance of Islamophobic discourse, while preventing attitudes by some radical ultra-fundamentalist Islamic or other groups presenting real threats of terrorism, violence, and violation of the human rights of women;

- Allow home-schooling in general, while reinforcing the system of controls and inspections to prevent that home-schooling is used to promote violence, the apology of terrorism, racism, anti-Semitism, or hate speech (public schools should also be encourage to promote interreligious and inter-cultural dialogue, rather than

censoring specific religious identities);

- Allow a latitude in religious speech for prophetic criticism of existing laws, while punishing incitement to violence;

- Remove from the law provisions allowing for swift dissolution or liquidation of religious association without due process or guaranteeing the right of the defense, which would constitute a breach of UDHR and ECHR provisions;

- Chain-connect any reference to “human dignity” to the parameter of the human rights enshrined in the Universal Declaration of Human Rights, and recognize the corporate right to religious liberty of religious bodies and their freedom to self-regulate their internal matters, including expulsion and treatment of members who have been expelled;

- Identify and punish criminal religious movements, in presence of clear and unequivocal evidence of criminal activities, such as advocating or practicing physical violence or systematically committing other common crimes, while avoiding references to pseudo-scientific concepts of brainwashing or “mental manipulation”:

- Maintain a dialogue with scholars and human rights activists critical of the anti-cult approach rather than with the anti-cult movements only.



REFERENCES

- Anthony, Dick and Massimo Introvigne. 2006. *Le Lavage de cerveau: mythe ou réalité?* Paris: L'Harmattan.
- Aquinas, Thomas. 2000. *Corpus Thomisticum*. Edited by Enrique Alarcón. Pamplona: Universitas Studiorum Navarrensis. <http://www.corpusthomisticum.org>.
- Bainton, Ronald H. 1953. *Hunted Heretic: The Life and Death of Michael Servetus, 1511–1553*. Boston: Beacon Press.
- Barker, Eileen. 1984. *The Making of a Moonie: Choice or Brainwashing?* Oxford: Basil Blackwell.
- Barker, Eileen. 2011. "The Cult as a Social Problem." In *Religion and Social Problems*, edited by Titus Hjelm, 198–212. New York and London: Routledge.
- Barkun, Michael. 2002. "Project Megiddo, the FBI and the Academic Community." In *Millennial Violence: Past, Present and Future*, edited by Jeffrey Kaplan, 97–108. Abington (UK) and New York: Routledge.
- BBC News. 2014. "German Home-School Family Will Not Be Deported from US." March 5. <https://www.bbc.com/news/world-us-canada-26454988>.
- Bezirksgericht Zürich. 2019. *Staatsanwaltschaft Zürich-Sihl g. Regina Ruth Spiess*. GG180259-L/U. July 9.
- Briones Martínez, Irene María. 2014. *Educación en familia. Ampliando derechos educativos y de conciencia*. Madrid: Dykinson.
- Bromley, David G., and J. Gordon Melton, eds. *Cults, Religion and Violence*. Cambridge (UK) and New York: Cambridge University Press.
- Bromley, David G., and Anson D. Shupe, Jr. 1981. *Strange Gods: The Great American Cult Scare*. Boston: Beacon Press.
- Corte di Cassazione. 2017. *F.L. v. Congregazione Cristiana dei Testimoni di Geova*. April 13, no. 9561. <https://sentenze.ialleggepertutti.it/sentenza/cassazione-civile-n-9561-del-13-04-2017>.
- Court of Appeal [London], Queen's Bench Division. 2020. *Otuo v. Morley and Watch Tower Bible and Tract Society of Britain*. March 17, case no. A2/2019/1645.
- Court of Appeal of Tennessee. 2007. *Barbara J. Anderson et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.* January 19. Case no. M2004-01066-COA-R9-CV. <https://cases.justia.com/tennessee/court-of-appeals/WatchtowerOpn.pdf?ts=1462446714>.
- Darmanin, Gerald. 2020. Tweet (with annexed memorandum). <https://twitter.com/GDarmanin/status/1313459612985810947>.
- Dillon, Jane, and James T. Richardson. 1999. "The 'Cult' Concept: A Politics of Representation Analysis." *Syzygy: Journal of Alternative Religion and Culture* 3:185–197.
- European Court of Human Rights. 2006. *Konrad and Others v. Germany*. September 11. <http://www.quaqua.org/Konrad.pdf>.
- European Court of Human Rights, 2010. *Jehovah's Witnesses of Moscow and Others v.*

- Russia. June 10. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-99221%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-99221%22]}).
- European Court of Human Rights [Grand Chamber]. 2013. *Sindicatul “Păstorul cel bun” v. Romania*. July 9. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-122763%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-122763%22]}).
- European Court of Human Right. 2018. *Ibragim Ibragimov and Others v. Russia*. August 28. [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-185293%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-185293%22]}).
- European Court of Human Rights. 2019. *Wunderlich v. Germany*. January 10. [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22homeschooling%22\],%22document-collectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-188994%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22homeschooling%22],%22document-collectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-188994%22]}).
- Gallagher, Eugene V., ed. 2016. *“Cult Wars” in Historical Perspective: New and Minority Religions*. New York and London: Routledge.
- Hervieu-Léger, Danièle. 2001. *La Religion en miettes ou la question des sectes*. Calmann-Lévy, Parigi.
- High Court of Justice, Queen’s Bench Division. 2019. *Otuo v. Morley and Watch Tower Bible and Tract Society of Britain*. June 7. [2019] EWHC 1349 (QB).
- Introvigne, Massimo. 2012. “Pope Benedict XVI and Religious Liberty: Separating Fact from Fiction.” *Annalis Universitatis Mariae Curie-Sklodowska* 19(2):25–33.
- Introvigne, Massimo. 2014. “Advocacy, Brainwashing Theories, and New Religious Movements.” *Religion* 44:303–319.
- Joas, Hans. 2011. *Die Sakralität der Person: Eine neue Genealogie der Menschenrechte*. Berlin: Suhrkamp.
- Joas, Hans. 2017. *Die Macht des Heiligen—Eine Alternative zur Geschichte von der Entzauberung*. Berlin: Suhrkamp.
- Johnson, Sylvester A., and Steven Weitzman, eds. 2017. *The FBI and Religion: Faith and National Security Before and After 9/11*. Berkeley, Los Angeles, and London: University of California Press.
- Kepel, Gilles. 1991. *Les Banlieues de l’Islam. Naissance d’une religion en France*. Paris: Seuil.
- Kilbourne, Brock K., and James T. Richardson. 1984. “Psychotherapy and New Religions in a Pluralistic Society.” *American Psychologist* 39:237–251.
- Kilbourne, Brock K., and James T. Richardson. 1986. “Cultphobia.” *Thought* 61(241):258–266.
- Levine, Robert M. 1995. *Vale of Tears: Revisiting the Canudos Massacre in Northeastern Brazil, 1893–1897*. Berkeley, Los Angeles, and London: University of California Press.
- Le Journal du Centre*. 2020. “Le Phénomène sectaire dans le viseur.” October 12.
- Lombroso, Cesare. 1890. *Pazzi ed anomali*. Città di Castello: S. Lapi.
- Lombroso, Cesare. 1909. *Ricerche sui fenomeni ipnotici e spiritici*. Turin: Unione Tipografica Editrice Torinese.
- Martin, Luis P., ed. 2000. *Les Francs-maçons dans la cité. Les cultures politiques de la Franc-maçonnerie en Europe (XIXe–XXe siècles)*. Rennes: Presses Universitaires de Rennes.

- Martin, Walter R. 1965. *The Kingdom of the Cults*. Grand Rapids (Michigan): Zondervan.
- Milicia, Maria Teresa. 2014a. "La protesta 'No Lombroso' sul web. Narrative identitarie neo-meridionaliste." *Etnografia e ricerca qualitativa* 14(2):265–286.
- Milicia, Maria Teresa. 2014b. *Lombroso e il brigante. Storia di un cranio conteso*. Rome: Salerno.
- MIVILUDES. 2020 [last updated]. "Qu'est-ce qu'une dérive sectaire ?" <https://www.deresives-sectes.gouv.fr/quest-ce-quune-d%C3%A9rive-sectaire>.
- Needleman, Jacob. 1970. *The New Religions*. Garden City (New York): Doubleday & Co.
- Niebuhr, H. Richard. 1929. *The Social Sources of Denominationalism*. New York: Henry Holt and Company.
- ODIHR (Office of Democratic Institutions and Human Rights, OSCE). 2019. *Freedom of Religion or Belief and Security: Policy Guidance*. Warsaw; OSCE/ODIHR.
- Palmer, Susan. 2011. *The New Heretics: Minority Religions, la République, and the Government-Sponsored "War on Sects."* New York: Oxford University Press.
- Poulat, Émile. 2010. *Scruter la loi de 1905. La République française et la Religion*. Paris: Fayard.
- Petracci, Matteo. 2014. *I matti del Duce. Manicomi e repressione politica nell'Italia fascista*. Rome: Donzelli.
- Platvoet, Jan G., and Arie L. Molendijk, eds. 1999. *The Pragmatics of Defining Religion: Contexts, Concepts and Contests*. Leiden: Brill.
- Richardson, James T. 1978. "An Oppositional and General Conceptualization of Cult." *Annual Review of the Social Sciences of Religion* 2:29–52.
- Richardson, James T. 1979. "From Cult to Sect: Creative Eclecticism in New Religious Movements." *Pacific Sociological Review* 22:139–166.
- Richardson, James T. 1993. "Definitions of Cult: From Sociological-Technical to Popular-Negative." *Review of Religious Research* 34:348–356.
- Richardson, James T. 1996. "Sociology and the New Religions: 'Brainwashing,' the Courts, and Religious Freedom." In *Witnessing for Sociology: Sociologists in Court*, edited by Pamela Jenkins and Steve Kroll-Smith, 115–137. Westport (Connecticut) and London: Praeger.
- Richardson, James T. 2014. "'Brainwashing' as Forensic Evidence." In *Handbook of Forensic Sociology and Psychology*, edited by Stephen J. Morewitz and Mark L. Goldstein, 77–85. New York: Springer.
- Richardson, James T. 2015. "'Brainwashing' and Mental Health." In *Encyclopedia of Mental Health*, 2nd ed., edited by Howard S. Friedman, 210–215. New York: Elsevier.
- Rochat, Giorgio. 1990. *Regime fascista e Chiese evangeliche. Direttive e articolazioni del controllo e della repressione*. Turin: Claudiana.
- Shupe, Anson D. 1995. *In the Name of All That's Holy: A Theory of Clergy Malfeasance*. Westport (Connecticut): Praeger.
- Shupe, Anson D. 1998. *Wolves Within the Fold: Religious Leadership and the Abuse of Power*. New Brunswick (New Jersey) and London: Rutgers University Press.

Shupe, Anson D. 2007. *Spoils of the Kingdom: Clergy Misconduct and Religious Community*. Urbana (Illinois) and Chicago: University of Chicago Press.

Shupe, Anson D., Jr., and David Bromley. 1980. *The New Vigilantes: Deprogrammers, Anti-Cultists, and the New Religions*. Beverly Hills (California) and London: Sage.

Shupe, Anson D., Jr., and David Bromley, eds. 1994. *Anti-Cult Movements in Cross-Cultural Perspective*. New York and London: Garland.

Shupe, Anson D., Jr., and Susan E. Darnell. 2006. *Agents of Discord: Deprogramming, Pseudo-Science, and the American Anticult Movement*. New Brunswick (New Jersey): Transaction Publishers.

Shupe, Anson D, William A. Stacey and Susan E. Darnell, eds. 2000. *Bad Pastors: Clergy Misconduct in Modern America*. New York: NYU Press.

Shusterman, Noah. 2014. *The French Revolution: Faith, Desire and Politics*. New York and London: Routledge.

Supreme Court of Canada. 2018. *Judicial Committee of the Highwood Congregation of Jehovah's Witnesses and Highwood Congregation of Jehovah's Witnesses v. Randy Wall*. SCC 26, [2018] 1 S.C.R. 750. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/17101/1/document.do>.

Tedeschi, Enrica. 1989. *Per una sociologia del millennio. David Lazzaretti: carisma e mutamento sociale*. Venice: Marsilio.

Tribunale di Bari. 2004. *Congregazione Cristiana dei Testimoni di Geova v. Vito Pucci* [order]. December 6/December 14. https://www.cesnur.org/2004/tdg_revoca.htm.

Tribunale di Bari. 2007. *Vito Pucci v. Congregazione Cristiana dei Testimoni di Geova e altri*. February 20. https://www.cesnur.org/2007/tdg_pucci.pdf.

Troeltsch, Ernst. 1912. *Die Soziallehren der christlichen Kirchen und Gruppen*. Tübingen: J.G.B. Mohr.

United States Court of Appeal, Ninth Circuit. 1987. *Paul v. Watchtower Bible and Tract Soc. of New York, Inc.* 819 F.2d 875 (1987).

UN Special Rapporteur on Freedom of Religion or Belief. 2020. "Elimination of All Forms of Religious Intolerance." Advance unedited report. October 12. New York: General Assembly of the United Nations.

USCIRF (U.S. Commission on International Religious Freedom). 2020. "The Anti-cult Movement and Religious Regulation in Russia and the Former Soviet Union." Accessed August 14, 2020. <https://www.uscirf.gov/sites/default/files/2020%20Anti-Cult%20Update%20-%20Religious%20Regulation%20in%20Russia.pdf>.

U.S. District Court for the Northern District of California. 1990. "Opinion (Jensen J.). Case No. CR-88-0616 DLJ. United States v. Steven Fishman," 13 April . 743 F.Supp. 713. Accessed September 17, 2017. http://www.leagle.com/xmlResult.aspx?xmldoc=19901456743FSupp713_11345.xml&docbase=CSLWAR2-1986-2006.

Vargas Llosa, Mario. 1984. *The War of the End of the World*. Translated by Helen R. Lane. New York: Farrar Straus and Giroux.

Venice Commission [European Commission for Democracy Through Law]. 2010. "Interim Joint Opinion on the Law on Making Amendments and Supplements to the Law on

Freedom of Conscience and Religious Organisations and on the Laws on Amending the Criminal Code, the Administrative Offences Code and the Law on Charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR—Adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010).” [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)054-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)054-e).

Venice Commission [European Commission for Democracy Through Law]. 2012. “Opinion on the Federal Law on Combating Extremist Activity in the Russian Federation, Adopted by the Venice Commission at Its 91st Plenary Session (Venice, 15–16 June 2012).” [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)016-e).

Verwaltungsbericht Berlin. 2010. *X g. Jehovas Zeugen in Deutschland*. June 10. VG27L129.10.

Vieila, Olivier-Philippe. 2020. “Contrôles, soupçons de sectarisme... Trois questions sur la fin de l’école à la maison.” *L’Express*, October 2. https://www.lexpress.fr/actualite/societe/controles-soupcons-de-sectarisme-trois-questions-sur-la-fin-de-l-ecole-a-la-maison_2135615.html.

Weber, Max. 1904–1905. “Die protestantische Ethik und der Geist des Kapitalismus.” *Archiv für Sozialwissenschaft und Sozialpolitik* 20:1–54, and 21:1–110.

Weber, Max. 1906. “Kirchen und Sekten.” *Frankfurter Zeitung*, April 13 and April 15.

Wesfreid, Marcelo. 2020. “Dérives sectaires : «Il y a une floraison de petites structures», alerte Marlène Schiappa.” *Le Parisien*, October 10. <https://www.leparisien.fr/politique/derives-sectaires-il-y-a-une-floraison-de-petites-structures-alerte-marlene-schiappa-10-10-2020-8400297.php>.

Wessinger, Catherine L. 2017. “The FBI’s ‘Cult War’ against the Branch Davidians.” In *The FBI and Religion: Faith and National Security before and after 9/11*, edited by Sylvester A. Johnson and Steven Weitzman, 203–243. Berkeley and Los Angeles: University of California Press.

Wright, Stuart A., ed. 1995. *Armageddon in Waco: Critical Perspectives on the Branch Davidian Conflict*. Chicago and London: University of Chicago Press.

Wright, Stuart A., and Susan Palmer. 2016. *Storming Zion: Government Raids on Religious Communities*. New York: Oxford University Press, 2016.

Wu, Junqing. 2016. “Words and Concepts in Chinese Religious Denunciation: A Study of the Genealogy of Xiejiao.” *The Chinese Historical Review* 23(1):1–22.

Wu, Junqing. 2017. *Mandarins and Heretics: The Constructions of “Heresy” in Chinese State Discourse*. Leiden: Brill.