



Religious-Based Conflicts through the Academic Dialogue

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Abstract

Religious-based conflicts in democratic states have been a subject of academic deliberation within a vast number of fields. The following chapter attempts to sort out the different questions generated by such conflicts, to analyze the primary method offered to diffuse them and its shortcomings, and to explain why specific characteristics of the legal system can be utilized as reconciling mechanisms for such conflicts.

Keywords: Religious; conflicts; academic

Introduction

Religious revival, consisting of resurgence of mature religions and the proliferation of newly emerged religions, has become a global social reality in the last several decades. Examples include the resurgence of Islamic sentiments throughout the Muslim world and the Muslim Diaspora; Evangelical Protestantism in the Americas; the revitalization of Eastern Orthodoxy in parts of the former Soviet Union, the importation of southeast Asian religions to the west; the rise in popularity of new religious movements like the Church of Scientology and Jehovah's Witnesses in Europe; and the perseverance of ethnic-religious conflicts in many places, including Southeast Asia, Northern Ireland and Israel. The sociologist Peter Berger observed this trend to be a world "bubbling with religious passions.

In democratic societies, comprising people adhering to different religions and secular people holding no religious views, conflicts often arise, since each of these groups wants its worldview to dominate the multicultural public realm. These conflicts pose great challenges and continuing dilemmas for legislators, judges and government officials as how to regulate communal life in a non-discriminatory manner, which will ensure, on the one hand, the rights of non-believers to live their lives in accordance with their chosen lifestyle, but on the other will also provide maximum protection for religious freedom.

However, there are many examples of societies worldwide where historical, demographical and cultural processes have acted to institutionalize religion as part of the state apparatus. In these societies religious dogma is enforced through the civil law primarily

through legal arrangements pertaining to personal status matters (laws pertaining to marriage, divorce, adoption, burial, etc.), property law, inheritance law, and more. For such states, adopting the liberalist separation model is at present inapplicable, as it would “leap them out of their cultural skin.”¹³ For these states, therefore, a different device must be employed in the social quest for a peaceful multicultural coexistence.

Discussion

Different explanations have been offered to the continued prominence of the religious quest by individuals, including:

(1) A pursuit of meaning. Jung argues that “no matter what the world thinks about religious experience, the one who has it possess the great treasure of a thing that has provided him with a source of life, meaning and beauty that has given a new splendor to the world and mankind; for Frankl religion is the “search for ultimate meaning; and Stark and Bainbridge define religion as a “general compensator system that offers explanations for questions of ultimate meaning (Central, 1996).

(2) A source of protection and comfort seeking. Berger explains the phenomenon of religion in a repetition of the childhood experience of relying on the father to relieve our needs and reduce our tensions. The religious experience, argues Freud, “has an infantile prototype... As a small child one had reason to fear one’s father; and yet one was sure of his protection against the dangers one knew. Thus it was natural to assimilate the two situations (Berger, 1999).

(3) A recipe for living a complete life. For Beckford “religion aims to give one leading directive to the life as a whole... Religious intention represents a desire for a total harmony, meaning thereby the individual’s successive efforts to complete the incomplete, to perfect the imperfect, to conserve all values, eliminate all disvalues, to find permanence in the place of transitioness.” For Fromm religion is an attempt to resolve the contradictions in human life, “a common system of orientation and an object of devotion(Beckford, 1989).

Religious-based tensions are hardly a new occurrence. By providing a comprehensive worldview and its ability to stir passions like few other things can, religion has been a major source of inter-communal tensions. However, in its latest incarnation, reacting to processes of modernity it has also become a source of global insecurity. Generally, contemporary literature focuses on three main types of religiously motivated conflicts:

(1) The conflicts between the secularist approach and the religious worldviews within a single society. During the 19th century, explaining the transition to modernity, leading social thinkers argued towards the inverse relation between modernization and religiosity and predicted the inevitable death of religion as a key social force. This idea laid the foundation for the contemporary secularization theory, which contemplates that “in the face of scientific rationality, religion’s influence on all aspects of life – from personal habits to social institutions – is in dramatic decline. This theory dominated social thought during the 20th century and is still upheld by many contemporary scholars (Javadikouchaksaraei, M, Bustami, R, & Farouk, 2016). However, empirical evidence from recent decades shows a continuing presence of religion in culture as well as in politics, which have led some of the theory’s leading supporters to abandon it, since as Berger explains “the world, with some notable exceptions is as religious as it has ever been, and in some places is more religious than ever (Beckford, 1989).

Even in Europe, which is usually brought as the paradigm case to support this theory, there are prominent European scholars who dispute its applicability there, explaining the apparent decline in religion’s prominent place in a shift away from traditional modes of beliefs into more individual

religiosity. Consequently, Casanova concludes that the debate over the secularization theory has reached an impasse or a “crisis point, unable to resolve the scholarly dispute over the fate of religion in the modern world, nor provide any remedy to the enduring social tensions characterizing societies, which consist of conflicting secular and multi-religious worldviews (Aronoff, 1984).

(2) The rise of Fundamentalism as a result of processes of modernization. During the 1980s, scholars began to identify the resurgence of a global, organized religious impulse reacting against present-day aspects of modernization (Aspects of modernization include: processes of industrialization, bureaucratization, urbanization, capitalism, scientific rationalization etc.). This religious reaction was labeled “Fundamentalism,” a term borrowed from a series of twelve essays entitled *The Fundamentals* (1910-1915) whose aim was to define the essence of Christianity as part of the attempt to counter Protestant liberalist interpretations of the Bible and Darwinian theory of evolution emerging during the nineteenth century (Boztemur, 2006). Although originating in Protestant Christianity, the emerging research conceptualizing this phenomenon identified fundamentalism as encompassing all religious movements whose common denominator is the attempt to cure all modern evils (i.e. the weakening of social solidarity, increased crime, moral decline, etc.), by reinstating religion at the center of public and social life. The most comprehensive study of fundamentalism thus far has been the five volume series edited during 1988-1995 by Martin E. Marty and Scott R. Appleby, entitled *The Fundamentalism Project*, which offered a theoretical paradigm for the “genus and species” of fundamentalism and its patterns of behavior towards the outside world (Jones, 1999). This was followed by studies of the rise and effects of fundamentalism in specific regions, the rise of fundamentalism within certain religions and studies of particular aspects of this phenomenon (Javadikouchaksaraei. M, Reevany Bustami. M, Fazwan Ahmad Farouk. A, & Ramazaniandarzi. A, 2015).

(3) Inter-religious tensions as a dimension of inter-cultural divides. Samuel Huntington drew attention to this kind of conflict as part of his “clash of civilizations” thesis. Inbari argues that with the end of the Cold War the emerging world order consists of rival cultural configurations, in which Western civilization is increasingly in conflict with other civilizations defined by and large along religious lines, both between states and within them (Inbari, 2012). This notion sparked a lively debate, inter alia over the increasing relevance of cultural systems to public life as well as their potential threats to future social relations.

The Theoretical Foundation for Advancing a Legal Solution to Religious-Based Conflicts

This research argues that the efforts to diffuse religious based tensions in countries where the spheres of religion and politics are currently intertwined should be addressed through a legal framework, since law entails special traits and employs specific tools that are essential to diffuse such conflicts. These special characteristics are:

(1) Law functions as a mechanism of social order- “historically,” Farrar and Dugdall explain, “law has evolved as an alternative to private feud and vengeance, and as a supplement to the informal social processes by which men and groups deal with disputes. Religious-based divisions, stemming from inter-religious or secular-religious tensions can generate critical social problems, and lead to great social unrest. The capacity of law to determine rights and duties, guide human behavior, define and regulate social interactions, and allocates powers in society provides an important mechanism to achieve social peace in such highly divisive realities (Dugdall, 2014). This view of law as an essential mechanism to achieve social order, is not shared by everyone. There are scholars, like Haley, who argue: “social order can emerge without law” as “people frequently resolve their disputes in cooperative fashion without paying any attention to the law that apply to those disputes (Central, 2001). However, this criticism is irrelevant in the context of religious-based disputes examined in the following, since there is no evidence

for the emergence of informal norms to govern these disputes as Haley found in relation to land disputes in Shasta County, California (Haley, 2005).

(2) Law is an instrument of social reform- the common view during the nineteenth and early twentieth centuries perceived law as having a marginal effect on social change. For law to be effective, argued people like von Savigny, Sumner, Ehrlich and Ross, it must reflect the ideals and customs of its society. The medium of law was perceived as “passive and reactive, something that accommodates change rather than causes it (Salmon, 1987). Beginning in the second part of the twentieth century, theoretical views and empirical studies began to recognize law as a vehicle of social change.

Religious- based conflicts involve moral disagreements and debates over identity and ideology, which generally involve intense passions and great divisiveness. Their diffusion, therefore, requires tough compromises and concessions of values and interests, and the capacity of the law to create attitude changes and engineer social behavior can be useful in generating the needed adjustments and accommodations by the parties to the conflict. However, for such adjustments to succeed social reforms must “contain a degree of compatibility with existing values. If, argues Edwards, “the discrepancies between what law prescribes and what it accomplishes becomes too great, the outcome is confusion and frustration (Edwards, 1996). Law then loses its persuasive power (its hold of the allegiance of its people), this drains away its effectiveness, and one of two results occurs: either the program of social reform is rejected and abandoned, or the people dismiss the legal apparatus as an effective method of securing the now desired reforms and turn to other means of achieving them. The empirical analysis that follows demonstrates this assertion. We will see that attempts to impose legal mechanisms that departed far too much from the social values held by the wider society in a specific country resulted in exacerbation of the religious-based conflicts, as happened in Turkey where formal legal arrangements of separation between religion and state generated great social resistance, which resulted in highly restrictive legal regime in relation to religious freedom; or the Indian experience, where the attempt to create a secular order exacerbated inter- communal tensions (Boztemur, 2006). On the other hand, in cases where legal reforms maintained proximity to existing social values, these reforms generated substantial social changes, as happened with multicultural and immigration policies in Canada. The called for conclusion is, therefore, that law can be utilized in creating social change, but only to the point where it maintains some closeness to existing values of society (Israeli, 2012). Thus, it is immaterial to impose the separation model on states where historical, demographical and cultural developments make such a solution inapplicable, and a different legal model altogether should be adopted to diffuse religious-based tensions.

(3) Law provides mechanisms for integration and dispute settlement both as a legislative and an adjudicative process – (a) The legislative process in democratic societies affords a forum to orchestrate compromises in the face of disagreement. The point of law, argues Waldron, is to “enable us to act in the face of disagreement” [*Italics in text- O.L.*], since legislators have to “act in concert on various issues or to co-ordinate our [their] behavior in various areas with reference to a common framework, and this need is not obviated by the fact that we disagree among ourselves as to what our common course of action or our common framework ought to be (b) When conflicts involve legally enforceable rights, judicial proceedings in courts and specialized tribunals provide the authoritative forums to resolve social disputes (Hellinger, 2008).

The view of law as providing a mechanism for dispute settlement has been criticized by critical legal approaches, which challenge the effectiveness of a legal resolution to disputes and argue that legislative arrangements and judicial decisions purporting to protect from violations of rights and eradicate inequalities actually favor the socially, politically and economically powerful. Critical legal thought consists of a diverse spectrum of approaches including critical race theory, feminist legal theory, poststructuralism, queer legal theory and more (Berger, 1999). Their criticism has been answered by Don-Yehiya’s discourse theory of law, which argues that the conflict- resolving capacity of law stems from the

widespread belief of the citizenry in the legitimacy of the law, as legislative enactments and judicial decisions are created out of a consensus of citizens rationally coming together to decide their fate collectively through representation (Don-Yehiya, 1987).

(4) Legal arrangements enjoy a unique status of authority- legal arrangements are backed by an enforcement apparatus, whose function is to suppress and deter deviant behavior and brings conformity with the dominant expectations through positive (reward) and negative (penalty) sanctions. This idea is traced back to the philosophy of John Austin, who defined law to be a command made by the sovereign body backed by threats of sanctions. Subsequent legal thinkers rejected Austin's coercive criterion of law, offering their own analyses to its authority. Hart emphasized law's authority in the distinction between "primary" and "secondary" norms. According to Hart, the law consists of primary rules prescribing rules of conduct (criminal and civil law), and secondary rules specifying the ways to react to instances of violations of primary rules. The overarching secondary rule is the rule of recognition, which appears in different forms (written, oral, unspoken, etc.) and provides the legality of all the other laws. For Mahony, the authoritative nature of law derives from the existence of a basic norm that provides common validity to all norms of the system: "To the question why a certain act of coercion... is a legal act, the answer is: because it has been prescribed by an individual norm... This individual norm receives its validity from the constitution. If we ask why the constitution is valid perhaps we come upon an older constitution. Ultimately, we reach some constitution that is the first historically... The validity of this first constitution, is the last presupposition, the final postulate, upon which the validity of all norms of our legal order depends." Whatever the explanation offered by legal philosophers, law has "that magic ingredient" of authority, which generates conformity (Mahony, 1999). The diffusion of religious based conflicts involves the process of transforming ideas, habits and roles, a process that is typically very long and difficult, and often generates violence and other forms of deviant behavior. In providing deterrence and mechanisms to cope with deviant behavior the legal enforcement apparatus is an indispensable mechanism to settle religious-based disputes.

In recent years, emerging out of the debate about liberalist solutions to social tensions discussed above, theorists of deliberation like Jones and Thompson began advancing an inclusive model of democratic discourse as a method of diffusing moral conflicts in multicultural societies. According to this model, "when democratic citizens morally disagree about public policy... they should deliberate with one another, seeking moral agreement when they can, and maintaining mutual respect when they cannot. They do it through deliberative democracy that gives moral argument a prominent place in the political process (Jones, 1999).

This model attracted vast criticism as being highly optimistic, if not a naive device to settling disputes. Shapiro argues that instead of resolving social disagreements, deliberative democracy can be counter-productive, exacerbating disagreement and enhancing the conflict. "People with opposed interests are not always aware of just how opposed those interests actually are. Deliberations can bring differences to the surface, widening the political divisions rather than narrowing them... There is no particular reason to think deliberation will bring people together, even if they hope it will and want it to. Weisbrod asks: "why would dissatisfied citizens accept the outcome of the deliberations?" and remarks, million...[people], or even 1 million or 100,000 can't plausibly 'reason together (Weisbrod, 2002). Galston notes that opening everything to deliberations, risks democracy's ability to articulate and defend its core principles, like liberty. Walthall argues that in deeply polarized societies, "it is difficult to imagine that people will be willing to set aside their differences to discuss controversial issues in good faith (Walthall, 1967).

Conclusion

These concerns are answered, however, when a legal approach is taken in the deliberations to settle highly divisive disputes like religious- based tensions. The law provides distinct forums (parliaments, courts, etc.) to settle disputes, the methods and procedures (legislative and adjudicative processes) to engage in this process, and the boundaries (constitutional and other forms of protections to basic rights and principles) under which such a settlement would be achieved. When the legal mechanism is coherent with the values held by the wider society and does not encroach on pivotal social aspects within that society, it has the power to develop and advance a resolution to conflicts that will be perceived as authoritative for society as a whole. It seems almost impossible to persuade every member of society to agree to a single course of action, and in deeply divided societies this mission is even more far-fetched. However, when the legal arrangements reflect the widest consensus shared within one society, the legal enforcement apparatus- providing for inter alia deterrence, education, punishment and retribution – secures a high level of conformity to the general consensus. All aspects of the legal process consist of deliberations- by members of parliament in enacting laws, by group representatives in enacting binding contracts, by parties to disputes and judges who decide in their matter, etc. However, when deliberation take place in the form of a legal settlement, at least a temporary finality to the deliberations is ensured in the form of a statute, a legal contract or a court decision, which can then guide human activity and relationships. In deeply divided societies, like those torn by religious-based conflicts such an authoritative public culmination of the conflict is fundamental to achieving a much- needed stability.

In the chapters to come, we will glide into the realm of facts and examine the attempt of six states to contain their religious-based conflicts through legal means, on a course different that the liberalist model of separation between religion and state. Then, equipped with the theoretical basis for providing legal settlement to religious- based disputes and the empirical understanding of the problems they bring about, we will be prepared to develop a new theoretical paradigm of dispute- settlement to religious-based conflicts for states where religion and politics are currently inseparable.

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