

Remarks on Main Freedom of Religion and Belief (FoRB) Articles

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REMARKS ON MAIN FoRB ARTICLES CORE TRANSNATIONAL INCL. EUROPEAN CONVENTIONS, DECLARATIONS, AND COMMENTS ON FoRB

1.a. Overview of the most relevant texts in conventions, declarations, comments and recommendations

- 1948 UN Universal Declaration of Human Rights
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 1966 International Covenant on Civil and Political Rights
- 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- 1993 CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)
- 2013 Council of the European Union: EU Guidelines on the promotion and protection of freedom of religion or belief
- European Commission

In what follows, special attention will be paid to the European Convention ('Convention') and the interpretative comments and guidelines enshrined in the CCPR General Comment no 22 and the EU Guidelines, along with the interpretations enshrined in the rulings of the European Court of Human Rights ('Court').

1.b. The texts and a few preliminary comments

1948 UN DECLARATION

Article 18.

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This universal declaration was drafted not long after WWII, and it is common to read it in light of the atrocities committed, also against humans and groups being identified, at least partially, with reference to religion, e.g. Jews; but also the efforts of certain states to manipulate populations trying to control and most likely change also their 'inner life' must be mentioned as another reason for the article.

Further back in history, wars, persecution, and crimes directed at the individual and at groups with religious affinities, either enacted by people belonging to another religion or confession, or by non- or anti-religious people and authorities against religious people, likewise is a matter of fact, and the drafting fathers most likely wanted a special article on religion for this reason, too.

Rather than, e.g. have only articles protecting the life of the individual, the right to privacy, to whatever thoughts and opinions, and the freedom to expression thereof, a need to protect religion in particular was seen.

Moreover, what is called 'religion' as well as 'religious belief' can be said to have positioned itself in many societies around the world as something 'special', something of a special 'value' (to the religious people but also to societies), something 'elevated', more valuable than other 'values' and 'belief-systems', and such notions of religion were presumably represented amongst the drafting fathers who among themselves also had people linked to Western forms of Christianity; notwithstanding the fact that the wording of the article 18, like the wordings of later declarations and conventions, normally is said to cover not just religion and religious beliefs and thoughts but - as said in inter alia CCPR General Comment number 22 - atheistic, theistic and non-theistic beliefs.

This leads to a few words about what preliminary results a semantic analysis conducted from a study of religions perspective may produce. What is the potential or implicit, and most likely 'meaning' of the words used in article 18 as well as in the corresponding articles in later declarations and conventions (cf. below)?

While 'thought', 'conscience', 'religion' and 'belief' most certainly are terms used so as to differentiate between each and every of them, thus indicating that 'religion' is not exactly same as 'belief' (and vice versa), 'thought', and 'conscience', the putting together or the linking together of these words *also* indicates that they are considered as, yes, closely linked. And, linking the terms, as if to some degree partaking in the same 'essence', is extremely widespread: amongst lawmakers, judges, politicians, human rights scholars, the public at large, religious people etc. With the spread of the human rights and its articles on freedom of religion or belief, such a way of thinking of religion, moreover, has spread to parts of the world beyond the European part of it.

Furthermore, when the article goes on linking these concepts and terms together, at the same time as it separates them from each other, and, as a group, from a so-called right to 'manifestation' (in public or in private, individually or in community with others) of 'religion or belief', it seems obvious to conclude that, taken together as a group, they constitute what has been called the 'forum internum' of the human being. A forum internum, moreover, that has an absolute right to freedom from any state interference.

This, then, constitutes some kind of 'anthropology', 'psychology', or 'religiology' that sees religion as something that primarily and essentially belongs to the 'inner' life of the individual, some primordial and universal mental state that is characterised by belief, thought and conscience, where the last mentioned term (originally closely linked to an idea about a moral god that admonishes human beings in regard to morals, with the - bad or good - conscience as a 'faculty' which, with the help of the god, could or ought to distinguish good from bad), linked as it is to moral norms about what is judged good or bad, furthermore links religion to morals.

This linking of religion to belief and - also seen in the stress of the importance played by a so-called 'free choice' of the individual - to the interior, inner realm of an individual human being and his/her so-called 'subjectivity', has in most scholars of

religion in general, as well as in scholars of religion with a special interest in religion in human rights, led to the conclusion that the wording of the article(s) on religion in human rights texts is strongly influenced by a Western, Christian, and especially Protestant notion of religion, itself an outgrowth of a long Western history.

Thus the claimed *universality* of the right and its implicit notion of religion is questioned, - even if it must, from a human rights perspective, also be noted that the 1948 UN Declaration actually was signed by the vast majority of the states involved, also by states where the notion of religion implicit in the dominant religion and the religious history of the country diverged from the notion in the 1948 declaration (and later declarations and conventions).

The widespread human-rights-notion of religion as primarily *belief* and/or the intimate relation, at the least, between belief and religion, with belief as the inner and invisible individual, though also universal, origin of e.g. visible religion and manifestation thereof, is seen by many scholars of religion as a bit ironic. Why? Because scholars of religion, i.e. the scientists specialised in what is called 'religion', for more than three decades have tried to 'deconstruct' this notion of religion, as well as that of 'belief', - and the postulated tight connection between the two.

In a lot of traditions which somehow must be termed religious, past and present, this discourse on religion as intimately linked to belief, thought and conscience would make no sense, - and, therefore, notions of 'freedom of religion' in that perspective might be equally ill-fitting.

In many religions, past and present, rituals, religious practice, religious institutions and communities have had priority over whatever might be said to constitute some interior subjective space and 'belief' within an individual. Like most scholars of religion, these religions would not 'start' with belief and the 'forum internum' but rather with the 'forum externum', i.e. the rituals, religious practices, so-called worship, observances and the like.

Scholars of religion would turn the 'chronology' and 'cause and effect' implicit in the wording of the article upside down: first and most importantly 'we' have rituals, worship, practices in community with others. Then, later on, the individual may come to entertain certain beliefs, taught to him or her im- or explicitly via the practices and by the community (elders).

It is, to give an example, not the child that chooses to get baptized by the parents, and to participate in mass and say prayers at home and in school; but during this kind of 'education', the child may come to believe, may become religious. The religious interior and 'religion' in this sense is something that is socially and culturally and historically 'constructed', and if this 'belief' is taken as the 'core' of religion and if this is what is protected, at times at the expense of the so-called 'manifestations' (the word in itself indicates that something inside, a belief, a feeling materializes and gets an outside form), then what 'we' consider important about religion, namely the religious practices and the manifestations of religion, is not equally important to human rights declarations, conventions, courts and states.

Belief, by some analytical philosophers defined as "the attitude of 'taking something to be true'" as, scholar of religion Donald Wiebe wrote in 1979 (234), a concept that was "not merely useless in the task of interpreting the meaning of the historical religious traditions, but rather positively misleading".

Within the study of religions criticism of the 'belief notion of religion' is thus, as observed by some (see in particular Blum 2018 *passim*), based on close analysis of "the history of the concept and the mistaken but prevalent assumption that belief constitutes a necessary or central aspect of religion", linked to "[l]ong standing traditions in religious studies that construe religious beliefs in ways that immunize them from assessments of truth and falsity", and scholars of religion likewise have several "[o]bjections to the subjective interiority supposedly implied by the concept of belief, and the related shift to social theory, according to which 'individual beliefs' are red herrings". (Blum 2018, 643).

It is, thus, not 'our' religion and our ways of having religion, that is protected in the human rights articles and in what has been called the human rights 'regime'. It is only the kind of religion and belief that has managed to get into the articles drafted by a limited set of human beings at a specific time and place in history and in the world. The universal nature or claim of the human rights is thus easily contested and seen as but another instance of a Western hegemonic discourse. It might thus lead to relativism and particularity in regard to human rights. At the same time, as mentioned above, human rights notions of religion have actually become widespread and accepted as 'natural' and 'universal' by a lot of people around the globe, as well as having contributed to make otherwise very different kinds of religious people 'unite' as religious with rights to freedom of religion - with a need to stand together against what they claim or conceive as attacks launched at them by a secular society or state.

But before we leave the discussions about the notion of religion and/or (sometimes 'and', other times 'or') belief, we also have to notice that 'belief' - so closely linked, in the text as well as in history to one religion, Christianity in its Protestant forms, in particular in the Western history of religions and ideas, as well as to religion in general nowadays - in the human rights texts and articles (and comments to them) on freedom of religion or belief, actually is also meant to encompass *non-religious* beliefs, including *atheistic* and *anti-religious* beliefs. But, one may argue, that these non-religious beliefs are still in some way seen as through the lenses of religion and measured and defined with regard to a special notion of religion. At the same time, it becomes clear that 'thought', as in the articles on freedom of religion and belief, is not just any kind of thought, and that neither 'thought' nor 'belief' in human rights discourse should be seen as identical to 'opinion' as this appears in the article on freedom of opinion and expression ('freedom of speech'). This, of course, is a little tricky because who is going to decide when an opinion is no longer an opinion, but a belief and a 'thought', not just a thought but something more?

As Evans (Evans 2009, 10-11) wrote:

"The Court has studiously avoided saying whether it considers particular forms of 'belief' to be religious in nature and since it is not necessary for it to do so in order to be able to apply Article 9 this is a wise approach. It is, however, clear that it considers that what might reasonably be described as the 'mainstream' religious tradition – such as Buddhism,

Christianity, Hinduism, Islam, Judaism, Sikhism – all fall within its scope and it has acknowledged that it embraces Jehovah’s Witnesses, the Church of Scientology and many other besides. Its applicability to cogent bodies of thought of a non-religious nature, such as atheism and pacifism, is also well attested. More difficulty has been occasioned by less well - established patterns of thought, or by beliefs which, though sincerely held, do not offer up an overall ‘guiding outlook’ of a similarly encompassing nature”.

The following list of notions related to 'belief' may be helpful:

- It is held commonly that religion involves belief which may be manifested in teaching, practice, worship and observance, and that religion involves choice, as well as individual and collective action/activities.
- Religious beliefs are treated often as a sort of beliefs in general but distinguished from other beliefs, such as those that are philosophical, political or ideological.
- The Court has stated that beliefs (“to attract protection under article 9”) must have a “certain level of cogency, serious reflection and importance”, not simply being “mere opinions or deeply held feelings” but rather spiritual or philosophical convictions with an identifiable formal content.
- Beliefs are often said to be religious beliefs by virtue of their object, e.g. “a supreme being”, “transcendence”, “a higher being of divinity”.
- Religion involves not just belief but a “set of beliefs”, “a statement of belief”, “a specifically formulated belief”.
- Theistic, non-theistic, and atheistic convictions/beliefs are included in the category 'belief' as regards article 9 and similar articles.
- The British Religion and Belief Regulation (2003), Equality Act 2010 (cf. Sherwood, p. 33 and 36) has defined it as follows:
 1. The belief must be genuinely held
 2. It must be a belief and not an opinion or view based on the present state of information available.
 3. It must be a belief as to a weighty and substantial aspect of human life.
 4. It must attain a certain level of cogency, seriousness, cohesion, and importance.
 5. It must be worthy of respect in a democratic society, not incompatible with human dignity, and not in conflict with the fundamental rights of others.

Item 5 above, of course, shows even more clearly than the other four items that this definition is to a very large degree far from being 'objective' and easily applicable. Is the belief in Jesus Christ worthy of respect? Is the belief in Satan? Is the belief in Shiva? And what about the belief in Ron L. Hubbard and the other Scientology belief in the so-called “thetans”? Flying saucers? Healing by the laying on of hands?

Shamanistic journeys into the other world to fight evil spirits and restore health? Etc., etc.

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