

The Routledge International Handbook of Religious Education

How and what to teach about religion is controversial in every country. *The Routledge International Handbook of Religious Education* is the first book to comprehensively address the range of ways that major countries around the world teach religion in public and private educational institutions.

It discusses how three models in particular seem to dominate the landscape. Countries with strong cultural traditions focused on a majority religion tend to adopt an “identification model,” where instruction is provided only in the tenets of the majority religion, often to the detriment of other religions and their adherents. Countries with traditions that differentiate church and state tend to adopt a “separation model,” thus either offering instruction in a wide range of religions, or in some cases teaching very little about religion, intentionally leaving it to religious institutions and the home setting to provide religious instruction. Still other countries attempt “managed pluralism,” in which neither one, nor many, but, rather, a limited handful of major religious traditions are taught. Inevitably, there are countries that do not fit any of these dominant models, and the range of methods touched upon in this book will surprise even the most enlightened reader.

Religious instruction by educational institutions in 53 countries and regions of the world are explored by experts native to each country. These chapters discuss:

- Legal parameters in terms of subjective versus objective instruction in religion.
- Constitutional, statutory, social, and political contexts to religious approaches.
- Distinctions between the kinds of instruction permitted in elementary and secondary schools and what is allowed in institutions of higher learning.
- Regional assessments which provide a welcome overview and comparison.

This comprehensive and authoritative volume will appeal to educators, scholars, religious leaders, politicians, and others interested in how religion and education interface around the world.

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The Routledge International Handbook of Religious Education

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Derek H. Davis and Elena Miroshnikova
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**Dedicated to our Parents,
Anna Ignatjevna and Mikhail Dmitrievitch Rantzev (Russia)
and
Wanda Jean Martin Davis and David Keithley Davis (U.S.A.)**

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Table of Contents

<i>List of figures</i>	000
<i>List of tables</i>	000
<i>List of contributors</i>	000
<i>Preface</i>	000
<i>Acknowledgments</i>	000
Introduction	000
<i>W. Cole Durham, Jr.</i>	
1 Religious education in Argentina	000
<i>Norberto Padilla</i>	
2 Religious education in Asia	000
<i>Tahir Mahmood</i>	
3 Religious education in Australia	000
<i>Paul Babie and Ben Mylius</i>	
4 Religious education in Austria	000
<i>Georg Königsberger and Louis Kubarth</i>	
5 Religious education in Azerbaijan	000
<i>Rashad Ibadov</i>	
6 Religious education in Bangladesh	000
<i>Mahmudul Alam, A.T.M. Shaifullah Mehedi and Nehraz Mahmud</i>	
7 Religious education in Belgium	000
<i>Fabrice Martin And Willy Fautré</i>	

Contents

8	Religious education in Brazil <i>Evaldo Xavier Gomes</i>	000
9	Religious education in Canada <i>John F. Young</i>	000
10	Religious education in China <i>Jinghao Zhou</i>	000
11	Religious education in Colombia <i>Vicente Prieto</i>	000
12	Religious education in Estonia <i>Merilin Kiviorg</i>	000
13	Religious education in European Union <i>Silvio Ferrari</i>	000
14	Finland <i>Matti Kotiranta</i>	000
15	Religious education in France <i>Regis Dericquebourg</i>	000
16	Religious education in Germany <i>Udo Friedrich Schmätzle</i>	000
17	Religious education in Greece <i>Nikos Maghioros</i>	000
18	Religious education in Hungary <i>Balázs Schanda</i>	000
19	Religious education in India <i>Tahir Mahmood</i>	000
20	Religious education in Indonesia: The Case of Islamic Education <i>Masykuri Abdillah</i>	000
21	Religious education in Ireland <i>Conor O'Mahony</i>	000
22	Religious education in Israel <i>Asher Maoz</i>	000

Contents

23	Religious education in Italy <i>Alessandro Ferrari</i>	000
24	Religious education in Japan <i>Eiichiro Takahata</i>	000
25	Religious education in Kazakhstan <i>Roman Podoprigora</i>	000
26	Religious education in Latin America <i>Juan G. Navarro Floria</i>	000
27	Religious education in Latvia <i>Ringolds BALODIS</i>	000
28	Religious education in Lithuania <i>Milda Ališauskienė</i>	000
29	Religious education in Malaysia <i>Rosnani Hashim</i>	000
30	Religious education in Mexico <i>María Concepción Medina González</i>	000
31	Religious education in Nepal <i>Kanak Bikram Thapa and Bal Bahudur Mukhia</i>	000
32	Religious education in Norway <i>Ingvill Thorson Plesner</i>	000
33	Religious education in Pakistan <i>Khalil-ur-Rehman Khan and Qaisar Javed Mian</i>	000
34	Religious education in Peru <i>Gonzalo Flores Santana</i>	000
35	Religious education in Poland <i>Katarzyna Zielińska, Marcin K. Zwierżdżyński</i>	000
36	Religious education in Portugal <i>Jorge Bacelar Gouveia</i>	000
37	Religious education in Romania <i>Emanuel Pavel Tăvală</i>	000

Contents

38	Religious education in modern Russia <i>Elena G. Romanova</i>	000
39	Religious education in Scotland <i>Francis Lyall</i>	000
40	Religious education in Senegal <i>Fatou Kine Camara and Abdourahmane Seck</i>	000
41	Religious education in Slovakia <i>Michaela Moravčíková</i>	000
42	Religious education in Slovenia <i>Drago Čepar</i>	000
43	Religious education in South Africa <i>Lourens M. Du Plessis</i>	000
44	Religious education in Spain <i>Carmen Garcimartín Montero</i>	000
45	Religious education in Sudan <i>Giuseppe D'Angelo</i>	000
46	Religious education in Sweden <i>Lars Friedner</i>	000
47	Religious education in Switzerland <i>Rene Pahud De Mortanges and Raimund Süess</i>	000
48	Religious education in Syria <i>Jacques EL-Hakim</i>	000
49	Religious education in the United Kingdom <i>Suzanne Newcombe</i>	000
50	Religious education in Ukraine <i>Natalia Gavrilova and Liudmyla Fylypovych</i>	000
51	Religious education in the United States of America <i>Elizabeth A. Clark</i>	000
52	Religious education in Uruguay <i>Carmen Asiaín Pereira</i>	000

Contents

53 Religious education in Vietnam <i>Nguyen Thi Minh Ngoc</i>	000
<i>Index</i>	000

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Figures

6.1	Population of Bangladesh by religious category, 1981–2001	000
6.2	Development and revenue budget	000
6.3	Madrasa and teacher-training institutes	000
14.1	Education structure	000

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Tables

6.1	Bangladesh—number of madrassas by type, 1989–2003	000
9.1	Overview of school funding across ten provinces	000
14.1	Religious commitments of the Finnish people	000
14.2	Participation in pre-primary education in 2005–09	000
30.1	Numbers of religious associations (AR) and their ministers of worship (April 2011)	000
34.1	Catholic Church educational institutions	000
38.1	Religious confessions in Russia,	000
38.2	The most frequently studied subjects	000
40.1	Public and private school attendance in Senegal	000
40.2	Religious origins of pupils and teachers in private Catholic schools	000
44.1	Non-Catholic organizations in Spain	000
48.1	Religious communities in Syria	000

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xx

Contributors

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Contributors

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Contributors

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Contributors

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Contributors

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Contributors

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Contributors

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Preface

We are pleased to present this volume principally as a tool for educators around the world who know the importance of teaching students about the role of religion in human life. We believe this volume will assist educators in their teaching mission as well as help others who wish to know more about the myriad ways in which religion is taught in both public and private educational institutions throughout the world. Religion and education is only one component of the broad field of church and state, but regrettably is a somewhat neglected dimension of church-state inquiry, especially on an international scale. Thus, while there are a number of books available that treat religion and education in national or even regional contexts, this book is unique in that it is the first to address religion and education from a truly international perspective.

The editors are hopeful that, in addition to being a valuable resource for education professionals, it will also benefit church-state scholars, researchers interested in the intersections of religion and education, legislators, religious leaders, and members of the general public who seek material that explains how countries around the world handle the complex issues surrounding religion as it is taught in educational institutions.

The contributors to the volume are academic scholars who live in the countries and regions about which they have written. There are 50 national essays and three regional (Asia, European Union, and Latin America) essays included. A separate essay for each of the nearly 200 nations in the world could not be provided without compiling a multi-volume set. Thus, we have had to make difficult choices about which nations to include. In short, we have attempted to cover every region of the world and to cover enough nations to ensure adequate attention to all of the world's major religions that are predominant in various sectors of the globe.

This is a balanced volume, slanted neither toward the right or left, but one in which factual summaries are presented by reputable scholars. In sum, this volume is a compendium of work compiled by some of the world's very best scholars in the field, which by itself makes the volume a valuable resource. Our hope is that it will become a useful resource for all who seek information about how religion is taught as an academic subject in different parts of the world. The editors can be contacted at derek_davis@baylor.edu and miroshnikovaem@gmail.com.

Acknowledgments

We express our special gratitude to Cole Durham, our good friend and colleague, for writing the “Introduction”. Professor Durham, Director of the International Law and Religion Program at Brigham Young University, Provo, Utah, is the most qualified person we know to write the Introduction to this book. He has traveled the world extensively and is well versed in much of the material covered in this book. We are also grateful to each of the volume’s contributors, all of whom are eminently qualified to write about religious education in their own countries and regions, and who have done so with such amazing enthusiasm, cooperation, and expertise. Finally, we thank Anna Clarkson, Philip Mudd, and Vicky Parting and their team of editors at Routledge for their friendliness, efficiency, and expert skills in producing the published volume. Choosing Routledge as the best possible publisher for this book was justified at every turn.

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Introduction

W. Cole Durham, Jr.

Few areas of social and political life attract such profound concern and intense attention as the religious education of each successive rising generation. This education is vital for the children themselves as they develop toward maturity and seek to understand the belief systems they have inherited and also the belief systems of others. It is also a matter of deep concern for parents (and those fulfilling parental roles), regardless of the religious (or non-religious) world view that they may hold, because it can have such a deep impact on those they care about most. For these and a variety of additional reasons, religious education is inevitably a major issue for religious and political communities. The way that teaching of and teaching about religion is handled in any particular society often triggers some of the most heated short-run political controversies. In fact, as Juan Navarro Floria suggests in his essay on Latin America, religious education has typically been “one of the ‘battlefields’ between religion and certain ideologies or political streams.”¹ Current educational systems typically reflect the current equilibrium reached in what are often ongoing struggles concerning the appropriate role of religion in educational settings, and in the public sector more generally. Finding effective and lasting solutions in this area is one of the deepest long-term concerns for any society seeking to endure.

Given the importance of such issues, the *Routledge International Handbook of Religious Education* is a most welcome publication.² It provides an invaluable overview of religious education in 50 countries, and includes in addition helpful overview essays regarding Asia, Latin America and the European Union. While the volume does not cover all the countries on earth, it certainly covers the leading jurisdictions. Moreover, the countries covered provide a varied and representative picture of differing religious education systems. The volume covers Australia, Canada, and the United States of America (U.S.A.); 23 European jurisdictions, including eight former socialist bloc countries that are now members of the European Union, and separate essays on the United Kingdom and Scotland; six Latin American countries; eight countries from East and South Asia; Russia, Ukraine, Azerbaijan, and Kazakhstan from the former Soviet Union; three countries from the Middle East; eight countries with predominantly Muslim populations; and three African countries (including both Francophone and Anglophone countries). The countries covered also represent a variety of religious cultures and predominant religions, including different strands of Christianity (Roman Catholic, Protestant, and different branches of Eastern Orthodoxy); Islam (Sunni and Shia); Hinduism; and Buddhism. Moreover, in our increasingly

W. Cole Durham, Jr.

pluralized world, the countries covered in the volume have representatives of most of the rest of the world's religions included among their religious minorities. Thus, the volume provides insight into the ways that religious education has developed in a wide and representative range of political and religious cultures.

Because religious education is so closely linked to the shaping of individual identity, character, and conscientious beliefs, this domain is subject to some of modern society's most fundamental constitutional and human rights norms. These include the rights of children to education and to freedom of religion or belief (consistent with "the evolving capacities of the child");³ and the rights of parents and legal guardians "to provide direction to the child in the exercise of [this] right"⁴ and to "ensure the religious and moral education of their children in conformity with their own convictions."⁵ Rights of minority groups are also often at issue. At the same time, constitutions typically give states substantial authority to establish and administer educational systems. But these educational systems in turn fit within and reflect a range of types of religion-state structures which contemplate varying degrees of institutional identification or separation of religious and state institutions.⁶

By providing descriptions of a variety of representative systems, this volume makes a vast store of practical experience from different systems available, suggesting ways that the cross-cutting demands of individual rights and institutional interests can be balanced and resolved. Each nation needs to find its own solutions to the problems that recur in this area, but awareness of the diverse approaches in different countries can suggest ideas for reform. Moreover, the solutions actually adopted yield significant insight into the fundamental value commitments of a country's legal system. Among other things, the structuring of religious education systems reflects in profound ways the extent to which religion is restricted to the private sector or is recognized as having a legitimate role to play in the public order of a society. Further, current policies generally reflect historical factors about how religious education has been handled in the past, whether religion is seen as a threat or a vital partner in the educational process, concerns about reinforcing predominant religions, and worries about respecting the rights of smaller groups. It is not possible in this brief introduction to begin to summarize the wealth of information gathered in the various country and regional studies. But it is possible to reflect on some of the recurrent issues, institutional patterns, converging trends, and some of the underlying tensions that emerge.

Religious education in non-governmental schools

An initial question concerns the status and significance of non-government schools in the overall educational system of various countries. Is it a requirement that all schools be public, or are private schools (particularly religious schools) allowed and, if so, can they be established relatively easily and how pervasive are they in the education system as a whole? To the extent that they are permissible, to what extent is public funding available to private schools and what restrictions are imposed with respect to such public funding?

There are a few countries, typically in settings where there are strong constraints on religion in general, such as Cuba or China, where private religious education is either forbidden or effectively barred because of the nature of restrictions on founding religious schools.⁷ High levels of restriction on religious education are also found where there is a particularly strong prevailing religion, or where there are intense fears of religious radicalism and extremism.⁸ In some cases, state regulations regarding the curriculum are so pervasive that it becomes difficult to discern the difference as a practical matter between state and private schools.⁹ In some

systems, there are governmental attempts at rigorous regulation of the curriculum and administration of religious schools, but state regulation is not always effective at the local school level.¹⁰

For the most part, however, private schools are allowed and constitute a substantial portion of the educational institutions in a country. The extreme case in this regard is Ireland, where the vast majority of schools are private, and the state “has entirely outsourced its primary education function.”¹¹ Much more typical are systems such as those in Australia or Spain, where a substantial percentage (but not a majority) are private.¹² In countries with traditions of separation of church and state, as well as in more cooperationist systems, private schools provide a significant outlet for parents who wish to raise their children in a particular religious tradition. Not surprisingly, in these systems private schools are given broad autonomy in structuring their educational programs and in administering their schools. The 2012 decision of the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*¹³ represents a particularly strong affirmation of such autonomy. In that case, the Court sustained the right of a religious school to terminate a teacher who was a commissioned minister, even though most of her time was spent teaching secular subjects. The Court held that the so-called “ministerial exception” to discrimination laws applied, and prevented enforcement of an otherwise applicable neutral and general law prohibiting discrimination on the basis of disability. The precise degree of autonomy that religious schools enjoy in such matters varies from country to country. Some constraints reflecting quality of education are imposed in various countries, but fairly strong religious autonomy protections are usually respected. This reflects both intrinsic respect for the fundamental right to freedom of religion or belief that is at stake, and a practical understanding that religious considerations are generally a primary motivation for creating such schools, and that, if the state interferes unduly with such schools, religious communities may be content to leave education of their children to the state. In many countries, this would result in a massive increase in the burden that state educational systems need to carry.

A major issue for private education is the extent to which public funding is available for private schools. This has been a flashpoint for controversy over decades in many systems, and the resulting solutions are complex and varied. In constitutional systems insisting on separation of church and state, the boundaries between religion and state are often most visible (and most contested) in the educational setting. Seldom is separation absolute. Thus, in most systems, including strong separationist jurisdictions such as the U.S.A., various forms of indirect support are typically permissible (most notably through provisions that exempt educational institutions from taxation). Moreover, certain types of direct subsidies are allowed for secular educational costs, such as transportation to parochial schools,¹⁴ secular textbooks,¹⁵ diagnostic tests,¹⁶ and the like. More recently, the U.S. Supreme Court has relaxed separationist standards to some extent, and has allowed funding that goes to parents or students that they can elect to spend on educational programs of their choice.¹⁷ Similarly, even in laicist France, substantial funding for the secular aspects of private religious education is allowed.¹⁸ State support for secular aspects of curriculum in private schools is common worldwide, and often brings increased regulatory burdens in its wake. From a comparative standpoint, one of the interesting questions is how states articulate the principles and structure the enforcement techniques used in delineating which programs at religious schools receive public funds.

One of the significant emerging questions relates to the extent to which religious schools that do not follow secular state guidelines can remain eligible for state funding. Thus, the chapter on Israel in this volume devotes considerable attention to a controversy that has engaged Israel’s Ministry of Education, the Knesset, and Israel’s Supreme Court over the past decade about the

W. Cole Durham, Jr.

extent to which ultra-orthodox high schools should remain eligible for state funding if they refuse to teach the core curriculum specified by the state. In the end, a compromise gave the ultra-orthodox schools reduced support, but a more flexible curricular requirement. They merely had to assure that their curriculum and activities “do not negate the values of the State of Israel as a Jewish and democratic state.”¹⁹ In a number of countries, public funding carries with it requirements to cater to the broader population, at least to some extent. For example, in France and India, schools accepting public funding may not reject students on the basis of religion and, in New Zealand, private schools must reserve 5 percent of their seats for students not adhering to the religion sponsoring the school.²⁰ In the United Kingdom, Catholic schools “provide about 10 percent of all maintained school places, with approximately 30 percent of the children being non-Catholics.”²¹ Also, there has been a controversy about the extent to which places in Church of England schools can be allocated on the basis of church attendance, and about the criteria that a Jewish school is entitled to use in selecting its students.²² In Canada, which has a tradition of minority schools dating back over a century, the Supreme Court has held that provinces were free to extend funding to private denominational schools, but were not constitutionally required to fund any but the minority schools specifically established as part of the nineteenth-century constitutional settlement.²³ Significantly, when a case raising this issue was taken before the United Nations Human Rights Committee, the Committee held that Canada must “provide an effective remedy that will eliminate this discrimination.”²⁴ But despite continued concern, Canada has not been able to remedy this problem.²⁵ As a general matter, there appears to be growing consensus that private education fills a vital role in most educational systems, justifying substantial public funding, but raising questions about the extent to which acceptance of public funding requires refashioning of private education to conform to public educational goals.

Religious education in the public sector

As Silvio Ferrari points out in his regional essay on religious education in the European setting, there are essentially three models that European countries have adopted: 1) disallowing religious education within the formal curriculum in schools operated by the state (e.g. France, with the exception of Alsace-Moselle); 2) providing non-denominational teaching *about* religions; and 3) providing denominational teaching of religion for prevailing religion(s) within the country.²⁶ In fact, these appear to be the major options not only in Europe, but worldwide.

Legal and policy issues arise with respect to the implementation of each of these models.

Behind these three approaches lies a deeper tension. The priority of parental beliefs and the autonomy of religious institutions in providing religious education was not a foregone conclusion in Europe. There is a tradition as old as Plato’s *Republic* that sees the state as the appropriate educator. As the German chapter notes, from medieval times until the French Revolution, education was in the hands of the church.²⁷ In part to unravel the hold of family and social class on education, some following the Enlightenment thought the family and the home was a “contaminated environment,”²⁸ possibly a source of aristocratic, class, or otherwise non-equalitarian values, and lacking the expertise necessary for education.²⁹ For Rousseau, in contrast, the natural right of parents had priority over the monopoly of the state in providing education.³⁰ In many ways, the church is intermediate between the state and the family, sometimes standing superior to both, but often serving either as an auxiliary to parents or to the state in providing education. In any event, with the shift from agricultural to industrial society, a key aspect of secularization over time has been the assumption by the state of responsibility over education. But the rights of the parents and the influence of the church remained potent social forces, as

reflected in constitutional and human rights norms that protect the rights of parents to guide the upbringing of their children, and the right of religious communities to autonomy in religious affairs.

These tensions between the family, the church, and the state as educators underlie many of the modern disputes about the form that religious education should take. What has distilled out in systems that still allow teaching of religion in the public schools is a range of approaches in which the parent continues to have a right to guide key issues of conscientious belief, dominant religious institutions retain an important role in providing religious education for those who voluntarily accept this education, and the state provides professionalized secular education. The degree of control left to the family and the church is a constant domain of struggle, compromise, adaptation, and readjustment.

Systems that disallow religious instruction

Many countries around the world have elected simply to stay out of the business of providing religious education. As is well known, the United States Constitution has been interpreted to proscribe subjective religious instruction in public schools. This is also the approach taken in Japan and South Korea, where this is thought to reflect liberal constitutionalism. But, of course, it is also the case in China, where the regime is ideologically opposed to religion. In Latin America, religious education in public schools is forbidden in several countries with strong anti-clerical movements in their history. This is true of Mexico, Uruguay, and Cuba.³¹ In the federal systems of Brazil and Argentina, only a few provinces provide for religious education.³² India prohibits denominational religious education for schools receiving total financial support from the state, but not when schools receive no or only partial public funding.³³ New Zealand permits religious instruction on school premises, but not as part of the normal curriculum.³⁴

In systems that do not allow religious education in schools operated by the state, borderline questions remain. For example, the chapter on France mentions chaplains from various religions teaching religion classes in public schools.³⁵ In the U.S.A., which forbids school prayer,³⁶ Bible reading,³⁷ and, more generally, inculcation of religion in the schools,³⁸ various forms of acknowledgement of religion and its place in religious life is permissible. Facts of religious history can be studied in history courses and religious music can be performed. Courses on the Bible as literature are permissible.³⁹ If other extra-curricular groups are allowed to use a school facility after hours, religious groups must be given equal access.⁴⁰ Release time programs, which allow public school students to be released for off-campus religion courses, have been sustained.⁴¹ As countries face these and similar issues, the general line seems to be that, while imposition or inculcation of religion in impressionable young people is impermissible, activities that merely acknowledge the historical and cultural place of religion in society are permissible. Country studies in this volume help explore just how strictly separationist systems insist on removing religion from the educational setting. What is significant is not only the applicable rules, but the history behind the rules, the attitude toward religion they reflect, the social tensions the rules resolve (or compound), and possible practice options that the various country studies suggest.

Teaching about religion

Many of the systems that forbid teaching *of* religion allow teaching *about* religion, at least in some measure. Moreover, systems that permit or require teaching *of* religion also condone and often encourage teaching *about* religion. In this sense, teaching *about* religion is a position intermediate

W. Cole Durham, Jr.

to the other two approaches. In large measure, the challenges teaching *about* religion faces derive from suspicions that it is in fact a masked version of one of the other approaches to religious education. Thus, those who advocate keeping religion out of public schools worry that teaching about religion allows its practitioners to smuggle teaching *of* religion into the schools. On the other hand, partisans of religious instruction in public schools often fear that teaching *about* religion either explicitly or implicitly cultivates a kind of religious relativism that promotes the very secularism they hope religious instruction will help to counter.

The worry that teaching about religion can easily turn into problematic teaching of religion takes a variety of forms. One of the most fundamental worries is that, despite its neutral garb, teaching about religion will in fact end up imposing religious values on children against the wishes (and beliefs) of their parents. This can be problematic either because the course seeks to inculcate a particular set of values that may be inconsistent with those held by children and their parents, or because even neutral teaching of course materials may send a message of exclusion or second-class citizenship to non-dominant groups. Thus, the chapter on Russia notes that Orthodox Culture Basics have been introduced in 81 percent of the political subdivisions of the Russian Federation, with Islam Basics and Muslim Basics introduced, respectively, in 7 percent and 6 percent of the subdivisions (presumably where those religions are strongly represented). It is somewhat unclear from the chapter whether such courses are voluntary or mandatory, and exactly how they are taught. But there has been considerable suspicion both in Russia and elsewhere that the courses would in fact operate as courses aimed at inculcating or, at a minimum, certainly privileging Orthodox beliefs. Similarly, in the U.S.A., separationists fear that ostensibly neutral “Bible as literature” courses will in fact provide cover for simply teaching the Bible, particularly in “Bible Belt” areas.

There were similar worries about Norway’s Christian Knowledge and Religious Ethical Education (“CKREE”) course. Though less dogmatic in its structure and more attuned to teaching about an array of religions, its teachings were unacceptable to many humanist parents, leading to court challenges that ultimately reached the European Court of Human Rights⁴² and the United Nations Human Rights Committee.⁴³ Without going into detail, it suffices to say that both bodies concluded that the course was not sufficiently neutral, and that insufficient and inadequate rights to opt out of particular sessions and out of the course as a whole were provided. In some ways, these cases highlight the difficulty of achieving a genuinely “neutral and objective” course. Thus, even where great care and good faith is evident in attempting to structure a neutral course, it is important to understand that different parents and children may nonetheless experience the course as a challenge to their conscientious beliefs and, when that is the case, reasonable opt-out opportunities should be provided. Even there, one of the points that became clear from the Norwegian cases is that not any opt-out program is sufficient. This needs to be handled in a sensitive way. One of the children in the Norwegian cases was granted an opt-out, but it involved sending her to another room for the class period. This treatment was just the same as punishment of other students for bad behavior. An opt-out structure that can easily be interpreted as a punishment is certainly not satisfactory. Another feature of the Norwegian course was that opting out of the entire course was not permitted; only opting out of particular sessions or activities, such as singing religious music, was allowed. But this put a virtually impossible burden on parents to know exactly what was going to happen when, and to manage to object in time. Complex or burdensome opt-out procedures are also unsatisfactory. Moreover, even if opt-outs are provided in a sensitive and manageable way, there is always the risk that has been understood in United States cases, that the child may be branded and ostracized as a result of even benign opt-out arrangements. The chapter in this volume on Norway gives substantial additional background into these cases and their aftermath.

Zengin v. Turkey,⁴⁴ another case involving a compulsory course in religious culture and ethics in Turkey, also reached the European Court of Human Rights. The problem was similar—an ostensibly neutral course objected to by a religious parent and his daughter. But the setting pointed to a larger concern. In *Zengin* the applicants were Alevis, and thus part of a substantial religious minority in Turkey. Part of the problem in the case was resistance by the state to recognize that the Alevi belief system desired recognition and respect in the compulsory course, which in fact focused on Sunni Islam. The court noted that “parents may legitimately expect that the subject [study of religion] will be taught in such a way as to meet the criteria of objectivity and pluralism.”⁴⁵ Courses teaching about religion need not only to be sensitive to individual pupils, but also to take into account respect for minority religious and philosophical convictions. It was particularly troubling in *Zengin* that, while Christians and Jews could opt out of the course, Alevis could not.⁴⁶ In general, the exemption procedure was inadequate.

Zengen could be thought of as a case in which the state exploits teaching about religion to repress a religious minority, and its potential to be used in this way points toward the larger risk that advocates of religious education fear: that it will be used to undermine religious belief more generally. This side of the issue is depicted well in the chapter on France. The chapter cites a circular letter to the presidents of the Catholic bishops’ conferences⁴⁷ that emphasizes the church’s right to teach its own beliefs in public schools and then addresses the risk of relativism or indifferentism that it sees in marginalizing religion classes and the teaching of “classes on religions”—i.e. teaching about religion. The religious concern is compounded by the fact that many of the arguments used in support of teaching about religion seem to emanate from a negative perception of religion. Thus, some of the most powerful arguments wielded in support of French legislation in support of teaching about religion were that:

- 1 religious culture should not be abandoned to religious movements because it would mean leaving a clear field to “credulity sellers, to the media and to fans of esotericism or irrational phenomena”;
- 2 the lack of teaching about religions opens a clear field to radical and fundamentalist views which can influence young people lacking “any qualified knowledge” on religious texts;
- 3 teachers can make the distinction between teaching a reality or a doctrine and promoting a doctrinal norm or an ideal.⁴⁸

Thus, the argument is that, not only is teaching about religion conducive to relativism, but it is also encouraged by those with negative attitudes toward religion. For this and a variety of related reasons,⁴⁹ teaching about religion plays into the hands of forces of secularization. In fact, some of the limited empirical evidence available on the impact of teaching about religion suggests that it tends to reinforce the belief systems that pupils already have.⁵⁰

Regardless of attitudes toward teaching about religion, there is a tendency to overlook the practical complexity of implementing such programs in ways that allow them to fulfill their promise. In addition to the major difficulty of developing a neutral and objective curriculum, there are tremendous practical problems in preparing the teachers. In the first place, there is a need for teachers who have developed credible knowledge about multiple religions. The magnitude of this challenge becomes obvious when one reflects on the fact that religious instructors have a major challenge in just learning their own religion. Second, in addition to the range of substantive knowledge needed, effective teachers about religion need to be skilled in knowing how to present the material in ways that will be sensitive to and respectful of the differing religious or life stance backgrounds of their pupils and their parents. As a practical matter, the

W. Cole Durham, Jr.

challenge is even worse, because courses about religions are too often staffed by faculty members from other fields, with neither the appropriate substantive or pedagogical training.⁵¹

Denominational religious instruction

The third major approach involves public school systems that either permit or require religious instruction as an ordinary part of the curriculum. This is the predominant pattern in Europe and in many other parts of the world. From a comparative religion-state perspective, this is one of the most typical aspects of “cooperation” systems. It is evident in many areas where there are substantial Catholic populations, such as Austria, Germany, and Spain, and also in many Latin American countries, such as Colombia, Chile, and Peru. In many countries, it is seen as an important aspect of the guarantee of parental rights to guide the religious education of their children. From a human rights perspective, such instruction should be voluntary, and one of the issues has to do with the adequacy of alternatives to religious instruction. In *Grzelak v. Poland*,⁵² for example, the European Court sustained the claim of Polish parents and their son that he had not received equal protection under Article 14 of the European Convention of his right to freedom of religion or belief because school authorities had not organized adequate alternatives to religious instruction. Among other things, this resulted in his not receiving marks for religion/ethics, which in the Polish context sent a signal to employers and others that he was a non-believer. As in *Folgero* and *Zengin*, the underlying premise is that students may not be coerced to receive religious or philosophical instruction that is inconsistent with their own beliefs or that of their parents. The post-reunification experience of Germany, dealing with post-communist populations where non-belief had become predominant, is representative of issues in many modern secular states. On the one hand, parts of the population welcome and even insist on religious instruction, whereas others are philosophically opposed. Yet the state has interests in raising an ethical citizenry. The result is the emergence of courses such as Brandenburg’s “Life-Ethics-Religion” course⁵³ or, more generally, secular ethics courses or teaching about religion courses as alternatives to traditional courses focused on teaching of religion. There are also implications for the extent to which costs of religious education should be borne by the general public or by the religious communities providing the instruction.

In addition to questions of how voluntariness can be assured are broader questions about state neutrality and equality in the provision of educational services. These are key ideological commitments of the modern liberal state. In Germany, the state is obligated to remain neutral in religious affairs, but at the same time is obligated to provide space for religious education as a regular school subject.⁵⁴ This religious instruction must respect the rights to freedom of religion of both parents and children by incorporating voluntariness requirements into the system. German theorists have spoken of “positive neutrality,” which encourages cooperation that affirmatively actualizes the conditions under which differing religious traditions can carry out their programs, including religious instruction. The India chapter similarly emphasizes a concept of neutrality that can be friendly, accommodating, and supportive of religion. In Germany, where conflicts between parents and state school officials emerge, they are to be resolved by communication and “meaningful cooperation with each other.”⁵⁵ This is obviously an ideal of civility for all systems.

Many educational systems that provide religious instruction have provisions that allocate space for this instruction on the basis of whether there are a specified number of students in the school. These requirements reflect practical realities that such instruction is not cost-justified if there are not enough students who will enroll in the religion courses. But a practical effect is that adherents of smaller religious groups can never meet the numeric thresholds. Exclusion of

Introduction

smaller groups from access to school facilities is compounded by rules in several countries that only “upper tier” religious communities (typically traditional religions in a country) are eligible to have religious instruction in public schools. In Spain, for example, only religions that are part of federations that have agreements with the state may have access to school classrooms to provide religious instruction, even if they are willing to provide instructors without state expense. The rise of Islam in Europe has complicated this picture in many European countries. Many are willing to accommodate such instruction, and even anxious to encourage the training of non-foreign teachers who can provide this education. But there are a variety of challenges, ranging from difficulties in determining how the differing requirements of Muslims from various religious divisions within Islam and from differing ethnic backgrounds can be handled. Chapters in this volume dealing with Islamic countries pose differing sets of issues, depending on the degree of fragmentation and pluralization within Islamic culture in the countries involved. In general, provision of religious education often raises sensitive issues of equal treatment and appropriate accommodation of religious minorities in society.

Beyond voluntariness and neutrality, a key issue concerns the strength of the role of the religious community whose religion is being taught in determining the content of the religious curriculum and in selecting the personnel who administer and teach the courses. Recurring issues in this regard have to do with the extent to which the teachers and administrators in a religious education system must comply with religious teachings to obtain and retain their employment. Representative in this regard is the recent decision of the European Court of Human Rights in *Siebenhaar v. Germany*,⁵⁶ which held that the religious freedom rights of a teacher were not violated when she was terminated because of activities in a religious community with beliefs incompatible with those of her employer. Her application was dismissed on the ground that Germany had rightly protected the autonomy of the religious community that employed her. As a practical matter, protecting this autonomy often means that religious communities have substantial say in who is selected and retained as teachers, even in public school settings. As in so many other areas, the collection of varied approaches and experience provides a rich practical resource in this area.

Another major issue is the extent to which religious instruction in public schools receives state funding, how this is administered, and the extent to which this financial leverage gives governments effective control over appointments. Similarly, secular accreditation requirements and concern for the quality of instruction intrude to a greater or lesser extent in the implementation of religious curriculum. A step removed from state involvement in the actual delivery of religious instruction is the type of training that is required of teachers, and the extent of religious control over the educational process, whether in theological or pedagogical faculties. These issues often look quite different when viewed through the eyes of those administering Muslim educational systems than when viewed through the conceptual filters of Western experience. Again, the comparative perspective provided by this volume has great value.

Conclusion

Stepping back from the practical realities of designing and implementing religious education, it is clear that religious education lies at the intersection of three institutions: the family, religion, and the state. It cannot avoid being affected by the process of secularization, and social processes aimed at countering secularization. Indeed, it is a focal point of “culture war” pressures on these issues. At the same time, education plays a critical role in the ongoing continuation, modification, and restructuring of each society over time. Religion has an interest in religious education, because it is vital to the continuation of religious traditions over time. States have differing

W. Cole Durham, Jr.

interests in religious education, in part for short-term reasons involved with garnering political support within society, but also for larger reasons including cultivation of an ethical citizenry. Religious education is inevitably affected by state policies that can aim at integration and assimilation of religious minorities, or cultivating respect for diversity and multiculturalism.

The reality is that there are no modern societies that are completely homogeneous religiously. The ease of travel, the pull of economic opportunity across borders, and population shifts due to war and other factors have all combined to create a world in which every country has substantial religious diversity, including a growing percentage of the population that lacks religious belief or is religiously indifferent. There may be one or a few religions that constitute the belief system(s) of the overwhelming majority of the population, but still there is likely to be a large number of distinct religious beliefs in the country. This means that education systems cannot avoid taking religious difference into account. Inevitably, religious differences will lead to tensions, and the broader social tensions are as likely to arise in educational contexts as elsewhere. Thus, for example, there are tensions between those who adhere to traditional Islamic practices such as wearing the various forms of Islamic headcoverings, and those who adhere to more contemporary belief systems. It is not surprising that such issues relating to clothing can come to be seen as symbols of religious devotion or, alternatively, as symbols of religious oppression. It is equally unsurprising that these issues find their way into court cases in country after country. A stream of cases, such as *Dahlab v. Switzerland*, *Şahin v. Turkey*, *Dogru v. France*, and countless others, are representative. Similarly, there are tensions between religious believers and those without religious belief, which take the form of disputes over the place of religious symbols in public space. The controversy over the display of crucifixes in Italian schools in *Lautsi v. Italy* is representative of numerous cases on this front.

The reality of religious difference is here to stay. The underlying tensions are profound and real, and we ignore them at our peril. States can seek to deal with such differences either by repressing them, or by finding effective ways to accommodate them. As the European Court stated in *Serif v. Greece*, in a line that has been quoted in numerous decisions since, although it is true:

that tension is created in situations where a religious or any other community becomes divided, ... this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.⁵⁷

Education in general and religious education in particular plays a crucial role in this regard. This volume provides rich insights into the many ways that countries around the world have wrestled with the issue of promoting tolerance and, more, mutual respect among those holding diverse religions and beliefs. While some states continue to see religious pluralism as a threat to stability, volumes such as this help to confirm the deeper teaching of history that the road to peaceful and abundant societies requires, finding effective ways to respect divergent beliefs. By providing a broader and deeper understanding of the way in which this is accomplished in different educational systems, this volume makes a significant contribution to building sensitive, accepting, and respectful societies.

Notes

- 1 Juan G. Navarro Floria, "Religion and education in Latin America," in this volume. In what follows, references to essays in this volume will simply refer to country chapters.

Introduction

- 2 This volume expands upon and explores in much greater depth educational issues touched on at the 18th International Congress on Comparative Law and addressed in Javier Martínez-Torrón and W. Cole Durham, Jr., *Religion and the Secular State* (Interim Edition, Provo, Utah: International Center for Law and Religion Studies, 2010), available online at <www.iclrs.org/index.php?pageId=3&contentId=20&blurId=975>. As one of the General Reporters for that study, I am particularly pleased to see efforts that started in the portion of that study dealing with religious education broadened and deepened in the present study. This introduction draws on and extends comparative reflections from the “General Report” in that volume (Ibid., 39–45).
- 3 Convention on the Rights of the Child, art. 14, adopted and opened for signature by the United Nations General Assembly Resolution 44/25 on November 20, 1989.
- 4 Ibid.
- 5 International Covenant on Civil and Political Rights, art. 18(4), adopted and opened for Signature by United Nations General Assembly Resolution 200A (XXI) on December 16, 1966.
- 6 For an overview of the range of such structures, see W. Cole Durham, Jr. and Brett G. Scharffs, *Law and Religion: National, International and Comparative Perspectives* (Austin, Boston, Chicago, New York and the Netherlands: Aspen Publishers, Wolters Kluwer Law and Business, 2010), 114–22; Javier Martínez-Torrón and W. Cole Durham, Jr., “General Report,” in *Religion and the Secular State*, *supra* note 2, at 8–16.
- 7 See chapter on Latin America for Cuban constraints; chapter on China.
- 8 See, e.g., chapters on Kazakhstan, Malaysia.
- 9 See, e.g., chapter on Malaysia.
- 10 See Pakistan and Turkey chapters.
- 11 Ireland chapter.
- 12 Examples include Austria, Bangladesh, Canada, France, Indonesia, Senegal, and the United States.
- 13 Slip opinion, No. 10–553, January 11, 2012, available online at <www.supremecourt.gov/opinions/11pdf/10-553.pdf>.
- 14 *Everson v. Board of Education*, 330 U.S. 1 (1947).
- 15 *Board of Education v. Allen*, 392 U.S. 236 (1968).
- 16 *Wolman v. Walter*, 433 U.S. 229 (1977).
- 17 For more detailed description of developments, see United States of America chapter.
- 18 See France chapter.
- 19 Israel chapter.
- 20 Martínez-Torrón and Durham, “General Report,” *supra* note 2, at 40–41.
- 21 United Kingdom chapter.
- 22 Ibid.
- 23 See Canada chapter.
- 24 United Nations, Human Rights Committee, 67th Session: Communication No. 694/1996, p.13; Anne F. Bayefsky and Arieh Waldman, *State Support of Religious Education: Canada versus the United Nations* (Leiden, Boston: Martinus Nijhoff Publishers, 2007).
- 25 Canada chapter, text accompanying notes 8–11.
- 26 Silvio Ferrari, “Religious Education in the European Union,” in this volume.
- 27 Germany chapter, text accompanying notes 1–2.
- 28 Germany chapter, quoting J. G. Fichte, “Zehnte Rede an die Deutsche Nation,” in *Johann Gottlieb Fichtes Sämtliche Werke*, ed. J.H. Fichte—unaltered edn. (Berlin: de Gruyter) 3:421f.
- 29 Germany chapter, text accompanying notes 5–7.
- 30 Ibid., text accompanying note 7. In fact, the German chapter notes an ambiguity in Rousseau’s *Emil*, which opens with the picture of parents as natural teachers, but ultimately seeks to cultivate a civil religion, which is completely anchored in the state, and where the state’s role is “to introduce children and young people to the natural religion of reason in order to then leave it up to them to decide in the course of their development, which particular religion they choose or if they choose any at all.” Ibid., text accompanying notes 2–3.
- 31 See Latin American chapter.
- 32 Ibid.
- 33 See India chapter; Martínez-Torrón and Durham, “General Report,” *supra* note 2, at 42.
- 34 Martínez-Torrón and Durham, “General Report,” *supra* note 2, at 42–43.
- 35 France chapter, text accompanying note 1.
- 36 *Engel v. Vitale*, 370 U.S. 421 (1962).

W. Cole Durham, Jr.

- 37 *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963).
- 38 See *Agostini v. Felton*, 521 U.S. 203 (1997).
- 39 See *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963).
- 40 *Good News Club v. Milford Central School*, 533 U.S. 93 (2001).
- 41 *Zorach v. Clauson*, 343 U.S. 306 (1952) (release time programs allowed provided they are not conducted on public school premises).
- 42 *Folgero v. Norway* (ECtHR, App. No. 15472/02, June 29, 2007).
- 43 *Leirvåg and others v. Norway*, UN Human Rights Committee, CCPR/C/82/D/1155/2003, Communication No. 1155/2003, November 23, 2004. For a brief summary of these cases, see ODIHR Advisory Council of Experts on Freedom of Religion or Belief, *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (Warsaw: OSCE Office of Democratic Institutions and Human Rights, 2007), Appendix III.
- 44 ECtHR, App. No. 15472/02, October 9, 2007.
- 45 *Ibid.*, § 68 (emphasis added).
- 46 *Ibid.*, § 74.
- 47 Circular letter No. 520/2009.
- 48 France chapter, text preceding note 7.
- 49 *Ibid.*, text accompanying notes 7–8.
- 50 See OSCE/ODIHR, *Toledo Guiding Principles*, *supra* note 35, at 64.
- 51 *Ibid.*, 43–62.
- 52 ECtHR, App. No. 7710/02, June 15, 2010.
- 53 Germany chapter, text accompanying note 22.
- 54 *Ibid.*, text accompanying note 10.
- 55 *Ibid.*, text accompanying note 16, quoting *Förderstufenurteil*, in *Deutsches Verwaltungsblatt*, 1973, 259.
- 56 ECtHR, App. No. 18136/02, February 3, 2011.
- 57 *Serif v. Greece* (ECtHR, App. No. 38178/97, December 14, 1999), § 53.

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Religious education in Argentina

Norberto Padilla

Religious and social composition of Argentina

The population of Argentina is largely Catholic, but all other main religious denominations are present, some since the early nineteenth century.

In 1853 the country obtained a lasting and foundational Constitution. One of the greatest concerns of its framers was to attract useful (European) immigrants, especially bearing in mind the British, German, Dutch, and others to whom freedom of worship should be guaranteed. The preamble of the Constitution invites “all men of the world who wish to dwell on Argentine soil” and ends by “invoking the protection of God, source of all reason and justice.”

At the same time, the framers reached a compromise solution on church–state relations, by which Article 2 determines that the federal government supports the worship of the Roman, Catholic Apostolic Church.

Other articles adopted the Patronage, which was considered a right inherited from the Spanish Domination. It meant interference of the state in the internal matters of the Catholic Church, as for example in Episcopal nominations. Only the president and vice-president were requested to belong to the Catholic Communion, as well as to be born on Argentine soil or to have Argentine parents if born abroad. All other public offices were open to people with independence of their religious affiliation, even if this was not always part of reality. Free exercise of religion is a right for “every inhabitant” (Article 14), and specified, albeit unnecessarily, in Article 20 for foreigners.

The Constitution was reformed in 1860, 1866, 1898, and 1949 but remained untouched in the matter of church–state relations.

On October 10, 1966 an Agreement between Argentina and the Holy See was achieved after nearly eight years of fruitful conversations. Church and state relations would be based on autonomy and cooperation and the Patronage was in fact abolished and deleted when the Constitution was amended in 1994.¹ The requirement for the president and vice-president to belong to the Catholic Communion was suppressed.

The religiously pluralistic character of Argentina has been progressive. During the nineteenth century, both before and, mainly, after the adoption of the 1853 Constitution, immigrants belonging to the Reformed tradition established their communities, as did Jewish immigrants.

Norberto Padilla

At the same time, Irish, Italian, Spanish, Polish, French, and other Catholic immigrants were supported by their new Argentine priests and religious congregations, which affected their Catholic lives and shaped their beliefs to a far greater extent than their own communities of origin. This pattern continues to this day.

During the first half of the twentieth century, Protestant denominations were mainly focused on their own ethnic communities (as were the Orthodox—Greek, Russian, Melkite, or Apostolic Armenian—with theirs); a great missionary impulse was given by the Baptists, free Evangelicals, and Pentecostals and, later, by Mormons, Adventists, and Jehovah's Witnesses. Throughout Latin America, the Pentecostal phenomenon, especially in the more deprived locations, is a challenge for the Catholic Church because many christened Catholics have turned to those communities and built their religious lives around them.

Allan Kardec's Spiritism experienced expansion, until recently, when, in some way, it was supplanted by Afro Umbandism. As for the Islamic faith, it became more evident during the late twentieth century, when mosques and Islamic schools were opened.²

The question about religion has not been included in Argentina's official census in the last four decades, thus researchers are sometimes without adequate census data except that which comes from the religious communities themselves, but this information is not always reliable. In August 2008 a sociological study was conducted to ascertain more facts about the religion and beliefs of the Argentine population. According to this study, 91 percent have a belief in God, 76 percent sat that they are Catholic, 11 percent are agnostic or non-believers, 9 percent belong to Protestant, Evangelical, or Pentecostal denominations, 1.2 percent are Jehovah's Witnesses, 0.9 percent are Mormons, and 1.2 percent belong to other religions.³

In Argentina today, mainly in the great urban centers, there is a growth of spiritual experiences with a diffused belief in God and without the mediation of confessional structures. Also, secularism has spread among the younger generations and in the cultural field.

Constitutional context: interface among state, religion, and religious education

The Argentine Constitution grants the Catholic Church a preeminent position as seen in Article 2 (the support of its worship); however, freedom of religion is widely recognized and always has been. Argentina is a country of harmonious coexistence between religious and ethnic groups.⁴ The Constitution grants the right "to teach and to learn" (Article 14) but has no specific regulations on religious education. Beyond this provision, it is important to have in mind that Argentina is a federal nation, and the 23 provinces and the Autonomous City of Buenos Aires have the right to organize their own educational system, although the Congress is empowered, according to Article 75.18: "To provide for the prosperity of the country, for the advance and welfare of all the provinces, and for the progress of education, drawing up general and university educational plans."

Moreover, in Article 75.19, the Constitution reads as one of the powers of Congress:

To enact laws referring to the organization and basis of education consolidating national unity and respecting provincial and local characteristics; which ensure the state responsibility that cannot be delegated, family and society participation, the fostering of democratic values and equal opportunities and possibilities with no discrimination whatsoever; and which guarantee the principles of free and equitable State public education as well as the autonomy and autarchy of national universities.

Both the Congress and the provinces must provide that the indigenous peoples are respected in their identity and have “the right to bilingual and intercultural education” (Article 75.17). Also, the provinces have not only the right, but the duty, of ensuring “elementary education” (Article 5).

Article 75.22 grants constitutional status to International Declarations and Treaties on Human Rights so the constitutional plexus makes it mandatory to enforce and guarantee their provisions. The UN Conventions on Civil and Political and Economic and Social Rights, the American Convention on Human Rights (Pacto de San José de Costa Rica), and the Convention on the Rights of Children are some of the ones recognized. These documents include relevant provisions: for example, the American Convention on Human Rights⁵ grants parents or guardians, as the case may be, the right to provide for the religious and moral education for their children or wards according to their own beliefs (Article 12.4).

Many denominations (especially the Catholic Church) have schools, and their faith is a specific subject in school plans. Other privately owned schools include religion as a curricular or optional subject, some have interdenominational teaching, and others choose not to have religion at all. The Catholic Church as well as Protestant, Adventist, and Jewish communities own and operate universities that grant degrees and titles recognized by the state. The National Council of Superior Education (CONEAU) surveys academic requirements without interfering in confessional particularities of the universities that have that character.

There is a deeply rooted tradition of “secular school” (“escuela laica”), since law 1420 was enacted in 1884 after an intense and divisive debate. This law, originally applicable in the capital of the Republic and places of federal jurisdiction, was enacted throughout the country. According to this law, religion in state schools could be taught by the ministers of all creeds only after class hours. This meant a defeat for the Catholic Church, and so it was intended to be by some of its promoters but, because education was granted to be obligatory and free of charge, it was useful for integrating the children of immigrants coming from all over the world.⁶

In 1943, under the military regime then in power, which had strong, conservative Catholic influence, Catholic religious teaching was introduced in all schools, providing an alternative teaching on morals and ethics for those who refused it. In 1954 the Government of President Perón, by then in a clash with the Catholic Church, eliminated religion from public school teaching and it has not been re-established. For non-Catholics it had previously been a sometimes traumatic experience of discrimination when a few of them (religious and non-believers) had to leave the classroom.

Some provinces have religion in their curriculum (Córdoba, Jujuy, Salta); others provide that the religion of the parents’ choice can be taught after class hours. The Constitution of the Province of Córdoba, for example, grants the right of parents to have religious teaching of their choice for their children in public schools, but this clause has not been enforced. The Constitution of the Province of Buenos Aires requests that education must be according to the Christian moral principles, respectful of freedom of conscience. The Constitution of the Autonomous City of Buenos Aires specifies that education shall be “secular” (“laica”), and so do other provincial constitutions. In 2001 the Province of Catamarca intended to introduce religion in its curriculum, but had to withdraw its plan after complaints by the Jewish Community associations.

The National Law of Education 26.206 (2006) creates the National Educational System at all levels. One of the purposes of the law is an integral education, but there is no reference to transcendence as a dimension of education or to religious values as part of it, as the precedent Federal Law of Education expressly manifested. The character of the agent of education is recognized not only for the state but also for families, civil organizations, and creeds.⁷ Within

Norberto Padilla

the frame of this law, the provinces and the Autonomous City of Buenos Aires develop their own plans according to their individual requirements.

State and religious autonomy

Religious communities are free to create schools that follow the official curriculum with autonomy granted to introduce their own planning.

It is relevant to mark the positive attitude towards minority religious groups in all educative centers: the right to celebrate holy days for Jews, Muslims and Seventh-day Adventists, and the right to refuse to pledge allegiance or make other patriotic expressions for those who object on religious grounds.

State financial support for religious education

The state gives economic funding to private education independent of religious affiliation. This covers teachers and personnel of the school if specific labor conditions are respected. Thus, there are private schools with state support and those without state support. The proportion of students in private schools is high: a quarter of the total. Interestingly, 41.1 percent of private schools are confessional; 65.2 percent of private schools have state funding. For example, 48 percent of education in the Autonomous City of Buenos Aires is in private hands. In some provinces it ranges from 34 percent to 100 percent;⁸ the great majority of the confessional private schools are Catholic.

With the exception of the northern Province of Salta, there is no religious education in state schools, even if local constitutions allow it. It is optional and open to whatever parents and legal guardians demand for their children. The authorities of each creed (mainly, the Catholic Church) are responsible for the contents of religious instruction and they own institutes for training teachers of religion that in many cases are attended also by non-Catholics. In a non-official way, in some towns and villages the bishop or the parish priest is invited to address the students. But for religious education children must attend the parishes and congregations that their parents choose.

Religious education is taught in private schools according to each church or the internal regulations of the creed chosen by the school (sometimes interdenominational instruction). And the school board is free to decide on qualifications for religious teaching. State funding does not apply to the wages of teachers of religion. Although religion is not part of the official curriculum, the school is able to deny promotion to the next term if the student fails in that examination; nevertheless the student can apply to another school and follow his or her studies and get a degree according to the official curriculum.

The Catholic Church gives religious education great priority, in which the matter of “effectiveness” is taken seriously. Immediately after the 2nd Vatican Council, some religious institutes closed their schools in cities and turned from the upper- and high-middle classes to the lower classes who lived in poorer areas of the country. Later, a better balance has been achieved under the guidance of the Catholic authorities in the way of missions and social and charitable work, while schools in deprived areas are funded in great measure by wealthier families whose children attend schools of greater social standing. The Catholic view has been, in the past, greatly influenced by the concern over state funding for their schools and in some ways this did not show enough concern about education as a whole. This has changed, and the commitment of the Catholic Church is now broader, focusing on quality and content of public and private education.

In the last decade, new issues have appeared requiring attention. Reference is often made to the rights of parents and legal guardians, of teachers, and of educational institutes. In the first place, questions have arisen on the laws—national, provincial, and those pertaining to the City of Buenos Aires—on sexual and reproductive rights. The National Law 26.150 “Programa Nacional de Educación Sexual Integral”⁹ assures the right of educational communities to adapt the proposals on sex education to their “socio-cultural reality in the frame of respect to their institutional platform and the beliefs of its members.”

Also, the anti-discriminatory draft law, much like the “Educación Sexual Integral” law, could be problematic due to the requirement that religious principles and family ethics be taught, which themselves might be in conflict with school principles and those of the educative community as a whole. The issue remains open for children attending state schools whose parents may feel a duty arising from their beliefs, religious or ethical, to object to the way in which sex education, issues on abortion, or the fundamentals on marriage and family are taught (especially after the law allowing same-sex marriages).

Since the late nineteenth century, the debate on the supposed conflicts between public and private education has been deeply rooted in society. Some of the traditional political parties (radical, socialist, etc.) have insisted on “secular education,” in the frame of a state-monopolized education. The Catholic Church and political parties like the Christian Democrats have fought for freedom in teaching and the right to create educative centers, including universities, both public and private. If very few people believe that religious education should return on a national scale, and the Catholic Church has not insisted on this, a more urgent struggle relates to the contents of an education open to a vision of the human being in all its dimensions, without excluding that he/she is “capax Dei (capable of searching for God), as well as the transmission of moral values on marriage, family, and the common good in coherence with the Christian roots of Argentine tradition.¹⁰ The Bishops’ Conference made a lasting contribution on the eve of the National Pedagogic Congress, called by the government of President Alfonsín, by producing a document called “Educación y Proyecto de Vida.”¹¹ If the Congress was highly motivated by the said opposition between public and private education, the commitment of parents and teachers of private schools, for whom the Bishops’ document was an inspiration, led to final statements in which the openness to transcendence in education was recognized.

The opposition has been shown between free-of-charge, secular, and obligatory education on one side and a paid (privileged) and confessional one on the other. This is actually a false dichotomy. In the late twentieth century a balance was found, even if not shared by all, when education was defined as being always public; management might be different in public and private schools, but in principle all education is always of public interest. State funding of private schools allows education to be assured for many deprived or low-middle-class children, and if the Catholic Church receives the greatest part of this funding, it is because it owns a great number of schools, both parochial and of religious congregations, all over the country. Evangelicals also operate numerous schools with state funding, as do other creedal societies. If funding was curtailed, the children would have to attend public schools, which frequently are ineffective or short of equipment.

In conclusion, freedom of education in Argentina is understood generally as the right to teach and learn according to one’s own religious tradition or beliefs. Parents in many situations can choose for their children religious education at a confessional private school, or they can choose to send their children to state schools. What is lacking is the right to choose either religious or secular education in state schools, where the religious issue is excluded even if the great majority believes in a God. Education is incomplete for that reason, and many cultural trends, religious as well as secular, are not able to be understood without reference to basic

Norberto Padilla

religious knowledge (in History, Art, etc. and of course, in ensuring that students are given the tools for respectful coexistence and dialogue in religious and philosophical aspects).¹² Unfortunately, no changes are imminently visible.

Notes

- 1 Norberto Padilla, “Los Acuerdos de la Santa Sede con la República Argentina,” *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, no. 22, January 2010.
- 2 For ten years, Carlos Saúl Menem, a convert to Catholicism from an Islamic family (Muslim parents, wife, and children), was President of the Republic; he is currently a senator.
- 3 Ceil-Piette-Conicet, *Primera Encuesta sobre Creencias y Actitudes Religiosas en Argentina*, Fortunato Malimaci, Director (Buenos Aires, August 2008) <www.calir.org.ar/docs/EstudioCONICET2008.pdf>.
- 4 Norberto Padilla, “Religion and Secular State in Argentina,” in *Religion and the Secular State: National Reports*, eds. Javier Martínez-Torrón and W. Cole Durham, Jr. (Provo, Utah: The International Center for Law and Religion Studies, Brigham Young University, 2010), 65.
- 5 <www.oas.org/juridico/english/treaties/b-32.html>.
- 6 Carlos A. Floria, *El Clima Ideológico de la Querrela Escolar*, in *La Argentina del Ochenta al Centenario*, eds. Gustavo Ferrari and Ezequiel Gallo (Editorial Sudamericana, 1980), 851. Ernesto J.A. Maeder, *La Vida de la Iglesia*, vol. 5, in *Nueva Historia de la Nación Argentina*, Academia Nacional de la Historia, var. authors, (Planeta Buenos Aires, 2000). Fernando Martínez Paz, *La Educación en el Período 1862–1914*, vol. 6, in *Nueva Historia de la Nación Argentina*, Academia Nacional de la Historia, var. authors, (Planeta Buenos Aires, 2001). Eduardo María Taussig, *Ley 1420 y Libertad de Conciencia* (Buenos Aires: Agape, 2006).
- 7 Octavio Lo Prete, “Educación Pública y Religión en la Argentina,” in *Religión y Educación Pública. Análisis Comparativo de su Regulación Jurídica en las Américas, Europa e Israel*, ed. Carmen Asiain Pereira (Madrid: Fundación Universitaria Española, 2010), 43–64. Jorge H. Gentile, *La Libertad Religiosa y la Educación* and Roberto Bosca, *El Derecho Eclesiástico en la Argentina en Materia Educativa*, at <www.calir.org.ar>.
- 8 Axel Rivas, *Radiografía de la Educación Argentina*; in collaboration with Alejandro Vera and Pablo Bezem (1st. edn. Buenos Aires: Fundación CIPPEC; Fundación Arcor; Fundación Roberto Noble, 2010).
- 9 www.me.gov.ar/doc_pdf/ley26150.pdf.
- 10 Juan Torella, “Hacia un Pacto Educativo Federal,” in *Desafío del Bicentenario: Enfrentar la Pobreza en un Estado Federal*, Manuel Mora y Araujo and Jorge Todesca, compiled by Norberto Rodríguez, with prologue by Torcuato Sozio, 1st. edn. (Buenos Aires: Asociación Cristiana de Jóvenes, 2010), 31. Fr. Torrella is the Vicar for Education in the Archdiocese of Buenos Aires.
- 11 Conferencia Episcopal Argentina, *Educación y Proyecto de Vida* (Buenos Aires: July 21, 1985) www.tecnocercana.com.ar/isma/doctrina/EducacionYProyectoDeVida.htm.
- 12 Lo Prete, 64.

Religious education in Asia

Tahir Mahmood

Introduction

Asia is the largest and most populous continent on the globe. Islam is the dominant faith in Asia, followed by Buddhism and Hinduism, while Confucianism, Christianity and several other traditional faiths also are strongly represented in various parts of Asia.

Centuries have intervened between the old times when religion fully controlled the law all over the world and the present age in which the two social-control mechanisms have exchanged their positions—religion now operates everywhere within the parameters set by the national constitutions and domestic laws. This is true also of Asia. There are different norms and modalities for determining the space for religion in state affairs and public matters in various countries, ranging from partial theocracy to total secularity. Like everywhere else on the globe, the state of religious education across Asia is governed by the national laws emanating from countries' respective patterns of religion-state relations.

This anthology on religious education in the contemporary world includes national reports on a number of Asian nations. Since these countries subscribe to divergent concepts of religion-state relations, there is tremendous diversity also in their systems of religious education. The summary offered here supplements the coverage of a number of Asian nations elsewhere in the present anthology.

Central Asia

In Central Asia, Azerbaijan and Kazakhstan are both Muslim-majority states constitutionally committed to the ideal of secularism. During their long association with the Soviet Union, socialist ideology pervaded all aspects of life in both countries. With the disintegration of the Soviet Union and independence of all its former constituent states, the scene has changed in both countries and religion is now allowed a wider space. The extent of various religious activities, including religious education, in both these countries is governed by the relevant provisions of their Constitutions of 1991¹ and 1995,² respectively, and the special laws enacted for this purpose—the Law on Freedom of Religious Belief in Azerbaijan and the Law on Religious Freedom and Religious Associations in Kazakhstan, both enacted in 1992. In terms of these laws, religious

Tahir Mahmood

education is not allowed in public schools in either country. Private schools in both countries are free to offer and organize religious education, but in strict compliance with the regulatory legislation, thus imposing an extensive state control. In practice the possibilities for religious education seem to be somewhat wider in Azerbaijan than in Kazakhstan.

The position of religious education in the rest of the Central Asian republics not covered by this anthology also seems to be more or less the same as in these two countries.

South Asia

In South Asia, India and Nepal are constitutionally secular states. However, they subscribe to a typical concept of secularism that ensures equality of all faiths but creates no US-type wall of separation between religion and state. In both countries the state does supervise and regulate various aspects of religion and religious activities. By the dictates of their respective constitutions no religious education is to be provided in either country in state-established and state-run schools, but state-aided schools and higher-level institutions are free to impart and organize religious education of all sorts without compulsorily imposing it on unwilling pupils. Unaided private schools and institutes of higher learning that are spread through the length and breadth of both India and Nepal legally can, and do, provide religious education on a wide scale—there being absolutely no state control on their curricula and little governmental regulation. In India the recently enacted Right to Education Act of 2009 is silent on the issue of religious education, but it is generally believed that all religious educational institutions of a private and denominational nature are outside its ambit.

On the other hand, in South Asia are the Islamic Republic of Pakistan and its breakaway State of Bangladesh—both constitutionally recognizing Islam as their official religion. While in Pakistan the Constitution of 1973 as amended is jam-packed with “Islamic provisions” directing the state to organize all aspects of public and private life in accordance with the teachings of Islam, the Bangladesh Constitution of 1972 does not go beyond declaring Islam to be the state religion. Consequently, religious education is far more extensive in Pakistan than in Bangladesh in all kinds of state-established, state-aided and unaided private institutions. In Pakistan a federal law of 2001 called the Madrasah Education (Establishment and Affiliation of Model Dini Madaris)³ has not succeeded in bringing religious education under effective state control and integrating, as it proposed to, the system of religious education with the general education system. In Bangladesh, too, there is a similar law called the Madrassa Education Ordinance of 1978, which was meant to regulate religious education in private institutions. There too, however, there is not much state control in practice over the system and content of religious education. In both countries the state provides financial support for religious education—extensively in Pakistan and moderately in Bangladesh.

Southeast Asia

Malaysia, in Southeast Asia, is constitutionally an Islamic state. Here the Constitution assures every religious group the right to establish and maintain institutions for the education of children in its own religion. Islamic religious education is nevertheless organized and financially supported by the state itself and, as per the terms of the Education Act of 1996, is to be compulsorily provided to Muslim students at the primary and secondary levels in all educational institutions—public and private, denominational, and non-denominational. Private educational institutions set up by the Chinese and Hindu minority communities are free to impart education in their respective faith traditions. In recent times there have been tensions between school managements

and parents of their non-Muslim pupils due to official insistence on compliance with Islamic discipline.

The State of Brunei also follows the Malaysian pattern of religious education, while in the Buddhist-dominated countries of Southeast Asia (also not covered in this book) the same place is assigned to Buddhist religious education as is to Islamic education in Malaysia and Brunei.

West Asia

In West Asia, the Arab State of Syria is a Muslim-dominated country. The Syrian Constitution⁴ does not proclaim Islam to be the state religion but requires the Head of State to be Muslim and mentions Islamic jurisprudence as the “main source of legislation”—assuring at the same time religious liberty to all sections of citizens. The system of education in Syria is fully under state control and there is no special law for religious education. Modules of basic religious education are provided in Muslim and Christian denominational schools under state supervision. These are evidently oriented towards the country’s present political ideology. There are, however, private religious schools of all communities which regulate their own curricula not controlled by the state authorities. The system of religious education in Syria is a model for many other Muslim countries of the region.

In Israel the Constitution accords a privileged position to the Jewish faith and therefore its dominance can be seen in all aspects of life including education. The State Law on Education specifically provides that “teaching the Torah of Israel, the history of the Jewish people, Israel’s heritage and Jewish tradition” and Zionism shall be part and parcel of all education. Judaic religious texts are taught in all public and private schools. As amended in 2008, the Education Law of the country has created a new category of state schools called Combining State Schools whose curriculum incorporates “intensified Judaic studies and Jewish identity teaching.” Any state-run school may be declared as a Combining State School if parents of at least two-thirds of the student body so desire. Private schools set up by Arab Muslim and Druze citizens are free to include education in their respective faiths in their curriculum.

East Asia

After a long spell of anti-religion official policies, China is now fast returning to a somewhat liberal religious liberty regime and its present Constitution guarantees freedom of both religious belief and unbelief. All religious activities are, however, still guided by the ruling party’s policies. Document 19 of 1982 stating the party’s religious policy calls for restoration and administration of religious places but stresses that religion must not interfere with secular aspects of life, including education. New Regulations on Religious Affairs⁵ were promulgated by a decree in 2005 protecting “normal religious activities” and safeguarding lawful rights and interests of religious communities. The traditional Chinese religions, especially the Confucian faith, are treated more liberally than the other “imported” faith traditions. Most of the educational institutions of all levels in China are state established or government controlled, and no religious education is imparted in these institutions. Since Marxism remains the official ideology of China, religious education at the school level and research at the university level are both required to be guided by Marxist principles. Private religious schools in limited numbers have been established in certain communities but their curriculum is closely watched and controlled by the government. On the whole, religious education in China remains very much undeveloped and restricted by extensive state control.

Tahir Mahmood

The space for religion and religious education in Vietnam has, over the years, closely followed the Chinese pattern. In recent years a liberal but guarded policy has been adopted towards religious activities. Here, too, the new Constitution of 1992⁶ protects freedom of religious belief and unbelief. A newly enforced Regulation on Religious Affairs and its accompanying documents lay down the parameters of religious activities. The national education system has no space for religious education, but all major religious communities have set up their own schools for clerical training which function under strict state control. The Education Law, however, prohibits all sorts of “evangelization” and “distortion of State policies” in all educational institutions.

In Japan the Constitution provides for religious freedom of individuals and communities and prohibits state interference in the internal affairs of religious organizations. It directs the state and all its organs to refrain from religious activities and from financially aiding the same but, at the same time, to respect the autonomy of religious organizations. Drawing on a provision of the Constitution, the Basic Education Act 2006⁷ prohibits religious education in state-established and government-run schools but adds that the “attitude of religious tolerance, general knowledge regarding religion and the position of religion in social life” shall be incorporated in basic education. Accordingly religion forms part of the curriculum for history, ethics, and morals, which is to be prepared and used in accordance with the official guidelines issued for this purpose from time to time. Private schools set up by various religious denominations are free to include their own religious studies in their curriculum. This is in accordance with a provision to that effect included in the Law on School Education. Teachers of religion in all schools must have attained special qualifications in the subject as laid down in the Law on School Teachers Licensing. A large number of private colleges and universities are sponsored by various religious organizations and are free to offer facilities for study and research in religion in general or particular religious traditions. The Constitution prohibits direct funding of religious activities, but a large number of schools and colleges subsidized by the government do teach religion under various general subjects.

Notes

- 1 See text of Azerbaijan’s Constitution at website for Educational Initiative for Central and Eastern Europe at <www.eicee.org>.
- 2 See Kazakhstan’s Constitution at *ibid*.
- 3 See “Report: The System of Education in Pakistan” at <<http://norric.org>>.
- 4 See Syrian Constitution at <www.mideastinfo.com>.
- 5 See <www.cecc.gov>.
- 6 See Vietnamese Constitution at <www.servat.unibe.ch>.
- 7 See <www.mext.go.jp>.

Religious education in Australia

Paul Babie and Ben Mylius

Introduction

The contemporary Australian community comprises approximately 22.5 million people¹ drawn from a wide range of social, cultural, and ethnic backgrounds, and a broad range of faiths. The earliest religious practices in Australia date back more than 40,000 years, to Australia's indigenous cultures; much more recently there occurred brief contact with Islam via Muslim traders from eastern Indonesia and, within the last 300 years, British–European colonization effected the more permanent introduction of Judeo–Christian faiths.²

Today, more than half of Australians continue to identify themselves as Christian, though trends in this area seem to be changing. At the 2006 census,³ 63.8 percent of the population identified themselves as Christian,⁴ 2.1 percent as Buddhist, and 1.7 percent as Muslim. A small percentage (2.4 percent) of the population indicated that they adhere to another religion; 11.3 percent did not specify; and 18.7 percent indicated that they practice no religion, up from approximately 16 percent at the 2001 census.⁵

Since its Federation in 1901, Australia functions as a federal parliamentary democracy and constitutional monarchy.⁶ It is comprised of a federal (or Commonwealth) government,⁷ and separate governments for each of its six states (New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia) and two territories (the Australian Capital Territory—A.C.T. and Northern Territory).⁸ This governmental and political structure carries implications for the place of religion within Australian primary and secondary education.

This chapter contains four parts. Part 1 is an introduction. Part 2 outlines the place of religion within the Australian legal and constitutional structure. Part 3 examines the accommodation of religion in government (public or state) and non–government (private) schools, using the State of South Australia as a representative example. Part 4 offers some brief concluding observations.

Legal context: the Australian Constitution and religion

Australia has no official state religion.⁹ Relations between the Commonwealth Government and “religion” are governed by Section 116 of the Australian Constitution, which provides four guarantees, as follows: “The Commonwealth shall not make any law for establishing any religion,

Paul Babie and Ben Mylius

or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.”¹⁰

A limited body of jurisprudence interprets these guarantees. Most of the case law concerns the “free exercise” clause,¹¹ though that provides useful general indicia for determining questions about what constitutes a “religion” and what might constitute an interfering law.

The courts narrowly construe “freedom of religion” and the notion of an interfering law, with the result that laws requiring compulsory peacetime military training¹² and providing for the wartime dissolution of “subversive associations”¹³ were held not to constitute Commonwealth interference with the free exercise of religion for the purposes of Section 116.

Historically, the judicial pronouncements on Section 116, and the dicta contained within them, make it clear that laws regulating matters that have “nothing at all to do with religion,”¹⁴ and laws (for example, criminal statutes) that may impact on aberrant religious practices in particular instances but do not “discriminate against religion generally”¹⁵ are not covered by the immunity in the provision. However, this narrow interpretation of religious freedom has been balanced by a broad interpretation of the concept of “religion” itself. In *Church of the New Faith v. Commissioner of Pay-Roll Tax (Vic.)*,¹⁶ which concerned the Church of Scientology’s status as a “religion” for tax purposes, Justices Wilson and Deane of the High Court of Australia set out several indicia for determining whether a set of beliefs or practices constitutes a “religion”:

[whether] the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses; ... whether] the ideas relate to man’s nature and place in the universe and his relation to things supernatural; ... whether] the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance; ... whether,] however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups; ... and perhaps whether] the adherents themselves see the collection of ideas and/or practices as constituting a religion.¹⁷

Thus, the threshold for classifying a particular set of beliefs or practices as a “religion,” in order to invoke the protections of Section 116, remains relatively low.

There is very limited analysis of the impact of Section 116 on primary and secondary education. In the only case to address that issue, *Attorney-General (Vic.); Ex Rel. Black v. Commonwealth* (the *DOGS case*), the High Court of Australia held that Commonwealth funding of non-government schools does not constitute “establishing [a] religion” for the purposes of Section 116.¹⁸

In 1988, a referendum attempted to “extend freedom of religion” (as well as extending rights to trial by jury and compensation for the compulsory acquisition of property). This, however, failed to achieve a majority in any state and was not carried nationally.¹⁹

Moreover, unlike all other Western liberal democracies, Australia has no national Bill of Rights (constitutionally entrenched or otherwise). Campaigns and community debate, however, about a possible future enactment of one have been prevalent over the last decade,²⁰ and some states and territories (most notably Victoria and the A.C.T.) have passed Bill of Rights-style legislation containing references to freedom of religion.²¹

In addition to the protections afforded by Section 116 of the Constitution, though, Australia is a signatory to international covenants protecting religious freedom in the educational context. The International Covenant on Civil and Political Rights (I.C.C.P.R.),²² Article 18, provides

for freedom of religion, while the International Covenant on Economic, Social and Cultural Rights (I.C.E.S.C.R.),²³ Article 13, provides for the right to education directed towards promoting tolerance amongst all individuals of all religious affiliations.

Education in Australia

Generally

Education at the primary²⁴ and secondary²⁵ levels in Australia may be very broadly categorized as either “government”²⁶ or “non-government.”²⁷ The majority of non-government schools in Australia are Catholic,²⁸ although schools representing many other faiths, denominations, and philosophies—including Lutheran, Anglican, Uniting, “Christian,” Islamic, Jewish, Greek Orthodox, non-denominational and secular (Montessori, Waldorf/Steiner, and other) are also in operation nationally.²⁹ In 2009, there were 9,529 schools operational across the country: 6,802 government schools, and 2,727 non-government schools,³⁰ catering to around 3,484,000 full-time students and around 23,300 part-time students.³¹

Funding for government schools comes primarily from state governments, with the Commonwealth government providing supplementary assistance.³² Non-government educational institutions are predominantly privately funded, though they receive some public funding, primarily from the Commonwealth government.³³ Australian students generally begin school with a kindergarten or preparatory school year, and then undertake 12 years of primary and secondary schooling; ten years of schooling is generally the minimum, although there is some variation in this and in school starting and leaving ages from state to state.³⁴

Religious education in Australian government schools: the example of South Australia

South Australia provides a broadly representative example of Australian state government approaches to religious education in government schools. As such, this section is confined, unless otherwise noted, to South Australian legislation and regulations.³⁵ Provision for religious education in South Australian government schools is made by Section 102 of the Education Act 1972 (S.A.):

102—Religious education

- 1 Regular provision shall be made for religious education at a Government school, under such conditions as may be prescribed, at times during which the school is open for instruction.
- 2 The regulations shall include provision for permission to be granted for exemption from religious education on conscientious grounds.

Beyond this enabling provision, the content and conduct of religious education in government schools is provided for by the *Education Regulations 1997* (S.A.) (“the Regulations”) which are made under the Act.³⁶ Among other things, the Regulations provide for the establishment of standing committees³⁷ and school-specific Religious Education Committees,³⁸ and for the development of course modules for distribution to schools.³⁹ Most significantly, they also provide for the conduct of both “religious education” and “religious seminars” in schools.⁴⁰

Paul Babie and Ben Mylius

1. Religious education classes

“Religious education” classes (known in some other states as “general religious education”)⁴¹ as referred to in the regulations are Society and Environment-style classes (in some jurisdictions this might be referred to as Social Studies or Civics). Teachers are responsible for the design of their curricula,⁴² and may (but need not necessarily) use the modules provided to them.⁴³ All curricula must be consistent with the South Australian Curriculum Standards and Accountability Framework, and must also be “inclusive of all students within the learning group.”⁴⁴

The Department of Education policy document on the subject makes clear that the aim of such religious education is “[not] to bring about commitment to any set of beliefs.”⁴⁵ Rather, the aim is to enable students to develop a sensitive understanding of the presence and influence of religion in life and society and of the variety of beliefs by which people live: religious, non-religious and traditional Through religion studies, students should gain a greater respect and empathy with the beliefs of others as well as a capacity to develop their understanding of what they themselves believe.⁴⁶

2. Religious seminars

The “religious seminars” (known in some other states as “special religious education”)⁴⁷ for which the regulations provide are more overtly religious or catechetical in content and style and are envisaged as sessions that may be attended by students of a particular faith or denomination.⁴⁸ These sessions are voluntary and require the informed consent of parents, which may be withdrawn at any time.⁴⁹ They may be held for up to one half-day per school term (Australian schools operate on four terms), and are taught or run by a nominated member of the relevant local congregation, though teachers must also remain present.⁵⁰ Their conduct, moreover, must be endorsed by school Governing Councils, and informed by the decisions of the school-specific Religious Education Committee, if one exists.⁵¹

3. Other religious activities in government schools

Beyond the religious education classes and religious seminars, two other types of religious activity may exist in government schools: student clubs and “Christian Pastoral Support Workers” (C.P.S. Ws.).

Student clubs (religious and otherwise) are held during non-instructional time, and may be organized by staff and/or volunteers; the principal’s permission is required for their formation, and informed parental consent is required for student participation once again.⁵²

The C.P.S.W. program is a further optional program that may be initiated within Government schools.⁵³ C.P.S.Ws. are employed by local Christian ministers’ associations, inter-church councils, or other ecumenical groups representative of the local religious community;⁵⁴ they operate in the school with the status of volunteers, and as such may not be referred to as “chaplains” or anything else that suggests some sort of formal training or professional status within the school.⁵⁵

According to the policy document, C.P.S.Ws. have two main roles: to “support the school in its aim to be a safe and supportive learning environment,” and to “link families to community resources and services.”⁵⁶ These roles allow for the provision of short- or longer-term support to students, staff, or other community members (though students require informed parental consent before undergoing any longer-term personal assistance), and for the provision of general information about local support and service groups, religious and otherwise.⁵⁷ They explicitly

preclude any sort of proselytizing, the exclusive advertisement of any particular religions or religious activities, and the setting up of school activities that might discriminate in some way on religious grounds.⁵⁸

Religious education in Australian non-government schools⁵⁹

Currently

As might be expected, the scope for religious education in non-government schools is greater than the scope for the same in government schools. All curricula in non-government schools must conform to the South Australian Curriculum Standards and Accountability Framework;⁶⁰ but beyond this, the intensity and purpose of religious education may be determined by the individual school, and will vary depending on the faith or denomination (if any) of the particular school.

As noted above, the Commonwealth provides the majority of any public funding to non-government schools.⁶¹ Currently, provision of such funding is made pursuant to the *Schools Assistance Act 2008* (Cth.).⁶² This Act provides for both recurrent funding (calculated by reference to enrolments and a complex set of other criteria⁶³) and capital funding;⁶⁴ funding for non-government schools with significant proportions of indigenous students;⁶⁵ and funding for targeted programs including the “Literacy, Numeracy and Special Learning Needs” program, the “Country Areas” program, and the “English as a Second Language” program.⁶⁶

As a prerequisite to funding, non-government schools or non-government school bodies (where they exist) must sign funding agreements that accord with the *School Assistance Regulations 2009* (Cth.).⁶⁷ These agreements place a number of conditions on funding, including requirements for school performance and transparency, grant acquittal and reporting, and monitoring and evaluation.⁶⁸ The agreements also stipulate the uses to which funds may be put: recurrent grant funds, which are most material to the present discussion, may be used for “teaching and ancillary staff salaries ... professional development of teachers ... curriculum development ... [and] maintenance and general operation.”⁶⁹

Secular non-government schools usually eschew specifically religious education in favor of broader cultural, social, and historical studies subjects. The majority of religious non-government schools appear to advocate a values-based approach to religious education, with a greater or lesser focus on evangelism or proselytism, depending on the individual school. Perhaps the greatest single difference between such schools and government schools is the religious backdrop to instruction, and the corresponding intensity of explicitly religious activities (chapels, devotions, prayers, etc.) in non-teaching time during the day.

Curriculum framework documents and statements, thus, speak variously of:

“[deepening] students’ understanding of the [Catholic] Tradition and [developing] an appreciation of its significance in their lives, so that they may participate effectively in the life of the Church and wider society[;]”⁷⁰ and “[allowing] students to reflect on issues of [Lutheran] faith and life in an open and sensitive environment ... [and teaching] that faith is more than just head knowledge or classroom learning but involves relationships and serving one another[;]”⁷¹ and “embed[ding] the heritage and traditions of the Anglican Church ... [as well as providing] a broad base in Religion and Spirituality[;]”⁷² and “provid[ing] a broad perspective of Jewish history through the festivals, laws and customs and the significance of the various Jewish festivals ... [and exposing students] to the full range of Jewish experience[;]”⁷³ and “[helping] students grow in their [Islamic] faith and appreciate the need to engage in life in a positive constructive way, showing respect to others and interacting with generosity and love.”⁷⁴

Paul Babie and Ben Mylius

The future

The Commonwealth's "Education Revolution," which has seen a progressive overhaul of educational funding arrangements in accordance with the identification of education as a Commonwealth government policy priority over the last several years,⁷⁵ may have a minimal impact on religious education. Among other things, this "Revolution" aims to modernize schools and provide for universal early childhood education. Most relevantly, for present purposes, it also contains provision for a National Education Agreement in two parts: (i) between the Commonwealth government and all state governments as part of the Council of Australian Governments' (C.O.A.G.) Intergovernmental Agreement (I.G.A.) on Federal Financial Relations and aimed at streamlining administration of relevant Commonwealth funds and services;⁷⁶ and (ii) a National Curriculum, overseen by a national body—the Australian Curriculum and Reporting Authority (A.C.A.R.A.)—established for the purpose.⁷⁷

Two key documents, the "Melbourne Declaration" on Educational Goals for Young Australians⁷⁸ and A.C.A.R.A.'s "Shape of the Australian Curriculum" inform the development of the new curriculum,⁷⁹ which will be developed in successive stages. English, mathematics, sciences, and history curricula are scheduled for completion by 2011; geography, languages and arts curricula by 2012; and the remaining areas identified in the Melbourne Declaration (including civics, citizenship, health and IT) by 2013.⁸⁰ While the key documents contain no specific reference to religion or religious education, beyond that to development of tolerance and respect for religious diversity, once the national curriculum is prescribed by regulation it appears that compliance by non-government schools will become a further condition of funding.⁸¹

Concluding observations

The contemporary Australian community benefits from a diversity of social, cultural, ethnic, and religious backgrounds. Operating within this pluralistic environment, the Australian polity allows for a robust educational experience at the primary and secondary levels in government and non-government schools.

In the case of government schools, funding is secured largely from the states, although with some Commonwealth supplementary assistance. By way of an example of the operation of this system, in the case of South Australia, religious education in government schools takes two main forms: "Religious education" classes, which are society and environment-style classes, and "religious seminars," which are more overtly religious or catechetical in content and style. Beyond these classes and religious seminars, religious student clubs and "Christian Pastoral Support Workers" (C.P.S.Ws.) may also operate in government schools.

Non-government educational institutions are predominantly privately funded, though, as with their government counterparts, they receive some public funding, primarily from the Commonwealth government. The Commonwealth provides both recurrent and capital funding, as well as funding for targeted programs, on the basis of a series of conditions regarding school performance and transparency, grant acquittal and reporting, monitoring and evaluation, and permissible uses of funds in many cases. The scope for religious education in non-government schools is nonetheless greater than that for government schools. While curricula must conform (in South Australia) to the South Australian Curriculum Standards and Accountability Framework, the intensity and purpose of religious education (if any) may be determined by the individual school.

Thus, the variety of styles and intensities of religious education in government and non-government schools and the diversity of schools available to students and parents, allows for positive individual choice of either secular or religious values-based education. This, combined with the significant changes that are presently occurring and concern (amongst other things) over the progressive development of a national curriculum, ensures the existence and ongoing development of primary and secondary education, including religious education, in Australia.

Notes

- 1 For a real-time population projection, see Australian Bureau of Statistics, "Population Clock" (2010). <www.abs.gov.au/AUSSTATS/abs@.nsf/Web+Pages/Population+Clock?opendocument>, December 7, 2010.
- 2 Department of Foreign Affairs and Trade, "About Australia: Religious Freedom" (2010) <www.dfat.gov.au/facts/religion.html>, December 3, 2010.
- 3 Censuses in Australia occur every five years: the latest was scheduled to occur on the night of August 9, 2011, and would mark the 100th anniversary of national Census taking in Australia. See Australian Bureau of Statistics, "Census 2011" (2010) <www.abs.gov.au/websitedbs/D3310114.nsf/Home/census?opendocument#from-banner=GT>, December 3, 2010.
- 4 This figure is divided amongst denominations as follows: Catholic 25.8 percent, Anglican 18.7 percent, Uniting Church 5.7 percent, Presbyterian and Reformed 3.0 percent, Eastern Orthodox 2.7 percent, and other Christian 7.9 percent. (All specific statistics referred to here may be generated using the "CData" and other search facilities on the Australian Bureau of Statistics website).
- 5 Ibid. See also Australian Bureau of Statistics, "2006 Census Quickstats" (2010) <www.censusdata.abs.gov.au/ABSNavigation/prenav/ViewData?method=Place%20of%20Usual%20Residence&subaction=-1&producttype=QuickStats&ar-eacode=0&action=401&collection=Census&textversion=false&breadcrumb=PL&period=2006&javascript=true&navmapdisplayed=true&#Religious%20Affiliation>, December 3, 2010. For a useful (older) discussion of religious affiliation in Australia, see also Australian Bureau of Statistics, "Religious Affiliation" (2006) <www.abs.gov.au/ausstats/abs@.nsf/bb8db737e2af84b8-ca2571780015701e/bfdda1ca506d6cfaca2570de0014496e!OpenDocument>, December 7, 2010.
- 6 For a useful, contemporary introduction to this and related topics, see Australia's recent report to the United Nations "Human Rights Council Universal Periodic Review: Attorney-General's Department, Commonwealth Government," *Universal Periodic Review—National Report Part II—Background and Framework* (2010) (available at <www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_InternationalHumanRights_UniversalPeriodicReview-NationalReport-Bacgroundand-FrameworkPartII>).
- 7 See generally links at Commonwealth Government, "Government and Parliament" (2010) <<http://australia.gov.au/topics/government-and-parliament>>, December 5, 2010.
- 8 For the sake of clarity, "State" will be used in this paper to refer to both States and Territories.
- 9 See, e.g., Department of Foreign Affairs and Trade, above n. 2. For discussions of the separation of church and State in Australia, see Reid Mortenson, "Judicial (In)Activism in Australia's Secular Commonwealth" in Christine Parker and Gordon Preece, eds., *Theology and Law: Partners or Protagonists?* (2005); Luke Beck, "Clear and Emphatic: the Separation of Church and State under the Australian Constitution," *University of Tasmania Law Review* 27 (2008): 161; Justice Susan Kenny (FCA), "The Right to Freedom of Religion," *Federal Judicial Scholarship* 3 (1999). For a historical discussion and critique, see Stephen McLeish, "Making Sense of Freedom of Religion and the Constitution: a Fresh Start for Section 116," *Monash University Law Review* 18 (1992): 207. For a comparative discussion of Australian and U.S. provisions, see Joshua Puls, "The Wall of Separation: Section 116, the First Amendment and Constitutional Religious Guarantees," *Federal Law Review* 26 (1998): 139.
- 10 *Commonwealth of Australia Constitution Act 1901* ("the Australian Constitution"). See generally Tony Blackshield and George Williams, *Australian Constitutional Law and Theory: Commentary and Materials* (3rd. edn. 2002), 1207–17. For a useful summary discussion, see also Denise Meyerson, "The Protection of Religious Rights under Australian Law," *Brigham Young University Law Review* 529 (1999): 538–40.

Paul Babie and Ben Mylius

- 11 See, e.g., *Krygger v. Williams* (1912) 15 C.L.R. 366; *Adelaide Company of Jehovah's Witnesses Inc. v. Commonwealth* (1943) 67 C.L.R. 116; *Church of the New Faith v. Commissioner of Pay-Roll Tax (Vic.)* (1983) 154 C.L.R. 120; *Kruger v. Commonwealth* (1997) 190 C.L.R. 1.
- 12 *Krygger v. Williams* (1912) 15 C.L.R. 366.
- 13 *Adelaide Company of Jehovah's Witnesses Inc v. Commonwealth* (1943) 67 C.L.R. 116.
- 14 *Krygger v. Williams* (1912) 15 C.L.R. 366 at 369 (“Griffith CJ”).
- 15 *Church of the New Faith v. Commissioner of Pay-Roll Tax (Vic.)* (1983) 154 C.L.R. 120.
- 16 (1983) 154 C.L.R. 120.
- 17 *Ibid.*, [174].
- 18 *Attorney-General (Vic.); Ex rel Black v. Commonwealth* (1981) 146 C.L.R. 559, [653] (Wilson J), [612] (Mason J).
- 19 See Constitution Alteration (Rights and Freedoms) Bill 1988 (Cth.) (available at <www.aph.gov.au/library/intguide/law/rights1988.htm>; Australian Electoral Commission, “Referendum Dates and Results 1906–Present” (2010) <www.aec.gov.au/Elections/referendums/Referendum_Dates_and_Results.htm>, December 5, 2010.
- 20 See, e.g., Paul Babie and Neville Rochow, “Feels like Déjà Vu: Religious Freedom under a Proposed Australian Bill of Rights,” *BYU Law Review*, forthcoming 2011; Australian Human Rights Group, “A Human Rights Act for Australia” (2010) <www.humanrightsact.com.au>, December 5, 2010. For a summary of the arguments made for and against a Bill of Rights in Australia, see generally George Williams, *A Bill of Rights for Australia* (2000).
- 21 See *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic.)* Section 14; *Human Rights Act 2004 (A.C.T.)* Section 14; Meyerson, above n. 10, 542–43. For a critical discussion of the Victorian Charter, see Simon Evans and Carolyn Evans, “Legal Redress under the Victorian Charter of Rights and Responsibilities” *Public Law Review* 17 (2007): 264. For other articles considering the charter, see the list at Human Rights Law Resource Centre, “Articles, Materials and Commentary on Victorian Charter” (2011) <www.hrlrc.org.au/content/topics/victorian-charter-of-human-rights/articles-materials-and-commentary-on-victorian-charter>, January 12, 2011.
- 22 Department of Foreign Affairs and Trade, “Treaty Database: International Covenant on Civil and Political Rights” (2010) <www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/8B8C6AF11AFB4971CA256B6E0075FE1E>, December 5, 2010.
- 23 Department of Foreign Affairs and Trade, “Treaty Database: International Covenant on Economic, Social and Cultural Rights” (2010) <www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/CFB1E23A1297FFE8CA256B4C000C26B4>, December 5, 2010.
- 24 “Primary” schools correspond approximately to U.S. elementary schools, typically catering for students from Reception to Grade 6 or 7.
- 25 Secondary schools typically cater for students from Grade 7 or 8 to Grade 12 or 13.
- 26 Sometimes referred to as “state” or (in contrast to the United Kingdom) “public.”
- 27 Various referred to as “independent,” “religious,” “church,” or “private,” depending on the particular school.
- 28 See Australian Bureau of Statistics, Commonwealth Government, “4221.0—Schools, Australia, 2009 (Reissue)” (2010), 8 (available at <[www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/05ADAC0812C70C9DCA25775700218CA4/\\$File/42210_2009.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/05ADAC0812C70C9DCA25775700218CA4/$File/42210_2009.pdf)>). See also Archdiocese of Adelaide, “Home” (2010) <www.adelaide.catholic.org.au/sites/CatholicEducationOfficesSA/>, December 7, 2010.
- 29 By way of example, a directory of non-Catholic, non-government schools in South Australia is available at The Association of Independent Schools of South Australia, “Member School Directory” (2010), <www.ais.sa.edu.au/_files/f/41329/AISSA%20School%20Directory%20July%202010.pdf>, December 7, 2010.
- 30 Or, expressed differently: 6,414 primary schools, 1,439 secondary schools, and 1,261 combined primary-secondary schools (excluding special schools): Australian Bureau of Statistics, above n. 28, 9.
- 31 *Ibid.*, 3–4.
- 32 Department of Education, Employment and Workplace Relations, “Overview” (2010) <www.deewr.gov.au/schooling/Pages/overview.aspx>, December 3, 2010. In 2007–08, state governments provided \$23.5 billion to government schools, with the Commonwealth government providing \$3 billion: Department of Education, Employment and Workplace Relations, Commonwealth Government, *Review of Funding for Schooling: Emerging Issues Paper, December 2010*, 12, available at <www.deewr.gov.au/Schooling/ReviewofFunding/Documents/EmergingIssuesPaper.pdf>.

- 33 In 2008, the Commonwealth Government provided \$6.1 billion to non-government schools, with state governments providing \$2.2 billion: Department of Education, Employment and Workplace Relations, above n. 32, 12.
- 34 Ibid.
- 35 It is noted that, while the relevant legislative provisions of other states' Acts are broadly similar, they differ in detail, and the following discussion should be read with this in mind. Relevant similar legislation in other Australian states and territories includes the *Education Act 2004* (A.C.T.), Section 29; the *Education Act 1990* (N.S.W.), Sections 32–33; the *Education Act* (N.T.) Section 73; the *Education (General Provisions) Act 2006* (Qld.), Section 76; the *Education Act 1994* (Tas.), Section 34; the *Education and Training Reform Act 2006* (Vic.), Section 2.2.11; and the *School Education Act 1999* (W.A.), Sections 69, 71. For an older, though still informative, detailed overview of the area, see Graham Rossiter, *Religious Education in Australian Schools* (1981). For further discussion, see Marisa Crawford and Graham Rossiter, "The Nature of Religious Education in Public Schools: The Quest for an Educational Identity," *Panorama: International Journal of Comparative Religious Education and Values* 5 (1994), 77.
- 36 These are further reflected in Department of Education and Children's Services (D.E.C.S.) policies on the topic: Department of Education and Children's Services, South Australian Government, *Administrative Instructions and Guidelines: Section 3: Religious Activities in Government Schools* (2007), <www.decs.sa.gov.au/volunteers/files/links/Religious_activities_in_Go.pdf>.
- 37 *Education Regulations 1997* (S.A.) Section 78. The Standing Committee on Religious Education in Government Schools is composed of departmental, ecumenical, parent organization, and tertiary education course representatives, and is charged with advising the Minister on various matters concerning religious education in schools.
- 38 *Education Regulations 1997* (S.A.) Section 79. The school-specific Religious Education Committees are composed of not more than two teachers, not more than two parents from the school council, and not more than four local clergy. These Committees are established by the head teacher or principal of the school, in consultation with the school council, and are charged with advising and assisting the head teacher or principal "in such matters concerning religious education in the school as the head teacher and the committee shall determine."
- 39 *Education Regulations 1997* (S.A.) Section 80. Pursuant to Section 81, only persons registered as teachers may teach the classes.
- 40 *Education Regulations 1997* (S.A.) Sections 81(1), 81(2).
- 41 See, e.g., N.S.W. Department of Education and Training, "Learning and Teaching: Religious Education" (2010), <www.schools.nsw.edu.au/learning/yrk12focusareas/religious/index.php> December 6, 2010.
- 42 Department of Education and Children's Services, above n. 36, 1.
- 43 For an informative discussion on the uptake of similar modules in government schools generally (and nationally), modules, and student experiences with these Religious Education classes, see Graham Rossiter, "Finding the Balance: Religious Education in Australia" (2010) <www.iarf.net/REBooklet/Australia.htm>, December 6, 2010.
- 44 Department of Education and Children's Services, above n. 36, 1.
- 45 Ibid.
- 46 Ibid.
- 47 See, e.g., above n. 41.
- 48 Department of Education and Children's Services, above n. 36, 1.
- 49 Ibid.
- 50 Ibid.
- 51 Ibid.
- 52 Ibid., 2.
- 53 The program is the result of a contract between the Minister for Education and Children's Services and the Heads of Churches State Schools Ministry Coordinating Group (S.M.G.), but it does not preclude the initiation by other faith groups of volunteer programs in schools. See *ibid.*
- 54 The school may not use its "global funding" to contribute to C.P.S.Ws.' salaries, although the School Governing Council may choose to contribute financially to the local Employing Group, if the support of the school community for such an action is forthcoming. See *ibid.*, 7.
- 55 Ibid.
- 56 Ibid.
- 57 Ibid., 6.

Paul Babie and Ben Mylius

- 58 *Ibid.*, 7.
- 59 As with the discussion of government schools, examples in this discussion of non-government schools will also be drawn from South Australia.
- 60 For a discussion of the sometimes complex relationship between religious non-government schools and anti-discrimination laws, see Carolyn Evans and Leilani Ujvari, “Non-Discrimination Laws and Religious Schools in Australia,” 30 *Adelaide Law Review* (2009), 31.
- 61 See above n. 33, and accompanying text.
- 62 Useful discussion and breakdown of the Act is contained in Department of Education, Employment and Workplace Relations, Commonwealth Government, *Schools Assistance Act 2008 Administrative Guidelines: Commonwealth Programs for Non-Government Schools, 2009 to 2012 (2010 Update)* (2010), <www.deewr.gov.au/Schooling/Programs/Documents/SchoolAdminGuidelines2010.pdf>, January 2, 2011). Useful further discussion, with a focus on emerging issues and community concerns, may be found in Department of Education, Employment and Workplace Relations, above n. 32.
- 63 Department of Education, Employment and Workplace Relations, above n. 32, 12–13.
- 64 *Schools Assistance Act 2008* (Cth.), Parts 4, 5.
- 65 *Schools Assistance Act 2008* (Cth.), Part 4, div. 9.
- 66 *Schools Assistance Act 2008* (Cth.), Part 6.
- 67 See above n. 62, 4.
- 68 *Ibid.*
- 69 Above n. 62, 14.
- 70 Catholic Diocese of Adelaide, “Crossways: the Framework for the Religious Education Learning Area” (2010), <www.adelaide.catholic.org.au/sites/CatholicEducationOfficesSA/media/files/3837.pdf>, December 7, 2010.
- 71 Faith Lutheran School, “Christian Living” (2010) <www.faith.sa.edu.au/christian_living.htm>, December 7, 2010.
- 72 St. Peter’s College, “Junior School Curriculum” (2010), <http://stpeters.sa.edu.au/assets/jnr_curriculum.pdf>, December 7, 2010.
- 73 Massada College Adelaide, “Curriculum: Jewish Cultural Traditions and History” (2010), <www.massada.sa.edu.au/jewish.asp>, December 7, 2010.
- 74 Islamic College of South Australia, “Primary School Handbook” (2010), <<http://icoso.sa.edu.au/downloads/handbook-primary.pdf>>, December 7, 2010.
- 75 Department of Prime Minister and Cabinet, “Future—Policy Priorities” (2010) <www.pm.gov.au/Policy_Priorities/Future/Priorities#Education>, January 13, 2011.
- 76 Council of Australian Governments, “Intergovernmental Agreement on Federal Financial Relations” (2010), <www.coag.gov.au/intergov_agreements/federal_financial_relations/index.cfm>, January 13, 2011; Council of Australian Governments, *National Education Agreement* (2010), <www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/IGA_ScheduleF_national_education_agreement.pdf>.
- 77 Established by the *Australian Curriculum, Assessment and Reporting Authority Act 2008* (Cth.): see Australian Curriculum, Assessment and Reporting Authority, “About us” (2010), <www.acara.edu.au/about_us/about_us.html>, January 13, 2011.
- 78 Ministerial Council on Education, Employment, Training and Youth Affairs, Commonwealth Government, *Melbourne Declaration on Educational Goals for Young Australians* (2008), <www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf>.
- 79 Australian Curriculum, Assessment and Reporting Authority, *The Shape of the Australian Curriculum Version 2.0* (2010), <www.acara.edu.au/verve/_resources/Shape_of_the_Australian_Curriculum.pdf>.
- 80 Australian Curriculum, Assessment and Reporting Authority, “Australian Curriculum” (2010), <<http://www.acara.edu.au/curriculum/curriculum.html#1>> at January 13, 2011. See also Ministerial Council on Education, Employment, Training and Youth Affairs, above n 78; Australian Curriculum, Assessment and Reporting Authority, *Curriculum Development Process Version 4.0* (2010) (available at <http://www.acara.edu.au/verve/_resources/ACAR-A_Curriculum_Development_Process_Paper_v4_June_2010.pdf>).
- 81 Above n. 62, 27.

Religious education in Austria

Georg Königsberger and Louis Kubarth

Generally speaking, Austria is considered to be a secular state. However, this statement might be reassessed, considering the widespread integration of religion not only in politics but in the entire daily life. This complex integration can be seen in the educational system, but it applies earlier than this: even kindergartens provide religious instruction.

Religious composition of Austria

The various religious communities in Austria are continuously losing members. This trend is confirmed by the Austrian census of population held every ten years. The last one, from 2001, shows an even higher tendency towards a non-confessional society. During the last 40 years the number of people without religious confession increased by approximately 100,000 people every decade. In the ten years immediately before the last census this figure tripled. According to this last census, about one-eighth of the Austrian population, namely one million, had no religious affiliation.¹ It should be pointed out that this figure might be even higher as a vast number of people did not answer the census questions about personal religious beliefs. Contrary to these trends, the Islamic and Jewish faiths are gaining more and more members.

The leading religious community in Austria remains the Roman Catholic Church. According to the church's internal statistics,² about 66 percent of the Austrian population was part of the Catholic Church in January 2010 – 8 percent fewer than ten years before. The other large Christian community is the Evangelical Church. Austria counts about 325,000 Protestants,³ thus 4 percent of the population.

After a long legal dispute against the Republic of Austria, Jehovah's Witnesses eventually were legally recognized as a religious society; they represent 3 percent of the population.⁴

The Jewish community grew during the decade 2000–10—after a long period of ebbing—by more than 8,000 members: 12 percent more than ten years before.

As a major non-Christian religion, Islam counted 340,000 members in 2001. By means of extrapolation from the last census, we estimate the number of Austrian Muslims to be more than half a million⁵ in 2010, thus 6 percent of the population.

Georg Königsberger and Louis Kubarth

Relation between state and religion

The question of how Austria is dealing with religious education in public and private schools depends on the legal status of each religious community. Therefore it is crucial to know the system of their legal recognition—that is to say, to know about Austria's corporation regulations. The numerous religious denominations in Austria can be classified into three separate legal categories. These three types of recognition all have a different set of rights, privileges, and duties:

- 1 officially recognized religious societies⁶
- 2 religious confessional communities⁷
- 3 religious associations.⁸

As Article 15 StGG.⁹—the Basic Law on General Rights (which is part of the Austrian constitutional law)—states, the differentiation between recognized and non-recognized religious societies is, in practice, likely unconstitutional. As a result the Austrian constitutional court has approved several times¹⁰ the possibility to differentiate between these two bodies. The court thus gave the opportunity to the legislature to introduce the Law on the Status of Religious Confessional Communities 1998,¹¹ creating a second-class status for those groups not willing or able to meet the requirements of the Law on Recognition of Churches. Article 15 StGG., providing the right of public demonstration to officially recognized religions, has been supplemented by Article 9 of the European Convention on Human Rights¹² (also part of Austrian constitutional law). Due to the influence of the E.C.H.R. the right of public demonstration is extended to the religious confessional communities.¹³

The universal and most embracing status of officially recognized religious societies provides a variety of privileges not granted to other types of communities. First of all these societies are considered public corporations.¹⁴ With official recognition, religious societies get the right to administer their internal affairs autonomously and retain enjoyment of their institutions. Public authorities thus generally have no ability to legislate concerning their internal organization, although religious societies, like every other society, are subject to the general laws of the country.¹⁵

One of these internal affairs is the funding of societies. The state provides a compulsory church contributions program, which allows only the officially recognized religious societies to encash their contributions not only by means of legal proceedings but also through administrative channels. Moreover, the contributions donated to the officially recognized religious societies can be deducted for income tax purposes.¹⁶

The 1998 Law on the Status of Religious Confessional Communities¹⁷ introduced the possibility for non-recognized communities to apply for the status of religious confessional communities. As stated before, these groups do not enjoy fiscal and educational privileges and rights. Until September 30, 2011, every religious group had to prove a 20-year period of existence of which at least ten had to be as a religious confessional community in order to be an officially recognized religious society.¹⁸ As an additional request for full recognition, § 11 (1) of the Law on the Status of Religious Confessional Communities imposes a minimum number of members proportional to the entire Austrian population (2 percent of the population, or approximately 16,000 members). This limit is widely criticized as violating the principle of equality before the law, since only four of the 14 officially recognized religious societies meet this membership requirement.

Entities not achieving the status of religious associations are not without some advantages. For example, societies constituted as religious confessional communities are legal entities (but not public corporations) and have some rare incentives concerning public acts and funding.

Religious education

The fundamental right to freedom of religion includes the parents' right to educate their children according to their own religious beliefs. This right must be seen in context with the children's right to freedom of religion and the state's mission to educate its citizens.¹⁹

The right of children's religious education is approved by the Law of the Religious Education of Children.²⁰ However, governmental measures concerning children's religious education may harm the parents' right to freedom of religion.²¹

Child education and the appointment of the confessional membership need mutual consent of the child's legal guardians. If this consent fails, the law prohibits a one-sided change of the previous confessional membership as well as deregistration from religious instruction at school. In these cases it is necessary to take legal action against the other legal guardian to change the child's confessional membership.²²

With appropriate sagacity the law accords to the child the right of self-determination in religious affairs. Austria provides a system of various levels dependent on the child's age: at the age of ten children must be heard at court if one parent wants a one-sided change of confessional membership. By the age of 12 the law prohibits a change of the child's confessional membership without the child's agreement. Religious maturity is accorded at the age of 14; children are then free to access or discharge religious communities on their own. Furthermore, children have the right to abandon compulsory courses of religious education at that age.²³

Kindergarten

Legislation and execution concerning the kindergarten system is the business of the Laender (the nine federal subdivisions of Austria).²⁴ One of the kindergarten's principles is to support the parents with their family education. Some Laender have introduced the possibility for officially recognized religious societies to provide religious education in public kindergartens (up to one hour a week).²⁵ Other Laender only offer the right of short visits to kindergartens by an agent of officially recognized religious societies in accordance with the kindergarten's principal.²⁶

The installation of religious symbols in kindergartens is in general dependent on the children's main religion (these regulations may differ from Land to Land). Financing is assured by aliquot contributions from the Laender and the parents. Admission to public kindergartens is open to everybody without distinction of birth, sex, race, status, class, language, or religion.²⁷ However, private kindergartens may restrict admission to a specific confession or language. Additionally, they obtain financial aid from the Laender.²⁸

Public schools

Until the middle of the nineteenth century the school system was dominated by the Catholic Church. In the second part of the nineteenth century a significant change toward a more liberal school legislation took place.²⁹ Due to the ambitions of the social democrat party, the identity of schools as either public or Catholic was abolished and a new interconfessional school was established. The officially recognized religious societies were obliged to hold their religious instruction lessons under the state's overall school responsibility. During the so-called "Stän-

Georg Königsberger and Louis Kubarth

destaat” era,³⁰ a kind of counter-revolution back to the hegemony of the Catholic Church found its way into the Austrian legal system. The legislation changed once more when Austria was annexed to the German Third Reich in 1938. The recovered hegemony of the Catholic Church was broken again and the school system underwent a very radical deconfessionalization.

After World War II, Austria returned to the tradition of the late nineteenth century. The discussion about church and state was not as forceful as in the years before. The social democrat party and the Austrian people’s party, governing in coalition, eventually found a compromise concerning the school system and enacted a large-scale school reform in 1962.³¹ As a consequence, Austria came to a more liberal international law treaty with the Holy See.³² Due to the increased majorities in the national council that were necessary to change the school system, these laws have not been significantly modified up to the present day.³³

Parents’ right to educate their children is now the counterpart to the state’s school responsibility and the inherent mission to instruct at schools. This mission is duly enshrined in the school organization act.³⁴ According to this act the school’s purpose is to take part in the children’s development in accordance with moral, religious, and social values.³⁵ The religious component remains an integral part of the public school system. Furthermore, value-oriented education is a component of every school subject; the religious instruction of the officially recognized religious societies has to be integrated within the overall school education principles.³⁶ To assure the legal validity of this school system, increased majorities in the national council are necessary to change the respective regulations.³⁷

Supervisory authorities are established in each Land and at the Federation. They consist—among others—of agents of religious societies.³⁸

The right to offer religious instruction in public schools is exclusively granted to officially recognized religious societies.³⁹ This differentiation is widely considered as discriminating, particularly since the legislator introduced the religious confessional community status in 1998. Nevertheless, some excuse this regulation, saying that this privilege can only be granted to well organized groups with respective capacities and a feasible number of pupils (which are actually requirements to achieve the status of an officially recognized religious society). It must be stated that a considerable number of already recognized societies do not fulfil these requirements. However, the right to provide religious instruction ranges even further: the officially recognized religious society does not only provide instruction, but also administers the entire educational content and religious curricula, and the instructive methods, and even selects the teachers.

For a considerable time there has been a discussion about the adoption of “ethics” as a compulsory subject for pupils who are not members of any officially recognized society or who have signed off from religious instruction. The main argument is that the lack of instruction about values must be compensated for those pupils. For this reason, in 1997 a first attempt commenced in eight schools with compulsory “ethics” for those pupils who would not attend religious instruction. Today there are approximately 200 schools with ethics instruction. The fact that these lessons are mostly held by Catholic teachers of religion is criticized vehemently. The feeble argument for this practice is that only the students of theology at the universities have attended the necessary lectures. Consequently it is possible that a pupil who has signed off from religious instruction courses is now instructed in ethics by the same teacher as before.⁴⁰

Financing religious instruction in public schools is the task of the state, which has not only to provide the respective infrastructure,⁴¹ but also to implement the administration for the lessons. The religious instruction curricula are created by the officially recognized societies. The teaching aids and textbooks must be in tune with and adjuvant to both civic education⁴² and the Christian doctrine.⁴³ A problem in this context is the absence of a review of the material by the state.

Religious education teachers at public schools can either stand in a contractual relationship to the state (under the law of obligations as well as in a civil service relationship) or in a contractual relationship to an officially recognized religious society.⁴⁴ Regardless of which contractual connection has been selected, the right to develop the *missio canonica*—the certificate of qualification—remains with the recognized society. The salaries are more or less always the responsibility of the state.⁴⁵

The legal instruments designed to control religious education are rather weak. The supervisors who exercise surveillance over religious education are authorized by the respective recognized religious society and—again—paid by the state. In addition, these supervisors have to be religious education teachers too.⁴⁶ According to the Austrian constitutional court,⁴⁷ responsibility for disciplinary authority is incumbent upon the recognized religious society, as long as the teacher stands in a contractual relationship to it.

Private schools

As the right to found establishments for instruction and education is approved to every “national” who has furnished in legally acceptable manner proof of his qualification,⁴⁸ this basic right can be claimed by religious confessional communities and private persons too.⁴⁹ Private schools are given legal force to create their own curricula, dispense recognized diplomas, or organize approved exams. Even though there is no distinction concerning the right of founding private schools, this principle is not preserved regarding the school’s funding.

Private schools run by officially recognized societies have the legal claim to financial support—be it by means of allocated staff or monetary support.⁵⁰ This differentiation is technically a violation of the principle of equality before the law, even though the constitutional court of Austria denies this.⁵¹ The fact that it is possible to found confessional private schools does not necessarily mean that every other school is a non-confessional school. Far from it! Those schools not dedicated to a certain confession have to be considered as inter-confessional schools⁵² and thus replenish the service provided by public schools. There is no reason for any difference concerning the funding of confessional schools run by officially recognized societies or non- or inter-confessional schools.⁵³

As school attendance is based on a contract under the law of obligations, private schools are free to levy tuition fees.⁵⁴ They may select their pupils according to their faith or language and can introduce new reasons for dismissal.⁵⁵

Conditions to be employed as a teacher at private schools are Austrian (or an EU-country’s⁵⁶) citizenship, the proved qualification, and the official permission to teach. The respective supervisory school authority has to be informed about the employment and can prohibit it within one month if these conditions are not fulfilled.⁵⁷

Notes

- 1 Census of population 2001, <www.statistik.at/web_de/statistiken/bevoelkerung/volkszaehlungen_registerzaehlungen/bevoelkerung_nach_demographischen_merkmalen/022885.html> (March 12, 2010).
- 2 Juriatti, “Kirchenstatistik Österreich, Katholikenzahlen leicht rückläufig,” <www.kath-kirche-vorarlberg.at/organisation/pressebuero/artikel/kirchenstatistik-katholikenzahlen-2009-leicht-ruecklaeufig> (March 12, 2010).
- 3 Evangelical census 2009, <www.evangel.at/kirche/zahlen-fakten> (March 12, 2010).
- 4 *Wiener Zeitung*, August 5, 2009, 12.
- 5 Marik-Lebeck, “Die muslimische Bevölkerung Österreichs: Bestand und Veränderung 2001–2009,” in *Islam in Österreich* (Jada/Vogl, 2010), 5.

Georg Königsberger and Louis Kubarth

- 6 Since 1874 the Law on Recognition of Churches, *Federal Law Gazette* 68/1874, arranges the recognition of religious societies. The Catholic Church, the Evangelical Church, the Greek Orthodox Church and the Jewish community were regarded as already recognized. Since 1874 the recognition is generally based on the special laws mentioned earlier. Today the following religious communities are officially recognized: Old Catholic Church (1877), Islam (1912), United Methodist Church (1951), Mormonism (1955), Armenian Apostolic Church (1972), New Apostolic Church (1975), Buddhism (1983), Syriac Orthodox Church (1987), Coptic Orthodox Church (2003), Jehovah's Witnesses (2009).
- 7 Introduced by the 1998 Law on the Status of Religious Confessional Communities, *Federal Law Gazette* I 19/1998, as amended in *Federal Law Gazette* I 84/2010. Today the following are recognized as religious confessional communities: Bahà'I Faith (1998), Baptists (1998), Union of Evangelical Congregations in Austria (1998), Christian Community (1998), Free Christian Congregation/Pentecostalism (1998), Hinduism (1998), Seventh-day Adventist Church (1998), Mennonite Church (2001), Church of God/Pentecostalism (2001), Elaia Christian Congregation (2006), Alevist religious community in Austria (2010).
- 8 2002 Law on Associations, *Federal Law Gazette* I 66/2002 as amended in *Federal Law Gazette* I 58/2010.
- 9 Staatsgrundgesetz (StGG.)—Basic Law of December 21, 1867 on the General Rights of Nationals in the Kingdoms and Laender represented in the Council of the Realm, *Federal Law Gazette* 142/1867 as amended in *Federal Law Gazette* 684/1988.
- 10 VfSlg. 17.021, VfSlg. 16.998.
- 11 Refer to note 7 herein.
- 12 E.C.H.R.—Art II Z 7 B-VG Novelle 1964, *Federal Law Gazette* 59/1964 as amended in *Federal Law Gazette* I 2/2008.
- 13 Grabenwarter, "Die Korporative Religionsfreiheit nach der Menschenrechtskonvention," in FS Rüfner (2003), 147.
- 14 Walter/Mayer/Kucsko-Stadlmayer, *Bundesverfassungsrecht*¹⁰ (2007), Rz 1452 ff.
- 15 Berka, *Lehrbuch Verfassungsrecht*² (2008), Rz 1448.
- 16 Einkommensteuergesetz (EstG.) – Income tax act, § 18 (1) Z 5 EStG., *Federal Law Gazette* 400/1988, as amended in *Federal Law Gazette* I 94/2010.
- 17 Refer to note 7 herein.
- 18 VfGH. G 58/10 ua: with its sentence of September 25, 2010, the Austrian constitutional court has decided that these two respites are unconstitutional. They violate Articles 9 and 14 of the E.C.H.R.
- 19 Article 2, Protocol 1 to the E.C.H.R.
- 20 Bundesgesetz über die religiöse Kindererziehung (RelKEG.)—Law on Religious Education of Children, *Federal Law Gazette* 155/1985 as amended in *Federal Law Gazette* I 191/1999.
- 21 Kalb/Potz/Schinkele, *Religionsrecht* (2003), 327.
- 22 § 2 (2) RelKEG.
- 23 Religionsunterrichtsgesetz—Act on religious instruction, § 1 (1) RelUG., Exceptions § 1 (3) RelUG., *Federal Law Gazette* 190/1949 as amended in *Federal Law Gazette* 256/1993. Kalb/Potz/Schinkele, *Religionsrecht*, 336.
- 24 Bundes-Verfassungsgesetz (B-VG.)—Austrian Constitution, Art. 14 (4) lit b B-VG., *Federal Law Gazette* 1/1930 as amended in *Federal Law Gazette* I 57/2010.
- 25 For instance, Lower Austria (§ 26 Nö KindergartenG.) and Vorarlberg (§ 11 (5) Vbg. KindergartenG.).
- 26 For instance, Burgenland (§ 3 (7) Bgld. KindergartenG.).
- 27 Article 14 (6) B-VG. This is extended to schools and after-school care clubs.
- 28 The specific regulation is in the competence of each Land.
- 29 Primarily Article 17 StGG. and the School-Church-Law 1868.
- 30 From 1934 to 1938 Austria was constituted as an authoritarian corporative state supported by the Catholic Church.
- 31 Bundes-Schulaufsichtsgesetz—Federal school supervisory act 1962, *Federal Law Gazette* 240/1962 as amended in *Federal Law Gazette* I 25/2008. This law referred the allocation of rights and duties to the Federation. Today the school system is dominated by the Federation and not by the legislations of the Laender.
- 32 Kalb/Potz/Schinkele, *Religionsrecht*, 341ff.
- 33 Art. 14 (10) B-VG.: Presence of at least half the members and by a two-thirds' majority of the votes cast.

- 34 Schulorganisationsgesetz (SchOG.)—School organization act 1962, *Federal Law Gazette* 242/1962 as amended in *Federal Law Gazette* I 44/2010.
- 35 § 2 SchOG.
- 36 Kalb/Potz/Schinkele, *Religionsrecht*, 346 f.
- 37 Refer to note 32 herein.
- 38 The number depends on the amount of members of the religious communities.
- 39 Article 14 StGG.
- 40 Kalb/Potz/Schinkele, *Religionsrecht*, 370.
- 41 Regarding the discussion on whether the state has to provide crucifixes in classrooms refer to: Brünner/Neger, “Country Report Österreich,” in *Religion—Staat—Gesellschaft* (RSG.) 2011.
- 42 § 2 (3) RelUG.
- 43 Vertrag zwischen dem Heiligen Stuhl und der Republik Österreich zur Regelung von mit dem Schulwesen zusammenhängenden Fragen (Schulvertrag)—School Treaty, Art. I § 5 (2) Schulvertrag, *Federal Law Gazette* 273/1962.
- 44 Potz/Schinkele, *Religionsrecht im Überblick* (2005), 120 f.
- 45 Kalb/Potz/Schinkele, *Religionsrecht*, 368 f.
- 46 Kalb/Potz/Schinkele, *Religionsrecht*, 370.
- 47 VfSlg. 2507/1953.
- 48 Art. 17 (2) StGG.
- 49 Kalb/Potz/Schinkele, *Religionsrecht*, 347.
- 50 Privatschulgesetz—Private school act, § 17 (2) PrivSchG., *Federal Law Gazette* 244/1962 as amended in *Federal Law Gazette* I 71/2008.
- 51 VfGH. 27. 2. 1990, B 1590/88.
- 52 Kalb/Potz/Schinkele, *Religionsrecht*, 389 f.
- 53 This point of view is affirmed by the statement of the European Commission of Human Rights—E.C. H.R. 7. 2. 1994, Appl. 23419/94.
- 54 § 5 SchOG. does not apply.
- 55 Schulunterrichtsgesetz—Schools instruction act, § 33 (8) SchUG., *Federal Law Gazette* 142/1986 as amended in *Federal Law Gazette* I 52/2010.
- 56 Article 18 Treaty on the functioning of the European Union (T.F.E.U.).
- 57 § 5 (6) PrivSchG.

Religious education in Azerbaijan

*Rashad Ibadov*¹

This chapter examines the relationship between religion and public education in Azerbaijan. In this regard, the analysis is aimed at the secularization process in Azerbaijani society, drawing particular attention to the concept of religious freedom both in constitutional and in other normative contexts, describing the relationship between religion and the state, construing the place of religion in public education, and examining the challenges and problems of religious education in the public education system of Azerbaijan.

The majority (about 93 percent) of the population of Azerbaijan adheres to Islam,² or is brought up under a secularized form of the Islamic tradition.³ Indeed, Azerbaijan is not a homogeneous religious society: there are other minority religions, primarily Orthodox Christians and Jews; in addition, there are congregations of Evangelical Lutherans, Roman Catholics, Baptists, Molokans (Russian Orthodox Old-Believers), Seventh-day Adventists, and Baha'is, who have lived in Azerbaijan for more than 100 years. Moreover, in the last ten years, a number of new religious groups considered foreign or non-traditional have been established, including "Wahhabi" Muslims, Pentecostal and Evangelical Christians, Jehovah's Witnesses, and Hare Krishnas.⁴

In this regard, it is possible to observe in Azerbaijan the coexistence of both secular and Islamic values, in all spheres of the public domain, including public education. Accordingly, in order to understand the nature of this coexistence, it is important to briefly examine the process of secularization in Azerbaijan.

Religion in social and historical contexts

Although the majority of Azerbaijanis adhere to Islam, Azerbaijan enjoys substantial secularity in almost all spheres of society. The process of secularization in Azerbaijan has had an interesting path, which can be divided into four periods. The first period is characterized by the mass Russian invasion of Azerbaijan at the beginning of the nineteenth century. The second period covers the collapsing years of the Empire of the Tzars and the two independent years of the Azerbaijan Democratic Republic (1918–20). The third period began with the Soviet invasion of Azerbaijan in 1920 and, finally, the fourth period refers to the years following the collapse of the Soviet

Union, when Azerbaijan regained its independence. Each of these periods has its own historical characteristics and legal implications for the process of secularization in Azerbaijani society.

The process of secularization in Azerbaijan starts with the emergence of quasi-secular public schools, which appeared during Russia's persistent presence in the Caucasus. As a result, various gymnasiums and schools were established wherein the natural sciences became an important part of the curriculum while, for the first time, women were allowed to attend school together with men.

In this period, another social factor that played an important role in secularization is related to European education. Many pioneers, who later became famous intellectuals of Azerbaijan, pursued their higher education in famous European universities; the fact itself had a tremendous effect on the secularization process in Azerbaijani society, not least through the establishment of educational, social, and cultural links between European cultures and the culture of Azerbaijan.⁵

As a result of the effective work of these intellectuals and existing Russian and European influences, secular education was integrated into school curricula in 942 elementary schools and 32 high schools by 1915.⁶ Some 2,000 students out of a total of 24,000 were girls.⁷

In the second stage, which roughly covers the period 1905–20, many intellectuals played a remarkable role in the formation of the Azerbaijani nation and its identity. The publication of numerous political newspapers in Azerbaijani and Russian had reached its peak. The prime national identity slogan changed from *being Muslim* into *being Turkish*.

Indeed, the culmination point for this period was the adoption of the Declaration of Independence of the Azerbaijan Democratic Republic (A.D.R.) by the National Council on May 28, 1918. Although the Declaration did not specifically mention the separation of religion from the state, it included modern concepts of statehood, such as democracy, friendly foreign relations, and non-discriminatory protection of all civil and political liberties of its citizens as the cornerstone principles of the A.D.R.⁸

The third period coincides with 71 years of Soviet rule, which were characterized by the imposition of a new so-called "religion"—communism, onto Azerbaijani society. Indeed, the Soviet models of communism and socialism were strongly built on materialism, atheism, "social equality" and "distributive justice." During this period, many mosques, churches, and synagogues were destroyed, thousands of religious ministers were executed, atheism was heavily propagated, while natural sciences—along with Marxism and Leninism—were taught at all levels of public education.

Each of these facts had an effective impact on the repudiation of religion, the transposition of religious beliefs and institutions, the privatization of religion, and the separation of ideas, beliefs, and attitudes in Azerbaijani society.

The fourth period includes the years following 1991, where religion–state relations have been maintained under the principles of neutrality, equality, and the protection of fundamental rights. More precisely, the new Constitution holds religion to be separate from the state; it recognizes basic religious freedoms and ensures the equality of all religions before the law.

Furthermore, Azerbaijan has ratified a number of key international conventions, such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, among others, which should strengthen and sustain the liberal principles mentioned above.

Finally, this period is characterized by enormous integrative steps and events, on Azerbaijan's path toward becoming a member of the democratic world. In this regard, Azerbaijan became a member of the Council of Europe, the O.S.C.E., the European Court of Human Rights, and, recently, it has taken part in the European Neighborhood Policy program.

Rashad Ibadov

Religious liberty and religion-state relations in the legal context

Constitutional overview

The fundamental religious liberties and the principles regulating religion-state relations in Azerbaijan have been set out in Articles 7 (the State of Azerbaijan), 18 (the Freedom of Conscience), and 48 (Religion and the State) of the Constitution,⁹ and by the Law on the Freedom of Religious Belief.¹⁰

In this regard, the constitutional provision asserting the separation of religion from the state is proclaimed in Article 7, which provides that “Azerbaijan is a democratic, legal, secular and unitary republic.”¹¹ This norm should primarily be interpreted in conjunction with Articles 18 and 48 of the Constitution, where the specificities of secularity are set out. Accordingly, Article 18 reaffirms the principle of separation, recognizes the equality of religions before the law, prohibits religious propaganda mortifying human dignity, and establishes public education as secular. Correspondingly, Article 48 acknowledges and guarantees freedom of conscience, freedom to profess or not to profess any religion, freedom to express and spread one’s belief, and freedom to perform religious rituals.

Furthermore, Articles 25 (right to equality), 56 (electoral right), 71 (protection of rights and liberties of citizens and non-citizens), 76 (defense of the Motherland), 85 (requirements for the deputy candidates of the *Milli Majlis* of the Republic of Azerbaijan), and 89 (nullification of the deputy status of deputies of *Milli Majlis* and deprivation of competences of deputies of *Milli Majlis* of the Republic of Azerbaijan) of the Constitution ensure a certain degree of religious liberty, but at the same time place procedural restrictions on electoral rights.¹²

The Law on the Freedom of Religious Belief¹³

Although the Law on the Freedom of Religious Belief is considered to be the fundamental and comprehensive legislative act aimed at ensuring religious liberties, it mainly regulates the relationship between religious organizations (or communities) and the state (Article 5), including the establishment of state registration mechanisms for religious organizations (Article 12) and a state body that would execute indirect control over religious organizations or communities (Articles 28, 29) established in Azerbaijan.

Articles 1 and 21 of the Law guarantee fundamental religious liberties of individuals, although they leave aside a number of important religious freedoms, namely the manifestation of religion in public educational institutions, religious holidays, place and time for religious rituals during the working hours in working places, display of symbols, days of rest, wearing of distinctive clothing or head coverings, and the like.

Article 5 of the Law lays down the fundamental principles that govern the relationship between the state and religious organizations. Specifically, it first stipulates that religion is separate from the state in the Republic of Azerbaijan; second, it ensures the equality of religions before the law; and third, it maintains the neutrality of the state toward all religions.

Finally, for the purpose of ensuring the religious freedoms set out in Article 48 of the Constitution and the objectives of the Law on the Freedom of Religious Belief, the State Committee for Cooperation with Religious Associations¹⁴ (hereinafter the Committee) was established by a presidential decree in 2001. Paragraph 1 of the Regulations of the Committee emphasize that the Committee is the central executive authority that shall “put into practice the state policy in the field of religious activity, observe the principles of the law on the religious

institutions and coordinate the activities of the relevant executive authorities related to the religious institutions.”¹⁵

Religion in public education

In Azerbaijan, formal public education is primarily composed of pre-school, elementary, secondary, and high schools.¹⁶ According to the Constitution of Azerbaijan, elementary and secondary education is compulsory.¹⁷ Higher education is mainly provided by public universities and specialized academies and institutions, although some private universities are also leading in this regard. Furthermore, the Law on Education also provides for other types of formal education, such as initial vocational education, secondary special education, retraining education, or secondary special education.

The principles governing religion and public education are primarily set out in Articles 18 and 42 (right to education) of the Constitution of Azerbaijan, in Article 6 of the Law on the Freedom of Religious Belief, and in Article 3 of the Law on Education.

Article 18.3 of the Constitution declares that “in the Republic of Azerbaijan, state education is secular.”¹⁸ In this respect, the Constitution of Azerbaijan is one of few among the members of the Council of Europe that has a direct reference to the secularity of public education. Complementing the strict nature of secularity, Article 6.1 of the Law on the Freedom of Religious Belief confirms that, in the Republic of Azerbaijan, state education is separate from religion.¹⁹ Furthermore, Article 3 of the Law on Education declares secularity as one of the fundamental principles of state policy in education.

While these norms prove that public education is heavily based on secular principles, Article 42.1 of the Constitution, which provides, “every citizen has a right to education,”²⁰ and paragraphs 2 and 3 of Article 6 of the Law on the Freedom of Religious Belief provide limited possibilities for individuals who aspire to get religious education within public schools. According to Article 6 .3 of the Law, “citizens have the right to study theology and receive religious education in any language, individually or together with others.”²¹ In lieu of this normative assertion, the condition of “citizenship” originates a similar problem already addressed. In this regard, only *citizens* can benefit from this opportunity. It seems that non-citizens, including lawful residents, are not entitled to religious education under the conditions set out in Article 6.3 of the Law.

The most fundamental provision with respect to religious education in public schools is found in Article 6.2 of the Law, which provides: “Theological, religious and religious-philosophical subjects, as well as introduction to the bases of sacred-cult books may be included into the educational programs of state educational institutions.”²² Although this provision may have legal importance for future developments with regard to religious education in public schools, heretofore it has been a dead letter. The reality is that no course teaching religion has ever been introduced in a public educational institution (except some state universities) of Azerbaijan since its independence in 1991. Nevertheless, Article 6 still lacks substantive rights and obligations with regard to religious education in public schools. The first problem is related to the exemptions from religious courses, if such courses are provided in public schools. Under international law, states are allowed to provide instruction of a particular religion in public education, provided they grant an exemption or accommodate other alternatives for those who do not believe in the particular religion or belief being taught. The Law on the Freedom of Religious Belief, including Article 6, does not entitle students to such an exemption for religious courses. In general, the right to receive full or partial exemption from religious courses has been left out from this law.

Rashad Ibadov

Another legal obligation that is absent from the Law is to create a favorable and non-discriminative environment for those students who are exempted from the instruction of a particular religious course. This is a state obligation deriving from the case law of the European Court of Human Rights, whereby states are under an obligation to create a favorable and non-discriminative environment within public schools for exempted children.

As was mentioned before, in public education in Azerbaijan the instruction of a particular religion or a course related to the history of religion and mankind has not been included in public school curricula, although the state may decide to do so under international law. Even if it were organized, the instruction of a particular religion in public schools must be carried out together with the Ministry of Education and the State Committee for Cooperation with Religious Associations. In this regard, paragraph 9.12²³ of the Regulations of the Committee enables the Committee to participate in the preparation of educational programs, teaching manuals on the basis of religious study, history of religion, religious-philosophical subjects, and holy religious books. This provision clearly outlines how the instruction of any religious course would fall under the strict scrutiny of authoritative state bodies, even if the state decided to allow them. These regulations do not provide any further guidelines in this regard. There are some important questions that need to be answered: for instance, who else or which religious institutions could possibly participate in the preparation of religious courses? Who could be entitled to teach? How should the textbooks be prepared?

The situation of religious education in public universities is fairly different. For instance, at Baku State University, the main university in Azerbaijan, there is a faculty of theology that trains professionals in Islamic theology and the Arabic language. The curriculum of the faculty primarily provides courses on Islam and philosophy, namely: Holy Quran, History of Islam, Sociology of Religion, Ethics of Islam, Philosophy of Islam, Philosophy of Religion, Hadith, Islamic Law, Logic, and so on.

Religious schools and religious education

The main laws governing the place of religion in public education that have been examined so far demonstrate that religion and religious education are quite distant from public education in Azerbaijan. More possibilities for religious education can be established within the religious organizations, which include religious centers, departments, communes, brotherhoods, and religious educational institutions.²⁴ In this regard, Article 6.4 of the Law on the Freedom of Religious Belief recognizes the right of religious organizations to provide religious education and it reads as follows: "Religious organizations, in accordance with their charters and relevant requirements of legislation, may create educational institutions to provide religious education for children and adults."²⁵ This provision sets a legal framework for religious education. All types of religious organizations (centers, departments, communes, brotherhoods) may benefit from this right. The Regulations for Administering the Courses Studying Sacred Books, adopted by the State Committee in 2008, vaguely imply that the provision in Article 6.4 primarily includes the right to organize religious courses on sacred books.²⁶ According to the Regulations, the Committee has a wide range of options in controlling these courses. The courses on Islam can be taught only by citizens of Azerbaijan who obtained their religious education in Azerbaijan, while courses on other religions can be taught by citizens of Azerbaijan, although the tutors may be educated abroad.²⁷

However, broader possibilities for receiving religious education can be organized by religious centers and departments.²⁸ Article 10.1 of the Law, for instance, permits *only* religious centers and departments to create religious educational institutions for the purposes of training (or

preparing) religious ministers and personnel for various religious professions.²⁹ Religious educational institutions must obtain a license from the relevant state body to operate, while individuals studying in these institutions have the same rights and responsibilities recognized for students studying in public schools.³⁰

Conclusion

As discussed above, the Azeri model of religion–state relations is heavily based on the principle of strict separation. The historical explanation of the process of secularization has shown how secular values were strongly established in the public domain of Azerbaijan, including public education. Nevertheless, this should not mean that religion does not play an important role in Azerbaijani society; on the contrary, the revival of religion in Azerbaijan is progressing rapidly. From the theoretical point of view, the Azerbaijani government is neutral on or equidistant from all religions and beliefs within society. In practice, it is also true that Islam as a religious institution has a natural advantage as the majority of Azerbaijanis adhere to Islam.

The overview of the Constitution and other laws has shown that religion and religious education are quite distant from public education in Azerbaijan. More possibilities for religious education can be found in religious organizations, although such education remains strictly regulated by governmental authorities.

It is submitted that the revival of religion in Azerbaijan, the country's geostrategic position in the Caucasus, the development of various religious and fundamentalist trends, and economic development, in combination with other socio-economic factors, will positively compel the Azerbaijani state to introduce a religious course in public schools in the near future.

Notes

- 1 thank Elena Miroshnikova for her academic support, and Veljko Milutinovic and Axelle Reiter for reviewing this paper.
- 2 The presence of Islam in Azerbaijan dates back to the seventh century, when the Arabs occupied Azerbaijan. For more information, see Ziya Bünyadov, *Azərbaycan VII-IX əsrlərdə* (Elm, 1965. *Azərbaycan dilinə tərcümə*, Azərnaşr, 1989); see also Vəlixanlı Nailə, *ərəb Xilafəti və Azərbaycan* (Bakı: Azərbaycan Dövlət Nəşriyyatı, 1993).
- 3 The Azerbaijani society has followed a particular and unique path to secularization over the last three centuries. In this regard, one of the most important periods was the secularization process imposed under Soviet rule. Soviet ideology and its secularization model affected to a large extent the life of Muslims under its rule. This is one of the main reasons why the majority of people in Azerbaijan adhere to Islamic values and identify themselves as Muslims, while remaining at the same time secular. For more information on the religious composition in Azerbaijan, see Raoul Motika, "Islam in Post-Soviet Azerbaijan," *Arch. de Sc. soc. des Rel.*, 2001, 115 (July–September 2001), 112; See also Charles van der Leeuw, *Azerbaijan: A Quest for Identity, A short History* (Curzon Press, 2000).
- 4 *International Religious Freedom Report 2006*, released by the Bureau of Democracy, Human Rights, and Labor, <www.state.gov/g/drl/rls/irf/2006/71368.htm> (last visited: April 10, 2010).
- 5 Altay Goyushov, "From the History of Secularization Process in Azerbaijan Society," *State and Religion* (November, 2006), 71.
- 6 *Ibid.*, 79.
- 7 *Ibid.*
- 8 "Declaration of Independence of the Democratic Republic of Azerbaijan, 28 May, 1918," <www.azembassy.ro/eng/news/press_releases/035.htm> (last visited: December 2, 2008).
- 9 This translation of the Constitution of the Republic of Azerbaijan has been downloaded from the official website of the Constitutional Court of the Republic of Azerbaijan.
- 10 Law on the Freedom of Religious Belief (1992).
- 11 The Constitution of the Republic of Azerbaijan, Article 7 (The State of Azerbaijan).

Rashad Ibadov

- 12 For instance, Articles 56, 85, and 89 place certain restrictions on religious ministers in relation to electoral rights, membership of Parliament, and nullification of membership of Parliament.
- 13 Law on the Freedom of Religious Belief (1992).
- 14 The State Committee for Cooperation with Religious Associations was founded by a decree of the President of the Republic of Azerbaijan in 2001. The Decree of the President of the Republic of Azerbaijan, N: 512, June 21, 2001.
- 15 Regulations of the State Committee for Cooperation with Religious Associations (2001), para.1, <http://dqdk.gov.az/eng/esasname_e.html> (last visited: April 20, 2008).
- 16 more detailed classification of the forms and types of education in Azerbaijan is included in Articles 8, 12, 13, and 14 on the Law on Education (2009) of the Republic of Azerbaijan.
- 17 Constitution of the Republic of Azerbaijan, Article 42.2 (Right to Education).
- 18 Constitution of the Republic of Azerbaijan, Article 18.3 (Religion and the State).
- 19 Law on the Freedom of Religious Belief (1992), Article 6.1 (Relationship between Religion and Schools).
- 20 The nature of Article 42.1, which declares that every “citizen” has a right to education, brings about a fundamental legal problem. The educational rights enshrined in the Constitution and Laws are only granted to citizens. In this regard, the language of Article 42 contravenes the nature of the right to education protected in International Human Rights Conventions and the General Comments of the United Nations supervisory organs and their case law, as well as the constitutional interpretation of the right to education in modern democratic states. Under international human rights law, states are obliged to provide education for everyone. In this respect, the Azerbaijani government is bound by Article 26 of the Universal Declaration of Human Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights, which explicitly obliges states to guarantee education for everyone. The term “everyone” is explained in General Comment 13 of the Committee on Economic, Social and Cultural Rights: namely, educational institutions and programs have to be accessible to everyone, without discrimination, within the jurisdiction of the State. In contrast, the Constitution of Azerbaijan only gives access to public education to its citizens; a condition further reiterated in Article 5 of the Law on Education.
- 21 Law on the Freedom of Religious Belief (1992), Article 6.3.
- 22 Law on the Freedom of Religious Belief (1992), Article 6.2.
- 23 The Decree of the President of the Republic of Azerbaijan on the Ratification of the Regulations of the State Committee for the Work of Religious Associations (2001), paragraph 9.12.
- 24 Law on the Freedom of Religious Belief (1992), Article 7 (Religious Associations).
- 25 Article 6.4 (Relationship between Religion and Education).
- 26 Regulations Administering the Courses Studying Sacred Books (2008), paragraph 1.7, <www.scwra.gov.az/view.php?lang=az& menu = 206& id = 618> (last visited: January 5, 2011).
- 27 Regulations Administering the Courses Studying Sacred Books (2008), paragraph 1.5.
- 28 The definition of religious centers and departments is not clear in this Law. The only example that comes to mind is the Caucasian Islamic Center, which should unite all Islamic religious organizations in Azerbaijan.
- 29 Law on the Freedom of Religious Belief (1992), Article 10 (Religious Educational Institutions).
- 30 Article 10.3 (Religious Educational Institutions).

Religious education in Bangladesh

Mahmudul Alam

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Nehraz Mahmud

Demographics of Bangladesh

General context of economy/society and constitutional provisions

Bangladesh is a low-income (developing) country with a population of more than 150 million people. The economy is mainly agriculture dependent (about 65 percent of the population lives directly or indirectly on the sector) and, as a corollary, an overwhelming number of its people are tradition-bound. About 75–80 percent of the population live in rural areas. Bangladesh is a market-based economic system. The values and aspirations enshrined in the Constitution are basically liberal (social-democratic) and therefore Euro-centric. People in general are religious. The state has honored the religious values of its citizens and has attempted to guarantee religious liberty in the Constitution.

According to Clause 17 of the Constitution the state will ensure mandatory and free general public education for all children up to a level denominated by law. The aim of the education system, by this clause, is to build up properly trained and well-intentioned citizens. Clause 28 (1) of the Constitution says that the state shall not discriminate against any citizens on grounds of religion, race, caste, sex, or place of birth. In Clause 28 (2) it is stipulated that no citizen shall, on the grounds of religion, race, caste, sex, or place of birth be subjected to any disability, liability, restriction, or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

Regarding religious freedom, Clause 41 (1) (a) states that every citizen has the right to profess practice or propagate any religion, and Clause 41 (1) (b) states that every religious community or denomination has the right to establish, maintain, and manage its religious institutions. More importantly, Clause 41 (2) states that no person attending any educational institution shall be required to receive religious instruction, or take part in or attend any religious ceremony or worship, if the instruction, ceremony, or worship relates to religion other than his own.¹

Mahmodul Alam, A.T.M. Shaifullah Mehedi and Nehraz Mahmud

Present socio-cultural composition

Bangladesh is a Muslim-dominated and Bengali-speaking country. According to the population census of 2001 (B.B.S.)² the percentage of religious population in the country was as follows: Muslims—89.7 percent, Hindus—9.2 percent, and other religions—1.1 percent. Figure 6.1 presents a more detailed analysis of population by religion as well as by years.

Figure 6.1 demonstrates quite clearly that the percentage of Muslims has grown in Bangladesh, whereas the percentages of other religious communities have either gone down or remained almost the same. The communities other than Muslims, Hindus, and Christians are important; they inhabit the sensitive areas of the Chittagong Hill Tracts, parts of the north-eastern greater districts of Sylhet and Mymensingh, and the northwestern division of Rajshahi. These communities are often referred to as “Adivasis” (so-called original tribes) and they have distinct dialects (significantly different from Bangla) and cultural practices.

Historical evolution of religious education

The madrassa or Islamic religious school system was established through the Deoband Madrassa in 1867 in colonial India. This religious education system has not only been directed to provide moral and theological teachings but also played an important socio-political role in uniting the Muslim community in British India. Many Islamic scholars, political leaders, and social elites were produced through the madrassa system. The trend of madrassas playing more than an educational role has continued in independent Bangladesh as well.

According to Ahmad (2004) the madrassas in South Asia teach a curriculum known as Dars-i-Nizami. This curriculum was written by Mullah Nizamuddin Sihalvi, a scholar of Islamic jurisprudence and philosophy in Lucknow. There exists another curriculum introduced by Mullah Nasiruddin Tusi through the Madrassa Nizamia established in Baghdad in the eleventh century. Sunni madrassas, which include variations such as the Deobandi, Bareilvi, or Ahl-i-Hadith, usually follow the standard Nizami curriculum established by the Deoband seminary in 1867.³ However, in recent years, Muslim religious education in Bangladesh has seen significant

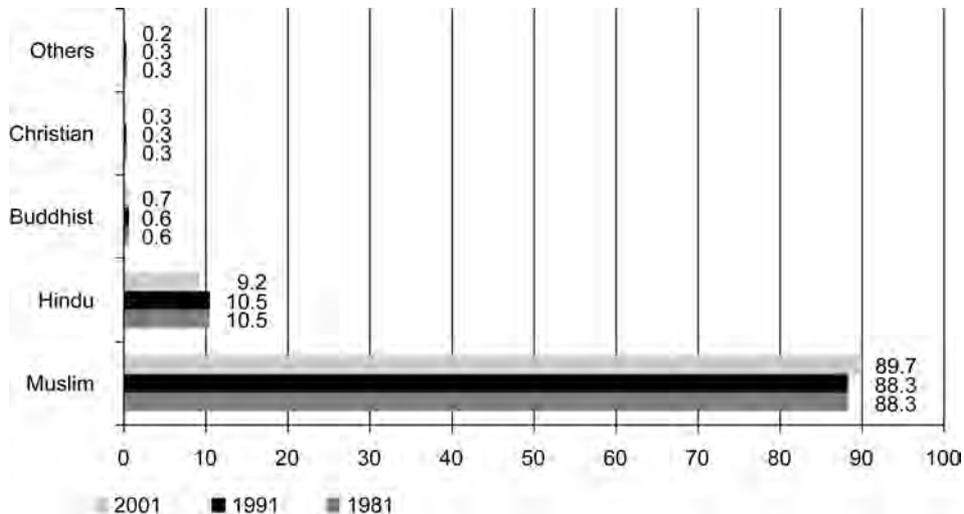


Figure 6.1 Population of Bangladesh by religious category, 1981–2001
 Source: Population census 2001, 1991 and 1981

changes in syllabus and teaching methods. There has been a continuous effort to make it more scientific and comparable to other parallel systems of education existing in the country.

Legal context of Islamic education

General rules for Islamic education in the late 1970s

The Islamic education of Bangladesh is regulated by the Madrassa Education Ordinance of 1978. According to this ordinance “madrassa” means a traditional religious institution of Islamic learning and includes Furqania Madrassa, Ibtedayee Madrassa, Dakhil Madrassa, and Alim Madrassa. “Madrassa Education” means education pertaining to Ibtedayee standard, Dakhil standard, and Alim standard and it includes reading of the Holy Quran, Islamiat, humanities including Arabic language and literature, Islamic history, general history, Bengali language and literature, science, commerce, agriculture, industry, military science, health education including physical education, and various other types of technical and special education.

Moreover, there are policies on manpower structure and government contribution to the salaries of the teachers of private madrassas. All madrassas, whether public or private, need to be registered under the Madrassa Board.

Bodies for regulating and administering religious (Islamic) education

As Sattar has pointed out, there have been several government plans to modernize madrassa education since the 1980s. During these periods it was decided that English, Bengali, science, and mathematics would be introduced within the system side by side with Islamic subjects and languages. This was a principal means for madrassas to receive government recognition and subsequently qualify for financial assistance for teachers' salaries. All the Islamic religious schools registered with a government board are known as “Aliyah” madrassas; the private or non-government madrassas belong to the *Quomi* education board.⁴

According to a survey prepared by the Bangladesh Bureau of Educational Information and Statistics (BANBEIS), more than 5,000 Quomi madrassas exist in Bangladesh, most of which are run by 19 private (educational) boards. Each of these boards has two regulatory bodies, one an advisory body and the other an executive body. Some of these madrassas, however, have individual bodies running them. The Quomi madrassas account for only 1.9 percent of the total primary enrolment and 2.2 percent of the total secondary enrolment.⁵ All of these madrassas are privately funded.

Alongside these prominent streams, mosque-based religious education systems also prevail in Bangladesh. This system is mainly segmented into standards called “quaida” and “Quran.” The syllabus of this system mainly includes training to read the Quran correctly; other subjects are more or less ignored and this system has no equivalence or recognition in the national education system.

In 1978 the Madrassa Education Board was formed under Ordinance for the Modernization of Madrassa Education. Humanities and science subjects were immediately included in the Alim level and, in 1980, the Alim level was given the standard Higher Secondary Certificate (H.S.C.) level. Subsequently in 1985 the Dakhil level was given the educational equivalence of the Secondary School Certificate (S.S.C.) These are significant reformative decisions by the state and their implementation has brought about positive developments in the Islamic (madrassas) stream of education. The aim of the state's madrassa-related educational policy is to bring convergence between the mainstream (secular-type) and the madrassa stream at the secondary level and

Mahmudul Alam, A.T.M. Shaifullah Mehedi and Nehraz Mahmud

beyond. With this purpose in view, the state has allowed/facilitated the introduction of modern (Western/Eurocentric) subjects such as humanities, business, sciences, technical education (mainly) at the Dakhil (S.S.C), Alim (H.S.C), Fazil (first degree) and Kamil (second degree) levels. In terms of course content and curriculum, the subjects follow the corresponding courses/subjects taught at the mainstream (equivalent) tiers.

From 1979 onward the situation evolved and the Madrassa Education Board, the central administrator/regulator of the country for Islamic education, was organized and its activities streamlined. Presently, the board performs the following key activities:

- 1 Approves the permission (recognition) for delivering education for Dakhil (S.S.C.) and Alim (H. S. C.) by any provider (institution); similarly it is responsible for renewal of any permission. The board follows the government rules in issuing permission to the madrassas. It is also responsible for permission to Fazil- and Kamil-level madrassas.
- 2 Approves the curriculum, textbooks, and lesson plans to be utilized by the madrassas, i.e. Dakhil, Alim, Fazil, and Kamil.
- 3 Conducts the annual public exams for Dakhil, Alim, Fazil, and Kamil; it also conducts Ibtedayee- (grade V) and Dakhil-level (grade VIII) scholarship exams annually.
- 4 Approves the Management Committee (MC) of the non-government educational institutions.
- 5 Approves and allocates funds (on behalf of the state) to different madrassas for organization of the scouts' movement (including boys, girl-guides, and rovers) and sports activities.

However, the Quomi madrassas still remain outside government legislation. Table 6.1 presents the number of Aliyah madrassas, showing significant growth in number over the period. The Aliyah madrassas account for 8.4 percent of total primary enrollment and 19 percent of secondary enrollment.⁶

State policies and actions in religious education, 1978–2010

Bangladesh has tried to modernize the Islamic educational stream over the last 30 years (1978–2010) by getting suggestions/recommendations from a number of educational commissions in 1978, 1997, and 2010. The recommendations were ultimately transformed into policies and concrete actions. Naturally, the changes in Islamic educational content have been reflections of the particular demands of the epoch. The major policy decisions are given below:

- 1 In 1978, the Education Commission aimed at producing socially and religiously motivated graduates from the Islamic education stream. Students enrolled in the stream were expected

Table 6.1 Bangladesh—number of madrassas by type, 1989–2003

Stage	1989	1992	2003
Ibtedayee (Grades I–V)	—	16,000	18,268
Dakhil(Grades VI–X)	—	4,000	9,206
Alim (Grades XI–XII)	—	752	1,180
Fazil(1 st Degree)	—	707	1,180
Kamil (2 nd Degree)	—	94	180
Total	13,828	21,553	30,014

Source: BANBEIS, 2011, Dhaka

Bangladesh

- to learn Holy Quran, Islamiat (i.e., Tafsir, Hadith, Fikh, Kalam, M'agulat, Fariad), humanities (including Bangla and literature, and Arabic language and literature), science and business, and technical education.
- 2 In 1997, the Education Commission deliberated mainly on Ibtedayee (primary) and Dakhil (secondary) levels. It was proposed to increase Ibtedayee schooling from five to eight years and, as a compensatory move, to reduce Dakhil (secondary) schooling from five years to two. The length of Alim (higher secondary) education was to remain the same (i.e. two years); Fazil (first degree) was to become a program of longer duration, of three to four years. Kamil (second degree) would be for one to two years. The Commission recognized the importance of technical and vocational educational (TVE) courses in the Islamic stream.
 - 3 The latest (2010) Educational Commission brought out a number of policy reforms. The Commission recommended inclusion of courses on ethics and climate change at the Dakhil level. It proposed to create opportunities for higher studies and training for madrassa teachers. It also proposed to form an Education Commission for Quowmi Madrassa, and to look into the management, course content, and other related aspects of the Quowmi Madrassas.

The Bangladesh education system also endorses religious education for other major religious communities, for example, Hindu, Buddhist, and Christian. There is a Bangladesh Sanskrit and Pali Board for Hindu religious education that offers a three-year course on Sanskrit and other religious subjects. These courses also include Sanskrit language, Prourahitta, Smriti (Hindu law), etc. However, the Bangladesh Sanskrit and Pali Board works under the Directorate of Secondary and Higher Education (D.S.H.E.). The Director General of the Directorate leads the Sanskrit and Pali Board Management Parishad as the chairman. This post is authorized by the Ministry of Education and s/he is responsible for all activities conducted under the board. It is interesting to observe that the chairman him/herself might not be a Hindu; thus his/her dedication to improve the quality of Hindu religious education might be thrown into question. The Secretary of the Board is usually an honorary member of the Management Parishad. The major institutions under the surveillance of the Bangladesh Sanskrit and Pali Board include tolls (Sanskrit schools), choupathies, and colleges. To be admitted into these courses one has to pass the S.S.C. examination. The title of "Teertha" is given after successful completion of the three-year course, which has to be completed separately for each subject. The Buddhist community in Bangladesh also has a similar system. A three-year course in Pali (Buddhist language) is offered for them and the final title after completion of the course is "Bisharad." The Buddhist religious education is also controlled by the Bangladesh Sanskrit and Pali Board. About 100 Pali Tolls exists in the country. There is a renowned Sanskrit college in Sylhet district. In the Southeastern part of Bangladesh, in the Chittagong Hill Tracts, there are several Buddhist religious schools and seminaries which are principally run by donations from community members. The Christian community in Bangladesh has Bible schools and intermediate seminaries which enroll students at the secondary level. There are also seminaries and theological colleges which admit students with H.S.C. degrees. One can obtain a bachelor's or master's degree in theology and divinity after the successful completion of the course. Church bodies pertaining to different denominations of Christianity usually run and manage these seminaries, schools, and colleges. In addition to the formal higher secondary-level religious education in Hindu, Buddhist, and Christian religions, "Dharma Shikkha," or religious studies, exists as a subject in all levels of primary and secondary education in Bangladesh.⁷

Mahmudul Alam, A.T.M. Shaifullah Mehedi and Nehraz Mahmud

Financial support for religious education

Financially, Bangladesh supports the Islamic stream of education in the country in modest terms, but regularly. See Figures 6.2 and 6.3.

In the fiscal year 2011 (July 2010–June 2011), the government allocated US \$604,000 (or Tk. 45 million) in the revenue budget for government-owned madrassas. The budget for the education sector is quite high for the year: US \$5.70 billion (Tk. 396.9 billion). When contrasted with the total (revenue) educational budget, both allocations for madrassas and (madrassa) teacher-training institutes do not seem to be that significant.

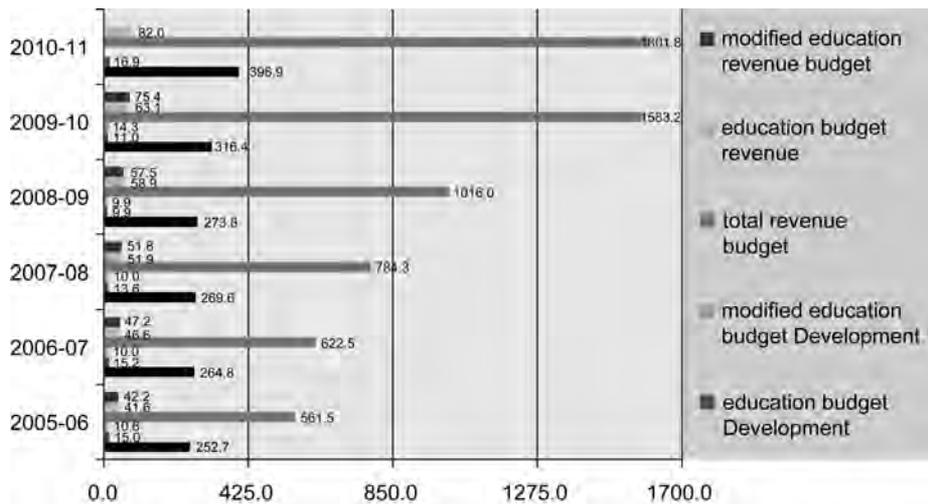


Figure 6.2 Development and revenue budget (in billion Taka; US \$1 = approx. Taka 70, 2010)
 Source: Bangladesh Bureau of Statistics—B.B.S., Dhaka, 2010

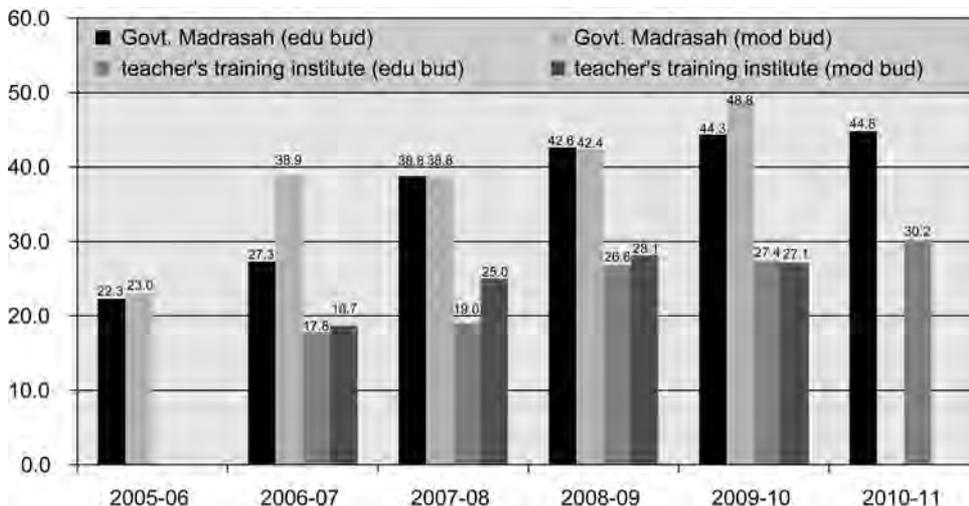


Figure 6.3 Madrasa and teacher-training institutes (in million Taka; US \$1 = approx. Taka 70, 2010)
 Source: Bangladesh Bureau of Statistics—B.B.S., Dhaka, 2010

The non-government madrassas (mainly Dakhil and Ibtedayee) get financial support from the state in the form of a Monthly Payment Order (M.P.O.); this is given as salary subventions for teachers and support staff at all state-recognized educational institutions, including madrassas. The state's financial support in terms of M.P.Os. to the non-governmental madrassas should be a significant amount, in the range of 10 to 15 percent of the education budget (revenue) of US \$5.70 billion. But the major source of Islamic educational financing is from the people at large; small donations, subscriptions, and large philanthropic foundations sustain Islamic education.

Existing approaches to religious education

Public schools

For more than two decades, the mainstream schools (teaching in the Bangla medium, almost 95 percent of them are owned by community/individuals, but receive state-subventions) teach a minimum course of religious education at the primary (grades I–V) and secondary (grades VI–X) levels. The students belonging to different religious traditions (e.g., Islamic, Hindu, Buddhist, and Christian) are given the chance to choose their religion-related course of study. In each case of religion study, the course content includes the core principles of the religion and the practical/ritual aspects of the same. The N.C.T.B. (National Curriculum and Textbook Board), on behalf of the state, develops and produces the curriculum, course content, and textbooks for each category of religion (not by denomination); and then the course is offered at the school. The religious teachers in an overwhelming number of schools (which receive state subventions) are appointed by the School Management Committee, or S.M.C., but the appointments need concurrence from the state, that is, from the Directorate of Secondary and Higher Secondary Education or D.S.H.S.E. in the case of secondary schools. The state (or D.S.H.S.E.) pays the salary for selected religious studies teachers.

Private schools

In the private schools (basically English-medium schools), the curriculum follows the same course as “O” level (and also “A” level) subjects in Britain. There are no religion courses offered as a compulsory subject. Therefore, no specialist (religion-based) teacher and funding is required in these schools.

Concluding remarks

In Bangladesh, religious educational course content maintains a significant presence even today. At the primary and secondary levels, students belonging to the mainstream study the basic elements of their religion as compulsory subjects. For the Islamic (madrassa) stream, the students have to learn Holy Quran, Hadith, Fikh, and studies related to religion as well as secular subjects such as humanities, sciences, and technical/business studies. Since 1978, state policy with regard to religious education has evolved to accommodate deep-seated religious beliefs and values in society on the one hand and to modernize religious education by increasingly combining elements of social sciences, sciences, and applied subjects on the other.

By and large the state has also made it possible for anyone studying in the Islamic stream to move to the mainstream (secular); equivalences between the two streams up to Fazil and Kamil

Mahmudul Alam, A.T.M. Shaifullah Mehedi and Nehraz Mahmud

are drawn and recognized. Now, the equivalences need to be effectively accepted and utilized by the educational institutions and the general population.

Notes

- 1 www1.umn.edu/humanrts/research/bangladesh-constitution.pdf.
- 2 See Bangladesh Bureau of Statistics (B.B.S.), *Statistical Yearbook of Bangladesh*, 2009, 48.
- 3 Mumtaz Ahmad, "Madrassa Education in Pakistan and Bangladesh," in *Religious Radicalism and Security in South Asia*, eds. Satu Limaye, Robert Wirsing, and Mohan Malik (Asia-Pacific Center for Security Studies: Honolulu, 2004).
- 4 Abdus Sattar, *Bangladesh madrasa shikhhka o samaj jibone tar provab (Madrassa Education in Bangladesh and Indications in Social Life)* (Islamic Foundation: Dhaka, 2004).
- 5 Asadullah Mohammad Niaz and Nazmul Chaudhury, *Religious Schools, Social Values and Economic Attitudes: Evidence from Bangladesh*, Working Paper no. 139, World Bank, December 2006.
- 6 Ibid.
- 7 www.banbeis.gov.bd/es_bd.htm.

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Religious education in Belgium

Fabrice Martin and Willy Fautré

The teaching of religion in Belgian schools cannot be understood without some basic knowledge about the ideological pillars of the state, the relations between religions and the state, and the various power levels of the state and the evolution from a unitary to a federal Belgium.

The historical pillars of the state

Since the creation of the Kingdom of Belgium in 1830, the main pillars of the political, social, and cultural structures have been rooted in three fundamental historical cleavages: the opposition between the right-wing and left-wing political groups,¹ their conflicting philosophical orientations (secularist or religious), and last but not least the divisions among the linguistic communities.

These three pillars are the main components of a typically Belgian institutional engineering system called the “pillarization” of the state. Their intertwining follows a dynamic the balance of which is constantly influenced by the changing role of the various societal actors: the secularist left-wing and right-wing political parties; Christian-democrat right-wing and center-left parties; the Flemish- and German-speaking communities who are more impregnated by the Catholic culture; and the French community advocating secularism.

Relations between religions and the state

The relationship between the state and religion in Belgium is rooted in the principle of state recognition of religions and worldviews.² After Belgium gained independence from the Netherlands in 1830, Catholicism, Protestantism and Judaism³ enjoyed de facto state recognition based on the official status granted to them under French rule (1795–1814). Anglicanism was recognized in 1835. Islam followed in 1974 and Orthodoxy in 1985.

Moreover, the philosophical worldview named “laïcité” (secular humanism) has indirectly enjoyed state recognition under the name “Conseil central laïc/ Centrale Vrijzinnige Raad” (Central Secular Council) since the last revision of the Constitution in 1994, as Article 181, § 2 then stated that the wages and retirement pensions of the secular moral advisers providing moral assistance were to be paid by the state.⁴

Fabrice Martin and Willy Fautré

The Syriac Orthodox Church (in 2005) and Buddhism (in 2006)⁵ requested the status of state recognition. Their applications are being processed and have already been announced to be successful.

There are no legal or constitutional criteria for granting state recognition. In 1985, Jean Gol, then Minister of Justice,⁶ said in an answer to a parliamentary question that the following criteria were taken into consideration: the membership of the religious community (several tens of thousands), its historicity, and its utility for society. However, his considerations were never enshrined in a law.

The religious and belief communities that are not recognized by the state are legally registered as non-profit associations and fully enjoy freedom of religion or belief.

Brief history of the Belgian school system and religious education

In 1830, the Belgian revolution against Dutch rule (1815–30) was mainly the work of the Catholics and of a middle class supporting economic and political liberalism, the Liberals. The drafting of the Constitution was the result of a pragmatic but unnatural alliance between Catholics and Liberals. The parties of this alliance had very deep divergences on a number of issues, including school education. The Liberals wanted to centralize the school system in the hands of secular public powers, but the Catholics were fiercely opposed to such a project (emergence of the first pillar, “secularists versus Catholics”).

The Constitution stemming from the Belgian revolution laid the foundation of a specific concept of a school system that was put in place in the framework of the mutual independence of state and religion.⁷

The fight for supremacy between the Liberal and the Catholic concepts was quickly engaged. Due to the limited financial means of the young state (notably because of the prioritization of national defense), few public schools could be created. However, Catholic primary and secondary schools, including Jesuit colleges, started mushrooming.

The “De Theux Law” of September 27, 1835 shed some light on the tensions between public schools and Catholic schools and highlighted the necessity of a compromise, a policy which has characterized the history of Belgium up to now. This law promulgated the creation of a state institution named “jury central,” the duty of which was the management and the recognition of academic degrees as well as the setting of norms for state-recognized diplomas.

On their side, the Catholics made sure that state schools provided a form of religious education similar to the one in denominational schools.

The law of September 23, 1842 made religious instruction mandatory at the primary level and authorized all “religious ministers” to give this instruction in state schools. As usual, Catholics benefited the most. Government officials were so well disposed that, in the 1840s, they virtually gave the Catholic clergy control over education in elementary schools. The growth of the religious orders also made possible a rapid expansion of Catholic secondary schools so that, by 1845, two-thirds of the high schools were operating under Catholic auspices.⁸

First school war

From 1846 to the end of the nineteenth century, “unionism”⁹ between the Liberals and the Catholics collapsed and strong tensions erupted again between both parties. Several laws were promulgated and then abolished according to the orientations of the various successive governments, parliamentary inquiries, and rationalizations of the state public schools and Catholic

schools (not without serious collateral damage sometimes; about 900 teachers in public schools were dismissed during one of those skirmishes).

The school policy then went through a phase of radicalization and secularization:¹⁰ reduction of the number of recognized denominational schools and multiplication of schools run by municipalities.¹¹

Through the “Provision” of June 1, 1850, the state created a series of secondary schools: ten “athénées royaux” and 50 “écoles moyennes.”¹² Religious instruction was on the agenda and religious ministers were “requested” to organize it. However, the bishops refused to participate in the implementation of this law and qualified the state public schools as “godless schools.”

From 1870 to 1878, the comeback of a government dominated by the Catholics put an end to the expansion of state schools and enabled Catholic schools to reconquer the lost ground. In 1878, the Liberals came back to power and put at the head of the Ministry of Public Instruction a notoriously anticlerical politician, Pierre van Humbeeck: diocesan inspectors lost their grip on schools run by the municipalities; Catholic municipal schools lost both their status and the state financing.¹³ The Law of 1879 (Article 4) provided that religious education was left to the families and religious ministers and that a classroom would be made available for religious classes before or after school hours. Compulsory ethical, neutral, and non-dogmatic classes were introduced.

Intolerance reached a climax between 1881 and 1886, during what was called the “first school war.”

Truce

The Law of May 19, 1914 stressed the compulsory and free character of school education. The head of the household had to make sure that his children were educated according to the legal provisions. A new principle was introduced which has been maintained up to now: the head of the household was granted the right to choose among a public school, a denominational school, or even homeschooling.¹⁴

The Law of November 13, 1919 stopped making a distinction between public schools and denominational schools as far as state financing was concerned. A directive of Minister Jules Destrée motivated by the will of Liberal and Socialist circles to introduce an ethics class gave a civic dimension to the mission of public schools.

After World War I, a number of parameters would change in the various political debates. A limited form of universal suffrage¹⁵ was introduced. This resulted in the necessity for the various political clans to put in place coalition governments (some sort of forced pacification).

The Law of 1934 confirmed the easing of tensions and led to the creation of public secondary schools.¹⁶

Second school war

In the 1950s, the school war flared up again when the issue of the financing of Catholic schools was raised. Indeed, their fast development necessitated an increase in their financial means and the decision of Minister Pierre Harmel (Christian Democrat) to grant them a huge additional amount¹⁷ reopened the hostilities. Concerning the opening and the recognition of denominational or state schools, he set up “mixed advisory commissions” composed of representatives of Catholic and public schools.

The same (left wing–right wing) “pillarization” phenomenon re-emerged between 1950 and 1958 through two antagonistic movements. During the period 1950–54, a government

Fabrice Martin and Willy Fautré

dominated by the Christian Democrats took initiatives in favor of Catholic schools, while in the period 1955–58, a government led by a coalition of Socialists and Liberals implemented diametrically opposite policies.¹⁸

The school pact

The school pact¹⁹ negotiated and adopted by the three main political parties (Liberal, Socialist, and Christian Democrat) was meant to stabilize and pacify the situation. Even now, it remains the main landmark to which the various educational policies refer.²⁰

Concerning religious classes in public schools run by municipalities, the law put an end to the influence of the Catholic clergy and provided for religious classes and non-denominational ethics classes in public schools run by the state.

Article 4 guaranteed the parents' right to choose their school,²¹ either public or denominational, and stipulated that two hours per week had to be devoted to religious or ethics classes in state public schools. It also stated that religious classes were to be taught by a minister of a state-recognized religion or a specifically trained teacher and controlled by inspectors appointed by the religious authorities. As to the class of non-denominational ethics, it was to be taught by teachers of general subjects having followed an additional specific training.

Transfer of the school education competences to the linguistic communities

In the 1970s–80s, the third pillar began to emerge with increasing strength, with the cleavage between the Flemish and the Francophone populations. The radicalization of the ethnic identities revealed wider and wider fractures between the two main linguistic communities. Five general reforms of the state institutions led to the creation of a federal state. The third major reform (1988–89) provided each linguistic community with competences in the area of school education. Each community then developed or redefined the norms of the school pact concerning religious education.

The Royal Decree of October 25, 1971 fixed the status of the teachers and inspectors of religious classes in public schools. It became a source of inspiration for the three communities although some differences appeared with the passing of time. The community governments delegated to the religious authorities the duty of proposing candidates who fulfilled the norms defined in Article 4 of the said Decree, § 1: to have Belgian citizenship or the citizenship of an EU member state; and § 5: to be a religious minister or to have the requested academic degrees or diplomas.

The current federal structures of the state and school education

Belgium is a federal state with a federal parliament, three regional parliaments and governments (Flanders, Wallonia, and Brussels-Capital), and three community parliaments and governments (the Flemish Community, the French Community, and the German Community).²² This double federalism (territorial federalism and community-based federalism) is a unique example in the world.

The country has been divided into four language regions (three monolingual and one bilingual): the Flemish Region (about six million inhabitants), the Walloon Region, (about 3.3 million inhabitants), the German-speaking Region (about 70,000 inhabitants living in nine municipalities of the Walloon Region), and the bilingual Region of Brussels-Capital (about one million inhabitants).²³ The 1962–63 language laws fixed the boundaries of the linguistic regions.

After several reforms of the Belgian state in the last 20 years, competences for many policy areas were transferred from the federal level to the regions or the communities. This was the case for school education, which was entrusted to the parliaments and governments of the three linguistic communities.

In each linguistic community, public schools at all levels are under the authority of municipalities or provinces, or the communities themselves; denominational schools are almost exclusively Catholic, apart from a few Jewish, Protestant, and Anthroposophic schools, and recently one Islamic primary school.

Norms regulating philosophical classes in the three linguistic communities

On the occasion of the July 15, 1988 revision of the Constitution, school education was transferred to the Flemish, French, and German-speaking communities of Belgium, but remained bound to Article 24 protecting all ideological, philosophical, and religious orientations of the parents and the students. The communities can control the quality of the teaching, but any interference in the contents of the curriculum is prohibited under Articles 19 and 21 of the Constitution which guarantee the autonomy of religions.²⁴

In the three linguistic communities, providing philosophical classes is an obligation.²⁵ The education authorities of the Catholic schools have the right to train their staff, to appoint the teachers and the inspectors,²⁶ and to determine the content of the curriculum. When a teacher is dismissed by his/her religious educational authority, he/she can only appeal the decision through the mechanism of his/her own religious hierarchy, if there is any.²⁷

However, each community may have a different sensitivity in its decrees and orders.

*In the French community*²⁸

- 1 The class of non-denominational ethics is considered neutral. Unlike the religious classes, the staff is not proposed by a specific philosophical group; its inspectors are treated in the same way as their colleagues in charge of other subjects (history, geography, and so on) and are submitted to the same rules.
- 2 Students *must* participate either in religious classes (state-recognized religions) or in non-denominational ethics classes.²⁹ The choice is the parents' or the students'.
- 3 Inspectors and teachers of religious classes are proposed by the representative bodies of the state-recognized religions to and appointed by the Minister of Education of the government of the French Community.³⁰
- 4 During the religious classes, the wearing of religious symbols is authorized both for teachers and their students. They are however forbidden for teachers in all public schools outside the religious classes. As far as the students are concerned, the ban is applied in public schools run by the French Community but is left to the discretionary power of the educational authorities of the public schools run by the municipalities and provinces.

In the German-speaking community

The German-speaking community, which comprises a small population (around 70,000 people) partly implements the rules in force in the French community. The inspection work is however allotted not to full-time inspectors but to delegates proposed by the representative bodies of the

Fabrice Martin and Willy Fautré

state-recognized religions, who go on teaching part-time and fulfill their inspection mission part-time while being paid on the basis of specifically defined criteria.³¹

*In the Flemish community*³²

- 1 The class of non-denominational ethics is based on a specific worldview—secular humanism—which is not the case in the French community. Their inspectors are therefore treated according to the same rules as their colleagues teaching religious classes, while in the French community they are subjected to the same norms as their colleagues in charge of other subjects.
- 2 Considering the secular humanism underpinning the non-denominational ethics classes and the freedom of choice of the parents, it is possible to opt out of the philosophical classes (whether religious or ethics classes), which is again not the case in the French community. This is particularly important for families whose religion is not recognized by the state: Jehovah's Witnesses, Mormons, or new religious movements.³³ Children with a different religious background can bring to school the material related to their religion and learn it by themselves during the philosophical classes.
- 3 Religious or philosophical symbols are forbidden in the schools run by the Flemish community, but the ban is left to the discretionary power of the educational authorities of the public schools run by the municipalities and provinces.
- 4 In the last pedagogical decree, no final or development objective is fixed for the philosophical classes. There is therefore no link between the general pedagogy fixed by the Flemish community and the specific objectives of the philosophical classes.³⁴
- 5 It is forbidden for a teacher to take a day off on religious grounds (i.e., Muslim or Jewish festivals)³⁵ but he/she can request a holiday motivated by a religious festival if he/she fulfills the conditions of access to an “unpaid holiday.”³⁶
- 6 Primary and special schools can freely fix two days off per school year. In schools where there is a more specific religious majority, these days can coincide with their religious festivals.

Notes

- 1 Throughout the nineteenth century until the 1970s, the dominant party was usually the Christian Democrats, and coalition governments were habitually formed by them together with Liberals and Socialists.
- 2 State recognition opens the door to the financing of religions and worldviews by various public powers: salaries and pensions of the clergy, maintenance of the places of worship, and so on.
- 3 At that time, there were only about 1,000 Jews and 5,000 Protestants (3,000 were foreigners) in Belgium.
- 4 The inclusion of this Article was not legally necessary because the state budget already provided for an annual subsidy to the representative body of secular humanism which was used for the salaries and the pensions of the secular moral advisers in the army (Law of February 18, 1991). However, it cannot be denied that the inclusion of Article 181, § 2 grants a certain constitutional recognition to secularism and an enhancement of its status, including outside Belgium.
- 5 modest budget has already been put at the disposal of the common representative body of the various Buddhist associations.
- 6 Religious affairs are under the authority of the Ministry of Justice.
- 7 See Article 17 of the Constitution of February 7, 1831.
- 8 Roger Aubert, in *History of the Church*, eds. Hubert Jedin and John Dolan (New York: Crossroad, 1981), 7:303.

- 9 The beginnings of unionism can be traced back to December 13, 1825 (under Dutch rule) when Baron de Gerlache, the Catholic leader in the upper house of parliament, called for freedom of education. This was an appeal to the Liberals. Despite their conflicting agendas and mutual suspicion, both sides decided that they hated the Dutch Government more than they hated one another.
- 10 A. Erba, *L'Esprit laïque en Belgique sous le gouvernement libéral doctrinaire (1857–1870) d'après les brochures politiques* (Leuven, 1967), 399–472.
- 11 Revision of the Law of 1842 on primary instruction.
- 12 An “athénée royal” provides education to students aged 12–18 years and an “école moyenne” to students aged 12–15 years.
- 13 Law of July 1, 1879.
- 14 Decision no. 85/98 of July 15 about the financing of a Steiner school.
- 15 Universal suffrage replacing the voting system based on the poll tax was granted to men above the age of 21 years. It was only open to women in 1948.
- 16 The quantitative restrictions of the 1884 Law were hereby removed.
- 17 Pierre Harmel (Minister of Education 1950–1954) increased the wages of teachers in Catholic schools and also linked the subsidies to the number of pupils.
- 18 See <www.crisp.be/vocpol}gthan}.
- 19 See Law of May 29, 1959. Article 3 states that school education must be open to anybody without any discrimination.
- 20 The law was mentioned in the revised constitution of 1988 which stresses the neutral character of the school system but also the right for philosophical or religious classes to be provided.
- 21 Article 4 of the Law provided that a student’s choice can be revised every year and that, at the age of 18, a youth can choose his/her school. The Royal Decree of March 14, 1960 specified that parents must be able to find a public school or a denominational school within a radius of 4 km. They can revise their choice every year.
- 22 Belgium has a population of about 10 million inhabitants. It consists of 10 provinces and 589 municipalities: 308 in Flanders, 262 in Wallonia, and 19 in the Brussels–Capital Region.
- 23 The official language is Dutch in the Flemish Region, French in the Walloon Region, and German in the German-speaking Region.
- 24 Constitutional Court, Decision no. 18/1993 of March 4, 1994.
- 25 See Article 24 of the Constitution of February 17, 1994.
- § 1:
- Education is free; any preventative measure is forbidden; the repression of offences is only governed by law or decree.
 - The community offers free choice to parents.
 - The community organizes neutral education. Neutrality implies notably the respect of the philosophical, ideological, or religious conceptions of parents and pupils.
 - The schools organized by the public authorities offer, until the end of school obligation, the choice between the teaching of one of the recognized religions and non-denominational moral teaching.
- § 2:
- If a community, in its capacity as an organizing authority, wishes to delegate competency to one or several autonomous bodies, it can only do so by decree adopted by a two-thirds’ majority vote.
- § 3:
- Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of school obligation.
 - All pupils of school age have the right to moral or religious education at the community’s expense.
- 26 Right from the beginning, the role of the priests was a determining factor, but because of dechristianization and the increasing difficulty in recruiting new religious ministers, a new generation of lay teachers emerged. Slowly but ineluctably, the content of the classes moved away from pure catechesis and the teaching of dogmas to a search for some meaning in life, with references to other religions or philosophical worldviews.
- 27 Council of State, Decision of April 29, 1975, Van Grembergen, no. 16.993, with a note of R. Versteegen, *Tijdschrift voor Bestuurswetenschappen en Publiekrecht*, 1976, 237; Council of State, December 20, 1985, Van Peteghem, no. 25.995.

Fabrice Martin and Willy Fautré

- 28 In the French-speaking part of Belgium and Brussels, 306,096 pupils were attending primary schools in the school year 2007–2008: 129,267 were enrolled in Catholic schools; 149,200 in public schools run by municipalities; 830 in provincial public schools; and 26,799 in public schools run by the French community.
During the same school year, 344,528 students were attending secondary schools: 207,830 in Catholic schools; 81,003 in public schools run by the French Community; 32,129 in provincial public schools; and 23,566 in public schools run by municipalities. Source: <www.statistiques.cfwb.be/publications/pub0001/2007/documents/version_etic.pdf>.
- 29 See Article 5 of the March 31, 2003 Decree defining the neutrality principle in the French community as modified by the June 2, 2006 Decree: “The teachers of the recognized religion classes and ethics inspired by these religions as well as the non-denominational ethics classes inspired by free thinking, shall refrain from denigrating the positions expressed in the other classes.” The same Article also specifies that all these classes are treated on an equal footing.
- 30 Royal Decree of October 25, 1971 as modified by the Decree of March 10, 2006, Chapter 7, Article 31.
- 31 Decision of the Constitutional Court of February 25, 2010.
- 32 In the Dutch-speaking part of Belgium and Brussels, 380,221 pupils were attending primary schools in the school year 2009–2010: 240,326 were enrolled in Catholic schools; 86,403 in public schools run by municipalities; 238 in provincial public schools; and 53,254 in public schools run by the Flemish community.
During the same school year, 431,439 students were attending secondary schools: 325,673 in Catholic schools; 72,846 in public schools run by the Flemish community; 13,629 in provincial public schools; and 19,291 in public schools run by municipalities. Source: <www.statistiques.cfwb.be/publications/pub0001/2007/documents/version_etic.pdf>.
- 33 On May 14, 1985, the Council of State authorized a family of Jehovah’s Witnesses not to enroll their daughter in a religious class or a secular humanism class on the grounds that both free thinking and other religious doctrines were conflicting with their own beliefs (Court decision Sluijs). In the wake of this decision, 400 Jehovah’s Witnesses requested to be exempted from such classes. (See “Ils sont 400 à être dispensés,” *Le Soir*, March 3, 1986.)
- 34 Decree of January 18, 2002.
- 35 Decision of the Flemish Government of April 17, 1991.
- 36 Decision of the Flemish Government of August 31, 2001.

Religious education in Brazil

Evaldo Xavier Gomes

Since obtaining its independence from Portugal in the early nineteenth century, Brazil has been a secular state with a rich religious composition. There are special laws that assure classes of religious education in public schools, although some limits are imposed. In the last few years there has been an intense debate on the secular character of the state and the maintenance of religious education in public schools.

Social and religious demographics of Brazil

The 2010 census presents a Brazilian population of 190,732,694.¹ The majority (84 percent) of the population live in urban areas. There is a strong imbalance in the distribution of the population across Brazil. São Paulo, Rio de Janeiro, Minas Gerais, and Espírito Santo, the four states forming the Southeast Region, which corresponds to 10.85 percent of the national territory, are concentrated, with 42.1 percent (80,353,724 persons) of the total population. Among the states, the federation São Paulo has the largest population, with 41,252,160. In the last few years Brazil's economy has experienced a strong growth rate, which makes Brazil one of the strongest economies in the world.²

The religious panorama of the country has changed radically in recent decades.³ In 1960 Roman Catholics claimed 93.1 percent of the total population, but by the year 2000 the percentage had decreased to 73.8 percent. The decline in the number of Catholics corresponds to parallel growth of other religious groups, mainly of evangelical Protestants, which claim 15.4 percent (26.2 million) of the population in the year 2000.

Church-state relations

Catholicism, the religion of the Portuguese empire, had a strong influence in the formation of the Brazilian nation and society. The Catholic Church deeply influenced art, culture, law, education, and other fields. This influence has been prominent since the discovery of Brazil by the Portuguese explorer, Pedro Álvares Cabral, on April 22, 1500. The independence from Portugal did not mean a change in the special relationship between church and the state in Brazil, as the privileges and status granted to the Catholic Church were not altered.

Evaldo Xavier Gomes

During the monarchy, since independence from Portugal in 1822 until the adoption of the republican regime in 1889, Catholicism was the official religion of the country. The empire of Brazil inherited the Portuguese system of church-state relations, of the “padroado,” which governed church-state relations during the colonial period (1500–1822). Under this system the Catholic Church was the official religion of the state, but to the imperial government was given the power to appoint bishops to Brazilian dioceses and all the main ecclesiastical authorities, and create parishes. Under the “padroado” regime all decrees and norms of the Holy See could be applied in Brazil, but only if they were approved by the emperor.

The first Brazilian Constitution of 1824 declared (Article 5) that “Roman Catholic Apostolic Religion will continue to be the Religion of the Empire.”⁴ Adherents of all other religions were allowed to meet, but only privately and without the benefit of church or temple structures. The Imperial Constitution expressed the desire of the Brazilian government to continue the same church-state system that prevailed during the entire colonial period. Actually, Dom Pedro I, the first Brazilian emperor, who proclaimed the independence of the country, claimed that the Holy See should accord Brazil the same privileges granted to Catholic monarchies across Europe. Finally the Holy See (Pope Leon XII) granted the privileges required by the Brazilian empire in 1827 with the bull, “Praeclara Portugaliae Algarbiorunque Regnum.”

Church-state separation in Brazil

In 1889 with the proclamation of a republic, a policy of separation between church and state was adopted.⁵ On January 7, 1890, only two months after the adoption of the republican regime, the new government issued Federal Decree N° 119-A, signed by Deodoro da Fonseca, the first Brazilian president, by which the “padroado” was abolished (Article 4) and all its “institutions, resources and privileges.” Consequently, all confessions were given the right of freedom of religion and association (Articles 2 and 3). Decree N° 119-A set up the basis for the new Brazilian policy on church-state relations. Under this norm the state could not establish or forbid a religion or discriminate on the basis of religion. One of the more important consequences of Decree 119-A was the recognition of the juridical personality of all religions, which enabled religious groups to acquire and manage their own properties, including temples (Article 5).

Indeed the first republican Constitution of 1891 definitively established the separation between church and state in Article 72, §§ 3 and 7.⁶ These provisions provided that public education should be secular (Article 5, § 6). Thus, since the first republican Constitution in Brazil there has been separation between church and state and state neutrality on religious education. Indeed, all following constitutions of 1934,⁷ 1937,⁸ 1946,⁹ 1967,¹⁰ and 1988 adopted the same principles.

In today’s constitutional context, church–state separation is specified in Article 5, § 6 of the Federal Constitution of 1988,¹¹ which also assures rights like the right to religious assistance (n. VII) and the inviolability of political rights for religious reasons (n. VIII); in addition it adopts the principle of non-discrimination against religious believers (n. XLI). The first republican Constitution recognizes the right of all religious communities to associate freely (Articles 5 and 19, § I) and at the same time prohibits state funding of churches and religious communities. This Constitution forbids any kind of state support, establishment, or funding to any church or religious organization. An exception, however, is recognized with respect to activities of cooperation between church and state in the public interest (Article 19).¹²

Even if separation between church and state is assured, the religious practice of the people is guaranteed by the recognition of rights like freedom of religion and conscience, protection of places of worship, freedom of association and to create churches, religious assistance in civil and

military institutions, recognition of civil effects to civil marriage, and collaboration between state and religious communities.

Religious education in public schools

Brazilian law guarantees religious education in public schools. In 1946 the Law on Rural Education assured the inclusion of religious education in all rural schools.¹³ By this law religious education classes became the responsibility of the ecclesiastical authorities. More recently, in 1996, the Law on Regulation of Education (*Lei de Diretrizes e Bases da Educação*—L.D.B.) recognized the right of all students to have optional classes of religious education in public schools.¹⁴ The Federal Constitution of 1988 reproduced almost the same rule in Article 210, § 1.

Under Article 33 of the Law of Regulation of Education, religious education in Brazilian public schools:

- 1 is an optional and not a mandatory discipline;
- 2 is considered part of the citizen's basic instruction;
- 3 is a discipline of the regular curricula of public schools; and
- 4 must reflect the religious diversity of the country.¹⁵

The same law forbids any form of proselytism in religious classes.¹⁶ Under the Brazilian political and administrative system, public education rules are generally the same for all cities and states. Nevertheless, they all have the right to create their own education system and to define the contents and rules regarding religious education.¹⁷ In case of conflict, federal legislation prevails.

One of the main characteristics of Brazilian law is respect for freedom of religion. For this reason, federal legislation on education provides that religious classes should not be mandatory for students, but rather a free choice of each student or their parents following their conscience and beliefs. Always respecting the free will of each student and their families, the state offers the possibility of enrolling in religious education classes or not.

Religious communities and institutions have a primary role in religious education in public schools. They have direct influence on the content of courses and the duty to organize the teaching, including establishing the qualifications of teachers.¹⁸

In the face of the lack of a specific qualification for teachers of religion, the Federal Council of Education¹⁹ established some minimal requirements for the qualification of teachers:

- 1 graduation as a medium-level professor;
- 2 pedagogic knowledge required by the law; and
- 3 having a license in any field of knowledge.

These are basic requirements for the national level;²⁰ moreover, state and municipal authorities may require additional qualifications.

Brazilian law does not define religious teaching. In legal texts we find descriptions, characteristics, and competences, but never a true definition. An attempt to give a definition of religious education was made by the National Council of Education in its Opinion no. 05/97:²¹

Religious education is understood as the space opened by public schools to allow the students, as an option, to have an initiation or to develop in one specific religion. From this point of view, only the churches, individually or in association, will be able to accredit

Evaldo Xavier Gomes

their own representatives to occupy this space as an answer to students' demand in a specific school.

Another important instrument for religious education, even if it lacks normative character at national level, is the document "National Curriculum for Religious Education" (*Parâmetros Curriculares Nacionais de Ensino Religioso*),²² written by a private citizens' association, named Fórum Permanente do Ensino Religioso.

An example of legislation in this field in state law is Law no. 3459, of the State of Rio de Janeiro,²³ which addresses the establishment of courses of "confessional" religious education in public schools in its territory. This law applies the principle of freedom of religion and belief, and at same time protects the right of the students, and their parents and tutors, to have classes of religious education according to their beliefs.

The significant aspect of this law is that it establishes confessional religious education, but without privileging any specific confession, while keeping the possibility of choosing among all the different confessions of the students of state educational institutions.²⁴

Religious education and the 2008 agreement with the Catholic Church

The only confession to have a special agreement with the Brazilian government is the Catholic Church, which signed the Agreement between the Federative Republic of Brazil and the Holy See on the legal status of the Catholic Church in Brazil, on November 13, 2008. This agreement includes special provisions relating to religious education. Specifically, Article 11 of the agreement provides:

Catholic Religious Education and that of other religions, is a discipline of optional registration and of the regular curriculum of public schools in primary education, keeping respect for the cultural and religious diversity of Brazil, in accordance with existing laws and without any form of discrimination.

The 2008 Agreement with the Holy See gives no special privileges or advantages to the Catholic Church. It makes no distinctions between Catholicism and other confessions. The effort to provide for equality among all religious groups is evident in the text of the agreement.²⁵

Jurisprudence on religious education

Each state of the federation has the freedom to apply the Constitution in those educational institutions under its own jurisdiction. This local application of the constitutional norm at different political levels has been object of considerable jurisprudential attention.

In an appeal at the Court of Justice of the State of Rio de Janeiro, the court determined that State Law no. 3459/2000, which included ecumenism as part of the content of religious education classes, was not in conflict with the Constitution. In its decision the court stated that ecumenism is a "form of coexistence and interfaith collaboration" and is not in opposition with any confession. In the same decision the court held that specific requirements to hire religious education teachers do not amount to discrimination between different religions. The Court of the State of Rio Grande do Sul²⁶ held that State Law no. 11.830, which establishes that public and private schools of the State of Rio Grande do Sul should adapt their calendar to holy days of all religious groups present in the territory of the state, violates the federal Constitution.

Current issues

In recent years there has been a strong debate on the harmony between the constitutional norm that assures religious education in public schools and the secular character of the state.²⁷ Consequently, in February 2001, the Municipal Council of Education (*Conselho Municipal de Educação*—C.M.E.) of the town of Rio de Janeiro, unanimously approved an opinion stating that religious education must not be in the curriculum of educational institutions, neither as a compulsory or an optional subject, due to the secular character of public schools.²⁸ Another troublesome issue pertains to the conflict between creationism and Darwinism. Some schools are still teaching creationism theories in their classes.²⁹ Clear guidelines are needed.

Religious education in general remains controversial. Thus, the Attorney General's Office (*Procuradoria Geral da República*) sent to the Federal Supreme Court in July 2010 a preliminary request arguing the unconstitutionality of religious education in public schools.³⁰

Notes

- 1 Source: “Resultados do Censo 2010—Primeiros Dados do Senso 2010.” IBGE. <www.censo2010.ibge.gov.br/primeiros_dados_divulgados/index.php> (last visited December 20, 2010).
- 2 “Brazil is the First Latin American Country to Emerge from Recession.” *The Economist*, September 14, 2009.
- 3 Evandro Ruiz Alves Costa, *Dinâmica Populacional e Igreja Católica no Brasil 1960–2000*. (Loyola, 2002).
- 4 *Constituição Política do Império do Brasil*, in <www.presidencia.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao24.htm> (at 09/08/2010).
- 5 The republic was proclaimed on November 15, 1889.
- 6 *Constituição da República dos Estados Unidos do Brasil* (February 24, 1891), in <www.presidencia.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao91.htm> (at 24/09/2009).
- 7 Article 17—“É vedado à União, aos Estados, ao Distrito Federal e aos Municípios: II—estabelecer, subvencionar ou embaraçar o exercício de cultos religiosos.” Article 113—“A Constituição assegura a brasileiros e a estrangeiros residentes no País a inviolabilidade dos direitos concernentes à liberdade, à subsistência, à segurança individual e à propriedade, nos termos seguintes: 1) Todos são iguais perante a lei. Não haverá privilégios, nem distinções, por motivo de nascimento, sexo, raça, profissões próprias ou dos pais, classe social, riqueza, crenças religiosas ou idéias políticas.” *Constituição da República dos Estados Unidos do Brasil* (July 16, 1934).
- 8 Article 32—“É vedado à União, aos Estados e aos Municípios: b) estabelecer, subvencionar ou embaraçar o exercício de cultos religiosos.” Article 122—“A Constituição assegura aos brasileiros e estrangeiros residentes no País o direito à liberdade, à segurança individual e à propriedade, nos termos seguintes: 4º) todos os indivíduos e confissões religiosas podem exercer pública e livremente o seu culto, associando-se para esse fim e adquirindo bens, observadas as disposições do direito comum, as exigências da ordem pública e dos bons costumes.” *Constituição dos Estados Unidos do Brasil* (November 10, 1937).
- 9 Article 31—“A União, aos Estados, ao Distrito Federal e aos Municípios é vedado: II—estabelecer ou subvencionar cultos religiosos, ou embaraçar-lhes o exercício; III—ter relação de aliança ou dependência com qualquer culto ou igreja, sem prejuízo da colaboração recíproca em prol do interesse coletivo.” Article 141—“A Constituição assegura aos brasileiros e aos estrangeiros residentes no País a inviolabilidade dos direitos concernentes à vida, à liberdade, a segurança individual e à propriedade, nos termos seguintes: § 7—É inviolável a liberdade de consciência e de crença e assegurado o livre exercício dos cultos religiosos, salvo o dos que contrariem a ordem pública ou os bons costumes. As associações religiosas adquirirão personalidade jurídica na forma da lei civil; § 8—Por motivo de convicção religiosa, filosófica ou política, ninguém será privado de nenhum dos seus direitos, salvo se a invocar para se eximir de obrigação, encargo ou serviço impostos pela lei aos brasileiros em geral, ou recusar os que ela estabelecer em substituição daqueles deveres, a fim de atender escusa de consciência.” *Constituição dos Estados Unidos do Brasil* (September 18, 1946).
- 10 Article 9—“A União, aos Estados, ao Distrito Federal e aos Municípios é vedado: II—estabelecer cultos religiosos ou igrejas; subvencioná-los; embaraçar-lhes o exercício; ou manter com eles ou seus representantes relações de dependência ou aliança, ressalvada a colaboração de Interesse público,

Evaldo Xavier Gomes

- notadamente nos setores educacional, assistencial e hospitalar.” Article 150—”A Constituição assegura aos brasileiros e aos estrangeiros residentes no País a inviolabilidade dos direitos concernentes à vida, à liberdade, à segurança e à propriedade, nos termos seguintes: § 1—Todos são iguais perante a lei, sem distinção, de sexo, raça, trabalho, credo religioso e convicções políticas. O preconceito de raça será punido pela lei; § 5—É plena a liberdade de consciência e fica assegurado aos crentes o exercício dos cultos religiosos, que não contrariem a ordem pública e os bons costumes; § 6—Por motivo de crença religiosa, ou de convicção filosófica ou política, ninguém será privado de qualquer dos seus direitos, salvo se a invocar para eximir-se de obrigação legal imposta a todos, caso em que a lei poderá determinar a perda dos direitos incompatíveis com a escusa de consciência.” *Constituição do Brasil*. (January 24, 1967).
- 11 Article 5—”All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security, and to property, on the following terms: VI—freedom of conscience and of belief is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed; VII—under the terms of the law, the rendering of religious assistance in civil and military establishments of collective confinement is ensured; VIII—no one shall be deprived of any rights by reason of religious belief or philosophical or political conviction, unless he invokes it to exempt himself from a legal obligation required of all and refuses to perform an alternative obligation established by law.” *Constitution of the Federative Republic of Brazil* (1988).
- 12 Article 19—”The Union, the States, the Federal District and the municipalities are forbidden to: I—establish religious sects or churches, subsidize them, hinder their activities, or maintain relationships of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest in the manner set forth by law; II—refuse to honor public documents; III—create distinctions between Brazilians or preferences favoring some. *Constitution of the Federative Republic of Brazil* (1988).
- 13 Article 48—”E’ lícito aos estabelecimentos de ensino agrícola incluir o ensino de religião nos estudos do primeiro e do segundo ciclo, sem caráter obrigatório. Parágrafo único. Os programas de ensino de religião e o seu regime didático serão fixados pela autoridade eclesiástica.” *Lei Orgânica do Ensino Agrícola*. (Decreto-Lei n° 9.613, de 20 de agosto de 1946).
- 14 Lei N° 9.394, de 20 de dezembro de 1996—*Estabelece as diretrizes e bases da educação nacional*. Modificada pela Lei n° 9.475, de 22 de julho de 1997—*Dá nova redação ao Article 33 da Lei n° 9.394, de 20 de dezembro de 1996, que estabelece as diretrizes e bases da educação nacional*.
- 15 Text modified by Law no. 9.475, September 22, 1997. Before this change Law no. 9.394, of December 20, 1996, provided in its Article 33 that religious education should be according to the preferences of students or those responsible for them: I—confessional, with teachers instructed and appointed by religious authorities; II—inter-confessional, with previous agreement of several religious entities.
- 16 Modified by Law no. 9.475 of July 22, 1997, Article 33 bans any kind of proselytism and establishes that the content of religious education and the norms of admission of teachers, although being a course of optional registration, must be determined by government authority. Until this new text of Article 33, religious education costs were not charged to the state. Proselytism as such is not forbidden by Brazilian law, but there are some specific norms which prevent its practice in specific situations. One example is the prohibition of proselytism in radio broadcasting (Article 3—Law no. 11.652, April 7, 2008 and Article 4—Federal Law no. 9.612, February 19, 1988).
- 17 It is important to notice that there a tendency of non-intervention of the state in the content of religious education classes. The National Council of Education, in its Opinion 097/99, recognized that the state should not intervene. In addition, the state must not be in an arbitrary position, making distinctions based on convenience as to whether to teach or not teach selected principles of the doctrine of any religion. (*Opinion n° 097/99—Formação de professores para o Ensino Religioso nas escolas públicas de ensino fundamental*, Conselho Nacional de Educação, April 6, 1999).
- 18 Brazilian legislation does not establish specific criteria for the habilitation and training of professors of religion. Law no. 9.475, of September 22, 1997, cited above, did not determine the creation of special courses to prepare religious education teachers. The law sends this duty to each educational system, federal, state, and municipal. In this sense, teachers of religion could obtain traineeship even from religious organizations.

- 19 *Opinion n° 097/99—Formação de professores para o Ensino Religioso nas escolas públicas de ensino fundamental.* Conselho Nacional de Educação, April 6, 1999.
- 20 Religious education, together with Portuguese language, mathematics, and history are considered as part of one single field of knowledge by the National Council of Education. (*Resolution n° 2/98—Institui as Diretrizes Curriculares Nacionais para o Ensino Fundamental.* Conselho Nacional de Educação, April 7, 1998).
- 21 *Parecer n° 05/97*, “Interpretação do artigo 33 da Lei 9394/96”. Conselho Nacional de Educação. 11 de março de 1997.
- 22 Forum Permanente do Ensino Religioso. *Parâmetros Curriculares Nacionais: Ensino Religioso.* 2nd. edn. Ave Maria, São Paulo 1997.
- 23 Law no. 3459, September 14, 2000, Rio de Janeiro – “dispõe sobre ensino religioso confessional nas escolas da rede pública de ensino do Estado do Rio de Janeiro.”
- 24 After the State of Rio de Janeiro’s law, the city of Rio de Janeiro also approved its own law on religious education in public schools (Municipal Law no. 3228, April 26, 2001, Rio de Janeiro—“dispõe sobre ensino religioso confessional nas escolas da rede pública de ensino do município do Rio de Janeiro”).
- 25 During the process of approval of the Agreement in the Chamber of Deputies, the Rapporteur of Dep. Chico Abreu voted in favor of its approval, but stated that “our position is for the suppression of the expression ‘catholic and of other confessions,’ used in § 1 of Article 11 of the Agreement between Brazil and the Holy See.” See <www.camara.gov.br/sileg/integras/683135.pdf> (en 09/10/09).
- 26 ADI 2806 / Rio Grande Do Sul, Ação Direta de Inconstitucionalidade, 23/04/2003, DJ 27-06-2003 PP-00029. Ementário: vol.—02116-02, PP-00359, RTJ, vol.-00191-02, PP-00479.
- 27 “Ensino religioso, caminho de fé e respeito às diferenças”. In *Jornal de Opinião*, n° 1145, 2011, p. 4–5.
- 28 *Parecer n° 04/2011*, “Opina sobre a aplicabilidade do disposto no Article 33 da Lei n° 9.394, de 20/12/1996 (Lei de Diretrizes e Bases da Educação Nacional) tratando do Ensino Religioso”. *Conselho Municipal de Educação—Câmara de Políticas Sociais Integradas à Educação—Ato do Conselho.* Diário Oficial, 24 de fevereiro de 2011.
- 29 “Metade das escolas tem ensino religioso—Sem diretriz nacional sobre conteúdos, Estados e Municípios adotam formatos diversos; lei veta só propaganda.” *Folha de São Paulo*, 27 de fevereiro de 2011. In <www1.folha.uol.com.br/fsp/cotidian/f2702201101.htm> (March 5, 2011).
- 30 Ação Direta de Inconstitucionalidade (A.D.I.) n° 4439. *Procuradoria-Geral da República (P.G.R.), Supremo Tribunal Federal.*

Religious education in Canada

John F. Young

To briefly summarize religious education in a bilingual, multicultural federation is an awkward proposition. With more than 34 million people spread out over 9 million square kilometers, ten provinces, and three territories, and with education being a provincial jurisdiction rather than a federal responsibility, it would be more prudent to suggest that there are multiple Canadas rather than a single object of study. This complexity, however, is part of the Canadian identity. The ways and means with which each jurisdiction pursues the authoritative allocation of values reflects a colorful spectrum of policies and approaches towards religious education that one might expect to find in a pluralistic and democratic society.

Canadian history and demographics

Prior to its founding in 1867, Canada was already home to disparate aboriginal peoples, French Roman Catholics, and English-speaking Protestants. That language differences in the colonial population were exacerbated by parallel religious differences is a fundamental rationale for the federal structure of Canada and why education was identified as a provincial jurisdiction. Yet even local politics were much animated by disputes over education curricula, the administration of schools, the rights and interests of minorities, and the influence of various churches and clergy. Non-denominational Christian content became the comfortable common ground, and the preferred political solution to mitigate such conflict. For example, the Ontario Public School Act of 1896 declared:

It shall be the duty of every teacher of a public school to teach diligently and faithfully all of the subjects in the public school course of study; to maintain proper order and discipline in his pupils in his school; to encourage his pupils in the pursuit of learning; to include, by precept and example, respect for religion and the principles of Christian morality and the highest regard for truth, justice, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues.

While a young Canada entertained little reluctance to identify itself as a Christian country, this self identity changed dramatically over the next century. Canada defines itself now with

references to multiculturalism, diversity, and tolerance, while secularism has become the common state policy, buttressed by claims of neutrality among religious beliefs. There are at least three reasons for this rapid change in Canada's identity. In the first instance, the demographics of the Canadian population have altered significantly. This is a consequence of changing immigration policy in the latter half of the twentieth century and in the respective birthrates of various segments of the population.¹ In 1901, for example, Protestants and Catholics accounted for a reported 98 percent of the population. This had changed modestly by 1971, when these faiths combined for a 90 percent share. By 2001, however, the proportion had diminished to 72 percent. While Islamic, Hindu, Buddhist, and Sikh populations are still relatively small minorities in Canada, each has doubled in numbers across Canada in the last decade.

A second reason for this change in identity is the rise in the number of Canadians who declare no religious belief. Whether those who so declare are atheists or agnostics, or whether they entertain personal, rather than collective, beliefs about God, is largely a moot point, as all contribute to the diminution of Canada's Christian identity. In the 1990s alone, an additional 1.5 million Canadians declared no religious affiliation and, by 2001, over 5 million, or 16 percent of the population, declared no religious belief. One explanation for this growth may be found in secularization theory, which suggests that, the more urban, industrialized, and educated the population, the weaker the demand for religion.² The growth of the state in twentieth-century Canada, particularly in such realms as health and social services and in public education, certainly undermined traditional roles assumed by churches, and there is a growing amplification of voices suggesting that religion is purely a private matter with diminished utility in the public square. The degree of religiosity among Canadian believers is also in decline, with only one-third of Canadians now attending religious services at least monthly.³ The self-identified non-religious find their greatest cohort between the ages of 25 and 44 (a 35 percent share), and their smallest share (6.2 percent) in the age cohort over 65 years. Such trends underscore significant change in Canadian society.

Third, with the introduction of the Charter of Rights and Freedoms to the Canadian Constitution in 1982, the courts, and particularly the federal Supreme Court of Canada, have altered Canada's political landscape. Prior to the incorporation of the Charter to the Canadian constitution, parliamentary supremacy ensured that provincial legislatures were the principal arbiters of conflict connected to education. The judicialization of politics that followed the Constitutional Act of 1982 furthered the role of the courts, increased their scope, and elevated the status of their decisions. As a consequence, the adjudication of such issues as public funding for schools and the role of prayers in public schools has been relocated to the courts, which often decide with finality. The intersection between law and the courts, on the one hand, and churches and religious belief on the other, now handles an abundance of traffic, including such issues as child abuse in residential schools, polygamy, and same sex marriage. In coordinating such traffic, the courts have essentially renounced Canada's Christian identity and now foster a secularist civil religion.⁴

The consequences of such developments can be witnessed throughout Canadian society and in the large arena of public policy, not only in the sphere of education. Before we turn our focus to specific issues in religious education, however, let us identify more clearly the various approaches towards public and private education developed by provincial jurisdictions.

John F. Young

Approaches to public and private education

The British North America Act (1867), which is a founding document of the Canadian Constitution, not only identified education as a provincial jurisdiction, but also entrenched established dichotomies of confessional and public schools (Catholic and Protestant) that were already in place to accommodate religious minorities in the two largest provinces, Ontario and Quebec. When Manitoba (1870), Alberta (1905), and Saskatchewan (1905) were later admitted into Confederation, specific language clarified the requirements for the perpetuation of similar arrangements.⁵ What has emerged is a patchwork quilt of standards for public funding for religious education that has led to different practices across the Dominion.

This point is likely best explained in the form of a table (see Table 9.1: Overview of school funding across ten provinces), which demonstrates that four of ten provinces fully fund “separate” school systems from the public purse. Separate is a euphemism for Catholic schools in three provinces, and for “English-speaking” schools in Quebec. In this last instance, the Quebec Education Act of 1988 recast separate schools as linguistic rather than confessional institutions. The change required a very rare constitutional amendment, which received royal assent in 1997.

Even though Manitoba was constitutionally obligated to fund French/Catholic schools, the great influx of English/Protestant immigrants after 1870 led the new province to ignore its obligations and then pass legislation in 1890 creating a single school system and ending public support for French/Catholic schools. This policy caused a national crisis and invited mediation by the federal government. The compromise that followed in 1897 created a slippery slope away from publically funded separate schools in Manitoba.⁶ Yet three of ten provinces maintain public funding for Catholic schools (Ontario, Alberta, and Saskatchewan) and Quebec maintains full public funding for English-speaking schools. Five of ten provinces (British Columbia, Alberta, Saskatchewan, Manitoba, and Quebec) also offer partial funding for independent schools, the vast majority of which are confessional schools sponsored by various faiths. In such instances, schools are required to teach ministry-approved curricula and employ certified teachers. Public funding is transferred to approved independent schools, with the proportion of per-pupil funding received as high as 70 percent in Alberta.⁷ To qualify for such funding,

Table 9.1 Overview of school funding across ten provinces

<i>Province</i>	<i>Fully funded public system</i>	<i>Fully funded separate school system</i>	<i>Public Funds used to cover part of the costs of independent schools</i>
British Columbia	Yes	No	Yes
Alberta	Yes	Yes	Yes
Saskatchewan	Yes	Yes	Yes
Manitoba	Yes	No	Yes
Ontario	Yes	Yes	No
Quebec	Yes	Yes	Yes
New Brunswick	Yes	No	No
Nova Scotia	Yes	No	No
Prince Edward Island	Yes	No	No
Newfoundland	Yes	No	No

Source: Larry Johnstone and Susan Swift, *Public Funding of Private and Denominational Schools in Canada*, Toronto: Ontario Legislative Library, 2000

schools also agree to basic guidelines against teaching racial or ethnic superiority, religious intolerance, or sedition.

Those less familiar with the Canadian context might legitimately wonder how such a hodgepodge of policies has been created. The answer lies not only in the historical and constitutional factors identified above, but also in the manner in which these conditions reflect the consequences of provincial politics and regional political cultures. Each provincial jurisdiction possesses its own dynamics, and there are constant pressures on government to both expand and reduce the scope of public funding for religious education. One of the more illuminating examples is the *Adler* case in Ontario in the 1990s.

Public schools versus private religious schools

Ontario now has full public funding for Catholic schools, but until 1987 this funding was only for the first nine years of a 13-year curriculum. In that year, the Ontario provincial government extended public funding for Catholic education through to completion.⁸ The aftermath of this decision invited political pressure for public funding from other religious groups. Jewish and Christian parents with children in unfunded independent schools launched a suit charging that full funding of Catholic schools discriminated against other religious denominations. The case was appealed all the way to the Supreme Court of Canada, which decided in 1996 that the principles behind public and separate school funding were clearly defined by the Constitution and did not fall under the Charter. The Supreme Court ruling noted that provincial governments were welcome to extend funding to private denominational schools, but were under no legal obligation to do so.

Later that year, another claim was made by a Jewish parent to the United Nations Human Rights Committee (U.N.H.R.C.), claiming that the international Covenant on Civil and Political Rights, which Canada had signed, provided for equal and effective protection against discrimination, and claimed that preferential funding for religious schools was a form of discrimination. The U.N.H.R.C. ruled that Canada was under obligation “to provide an effective remedy that will eliminate this discrimination.”⁹ This ruling implied that either public funding should be extended to all religious groups, or that public funding for Catholic schools should be terminated. Yet the Canadian federal government protected the status quo by reference to the constitutional division of powers between federal and provincial governments and the political bargain that protected enumerated school financing within the Constitution. Eliminating public funding for Catholic schools in Ontario would require a controversial constitutional amendment, something that is a ridiculously difficult challenge in the Canadian context. Alternatively, extending full funding to other denominational schools would cost an additional 300 to 700 million dollars per year, arguably an expense best left to political, rather than judicial, decision making.¹⁰ The U.N.H.R.C. reaffirmed its concerns in November, 2005, which continue to be ignored by the governments of Canada and Ontario. In 2007, Leader of the Opposition John Tory campaigned at the provincial election with a platform promising equal public funding for independent schools as a way to remedy the situation. He was soundly defeated.¹¹

The variety of funding formulae for religious schools in Canada is thus a consequence of historical, cultural, legal, and political factors that have combined in different permutations in different provinces. In some provinces, Catholic schools receive funding equal to public schools, and in other provinces they do not. In some provinces, religious organizations may officially sponsor an independent school, or religious believers may work collectively to sponsor an independent school, both of which can qualify for substantial, but not equal, public funding. In

John F. Young

contrast, in some provinces, only public schools receive government support. While some citizens find the transfer of such public funds to religious schools to be a tragic confusion of church and state, others point out that partial funding to independent schools is a relative bargain for the public purse: closing independent schools would likely flood the public system with greater numbers of students at much higher costs. Proponents of independent or separate schools also highlight that parents have a right to choose schools for their children, and religious education is a legitimate choice in a pluralist society, particularly as part of the costs are carried by the parents. While independent schools have small proportions of the student population (between 6 and 16 percent across provinces), it is clear that their numbers are growing at the same time that public schools are closing and the overall total for students is in decline. The stakes remain quite high, and education is not only a service but also a big business: there are more than 15,500 schools in Canada, with an average of 350 students per school, employing 310,000 educators (about 2 percent of the total labor force). At least 42 billion public dollars is spent annually on education. Despite that amount, public spending is generally viewed as a zero-sum game, which is one reason why teacher unions typically propose ending support for independent schools in order to transfer more resources to public schools.

A second area of conflict regarding religious education in Canada concerns the educational experience, including school practices and curricula. Where prayers and religious instruction were once commonplace in Canadian public schools, they are now considered trespass and in violation of rights and freedoms guaranteed to all Canadians. This is not the case in separate or independent schools, however, where prayer and religious instruction remain part of the curriculum. From the late 1970s through the 1990's, courts increasingly ruled that public schools were obliged to include all students and that any mandatory religious observance or instruction of a particular faith was impermissible. The inclusion principle was a response to the practice of exempting students from prayer or other religious activity. In Sudbury, Ontario, for example, each school began the day with an assembly that included the singing of the national anthem and a recitation of the Lord's Prayer. In *Zylberberg v. Sudbury Board of Education* (1988), however, the Court found that the policy imposed Christian practices on students, and noted that voluntary exemption fostered the stigmatization of children and was a form of religious discrimination. In *Bal v. Ontario* (1994), a case prompted by opposition to two periods of mandatory religious instruction each week, the court noted the changing legal context, which signified the end of an era of majoritarian Christian influence, ... and the beginning of a period of secularism in education based on an awareness of a changing societal fabric and Charter protection for minority rights to freedom of religion.¹²

Purging public schools of religious practice and curriculum was primarily promoted as the inclusion of minorities and accommodation of diversity. That parents and students with passion for public prayer could often enroll in religious schools outside the public system and often at partial public expense might have mitigated some of the political fallout from such developments. As a result of these court rulings and the subsequent public acquiescence, religious education in public schools, such as it existed, was benign: curricula could review religion but not encourage its practice. Teachers could instruct students but not indoctrinate, and any religious education that occurred had to avoid devotion or conversion.¹³ Schools would have to find "less intrusive ways" to instill educational and moral values.¹⁴

More recent concerns over religious illiteracy and moral education have prompted provincial education ministries, academics, and local school boards to reconsider the curricula in public schools. While there is little advocacy for reintroducing prayers in school, teaching *about* spirituality has resurfaced as a legitimate endeavor for public schools.¹⁵ While the issue remains controversial, particularly given the tensions of the past, the U.S. National Council for Social

Studies recognizes that “knowing about religions is not only a characteristic of an educated person, but is absolutely necessary for understanding and living in a world of diversity.”¹⁶ Such statements are referenced and repeated in the Canadian context.¹⁷ Yet, as religion is recognized (again) as a mandatory part of the public school curriculum, the challenge of finding the elusive middle ground among disparate values, cultures, interpretations, and pressures can place teachers, parents, students, and administrators in awkward positions. Where secularism was once considered neutral ground in disputes between Catholics and Protestants, it has no neutrality in disputes between evangelicals and moral relativists, or between Catholics and secular humanists.

As the ground has shifted towards instruction *about* religion, concerns arise that the state is now claiming a right to teach religion. In a pluralistic society, this might serve the interests of tolerance and appreciation for diversity, but non-denominational and inherently relativistic instruction might also be perceived as undermining religious practice and devotion. Efforts to so amend the curriculum are likely to invite additional conflict and tensions to public education.¹⁸ The implicit assumption in the current pedagogy is that religion is akin to cultural studies, and can be well understood through dispassionate instruction. A counter-argument might highlight instead that religion is a cornerstone of human identity because of the doctrine and worship connected with faith. It may be a harbinger of further tensions in the future that the Quebec provincial government recently banned religious instruction from provincially funded day cares. Part of the justification concerns government funding for religious indoctrination. But also highlighted is the claim that religious instruction is offered in the public school system. Inasmuch as the state assumes a privileged position for religious instruction, pluralism becomes increasingly vulnerable.¹⁹

Conclusion

The Canadian experience with religious education is thus shaped by the institutional setting and the evolving social context. While there are many who would like to alter the status quo, the task of doing so would require not only satisfying the legal requirements imposed by the courts, but also the more challenging task of building an enduring coalition of support. Despite the flaws and tensions in the compromises and policies that currently exist, the various arrangements found across the provinces and territories are reasonable outcomes in a pluralistic and democratic society.

Notes

- 1 *Statistics Canada: Religions in Canada* reports that Protestants comprised roughly 40 percent of the immigrant population prior to 1961, and only 10 percent of the immigrant population in the last decade of the twentieth century. In Canada, Muslim and Hindu birthrates are significantly higher than the average Christian population birthrates. Statistics Canada examines religious identity each decade—the next iteration being due in 2011. See <www12.statcan.ca/english/census01/Products/Analytic/companion/rel/contents.cfm>.
- 2 For a discussion on the secularization debate, see Pippa Norris and Ronald Inglehart, *Sacred and Secular: Religion and Politics Worldwide* (Cambridge: Cambridge University Press, 2004); and Rodney Stark and Roger Finke, *Acts of Faith: Explaining the Human Side of Religion* (Berkeley: University of California Press, 2000).
- 3 Warren Clark and Grant Schellenberg, “Who’s Religious?” *Canadian Social Trends* (Summer, 2006), Statistics Canada Catalogue No. 11–008. See also John F. Young, “Faith and Politics in Canada,” in John F. Young and Boris DeWiel, eds., *Faith in Democracy? Religion and Politics in Canada* (Newcastle: Cambridge Scholars Publishing, 2009), 1–13.

John F. Young

- 4 See John von Heyking, "The Charter and Civil Religion," in John F. Young and Boris DeWiel, eds., *Faith in Democracy? Religion and Politics in Canada* (Newcastle: Cambridge Scholars Publishing, 2009), 36–60; John von Heyking, "Civil Religion and Associational Life under Canada's 'Ephemeral Monster': Canada's Multi-Headed Constitution," in Ronald Weed and John von Heyking, eds., *Civil Religion in Political Thought: Its Perennial Questions and Enduring Relevance in North America* (Washington: Catholic University of America Press, 2010); Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy* (Montreal: McGill-Queen's University Press, 2004); Andy N. Khan, "The Legal Context of Canadian Education," *Australia and New Zealand Journal of Law and Education* 2:1 (1997), 25–58; Jose Woehrling and Rosalie Jukier, "Religion and the Secular State in Canada," *Religion and the Secular State: National Reports* (Provo, Utah: International Center for Law and Religion Studies, Brigham Young University, 2010), 183–212.
- 5 In reference to Article 93 of the Constitution, the Alberta Act declared: "nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances." Similar language is found regarding Saskatchewan, Manitoba, and even greater clarity with reference to Quebec.
- 6 See Lovell Clark, ed., *The Manitoba School Question: Majority Rule or Minority Rights?* (Toronto: Copp Clark, 1968).
- 7 Manitoba 60 percent, British Columbia 50 percent, Quebec 40 percent. To clarify: private schools in these provinces receive per-student public funding at a fixed percentage of the amount transferred to public schools. Exceptions to these norms do exist. For example, in Alberta, charter-based schools may have a denominational identity and receive full funding. It is also worthwhile to note that tuition costs to independent schools are partially mitigated by tax credits, which fuels further concerns about "public funding" of religious schools. In the case of British Columbia, the absence of a publically funded separate/Catholic school system added strength to the coalition of interests that effectively lobbied for public support for independent schools.
- 8 The government's decision had been made in 1984, although three years of court challenges concerning discrimination were endured prior to implementation. The Supreme Court ruled in 1987 that "these educational rights, granted specifically to the Protestants in Quebec and Roman Catholics in Ontario, make it impossible to treat all Canadians equally. The country was founded upon the recognition of special or unequal educational rights for specific religious groups in Ontario and Quebec. The incorporation of the Charter into the Constitutional Act, 1982, does not change the original confederation bargain." See *Reference re an Act to Amend the Education Act (Ontario) (The Bill 30 Case)* 1987.
- 9 United Nations, Human Rights Committee, 67th Session: Communication No. 694/1996, p.13; Anne F. Bayefsky and Arieh Waldman, *State Support of Religious Education: Canada versus the United Nations* (Leiden, Netherlands, Boston, MA: Martinus Nijhoff Publishers, 2007).
- 10 Larry Johnston and Susan Swift, *Public Funding of Private and Denominational Schools in Canada* (Toronto: Ontario Legislative Library, 2000), <www.ontla.on.ca/library/repository/mon/1000/10286133.htm>.
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- 13 See "Education About Religion in Ontario Public Schools" (1994), <www.edu.gov.on.ca/eng/document/curricul/religion/religioe.html>.
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Canada

- 16 “Study About Religions in the Social Studies Curriculum,” <www.socialstudies.org/positions/religion>.
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Religious education in China

Jinghao Zhou

China has more than 4,000 years of written history that embraces diverse religious traditions. However, since the Communist Party of China (C.P.C.) began to govern China in 1949, the Chinese people of all nationalities have been under the leadership of the C.P.C. and the guidance of Marxism–Leninism and Mao Zedong’s thought. Essentially, China is an atheist country. Although the Chinese people had rights to practice religions by the law, formal religious education was banned under the Mao regime. In the post–Mao era, the government has implemented a liberal policy toward religions. As a result, religious education in China is now in revival but the development of religious education has been very slow. Due to the fact that there is no existing literature seriously addressing religious education in China, and because the Chinese government does not provide statistics on this subject, it is difficult to offer a detailed report on religious education in China.

Background

China, officially the People’s Republic of China, was founded on October 1, 1949. It is an authoritarian state in which the C.P.C. is the sole ruling party. Mao Zedong is the founding father of China and ruled it until he died in 1978. China covers 3,691,502 square miles and has 1.34 billion people. The Han is the largest group among 56 ethnic groups, making up about 94 percent of total Chinese population. China is the largest country in terms of its population, the second largest economy in terms of G.D.P., and the third largest country in terms of the size of land.

Chinese religions can be categorized into two main groups: indigenous religion and imported religion. The three traditional Chinese religions—Daoism, Buddhism, and Confucianism—are indigenous religions. Islam, Protestantism, and Catholicism are imported religions. Strictly speaking, Confucianism and Daoism are typical Chinese indigenous religions, although many Western scholars do not regard Confucianism as religion. Since Buddhism came into China in the first century from India, it has merged in every aspect of Chinese society. Thus, China’s religious heritage is made up of three religious traditions, the so-called *san jiao*.¹ In imperial China, Buddhist and Daoist temples only provided very limited religious education within their own circles due to financial restriction, and formal Buddhist and Daoist schools did not exist.

Christian missionary activity in China began in the seventh century. Nestorian Alopen, the first Christian missionary, arrived in *Xian* in 635 during the Tang dynasty. The second wave of the Christian mission was the Roman Catholic missionary movement. John Corvino, the first Catholic missionary and a zealous Franciscan monk, arrived in China in 1292 under the Yuan dynasty,² but the Catholic mission did not have much influence on China until Matteo Ricci arrived there in the sixteenth century.³ After the first Opium War, both Catholicism and Protestantism began to develop relatively rapidly in China. Accordingly, religious education, particularly Christian education, emerged in China, especially in the east-coast cities, such as Shanghai, Nanjing, Fujian, and Guandong. However, due to the resistance from Chinese indigenous religious movements, religious education was mainly limited to the religious schools which were established by foreign missionaries. After the Nationalist government was finally settled in Nanjing in 1927, Chinese Christianity gained more ground. The growth of the Chinese Christian movement slowed down again after the C.P.C. came to power in 1949. Since the reform movement began in 1978, the Christian movement has developed faster than Westerners imagined.

Chinese religions under communist China

After the C.P.C. came to power in 1949, the Chinese government began to monitor and regulate all religions, particularly imported religions. In 1950, the first Chinese Christian Conference drafted the *Christian Manifesto: The Direction of Endeavor for Chinese Christianity in the Construction of New China*, indicating that China had begun to launch the Three-self Movement—self-administration, self-support, and self-propagation. Under the three-self principles, all Chinese religious organizations were cut off from foreign countries and all foreign missionaries were driven out from mainland China. During the ten years of the Cultural Revolution (1966–76), all religions were denounced, all religious believers were persecuted, all religious meeting places were closed, all religious activities were prohibited, and property belonging to religious institutions was confiscated.

After the Cultural Revolution, the Chinese government made efforts to restore freedom of religious belief and reopened sites for religious activities. The C.P.C. remains officially atheist, but it has been growing more tolerant of religious activity for the past 20 years.⁴ According to a survey published in a state-run newspaper, 31.4 percent of Chinese adults claim to be religious, and there are more than 100 million religious believers in China, while Western scholars estimate that in China there are more than 200 million religious believers.⁵ Most Chinese believers profess Eastern faiths. Among the estimated 200 million religious believers, there are only about 40 to 60 million Protestants, 12 million Catholics, and 18 million Muslims. At present, China has about 13,000 Buddhist temples and 200,000 Buddhist monks and nuns, and over 1,500 Daoist temples and more than 25,000 Daoist priests and nuns. Islam and Christianity were introduced into China in the seventh century. There are 18 million Chinese Muslims and 30,000 mosques, and Christianity is catching up, with 4 million Roman Catholic adherents worshipping at more than 4,600 churches and 10 million Protestants worshipping at more than 12,000 churches. There are more than 23,000 mosques with 29,000 clergymen in the Xinjiang Uygur Autonomous Region, and over 1,700 places of worship and religious activity in Tibet, housing 46,000 resident monks and nuns. In addition, there are over 50,000 houses of worship, but most of them are mosques in active use.⁶

Jinghao Zhou

Legal provisions and government policy on religious activities

The Chinese Constitution has been changed several times since 1949. There are versions of 1954, 1975, 1978, and 1982, but every version of the Chinese Constitution protects freedom of speech, assembly, association, procession and demonstration, and religious belief. Article 88 in the Constitution of 1954 stated that “citizens of the People’s Republic of China enjoy freedom of religious belief.” Article 28 in the Constitution of 1975 stated that citizens “have the freedom to practice a religion, the freedom to not practice a religion and to propagate atheism.” Article 36 in the Constitution of 1982 stated that “Citizens of the PRC enjoy freedom of religious belief. No organ of state, mass organization, or person is allowed to force any citizen to believe or not to believe in religion.”

In order to minimize religious influences on society, the government uses criminal law to limit religious freedom. The Criminal Law was adopted by the Fifth National People’s Congress on July 1, 1979, in which there are two articles that deal with religion that make a distinction between feudal superstitious beliefs and the major religions. Article 99 states, “Those organizing and utilizing feudal superstitious beliefs and secret societies or sects to carry out counter-revolutionary activities will be sentenced to fixed-term imprisonment of not less than five years.”⁷ Article 147 reads, “A state functionary who unlawfully deprives others of their freedom of religious beliefs or violates the customs and habits of minority nationalities to a serious extent, will be sentenced to detention or imprisonment for not more than two years.”⁸

Government/party’s policy is above the law in China. All religious activities are actually guided by the government/party’s policy instead of laws. On March 31, 1982, the central committee of the Chinese Communist Party issued an important statement of religious policy: Document 19, which called for restoration and administration of churches, temples, and other religious sites, warned that religion must not interfere with politics, education, or marriage and family life, and reaffirmed that the government prohibited criminal and counter-revolutionary activities committed under the cover of religion. In 1994, the government issued two important decrees No. 144 and No. 145, signed by Chinese Premier Li Peng, regulating both foreigners’ and Chinese citizens’ religious activities within in China.

Regulations Governing the Religious Activities of Foreign Nationals within China Decree No. 144 stipulates that foreign nationals may participate in religious activities in religious venues in China, including monasteries, temples, mosques, and churches, which are recognized by the Religious Affairs Bureaux of the People’s Government at or above the county level. They may invite Chinese clerical personnel to conduct religious rituals such as baptisms, weddings, funerals, and prayer meetings. However, they are not permitted to establish religious organizations, liaison offices, or venues for religious activities, or run religious schools or institutes within China. They are not allowed to seek to convert members of the Chinese public or to appoint clergy or undertake other evangelistic activities. When foreign nationals enter China, they may carry printed materials, audio and visual materials, and other religious items for their own use, but if greater quantities are brought in, the materials will be dealt with according to the relevant Chinese customs regulations.

Regulation Governing Venues for Religious Activities Decree No. 145 emphasizes that all religious activities must be registered. Registration is required for the establishment of a venue for religious activities. Registration requires three things: patriotic association, a fixed meeting place, and activities confined to a specific geographic area. The regulation reaffirms that venues for religious activities shall not be controlled by persons or organizations outside China. Land, mountains, forests, and buildings cannot be used for religious purposes without the government’s permission; donations from persons and organizations outside China cannot be accepted;

and the publication of religious articles and artwork is forbidden. If violation of the stipulations of this regulation threatens public security, the public security organs are empowered to mete out penalties in accordance with the relevant sections of China's Public Security Administration Penal Code; if the violation constitutes a criminal act, the judiciary is to undertake an investigation to determine criminal responsibility.

In 2005 the Chinese government issued the Decree of the State Council of the People's Republic of China, No. 426, Regulations on Religious Affairs, to ensure citizens' freedom of religious belief, maintain harmony between religions, preserve social concord, and regulate the administration of religious affairs. This document once again uses the term "normal religious activities," saying that the government protects normal religious activities and safeguards the lawful rights and interests of religious bodies and sites for religious activities. This document includes seven chapters: general provisions, religious bodies, sites for religious activities, religious personnel, religious property, legal liability, and supplementary provisions.⁹

Government control system

The Chinese government views religious activities as potential threats to the regime, so it tightly controls all religious activities, including religious education. One of important controlling mechanisms is that the C.P.C. controls Chinese religious activities through official Chinese ideology. The Constitution of China continues to insist that the Four Cardinal Principles—Marxism–Leninism–Mao Zedong Thought, the leadership of the party, the proletariat dictatorship, and the socialist road—are the theoretical foundations of China. Marxism is the theoretical foundation of the C.P.C. and the official ideology of China. Not only the Youth League Members and the Party Members, but also all the Chinese people, including church members and seminary students and faculty, are required to follow the principles of Marxism. In Chinese colleges and universities, Marxism is a required course. Religious research and education are also required to be guided by Marxism.

The C.P.C. controls Chinese religious activities through organizations. From the national level to the local level, both the party and the government have set up corresponding departments to regulate Christian churches. The United Front Office is the party branch that is in charge of religious affairs and that supervises the government branch—the Religious Affairs Bureau (RAB), which works directly with religious organizations, such as the Three-Self Patriotic Movement Committee of Protestant Churches of China (T.S.P.M.), the China Christian Council (CCC), and the China Catholic Patriotic Association. The Three-Self Movement is a special tool for the C.P.C. to control Chinese Christianity.

To control religious activities, the Religious Affairs Bureau State Council issued a special document in July 1996 to enforce the implementation of government laws and policy toward religion, called *Method for the Annual Inspection of Places of Religious Activity*.¹⁰ This document aims to protect the legal rights of places of religious activity, strengthen the management of places of religious activity according to law, and advance the systemization and standardization of the self-management of places of religious activity, which method is established according to the relevant regulations of the Management of Places of Religious Activity Ordinance and the Method of Registration for Places of Religious Activity. The department responsible for the annual inspection of a place of religious activity is the department which is responsible for the registration of that place of religious activity. The main criteria of the annual inspection of a place of religious activity include seven articles. The key aim of the criteria is to insure that all religious activities in China are obedient to national law, regulations, and policies.

Jinghao Zhou

Chinese traditional religions as an education

The three Chinese traditional religions (in Chinese, *san jiao*) are closely related to education. Derk Bodde suggests that it is better to understand *san jiao* as “three teachings” rather than “three religions.” The Chinese word for religion is *jiao*, which means “teaching” or “system of teaching.” When the Chinese use this term, they make no distinction between the theistic religions and purely moral teachings.¹¹ The moral teaching is thus developed so as to provide guidance for people to follow, rather than to worship without a desirable ending. So, being a Buddhist, a Daoist or a Confucian-style person makes no difference; the moral teachings being followed are similar to Western-generated terms such as “religion.”

Daoism teaching associates human weakness and sickness with sin, tries to heal such ills with the confession of sin and forgiveness, and bridges the gap between human beings and divine beings through the ritual practices of prayer and penance. Buddhism came to China and began its missionary venture in the first century. Buddhist teaching includes three major points: discipline, meditation, and wisdom. Buddhist education is based on filial piety, as is the Chinese culture. Buddhism preaches karma, the Four Noble Truths and the Eightfold Noble Paths, and affirms a spiritual dimension through belief in meditation and transcendence which lie outside of time and history.

Daoism and Buddhism are inclusive religions so they absorb good elements from the other traditional religions, especially from Confucianism. Thus, the three religions become integrated human moral teaching in China. Li Shiqian, a famous Chinese scholar, described the three religions in this way 1,500 years ago: “Buddhism is the sun, Daoism the moon, and Confucianism the five planets.”¹²

Confucian teaching is based on the five constant virtues: *jen* (benevolence), *yi* (righteousness), *li* (propriety), *zhi* (knowledge/wisdom), and *xin* (sincerity). The main Confucian teaching is the three cardinal guides (ruler guides subject, father guides son, and husband guides wife), five relationships (ruler is subject to ruler; son is subject to father; wife is subject to husband; younger is subject to elder; and friends must trust each other), the three obediences (in ancient China a woman was required to obey her father before marriage, her husband during married life, and her sons in widowhood), and the four virtues (fidelity, physical charm, propriety in speech, and efficiency in needlework).

All these Confucian principles worked together as a net to maintain Chinese social order and political structure and to restrain the human nature of the Chinese people.

Confucianism kept expanding its influence through its educational program before 1949. Confucius was the greatest teacher in Chinese history, and made tremendous efforts to develop educational programs. His disciples did the same thing for more than 2,000 years. The content of civil service examination was the Confucian text. Anyone who wanted to be an official was required to study Confucianism and pass the examination. The main concern of most Chinese families was to learn Confucianism and prepare their children for the examinations. This trend created a huge demand for Confucian books and became the stimulus for the development of printing techniques. In turn, printing techniques promoted Confucianism's spread over the country. Therefore, in ancient China, Confucianism became the tool of the Chinese people to fulfill their political dreams, the bridge to cross the gap from the status of common people to official positions, the only source of moral behavior, and the sole standard of social and political values. All these are the major reasons for Confucianism to become a feudal ethical code for regulating individual behavior, familial relations, and social conduct.

It should be noted that the C.P.C. adopts a more tolerant policy toward Chinese traditional religions and invested good efforts to promote Chinese traditional religions, including

renovating Buddhist and Daoist temples to attract domestic and foreign tourists. Classic Confucian texts continue to be used in Chinese schools. Recently, the C.P.C. has tried to revive Confucianism at home and abroad, including reinforcing Confucian family values, publishing a series of books on Confucian subjects, airing special programs about Confucianism on C.C.T.V., and placing a huge statue of Confucius in the heart of the capital Beijing, the Tiananmen Square. The Chinese government has also established more than 100 Confucian Institutes worldwide. All of these developments indicate that the C.P.C. attempts to use traditional Chinese religious teaching as a vehicle to promote a “harmonious society” in order to retain its ruling party position.

Religious education in Chinese schools

All the restrictions imposed by the party/government certainly have a negative impact on religious education in China. Theoretically, China has implemented a policy of separating religious activities from the government. The Chinese government protects normal religious activities but no one is allowed to may make use of religion to engage in activities that disrupt public order and interfere with the educational system of the state.¹³

According to the Constitution of China, all Chinese people have equal opportunities to receive an education, so China has the largest school system in the world, but Chinese schools, including primary schools, middle and high schools, and colleges and universities, are mainly run by the government. Because the C.P.C. was very concerned about political education and ideological control, it did not allow anyone to establish private colleges and universities during the Mao era.

Since the reform movement, private primary schools have slowly developed, but very few of them are really funded by private organizations and foreigners. In China religion is not a subject taught in state schools, although some institutions of higher learning and research institutes conduct research on religion. Approximately 50 percent of primary and secondary students were enrolled in schools operated or funded by religious organizations. These schools may provide religious education, but the government does not maintain statistics on this subject.¹⁴

Generally speaking, religious courses in China are included in the curriculum of the Department of Philosophy. For example, the Department of Philosophy at Beijing University offers the following courses: Introduction to Religion, Marxism on Religion, Classic Texts of Chinese Buddhism, Classic Texts of Chinese Islam, Introduction to Quran, Original Text of Daoism, Introduction to the Bible, Religious Philosophy, History of Christianity, History of Buddhism, and Science and Religion.¹⁵ The Departments of English Language and Literature at Chinese universities also offer some religious courses, such as “Reading the Bible,” but professors only teach the Bible in a cultural perspective, not in a religious perspective. In this sense, there is no Western-style religious education in Chinese schools and universities.

According to a White Paper published by the Chinese State Council:

religious organizations in China run their own affairs independently and set up religious schools, publish religious classics and periodicals, and run social services according to their own needs. The various religious schools and institutes set up by the different religious organizations teach religious knowledge in line with their own needs.¹⁶

In China, there are over 3,000 religious organizations.¹⁷ But there are only about 30 Buddhist schools and colleges, 15 Daoist training schools, and 18 registered Christian seminaries and Bible schools. Nanjing Theological Seminary serves as the national seminary of China. Regional

Jinghao Zhou

seminaries include Huadong Theological Seminary, Yanjing Theological Seminary, Binhe Road, Dongbei Theological Seminary, Zhongnan Theological Seminary, Sichuan Theological Seminary, Guangdong Union Theological Seminary, Anhui Theological Seminary, Shandong Theological Seminary, Yunnan Christian Theological Seminary, Shaanxi Bible School, Hunan Bible School, Jiangxi Bible School, Henan Theological Seminary, Inner Mongolia Training Center, and Jiangsu Bible School.

Due to the special circumstances in China, the educational goal of religious school is to train professional religious service people who support the C.P.C.'s leadership, love the socialist motherland, possess a rich spiritual life in faith and religious knowledge, unite the majority of religious followers, and develop local independent religious organization. Obviously, the purpose of religious education in China is somewhat different from religious education in Western societies.

Conclusion

China has a long religious tradition, but religious education in China appears to be a very complex phenomenon. First, teaching a moral and social code is one of the distinctive characteristics of Chinese traditional religions. Culturally, Chinese traditional religion as an education is still pervasive and influential. The C.P.C. is willing to use Chinese traditional religions to promote family values and the common good because Chinese traditional religions are morally centered. Second, the C.P.C. is very sensitive about the political aspect of religions, especially Christianity and Islam, so the Chinese government has closely monitored and controlled overt religious activities, including religious education. Due to various restrictions imposed by the C.P.C./the government, religious education in China is undeveloped, and the influence of religious education is very limited. Third, although, in the post-Mao era, the Chinese government has implemented more liberal policies for Chinese religions, religious education is developing slowly. At the present time, the direction of the development of the Chinese political system is uncertain so we should not be expected to see a rise in religious education any time soon. Fourth, China has a rich cultural heritage in religious education, but the content of religious education faces great challenges in the twenty-first century. In the era of globalization, religious education should not only deal with moral and spiritual issues, but also with the threat of war, and the crisis of pollution, energy, and diseases. Thus, it has left a large space for religious professionals, scholars, and educators to provide research in this area.

Notes

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Religious education in Colombia

Vicente Prieto

Religious and social context

The Colombian territory covers 1,140,000 square kilometers, and the population is approximately 45 million (75 percent urban, 25 percent in rural areas).

Independence from Spain in 1819 initiated the current political system of a unitary (non federal) presidential republic; the legislature consists of the Senate and House of Representatives. The Constitution currently in force is from 1991. The legal system is European-continental. However, in recent years the jurisprudence of the Constitutional Court, created in 1991, has assumed particular importance.

The Colombian population falls into two major religious groups: the Catholic Church (80–90 percent) and non-Catholic Christians of various denominations. This second group is not homogeneous, but includes very different religious communities (differing in number of members, doctrine, and structure). A small minority of Jews and Muslims also reside in Colombia.

General legal context

Colombia is a secular state. Secularism, in Colombia, is understood in connection with the principles of equality and cooperation with different religious communities. Various factors led to this system as adopted in the 1991 Constitution. The first factor was greater sensitivity to the different manifestations and consequences of the right of religious freedom. This sensitivity is linked to the remarkable increase in recent decades of Christian denominations other than the majority religion, Catholicism. Colombia is no longer homogeneously Catholic, as was the case until the second half of the twentieth century. Religious plurality demanded new approaches and resulted in the 1991 Constitution and subsequent legislation and jurisprudence.

The emergence of new religions opened the possibility of a different system of dealing with religion. One possibility was to continue the system of the previous Constitution (1886): allowing individual and collective religious freedom, while offering state protection to the Catholic Church. Catholicism was the majority religion, and was therefore regarded as “the Nation’s religion” and as a fundamental element of social order. In this scheme, the government

limited the recognition of minority faiths to the regime of private law associations, very different from the status accorded to the Catholic Church.

The system actually established by the 1991 Constitution is markedly different from the 1886 Constitution. The 1991 Constitution welcomes the prospect of the “Secular State,” in which the state does not adopt any religion, even if it is the church of the majority. The state also declared itself incompetent in religious matters. Furthermore, all religious denominations are equal before public authorities, and the state facilitates and promotes state cooperation with all religions.

The reference point in this model has historically been the state’s relationship with the Catholic Church because this was the only type of institutional relationship between the state and religious interests in Colombia. The 1991 Constitution has sought to extend to all religions the same legal treatment that was previously reserved exclusively for the Catholic Church.

The current regime derives mainly from the Constitution and the *Ley Estatutaria de Libertad Religiosa* (Religious Freedom Act, Law 133 of 1994). In relation to education, the principal legal statute is the *Ley General de Educación* (General Education Act, Law 115 of 1994).

Concordat with the Holy See

In 1973 there was enacted a Concordat between the Holy See and the Colombian State,¹ which in its Articles XI and XII establishes:

XI. In order to facilitate the right of families to choose freely the education centers for their children, the State will contribute equally to fund catholic schools; XII. Developing the right of Catholic families that their children receive religious education according to their faith, education plans, in primary and secondary levels, will include religious education in public establishments, according to the Magisterium of the Church. For the realization of this right the competent ecclesiastical authority will provide the programs, approve the texts of religious instruction and see how such education is taught. The civil authority shall take account of certificates of fitness to teach religion, issued by the competent ecclesiastical authority.²

On July 2, 1975, in the exchange of instruments of ratification of the Concordat, important observations were made. Specifically, attendance at Catholic religious teaching in public schools was determined not to be compulsory for adult students or for pupils whose legal representatives have requested a dispensation from the Catholic religion classes.³

In 1993, the Constitutional Court of Colombia declared several articles of the Concordat (Decision C 027, 1993) to be unconstitutional, including Articles XI and XII. In addition to reasons related to the equality of all confessions, Article XI was declared unconstitutional as contrary to Article 355, 1 of the Constitution, which prohibits public authorities from funding private individuals or institutions.⁴ However, according to Article 355, 2, it is possible to subscribe agreements between the state and religious entities in order to give impulse to programs and activities of public interest.⁵

Article XII was declared to be unconstitutional on the basis that only the Catholic religion can be taught in public schools and, according to the Court, in a compulsory way. Other religious entities should have the same possibility.⁶ It is very striking that the Court, in its analysis, did not take into account what had been established, as seen above, in the exchange of instruments of ratification of the Concordat, which explicitly excludes from the Catholic religious education those who request the appropriate dispensation. More generally, it is obvious that

Vicente Prieto

the Concordat is addressed to the Catholic faithful. What might happen with people of other faiths was not, or could not be, subject to the provisions of the Concordat. Furthermore, it is not appropriate in our opinion to conclude that the existence of Catholic religion courses implies the obligation, for all students, to attend the lessons.

In any case, the Court's concerns regarding the equality of all confessions were resolved the following year (1994) with the *Ley Estatutaria de Libertad Religiosa* (Religious Freedom Act, Law 133 of 1994).

Current legal system

The main principles regarding education are contained in Articles 67 and 68 of the Colombian Constitution:⁷ 1) responsibility in the education process belongs to the State, the society and the family; 2) the state regulates and oversees education and conducts required inspections in education matters; 3) individuals may create educational institutions; 4) parents have the right to choose the type of education they want for their children; and 5) religious education cannot be imposed.

The *Ley Estatutaria de Libertad Religiosa* (Religious Freedom Act, Article 6, h)⁸ recognizes the right of every person to choose religious and moral education according to personal convictions. Therefore, public schools have the obligation to include in their programs religious and moral education according to the personal faith of the students. The right to refuse such education is guaranteed.⁹ The same law establishes for teachers the need of a certificate of fitness to teach religion, issued by the competent religious authority (Religious Freedom Act, Article 6, i¹⁰).

The cited provisions were made concrete by the *Ley General de Educación* (General Education Act, Law 115 of 1994).¹¹ Article 23, 6, establishes the obligation of religious education among the main areas of basic and middle education. The freedom to attend such lessons is underlined.¹²

Agreements with religious entities

The 1991 Constitution does not contemplate the possibility of concluding Agreements with religious denominations. This is different from the Constitution of 1886, which did so in connection with the Catholic Church. Though the 1991 Constitution fails to address the possibility of concluding Agreements with religious denominations, the Religious Freedom Act does so in Article 15:¹³ the state may conclude Agreements about religious matters (International Treaties or Internal Public Law Agreements) with churches and religious denominations that enjoy personality and offer warranty of stability.

The Constitutional Court of Colombia¹⁴ has stressed that the determination of whether Conventions with churches and religious denominations qualify as Public Law Agreements is the consequence of considering the Convention's relation to "matters of public concern," the "public" and the "general interest." Consequently, both the Catholic Church and other faiths are able to conclude Agreements and intervene directly in determining their specific legal situation and ways to contribute to achieve the common good.

The Religious Freedom Act distinguishes between International Treaties and Internal Public Law Agreements. Although not explicitly stated, International Treaties include Agreements with the Catholic Church because they are considered true International Treaties by force of the status of the Holy See as a subject of International Law.

In Article 14 of Decree 782 of 1995,¹⁵ the conditions for Public Law Internal Agreements are set out: 1) the religious entity wanting to sign such an Agreement must have special juridical

personality, recognized by the Ministry of Internal Affairs, or “public ecclesiastical personality” (this refers to the distinction between non-Catholic and national Catholic entities); 2) the State keeps its discretion to weigh the desirability of the Convention, depending on the content of the statutes of the religious community, the number of its members, its roots, and its history; 3) if the Agreements deal with matrimonial matters, the religious community must demonstrate possession of matrimonial law provisions not contrary to the Constitution, and ensure the reliability and continuity of their religious organization;¹⁶ and 4) if the Agreement includes the possibility of declaring nullity of marriage, it is required that the religious entity hold substantive and procedural laws to guarantee full respect for fundamental rights.

The competence to subscribe the Agreement rests with the Ministry of Internal Affairs, in consultation with other Ministries if the matter requires. The checking of legality is performed by the Board of Civil Service and Consultation of the State Council. The Agreement is then promulgated by its publication in the Official Journal.¹⁷

Termination of the Agreements may be mutually agreed between the parties or by unilateral decision of the state.¹⁸ The latter may occur in the following situations: 1) cancellation of the legal personality (in the case of Catholic entities, this decision can only be taken by the respective authorities of the Catholic Church); or 2) breach of commitments. In any case, termination of the Agreement requires a government decree, with a previous judicial decision.

Agreements can be on any religious issue. However, their existence is required for the recognition of civil effects of religious marriages and of marriage nullity decisions;¹⁹ to offer religious education in public schools;²⁰ to ensure permanent religious assistance in prisons, hospitals, welfare, education, military, and police facilities; and for regulating all matters relating to artistic and cultural heritage.²¹

By Decree 354 of 1998,²² the president approved the Internal Public Law Agreement number 1 of 1997, between the Colombian Government and some non-Catholic Christian religious entities. It was signed in Bogotá on December 2, 1997. The negotiation and development of the Agreement was carried out by the Ministry of Internal Affairs, in accordance with Article 15 of Decree 782, 1995. It is the only such Agreement that has been signed to date.

The Agreement extends to the following religious entities: Concilio de las Asambleas de Dios de Colombia, Iglesia Comunidad Cristiana Manantial de Vida Eterna, Iglesia Cruzada Cristiana, Iglesia Cristiana Cuadrangular, Iglesia de Dios en Colombia, Casa sobre la Roca-Iglesia Cristiana Integral, Iglesia Pentecostal Unida de Colombia, Denominación Misión Panamericana de Colombia, Iglesia de Dios Pentecostal Movimiento Internacional en Colombia, Iglesia Adventista del Séptimo Día de Colombia, Iglesia Wesleyana, Iglesia Cristiana de Puente Largo, and Federación Consejo Evangélico de Colombia (Cedecol). All of these religious entities have special juridical personality recognized by the Ministry of Internal Affairs.

The articles of the Agreement follow closely the classical matters contained in the Concordats with the Catholic Church. The covered topics are marriage in Articles I–VI; religious education and freedom of education in Articles VII–XIII; religious assistance to members of the security forces and in prisons in Articles XIV–XVIII; places of worship in Articles XIX–XX; and social assistance programs in Article XXI.

Chapter II (Articles VII–XIII) deals with religious education. In Article VII is guaranteed the freedom to choose non-Catholic education, according to the right of parents to freely decide the education they want for their children.

Article VIII contains more concrete norms: religious lessons in school planning, means and places to teach, possibility of specific agreements with each entity. The same right is guaranteed in denominational schools, according to the right of recognized religious entities to establish,

Vicente Prieto

organize and direct educational institutions of all levels (Article X). Article XII deals with the state's duty to monitor the quality of education (text books, planning, etc.). Finally, Article XII establishes rules about the studies and qualifications needed to teach religious matters.

Notes

- 1 The Concordat was subscribed on July 12, 1973. It was approved by Law 20 of 1974. The text appears at <www.dmsjuridica.com/CODIGOS/LEGISLACION/LEYES/LEY%2020%20DE%201974.htm> (last visited November 8, 2010).
- 2 Artículo XI: "A fin de hacer más viable el derecho que tienen las familias de escoger libremente centros de educación para sus hijos, el Estado contribuirá equivalentemente, con fondos del Presupuesto Nacional, al sostenimiento de planteles católicos"; **Artículo XII**: "En desarrollo del derecho que tienen las familias católicas de que sus hijos reciban educación religiosa acorde con su fe, los planes educativos, en los niveles de primaria y secundaria, incluirán en los establecimientos oficiales enseñanza y formación religiosa según el Magisterio de la Iglesia. Para la efectividad de este derecho, corresponde a la competente autoridad eclesiástica suministrar los programas, aprobar los textos de enseñanza religiosa y comprobar cómo se imparte dicha enseñanza. La autoridad civil tendrá en cuenta los certificados de idoneidad para enseñar la religión, expedidos por la competente autoridad eclesiástica. El Estado propiciará en los niveles de educación superior la creación de institutos o departamentos de ciencias superiores religiosas, donde los estudiantes católicos tengan opción de perfeccionar su cultura en armonía con su fe."
- 3 "La asistencia a la enseñanza y formación religiosas según el magisterio de la Iglesia Católica que ofrecerán los planes educativos en los establecimientos oficiales de primaria y secundaria de acuerdo con el artículo doce del Concordato, no es obligatoria para los alumnos católicos menores cuyos representantes legales hayan pedido dispensa de los cursos de religión católica y para los alumnos católicos mayores de edad que presenten una solicitud en ese sentido, de conformidad con el principio de la libertad religiosa consagrado en las conclusiones del Concilio Vaticano II y en las normas de la Constitución Política de Colombia," in J. T. Martin De Agar, *Raccolta di Concordati* (Libreria Editrice Vaticana, Città del Vaticano 2000), 142.
- 4 Art. 335, 1: "Ninguna de las ramas u órganos del poder público podrá decretar auxilios o donaciones en favor de personas naturales o jurídicas de derecho privado."
- 5 Art. 335, 2: "El Gobierno, en los niveles nacional, departamental, distrital y municipal podrá, con recursos de los respectivos presupuestos, celebrar contratos con entidades privadas sin ánimo de lucro y de reconocida idoneidad con el fin de impulsar programas y actividades de interés público acordes con el Plan Nacional y los planes seccionales de Desarrollo. El Gobierno Nacional reglamentará la material."
- 6 "Lo que se censura frente al nuevo Estatuto Constitucional, es que compulsivamente sea esa la única enseñanza que deba impartirse en los centros educativos del Estado, sin que se dé opción al alumnado de recibir la de su propia fe, o de no recibir ninguna. Dentro de la reglamentación legal que habrá de expedirse al efecto, a la Iglesia Católica habrá de dársele el espacio religioso en los establecimientos del Estado, lo mismo que a las demás religiones, dejando en todo caso en libertad a los estudiantes que no quieran recibir instrucción religiosa alguna, con lo cual se conseguiría colocar en el mismo plano de igualdad a todas las confesiones pues se satisfaría el interés religioso de los estudiantes según sus propias creencias y no se obligaría a nadie a recibir cátedra religiosa." (Decision C 027/93.) The text of this decision and of others cited in this paper can be read in <www.ramajudicial.gov.co> (last visited November 5, 2010).
- 7 "Art. 67. La educación es un derecho de la persona y un servicio público que tiene una función social; con ella se busca el acceso al conocimiento, a la ciencia, a la técnica, y a los demás bienes y valores de la cultura. La educación formará al colombiano en el respeto a los derechos humanos, a la paz y a la democracia; y en la práctica del trabajo y la recreación, para el mejoramiento cultural, científico, tecnológico y para la protección del ambiente. El Estado, la sociedad y la familia son responsables de la educación, que será obligatoria entre los cinco y los quince años de edad y que comprenderá como mínimo, un año de preescolar y nueve de educación básica. La educación será gratuita en las instituciones del Estado, sin perjuicio del cobro de derechos académicos a quienes puedan sufragarlos. Corresponde al Estado regular y ejercer la suprema inspección y vigilancia de la educación con el fin de velar por su calidad, por el cumplimiento de sus fines y por la mejor formación moral, intelectual y

física de los educandos; garantizar el adecuado cubrimiento del servicio y asegurar a los menores las condiciones necesarias para su acceso y permanencia en el sistema educativo. La Nación y las entidades territoriales participarán en la dirección, financiación y administración de los servicios educativos estatales, en los términos que señalen la Constitución y la ley”; “Art. 68. Los particulares podrán fundar establecimientos educativos. La ley establecerá las condiciones para su creación y gestión. La comunidad educativa participará en la dirección de las instituciones de educación. La enseñanza estará a cargo de personas de reconocida idoneidad ética y pedagógica. La Ley garantiza la profesionalización y dignificación de la actividad docente. Los padres de familia tendrán derecho de escoger el tipo de educación para sus hijos menores. En los establecimientos del Estado ninguna persona podrá ser obligada a recibir educación religiosa. Las integrantes de los grupos étnicos tendrán derecho a una formación que respete y desarrolle su identidad cultural. La erradicación del analfabetismo y la educación de personas con limitaciones físicas o mentales, o con capacidades excepcionales, son obligaciones especiales del Estado.”

- 8 The text of the Law is available at the following website: <www.cntv.org.co/cntv_bop/basedoc/ley/1994/ley_0133_1994.html> (last visited November 11, 2010).
- 9 “Elegir para sí y los padres para los menores o los incapaces bajo su dependencia, dentro y fuera del ámbito escolar, la educación religiosa y moral según sus propias convicciones. Para este efecto, los establecimientos docentes ofrecerán educación religiosa y moral a los educandos de acuerdo con la enseñanza de la religión a la que pertenecen, sin perjuicio de su derecho de no ser obligados a recibirla. La voluntad de no recibir enseñanza religiosa y moral podrá ser manifestada en el acto de matrícula por el alumno mayor de edad o los padres o curadores del menor o del incapaz.”
- 10 “Tratándose del ingreso, ascenso o permanencia en capellanías o en la docencia de educación religiosa y moral, deberá exigirse la certificación de idoneidad emanada de la Iglesia o Confesión de la religión a que asista o enseñe.”
- 11 Text in <www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=292> (last visited November 6, 2010).
- 12 See also Article 24: “Se garantiza el derecho a recibir educación religiosa; los establecimientos educativos la establecerán sin perjuicio de las garantías constitucionales de libertad de conciencia, libertad de cultos y el derecho de los padres de familia de escoger el tipo de educación para sus hijos menores, así como del precepto constitucional según el cual en los establecimientos del Estado ninguna persona podrá ser obligada a recibir educación religiosa. En todo caso la educación religiosa se impartirá de acuerdo con lo establecido en la ley Estatutaria que desarrolla el derecho de libertad religiosa y de cultos.” According to these principles, Decree 4500 of 2006, Article 4, recognizes for religious lessons the same level of evaluation as established for other school subjects. In case of refusal of religious education, the school plan should provide alternative subjects.
- 13 Article 15: “El Estado podrá celebrar con las Iglesias, confesiones y denominaciones religiosas, sus federaciones y confederaciones y asociaciones de ministros, que gocen de personería y ofrezcan garantía de duración por su estatuto y número de miembros, convenios sobre cuestiones religiosas, ya sea Tratados Internacionales o Convenios de Derecho Público Interno, especialmente para regular lo establecido en los literales d) y g) del artículo 6o. en el inciso segundo del artículo 8º del presente Estatuto, y en el artículo 1º de la Ley 25 de 1992. Los Convenios de Derecho Público Interno estarán sometidos al control previo de legalidad de la Sala de Consulta y Servicio Civil del Consejo de Estado y entrarán en vigencia una vez sean suscritos por el Presidente de la República.”
- 14 Decision C-088, 1994.
- 15 The text of this Decree is found at the following site: <www.presidencia.gov.co/prensa_new/decretoslinea/1995/mayo/12/dec0782121995.pdf> (last visited November 10, 2010).
- 16 See Law 25 of 1992, Article 1 (text in <www.secretariasenado.gov.co/senado/basedoc/ley/1992/ley_0025_1992.html>, last visited November 10, 2010).
- 17 See Decree 782/95, Article 15.
- 18 See *ibid.*, Article 16.
- 19 See *ibid.*, Article 13, paragraph 2.
- 20 *Ibid.*
- 21 See Law 25 of 1992, Article 1; Religious Freedom Act, Article 15.
- 22 Text of the Decree is found at the following site: <www.presidencia.gov.co/prensa_new/decretoslinea/1998/febrero/19/dec354191998.pdf> (last visited November 10, 2010).

Religious education in Estonia

Merilin Kiviorg

Social demographics

Estonia could be said to be one of the least religious countries in Europe. According to the last population census from the year 2000, approximately 29 percent of the adult population (those aged 15 and above; total questioned 1,121,582) considered themselves adherents of any particular creed.¹ Of this figure, about 13.6 percent declared themselves to be Lutherans. The majority of Lutherans are ethnic Estonians. The second largest religious tradition in Estonia is that of the Orthodox Church. Of the 29 percent of the population following any creed, 12.8 percent considered themselves as Orthodox. However, some new data suggest that the Orthodox community may have grown in numbers and become a fraction bigger than the historically dominant Lutheran church.² The Orthodox community in Estonia is divided (also ethnically) between the Estonian Apostolic Orthodox Church (EAOC) and the Estonian Orthodox Church of Moscow Patriarchate. All other Christian and non-Christian religious communities have adherents of approximately 2.6 percent of the adult population (aged 15 and above).³ The largest religious communities among those are Roman Catholics, Old Believers, Baptists, Pentecostals, and Jehovah's Witnesses. Considering the above figures, the percentage of atheists is surprisingly low—approximately 6 percent. There is a small Muslim community in Estonia. Muslims have lived on the Estonian territory since the eighteenth century. The majority of Muslims are ethnic Tatars. The ethnic composition of the Muslim community changed during the Soviet period due to new arrivals from other republics of the former Soviet Union, such as Azerbaijan, Uzbekistan, Kazakhstan, and other traditionally Muslim nations of the Caucasus and Central Asia. However, Tatars maintained their leading role in cultural and religious activity.⁴ They have integrated well into Estonian society and there is no reason to associate them with radical Islam. So far there are only a limited number of new arrivals. Estonia does not yet have any of the challenges related to the growing Muslim communities as experienced in other European countries. The Estonian indigenous religious tradition is represented by the House of Taara and Native Religions. One way or the other some practices of indigenous religious tradition are popular and important for many in Estonia.

According to the Eurobarometer survey (*Social Values, Science and Technology*), carried out in 2005, Estonia was shown to be the most skeptical country in Europe in regard to belief in the

existence of God. Less than one out of five declared any belief in God (approximately 16 percent). This probably shows a relative coolness towards traditional religions and institutional forms of religion. However, more than 54 percent believed in a non-traditional concept of “some sort of spirit or life force.”⁵ Although there are discrepancies between different surveys, they seem to suggest that religion is both an individual and private matter in Estonia (“believing without belonging”). These surveys also give one confidence in saying that the majority of the Estonian population is not hostile to religion. The new comprehensive census of the Estonian population, which will also ask questions about religious affiliation, was due to take place in 2011.⁶

Constitutional context

Religious education (hereafter, RE) in Estonia is a voluntary, non-confessional (non-denominational) subject. Unlike other countries with non-confessional models of religious education, in Estonia religious education is an elective, rather than a required course. As to the typology of RE, it is intended to be a mix of teaching about religions and ethics.⁷ The type of religious education reflects Estonian constitutional principles of neutrality/separation of the state and church (“There is no state church”; Article 40, Estonian Constitution⁸), non-discrimination and freedom of religion and belief. However, the chosen type of RE is also a result of the heated debates over RE since Estonia regained independence after the Soviet occupation in 1991.⁹

There is no explicit mention of religious education in the Constitution. Article 37 of the Estonian Constitution creates the basis for the entire school system, but does not specifically mention religious education.¹⁰ According to the Estonian Constitution, education is supervised by the state.

As to the relationship between state and church generally, the separation of state and church has not been interpreted as a rigorous policy of non-identification with religion. The cooperation between the state and religious associations in areas of common interest is established practice today. Thus, the principle, “there is no state church”, is not interpreted similarly to disestablishment in the USA or the principle of *laïcité* in France. Maruste has rightly pointed out that the Estonian Constitution does not make any reference to secularism as a constitutional principle.¹¹ Estonia most probably fits into the category of cooperation systems on the continuum of state and church relationships. As to religious education, cooperation between the state and religious organizations in developing the curriculum and providing teachers has been most prominent. However, it is probably right to say that Estonia is still looking for an adequate balance for political interaction between state and religion. This process is influenced by Estonian history and culture, but also by similar processes and debates throughout Europe and beyond.¹² There is ongoing debate on the preferential treatment of traditional Christian religious communities. However, criticism in this regard (with some exceptions) is usually targeted at the government rather than religious institutions or their members. The government has been accused of favouring Christian religions. These debates seem to be related to wider questions about identity or the rebuilding of Estonian identity after the collapse of the Soviet Union, and more recently in the context of belonging to the European Union. This ongoing debate can only be considered healthy and normal for a democratic society. In the context of RE, the preferential treatment of Christian religions was furiously debated during the development of the National Curriculum.

Religious education has been one of the most contested issues regarding religion in Estonia today and, in fact, throughout its history as an independent state (1918–40 and 1991–present). As to the historical development of RE, some historical points of reference are necessary. Under

Merilin Kiviorg

Swedish rule from the middle of the seventeenth century to the beginning of the eighteenth century, the Lutheran Church enjoyed the position of being the state church.¹³ One of the cornerstones of the Lutheran paradigm was the idea that people should be taught to read in order to be able to read the Bible. To some extent one can say that the network of public schools that began to develop at the end of the seventeenth century was somehow an offshoot of the Lutheran Church—being to some degree an expansion of the confirmation school, where religious education had a central role.¹⁴ After the incorporation of Estonia into the Russian empire at the beginning of the eighteenth century (as a result of the Great Northern War), the Lutheran Church preserved its key position in developing schools and organizing religious education. Translated biblical texts remained an important source for Estonians to learn to read and write. For example, at the end of the nineteenth century (during the Russification period¹⁵) religious education was the only subject that was allowed to be taught in Estonian. This remained the case even at the beginning of the twentieth century. At the beginning of the twentieth century, however, religious education had started to run into trouble. This was due to a combination of complex factors, including socio-political ones. As pointed out by Valk, the method of teaching focused on memorizing biblical texts, and whether a student actually understood what he/she read was significantly less important.¹⁶ All school activity was supervised by the church. No pedagogical preparation was required from supervisors (visitors). This was an increased source of tension between conservative supervisors and progressive teachers. Secularization and political turbulence at the time also exacerbated the crisis in religious education.¹⁷

During the first independence period (1918–40), Estonia was one of the first countries where a model of non-confessional religious education was introduced. The RE followed the ideas enshrined in the 1920 Constitution, which set forth the principle of separation of state and religion.¹⁸ The subject included learning about different world religions. A clear distinction was made between religious education at schools and religious instruction in churches. Nevertheless, as Schihalejev points out, the major content was Christianity, with emphasis on moral development and cultural heritage. Bible stories were presented from a non-confessional perspective, which was an attempt to do justice to different denominations.¹⁹ However, the basis of non-confessional religious education was Christianity. This can be seen as justified at the time. Most of the population (about 78 percent) belonged to the Estonian Evangelical Lutheran Church.²⁰ The second largest church was the Estonian Apostolic-Orthodox Church (according to the 1934 census, approximately 19 percent belonged to the latter church).²¹ Although secularization of Estonian society was in progress, rural areas were still strongly community oriented, with the church playing a significant role. Nevertheless, as early as the 1930s it was noted that Estonians were becoming relatively less religious; the evidence for this was found in the decline of payments for church membership.²² One more fact needs to be mentioned here. In classes where students had the same religious background, a confessional element was allowed to be introduced. In multi-religious schools, grouping of students according to their confession was allowed.²³ As about 86.3 percent of students were taking religious education classes, the school prayer was introduced again. Some incidents were reported where students who did not take religious education classes were still required to be present at school prayers. This was considered to be against the freedom of religion or belief of students.²⁴

When the Soviet Union occupied Estonia in 1940, religious education was banned in schools. All forms of religious studies at schools were suppressed and courses of scientific atheism were introduced instead.²⁵ After regaining independence in the early 1990s, discussions about religious education started once again.

There are several background factors which seem to influence the debate today. The absence of experience, for some 50 years, in providing (or receiving) religious education in Estonia, due to the Soviet occupation, is probably one of the most important factors. However, the relatively low religiosity of the Estonian population plays a significant role as well.

Legal context

There is no specific law solely on religious education. In addition to the Constitution, Article 2 of the Education Act (EA, *Haridusseadus*) sets general objectives and levels of education, stating *inter alia* that the fundamental principles of education are based on the recognition of universal and national values, of the individual, and of freedom of religion and conscience.²⁶

The laws specifically relevant to RE are the EA and The Act of Basic Schools and Gymnasiums (BSG, *Põhikooli-ja gümnaasiumiseadus*). The laws affecting RE have been changed recently. Until September 1, 2010, Article 4 (4) of the EA set forth that the study and teaching of religion in general education schools is voluntary and non-confessional.²⁷ The BSG set forth that religious education is compulsory for the school if at least fifteen pupils wish it to be taught.²⁸ Article 3 (4) of this Act also specified that religious education is non-confessional and voluntary.²⁹ There was no unified curriculum provided by the state; however, there were guidelines.

The new BSG³⁰ took effect on September 1, 2010. There are many aspects to this new law which are unclear and need to be tested out in practice. It is also likely that some further amendments to the law are needed.³¹

The new BSG³² introduced a few changes to the school system in Estonia generally. As to RE, the above-mentioned provisions in the EA and BSG have been removed. The new BSG mentions RE as one of the voluntary subjects (Article 15 (4)). Although schools have relative freedom to provide and design their voluntary courses, the courses on RE have to follow the state-provided syllabus (Article 15 (4)). This is a result of intensive debates on RE which have been held since the end of the Soviet occupation in 1991, and it seems to be an attempt to unify and establish control over the content of religious education nationally. There is another change relating to RE: in gymnasiums (upper secondary schools), depending on the modules that the student chooses, RE may become compulsory once chosen. Although the law entered into force on September 1, 2010, the latter provision does not necessarily take effect in all schools until September 1, 2013 (BSG, Article 89 (1)).

According to Article 15 (2) of the BSG the Government has adopted two regulations setting forth the National Curriculum for Basic Schools (*Põhikooli riiklik õppekava*)³³ and the National Curriculum for Gymnasiums (*Gümnaasiumi riiklik õppekava*).³⁴ According to Article 11 (4) of the National Curriculum for Gymnasiums the school has to provide at least two optional courses on RE during the three-year period of study. The obligation to provide RE is not clearly pronounced in the National Curriculum for Basic Schools. However, the school seems to be obliged to provide some optional courses (Article 15 (4), one of which could be RE. There are still some discrepancies in the new BSG and between the BSG and governmental regulations. The BSG and the regulations still need to be synchronized/harmonized. The matter is also complicated by the fact that both the law and regulations take effect gradually over the three-year period.

According to Article 17 (4) of the BSG, the school may also take into account (accept) that a student takes classes in another school (basic or upper secondary), provided there is an agreement between his or her parents and the school's director. This provision may become relevant as regards RE, for example, in the case where a student wishes to take confessional RE in a

Merilin Kiviorg

denominational basic or upper secondary school. However, implications of this provision are not clear.

There are no specific bodies in the state structure that solely deal with religious education. However, the Ministry of Education and Research has approved the composition of subject committees (*ainenõukogu*). The committee for RE includes representatives from academic (theological) institutions, as well as schools and professional associations (for example, the Association of Estonian RE Teachers, *Eesti Religiooniõpetajate Liit*).³⁵

The state and religious autonomy

There are no direct legal or political instruments designed to control the choices of citizens as regards their religion or religious education. As noted above, RE is a voluntary subject. As described below, RE is designed to prepare students for life in a pluralistic and multicultural world. However, RE should be put into a larger context provided in the National Strategy for General Education (*Üldharidusstrateegia 2007–2013*).³⁶ In general terms, this strategy emphasizes the role of education in effective social participation, integration, free movement (of labor), and economic progress. The strategy emphasizes that the curriculum and school environment should provide a precondition for understanding and respect for other cultures and religions. This is seen as being important in the context of European integration and the free movement of people and labor (e.g. the Lisbon Strategy). Thus, one can argue that one of the aims of RE is socio-economic development and integration. Whether this can be seen as a direct attempt to control people's choices, however, is a complex matter which cannot be discussed at any reasonable length in this essay.

Parents or students themselves are also free to choose confessional RE provided by religious or private educational institutions.

Religion and the autonomy of the state

There is no legal provision providing a basis for any particular religion(s) to have power to control religious education in public schools. However, the Estonian Council of Churches³⁷ and Estonian Evangelical Lutheran Church specifically have been very active in contributing to policies and projects, for example, regarding religious education. This cooperation with the state has been seen as controversial. However, as mentioned above, public criticism about political involvement of religion in politics has focused mostly on the role and attitudes of the state in this involvement.

Non-Christian communities, and especially the religious community representing Estonian indigenous beliefs, have also been active in politics to a certain extent. With their initiative, the Round Table of Religious Organizations (*Usuliste Ühenduste Ümarlaud*) was established in April 2001. The Round Table comprises non-Christian movements in Estonia and was established with the aim of presenting their views more successfully in their relationships with the state. It was created as a result of state favoritism of Christian religions. When the Round Table was initiated, new proposals about religious education were hotly disputed in society.

One of the concerns expressed during the 18 years of debate over RE was that teachers of religious education, having a mostly Christian background, may have a problem in instructing objectively. These concerns were partly related to negative experiences during the first days of religious education in state schools after Estonia regained its independence. When schools became open to religious education, many eager people rushed into the profession without the pedagogical experience and professional skills required. Sometimes religious education turned into confessional instruction in schools.³⁸ Today, teachers of RE as a rule have to have both

higher theological and pedagogical preparation (although there are some exceptions). Teachers of RE are educated at the Theology Faculty of the University of Tartu, but also by academic institutions initiated by religious organizations. This fact seems to have been accepted in society (at least it is not currently disputed).

State financial support for religious education

The Estonian school system consists mainly of state schools. Thus, the primary place for religious education is in public schools financed by state or municipal government. The teachers of religious studies are paid from the state or municipal budget. Private schools have some access to public funding. There are no private confessional basic and upper secondary schools that are completely funded by the state. Confessional religious education is also provided for children by Sunday and Bible schools operated and mostly financed by religious organizations.

Religious education in public schools

As noted above, RE in Estonia is a voluntary, non-confessional (non-denominational) subject. The public school curriculum does not include denominational religious instruction as a specific subject. In fact, there is no legal basis to provide denominational education in public schools. As noted above, this option only existed during the first independence period (1918–40).³⁹

As to the content of RE in basic⁴⁰ and secondary schools,⁴¹ it is (or was due to be, as the laws take effect gradually) a mix of learning about religions and ethics (broadly defined). The aim is to give a non-confessional overview of world religions and to help students to understand the impact of different religions in world culture and, most importantly, to prepare them for life in a pluralistic and multicultural world. Not only are religious world views covered, but also non-religious views. Topics such as secularization and the relationship between science and religion are also included. The syllabus seems to be aimed at teaching to tolerance. It is intended to develop religious literacy and readiness for dialogue by introducing different world religions/views. An interesting aspect is that students are encouraged to recognize and understand religious discrimination and analyze both positive and problematic religious manifestation in context. Discussions are also held about existential questions. There are obviously differences in methods of teaching and learning according to the age of the students.

The preambles to the syllabuses of basic schools and also upper secondary schools emphasize that religious education is founded on the UN Declaration of Human Rights. Religious education is a precondition for protection of freedom of religion or belief. The aim of religious education is to provide knowledge about religion in order to help students understand the world, its cultures, and the role of the religious dimension in human life. It also emphasizes the importance of learning about local religions and cultural heritage. An important aim of religious education is to support pupils' moral development, and special attention must be paid to the problems of pupils' everyday life and their questions. The syllabus seems to take into account some of the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools adopted by OSCE/ODIHR in 2007.⁴²

Thus, there is a strong emphasis on learning how to navigate in a multi-religious world, while remaining open minded and critical at the same time. Dialogue and respect seem to be the key words that characterize both the curriculum of basic schools and gymnasiums. As to the methods of teaching, there seems to be a strong emphasis on a student-centred approach. All in all, it seems to be a rather convincing syllabus which should satisfy people from different backgrounds. However, it is rather ambitious and it remains to be seen how it will work in

Merilin Kiviorg

practice. Also, the lack of adequately qualified teachers and course materials to actualize this syllabus is still an issue. Teachers need to have both theological and pedagogical preparation. The law aims at teachers having at least higher education (BSG § 75 (2)); however, in some circumstances deviations from this may be allowed (BSG § 75 (6)).

According to the law, RE in public schools is/was due to be based on the national syllabus as described above. Schools have relative freedom to offer additional voluntary courses provided that the means, time, and human resources are available. Some schools have provided additional courses related to religion. However, indoctrination or teaching into religion in public schools is strongly questionable under the Estonian Constitutional framework. It would most likely also trigger a social outcry (most likely, questions about neutrality and financing as regards such RE would emerge). Thus, the content and method of teaching of additional voluntary courses relating to religion matters.

Religious education in private schools

Religious organizations can set up private educational institutions with curricula and diplomas recognized by the secular state. The Private Schools Act (PSA, *Erakooliseadus*) regulates the establishment of private educational institutions at all school levels (pre-school, basic, secondary, vocational, and higher education).⁴³ These private schools need to obtain a license from the Ministry of Education and Research (PSA, Article 5 (1)). Sunday or Bible schools run by churches and congregations do not need the license. The license is issued for a certain period of time for up to five years (PSA, § 5 (2¹)). It is also important in order to apply for funding and projects financed by the state or municipal government. Only a few religious organizations have established schools⁴⁴ in accordance with the Private Schools Act.

As noted above, according to the Estonian Constitution (Article 37), provision of education is supervised by the state. If, as a result of state supervision, it becomes evident that the schooling and education provided at the private school do not comply with the statutes of the private school or that the standard of education does not correspond to the level of education (e.g. basic or upper secondary) specified in the education license or does not meet the requirements established for this type of private school by law, the agency exercising state supervision has the right to issue a precept to the head of the school for the elimination of deficiencies and for the improvement of the schooling and education (§ 23 (2) PSA). If the private school fails to comply with the precept during the term specified in the warning, the state supervisory agency may impose a penalty pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Act⁴⁵ (*Asendustäitmise ja sunniraha seadus*). Issuing the above-mentioned precept is not at the discretion of the state agency, and the manager of the school has the right to contest it.

Private schools have relative freedom as regards curriculum, ethos, and admissions. The manager of a private school approves the curriculum. The curriculum is entered into the Estonian Education Information System upon the issuing of a license (PSA, § 11 (2)).

According to the amendments applicable from September 1, 2010, Article 11 (5) of the PSA explicitly sets forth that it is allowed to provide confessional religious education in private educational institutions (previously there was no explicit mention of this).⁴⁶ This is a general provision which applies to all private schools, not just confessional ones. The PSA further states that the confessional RE is voluntary. Thus, one can discern from this that there is no legal obligation to provide confessional RE and, even in confessional schools, which provide state-licensed basic or upper secondary education, confessional RE must be voluntary. There is no

provision as to the number of students needed for this kind of course. The confessional RE is provided according to the conditions and rules established by the school.

Private educational institutions, when providing state-licensed/state-supervised basic or upper secondary education, have to follow the standards set in the National Curriculum for Basic Schools⁴⁷ or Gymnasiums.⁴⁸ The National Curriculum applies to all schools irrespective of their legal status (public or private), if specific laws do not provide different regulation (for example, the PSA). This means that, according to the new law and regulations, private educational institutions may also be required to provide non-confessional voluntary RE to their students as set forth in the BSG and in the National Curriculum. This can be seen as justified considering the need to prepare students for a multi-religious/multicultural society with an emphasis on respect and dialogue. However, application of the law in this matter is not entirely clear yet.

As to the actual teaching or content of RE in private schools, state control is most likely to happen *ex post facto*. So far there have been no reported conflicts of interests or concerns related to teaching non-confessional or confessional RE in private schools. As noted above, there have been reported problems relating to RE in public schools.

Conclusion

Religious education in public schools has been one of the most contested issues regarding religion in Estonia today and, in fact, throughout its history as an independent state. There has always been partial agreement as to the need to teach students about religions. However, there are different opinions as to how religious education should be conveyed. Views have differed regarding the age at which religion needs to be introduced in schools and by whom it should be taught. There are some additional practical and structural problems which relate to the school curriculum and teaching methods as a whole. Regarding religious education specifically, the major concern has been its content and purpose. Concerns have been expressed about how to strike a balance between introducing Christianity and other world views. This has fuelled the debate about religious education. However, after the furious debating over the past 18 years, a compromise seems to have been achieved. Although many legal and practical aspects are still unclear, it is hoped that they will not hinder delivery of religious education as such. RE is considered the key to the eradication of many problems related to religion.

Notes

- 1 The total population of Estonia is currently 1,340,122. Statistics Estonia, <www.stat.ee>, February 14, 2011.
- 2 Information about current membership of religious organizations is based on data from the Ministry of Internal Affairs. Ministry of Internal Affairs, <www.siseministeerium.ee/37356>, January 30, 2011. It has to be emphasized that religious organizations are not obligated to provide the Ministry of Internal Affairs with statistical information of their membership. Religious organizations have voluntarily informed state officials about the number of their adherents.
- 3 Statistical Office of Estonia, “2000 Population and Housing Census: Education. Religion” (Tallin: Statistical Office, 2002), 40.
- 4 R. Ringvee, “Islam in Estonia,” in *Islam v Európe* (Centrom pre európsku politiku, Bratislava: 2005), 242–43.
- 5 European Commission, Special Eurobarometer: *Social Values, Science and Technology*, (2005), 11.
- 6 Statistics Estonia, <www.stat.ee/39106>, April 25, 2010.
- 7 According to the classification provided by C. Evans, it can be argued that the RE in Estonia fits most comfortably within the category of “plural religious education,” that is, students learn about the basic practices, beliefs, rituals, etc. of a variety of religions. They are presented with information about these

Merilin Kiviorg

religious traditions but are not taught that any of them are (un)true. The instruction also extends to philosophies and beliefs of a non-religious nature. C. Evans, "Religious Education in Public Schools: An International Human Rights Perspective" (HRLR 8, 2008), 461. Religion in Estonian schools is also taught within other subjects, for example, art, history, and literature (Evans calls it "incidental RE"), to the extent necessary to understand certain topics or visual art.

8 RT I, 1992, 26, 349.

9 The independent Republic of Estonia was born in the aftermath of World War I (1914–18). The date of Estonian independence is February 24, 1918. The outbreak of World War II disturbed the peaceful development of the country, which was subsequently occupied by the Soviet Union (1940–41, 1944–91) and Nazi Germany (1941–44). A resurgence of Estonian national identity began in the late 1980s, leading to independence in 1991.

10 Article 37 of the Estonian Constitution:

- 1 Everyone has the right to education. Education is compulsory for school-aged children to the extent specified by law, and shall be free of charge in state and local government general education schools.
- 2 In order to make education accessible, the state and local government shall maintain the requisite number of educational institutions. Other educational institutions, including private schools, may also be established and maintained pursuant to law.
- 3 Parents shall have the final decision in the choice of education for their children.
- 4 Everyone has the right to receive education in Estonian. The language of instruction in national minority educational institutions shall be chosen by the educational institution.
- 5 The provision of education shall be supervised by the State.

11 R. Maruste, *Konstitutsionalism ning põhiõiguste ja -vabaduste kaitse* [Constitutionalism and Protection of Fundamental Rights and Freedoms] (Tallinn: Juura, 2004), 522.

12 See e.g. Kiviorg, M. "Estonia" in R. Torfs (ed.), *International Encyclopaedia of Laws: Religion* (Kluwer Law International, 2011).

13 For a more detailed account of historical and cultural factors influencing law and religion in Estonia today, see e.g. Kiviorg, M. "Estonia" in R. Torfs (ed.), *International Encyclopaedia of Laws: Religion* (Kluwer Law International, 2011); for a more general historical account, see Raun, T. *Estonia and Estonians*, 2nd edn. (Stanford: Hoover Institution Press), 2001.

14 F. Kozyrev and O. Schihalejev, "Religious Education in Estonia and Russia: Resemblances and Differences," in *Encountering Religious Pluralism in School and Society: A Qualitative Study of Teenage Perspectives in Europe*, ed. T. Knauth et al. (Münster: Waxmann, 2008), 310.

15 The concept of "Russification" is a somewhat confusing. However, it encompasses a series of administrative and cultural reforms, which were intended to unite the Baltic provinces more closely than before with Russian empire. T. Raun, *Estonia and Estonians*, 2nd ed. (Stanford: Hoover Institution Press, 2001), 59.

16 P. Valk, *Ühest heledast laigust Eesti kooli ajaloos* (Tallinn: Logos, 1997).

17 For a more detailed overview about RE in historical context in Estonia, see Kiviorg, M. "Estonia" in R. Torfs, ed., *International Encyclopaedia of Laws: Religion* (Kluwer Law International, 2011).

18 Following the ideas enshrined in the 1920 Constitution, the Law on Public Primary Schools, which was adopted by Parliament on May 7, 1920, abolished religious education in primary schools (RT 1920, 75/76, 208). The same principle was followed in the Law on Public Gymnasiums (RT 1922, 155/156, 91), which was adopted on December 7, 1922 (the law was superseded by the referendum in 1923, however, and never came into force). There were heated public debates taking place before and after the laws were passed (historical records reveal colourful public debates—quite unusual for the generally reserved and mild-tempered Estonians). The matter was eventually settled by the 1923 referendum (RT I 1923, 35, 36). Sixty-six percent of the voting population participated in the referendum. Of these, 71.9 percent voted for state-financed religious education as a voluntary topic in all schools. After the referendum, previously adopted laws for primary schools (RT I 1923, 35, 36) and gymnasiums (RT I 1923, 97/98, 77) were amended. From then on religious education was voluntary for students and teachers, but compulsory for schools.

19 O. Schihalejev, *Estonian Young People, Religion and Religious Diversity: Personal Views and the Role of the School* (Tartu: University of Tartu Press, 2009), 42.

- 20 According to the national census of 1934, there were 874,026 Evangelical Lutherans in Estonia out of a total population of 1,126,413. Estonian Institute, <www.einst.ee/society/Soreligion.htm>, February 2, 2000; see also Statistical Office of Estonia, “2000 Population and Housing Census: Education. Religion” (Tallinn, Statistical Office, 2002), 17.
- 21 Riigi Statistika Keskbüroo, “Rahvastiku koostis ja korteriolud: 1 III 1934 rahvaloenduse andmed” (Tallinn: Riigi trüükikoda, 1935), Vihik II.
- 22 Statistical Office of Estonia, “2000 Population and Housing Census: Education. Religion” (Tallinn, Statistical Office, 2002), 17.
- 23 Haridusministeeriumi ringkirjad (Tallinn: Haridusministeerium, 1932): 79–80.
- 24 P. Valk, *Ühest heledast laigust Eesti kooli ajaloos* (Tallinn: Logos, 1997), 38–39.
- 25 O. Schihalejev, “Meeting Diversity: Students’ Perspectives in Estonia,” in *Encountering Religious Pluralism in School and Society: A Qualitative Study of Teenage Perspectives in Europe*, ed. T. Knauth et al. (Münster: Waxmann, 2008), 248.
- 26 RT I 1992, 12, 192; RT I 2010, 41, 240 (last amended).
- 27 RT I 1992, 12, 192; RT I 2007, 12, 66.
- 28 This provision was introduced in 1999. Before its adoption it was likely that schools did not provide religious education even if there were pupils who wished to be taught. The reasons for this varied (financial issues, lack of human resources, overloaded curriculum, etc.).
- 29 RT I 1999, 24, 358.
- 30 RT I 2010, 41, 240 (entered into force September 1, 2010; some provisions, however, were due to enter into force at a later date).
- 31 Parliamentary debates at the time of the processing of the law focused on the structure of the school system and regional development. Intensive debates were held on how the reform influences the survival of rural areas and financial issues relating to reform. There was surprisingly little debate regarding RE, considering the furious debates held in the past 18 years. See XI Riigikogu Stenogramm, V Istungjärg, March 23, 2009; XI Riigikogu Stenogramm, VI Istungjärg, November 25, 2009; XI Riigikogu Stenogramm, VII Istungjärg, June 2, 2010; XI Riigikogu Stenogramm, VII Istungjärg, June 6, 2010. Available at <www.riigikogu.ee>, December 1, 2010.
- 32 RT I 2010, 41, 240 (entered into force September 1, 2010; some provisions, however, were due to enter into force at a later date).
- 33 RT I, 14.01.2011, 1.
- 34 RT I, 14.01.2011, 2.
- 35 “Üleriigiliste ainenõukogude moodustamine, ülesanded ja töökord,” Haridusministri käskiri, March 26, 2008, no. 367.
- 36 Ministry of Education and Research, <www.hm.ee>, December 20, 2010.
- 37 The members of the Council are as follows: (1) the Estonian Evangelical Lutheran Church; (2) the Roman Catholic Church; (3) the Estonian Apostolic Orthodox Church; (4) the Estonian Orthodox Church of Moscow Patriarchate; (5) the Estonian Christian Pentecostal Church; (6) the Estonian Methodist Church; (7) the Estonian Union of Evangelical Christian and Baptist Congregations; (8) the Seventh-day Adventist Church; (9) the Charismatic Episcopal Church of Estonia; and (10) the Estonian Congregation of St. Gregory of the Armenian Apostolic Church. The Estonian Council of Churches is a rather unusual ecumenical organization (registered as a non-profit organization) which has members who normally are not interested in ecumenical cooperation. It also includes churches with a relatively short history.
- 38 P. Valk, *Development of the Status of Religious Education in Estonian School. European and Local Perspectives*, paper given at the Conference on Law, Religion and Democratic Society (Estonia, University of Tartu, 1999). Conference materials are available at the University of Tartu Faculty of Law, Chair of Public International Law and EC Law.
- 39 Haridusministeeriumi ringkirjad (Tallinn: Haridusministeerium, 1932): 79–80.
- 40 National Curriculum for Basic Schools (*Põhikooli riiklik õppekava*), RT I, January 14, 2011, 1, Lisa 9.
- 41 National Curriculum for Gymnasiums (*Gümnaasiumi riiklik õppekava*), RT I, January 14, 2011, 2, Lisa 8.
- 42 *Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools* (Warsaw: OSCE, 2007).
- 43 RT I 1998, 57, 859; RT I 2010, 41, 240 (last amended).
- 44 Private schools can be established *inter alia* by non-profit organizations (PSA, Article 2), including religious associations.

Merilin Kiviorg

45 RT I 2001, 50, 283, RT I 2007, 24, 127 (last amended).

46 This provision was included by the new BSG which amended several paragraphs of the PSA (see Article 105 of the BSG).

47 National Curriculum for Basic Schools (*Põhikooli riiklik õppekava*), RT I, January 14, 2011, 1.

48 National Curriculum for Gymnasiums (*Gümnaasiumi riiklik õppekava*), RT I, January 14, 2011, 2.

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Religious education in the European Union

Silvio Ferrari

Religious education in the European Union has become a topic of great relevance as a result of the transformation of Europe into a multi-religious continent, and several studies have been recently devoted to this subject.¹ The chapters in this book covering various European nations show that the teaching of religion in European public schools is imparted according to three different patterns.

Models of religious education

First, there are some countries where no teaching of religion is offered. A good example is France, with the exception of Alsace-Moselle. French public schools do not offer a specific course where the teaching of one or more religions is provided: references to religion are part of the teaching of other school subjects like history, geography, languages, the arts, and philosophy, and are made by the teachers of these disciplines. In secondary schools, parents or students can ask for the creation of a chaplaincy and, with the authorization of the school authorities, the chaplain can teach religion on the school premises to the students who want to receive this teaching; however religious education is not given during school time and is not part of the normal school curriculum. Hungary and the Czech Republic follow a similar model: in both countries no teaching of or about religion is part of the school curriculum, although denominational teaching of religion is sometimes provided.

A second pattern is provided by the countries that offer “non-denominational” teaching about religion. This expression indicates the provision of knowledge and information about a number of different religions from a point of view that is external to each of them. Teaching about religions is organized, managed, and controlled by the state. In particular, state institutions are in charge of the training, selection, appointment, dismissal, and remuneration of teachers, who do not need any authorization issued by religious authorities; the definition of the curriculum and the syllabus; and the approval of textbooks. Some of these activities are performed in cooperation with the religious communities (for example in the U.K.). With a few exceptions (Estonia and Slovenia, among others), this non-denominational teaching is compulsory; in some countries students have the right to opt out. No alternative education is provided to them. The

Silvio Ferrari

non-denominational character of this teaching does not exclude the possibility of paying special attention to Christianity (as is the case in Denmark and the U.K.).

Finally, there are countries with denominational teaching of religion, that is, teaching of a specific religion. Generally speaking, this teaching is organized, managed, and controlled by the concerned religious community (frequently in cooperation with the state), but the scope of its powers is different from country to country.² In most cases, religious authorities have the power to select the teachers. Even when the teacher is appointed and paid by the state, he/she cannot teach without the authorization of the religious community, and the revocation of the authorization obliges the teacher to stop teaching (this is the case, for example, in Portugal, the Netherlands, Poland, Austria, Belgium, Spain, Latvia, Luxembourg, and Italy). Religious communities also play a role (that is different from country to country) in the definition of both curriculum and syllabus and in the adoption of textbooks.

Frequently, states assume an obligation to offer denominational teaching of religion (for example, the Netherlands, Romania, Poland, Bulgaria and, in relation to the Catholic religion only, Portugal, Spain and Italy), but students (or their parents) have the right to choose whether to attend or not; in some cases, the teaching is compulsory, and students have only the right to opt out. In a few countries, students who do not follow the teaching of religion are required to attend an alternative lesson. Denominational religious instruction is generally supported, from an economic and logistic point of view, by the state, which pays the teachers (this is the case, for example, in Belgium, Finland, Poland, the Netherlands, the Czech Republic, Spain, Italy, Luxembourg, and Romania) and makes available the facilities and the school time. However, not all religions can be taught at school. In some states this right is granted only to recognized or registered religious communities and almost everywhere a minimum number of students applying for the teaching of a specific religion is required. In some cases these restrictions limit the number of minority religions that can be taught in the public schools; in other cases, minority religious communities, although having the right to teach their religion, prefer not to make use of this opportunity.

Recently, some changes have occurred in the countries where denominational teaching of religion is imparted. In particular, in some countries where, until 20–30 years ago, just one religion could be taught, it is now possible to teach a number of religions (for example, in Italy, Spain, and Portugal); in other countries (e.g. Germany) there are increasing ecumenical and interdenominational openings (however, such a development—and this is its main limitation—can take place only in religiously plural countries: it is hard to imagine it in countries with a dominant religion, like Poland or Italy); denominational teaching of religion is less and less limited to the knowledge of a single religion and frequently includes elements of general religious culture and ethical issues (this is the case, for example, in Italy and Spain, and, in France, in Alsace-Moselle). However, the approach to these issues cannot be neutral (as it should be in the case of non-denominational teaching), as it reflects the point of view of the religion that is being taught. As a consequence of these changes, the subject matter of denominational and non-denominational teaching of religion has become more similar, while the distance between the two models remains unaltered insofar as concerns the authority in charge of organizing and controlling that education (the religious communities in one case, the state in the other).

Future challenges

None of these three models is able, alone, to meet the challenge posed by the growing religious plurality of Europe. Therefore it is necessary to combine them in ways that answer the needs of the different cultural traditions of the European states. That being said, it is undeniable that, in

countries with denominational religious education, where just one religion is taught at school, the problem of learning about the different religions that exist in Europe has become acute. If the religious communities are not able to develop interdenominational and inter-religious education (and they are still far from that), the only viable alternative would be non-denominational education about a plurality of religions. A model for such instruction has been indicated in the recommendation, *Religion and Democracy*, of the 1999 Parliamentary Assembly of the Council of Europe: this directive promotes better knowledge of different religions through the teaching of comparative history of religions and of the history and philosophy of religion.³ In this perspective non-denominational teaching about religions and non-religious conceptions of life and the world would become mandatory and would be organized and delivered according to the standards of other school teachings (that is, without any control by religious authorities over teachers, programs, books, and so on), although some kind of cooperation and consultation with the different stakeholders (families, religious communities, associations of teachers, etc.) would be advisable.⁴

At the same time it is equally undeniable that denominational teaching of religion is part of the legal tradition of many European countries where the school is conceived of as an institution responding to the various requests coming from civil society. Moreover, even if non-denominational education about religions is introduced or if the knowledge of religions is embedded within various school disciplines (according to the French model), denominational religious teaching has a role to play in the process of students' education. But it might need to be seriously reformed: in particular, it is necessary to make it fully voluntary, to give the right to impart this teaching to several religions and to ensure that the support provided by the state is not selectively granted to only some of them; according to different national situations, this teaching could be placed inside or outside school hours and the teachers could be paid or not by the state.

Once these conditions are met, the two systems of religious teaching can coexist and offer, through their integration, a contribution to students' education that is equal to the challenges posed by the religious transformation of Europe.

Notes

- 1 See Robert Jackson, Siebren Miedema, Wolfram Weisse, Jean-Paul Willaime, eds., *Religion and Education in Europe* (Münster, Waxmann, 2007); Elza Kuyk, Roger Jensen, David Lankshear, Elizabeth Löh Manna, Peter Schreiner, eds., *Religious Education in Europe* (Oslo, IKO, 2007). The European Consortium for Church and State Research devoted its 2010 meeting (Trier, November 11–14, 2010) to “Religion in Public Education”: the proceedings are available at <www.churchstate.eu/Meetings/Meeting-2010/1,000000270353,8,1>.
- 2 This control is justified by the religious communities on the basis of the need to grant the orthodoxy of the teaching. See, for example, Congregation for Catholic Education, *Circular Letter*, no. 13–14: “it is for the Church to establish the authentic contents of Catholic religious education in schools. This guarantees, for both parents and the pupils themselves, that the education presented as Catholic is indeed authentic. [...] The Church identifies this task as its own, *ratione materiae*, and claims it for its own competence, regardless of the nature of the school (State-run or non-State-run, Catholic or non-Catholic) in which such teaching is given.”
- 3 Council of Europe, Recommendation 1396 of Parliamentary Assembly (1999) Religion and Democracy: “13. The Assembly consequently recommends that the Committee of Ministers invite the governments of the member states: [...] ii. to promote education about religions and, in particular, to: a. step up the teaching about religions as sets of values towards which young people must develop a discerning approach, within the framework of education on ethics and democratic citizenship; b. promote the teaching in schools of the comparative history of different religions, stressing their origins, the similarities in some of their values and the diversity of their customs, traditions, festivals, and so on; c. encourage the study of the history and philosophy of religions and research into those subjects at

Silvio Ferrari

university, in parallel with theological studies; d. co-operate with religious educational institutions in order to introduce or reinforce, in their curricula, aspects relating to human rights, history, philosophy and science; e. avoid—in the case of children—any conflict between the state-promoted education about religion and the religious faith of the families, in order to respect the free decision of the families in this very sensitive matter. [...]. 14. The Assembly also recommends that the Committee of Ministers: i. lay down, as part of its projects on education for democratic citizenship and history teaching, guidelines for the introduction of educational syllabuses relevant to points 13.ii.a, b and c of this recommendation.”

- 4 The opportunity to include different stakeholders in the organization of the non-denominational teaching of religion is strongly underlined in the recommendations of the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (Warsaw, OSCE/ODIHR, 2007), 15. The arrangements for producing agreed-upon syllabi for religious education that are in force in England can offer interesting clues (see Luce Pépin, *Teaching about Religions in European School Systems: Policy Issues and Trends* (London, Alliance Publishing Trust, 2009), 65).

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Religious education in Finland

Matti Kotiranta

The religious and social composition of Finland

Finland has 5,351,427 inhabitants (2009), of which 888,323, 16.6 percent, are under the age of 14.¹ The religious commitments of the Finnish people are as shown in Table 14.1.

There are 22 different Islamic communities in Finland and they have an estimated 30,000 followers of Islam. Jehovah's Witnesses have 19,200 members, while the number of Mormons in Finland is 3,300. The Jewish community has 1,200 members. In addition, some 13 percent of the Finnish population (N = 700,000) are not affiliated with any religious group.²

Education—constitutional context, and facts and figures

In Finland, the basic right to education and culture is recorded in the Constitution of Finland.³ Public authorities must secure equal opportunities for every resident in Finland (not just Finnish citizens) to obtain a compulsory education and thereafter must provide opportunities for people to develop themselves according to their abilities, irrespective of domicile, sex, economic situation, or linguistic and cultural background.⁴ Most other qualifying education is also free of charge for students, including postgraduate education at universities.

The structure of the Finnish education system is shown in Figure 14.1.

Table 14.1 Religious commitments of the Finnish people

Population	5,351,427
Religious adherence	Lutheran 79.7% 4,449,516
	Greek Orthodox 1.1% 58,445
	The Finnish Free Church 14,233
	Roman Catholics 9,672
	Adventist 3,751
	Baptists 2,382
	Methodists 1,279
	Anglican Church in Finland 100

Source: www.oph.fi/english/education/overview_of_the_education_system

Matti Kotiranta

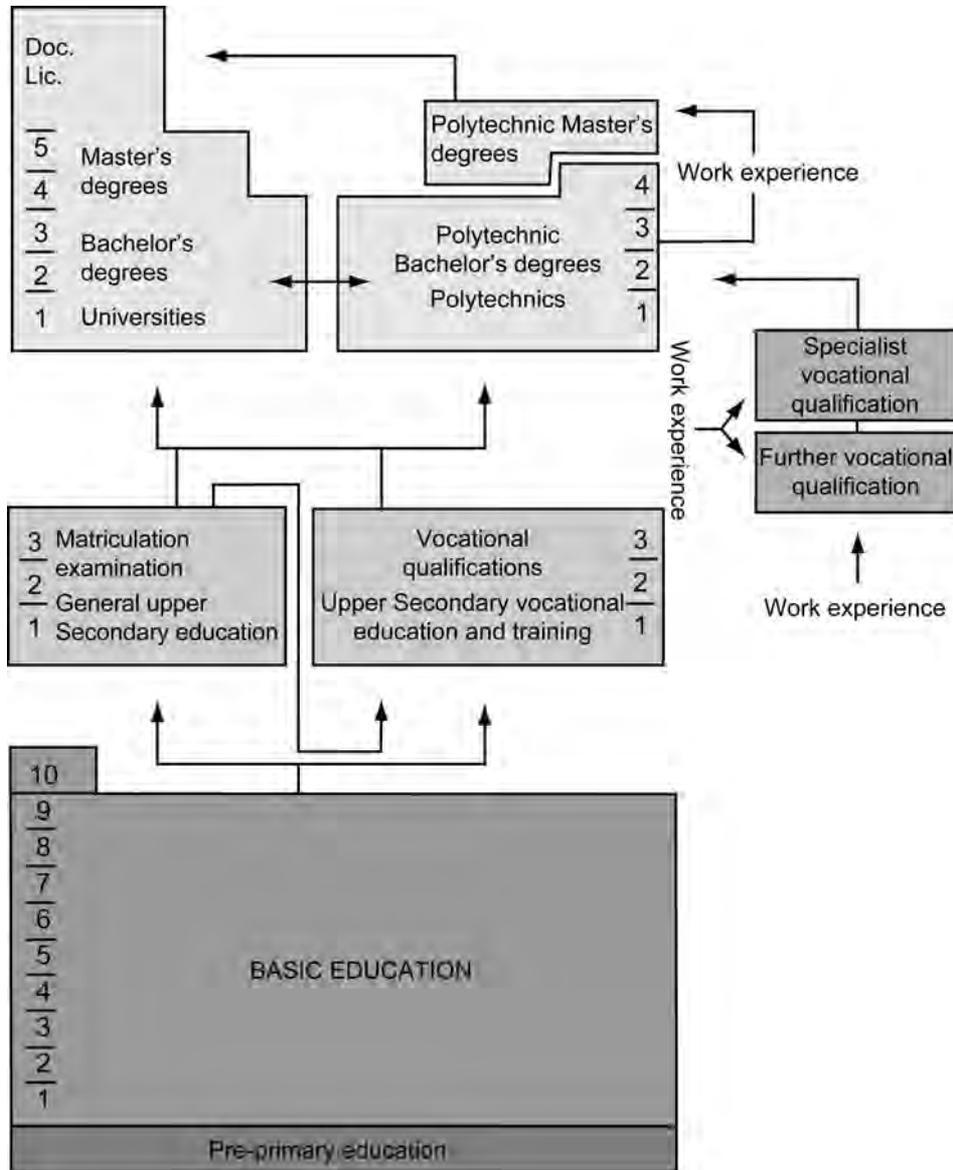


Figure 14.1 Education structure (years)
 Source: www.oph.fi/english/education/overview_of_the_education_system

Pre-primary education

Pre-primary education (pre-school) is provided in schools and day-care centers. Pre-school education starts a year before children go to comprehensive school. The aim of pre-school education is to improve children's capacity and skills for school and learning. Participation in pre-school education is every child's right. In 2009, pre-primary education [I.S.C.E.D. 0] was given to 12,580 children in conjunction with schools and 44,405 children in day-care centers (total: 56,985). This accounts for 99.4 percent of the entire age group (see Table 14.2).

Table 14.2 Participation in pre-primary education in 2005–09

	2005	2006	2007	2008	2009
Pre-primary education in conjunction with schools	12,276	12,970	12,250	12,434	12,580
Pre-primary education in conjunction with day care	42,943	43,090	44,061	43,499	44,405
Total	55,219	56,060	56,111	55,933	56,985
Participation in pre-primary education as percentage of 6 year-olds	95.2	97.9	99.8	99.5	99.4

In addition to pre-schools provided by local authorities and state-owned educational institutions, pre-primary education may also be offered by private basic education providers.

Religious and ethical teaching is a statutory part of day care. In order to enable the participation of as many children as possible, religious education is broadly Christian in scope. As the variety of children's nationalities and cultures increases, there are more and more children in day care whose religious and cultural background differs from the Finnish tradition. This creates further challenges for religious education in day care.

Basic education

Basic education lasts for nine years and caters to all those between seven and 16 years of age. Schools do not select their students, but every student can go to the school of his or her own school district. Students are neither channelled to different schools nor streamed. Children start compulsory school at the age of seven. It is also possible to start school one year earlier or later based on a medical psychologist's or physician's statement.

After completing basic education, a young person can continue studying or enter working life. When those completing basic education feel that their skills are not quite up to the standard required by further education, they can supplement their knowledge and improve on their school-leaving certificate marks by enrolling in additional voluntary education in the so-called tenth grade.

The government contributes to the financing of all schools. Nine years of basic education can be continued in two major ways, either in *upper secondary vocational education* and training or in *upper secondary education*. Both vocational and upper secondary studies make it possible to continue one's studies at polytechnic school or at university.

In the Finnish educational system, religious education is given at two levels: basic education (grades 1–9) and upper secondary school (years I–III), which follows basic education.⁵ In the upper secondary school there are three obligatory courses in religious education. A pupil can choose more courses if he or she is willing. There are at least two extra courses available: world religions and religion in Finland. Upper secondary school leads to matriculation. Alternatively basic education can be followed by vocational school. However, there is no religious education in vocational schools.

There are few private schools in Finland. Compared with the total number of schools, the proportion of licensed private schools is small. Usually these schools are not based on religion or supported by a particular religion. Licenses have also been granted for a few comprehensive schools which are based on religious confessions. The English school in Helsinki is a Catholic foundation. There are fewer than 15 Christian schools and two other faith-related schools. For

Matti Kotiranta

children attending these schools, the teaching and educational equipment are free of charge. There are no statistics of the number of religious pre-schools.

A major objective of Finnish education policy is to achieve as high a level of education and competence as possible for the whole population. The Finnish National Board of Education has expressed its objective in the following way:

One of the basic principles behind this has been to offer post-compulsory education to whole age groups. In international terms, a high percentage of each age group goes on to upper secondary education when they leave comprehensive school: more than 90 per cent of those completing basic education continue their studies in general upper secondary schools or vocational upper secondary education and training. Issues of educational equality are among the key topics in the new Development Plan for Education and Research for 2007–12. Its objectives include raising the level of education of the population. The aim is that 92.5% of the age group 25–34-years-olds will by 2015 pass an examination on upper secondary or tertiary level.⁶

Religion as a subject of instruction and its substitutes

Religious education in the school system

Religious education has a very long tradition in the Finnish education system.⁷ At the moment, religious education is a compulsory school subject, both in Finnish comprehensive schools (7–16 years) and in senior/upper secondary schools (16–18/19 years).⁸ In the literature, the current religious education solution in Finland has been considered “weak confessional.” Pupils study religious education according to their own religious tradition. Therefore, religious education includes content based on the respective traditions but does not include the elements of religious practice.⁹

In a nutshell, the purpose of religious education is described as follows:

The main purpose of religious education is to offer stimuli for the construction and development of students’ own religious view on life by teaching them about their own religion, life and thinking of various religions, and by giving students the readiness to understand different world views. Therefore Religious education as a subject gives an opportunity to study and discuss main questions in religion and life. And students in all Religious education at school are respected as independent and truth-seeking individuals.¹⁰

As quoted above, in religious education curricula, life’s religious dimension comes under examination from the standpoint of the pupil’s own growth as a broader social phenomenon. Religion is understood as a cultural factor in the Finnish culture. Instruction in religion emphasizes religious knowledge and readiness to encounter new religions and world views. In primary education, the objectives of the instruction are to: 1) familiarize the pupil with his or her own religion; 2) familiarize the pupil with the Finnish spiritual tradition; 3) introduce the pupil to other religions; 4) help the pupil to understand the cultural and human significance of religions; and 5) educate the pupil in ethical living and help him or her understand the ethical dimension of religion.¹¹

Religious education is delivered in the religion of the majority. Because the majority of Finns are members of the Evangelical Lutheran Church of Finland, in practice the instruction in religious education is given mostly according to the Lutheran majority. Religious education of

other religious denominations will be organized if three conditions hold. First, the denomination must be a registered religious community in Finland. Second, the denomination must have a curriculum (so-called National Framework Curricula) approved by the National Board of Education. The system is not automatic, since some Christian minority groups participate in the Lutheran religious education lessons. And, third, instruction is implemented if there are a minimum of three pupils in one municipality who belong to the community and who will take part in this instruction. If religious education for their own religion or denomination is available, the pupils have no right to opt out of it. The status of Orthodox instruction differs from other religious minorities. If there are a minimum of three Orthodox children in municipality schools, instruction is automatically provided and parents' request is not needed.

At the moment, National Framework Curricula are written for the following religions: Lutheran, Orthodox, Catholic, Islamic, Adventist, Buddhism, Good's people (Protestant society), Free Church, Krishna-Society (I.S.-C.O.N.), Anthropological Society, and Bahía's instruction. All of them are labelled as religious education. Because religious education is related to one's own religion, every religious education version has its own name, for example Catholic religious education. Pupils who do not belong to any religious community are taught ethics. There is an alternative subject called "Life Questions and Ethics." The National Board of Education has established its own general aims and principles for that subject. In Finland, the concept "exempted from religious education" is no longer in use.

Over the past 30 years the interpretation of the term "confessional" has been problematic in Finland since there is a change in meaning when connected to religion. The previous law established freedom *from* religion. In contrast, the current law creates a positive right: freedom *for* religion. Within the religious education curriculum the confessional and denominational concepts were ambiguous and caused problems under the old legislation. The new legislation has helped to clarify good practice.¹²

The concept of "according to one's religion" is new, a product of the new Act of Religious Freedom since 2003. Religious education was defined as denominational. However, during the last two decades the Finnish Lutheran denominational religious education has been understood as non-confessional in spiritual or religious meaning. The term, "confessional", underlines the content of education.

The introduction of a new law on religious freedom in Finland in 2003 meant above all the removal of certain restrictions, which has so far ensured that no cases of infringement of the First Supplementary Protocol to the European Convention on Human Rights (§ 2)¹³ (concerning education in accordance with one's religion and convictions) have yet been brought before the Supreme Court. The new law differs in many respects from its predecessor, passed in 1922.¹⁴ The new law and the consequent changes to the compulsory education law and the law on upper secondary schools¹⁵ mean a considerable strengthening of the position of the teaching of religion in schools and a clarification of its nature and purposes. This is clearly reflected not only in the laws themselves but also in the statement issued by the Parliamentary Education Committee and the report of the Constitutional Committee. It may be concluded from these and from the discussions held in Parliament that a very large majority of representatives were extremely favourably disposed towards pupils receiving teaching in their own religion.¹⁶

In the first place, the right to instruction in religion or the philosophy of life had been clearly defined in the Constitution, so that receiving such instruction could be seen to be in agreement with the Constitution. Second, a distinction was made between instruction in one's own religion and religious observance as referred to in the Constitution. Those who emphasized the nature of religious instruction as a form of religious observance during the preparation of the new law were of the opinion that teaching of this kind should be made optional, with the

Matti Kotiranta

alternative of teaching in the philosophy of life, or even that it should be replaced by a form of teaching on the world's religions that would be common to everyone. The minimum requirement was the right to opt out if the teaching contained events or rituals of a kind that could be regarded as religious observances.¹⁷

Parliament nevertheless established firmly that *religious instruction should not be equated with religious observance* and quashed all interpretations to that effect. This also resulted in years of wrangling on the subject and removed the uncertainty experienced on this point in schools. It is important that no one among those obliged to attend classes in religious instruction should be able to demand exemption on the grounds of it taking on the nature of religious observance.¹⁸

Parliament also laid down the rule that all syllabi should be examined upon the new law coming into force to ensure that they meet the requirement for instruction in the pupils' own religion in an impartial manner, and also to ensure that the religion and philosophy of life syllabi for the upper secondary school contain "the foundations of the major religions of the world to the extent required for a good general education." This latter aim has now clearly been taken into account, at least as far as instruction in the majority religion is concerned.¹⁹

The new law is also clearer than its predecessor from a material point of view, in that it transfers the regulations applying to detailed individual issues from the law on religious freedom to the relevant points in the general legislation.

Religiously motivated behaviour in public schools

Working conditions, religious symbols, religious garments

In Finland, there are no religious aspects on working conditions for teachers or other staff in public schools. The question of benediction of public school buildings has never been discussed. Nor is there currently any discussion in Finland concerning religious symbols (e.g. crucifixes), praying, or conducting religious services in public schools. The only public debate concerning crucifixes was shortly discussed by the Finnish media in November 2009 when the European Court of Human Rights ruled against the use of crucifixes in classrooms in Italy. The ruling marked the end of an eight-year battle by a Finnish-born mother, Soile Lautsi. She took her cause to court after failing to get crucifixes removed from the school at which her two children were being taught at a town in northeast Italy. Lautsi appealed to Strasbourg in 2006 when her case was thrown out by Italy's constitutional court.

The question of religious garments worn by teachers and students has not been discussed by the Finnish National Board of Education. The Board has not given official instructions for schools. In Finland there is no law or regulation that forbids wearing religious garments (e.g. scarves). Nor is there any legislation which gives permission to use scarves. Until now there has been no case at the local or upper courts concerning wearing of scarves or burqa (i.e. a black, full-cover garment with headscarf) in basic education or in the upper secondary schools.

In Finland citizens are free to wear religious symbols (for example, crucifixes or scarves) in public places. There are two exceptions to this rule. The first comes from safety regulations. The labor law obliges employer and employees to follow safety instructions. It is possible, for instance, that it is not allowed to tie on a scarf, if a person is working with machinery and this may be injurious to health. The second exception considers hurting other's religious feelings. The current penal provisions no longer protect God's honor, but rather religious convictions and feelings and religious peace. Religious peace means religious order, related to the general category "law and order." This means, for instance, that is not allowed to dress in an insulting way, which affronts openly someone else's religious conviction.

Teachers

Teacher education in Finland is situated in universities. Religious education is given by two types of teachers: classroom teachers and subject teachers. The classroom teachers have completed a five-year M.Ed. degree. The training includes the minimum of two credits in religious education. The classroom teachers are qualified to teach all subjects at grades 1–6 in basic education, including religious education. The age of their students ranges from seven to 13 years.

The subject teachers are qualified to teach basic education in grades 7–9 and in upper secondary school (years I–III). The age of their students varies between 13–18 years. In principle, teachers of religious education are required to possess a master's degree in theology. The subject teachers major in systematic theology, church history, bible studies, practical theology, or comparative religion. The religious education teachers are of exactly the same status as the teachers of other school subjects. In other words, they are not employees of any church or of an equivalent institution, but are employed and qualified by the state. The majority of religious education teachers are not ordained priests.²⁰

Teacher training for subject teachers is 60 credits and lasts for one year. In contrast to many European systems, training is given by a Department of Applied Sciences of Education and not by the Faculty of Theology. It includes studies such as educational philosophy, psychology of learning, special education, didactics in religious education, and three teacher practices. Teacher training is popular among theology students. For instance, at the University of Helsinki only 1/3 of the participants in the teacher training entrance examination are accepted to this course.²¹

Opting out of school obligations for religious reasons; current developments and challenges

There are in Finland no general provisions that give a pupil the right to be out of school on religious holidays. The working year of the schools is normally divided into an autumn and a spring semester, allowing holidays for Christmas and New Year. Within the semesters, the Finnish National Board of Education decides on holidays, normally including Easter holidays. On the other hand, the parents of a pupil have the possibility in the primary and secondary school of taking the child out of school for some days per year. The permission for exemption is granted by the school's head teacher.

The current Finnish religious education situation is relatively new. In the 2000s Finnish teacher training was reformed. As a result, researcher-based teacher education has been accepted as the guiding principle for Finnish teacher education. Research-based teacher education consists of gaining a profound knowledge of the object of study and the promotion of the internalizing of a research-oriented attitude towards teaching.²² In practice this means that there is no possibility for opting out of a biology class (e.g. due to believing in creationism).

Also, new national curricula (covering 11 different religions) were published in 2004 and schools have completed their syllabi. Parliament has made a clear decision about religious education. There was a political idea to unite all religious education into a single subject. Parliament voted and the result was 75 percent against the one religious education model in favour of the "one's own religion" model. The new Act for Religious Freedom (2003) was made in positive terms. It creates the situation where everyone should have to right to religion and not only to opt out.²³

In the future the development of multicultural religious education could be remarkable in Finland. Now there are multi-faith schools in the largest cities, especially in areas of the capital, Helsinki. If this leads to more religions that have their own religious education curricula, then

Matti Kotiranta

the cost of providing religious education will rise. As educationalist Juha Luodeslampi has emphasized, this might increase the pressure for integrated religious education, but at the moment parliament's opinion is clear. The right to "one's own religion" has been affirmed in the recent debate and the cost implications are not the major consideration in determining that approach.²⁴ In a way, the system and its specific features will be subject to discussion. Changing ideas on education and religious pluralism as well as state intervention all will have an impact on the future education system of Finland.

Notes

- 1 <www.stat.fi/til/vaerak/2009/vaerak_2009_2010-03-19_tau_003_fi.html>.
- 2 Kääriäinen/Niemelä/Ketola, 2005.
- 3 The Constitution of Finland, §16 and §17. See <www.eduskunta.fi>. In English: *The Constitution of Finland*.
- 4 The public authorities are obligated to provide for the educational needs of the Finnish—and Swedish-speaking population—according to the same criteria. Approximately 5.5 percent of the population have Swedish as their mother tongue. Both language groups have the right to education in their own mother tongue. Regulations on the language of instruction are stipulated in legislation concerning different levels of education. The entirely Swedish-speaking Province of Åland has its own educational legislation. <www.oph.fi/english/education/overview_of_the_education_system>.
- 6 Jakku-Sihvonen/Niemi, 2006.
- 7 <www.oph.fi/english/education/overview_of_the_education_system>.
- 8 For a historical overview of the Finnish education system, see <www.oph.fi/english/education/overview_of_the_education_system/historical_overview>.
- 9 According to the Basic Education Act (628/1998), all children permanently residing in Finland are subject to compulsory education. Compulsory education starts in the year when a child becomes seven years of age and ends when the syllabus of basic education has been completed or 10 years after the beginning of compulsory education.
- 10 Ubani, 2007, 21; Räsänen and Ubani, 2009, 58.
- 11 <www.suol.fi>.
- 12 Luodeslami, 2007, 67.
- 13 Seppo, 2003; Luodeslampi, 2007, 66.
- 14 Article 2 provides for the right not to be denied an education and the right for parents to have their children educated in accordance with their religious and other views.
- 15 It is very similar in structure, however, being divided into four main sections: the first containing provisions of a general nature, mostly connected with the individual's freedom of religion and the use to be made of it; the second dealing with registered religious communities, their purpose, foundation procedures, and forms and conditions of activity; the third containing regulations for the application of the law on public assembly to the practice of religion and setting out sanctions for infringements of the law on requiring communication of data on the membership of religious communities to the authorities; and the fourth containing details of when and how the law should come into force and transition regulations.
- 16 §13 of the law on compulsory education and §9 of the law on upper secondary schools contain both old and new provisions on the rights of individuals and certain groups to receive instruction in their own religion or philosophy of life. As heretofore, the authority responsible for arranging compulsory education is obliged to ensure that those belonging to the majority religious group receive appropriate instruction. A new feature, however, is the provision that pupils or students who do not belong to any religious community shall attend classes in the majority religion only if they so desire, as indicated by their parents in the case of compulsory schooling or the students themselves at the upper secondary school.
Teaching in their own religion shall also be guaranteed to minority groups of at least three pupils belonging to either the Evangelical Lutheran Church or the Orthodox Church, while corresponding teaching shall be arranged for groups of at least three pupils belonging to some other religious group only on application from a parent or guardian or from the students themselves at the upper secondary

- school. The upper secondary school legislation grants students entering that level of schooling the right to choose between religious instruction or teaching in the philosophy of life. Seppo, 2003, 183.
- 17 Seppo, 2003, 182–83.
 - 18 Seppo, 2003, 183.
 - 19 Ibid.
 - 20 Seppo, 2003, 183.
 - 21 For excellent national data on religious education in the Finnish education system, see Räsänen and Ubani, 2009. The article analyzes the Finnish data concerning empirical results on educational goals, pedagogical methods used, and orientation to religion, values, politics, and institutions. See further Räsänen and Ubani 2009, 61–67.
 - 22 Räsänen and Ubani, 2009, 59.
 - 23 See further Jakku-Sihvonen/Niemi, 2006.
 - 24 See above notes 16–20 (Seppo, 2003, 182–83); Luodeslampi, 2007, 66.
 - 25 Luodeslampi, 2007, 69.

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Religious education in France

Regis Dericquebourg

Until the 1980s, teaching about religion at French schools was rarely discussed, but since the 1980s–1990s, it has become a topic to which sociologists and political analysts have given considerable attention. The starting point of teaching about religion originates from several observations: religion is losing its influence and consequently fewer and fewer children can acquire a religious culture during their studies. Moreover, with regard to alleged threats from “sects” and from Muslim extremism, some Catholics and rationalists have come to the conclusion that for their own protection young people must be intellectually equipped so that they do not react with naivety to marginal or dangerous world view proposals. The best way in their eyes is to teach about religions, especially about their history, and to teach about philosophy (metaphysical and moral). The underpinning idea is that some knowledge about religions is necessary to understand literary works and the history of France, Europe, and the world. Some have also advocated that teaching about religion could contribute to a mutual understanding among young people. The knowledge about others’ religion (beliefs, life guidelines, values, religious festivals) would blur the impression of radical otherness and would lead to adjustments between social groups. The introduction of religion in the school curriculum has now become an element of public debate. In this chapter, we will address the situation in France.

Religious panorama of France

Until 1950, 80 percent of France’s population was Roman Catholic. Gradually, Catholicism has declined and is now claimed by only 50 percent of the French people. Only 11 percent of these practice their religion on a regular basis (attending church every Sunday). Islam is the second religion of the country, with one to five million members according to various estimates (in France, there are no official statistics on religions). There are also one million Protestants (including Evangelicals). Jews allegedly number four hundred thousand. Six hundred thousand people are said to belong to minority religious groups (Buddhists, Seventh-day Adventists, Mormons, Scientologists, Moonies, Raelians, New Age) but the most numerous are Jehovah’s Witnesses, with about 133,000 members.

Laws and principles regulating relations between religions and the state

Relations between the state and religions are regulated by the 1905 Law on the *associations cultuelles*,¹ which is the foundation of the French *laïcité* (separation of state and religions). This concept has no equivalent in other countries, except in Turkey. The 1905 Law creates a material and philosophical separation between the state and religions. It is the foundation of state neutrality as enshrined in Article X of the Constitution: “The State does not finance or recognize any religion.” This means that France does not favor any religion. In principle, all religions have the right to enjoy the same recognition and the same treatment. From a legal point of view, a religion is registered as an *association cultuelle* under the 1905 Law. However, until recently, not all religions had access to this sort of registration. The status of *association cultuelle* is granted by the religious department of the Ministry of the Interior, a body in charge of “religious affairs.” It was granted to historical religions and some minority religious movements such as Antoinism and the Christian Science Church. Because of the climate created by the fight against sects which started around 1981 when the Socialists came to power, no other religion has since been registered as an *association cultuelle*. Registration was refused to Jehovah’s Witnesses.

In fact, there are two types of status in the 1905 Law: the full status and the ordinary status. The full status allows tax exemptions in respect of the real estate used as places of worship (for example, for the surface of a church building used for worship, but not for that used as housing by the priest), receipt of donations and inheritance, chaplains in prisons and, in the case of this research work, chaplains (priests, pastors, catechists, imams) teaching religious classes in public schools. Minority religious groups do not enjoy this full status. Religions are equal in principle, but they are not by law and in practice. Things are changing, however, notably because of decisions of the European Court on Human Rights concerning Jehovah’s Witnesses and the Church of Scientology, but there is a certain inertia. France seems reluctant to integrate such decisions into its legislation on religions.

History of the relations between state and religions

Several periods can be distinguished in the history of relations between the state and religions. Prior to the French Revolution, Catholicism was the official religion. France was considered “the oldest daughter of the Church.” This did not mean that there was no tension between the monarchy and the papacy on financial and political issues. They collaborated, but each party strove to maintain a maximum of power. At stake were the appointment of the clergy and religious taxes. Covenants between both parties periodically revised their relations.

Under the monarchy and until the French Revolution, schools were under the authority of the Catholic Church. The 1789 Revolution put an end to the monarchy and instituted the first separation between the state and the church in 1794. The revolutionaries first tried to place clergy on the payroll of the state; they were simultaneously required to swear allegiance to the Constitution of Revolutionary France. In 1794, the budget for the clergy was canceled and, on February 21, 1795, decrees on freedom of worship were published. They guaranteed the free exercise of worshiping activities but only in private. The Republic did not finance any religion and did not pay the salaries of the clergy. It did not grant places of worship or housing to the clergy. It prohibited the public exercise of a religion and the wearing of vestments in the public square. Religious furniture and other items had to remain in places of worship. The publicity for religious activities was forbidden in the public square (no bell ringing to call the faithful to religious services). Religions were under the surveillance of the police. The municipalities could not buy or rent premises for religious services. Concretely, this decree instituted a strict material

Regis Dericquebourg

and spiritual separation between state and churches. In such a context, school education was neutral and there were no religious classes.

This regulation of the relations between the Republic and religions was revised by Napoleon in 1801 as he wanted to have more power over religions. In his appetite for hegemony, Napoleon Bonaparte wanted to have full control over religions and their clergy in France. In 1801, he signed a concordat with the pope. According to this agreement, Napoleon would appoint the members of the clergy and, in exchange, put them on the payroll of the state. In 1802, the agreement was ratified by Parliament. He signed the same agreement with the two Protestant Churches (Calvinist and Lutheran) and, in 1808, he signed a Concordat with the representative of French Judaism. The Concordat system came to an end in 1905 with the adoption of the law on the separation of state and religions.

Juridical framework of religious education

Until the French Revolution, all schools were Catholic. For a long time, school education was not obligatory and education was the sole responsibility of families. The wealthiest families would hire private teachers. In some villages, priests with a low level of education would give some classes to peasants' children during winter.

To thwart Protestantism, Louis XIV promulgated a decree (December 13, 1698) which obliged the parents to send their children to parish schools where basic knowledge and catechesis were taught by a priest whose morality and religious knowledge were duly certified by the bishop. The parents paid tuition fees. Children were then taught religion but not about religion. Louis XV confirmed this decree in 1724. At that time, there were many primary schools in France but the literacy rate was still very weak.

Until the French Revolution, the Catholic Church was of the opinion that teaching religion was to be at the top of the agenda of the school curriculum.² The people, however, were not satisfied with the school system as can be seen in the book of complaints of the 1789 Revolution where they complained about its shortcomings, the ignorance of the teachers, and the appalling state of the classrooms. During the revolutionary period, several projects of reform of the school system were proposed (Talleyrand, 1791; Condorcet, 1792; Le Pelletier de Saint Fargeau, 1793; Gabriel Bouquier, 1793; Lakanal, 1794). They all had in common the will to hire secular teachers. This is how the school system was separated from the clergy and the church. Revolutionary assemblies favored civic education over religious education. After 1795, the Catholic Church of France was reduced to a private association surrounded by suspicion and sometimes exposed to persecution.³

Napoleon Bonaparte was not very interested in the schooling of his people. He entrusted this mission to the Catholic Church which appointed Brethren of the Christian Schools (also named Ignorantines) to this end. In 1806, Napoleon created a body of qualified teachers. The Brethren of the Christian Schools were allowed to go on teaching if they were certified. In 1810, they were officially authorized to carry out their teaching mission. On April 8, 1824, under pressure of the radical supporters of the monarchy, a decree was promulgated that re-entrusted the school system to the clergy of the Catholic and Protestant churches. In 1833, under Guizot (Protestant), school education became a state mission with a specific budget and a qualified staff. In 1850, the Falloux Law put in place two networks of schools: public schools created and maintained by the municipalities, the *départements*,⁴ or the state, and the free schools created by individuals or associations. On March 28, 1882, Jules Ferry, Minister of Public Instruction, promulgated a law on compulsory primary education. This law secularized the curriculum and stipulated that religious education had to take place outside the school buildings. A day off was

granted on a weekday, apart from Sunday, to allow children to attend religious classes. Moral and civic education was at the same time introduced in the school curriculum to replace religious classes. The law of October 30, 1886 finalized the secularization process by entrusting school education to exclusively secular staff.

Education in secondary schools was in the hands of the Jesuits until their expulsion from France in 1764.

State financing of private schools

The legal framework regulating private schools is defined by the December 31, 1959 Law, also called the “Debré Law” after the name of the Prime Minister and Minister of Education in the government of General De Gaulle. This law was drafted to put an end to the difficult situation of Catholic schools after the Second World War. The Catholic Church was then beginning to lack priests, monks, and nuns. It had to appoint lay teachers who needed to be paid and this entailed a substantial growth in tuition fees that modest families could not bear. France was then going through a severe economic crisis and many households were lacking financial means. Moreover, the state had to face an increase in children born after the war (baby boom) who needed to be schooled until the minimum age of 16 years. Public schools were unable to cope with this problem. Robert Debré then wanted to associate private schools (mainly Catholic) to public education and allowed them to conclude a contract with the state. According to this contract, private schools would teach the public curriculum and accept all children, whatever their beliefs, their origin, or their opinions. The headmaster selected the teachers but they were paid by the state. The school received a fixed sum for the salary of the headmaster and the auxiliary staff. Later on, other laws granted an equivalent status to private and public school teachers. The “Debré Law” was criticized: radical secularists contested the public financing of private schools and some Catholics contested the authority of the state over their schools. However, without this law, private schools would have disappeared and the state would have never been able to face the influx of the post-war children to be schooled until the age of 16 years. Finally, this regime of coexistence of the two school networks was consolidated and improved by further decrees. The “Debré Law” recognized “the specific character” of the private schools but forbade obligatory religious classes. Catechesis was a choice; it was taught by Catholic chaplains or persons trained to this end. In Muslim secondary schools, religious classes were provided by imams or specifically trained people. This “auxiliary” staff was not salaried by the state. Teaching about religions is another area: it is part of the official curriculum and it must be neutral as it is addressed to children with various religious backgrounds.

Teaching about religions in public schools

Recent facts

In France, the current discussion on teaching about religions at schools was triggered by the report of Régis Debray of March 2002, drafted on request of the then Minister of Education, Jack Lang. He concluded that the space allotted to teaching about religion in a secular and republican context had to be reexamined.⁵

Generally speaking, this report proposed a form of teaching about religions which made a distinction between information about them and catechesis and identified religion as an element of culture and spirituality. Concretely, the report proposed 12 measures, including: 1) to assess the history and geography curriculum in secondary schools as religion was already an issue

Regis Dericquebourg

addressed in these subjects in the 1996 teaching programs; 2) to propose to students personal interdisciplinary works on religion; 3) to create classes of philosophy and history of religions in teacher training colleges and include a module on *laïcité* and the history of religions in the continuous training of all teachers, using the expertise of specialists from the Bible School of Jerusalem, the Protestant and Catholic Faculties of Theology, and the Grand Mosque of Paris; 4) to use the *Ecole Pratique des Hautes Etudes* (E.P.H.E.), a university-type institution, as a platform for a network of research laboratories attached to universities and to the C.N.R.S. (Centre National de la Recherche Scientifique) in order to cover the needs for initial and continued training; 5) to create a research unit on education–society–religion; and 6) to task experts with the production of pedagogical dossiers on religions. These measures were included in the decisions of the Minister of National Education on teaching about religions in secular schools (March 14, 2002).⁶

In June 2002, the new Minister of National Education, Luc Ferry, created the European Institute for Religious Sciences (I.E.S.R.) chaired by Régis Debray. In November 2002, the Minister of National Education, Xavier Darcos, indicated that teaching about religion should concern not only the geography and history teachers but also those who teach literature, philosophy, art, or languages. On this occasion, he confirmed his refusal to create specific classes about religions and to include the study of religions in the existing curricula.

In 2004, Régis Debray resigned from the I.E.S.R., criticizing “the lack of a real national will to boost this sort of historical and philosophical teaching which remains dependent on the good will or the ill will of the educational institutions and the regions.”⁷

In February 2005, the then Communist-linked deputy Jean-Pierre Brard, known for his attacks against minority religious groups (in particular Protestant groups), convinced 29 out of 30 members present in the National Assembly (from the left-wing to the right-wing parties) to support an amendment that made teaching about religions a component of the general guidelines of school education.

Arguments in the debate for or against teaching about religions at school

People in favor of teaching about religions at school justify their position in various ways: 1) religious culture should not be abandoned to religious movements because it would mean leaving a clear field to “credulity sellers, to the media and to fans of esotericism or irrational phenomena”;⁸ 2) the lack of teaching about religions opens a clear field to radical and fundamentalist views which can influence young people lacking “any qualified knowledge” on religious texts; and 3) teachers can make the distinction between teaching a reality or a doctrine and promoting a doctrinal norm or an ideal.

Obviously, these arguments are the result of a negative perception of religion. It is not appropriate to abandon solely to religious actors the monopoly of the teaching of their doctrine and their religion because it is not risk-free. Teaching about religions is therefore considered a form of prophylaxis. This prophylactic dimension is present in the Debray Report. Moreover, when writing about instruction on religion in France, Debray makes a distinction between the historical religions and “the sect issue.” As can be seen, minority religious groups (for example, Mormons, Jehovah’s Witnesses, Evangelical Protestants) are perceived and addressed as a problem. This echoes the policy of the Vichy Government⁹ in which a specific unit was created to deal with “the Jewish issue” on March 29, 1941. Jews were no longer considered members of a religious group but put in the category named “the Jewish issue,” in much the same way as now members of minority religious groups are put in the category named “the sect issue.”

Opponents of classes about religions in public schools use several arguments: 1) they fear a relativistic presentation putting all religions (including “theirs,” “the only true one”) on the same footing as the others, every religion becoming hereby a response among others to existential anxieties; 2) the objective presentation of a religion deletes the subjective dimension of beliefs: faith, a fundamental element; 3) in the regions of France where religious classes are organized on the basis of the Concordat, fewer and fewer students take part in religious classes (5 percent in universities; 20 percent in secondary schools), which means that there is no real need for such classes; 4) there is a risk of indirect proselytism; 5) the hidden agenda is said to be the purchase of social peace in the Muslim ghettos on the outskirts of the big cities; 6) the current curriculum provides for a space dealing with religion; 7) the presentation of religions at school, even if it is scientific, may exacerbate self-identification in an ethnic or a religious community¹⁰ in educational institutions which must be neutral; 8) the involvement of religious actors wanted by the Debray Report in the training of future teachers is abnormal in the light of the principle of *laïcité*; 9) agnostic students will feel discriminated against if teaching about religions does not include secular humanism; and 10) last, but not least, some think that the debate is useless as religion is only one of the components of an attempted explanation of the contemporary world and it is not a fundamental element of it any more. From this point of view, economy would provide a better tool for understanding the world. Moreover, the lack of religious culture that has often been highlighted is not the main cause of societal problems. History, political science, general culture, and ethics can better help people to face social problems.

Teaching about religions in faith-based (mainly Catholic) schools

Position of the Catholic Church on teaching about religions

In 2009, in the public debate on teaching about religions at school, the Catholic Church took a position in a circular (Circular letter No. 520/2009 to the presidents of the bishops’ conferences on teaching about religions at school. Rome, May 5, 2009)¹¹ while recalling the principles of the Catholic Church concerning teaching of religion. The authors of the circular letter were making two distinctions: the first one between the Catholic schools and public schools and the second one between catechesis and teaching about religions.

Concerning the first distinction, the Catholic Church claims the right to teach its own beliefs in public schools. It considers that it is the matter of its specific competence and it claims to do it “under the authority of the Church.” In France, the authorization granted to Catholic chaplains or catechists to teach their beliefs is in accordance with this claim.

Concerning the second distinction, religious education in Catholic schools must be different from catechesis. Religious education at school “provides students with information about Christianity and Christian life” while catechesis tries to favor a “personal relation to Christ and the maturing of Christian life in its various aspects.” The document is silent about teaching on other religions (Buddhism, Islam, Hinduism) or atheism, although it recognizes pluralism, and Catholic schools in France engaged in a contractual relation with the state must accept young people whatever their religion as they complete their mission of public service. In fact, the Catholic Church makes a distinction between teaching of Christianity at school, the aim of which is the doctrinal impregnation of the students and the education system by its moral values (completing hereby the education provided by Christian parents) and classes on religions in which it sees a “risk” of relativism. The document says:

Regis Dericquebourg

Marginalizing religious classes in schools means, at least in practice, to choose a way which can lead to errors or be harmful to students. Moreover, if religious education is limited to the exposure of the different religions in a comparative and neutral way, it can be a source of confusion or lead to relativism or indifference.¹²

Obviously, the Catholic Church primarily claims religious freedom in the exclusive framework of its “evangelization mission,” in other words “proselytism.” In France, it has managed to have “its specific character” recognized by Article 1 of the Debré Law No. 59–1557 of December 31, 1959 which says:

In private schools under private contract, the teaching defined by the contract is subject to State control. While keeping its specific character, the school must provide this teaching in the full respect of freedom of conscience. All children without any distinction of origin shall have access to it.

This specific character is not limited to France; it was also recognized in Poland, notably in employment issues. This created controversies as representatives of the centre-right party said that Catholic schools had the right to refuse to hire homosexual or transsexual male and female teachers. This policy conflicts with the European laws on non-discrimination. This “specific character” legally recognized is, however, difficult to be implemented as it cannot violate the principles guaranteed by the Constitution and the treaties signed by France on freedom of conscience and all forms of non-discrimination. This difficulty was highlighted by the State Adviser Roger Errera when on March 15, 2004 he answered a request of the National Assembly for a definition of the “specific character” concept:

The law does not define the concept of specific character; nor does the jurisprudence. It is rather easy to identify when distinguishing between education and instruction. The specific character is ‘the different value’ of private schools, the style of education, the staff, the activities outside school, the pedagogical approaches, the relations with the families and with the students, the structure of the classrooms, the values on which this school was created.¹³

It is in the name of this specific character that religious classes and religious practices (opening religious service, preparation for solemn communion) aiming at communicating faith and religious socialization can take place in such schools.

Other faith-based schools

In France, most of the faith-based educational institutions are Catholic schools, but they are not the only ones to be allowed to invoke some specificity.

Muslims have begun to open secondary schools. There are not many: one in Saint Denis de la Réunion (1947); one in Aubervilliers (2001); one in Lille (2003); one in Décines, near Lyon (2007); and one in Marseille (2009). This has aroused debates among Muslims. The Grand Mufti of Marseilles Soheib Bencheikh has declared:

I cannot see any advantage in a purely Islamic school. Public schools give us and all Frenchmen the best opportunities to become good citizens and it is up to the parents to

send their children to Coranic schools to learn Arabic and the fundamental tenets of Islam.¹⁴

At the Lycée Averroes in Lille, which was created to provide school education to girls who had been expelled from public schools for wearing a veil or a hijab, such garments are allowed but are not obligatory. (In Medersa school in La Reunion, the veil is compulsory). The Arabic language is taught as a third language in the same way as Spanish and there is an optional class of initiation to Muslim spirituality and culture called “religious ethics” for two hours per week. Averroes school in Lille has concluded a contract with the state: it means that the state pays the salaries of the teachers and in return the school respects the official curriculum and is non-discriminatory in the enrollment of students. Religious education is possible outside the official curriculum: it can be religious classes or classes on Islam by Muslim chaplains in the same way as Catholic, Jewish, or Protestant chaplaincies.

There are also Jewish schools. According to old statistics, 28,000 children were studying in Jewish schools in 2002. If we consider that the number of children has been stable since 2002, it would mean that 26.2 percent of them are schooled in Jewish institutions. The preference for a Jewish school is justified by several reasons: the issue of Saturday classes (Sabbath day), the prohibition of religious symbols in public schools (kippa, tsitsit), and the universalistic character of public schools ignoring the sub-cultures. Their schools have been revived by the arrival of Jews repatriated from Mahgreb countries who have brought a new dynamism to Judaism in France and by the immigration of specific groups such as the Loubavitch (10 educational institutions) and the Orthodox Jews (15 educational institutions). As is the case in the Muslim community, there is also a debate as to the relevance of creating Jewish schools. The reproaches are the major financial cost to be borne by the families, the lower level of training of the teachers, and the parents’ wish for their children to be open to the outside world. Here the specific character is fulfilled by religious classes and classes on Judaism, the learning of the Hebrew language and Jewish civilization.

In France, 800 children are said to be schooled in 18 educational institutions claiming to be linked to Evangelical Protestantism. The schools are grouped together in two international federations: the Association of the French-speaking Evangelical Protestant Schools (A.E.S.P.E. F.) and the International Association of Christian Schools (A.C.S.I.). They were created from 1980 on by churches, pastors, and parents who did not want to separate faith from instruction. As can be seen, the specific character is claimed and the curriculum can be said to be religious as far as religion impregnates all knowledge and all activities as is the case for the Loubavitch. The school day starts with a small religious service, a prayer, the reading of the Bible, and a testimony or a hymn. “We start the day focusing on God,”¹⁵ declares Daniel Neuhaus, in charge of the A.C.S.I. French-speaking branch. The curriculum is interpreted from the “humanist” or Christian faith perspective. The history of mankind is taught in its creationist version but the evolutionist theories are also presented as they are part of the national education program. These schools are not under contract with the state but, as any school (including home-schooling), they are controlled by a state inspector. The costs are covered by the families and they collect donations to this end. The salaries of the teachers are low and their mission is presented by Daniel Neuhaus as a service to God. These schools enroll Evangelical Protestant children but also others, Catholic and Muslim families being interested in the moral quality of the teaching. The (Timotheus) Evangelical school of Fontenay sous Bois has children of immigrants from Africa and the West Indies.

The other minority religious groups, including Jehovah’s Witnesses, have not created schools. The Church of Scientology opened one (L’Ecole de l’Eveil/ Awakening School) but it was

Regis Dericquebourg

later closed due to administrative harassment. Its pedagogues were practicing the well-known Freinet method. The teaching was not religious but was prioritizing creativity and the autonomy of the child.

Conclusion

France has envisaged teaching about religions at school but the project has never become a reality and this is the status quo. Religion continues to be addressed in history classes and through the study of literary works according to the need to explain specific events or to understand the writings that contain references to religious elements. The reasons why the objective could not be reached are multiple: the wish not to overburden the curriculum, the difficulty and the cost of creating and training a body of certificated teachers specialized in religious science, but mainly the divergent opinions between the “two Frances” (the France of the atheist secularists and the France of the believers) on what it means to teach about religions. The anticlerical actors do not see the usefulness of it as France is largely secularized and the believers fear a reductionist and relativistic approach to religions.

Notes

- 1 Associations with a scope limited to worshipping activities, all the other religious activities (like selling religious books, icons, medals, religious pictures, or travel tours for pilgrimages) being regulated by other laws, mainly commercial ones.
- 2 Academon website: *L'Enseignement primaire de la Révolution à Guizot (1789–1833)*.
- 3 See <www.professeurphifix.net/eveil/texte_revolution.htm>.
- 4 Territorial entities.
- 5 See <www.la-croix.com>. Article published on August 31, 2007 (“Historique du Rapport Debray”).
- 6 See <www.education.gouv.fr/discours/2002/religion.htm>.
- 7 <www.la-croix.com/.../Regis-Debray-demissionne-d...>. Letter of Regis Debray to the minister on education. Paris. *La Croix*, November 4, 2004. Archive of this Catholic daily journal.
- 8 <atheisme.free.fr/Religion/Rapport_regis_debray.htm>.
- 9 The French Government collaborating with the German occupiers during the Second World War.
- 10 The famous *communautarisme*, held in contempt and fought against in France.
- 11 See <www.vatican.va/roman_curia/congregation/cccatheduc/documents/rc_con_doc_20090505_circ-insegn-reli_fr.html>.
- 12 Ibid.
- 13 “La pastorale en lycée et collège. Direction diocésaine de l’enseignement catholique du Morbihan,” 3. Document of the Head of the Catholic schools of the Morbihan, France about the “specific character” in France.
- 14 Lycée de la discorde. See <www.aslama.com/.../18760-Lycée-de-la-discorde>.
- 15 “The pupil, God’s creature”. *Réforme*, January, 24, 2008. (*Réforme* is a French Protestant daily paper.)

Religious education in Germany

Udo Friedrich Schmälzle

The ideological and religious determinant of schools is one of the central issues in the history of German education. The path to laicization and secularization of education is characterized by the conflict between state and church about the influence on schools and thereby, in the long run, about securing religious education in schools. The wording of the current constitutional law can be best understood in regard to the historical context which led to this wording. The dispute concerning the rights of parents and the churches to have their say in religious education is of central importance in public schools. New problems emerged after the fall of the Berlin Wall in 1989 in the eastern federal states, in which only a third of the population professes to belong to a Christian church.

Historical context of religious education in Germany

The medieval educational system was in the hands of the Christian church, and with its cathedral and Latin schools it was mainly involved in the training of clergy. School was a matter of the church school administration. Before the introduction of Prussian Common Law in 1794 and the introduction of compulsory education, for children, family life and education concur within the extended family. Values and standards, vocational skills, and abilities were often “learned and adopted” as part of the life of the household without a formal educational process. The domestic environment imparted social standards. An individual’s identity was not based on free decisions and safeguarded by the right of self-determination, but by the affiliation to social class. Religious practice and denominational identity were less the product of independent personal decisions, but the result of a social conveyance by the social class.¹

With the French Revolution in 1789 there was a break with this medieval tradition. In the period following, the various nations developed their own profiles concerning the relationship between state and church, the understanding of religion as such, and thus also of religious education. The development in France was decidedly influenced by the attempt, according to Rousseau, to create a “religion civile” in the “Contrat social” (1762), which Rousseau consequently expressed in pedagogic terms in his novel “Emil” (1762). The “religion du prêtre” was to be replaced by a “religion civile,”² which was to be completely anchored in the responsibility of the state. It was the state’s duty, with its civic concept of religion, to introduce children and

Udo Friedrich Schmälzle

young people to the natural religion of reason in order to then leave it up to them to decide, in the course of their development, which particular religion they choose or if they choose any at all. After the fall of the Berlin Wall in 1989 this religious education concept in Germany was taken up again during the debate on the introduction of religious education in the new federal states, in order to pedagogically justify an alternative to the denominational religious education in the old federal states.³

The development in Germany was in particular molded by the following paragraphs of the “Prussian Common Law” from the year 1794. As early as 1763 Friedrich II had granted the Prussian state, or rather its communities, authority over schools, in the General School Regulations. Prussian Common Law introduced: the school as an institute of the state (§1); compulsory public education (§43); equal rights of the churches (§13); and the maintenance of schools as a common responsibility of the state. Up until this time parish priests had carried out the state supervision of schools alongside their religious duties. With the introduction of compulsory schooling, religious education has, since the nineteenth century, increasingly shifted to the schools. If we have now arrived at the point where school represents the crucial place for spiritual and religious education of children and young people, then this development begins social-historically at the “cultural threshold” (*Gehlen*) of the move from the agrarian to the industrial culture, in which *civitas domestica*, the unity of the domestic environment, was disintegrating, and the educational process was transferred functionally and purposefully to the school.

Constitutional law supersedes parents’ rights—parents’ rights supersede constitutional law: the dispute over religious education before the Weimar Constitution

This educational process was no longer to proceed tied to social position, but schools were to become “fertile ground for young people not just as future citizens of the state, but also as first-rate human beings.”⁴ Behind the idea of making education functional is the interest, after the Enlightenment, of the modern state in distancing itself from the church, social class structures and local interests, and turning the principles of freedom and equality into the basis of the educational process and thus guaranteeing spiritual conformity of the citizens. The pedagogics of the Enlightenment, which stressed moral and patriotic education as being the duty of the state, justified the separation of home and school because of the class identity bias of parents. Children should be shielded from their parents. Schools should treat all children equally and thereby contribute to overcoming the class-based society. The demand to shield children, for their own sake, from the family and the adult world culminated in the plan of J.G. Fichte to make school the exclusive educational establishment and to remove children “from our contaminated environment” and to establish “an unadulterated time for them,”⁵ or, according to W. Sause, to provide an unrestricted education regiment of the state in which specialists could educate the children, protected from the corruptive influence of parents.⁶ This touches the roots of anti-familial models in German pedagogics, which in the assessment of parental education did not follow J. J. Rousseau, who in the first book of “*Emil*” develops a positive picture of “the father as an educator”:

As the mother is the true wet nurse, the father is the true teacher The child is passed from the hands of one into the hands of the other. It is better to be educated by a decent, even if uneducated father, than by the best teacher in the world: since it is easier to replace talent with diligence, than diligence with talent.⁷

In assessing parents as the responsible individuals to carry out religious education, the churches did not adhere to the idealistic position of J. G. Fichte, but to the judgment of J. J. Rousseau. The natural right of parents had priority over the traditional education monopoly of the state. The wishes of the legal guardians should be the basis of religious education at school. The Christian churches saw themselves as the true interpreter of these wishes, and as advocate of the educational political interests of parents. In the so-called *Kulturkampf* after 1871 an important line of argument of the Center Party and the church was: parents' rights override state law, while in the Prussian Constitution of 1850 (§21, 1) the parents' right was limited to bringing their children to school.

Institutionalization and denominationalization of religious education in the constitution of the Weimar Republic and in the Constitution of the Federal Republic of Germany

Even after the introduction of Prussian Common Law the churches carried out the supervision of schools on behalf of the state through their local parishes. In 1872 this religious supervision of schools was limited to clergymen as local school inspectors, while the next highest supervision was transferred to state officials (district school inspectors). Article 144 of the Weimar Constitution, adopted on August 11, 1919, which based itself in many articles on the Paulskirche Constitution of 1848, eliminated the local church school inspector and thereby terminated the direct influence of the church on public schools. With the Weimar Constitution, supervision of schools by the church was finally laid to rest and thus the separation of church and state accomplished. Since this time the supervision of schools has been carried out by professionally trained state officials. The Weimar Constitution emphasized new features of parental rights, which even today still have an influence on religious education in schools: the legal position of parents (Article 120; 146.2) was redefined and “the natural right of parents recognized” to independently make decisions about the education of their children (Article 10). Even 100 years ago, those Weimar school articles allowed for the fact that parents, and therefore also pupils, could not be presumed to have a common system of values and that they should not be imposed by the democratic state. Thus the Weimar Constitution already oriented itself on the principles of the freedom of religion and conscience (Article 135), and in Article 148.1 it set a minimum of obligatory educational goals, upon which all schools should direct themselves (moral education, civic conviction, personal and vocational capability). In Article 148.2 the Constitution specifically requires that the feelings of dissenters be considered. A further important point in the Constitution was the fact that denominational schools could be established on request. In Article 149 concerning state schools, both Christian denominations are given the opportunity to follow their specific religious educational goals in their own denominational Religious Education.⁸

After the collapse of National Socialism, a period in which many of these fundamental rights were repealed, the Parliamentary Council of 1948/49 oriented itself on the Weimar religious law in its phraseology of the Basic Law for the Federal Republic of Germany (*Grundgesetz*), but stressed more strongly the importance of religious education at school.⁹ From Article 4 and Article 7 of the Basic Law it follows that the fathers of the Basic Law were exponents of a “positive religious freedom.” Thus since the Weimar Constitution of 1919 there has no longer been a state church, that is, the state may not identify itself with religious organization. It must be ideologically neutral. A “negative freedom of religion,” underlying the constitutions in other European states, would have the consequence that the Basic Law, in view of the implementation of the freedom of religion, would have to stipulate an absolute separation of state and church and forbid the passive support of religious education in state institutions. The Basic Law supports positive freedom of religion by creating space for the church within state institutions

Udo Friedrich Schmälzle

for Religious Education and spiritual welfare outside school. These fundamentals of the *Grundgesetz* in Germany are continually under discussion between the political parties. The ecclesiastical law expert Axel von Campenhausen defended the concept of positive freedom of religion in the Basic Law in the debates after 1968:

Bringing religiously determined moral education into schools is a precondition for the existence of a free democratic constitution. Society, the state community, is, as seems to me, almost obligated to recognize and support the religious commitment. The constitutions of the federal states specify reverence of God, respect of the religious conviction of others, self-control, and a sense of responsibility, helpfulness, forbearance, truthfulness, brotherly love, and similar characteristics as educational goals. Here it is clear what weight the religiously neutral community gives to moral education which is determined by religious conviction.¹⁰

The Basic Law thereby offers a positive framework of religious education for the Christian religious communities. The state grants religious communities the opportunity to play a part in religious education in schools “regardless of the state’s supervisory right”. Thus religious education can be provided in accordance with the principles of the religious community. Religious education is a regular school subject and the state is responsible for ensuring that it is actually treated as such, meaning that lessons are regularly given and that they are within the normal school schedule.

On the other hand, the state also protects the religious freedom of the individual. This protection begins with the child’s right to freedom of religion over the parents. Children have their own right of self-determination regarding religion. According to §5.1 of the law of July 15, 1921 concerning children’s religious education, if a married parent decides to take a child which has completed its tenth year of life out of religious education, the child must obey. At the age of 13 a child can no longer be forced by his/her parents to adopt another faith. At the age of 14 a child is considered religiously independent or rather has “religiously come of age.” By the end of their fourteenth year, children have the right to decide their religious faith autonomously. The Basic Law thereby embodies the limits of positive freedom of religion in the right of self-determination of parents, children and young people.

Constitutional bases for solving conflicts of values in religious education in schools

To summarize so far: the Basic Law of the Federal Republic of Germany assures a concise framework for religious education at school:

1. As a free democratic constitutional state it guarantees the freedom of faith, conscience and denomination of the individual against any ideological monopolistic claims. The cooperation between state and the churches, within the framework of a positively understood freedom of religion, is counter-balanced by the fact that, according to the constitution, parents, pupils and teachers have the freedom to withdraw from religious education should they so choose.
2. The state fosters religious education at school and wants thereby to impart values that are of fundamental importance for the existence of a free democratic order and over which the state has no say. This positive understanding of the freedom of religion was defended by the constitutional expert Ernst-Wolfgang Böckenförde with the theory: “The liberal, secularized state lives on prerequisites which it cannot guarantee.”¹¹ Above all, this concerns the values

explicitly referred to by Axel von Campenhausen, which were revived in 2008—again at the discussions in Essen—by the head of the Council of the Protestant Church, Bishop Wolfgang Huber¹² and by the constitutional judge, Udo Di Fabio.¹³

It is not surprising if in practice these constitutional principles raise questions and cause conflicts. Even the Weimar “school compromise,” which anchored denominational religious education in the Constitution, assumed an ideological and multi-religious society, and anchored the counter-balance in case of a conflict in the right of self-determination of parents, pupils and teachers.¹⁴

Thus, the schools had the task of developing conflict models in situations where the values and standards of parents and those in authority in schools cannot be reconciled. The historically growing distance between familial and school education increasingly leads to conflicts. This also applies to questions of sexual education, choice of school, determining secondary education of pupils and, last but not least, religious education. The fact that schools are moving away from solely educational goals and relinquish the up-bringing of children is the pragmatic result.

The constitutional interpretation of the rights of parents has to proceed from the area of conflict between Article 6.2 of the Basic Law (“Care and raising of children are the natural right of parents and their most important obligation”) and Article 7.1 (“The entire school system is under the supervision of the state”). The Federal Constitutional Court confirmed the principle of plurality and in a fundamental decision in 1973 determined that in schools the state has to “respect the responsibility of parents for the overall plan of the education of their children and to be open to the variety of opinions in educational matters.”¹⁵ The parents’ right thus justified not only the right to choose a school, but also the right to make choices at school. These rights to choose concern above all the fate of pupils when decisions are made about their future educational career, which are based on prognoses by the school. Parents are to be integrated into these decision-making processes and kept informed.

This basic option of the Federal Constitutional Court is crucial to religious education. The apportionment of parents’ rights and the supervisory right of the state in schools in solving conflicts is not about a degree of rank. The common responsibility for the development of the personality of children and young people connects the two educational fields of parents and schools. “*The mutual task of parents and schools, i.e. the development of the child’s personality, cannot be divided into individual responsibilities.*”¹⁶ With this judgment an important decision concerning the way forward has been made. The conflicts between state and family regarding education at school are to be solved by communication and cooperation. The Federal Constitutional Court speaks of a “*meaningful cooperation with each other.*”

Religious education in the new federal states after the fall of the Berlin Wall in 1989 and after reunification in 1990

If in the time between 1950 and 1989 the constitutional basis of religious education in public schools was discussed, then it mostly concerned a “crisis of religious education,” whose roots were “primarily in the area of religious teaching,” that is, in the content and methods employed in religious education.¹⁷ After the peaceful revolution in 1989 the constitutional expert Kästner sees himself “in the same boat” as the teachers of religious education when the question about the future of religious education in public schools is discussed. Böckenförde also diagnoses a new problem and observes: “Article 7 of the Basic Law was conceived based on a social reality where the predominant majority of school-aged children belonged to a Christian church and the problem of the minority only arose on the non-Christian side.”¹⁸ After reunification the tide

Udo Friedrich Schmälzle

turned in the new federal states. Heinz Bude thus refers to the radical religious-sociological facts of the anti-church process in the GDR era:

One has to remind oneself of the extent and consequence of the rollback of the church's influence which took place in Eastern Germany in the course of 40 years in order to understand the incomprehension of the church's regaining influence: In 1949 approximately seven per cent of the population there had no religious affiliations, by 1989 two thirds of East Germans had no religious affiliation. In Western Germany today still more than 80 per cent of the population belong to the Protestant or Catholic church, and only 15 per cent are non-denominational. ... Around 25 per cent of the Eastern German population belong to the Protestant church, and only three or four per cent to the Catholic church.¹⁹

Even if the churches in the western federal states can still count on large support in the population, the situation in Eastern Germany poses fundamental problems for the constitutional experts. "Experts not only from the field of Religious Education, but also from jurisprudence are questioning the place of Religious Education in the structure of the public school."²⁰ These questions are aggravated by the demand by some established religious communities and such communities which see themselves as a religion, for the same constitutional guarantees which the two large Christian churches are entitled to.

In the new federal states the conflict about the future forms of religious education in public schools intensified after the fall of the Berlin Wall and reunification in 1990. Roland Resch, Minister of Education in Brandenburg (1992–94), observed in 1993: "After 40 years of commando-style education and one-sided ideological influence, there is little public interest in adopting the concept of Religious Education from the old federal states."²¹ The state of Brandenburg decided, against the backdrop of the secularization and de-Christianization in the 40 years of the GDR dictatorship, not to offer denominational religious education in state schools. Instead, since the school year 1996/97 the subject "Life-Ethics-Religion" (L.E.R.) has gradually been introduced,²² which is to be "non-denominational, religiously and ideologically neutral." "Pupils are to be particularly encouraged to self-determine and responsibly shape their own lives, and to be helped to find their way independently and discerningly in a democratic and pluralist society, with its various moral concepts and meanings of life."²³ It is underestimated how quickly the ideological neutrality postulate can mutate to the "status of religion." According to educational law, denominational religious education may only be given in public schools in Brandenburg at the expense of the churches and on written request by the parents and/or the pupils, depending on age. However, pupils attending religious education must still take part in L.E.R. lessons.

All other new federal states in Eastern Germany introduced denominational Religious Education and recognize the participation in this as a replacement for alternative ethical or religious studies. While the ecclesiastical law expert Kästner comes to a clear judgment on the constitutional state of affairs in Brandenburg: "The current legal situation in Brandenburg from the start violates the religious and ideological neutrality of the constitutional state,"²⁴ in 2006 the Federal Minister of Justice emphasized other points. In the fifth Berlin speech on religious politics on December 12, 2006, the Federal Minister of Justice, Brigitte Zypries, made her position on "religion and law" clear, and tried to disparage the traditional meaning of religion and thereby of religious education. Zypries held the opinion that religion was not the only source of values of a society: "Churches should not have the sole claim to the moral orientation of young people in schools." In subjects such as "Law and Politics," "Morals and Standards" or "Ethics,"

pupils would be able to learn about religions to which they do not belong, according to the minister. Only those who know other religions could face them with respect. “Therefore all pupils should learn something about all religions—together and not denomination-oriented.” The Berlin speech on religious politics was organized by the research field “Religion and Politics” of the Faculty of Theology at the Humboldt University of Berlin.²⁵ The law minister was therefore behind the decisions of the state of Brandenburg.

Against the background of the debate about the introduction of Islamic Religious Education, the Münster expert on administrative law, Janbernd Oebekke, continues to speak in favor of a positive religious constitutional law. He emphasizes the importance of retaining the “religious and ideological neutrality” of the state and justifies his position by stating that only through the positive neutrality of the state can one have influence on forms of religious education “which could jeopardize the rights of citizens or the continuance of social order.”²⁶

Conclusion

There is no doubt that, in the search for responsible forms of religious education in a pluralist society such as the Federal Republic of Germany, we are at present confronted with diverse interests and contrary movements. The decisions of the founders of the Basic Law and the subsequent decisions of the Federal Constitutional Court to orientate themselves, in crisis situations, on the freedom of faith and conscience of fathers, mothers and young people, and at the same time to positively create space in the public educational domain for constitutional forms of religious education, have proved themselves over time, and remain—despite secularization, pluralization, and de-Christianization—capable of being further developed.

Notes

- 1 See H. Felzer, *Jugend in der mittelalterlichen Ständegesellschaft* (Wien (Diss.) 1971); K. Erlinghagen, *Die Säkularisierung der deutschen Schule* (Hannover 1972). In the Treaty of Westphalia schools were referred to as “anexum religionis.”
- 2 See Jean-Jacques Rousseau, *Contrat social IV*,8 (Oeuvres complètes) (Paris 1832), 161. See also Hans Maier, *Revolution und Kirche. Zur Frühgeschichte der Christlichen Demokratie*, 5. Rev. ed. (Freiburg, Basel, Vienna 1989), 126ff.
- 3 See Dieter Fauth, *Religions als Bildungsgut-Sichtweisen in Staat und evangelischer Kirche* (Würzburg 2000), 559ff.
- 4 J. G. Herder, *Schulrede*, 1786, quoted in O. Vogelhuber, *Geschichte der neueren Pädagogik* (Munich 1971), 407.
- 5 See Johann Gottlieb Fichte, “Zehnte Rede an die deutsche Nation,” in *Johann Gottlieb Fichtes sämtliche Werke*, ed. J.H. Fichte, Unveränd. Nachdruck (Berlin 1965) (de Gruyter) Vol. VII, 421f.
- 6 See J. Dolch, *Das Elternrecht* (Langensalza 1928), 15 and 31f.
- 7 Jean-Jacques Rousseau, *Emil oder über die Erziehung*, 7th ed. (Paderborn 1985), 22.
- 8 Article 149 of the Weimar Constitution: “Religious education is a regular school subject with the exception of the non-denominational schools. Teaching is regulated in the context of educational legislation. The religious education is provided in accordance with the principles of the relevant church irrespective of the regulatory right of the state. The teaching of religious education and carrying out the church’s teachings are up to the teacher, while participation in religious educational subjects or church festivities and activities is decided by the legal guardian of the child. The theological faculties at the universities are maintained.”
- 9 Article 4: Freedom of conscience and faith: “§1: The freedom of faith, of conscience and the freedom of the religious and ideological faith are inviolable. §2: The freedom to exercise one’s religion is guaranteed.”
Article 6: Parents’ right: “§2: Care and education of the child are the natural right of parents and their primary duty (see Weimar Constitution, Article 10).”

Udo Friedrich Schmälzle

- Article 7: Public education: “§1: The entire public education system comes under the supervision of the state. §2: The legal guardians have the right of decision regarding the participation of the child in religious education. §3: Religious education in public schools, with the exception of the non-denominational schools, is a regular subject. It is provided in accordance with the principles of the relevant church irrespective of the regulatory right of the state. No teacher may be obligated against his will to provide religious education.”
- 10 A. von Campenhausen, “Der Religionsunterricht im weltanschaulich neutralen Staat,” in W. G. Esser, ed., *Zum Religionsunterricht morgen*, Vol. 1 (München-Wuppertal 1970), 87.
 - 11 Ernst-Wolfgang Böckenförde, *Staat, Gesellschaft, Freiheit. Studien zur Staatstheorie und zum Verfassungsrecht* (Frankfurt a.M. 1976), 60.
 - 12 “It is in accordance with the heart of Christian faith, human dignity, human rights and thereby religious freedom, to accept people of other faiths. This is why Christian churches respect the right of existence of other religions, including their right to operate in public. However, tolerance does not mean believing everything to be right and agreeing with everyone.” Bischof Prof. Dr. Wolfgang Huber, “Kirche und Verfassungsordnung,” in *Essener Gespräche* (42), *Die Verfassungsordnung für Religion und Kirche in Anfechtung und Bewährung* (Münster 2008), 7–55, 29.
 - 13 “Christianity raises the question a priori, whether the law is justified in making secular law judgeable on the benchmark of natural divine right. The absolutist claim conflicts with this, to make unlimited laws on behalf of the state The modern state takes its legal culture from Jewish-Christian stock, and even borrows some scholarly tradition from the Islamic world, and much from Greek and Roman antiquity. But the Bible is at the centre.” Prof. Dr. Dr. Udo Di Fabio, “Staat und Kirche: Christentum und Rechtskultur als Grundlage des Staatskirchenrechts”, in *Essener Gespräche* (42), 2008, 129–65, 139.
 - 14 Cf. Udo Friedrich Schmälzle, “The Importance of Schools and Families for the Identity Formation of Children and Adolescents,” in *International Journal of Education and Religion*, Vol. II-I (2001), 27–42. See also Udo Friedrich Schmälzle, *Schüler, Lehrer, Eltern* (Opladen 1985).
 - 15 “Förderstufenurteil,” in: *Deutsches Verwaltungsblatt* 1973, 259.
 - 16 Ibid.
 - 17 Karl-Hermann Kästner, “Religiöse Bildung und Erziehung in der öffentlichen Schule—Grundlagen und Tragweite der Verfassungsgarantie staatlichen Religionsunterrichts,” in *Essener Gespräche* zum Thema Staat Und Kirche (32) (Münster 1998), 61–123, 62.
 - 18 Ernst-Wolfgang Böckenförde, “Aussprache,” in *Essener Gespräche* (26) (Münster 1992), 101.
 - 19 Stephan Lessenich/Frank Nullmeier, *Deutschland eine gespaltene Gesellschaft. Bundeszentrale für politische Bildung* (Bonn 2006,) 310.
 - 20 Karl-Hermann Kästner, 1998, 63.
 - 21 See Dieter Fauth, *Religion als Bildungsgut—Sichtweisen in Staat und evangelischer Kirche* (Würzburg 2000), 26.
 - 22 Cf. §141 Satz 1, Schulgesetz Brandenburg.
 - 23 Ibid.
 - 24 Karl-Hermann Kästner, 1998, 84.
 - 25 The speech can be obtained from the organizer: Chair for Practical Theology and Religious Education, Humboldt University of Berlin, Unter den Linden 6, 1199 Berlin, Germany.
 - 26 Janbernd Oebekke, “Der Islam und die Reform des Religionsverfassungsrechts,” in *Zeitschrift für Politik* (ZfP), 1/2008 (55. Jahrgang), 49–63, 61.

Religious education in Greece

Nikos Maghioros

Religious and social demographics of Greece

At the end of 2007, the population of Greece was estimated at 11,213,785 persons. In 2009 the population aged 0–29 years numbered 3,638,200 individuals, or 32.3 percent of the total population. At the beginning of the 2009/10 school year, there were 1,051,297 students enrolled in compulsory education (primary and lower-secondary school levels). In 2009/10, 93.64 percent of the students enrolled in primary and secondary education attended public schools, which provide free education.¹ Private schools are not grant aided; they are fully self-financed. Greek is the official language and it is used throughout the Greek territory. Greek is the language of instruction at all levels of education.

The majority of Greeks are baptized according to the rite of the Eastern Orthodox Church, although official statistical data is not available. There are smaller communities of Roman Catholics, Protestants, Jehovah's Witnesses, Armenians, and Jews.² The Greek citizens of Muslim religious persuasion, mostly of Turkish, Pomak, and Roma origin and residing in Thrace, number about 100,000. For these Muslim communities, special minority schools have been set up in which the teaching takes place in both the Turkish and the Greek language on the basis of specialised study programs offered by specially trained teaching staff.

Constitutional aspects of state, religion, and religious education

The Constitution of 1975 introduced a more liberal view on church and state matters than the previous one of 1952 and included a series of important modifications.³ It is important to note that, during the preliminary phase of discussions and proposals between the parties, many were in favor of an eventual separation between church and state. Certain arguments, such as the need to conserve social unity and the religious homogeneity of people after the dictatorship, inhibited a radical reformation.⁴ The first part of the Constitution included the “Basic Provisions” that is the “Form of Government” (Articles 1 and 2) and the “Relations of Church and State” (Article 3). The provisions of Article 3 were not all new, as they already existed in various forms in all previous Constitutions. Article 3, Paragraph 1 establishes the Orthodox Church as the prevailing religion and affirms that the Orthodox Church: 1) is inseparably united in doctrine with the

Nikos Maghioros

Ecumenical Patriarchate of Constantinople and with every other Orthodox Church; 2) is obliged to apply the Orthodox Canon Law and follow the Tradition; and 3) is autocephalous and self-governing in the legal frame of its Statutory Charter (Law 590/1977), in compliance with the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.⁵

This privileged placement of Orthodoxy in education is justified by the definition “prevailing religion” (Article 3 §1) or “State Law Rule” over ecclesiastical matters, as a core element of the actual system of the relations between church and state in Greece.⁶

In the second part of the Greek Constitution, entitled “Individual and Social Rights,” Article 13 guarantees religious freedom.⁷ The important thing is that the right to manifest one’s religion and perform rites of worship established in Paragraph 1 is not subject to any constitutional revision. Moreover, freedom of conscience in religious matters is inviolable. The enjoyment of personal and political rights does not depend on an individual’s religious beliefs. Freedom of conscience includes the freedom to believe any religion or not to believe at all, the right to change religion, the freedom to manifest or to keep secret one’s religion or belief, religious equality, and the right to a religious education. Greeks also have the right to create religious associations and establishments. But religious freedom has limitations, as well. These limitations are prescribed by law and are necessary in a democratic society, in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁸

There is also a strong *freedom to practice* any religion; individuals are free to perform their rites of worship without hindrance and under the protection of the law. The performance of rites of worship must not offend public order or public morals. No one may be exempt from their obligations to the state or may refuse to comply with the law by reason of their religious convictions. The *freedom of worship*, in the light also of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, gives individuals the right, either alone or in community, in public or private, to manifest their religion or belief, in worship, teaching, practice, and observance. Finally, individuals have the right to construct churches and other religious buildings.⁹

“Prevailing Religion” and “Religious Freedom” are the two main poles of the formulation of state and church in Greece according to the Constitution, and in practice they produce a permanent tug of war. The way of interpreting these two articles is critical in order to describe with precision the system of state and church relations and also to evaluate the need for modifications. If, for example, the term “prevailing” in the Constitution affirms that the majority of Greeks are Orthodox, the meaning of the Article is completely different than if “prevailing” has reference to the official religion of the Greek state.

Education in Greece is compulsory for all children between the ages of six and 15 and it lasts ten years. Religious education is an obligatory subject both in public and private schools. According to Article 16, §1 and 2 of the Constitution, “Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.”

Although the Constitution refers to the development of the *religious consciousness* in general, the law considers that the majority of Greeks are Orthodox. According to Law 1566/85, among the goals of both primary and secondary education is “to have faith to the country and the genuine elements of the orthodox Christian tradition” (Article 1, §1), and “to realize the deeper meaning of the orthodox Christian ethos” (Article 6, §1). Students who do not belong to the Orthodox Church have the right to have teachers of their own dogma (Article 17, §4).

Some religious communities even have their own private schools, for example, Muslims, Jews, and Catholics, where courses of religion may be included.

The general responsibility for education lies with the Ministry of Education, Lifelong Learning and Religious Affairs. The Greek education system is ruled by national laws and legislative acts (decrees, ministerial decisions). All curricula are developed by the Pedagogical Institute. This is a self-administered state organization operating under the supervision of the Ministry of Education, Lifelong Learning and Religious Affairs. Its duty is to formulate the guidelines, draft the timetable and the curricula, approve and order textbooks, apply vocational guidance, introduce issues and innovations, apply new teaching methods, and promote in-service training of teachers.¹⁰

The state and religious autonomy

The religious education curricula for Gymnasia and Lykeia are drawn up by the Pedagogical Institute and submitted to the Ministry of Education, Lifelong Learning and Religious Affairs for approval. There is a continuous effort to improve school textbooks in order to deal with other religious minorities in Greece more objectively.¹¹

Teachers are graduates of the two Faculties of Theology (Athens and Thessaloniki), which are state faculties without confessional character. The studies take four years to complete. The admission procedure to the Faculties of Theology is the same as for the university sector and it follows general entrance examinations. The degree offers the possibility of participating in an examination held by the Supreme Council for Civil Personnel Selection (A.S.E.P.). Many teachers of religion have postgraduate or doctoral degrees.

The character of religious education in the compulsory education period is strongly influenced by Orthodox theology. Benedictions at school buildings are not institutionalized but are a common practice at the beginning of the school year. There is no regulation of religious symbols in public schools. Usually classrooms have icons of Jesus Christ, the Virgin Mary, or the crucifix.

The planning of church attendance by students at least once a week or once a fortnight is a principal task of school directors and teachers. Participation in religious services at least once a month is expected of students. The daily common prayer must be made with due reverence, every day before the start of school, at a joint gathering of students and teachers in the schoolyard.¹²

In September 2006 a directory of the Ministry of Education prohibited the presence of priests in schools for the confession of students after parents of students appealed to the Greek Ombudsman. According to the Ministry, confession is not part of the cognitive process or the course of religious education and “for more educational, and theological reasons, and because in schools there is no appropriate place to ensure peace and privacy during the sacrament, the confession can not be performed within the schools.”¹³ If it is the case, the director announces at school that the parish priest performs the sacrament of confession especially for students. Directors also should facilitate the visits of metropolitans or bishops to schools, but without disrupting the school program.

The right of exemption from religious education, prayer, and attending mass is allowed for non-Orthodox pupils, if they (if they are adults) or their parents request an exemption for reasons of conscience.¹⁴ Because religion is a personal datum which is considered to be sensitive (Law 2472/1997 §2 case a), forced forms of worship violate religious freedom.¹⁵ The civil law provision leaves no doubt as to the parents’ prevalence regarding the religious education of their children at school (Art. 1510, 1 1518, 1).¹⁶ The right of exemption from the lesson of religious

Nikos Maghioros

education, prayer, and attending mass is recognized for non-Orthodox pupils, if they or their parents request an exemption for reasons of conscience. As the Council of State has decided in decision no. 3356/1995, refraining from such obligations does not constitute grounds for penalty.

Presidential Decrees (PDs) 104/1979 and 294/1979 establish the religious holidays for schools. For Orthodox students these are: Christmas holidays (December 24 until January 7); Easter holidays (from Good Monday to the Friday after Easter); Sundays; the feast of the Three Hierarchs (January 30); the feast of the Holy Spirit; the feast of the patron saint of the city where the school is; and Clean (Shrove) Monday. Students of the “Latin dogma” may be absent from the courses the day of the feast of St. Joseph (March 19) and the Corpus Christi feast, as well as from the eve of the Latin Easter until the day after. Jewish students may be absent the eve and the first day of the Jewish year (Rosh Hashanah), the Day of Atonement (Yom Kippur), and Passover (Pesach). Muslim students have no classes during the eve and the day of Şeker Bayramı and Kurban Bayramı.

Religion and state autonomy

Ecclesiastic education schools and ecclesiastic institutes of vocational training (E.I. E.K.)¹⁷

According to PD417/87 the general state supervision of all religions is entrusted to the General Secretariat of Religious Affairs (G.S.R.A.) of the Ministry of Education, Lifelong Learning and Religious Affairs.¹⁸ Its duty is the supervision of the implementation of government policy in the area of cults. The Department of Ecclesiastical and Religious Education was established by PD147/1976 (GG 56 A') to oversee the Ecclesiastical Secondary Schools and Clerical Second Chance Schools (ISDE). It has the responsibility for educational matters, curricula, and administrative issues, and also issues relative to the preachers of the Church of Greece. Two collective bodies operate in this department: the Council of the Secondary Ecclesiastical Education (Y.S.D. E.E.), which deals with issues regarding the personnel of Ecclesiastical Education, and the Supervisory Board of the Secondary Ecclesiastical Education (E.S.D.E.E.), which oversees the Schools of Ecclesiastical Education.

The Department of Ecclesiastical and Religious Education is also divided into two sections. The Personnel Section is responsible for appointments, transfers, postings, promotions, layoffs, and general issues in relation to staff of the Schools of Ecclesiastical Education. It includes the Apostolic Diakonia of the Church of Greece, which organizes the missionary and cultural activities of the church, and its preachers. The Administrative Section deals with the establishment, suspension, modification, and transfer of Ecclesiastical Schools, as well as the administrative rules of Ecclesiastical Schools and issues regarding the registration, transfer, and evaluation of students. It also monitors the administration of Rizarios Ecclesiastical School and Athonias Ecclesiastical Academy.

According to Law 3432/2006, Ecclesiastical Education is provided in Ecclesiastical Lower Secondary Schools, in Ecclesiastical Unified Upper Secondary Schools, in Higher Ecclesiastical Academies, and in Clerical Schools of Second Chance. These educational units are productive schools of the Orthodox Church in Greece and are supervised by the Ministry of National Education and Religious Affairs (Article 1.2).¹⁹

The Ecclesiastical Lower Secondary Schools and the Ecclesiastical Unified Upper Secondary Schools belong to post-compulsory secondary education. The Higher Ecclesiastical Academies

to public higher education and Clerical Schools of Second Chance constitute institutions of lifelong learning (Article 2).

The aim of Ecclesiastical Education is the elevation and training of the educational level and Christian morals of the staff, clergy, and laypersons of the Orthodox Church in Greece. The students are male only.

The Higher Ecclesiastical Academies grant degrees equivalent to those of public higher education. Their function began in the academic year 2007/08 (Article 3, §1). Higher Ecclesiastical Academies have as a mission: 1) to render their students participants of the values of the Orthodox Faith and Christianity; 2) to provide their students with suitable education and the necessary knowledge, through theoretical and practical training, at a high educational and intellectual level; 3) to project and develop the historical sources of the Orthodox faith and tradition, the monuments and the heirlooms of Orthodoxy, and generally speaking the treasures of the spiritual creation and cultural heritage of the Church of Greece and Orthodoxy in general, with a view to serving the Orthodox Church; and 4) to cultivate in their students the spirit of unity, love, and collaboration, which in its turn will disperse to Orthodox believers and to each individual in the social environment of the Orthodox Church in Greece, with the fundamental objective of peaceful and harmonious coexistence at a national and ecumenical level (Article 3). Access to the programs of study of the Higher Ecclesiastical Academies is for holders of a certificate of Unified Upper Secondary Schools or other equivalent school of Unified Upper Secondary Schools according to the conditions and the terms of the system of entrance to Tertiary Education, as long as they are Orthodox Christians. For the programs of clerical studies, only male candidates are admitted.

Secondary Ecclesiastical Education consists of ten Ecclesiastical Gymnasias, 17 General Ecclesiastical Lykeia, three Second Chance Seminary Schools (I.S.D.E.), one Ecclesiastic Institute of Vocational Training (E.I.E.K.) at Rizarios Ecclesiastic School, and 11 departments of ecclesiastic training offered at the state Institutes of Vocational Training (I.E.K.).

The Ecclesiastic Gymnasias have a three-year course of studies and are equal to the Lower Secondary Schools of General Education; Ecclesiastic Institutes of Vocational Training (E.I.E.K.) provide post-secondary ecclesiastic training that lasts for two semesters and falls under non-compulsory, post-secondary vocational training.

Almost all Ecclesiastic Educational Schools, I.S.D.E. and E.I.E.K., operate as boarding schools providing accommodation and meals free of charge to their students. Pupils in Ecclesiastic Gymnasias and Ecclesiastic Genika Lykeia follow the same timetable as that of General, Lower, and Upper Secondary Education Schools (Gymnasias and Genika Lykeia). Additionally the curriculum includes specific subjects such as the Old and New Testament, Byzantine music, and liturgy.

Minority schools

In Thrace there are 194 Minority Schools for children from the Muslim minority. These schools operate on the basis of the Treaty of Lausanne (1923) and pursuant to legislative measures and regulatory decisions issued within the framework of international cultural agreements. In these schools a bilingual (Greek and Turkish) curriculum is implemented on the basis of specialized study programs offered by specially trained teaching staff.

In minority primary schools a special program, "Education of Muslim Children," has been implemented since 1997 that aims at harmoniously integrating pupils in education and in society and improving the educational outcomes of the Muslim minority. This program targets education studies and research, development of educational material, and provision of further

Nikos Maghioros

training for teachers. Within the scope of the program 55 new textbooks were drafted, together with their accompanying supplementary material, an electronic method of learning Greek Language teaching was introduced, and, finally, a trilingual software dictionary (Greek–English–Turkish) was developed that includes terminology of subjects from all three grades of Gymnasio.

During the 2007/08 school year, there were eight Support Centers (ΚΕΣΠΕΜ/KESPEM) operating for Muslim minority children within the context of the program that were further enriched by the addition of new libraries, as well by two mobile (ΚΕΣΠΕΜ/KESPEM) units that made support services available to remote villages in Thrace.

State financial support for religious education

Education financing is the responsibility of the state through the regular budget and the public investments budget, and to a lesser degree by non-state sources. The regular budget covers teachers' salaries, operational costs of school units, books, pupil transportation, provision of meals and accommodation of pupils/students where applicable, scholarships, and purchase of teaching equipment.

The Public Investments Program covers all fixed asset expenditures, that is, the purchase of land; the construction, repair, and maintenance of buildings and facilities; and the provision and maintenance of equipment and laboratories. Furthermore, it covers the expenses incurred by drafting and creating new educational programs, the enhancement of scientific research, and the general support of educational policy.

In the context of the National Strategic Reference Framework (E.S.P.A.) 2007–13, innovative and development projects have been drawn up and implemented, 75 percent financed by European Union funds and 25 percent by national funds. These projects include the Sector Operational Program, "Education and Lifelong Learning," co-financed by the European Social Fund, as well as the Regional Operational Program co-financed by the European Regional Development Fund for infrastructure and equipment for all educational levels for both initial vocational training and lifelong learning. The main aim is to organize education and lifelong learning in such a way as to lead to active participation in society, a smooth transition into the labor market, and to curb school drop-out rates, especially among vulnerable groups.

Private expenditure on education covers the provision of educational services by private schools operating in parallel with state schools. It further covers the services of private tutorial centers (*Frontistiria*) offering parallel tuition on school subjects, and private foreign language courses, as well as private tutors employed by families and students to provide supplementary teaching.²⁰

Description of the current model of religious education (confessional/non-confessional)

The Greek education system consists of three levels: Primary, Secondary, and Tertiary.

Primary Education is divided into pre-school education, which is provided by pre-primary school (*nipiagogeio*), and compulsory primary education, which is provided by the primary schools (*dimotiko scholeio*). This level begins at the age of four years optionally, while attendance in them is compulsory for all five-year-old children.

The curriculum in pre-primary schools is developed by the Pedagogical Institute. Teachers are graduates of the Pedagogical Departments of the universities. Their admission in these departments is through the procedure of general entrance examinations and the studies last for

four years. Law 1771/1998 authorized the appointment of non-Orthodox teachers in public elementary schools and in nurseries if they met the formal requirements.²¹

As stated in Law 1566/1985, the aim of pre-primary schools is to assist children to develop physically, emotionally, mentally, and socially, at the individual level as well as the group level. Special attention is given to the development of motor and cognitive abilities. There is no particular attention given to religious education.

Primary education constitutes a part of the ten-year duration of compulsory education and covers six grades from A to F. It is provided in primary schools for children aged from six up to 12. The curriculum in primary schools is developed by the Pedagogical Institute.

Teachers are exclusively graduates of the Pedagogical departments of primary education established by Law 1268/1982. Their studies last four years and their admission in these departments is through the procedure of general entrance examinations.

According to Law 682/77 on private education, private primary education is organized and operates similarly to that of state schools; equal titles are granted and the national curriculum is implemented. Tuition and other fees are paid in private schools and no state subsidies apply.

There are also foreign private schools providing education mainly to foreign nationals residing in Greece that operate on the basis of bilateral cultural agreements between Greece and the specific contracting states and pursuant to the provisions of the law on foreign schools. These schools have been founded by foreign institutional bodies and cultural organizations.

Secondary Education includes two sub-levels: Compulsory Lower Level Secondary Education and Post- (or non-) Compulsory Upper Secondary Education. Compulsory lower level secondary education lasts for three years and is offered at *Gymnasio* and in parallel at evening schools (*Esperino Gymnasio*) in which attendance starts at the age of 14. Post- (or non-) Compulsory Upper Secondary Education includes general secondary education and vocational secondary education. The first comprises General Lyceum (*Geniko Lykeio*) and the second Vocational Lyceum (*Epagelmatiko Lykeio*) and Vocational School (*Epagelmatiki Scholi*). In parallel with the mainstream, schools of secondary education operate Evening Gymnasias (*Esperina Gymnasia*), and Evening Genika Lykeia and Evening Vocational Lykeia (*Esperina Genika and Epagelmatika Lykeia*). There are also Vocational Schools (*Epagelmatikes Scholes*) operating during the day only which, together with Vocational Lykeia make up secondary Vocational Education (Law 3475/2006). The duration of studies is three years for General and Vocational Lykeia and four years for Evening General and Vocational Lykeia. In General and Vocational Lykeio, pupils enroll at the age of 15, while in Vocational School they enroll at the age of 16.

The curricula and timetable of Gymnasias and Lykeia are drawn up by the Pedagogical Institute and submitted to the Ministry of Education, Lifelong Learning and Religious Affairs for approval.

Teachers at Gymnasias and Lykeia offer instruction exclusively on the subject of their specialization. They are university graduates of departments relative to the subject they teach. Their studies last for four years. The admissions procedure to the university sector of higher education is after general entrance examinations. The degree offers their holders the possibility of participating in an examination held by the Supreme Council for Civil Personnel Selection (A.S.E.P.).

Tertiary Education comprises the University Sector—Universities (*Panepistimia*), Technical Universities (*Politekhneia*), the Higher School of Fine Arts (*Anotati Sxoli Kalon Texnon*)—and the Technological Sector—Technological Education Institutions (*Technologika Ekpaideftika Idrymata*—TEI) and the Higher School of Pedagogical and Technological Education (*Anotati Sxoli Paidagogikis kai Technologikis Ekpaideftis*—A.S.P.E.T.E.).

Students are admitted to these Institutes according to their performance in national level examinations taking place at the second and third grade of Lykeio.

Nikos Maghioros

Additionally, students are admitted to the Hellenic Open University at 22 years of age by drawing lots.

Notes

- 1 European Commission, Eurydice, *National System Overviews on Education Systems in Europe and Ongoing Reforms: Greece* (2010), 1. According to the 2001 census data of the National Statistical Service of Greece the permanent population numbered 10,934,080 inhabitants, 5.41 million (49.51%) male and 5.52 million (50.49%) female. The latest available population projections, based on the results of the 2001 Census, estimate that, in 2050, the total population of Greece will be approximately 11,500,000. The percentage of the active working population aged 15–64 will probable decrease by 13.2 percentage points, falling from 68.15% in 2000 to 54.9% by 2050. European Commission, Eurydice, *Organization of the Education System in Greece 2009–2010*, 10.
- 2 significant amount of immigrant population resides in Greece and, thereby, increases the members of the Muslim community in the country. The exact number remains unknown, since a large number of them remain unregistered and therefore do not hold a provisional or permanent residence permit. There are traditional populations of Jehovah's Witnesses (estimated with all family members at 46,414), Jews (estimated at 4,000–5,000), Catholics (estimated at 50,000, of which some 5,000 Eastern Rite Catholics who belong to the traditional Catholic minority), and Protestants (estimated at 20,000–25,000). As a religious minority, the Old Calendarists are far more numerous (700,000 to 1 million) and differ only in the fact that they belong to an administratively non-recognized Orthodox Church (as opposed to the New Calendarists, who are officially recognized). Greek Helsinki Monitor, *Religious Freedom in Greece: Report 2002*, 3.
- 3 There is no such provision for the President of the Republic to be an Orthodox. Before assuming his duties, the President of the Republic takes the oath before the Parliament (Article 33 §2). Proselytism against the prevailing religion is prohibited (Article 1 §1). Proselytism against every religion and not only of that prevailing is prohibited (Article 13 §2). Education is based not on the principles of the Greek-Christian (Orthodox) culture, but education aims at the development of national and religious consciousness (Article 16 §2).
- 4 I. Konidaris, *Manual of Ecclesiastical Law* (Athens-Komotini, 2000), 95 (in Greek).
- 5 "1. The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928. 2. The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph. 3. The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited".
- 6 Ch. Papastathis, "The Hellenic Republic and the Prevailing Religion", in: *Brigham Young University Law Review* 4 (1996), 815; in *Church and State in the European Union*, ed. G. Robbers (Baden-Baden, 2005), 116; P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece* (Athens-Komotini, 2000), 19–26; N. Maghioros, "State and Church in Greece: 'To reform or not to reform?'" in *Droit et Religions* 2 (2006–7), 497–502.
- 7 "1. Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs. 2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the good usages. Proselytism is prohibited. 3. The ministers of all known religions shall be subject to the same supervision by the state and to the same obligations towards it, as those of the prevailing religion. 4. No person shall be exempt from discharging their obligations to the state or may refuse to comply with the laws by reason of their religious convictions. 5. No oath shall be imposed or administered except as specified by law and in the form determined by law".

- 8 Ch. Papastathis, *Ecclesiastical Law* (Athina-Thessaloniki, 2003), 83–97 (in Greek); I. Konidaris, *Manual of Ecclesiastical Law*, 45–64; P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece* (Athens-Komotini, 2000), 19–26.
- 9 The Council of State has officially recognized Catholics, Evangelicals, Seventh-day Adventists, Methodists, and Christian Jehovah's Witnesses. All known religions to be considered by the Greek state legal entities under private law must establish an association, or foundation, or charitable fundraising committee pursuant to the Civil Code.
- 10 <www.pi-schools.gr>.
- 11 Textbooks are approved by the Pedagogical Institute, published by the School Book Publishing Organization, and distributed to every pupil in public schools at no cost.
- 12 Circulars Φ200/21/16/139240/26-11-1977; Γ/6251/22-10-1979; Γ/2875/30-04-1981, PD 201/1998.
- 13 Circular Γ2/76992/27.07.2006.
- 14 Circulars of the Ministry of National Education and Religious Affairs: Γ2/6904/29.11.95, 61723/13-6-2002; 91109/Γ2/10.7.2008; 104071/Γ2/4.8.2008; 12/977/109744/Γ1/26.8.2008.
- 15 “The obligatory declaration of religion which is considered to be a prerequisite in order that the student may be exempted from Religious Education class violates the principle of necessity” because this on the one hand would contravene the negative religious freedom of both students concerned and their parents or custodial parents, and on the other hand it would be opposite to the more specific right of parents “to cater to [their children’s] education according to their own religious and philosophical beliefs” (Article 2 of the First Protocol of the European Convention for Human Rights). Hellenic Republic–Data Protection Authority, Decision 77A/2002 no. 5. See also the E.C.H.R. judgment in the case of *Alexandridis v. Greece* (appl. no. 19516/06) according to which it was a violation of Article 9 of the European Convention on Human Rights. The Court held that “the fact that the applicant had had to reveal to the court that he was not an Orthodox Christian had interfered with his freedom not to have to manifest his religious beliefs. ... the freedom to manifest one’s beliefs also contained a negative aspect, namely, the individual’s right not to be obliged to manifest his or her religion or religious beliefs and not to be obliged to act in such a way as to enable conclusions to be drawn regarding whether he or she held—or did not hold—such beliefs.”
- 16 Naskou, 30.
- 17 The legal framework which regulates ecclesiastic education issues includes PD1025/1977, (Presidential Decree): 1977, 1025, *Government Gazette A* 344/10.11.77; Modification and organization of Ecclesiastical Schools and supplementary provisions of the PD292/1977, PD73/2001, (Presidential Decree): 2001, 73, *Government Gazette A* 64/2.4.2001; Regulation of studies and regulation of operation of boarding schools in Higher Ecclesiastical Schools, Law 3432/2006, *Government Gazette A* 14, on the structure and function of Ecclesiastical Education.
- 18 *Government Gazette A* 186/87. It is divided into the Department of Ecclesiastical Administration, the Department of Ecclesiastical Education, and the Department of Heterodox and Hetero-religious.
- 19 The title was recently modified by the Ministry of Education, Lifelong Learning and Religious Affairs.
- 20 European Commission, Eurydice, *Organization of the Education system in Greece 2009–2010*, 30.
- 21 “1. Nursery school and primary school candidate teachers belonging to religions other than Orthodox Christianity can be appointed to public multi-seated primary schools and two-seated nurseries if they have the necessary qualifications. 2. The teachers appointed according to the above paragraph will not teach divinity to pupils other than the ones who belong to the same religion as their own. 3. The appointment of teachers of other dogmas and religions can go ahead in one-seated public schools when pupils belonging to the same dogma or religion are educated there.” Also see G. Sotirelis, *Religion and Education* (Athens-Komotini, 1998), 180–98.

Religious education in Hungary

Balázs Schanda

Religious demographics of Hungary

Most Hungarians have a denominational identity and consider themselves to be believers. However, only about 15 percent of the population attend church regularly. Around half of the population of Hungary describe themselves as “believing in their own way.” After rapid and enforced secularization after the crackdown on the 1956 revolution against the communist system in the 1960s, there has been since the late 1970s an increasing trend towards religiosity.¹ For the census conducted in 2001, a question on religion was included. The question was formulated in an open way (there were no predefined answers); response was optional and anonymous, for reasons of data protection. The results of the census showed that 55 percent of the population was Catholic, 15 percent Reformed (Calvinist), 3 percent Lutheran, and less than 2 percent belonged to more than 100 different faith communities. Ten percent of citizens failed to give an answer, and 15 percent declared not to have a denomination.²

Historical and constitutional context of religious education

Ever since education in Hungary became an issue, the churches—after the Reformation, the various denominations, especially the Calvinist (Reformed) Church and the Catholic Church—have played a determinative role in organizing and providing education. Also, since the introduction of compulsory elementary education by the “Ratio educationes” of Queen Maria Theresa issued in 1777, schools serving the public and the state were maintained by church communities. Public schools emerged only in the nineteenth century. When education was nationalized in the course of the communist takeover in 1948,³ two-thirds of all elementary schools and one-third of secondary schools were run by churches. In public schools, denominational religious education remained compulsory until 1949. The possibility of optional religious education at schools was recognized, but due to the systematic harassment of clergy, as well as parents and children who tried to invoke this right, it was rather a dead letter than a real right (by the 1980s only 4 percent of pupils at elementary schools had religious education at school, mostly in some rural areas, whereas from the 1970s religious education at church premises was tolerated to some extent).⁴ During the four decades of communist rule (1949–89), education was totally

controlled and provided by the state (only ten denominational secondary schools prevailed due to agreements concluded with the Catholic Bishops' Conference in 1950, and the Reformed Church as well as the Alliance of Jewish Communities in 1948). Churches made huge efforts to overcome the legacy of the communist system, but took the current social context—the fact of secularization—into consideration. Consequently, church-run schools became an important alternative to public schools, but churches did not aim at restoring their earlier role in education. As for the place of religious education in public education, churches did not attempt to change the status of religious education as an optional subject. In practice, churches tried to avoid conflicts concerning religious education and to ensure that parents truly enjoyed freedom to opt for religious education.

The Constitution provides for religious freedom, non-discrimination and the right of the parents to decide on the education of their children.⁵ Religious education is not specifically addressed in the Constitution, but both parental rights and religious freedom (including the freedom to teach one's religion) are. There are no preferred or privileged religions or confessions. Neutrality may be seen as the most important principle governing the state in its relationship with the religious communities as well as with other ideologies. The state should remain neutral in matters concerning ideology: there should be no official ideology, be it religious or secular. Neutrality means that the state should not identify with any ideology (or religion); consequently it must not be institutionally attached to a number of churches or to any one single church. This shows that the underlying doctrine behind the principle of separation (as explicitly stated in the Constitution) is the neutrality of the state. It is to be noted that neutrality has to be distinguished from indifference, which is not what the Constitution implies—as follows from the concept of neutrality elaborated by the Constitutional Court. Neither is neutrality “laicism”: the state may have an active role in providing an institutional legal framework as well as funds for the churches to ensure the free exercise of religion in practice: “*from the right to freedom of religion, follows the State's duty to ensure the possibility of free formation of personal convictions.*”⁶ The state should not enter into institutional involvement with any organization that is based on an ideology, either religious or secular. Freedom of religion and freedom from religion are equally protected—neither case should be treated as an exception. All public institutions are bound by the principle of neutrality: the state must not maintain non-neutral institutions such as schools or theological faculties; church institutions, however, do enjoy public funding. The meaning of separation may be defined on the one hand by respecting the autonomy (or self-determination) of the churches (“*the State must not interfere with the internal workings of any church*”), and, on the other hand, by the principle stated in the law on religious freedom: “*No State pressure may be applied in the interest of enforcing the internal laws and rules of a church.*”⁷ Religious communities are not allowed to make use of state power. In the relationship between the individual and his or her church, the state plays no role.

The legal context of religious education

The right of religious communities to provide, and of parents and legal guardians to opt for, religious education is ensured by law.⁸ Religious education, however, is a matter for the churches and religious communities, not for the state. Consequently there is no state body to deal with religious education.

The possibility for children/students to participate in optional religious education and instruction organized by a church legal entity in state and council educational-teaching institutions has to be ensured.⁹ Church legal entities may organize religious education and instruction on demand of the parents at kindergartens and on demand of the parents and the pupils at

Balázs Schanda

schools and halls of residence. Religious education and instruction at kindergartens may be organized separately from kindergarten activities, also taking account of the daily routine at the kindergarten. They may be organized at schools in conformity with the order of compulsory curricular activities. It is the task of church legal entities to define the content of religious education and instruction, to employ and supervise religious education teachers and to execute the acts of administration related to religious education and instruction with special regard to the organization of the application for religious education and instruction, the issuance of progress reports and certificates, and the supervision of lessons. The school, dormitory or kindergarten is obliged to provide the necessary material conditions for religious education and instruction, using the tools available at the educational-teaching institution, with special consideration to the proper use of rooms and the necessary conditions for application and operation. The kindergarten, school, or dormitory shall cooperate with the interested church legal entity in the course of the performance of the tasks related to the optional religious education and instruction organized by the church legal entity.¹⁰ The reality of religious education at public schools shows great regional differences. At elementary schools in certain rural areas the large majority of children frequent religion classes at school, whereas in urban areas, especially at the secondary school level, religious education is not even offered by churches, but held on church premises. At the secondary school level, the offer of church-run schools provides an alternative in most major cities.

Religious instruction in public schools is delivered by religious communities, not by the school. The instruction is not a part of the school curriculum, the teacher of religion is not a member of the school staff, grades are not given in school reports, and the churches decide freely on the content of the religion classes as well as on their supervision. Teachers of religion are in church employment; however, the state provides funding for the churches to pay the teachers. The school has only to provide an appropriate time for religious classes (this is a difficult issue in many cases) as well as teaching facilities. Churches are free to expound their beliefs during the religious classes: they do not have to restrict themselves to providing neutral education, merely giving information about religion, as do the public schools. Religious education is not part of the public school's task; it is a form of introduction into the life and doctrines of a given religious community at the request of students and parents.

Religion and autonomy

There are no legal or political instruments designed to control the religious education or the choices of the citizens. The general attitude is highly tolerant but often diffident with regard to religious issues. All religious communities decide on their own on the form and the content of their religious education. Religious communities are also free not to offer religious education at schools—even when parents would desire it.

Religious communities are free to set up schools with curricula and diplomas recognized by the state. At the primary school level about 6 percent, and at secondary general school level about 22 percent, of pupils attend schools run by ecclesiastical entities. There are also some church-run vocational schools.¹¹

State financial support for religious education

The budget provides a subsidy for churches and religious communities as a contribution to the salaries of the teaching staff. The teacher himself or herself does not become a state employee, but

money he/she receives originates from the state. Church-run schools enjoy equal funding to public schools.

Models of current religious education in Hungary

Religious education in public schools

Denominational religious instruction in public schools is an optional subject, provided by churches and religious communities. Instruction is confessional. The public school is practically hosting religion classes. The teachers of religious education are appointed, controlled, and paid by their denomination (sometimes a member of the teaching staff may also act as a teacher of religion classes—in this case the person has two different appointments to the same institution).

Public schools are bound by the principle of neutrality. They should not endorse any religion or ideology, but must provide objective and many-sided information about religions and philosophical convictions.¹² Teachers at public schools should teach on a neutral basis; they have the right to express their opinion or belief, but they should not indoctrinate their students. The pedagogical program, the functioning, and the direction of public schools shall not take position in matters of religious truth.

Religious information and issues certainly come up in classes in literature, history, and the like. These shall not require identification by students or teachers but rather provide neutral and factual information and would not be considered as a challenge.

Public schools (both primary and secondary) have to provide space for religious communities to offer religious education at their premises in a “protected” time frame, that is, after 7 a.m. and before 3 p.m., when there are no concurrent obligatory classes (a school choir or a sports event may concur with religion classes).

Religious education in private schools

For financial reasons it is not likely that denominational schools would be run by a private entity instead of a church legal entity. Private schools often offer special pedagogic programs (languages, sports, arts) and may have a special religious identity. As registering a religious entity is a merely formal act, a school run by such an entity would enjoy significantly more favorable financial conditions than a private school. Private schools also have the right not to enable religious education. Private schools are also entitled to certain public subsidies, but they are not fully funded by the state budget.

Schools run by religious entities do not qualify as private schools. Educational institutions run by public entities (state, local communities, minority self-governments) are bound by the principle of neutrality with regard to religion, whereas institutions run by churches are not. The place of religion is quite different in these institutions, but church-run institutions are entitled to the national average of public spending on schools that means the local spending besides the central subsidy—for this they cannot collect tuition fees.

Denominational religious education can be compulsory at church-run schools, as part of the school curriculum. Church-run schools also can be exclusive with regard to their religion.¹³ Teachers of religion need a university degree, usually issued by a theological college or faculty. In church-run schools the teachers of religion are members of the faculty.

Balázs Schanda

Religious education on church premises

Religious education is largely carried out on church premises (church buildings, parish and community houses). This type of education falls fully under the protection of religious freedom and is not regulated in any way by legal norms.

Notes

- 1 For a comparative overview of attitudes see M. Tomka and P. Zulehner, *Religion in den Reformländern Ost* (Mittel) (Europas: Ostfildern, 1999).
- 2 Data were published indicating regions, settlements, correlation to marital status, and age. Központi Statisztikai Hivatal, 2001, évi népszámlálás, 5. Vallás, felekezet, Budapest, Központi Statisztikai Hivatal, 2002 [Hungarian Central Statistical Office, Population census 2001, 5. Religion, denomination, Budapest, Hungarian Central Statistical Office, 2002] <www.nepszamlalas2001.hu/dokumentumok/pdfs/vallas.pdf>.
- 3 Act XXXIII/1948.
- 4 On issues of religious education under the communist regime: Nagy, Péter Tibor, *Járszalag és aréna* (Új Budapest, 2000), 187–243.
- 5 Constitution § 60: “(1) In the Republic of Hungary everyone has the right to freedom of thought, freedom of conscience, and freedom of religion.
(2) This right shall include the free choice or acceptance of a religion or belief, and the freedom to publicly or privately express or decline to express, exercise and teach such religions and beliefs by way of religious actions, rites or in any other way, either individually or in a group.
(3) The church and the State shall operate in separation in the Republic of Hungary.
(4) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the freedom of belief and religion.”
§ 67: “(2) Parents have the right to choose the form of education given to their children.”
§ 70/A: “(1) The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.”
- 6 Decision 4/1993 (II. 12.) AB (commentary and text in English: I. Sólyom and G. Brunner, eds., *Constitutional Jurisdiction in a New Democracy. The Hungarian Constitutional Court* (The University of Michigan Press, 2000), 246–66).
- 7 Act IV/1990 (on the Freedom of Conscience and Religion, and on Churches), § 15.
- 8 Act IV/1990, § 5 Parents and guardians are entitled to decide on the moral and religious education of their minor children, and to provide for it appropriately.
- 9 Act IV/1990. § 17 (2) A church legal entity may provide religious education in public education institutions on a non-compulsory basis (as an optional subject), according to the demand of the students and parents.
- 10 Act LXXIX/1993 (on Public Education), § 4 (4).
- 11 For data: a bilingual (Hungarian–English) overview of the system of education is available at: <www.okm.gov.hu/letolt/statisztika/okt_evkonyv_2008_2009_091207.pdf>.
- 12 Act LXXIX/1993, § 4 (2).
- 13 Act CXXV/2003. § 28 (2).

Religious education in India

Tahir Mahmood

Religious composition of India

Religious pluralism is one of the fundamental features of the Republic of India. India is indeed a mosaic of various faith traditions and diverse cultures. Hinduism is the predominant religion in the country. Three other faiths not fundamentally different from Hinduism are Sikhism, Buddhism, and Jainism; the population figures for adherents of these three faiths are 16 million, 8 million, and 3.5 million, respectively. At the same time India is home to the second largest Muslim community in the world next to Indonesia (nearly 160 million) and has a Christian population of about 24 million. While Islam constitutes the majority religion in two of the 35 constituents of federal India,¹ Christianity is the dominant religion in three—all located in the Northeast.² In several other states the number of adherents of these faiths is much above the national average.³ Among the smaller religious communities of India are the Parsi Zoroastrians, Baha'is, and Jews.

Neither the Constitution of India nor any legislative enactment lists the various religious communities of the country. There is also no law requiring compulsory registration of religious communities. The Census Reports of India issued after every 20 years, however, contain checklists of all religious groups and provide statistical information on their population in various parts of the country.

Five religious communities of India—Muslims, Christians, Sikhs, Buddhists, and Parsi Zoroastrians—are specified as religious minorities under certain central and state laws providing for their welfare and protection of rights.⁴ These are not, however, exhaustive provisions and do not affect the minority status of other smaller religious groups.

Religion-state relations

The Constitution of India adopted in 1950 is based on the principle of secularism, which is fundamentally different from the former Soviet, American, and French concepts of secularism and means nothing more than a complete equality of all religions and all religious communities in the eyes of the state.

Tahir Mahmood

There is no state religion in India—all religions, big and small, are equal in the eyes of the state.⁵ There is, however, no non-establishment clause in the Constitution and by implication the state is free to regulate and organize religious affairs. Religion has no substantive role to play in the affairs of the state, but there is no ban on allowing it a ceremonial role in state functions and official events.

Freedom of conscience and the right to “profess, practise and propagate” religion are guaranteed by the Constitution as people’s fundamental rights.⁶ These rights can, however, be curtailed or controlled by the state in the interest of “health, morality and public interest.” Also these freedoms do not bar the state from introducing social reforms and from “regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.”⁷ Group rights of religious communities and subcommunities to organize their own affairs in matters of religion are also assured by the Constitution.⁸ The Constitution further entitles every section of citizens in all regions of the country to conserve its distinct culture, language and script⁹—imposing at the same time on all citizens a fundamental duty “to value and preserve the rich heritage of our composite culture.”¹⁰

Legal context

Every religious community in India is free to establish and administer educational institutions of its choice, though no citizen can be denied admission on the ground of religion to any institution maintained or aided by the state.¹¹ For the religious and linguistic minorities this freedom is specified by the Constitution as a fundamental right and the state is precluded from discriminating in any way against their educational institutions in giving financial aid.¹² Although under the Constitution this right of the minorities is unconditional, it has over the years been diluted to a large extent by the process of administrative regulations and judicial decisions. In a 1992 case relating to a prominent Christian institution, the Supreme Court decided that in all minority educational institutions, minority community students should be admitted to only half of the total seats available—thus virtually creating an equal space for those of the majority community in all minority institutions.¹³ There is no parallel arrangement for any fixed intake for the minorities either in state-run institutions or in those established by the majority community.

The statutory National Commission for Minority Educational Institutions was established under parliamentary legislation in 2004. The Commission is empowered by law to help the minorities in the exercise of their educational rights under the Constitution, but its jurisdiction does not extend to exclusively religious schools.

General education

Regarding the general right to education, the Constitution provides as follows:

- 1 “Within its economic capacity and development” the state shall make effective provisions for securing the right to education.¹⁴
- 2 The state shall “endeavour to provide” early childhood care and education for all children until they complete the age of six years.¹⁵
- 3 The state, by way of a fundamental right of citizens, shall provide free and compulsory education to all children of the age of six to 14 in such manner as the state may by law determine.¹⁶
- 4 Every parent or guardian has a fundamental duty to provide opportunities for education to his child or ward between the age of six and 14 years.¹⁷

- 5 Every state and local authority shall endeavour to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups.¹⁸

The word “education” in any of these provisions has not been defined by the Constitution. The Right of Children to Free and Compulsory Education Act of 2009, passed pursuant to these constitutional provisions, also does not define the word “education.”

Religious education

In the past, religious education in India has been generally sponsored by the state but the dimensions and parameters of such sponsorship have been different in different periods of history. In the pre-British era, Hindu and Muslim rulers in various parts of the country patronized religious education in all its aspects. During the 350-year British rule in India, the government greatly encouraged studies in Christian theology in various ways and by all means. This historical legacy in regard to religious education has left its impact on present-day India, which is now a secular nation by the dictates of the national Constitution.

The Constitution of independent India does not specifically direct the state either to remain aloof from or get involved in the system of religious education in the country. Nor does it designate any particular religion to exercise control over studies in religion and theology. In consonance with its peculiar concept of secularism, the Constitution makes the following provisions in respect of religious education:¹⁹

- 1 No religious instruction shall be provided in any educational institution wholly maintained out of state funds.
- 2 This restriction does not apply to an educational institution which is administered by the state but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- 3 No person attending any educational institution recognized by the state or receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Provision for religious education in any institution, to whichever religious community it may belong, is no bar for receiving financial aid and assistance from the state. The state does provide fixed annual grants to millions of schools and colleges whose curriculum includes theology and religion. A governmental organization known as the Maulana Azad Education Foundation was set up in 1994 to provide finances to educational institutions established and run by religious minorities in many of which religious education is imparted on an optional basis.

Public institutions of denominational nature

There are thousands of educational institutions in the country with denominational or sub-denominational names recognized and aided by the state and most of these offer optional instruction in religion and theology. There are a much larger number of seminaries established and run by different communities not receiving any state aid and providing compulsory instruction in the religion and theology of the establishing community. Hindu, Christian, and

Tahir Mahmood

Islamic schools and colleges are found in almost all major cities of India, while there are also many Khalsa (Sikh) and Jain educational institutions in some parts of the country. Among the majority Hindu community sub-denominational and sectarian institutions, the words Dayanand Anglo-Vedic, Brahmosamaj, and Sanatan Dharm, and the like, are included in their names, while among Muslims, separate Sunni and Shia educational institutions are working in some states. The Christian institutions use either the word “Christian” in their names or are named after particular saints or sects—St Stephen’s, St Xavier’s, St Andrew’s, St Columba, St John’s, Mother Provincial, and All Saints, to name a few.

There are several universities in the country established by particular religious communities and associated with the names of their faith. Among these are the Hindu University in the holy Hindu city of Banaras, the Muslim University in Aligarh town, and the Jamia Millia Islamia of Delhi—all three now governed by statutes enacted by the central legislature. There have been disputes leading to court cases about the minority character of the latter two, both of which were originally established by the Muslims. The Sikh community has also established two universities in the Sikh-dominated state of Punjab.

The Banaras Hindu University Act 1915 empowers the university to “promote the study of Vedic, Hindu, Buddhist, Jain, Islamic, Sikh, Christian, Zoroastrian, and other civilizations and cultures.” Similarly, the Aligarh Muslim University Act 1920 authorizes the university to “promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training.” There is no parallel provision in the Jamia Millia Islamia Act of 1988. The governing statute of Guru Nank Dev University of Amritsar makes special provisions for studies and research in Sikh religion and life and teachings of its founder.

Both the Banaras Hindu University and the Aligarh Muslim University have fully fledged Faculties of Theology imparting Hindu and Islamic religious education respectively for their adherents on an optional basis. In the Muslim university there are separate faculties of Sunni and Shia theology providing instruction, even to the doctoral level.

There is an old university-level institution in West Bengal state known as the Senate of Serampore College, which organizes Christian theological education at various levels in all its affiliated colleges and schools.

Several universities and colleges have departments of Vedic Studies, Islamic Studies, and Biblical Studies, while some have set up a department for studies and research in comparative religion. In 2003 the government then in power instructed all universities to teach Vedic astronomy as an optional subject; the constitutional validity of the instruction was upheld by the Supreme Court.²⁰

Private educational institutions

Private educational institutions established by and belonging to various religious communities are at work throughout the length and breadth of the country; and all of these provide instruction in the religion and theology of the respective communities. The educational institutions of such nature among the Hindus are generally known as *pathshala* (study center), *gurukul* (teacher’s family) or *shishu mandir* (children’s temple). There are also many *bal vihars*, which are an equivalent of Christian Sunday schools and are run by temples and Hindu religious trusts or endowments. Hindu Vedic *pathshalas* teach the four Holy Vedas (Hindu scripture) and their commentaries, Hindu theology, and various other related topics. Some of them have special programs to train and produce Hindu clergy—*acharyas* (religious teachers), *purohits* (religious functionaries), and the like. Some institutions run by the Sikh, Buddhist, and Jain communities

produce *granthis* (those memorizing Sikh scripture by heart) and experts in Buddhist and Jain theology, respectively.

Muslim religious institutions are generally known as *madarsa* (accurately, *madrassa*, or, place of learning). Most of the mosques in the country, big and small, have primary-level *madarsas* attached to them and financed by their management. The *madarsa* education curriculum, generally known as the *Dars-e-Nizami*, includes Qur'an (Islamic scripture) and its exegesis, *Hadith* (Prophet's Traditions), Islamic theology, Arabic language and grammar, *fiqh* (Islamic religious law), and the like. Many Qur'an institutes and *madarsas* train pupils as *hafiz* (Qur'an-memorizers), *imam* (prayer-leaders) and *mu'azzin* (callers to prayers in mosques). All the *madrasas* are apolitical and provide instruction and boarding to the poorer segments of society which are generally neglected by the state. The negative connotation of the word "*madrasa*" as it has now come to be understood in the West is wholly inaccurate.²¹

The universities established by the Muslims grant equality of qualifications from *madrasas*. The Aligarh Muslim University and Delhi's Jamia Millia Islamia have set up correspondence committees for evaluating the degrees of students from *madarsas*. The *madrasas* apply to the committee regarding their courses and the committee recommends the levels of formal education systems corresponding to the *madrassa* education.

Legislative enactments in several states have created statutory "Madarsa Boards" to regulate the working of *madarsa* education. A recent proposal of the central government to set up a similar board on an all-India level has been abandoned due to stiff opposition by the religious leaders of the community. The central government runs a "Madarsa Modernization Scheme" for which there have not been many takers for fear of undue state intervention in the system of religious education.

Christian theological institutions are found in various parts of India.²² The two major church organizations of India—the National Council of Churches in India (N.C.C.I.) and the Catholic Bishops Conference of India (C.B.C.I.)—manage and regulate Christian theological education in the seminaries and schools in various parts of the country.

Teachers of religion and theology in institutions belonging to various religious communities are appointed by the respective institutions or their governing bodies; the government has no say in it. However, public institutions offering religious education on an optional basis must, in respect of the appointment of teachers for such programs, comply with general administrative regulations issued for this purpose.

The state does not finance any community-specific institution exclusively imparting religious education. All such institutions, of all communities, depend entirely on public funding and popular financing. Under the Madarsa Modernization Scheme of the central government referred to above, the government can provide salaries for teachers whom the Muslim *madarsas* may want to appoint for teaching modern subjects like science, mathematics, and technological subjects, but such appointments are to be strictly regulated by government officials.

There are statutory bodies in the country regulating religious endowments and trusts belonging to various religious communities, like the Religious Endowment Boards for the Hindus,²³ State Wakf Boards for the Muslims, and Gurdwara Prabandhak Committees for the Sikhs.²⁴ These bodies, which get financial grants from the government, are not precluded from providing funds to institutions providing religious education.²⁵

Conclusion

India has always been and remains a deeply religious society. The present state of religious education in the country emanates from various provisions of the Constitution and law which,

Tahir Mahmood

together, assure basic secularity of the state without undue insensitivity to society's religious sensitivities. The system partakes of two different channels—one accommodating religious education on an optional basis in institutions of a public nature and the other providing religious education in religion-specific private seminaries. The former works under state patronage and financing to varying extents; the latter under the sponsorship of various religious communities. In a nutshell, religious education in India is a subject of public-private partnership and ordinarily does not face serious problems.

Notes

- 1 State of Jammu and Kashmir, and Union Territory of Lakshadweep.
- 2 Meghalaya, Mizoram, and Nagaland.
- 3 Muslims in Assam, Bihar, Kerala, Uttar Pradesh, and West Bengal; Christians in Andamans, Goa, Kerala, and Manipur.
- 4 Central Government Notification of May 21, 1993 issued under the National Commission for Minorities Act 1992 and definition clauses in several State Minorities Commission Acts.
- 5 The Preamble to the Constitution of 1950 declares India to be a secular state and various provisions in the chapter on peoples' rights prohibit religion-based discrimination by the state and its institutions.
- 6 Constitution of India 1950, Article 25.
- 7 This is made clear by the opening words and specific clauses of Article 25.
- 8 *Ibid.*, Article 26.
- 9 *Ibid.*, Article 29 (1).
- 10 *Ibid.*, Article 51-A.
- 11 *Ibid.*, Article 29 (2).
- 12 *Ibid.*, Article 30.
- 13 *St. Stephen's College v University of Delhi* (1992) 1 *Supreme Court Cases* 558. The rigidity of this ruling has been mitigated by later decisions allowing minor adjustments.
- 14 Constitution of India 1950, Article 41.
- 15 *Ibid.*, Article 45.
- 16 *Ibid.*, Article 21-A.
- 17 *Ibid.*, Article 51-A (k).
- 18 *Ibid.*, Article 350-B.
- 19 *Ibid.*, Article 28.
- 20 See details in *Amity Law Watch*, Vol. II:2 (June 2004) published by the Institute of Advanced Legal Studies, Amity University.
- 21 The biggest religious education institutions of the Muslims in India have a worldwide reputation and draw students from various foreign countries. For example, the Dar-ul-Uloom of Deoband and the Nadwat-ul-Ulama of Lucknow, both outstanding institutions, are situated in the North Indian State of Uttar Pradesh.
- 22 The Vidyajoti Institute in Delhi and the St Martin's Institute in Hyderabad are very well known.
- 23 Among these are the Bihar Hindu Religious Trusts Act 1950, Orissa Hindu Religious Endowments Act 1951, Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, and Karnataka Hindu Religious Institutions and Charitable Endowments Act 1997.
- 24 Central Wakf Act 1995, UP Muslim Wakfs Act 1960, West Bengal Wakfs Act 1935, and Jammu and Kashmir State Wakfs Act 1958.
- 25 For instance, Punjab Sikh Gurdwaras Act 1925 and Delhi Sikh Gurdwaras Act 1971.

Religious education in Indonesia

The case of Islamic education

Masykuri Abdillah

Religious demographics

In Indonesia there are about 583 ethnic groups and local languages or dialects, and there are five officially recognized religions: Islam (88 percent), Christianity (Protestants and Catholics, 8.7 percent), Hinduism (1.7 percent), Buddhism (0.6 percent), and Confucianism. Each of them has equal rights and obligations, and each has religious holidays recognized as official holidays. Hence the founding fathers formulated the motto, *Bhinneka Tunggal Ika* (unity in diversity), to account for this situation. Preparing for Indonesian independence in 1945, they promoted *Pancasila* as a common platform, making it the basis of state.¹ Consequently, Indonesia is neither a secular nor a religious state, but the state clearly recognizes the existence of religion in the life of the state. The state is responsible for serving and facilitating religious adherents via the Ministry of Religious Affairs (M.O.R.A.). One of the state's services is religious education as stipulated in the 1945 Constitution as well as in various acts and regulations on education. Religious education is not only for Muslims as the majority of the Indonesian people, but also for Christians, Hindus, Buddhists, and Confucians.

Indonesia delivers religious education by formal and informal means. The first is religious education in the schools and *madrasahs* (religious schools), while the latter is religious education through sermons or lectures in the mosque or *majlis ta'lim* (forum for learning religious knowledge). Religious education in schools consists of two forms. The first is religious education as a compulsory subject matter or lesson (*pendidikan agama*) for all levels of education from primary schools to university level, and the latter is religious educational institutions (*pendidikan keagamaan*) in the form of *madrasah*, which is a sub-system of the national educational system and comprises all school levels, from primary school up to university. These two forms of religious education are called for in the National Educational System Act of 2003.

In previous periods, the government marginalized religious educational institutions, especially through low budgets and limited acceptance of their alumni for employment. In the reform era (1998–present), which practices substantive democracy, there is no longer discrimination between school and *madrasah* (religious school) in terms of state policy, although in practice this sometimes still happens. Based on this background, this paper will describe and analyze the development of Islamic education in both forms. This is important to discuss, especially because

Masykuri Abdillah

in fact, the *madrasah* alumni have important positions in their communities, and many of them have important positions in several state bodies. Readers will need to look elsewhere for information about education in Indonesia pertaining to non-Muslims.

Religious education as a subject matter

Religious education as a subject matter for primary and secondary schools originally was based on the Decree of the Minister of Religious Affairs No. 3/1953. After this, religious education from primary school up to university was based on the Decree of M.P.R.S. (People's Consultative Assembly) 1960 and 1966. Today it is based on the National Educational System Act of 2003, and operationally it is based on the Government Regulation of 2007 on Religious Education and Religious Institutional Education. According to this regulation, the function of religious education is to develop the Indonesian people who believe and fear (*taqwa*) Allah, to teach morality, and also peace and harmony in intra- and interfaith relations. It is also included in national curricula from primary school to university, which are administratively under the Ministry of National Education (M.O.N.E.), as stipulated in Article 31 of the Act. In this case, the Ministry of Religious Affairs (M.O.R.A.) is obliged to provide religious teachers for the schools and universities, especially those belonging to the state.

Religious education is today a compulsory subject matter, as stipulated in Article 12 of the Act: "religious lesson is delivered to every learner in accordance with his/her religion imparted by a teacher who has the same religion." In certain cases, however, this Article has not been effectively implemented because of limited religious teachers, especially in remote areas. In certain cases, a non-religious teacher might teach a religious lesson, or a teacher whose religion is different from the student's might deliver a lesson. The same problem also occurs in private schools that belong to a religious organization, which mostly provide religious education only for learners whose religion is the same as the organization's religion.² Other learners whose religion is different from the organization's religion rarely receive religious education in school.

Although religiosity and morality are becoming one of the objectives of education, schools typically offer religious lessons only for two lessons (90 minutes) per week. Most devout Muslims consider this too little time and, hence, many of them request more time for this subject; moreover, many want ethics and morality offered as part of religious education.³ Yet it is too difficult to fulfill this request because the burden of the existing curriculum is already heavy. Most schools solve this problem by conducting religious education as an extra-curricular program and making it not only a responsibility of teachers of religious lessons, but also of other teachers by integrating it into all subjects. In this context, the schools generally provide a prayer room, *musalla* (place for prayer), or mosque in the area of school, unless the schools belong to a non-Islamic educational institution. The schools generally also nominate Muslim students to perform prayers, especially the *zuhr* (midday) prayer, as well as religious lectures after the prayer.

Religious education is today facing more challenges than in previous times, due mostly to modernization that usually leads to rationalization and secularization, so that many students are not interested in religious lessons. In such a situation, religious teachers are obliged to improve the quality of their subject matter and teaching methodology. Many teachers want to explain religious teachings not only from a theological perspective, but also rationally and scientifically in the context of globalization, democratization, human rights enforcement, and the like.⁴ In this case, qualifications for religious teachers are the same as for teachers of other subjects, as stipulated in the Teachers and Lecturers Act of 2005.

Religious educational institutions

Islamic education has functioned since the early days of Islam in Indonesia (thirteenth century). In the beginning, Islamic education had the form of *pesantren* (Islamic boarding school), which was at that time the only structured educational institution in Indonesia and the oldest system of education in Indonesia. *Pesantren* is an Islamic religious school providing boarding facilities (dormitory) and offering the guidance of one or more *ulama* (religious teachers or scholars) and their assistants. In 1905, some *ulamas* in West Sumatra introduced the *madrasah* system that implemented a Western system of class division. Some of them also introduced “secular” sciences such as math, biology, and geography as essential to the *madrasah* education.

Since Indonesian independence in 1945, a significant number of *pesantren* have adopted the *madrasah* system. Since the 1970s, there have been efforts toward Islamic education reform, introduced by either government and Muslim leaders or *ulamas*. In 1975, the government issued a Joint Decree between the Minister of Religious Affairs, Minister of Education and Culture, and Minister of Home Affairs. The Decree raised the status of the *madrasah* system to make it the equivalent of the state’s school system.⁵ Yet the joint decree established in 1975 brought about a change of *madrasah* curriculum so that it now consists of 30 percent religious subject matter and 70 percent social and natural sciences. Muslim leaders were critical, asserting that that this would bring about a lack of understanding Islamic knowledge.⁶

Therefore, as a remedy, some Muslim leaders introduced a balanced curriculum of religious knowledge and “secular knowledge.” Traditionally the Islamic educational institutions are administered under the Minister of Religious Affairs (M.O.R.A.), yet a number of *pesantren* have opened “secular” schools, such as primary school (S.D.), junior secondary school (S.M.P.), senior secondary schools (S.M.A.), and even universities. Broadly speaking, the “secular schools” established by Islamic organizations and foundations are also recognized as part of Islamic education, but they are not included in this discussion.⁷ Nevertheless, there are several problems faced by Islamic educational institutions that were inordinately neglected by the government due to its “dichotomy of education” policy.

Before 1990 *madrasah* was considered a religious education, but since the early 1990s the *madrasah* has become a general or public education, as stipulated in the National Educational System Act of 1989. The Act was amended to become the National Educational System Act of 2003, and it strengthens the status of *madrasah*. The regulation brought about two forms of *madrasah*, namely:

- 1) *madrasah* as a general or public education with Islamic character, namely *ibtidaiyyah* (equivalent to primary school), *tsanawiyah* (equivalent to junior secondary school), and *aliyyah* (equivalent to senior secondary school); its curriculum is completely the same as the public school curriculum, but augmented by subjects that teach religious knowledge, namely the *Quran*, *Hadith*, *‘aqidah* (Islamic theology), *akhlak* (Islamic ethics), *fiqh* (Islamic law), and *tarih* (Islamic history). The majority (about 92 percent) of this kind of *madrasah* are private, established by Islamic foundations, *pesantren*, or Muslim religious organizations.
- 2) *madrasah diniyyah* (religious school) that serves to “prepare learners in understanding and practicing religious teachings and/or expertise in religious knowledge,” as stipulated in Article 30 of the National Educational System Act of 2003. It mainly introduces religious knowledge and becomes an informal education. Several years ago, four subject matters were added: Indonesian language, math, natural sciences, social sciences and civic education. In this case, the *madrasah diniyyah* can be recognized as formal education, which also means that it has the right to implement compulsory education. Besides, the alumni of *madrasah diniyyah*

Masykuri Abdillah

can continue their education at school or *madrasah* as a general education as well as at a university or college that is in accordance with their major subject. All *madrasah diniyyah* are private, established by *pesantren*, Islamic foundations, or mosques.

Article 35 of the National Educational System Act of 2003 stipulates the standard of national education for all types of educational institutions, including *madrasah* as general school; and operationally the standard is stipulated in the Government Regulation of 2005. The standard consists of content, process, competence of graduates, human resources, facilities, budget, management, and evaluation. Authorities even decided to implement a national examination, including one for *madrasah*. In the case of Islamic educational institutions, the Ministry of Religious Affairs has made an effort to improve the quality of *madrasahs* to reach these standards, especially in curriculum development, improving the quality of teachers and lectures, providing more education facilities and infrastructures, and improving education management.

Responding to the Government's Regulation of 2005 on the National Standard of Education, requiring that teachers should be at least a graduate of S1 (bachelor's degree) and have a teaching certificate, the government has made efforts to improve the education level of teachers. In fact, the number of teachers who have bachelor's degrees for *madrasah ibtidaiyyah* (M.I.) and *tsnawiyyah* (M.Ts.) is under 50 percent. Hence, since 2005 the M.O.R.A. program has helped schoolteachers pursue a bachelor's degree. The M.O.R.A. has also made efforts to improve the quality of management of *madrasah* by organizing workshops sponsored by state and private *madrasahs*. Although most of them are private, the government in the reform era has a responsibility to improve the quality of *madrasahs*. In recent years, the government has provided grants or subsidies for education facilities and infrastructure as well as rehabilitation funds for certain private *madrasahs*.

Like religious schools or *madrasah*, the development of religious higher education also took place in several stages. The first institution for Islamic higher education was *Sekolah Tinggi Islam* (S.T.I., College for Islamic Studies), established in July 1945 in Jakarta by a foundation supported by Japanese colonial rule. The S.T.I. then moved to Yogyakarta following the move of the Indonesian capital to Yogyakarta. In 1948, it became the Islamic University of Indonesia (U.I.I.), and in 1950 the Faculty of Religious Studies became the *Perguruan Tinggi Agama Islam Negeri* (P.T.A.I.N., State College for Islamic Studies). In 1957, the Ministry of Religious Affairs established *Akademi Dinas Ilmu Agama* (A.D.I.A., State Academy for Islamic Studies) in Jakarta. In 1960, the two Islamic colleges in Yogyakarta and Jakarta were combined and became the *Institut Agama Islam Negeri* (I.A.I.N., State Institute for Islamic Studies).⁸ Later several state and private institutes as well as many state and private colleges for Islamic studies were established throughout Indonesia.

The development and reform of Islamic higher education accelerated during the reform era (1998–present). Six I.A.I.N.s (State Institute for Islamic Studies) became *Universitas Islam Negeri* (U.I.N., State Islamic universities), which imply that they have not only faculties for Islamic Studies, but also social and natural sciences.⁹ The transformation was a response to the existing demand that many *madrasah* alumni want to continue their studies in not only faculties or departments of Islamic studies, but also faculties of natural science, technology, and social sciences in line with the transformation of *madrasah's* status as a public or general education. It was also a response to challenges that a quality education should equip one with certain skills to compete in the labor market. Yet there is simultaneously also a strong push by some to abolish the dichotomy between religious knowledge and general or “secular” knowledge, and thus integrate all knowledge as introduced by the Quran.¹⁰ Today there are 12 I.A.I.Ns. (State Institute for Islamic Studies), six U.I.Ns. (State Islamic University), 35 S.T.A.I.Ns. (*Sekolah*

Tinggi Agama Islam, State Colleges for Islamic Studies), and thousands of private colleges and institutes throughout Indonesia focusing on Islamic studies.

Religious and national vision

Islamic educational reform relates to the development of religious thought and national perception, which is still an evolving discourse in Indonesia, especially concerning the emergence of religious “fundamentalism” and radicalism. The religious understanding of most Indonesian Muslims is moderate, as represented by the two biggest Islamic organizations, Muhammadiyah as a representative of the “Islamic modernist group,” and Nahdlatul Ulama (N.U.) as a representative of the “Islamic traditionalist group.” They have had a significant role in religious education in Indonesia, even before its independence in 1945. The Muhammadiyah is the first Islamic organization to introduce Islamic education reform since its beginning in 1912. Most of its educational institutions combine religious and secular instruction.

Unlike Muhammadiyah, the Nahdlatul Ulama (N.U.), as a representative of the “Islamic traditionalist group” since the beginning of its establishment in 1926, has also organized Islamic education aimed at teaching Muslim children to be believers and good Muslims who follow Islamic doctrines according to Sunni *mazhab*. Many of them have introduced education reform since Indonesian independence in 1945. It is true that several of N.U.’s *pesantrens* and *madrasahs* introduced education reform before independence, but their number was very small. This is in accordance with the N.U.’s religious thought (at that time more conservative in nature), although in fact the N.U. leaders were also able to take part in the debates on national issues, as shown in sessions before Indonesian independence as well as in sessions of the Constituent Assembly in 1956–59.

Most Indonesian Muslims promote peace and harmony in the life of society and state. Conversely, they do not support any effort to make Indonesia an Islamic state, although there were debates about it in the sessions leading up to Indonesian independence in 1945. In accordance with this, religious education delivered to learners is also moderate in nature. This is in accordance with the objective of national education, as stipulated in Article 31 (1) of the 1945 Constitution: “improve belief in Good and glorious ethics,” and it is also stipulated in the National Educational System Act: “in order to be humankind who believes in God, has a glorious ethics ... becomes a democratic and responsible citizen.” This means that Islamic education, including *madrasah diniyyah* (religious school), is also responsible for educating students to have a religious and national vision/identity. In line with this, religious education is obliged to promote tolerance, peace, and harmony in the life of society and state, including religious tolerance;¹¹ and conversely, to oppose radicalism and violence, especially that which is legitimized by religious doctrines.

The fall of Soeharto’s regime in 1998 led to the emergence of the current reform era, which promotes greater freedom of expression. Small Muslim groups that support religious radicalism and extremism have taken advantage of this condition to openly express and disseminate their thought and activities. Although they are a minority of Indonesian Muslims, they are very vocal toward government policy, any foreign power, and any supposed violation of God’s orders. They divide into two groups: radical and extremist. The *Majelis Mujahidin Indonesia* (Council for Indonesian Mujahidin) and *Hizbut Tahrir* (Liberation Party), as well as *Front Pembela Islam* (Front of Islam Defender), can to some extent be included in the radical groups. They are influenced by radical *Ichvani* or *Salafi* movements. Meanwhile, the *Jama’ah Islamiyah* (J.I.) *Jama’ah Ansarut Tauhid* (J.A.T.) and *Negara Islam Indonesia* (N.I.I., Indonesian Islamic State) can be included in the extremist groups; some of them even commit terrorism in the name of *jihad*, such as the

Masykuri Abdillah

Bali blast in 2002 and the J.W. Marriott bombings in 2006 and 2009. Extreme groups in the Middle East, such as the Jama'ah Islamiyyah, Tanzim al-Jihad, Al-Qaidah, and Salafi Jihad, influence them directly or indirectly. They are not sympathetic to liberal developments in education, preferring instead religious “indoctrination” conducted by radical or extremist groups.

Conclusion

Indonesia delivers religious education through formal and informal modes. Religious education in formal education consists of two forms: religious education as a compulsory subject, and religion offered in religious educational institutions. The first is a subject matter provided for all levels of education from elementary school to university, in both state or private institutions, while the latter consists of religious educational institutions in the form of *madrasah*, which is a sub-system of the national educational system. The *madrasah* system is traditional Islamic education, which since the 1970s has been under reform, and today it has been integrated into the national educational system by making it equivalent to general or public schools. This means that today there is no longer a dichotomy between *madrasah* and school. The alumni of *madrasah* can continue their education at school; and conversely, the alumni of school can continue their education in *madrasah*.

Although there is no longer a dichotomy between Islamic educational institutions and general or public schools, the quality of *madrasah* generally is still left behind by the quality of school in terms of management, facilities, and learning methodology. This disparity of quality can be solved if the government establishes a policy of “affirmative action” towards Islamic educational institutions.

Notes

- 1 Pancasila is an Indonesian state philosophy, which means five principles: 1) belief in the One and only God; 2) just and civilized humanitarianism; 3) the unity of Indonesia; 4) democracy guided by the inner wisdom of deliberation among representatives; and 5) social justice for all Indonesian people. The Pancasila was a compromise between those who supported a secular state and those who supported an Islamic state.
- 2 In 1988–89 there were debates concerning this Article. The Christian schools generally did not agree with this Article, namely providing religious education for non-Christian students, but the M.O.R.A. would be ready to provide the religious teachers needed by students.
- 3 See Muhammad M. Basyuni, *Manajemen Pembangunan Umat* (Jakarta: FDK Press, 2008), 41.
- 4 Cf. Husni Rahim, “Pendidikan Islam di Indonesia: Keluar dari Eksklusifism,” in *Pendidikan untuk Masyarakat Indonesia Baru*, eds. Ikhwanuddin Syarif and Dodo Murtadlo (Jakarta: Grasindo, 2002), 431–32.
- 5 See Amin Abdullah, “Pendidikan dan Upaya Mencerdaskan Bangsa,” in *Paradigma Baru Pendidikan: Restropeksi dan Proyeksi Modernisasi Pendidikan Islam di Indonesia*, eds. Kusmana and J.M. Muslimin (Jakarta: Direktorat Pendidikan Tinggi Islam, Departemen Agama RI, 2008), 47.
- 6 Responding to this, Minister of Religious Affairs Munawir Sjadzali (1983–93) established a special *madrasah* (M.A.K.) whose curriculum consists of 70 percent religious subject matters, and 30 percent social and natural sciences.
- 7 See Masykuri Abdillah, “Pesantren dalam Konteks Pendidikan Nasional dan Pengembangan Masyarakat,” in *Pendidikan untuk Masyarakat Indonesia Baru*, eds. Ikhwanuddin Syarif and Dodo Murtadlo (Jakarta: Grasindo, 2002), 408–9.
- 8 Affandi Muchtar and Kusmana, “Model Baru Pendidikan: Melanjutkan Modernisasi Pendidikan Islam di Indonesia,” in *Paradigma Baru Pendidikan: Restropeksi dan Proyeksi Modernisasi Pendidikan Islam di Indonesia*, eds. Kusmana and J.M. Muslimin (Jakarta: Direktorat Pendidikan Tinggi Islam, Departemen Agama RI, 2008), 4.

- 9 Before the transformation of I.A.I.N. to become U.I.N., several I.A.I.Ns., among others the Jakarta I. A.I.N., had opened several departments beyond Islamic studies, introducing “I.A.I.N. with wider mandate.” See Azyumardi Azra, *Paradigma Baru Pendidikan Nasional* (Jakarta: Kompas, 2002), 40.
- 10 Regarding “integration of knowledge,” see Kusmana, ed., *Inegrasi Keilmuan: UIN Syarif Hidayatullah Jakarta Menuju Universitas Riset* (Jakarta: UIN Press, 2006).
- 11 Many teachers of *madrasah* and *pesantren* participated in workshops on democracy, human rights, peace, and harmony, among other things, conducted by the Center for Human Resources Development, State Islamic University, Jakarta.

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Religious education in Ireland

Conor O'Mahony

Introduction

In any comparison of international approaches to the protection of religious liberty in the education setting, Ireland, by the standards of a Western liberal democracy, provides a particularly unusual case study. For various historical and demographic reasons, the approach in Ireland has emphasised the protection of the free practice of religion, through a permissive and at times facilitative approach towards denominational education, with a lesser emphasis being placed on the protection of religious liberty *per se* and on the prohibition of religious discrimination. The result of this is that members of large religious groups—most particularly members of the Roman Catholic faith—enjoy unusually strong rights around their religious freedom in the education system, while members of minority faiths and of none find themselves subject to a variety of pressures on their religious freedom, stemming from both legal norms and practical realities. This paper will show how this approach has developed and operated in practice, and how the deeply embedded nature of the current approach causes efforts at reform to encounter both serious resource difficulties and barriers based on the prevailing concept of religious freedom.

Historical and social background

Ireland has always been, and remains, a largely Christian and predominantly Roman Catholic country, albeit that the past decade or two has seen both a decline in rates of religious participation and an increased diversity brought about through immigration. At the time that the Constitution was drafted in 1937, the figures relied on by the drafters indicated that 92.6 percent of the population was Roman Catholic, while 99.6 percent were members of one of the Christian denominations.¹ A tiny Jewish population (of less than 4,000) existed at that time, and indeed received some acknowledgement in the text of the new Constitution.² These figures are now rather different. In the most recent census,³ 86.8 percent of the population identified themselves as Roman Catholic; a not insignificant proportion of this would be made up of individuals who were baptized and raised as Catholics, but are no longer practicing Catholics (although it is difficult to put an exact figure on this). Only 3.8 percent identified themselves as a member of another Christian denomination; 0.75 percent as Muslim; 0.05 percent as Jewish; 2.5

percent as being of another stated religion; 4.4 percent as being of no religion, while 1.7 percent did not state. These bald statistics do not tell the full story of the extent of the changed (and less significant⁴) role that religion plays in Irish society when compared with 1937, but nonetheless it is clear that the majority of the population remain Christian and, particularly, Catholic.

As regards education, Ireland is perhaps unusual in the way in which its primary school system, in spite of the use of the term “National School,” is not at all national or public—it is, in fact, a system of private schools, overwhelmingly owned and managed by religious denominations, with the small remainder owned and managed by organizations committed to the provision of a multi-denominational alternative. The state, quite simply, is not in the business of primary education provision—it has entirely outsourced its primary education function. The roots of this system are historical and pre-date the 1937 Constitution quite considerably; indeed, they can be traced to the very beginning of the system of state-funded education in Ireland in 1833 and a document known as the “Stanley Letter.” The following passage from the judgment of Justice Hardiman in the Supreme Court decision in *O’Keeffe v. Hickey* neatly captures the forces at work:

The period between the Act of Union in 1800 and the concession of Catholic Emancipation in 1829 was one of acute denominational conflict and proselytism. The Established (Anglican) Church of that time undertook a considerable missionary programme Both the dissenting churches and the Roman Catholic Church were anxious that children of their respective denominations respectively be educated in schools controlled by those denominations respectively and not by the State or the Established Church. In the achievement of this objective they were remarkably successful and brought about, from the very beginning of the system of national education, a situation in which the Government authority, then the Irish Executive, paid for the system of national education but did not manage it or administer it at the point of delivery: this function was left to the local manager, usually (invariably in the case of Roman Catholic schools) a cleric, and usually appointed by the local Bishop who was the patron of the school.⁵

Upon independence in 1922, the newly formed state had neither the desire nor the resources to disturb this arrangement, while the religious denominations, and particularly the dominant Catholic Church, were content to retain the influential role given to them through the primary education system.

Constitutional framework

When the current Irish Constitution was drafted in 1937, the overriding intention of the education provisions was to copper-fasten the education arrangements existing at that time. In principle, Article 42.1 gives parents strong rights over the religious education of their children, by protecting their right to provide, according to their means, for the religious, moral, intellectual, physical, and social education of their children, and Article 42.2 reinforces this right by granting parents the right to provide this education in their homes or in private schools, or in schools recognized or established by the state. Moreover, Article 42.3 expressly prohibits a state monopoly on education by prohibiting the state from obliging parents to send their children to any particular type of school, although the state is obliged to ensure that children receive a certain minimum education (outside of the religious sphere). Article 44.2 seeks to reinforce these rights by guaranteeing freedom of conscience and the free profession and practice of religion to all citizens (which includes both parents and children) and by prohibiting the state from making any

Conor O'Mahony

distinction or discrimination on religious grounds. On the face of it, these provisions would seem to indicate strong protection for individual religious liberty and to guarantee freedom of choice to parents regarding the type of education, and most particularly the type of religious education, that they wish their children to be exposed to.

However, when set against the reality of the Irish primary school system, and read alongside other provisions which reflect the arrangements in place in 1937, these provisions appear in a rather different light. When Eamonn de Valera, the architect of the 1937 Constitution, and his advisers came to draft the provisions relating to education, their greatest concern was the maintenance of the status quo—so much so that when de Valera was presented with a draft of Article 42.4 that referred to a duty on the state to “provide free primary education,” he altered this to “provide for” in his own handwriting.⁶ The immediate reasoning behind this change was to cement the existing indirect provision model whereby the state provided funding to denominational schools, which then provided free primary education on the state’s behalf. Article 44.2.4 further reinforces this arrangement by expressly authorizing state funding of denominational schools on a non-discriminatory basis.

In *Crowley v. Ireland*, Justice Kenny in the Supreme Court decision confirmed that the use of the phrase “provide for” in Article 42.4 keeps the state one step removed from the actual provision of education:

The effect of this is that the State is to provide the buildings, to pay the teachers who are under no contractual duty to it but to the manager or trustees, to provide means of transport to the school if this is necessary to avoid hardship, and to prescribe minimum standards.⁷

The learned judge was further persuaded by the Irish version of Article 42.4; he said that “[t]he distinction between providing free education and providing for it is brought out vividly in the Irish version which is ‘ní foláir don Stát sócrú do dhéanamh chun bun-oideachas do bheith ar fáil in aisce’ whose agreed translation is: The State must make arrangements to have basic education available free.”⁸ Therefore the role of the state goes no further than facilitation, and direct state provision of education is in no way required. The historical system established in 1833 and copper-fastened in 1937 has endured to this day, and well over 3,200 out of a total of 3,300 primary schools remain denominational in nature. Thus 92 percent of primary schools are Catholic denominational schools; most of the remainder are Protestant denominational, while a small multi-denominational sector is beginning to emerge.⁹ The limited case law that exists seems to suggest that the right to send children to schools operating under a specific religious ethos is seen as a core feature of the rights of parents under Articles 42 and 44, with some judicial pronouncements going so far as to suggest that not only is the state entitled to fund such schools, but parents may even have a constitutional claim to positive state support.¹⁰ While, in principle, the notion of state support for religious education attuned to particular beliefs seems to guarantee very strong religious liberty, it is clear that this right could never be made equally available to all religious persuasions, particularly in a small and relatively homogenous country like Ireland. Eoin Daly has thus argued that this approach makes the protection of religious liberty in the education setting contingent on the existence of critical mass and social and political capital, which undermines the concept of an individual right to religious liberty.¹¹

With this in mind, the Constitution seeks to provide for the reality that many parents will be left with no choice but to send their children to a school operated by a religious denomination of which they are not a member, and specifies in Article 44.2.4 that children have the right to attend a school receiving public funds without attending religious instruction at that school. In

principle, this opt-out provision should protect the religious liberty of children and parents who are unable to access a school attuned to their own religious beliefs. However, this latter right is entirely undermined by the operation of what is known as the “integrated curriculum” within these denominational schools. The integrated curriculum has its origins in Rule 68 of the 1965 *Rules for National School*:

Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject-matter, God’s honour and service, includes the proper use of all man’s faculties, and affords the most powerful inducements to their proper use. Religious instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school.¹²

Rule 68 goes on to state that the teacher “should constantly inculcate” various Catholic values in their students and that the primary duty of the educator is to habituate the students to observe the laws of God.¹³ To clarify the gravity of what Rule 68 aims to achieve, it is worth pointing out that the *Oxford English Dictionary* definition of the word “inculcate” is:

to endeavour to force (a thing) into or impress (it) on the mind of another by emphatic admonition, or by persistent repetition; to urge on the mind, esp. as a principle, an opinion, or a matter of belief; to teach forcibly.¹⁴

Thus, while the predominant approach is that Irish primary schools deliver 30 minutes per day of formally timetabled religious instruction,¹⁵ religious values permeate the entire school day.

The effect of the integrated curriculum is that it is impossible for a child to attend the vast majority of primary schools in Ireland without being exposed to, and influenced by, Catholic teachings.¹⁶ This system quite obviously impinges on the religious freedom of non-Catholic children and parents within the education system—and yet the scant case law that exists in this area to date would seem to indicate that the courts do not consider this to be unconstitutional. In *Campaign to Separate Church and State Ltd v. Minister for Education*, Justice Barrington examined this issue and stated:

The Constitution therefore distinguishes between religious “education” and religious “instruction”—the former being the much wider term. A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school, but the Constitution cannot protect him from being influenced, to some degree, by the religious “ethos” of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.¹⁷

When read in the isolated context of a constitutionally sanctioned system of non-discriminatory state funding for denominational education, this passage is unobjectionable; however, the empirical reality of the overwhelmingly denominational nature of the Irish primary school system, combined with the operation of the integrated curriculum, can have the effect that it is virtually impossible for some parents and children to fully exercise their rights with respect to religious freedom in education. They are faced with no realistic freedom of choice of school, and this is compounded by a partial and ineffective opt-out mechanism that leaves the children subject to a significant degree of religious influence. There are currently only a very small number of multi-denominational schools available, and these are concentrated in the major cities; con-

Conor O'Mahony

sequently, the only possibility of non-Catholics avoiding exposure to Catholic denominational education will often be through the establishment by their parents of a private school or through home education (neither of which may be practicable in many cases). Thus, given that economic reality makes it improbable that a genuine parallel system of state-funded multi- or non-denominational schools will be established in even the medium term, a partial restriction on the religious rights of members of the majority religions, through the abolition of the integrated curriculum and a watering down of school ethos outside of formally timetabled periods of religious instruction, may ultimately be a necessary price of avoiding a severe abrogation of the freedom of thought, conscience and religion of members of minority religions and of none.

Education legislation: employment and admissions

For many years, education in Ireland was administered entirely on a policy basis through circulars and memoranda, and it is only in the recent past that matters have been placed on a legislative footing. As occurred when the Constitution was drafted in 1937, the legislation was drafted so as to reflect the long-established system of state-funded denominational education. The Education Act 1998 makes it a function of the board of management of a school to uphold “the characteristic spirit of the school as determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school.”¹⁸ More striking are the exemptions made in Ireland’s anti-discrimination legislation for denominational schools. The Employment Equality Act of 1998 prohibits religious discrimination in employment matters,¹⁹ but the Act permits denominational schools to engage in such discrimination—in both hiring and firing—where reasonably necessary to uphold the ethos of the school.²⁰ Similarly, the Education Act of 1998 requires school admissions policies to provide for maximum accessibility to the school and to respect principles of equality, but also to uphold the school’s characteristic spirit.²¹ The Equal Status Act of 2000 expressly prohibits religious discrimination in school admissions, but an exemption is made for cases where denominational schools admit coreligionists in preference to non-coreligionists, or where they refuse to admit a non-coreligionist (provided that such refusal is reasonably necessary to uphold the ethos of the school).²²

On first reading, these provisions might seem to constitute a flagrant breach of the constitutional prohibition on religious discrimination, but the Supreme Court has read that prohibition as being subject, in certain circumstances, to the broader guarantee of religious freedom. In *Quinn’s Supermarket Ltd v. Attorney General*,²³ the Supreme Court indicated that legislative distinctions are sometimes necessary to give effect to the guarantee of free profession and practice of religion. In that case, legislation which made an exception to restrictions on opening hours for Jewish kosher meat shops, in order to facilitate the observance of the Jewish Sabbath, was held not to constitute “discrimination on the ground of religious profession, belief or status” within the meaning of Article 44.2.3. Justice Walsh stated that:

[if] the implementation of the guarantee of free profession and practice of religion requires that a distinction should be made to make possible for the persons professing or practicing a particular religion their guaranteed right to do so, then such a distinction is not invalid having regard to the provisions of the Constitution. It would be completely contrary to the spirit and intendment of the provisions of Article 44, S. 2, to permit the guarantee against discrimination on the ground of religious profession or belief to be made the very means of restricting or preventing the free profession or practice of religion. The primary purpose of the guarantee against discrimination is to ensure the freedom of practice of religion.²⁴

When the Court was invited to pronounce on the constitutionality of the Employment Equality Act on a judicial preview,²⁵ it reiterated the point outlined in the *Quinn's Supermarkets* case that it is constitutionally permissible to create a legislative distinction if this is necessary—but stressed only insofar as is necessary—in order to give effect to the guarantee of free profession and practice of religion. The Court thus held that provisions allowing for religious discrimination against teachers may be permitted if reasonably necessary to protect the free practice of religion of those who seek to have their children educated through a particular religious ethos, with the question of what is to be deemed “reasonably necessary” being an objective test to be determined on a case-by-case basis.²⁶ This decision may provide constitutional cover for the provisions of the Equal Status Act of 2000 relating to school admissions; the key point of debate in each instance is how to define what is considered “reasonably necessary” to uphold the ethos of a school.²⁷ Arguably, the necessity is not as great in the context of admitting an individual child who is a non-coreligionist as it is in the context of employing a teacher, given the enormous influence exerted by teachers on the atmosphere of a school. Even in relation to teachers, however, it may be arguable that the necessity does not arise if the teacher is engaged in teaching exclusively non-religious material. In a recent case before the Equality Tribunal, in which a Catholic school was found to have discriminated against a Protestant teacher when revoking a job offer, Section 37 was not relied on by the school.²⁸ One possible (and speculative) reason for this odd approach of failing to play the strongest card in the deck is that the religious denominations would prefer not to have the concept of reasonable necessity defined too precisely. Potential flashpoints exist on this point in relation to a variety of issues, including teachers who are cohabitees, divorcees, or homosexuals, and whose lifestyle could potentially be seen as undermining the ethos of the school.²⁹ In the only case in point to come before the courts (under older legislation), a school was found to be entitled to dismiss a teacher who was cohabiting with a separated married man³⁰ and, as will be seen below, teachers in the present day admit to feeling pressure to avoid disclosing lifestyle details which may be seen to conflict with the ethos of the school in which they teach.

Religion in national schools: empirical evidence

A recent empirical study by Alison Mawhinney has disclosed a variety of ways in which the reality of the *de facto* denominational nature of the Irish primary school system, and the constitutional and legislative backing which it enjoys, has an adverse impact on the religious freedom of children, parents, and teachers.³¹ First, the religion taught in Irish denominational schools, far from being an objective or pluralist study of religious thought, is in reality doctrinal instruction in which religious beliefs are presented as fact; as one parent put it, “it’s taught as something that definitely, obviously, really happened.”³² This is combined with the operation of the integrated curriculum, in which religion is integrated into the entire work of the school and opt-outs from timetabled religious instruction are ineffective. In the words of the parents interviewed, “religion is not a subject that they do for a half-hour. It’s constantly brought up again and again like prayers here and there, colouring in pictures, say of the nativity. It was 24/7!”³³ The teachers interviewed confirmed this impression, with one stating that “[i]t would be near nigh impossible” for a child to effectively opt out.³⁴

Perhaps more serious still is the evidence which clearly suggests that an opt-out of even timetabled religious instruction is often not available in any meaningful way, with children left to amuse themselves in the library or sometimes in the same classroom due to a lack of resources.³⁵ In some cases, schools will only allow an opt-out if the parents collect the child from school (which is often impractical).³⁶ These facts are reinforced by clear evidence that parents who do not wish their child to be exposed to doctrinal religious instruction are reluctant

Conor O'Mahony

to exercise whatever opt-out is available due to fears concerning their child being stigmatised or even bullied by other pupils or by teachers.³⁷ As regards admissions, a very low incidence of refusals on grounds of religion seems to actually occur in practice,³⁸ but schools do request baptismal certificates as part of the admissions procedure.³⁹ What is more interesting about Mawhinney's study is the evidence that suggests that the law on admissions policies, combined with the lack of freedom of choice available, leads in many instances to parents choosing to have their child baptized for the purpose of securing a place at the local school where otherwise they would have chosen not to. Parents made comments like "[t]he only schools are Catholic ones You would be stuck," and "I knew if I didn't [get the children baptised] it would be a problem getting them into that school."⁴⁰ This is a major issue for religious freedom in Ireland, given the serious nature of state policy leading not just to exposure to beliefs other than one's own, but also an insidious pressure to (at least superficially) convert to and practice a religion that does not conform with one's own beliefs.⁴¹

In relation to the employment of teachers, the absence of the availability of alternative employment outside of denominational schools is once again a key factor. In light of this lack of alternatives, teachers feel compelled to give the appearance of being a practicing member of the denomination when being interviewed for appointment or promotion (and sometimes feel there is no point in applying for promotion if their true religious views are known in the locality).⁴² They are also compelled to teach, as fact, religious doctrine which they do not believe in themselves, and to prepare children for the sacraments.⁴³ Finally, teachers whose lifestyle does not conform to the teachings of the denomination whose school employs them are in constant fear for their jobs. One teacher commented that "[i]f you are to uphold the ethos you are expected to be a Catholic person inside and outside of the school,"⁴⁴ while another commented that "upholding the ethos has meant conforming to the ethos This responsibility does interfere with my freedom of thought and conscience."⁴⁵

Conclusion

Although it is a Western liberal democracy, with the usual constitutional guarantees regarding freedom of conscience, freedom from religious discrimination, and freedom to determine the religious education of children, Ireland nonetheless presents a clear case of law, policy, and practice combining to severely impinge upon the religious liberty of children, parents, and teachers of minority religions and of none. However, far from being seen as a breach of the above-mentioned constitutional guarantees, the current position is defended in constitutional jurisprudence, and underpinned in legislation, as being a function of guaranteeing the freedom of members of religious groups to practice their religion by ensuring that their children are educated in a religious atmosphere—a possibility which is, in theory, available on a non-discriminatory basis to people of any religious persuasion. However, resource concerns mean that, in reality, such an opportunity is contingent on the availability of critical mass, and the majority of non-Catholics have no effective choice other than to avail themselves of Catholic denominational schools operating an integrated curriculum and an ineffective opt-out system.

Reform on this issue in Ireland is an intensely difficult affair, due to the strong vested interests involved, and the level of legal protection which they enjoy. There is no realistic possibility of the state compulsorily requiring denominational schools to operate as multi- or non-denominational schools; Article 44.2 of the Constitution expressly protects the right of religious denominations to manage their own affairs and to maintain institutions for religious purposes, and provides that property of religious denominations shall not be diverted save for necessary works of public utility. The exact scope of these provisions may be arguable, but it is not an

argument that any government is likely to want to make. Equally significant is the fact that the prevailing conception of religious liberty in education gives rise to the possibility that a diversion of funding away from denominational schools could be viewed by the courts as an attack on the religious freedom of the groups operating those schools. As a result, there has been a lack of concerted effort to address this issue on a systemic basis for many years, with the only real change coming through the efforts of the Educate Together movement to establish multi-denominational schools and apply for state recognition and funding for these schools.

In the past two years, religious denominations have been invited to consider the possibility of ceding patronage of some schools in urban areas, but progress on this issue has been extremely slow.⁴⁶ The new government elected in February 2011 has now moved to establish a Forum on Patronage and Pluralism, but already the Catholic education sector has mobilized to resist an initial call for 50 percent of schools to be divested.⁴⁷ It remains to be seen what level of change will be achieved, but it seems clear that focusing on diversity of type of school alone leaves the state too dependent on the goodwill of others rather than on its own policy. Given the impossibility of providing a universal multi- or non-denominational alternative in current economic circumstances, and the small likelihood of a sufficient number of Catholic schools being divested to achieve this aim, there may be little choice other than to implement measures designed to dilute the integrated curriculum and allow for an effective opt-out mechanism, at least in denominational schools in areas where no alternative form of state-funded education is accessible. This may have the effect of slightly diluting the rights of the religious majority in such schools, but it seems to be the only means available of avoiding a severe restriction on the religious liberty of the minority.

Notes

- 1 Keogh, "The Irish Constitutional Revolution: An Analysis of the Making of the Constitution," in *The Constitution of Ireland 1937–1987*, ed. Litton (Dublin: Institute of Public Administration 1988), 67, cites these figures from the De Valera papers (and thus it seems safe to assume De Valera was relying on these figures). Interestingly, the 1936 census, available at <<http://census.cso.ie/Census/TableViewer/tableView.aspx?ReportId=74640>> (accessed December 3, 2010), gives slightly different figures, indicating that 93.4 percent of the population was Roman Catholic, although the overall figure of 99.6 percent Christian remains the same.
- 2 Article 44.1, as originally enacted, contained two sub-paragraphs to sub-section 1, the first of which recognized the "special position of the Holy Catholic Apostolic and Roman Church as the guardian of the faith professed by the great majority of citizens," and second of which stated that the state "also recognised . . . as religions existing in Ireland" a number of other denominations, such as the Church of Ireland, Presbyterians, Methodists, and Jews. Hogan and Whyte, *JM Kelly: The Irish Constitution*, 4th ed. (Dublin: Butterworths, 2003), 2034, state that "[w]hile to a contemporary eye, the recognition of the 'special position' of the Roman Catholic Church appears somewhat triumphalist, the fact remains that these provisions represented, in 1937, a skilful endorsement of religious pluralism." The conservative elements of the Catholic Church were, at that time, openly anti-Semitic, and the recognition of the Jewish congregation may have been intended as a challenge to this position. Nonetheless, as pointed out by J. Barrington in *Campaign to Separate Church and State v. Minister for Education* [1998] 2 I.L.R.M. 81 at 99, "the term 'special position' was a source of misunderstanding. As long as it remained there was a latent suspicion that while all citizens were equal Roman Catholics might, in some sense, be more equal than others." Consequently, these provisions were removed by the Fifth Amendment to the Constitution in 1972.
- 3 Figures are available at <<http://census.cso.ie/Census/TableViewer/tableView.aspx?ReportId=74640>> (accessed December 3, 2010).
- 4 See generally Inglis, *Moral Monopoly: The Rise and Fall of the Catholic Church in Modern Ireland* (Dublin: University College Dublin Press, 1998).
- 5 [2009] 2 I.L.R. 302 at 310.

Conor O'Mahony

- 6 Farry, *Education and the Constitution* (Dublin: Round Hall, Sweet & Maxwell, 1996), 13; *Report of the Constitution Review Group* (Dublin: Stationery Office, 1996), 344.
- 7 [1980] I.R. 102 at 126. It is interesting to note that Justice Kenny included the provision of buildings within the scope of the state's duty, even though this was part of what was intended to be excluded by the wording of the duty to "provide for" free primary education.
- 8 *Ibid.*
- 9 See Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (Saarbrücken: VDM Verlag, 2009), 50.
- 10 See *Campaign to Separate Church and State Ltd v. Minister for Education* [1998] 2 I.L.R.M. 81, as discussed by O'Mahony, *Educational Rights in Irish Law* (Dublin: Thomson Round Hall, 2006), paras. 5–28 to 5–38.
- 11 See Daly, "Religious Freedom and the Denominational Education Model in the Republic of Ireland: the Shortcomings of 'Accommodationist' Reform," 9, *Education Law Journal* (2008): 242; and "Religious Freedom as a Function of Power Relations: Dubious Claims on Pluralism in the Denominational Schools Debate," 28, *Irish Educational Studies* (2009): 235.
- 12 *Rules for National School* (Dublin: Stationery Office, Dublin, 1965), 38.
- 13 *Ibid.*
- 14 *Oxford English Dictionary*, 2nd ed. (Oxford: Clarendon Press, 1989), VII: 832.
- 15 See Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (Saarbrücken: VDM Verlag, 2009), 69–70.
- 16 See further Hyland, "The Multi-denominational Experience," in *Report of the Constitution Review Group* (Dublin: Stationery Office, 1996), 630–34; and Clarke, "Education, the State and Sectarian Schools," in *Ireland's Evolving Constitution*, eds. Murphy and Twomey (Oxford: Hart Publishing, 1998), 69–71.
- 17 [1998] 2 I.L.R.M. 81 at 101. See, however, Whyte, "Education and the Constitution," in *Religion, Education and the Constitution*, ed. Lane (Dublin: Columba Press, 1992), 107–8.
- 18 Section 15(2)(b).
- 19 Sections 6 and 8.
- 20 Section 37(1).
- 21 Sections 9(m) and 15(2)(d).
- 22 Section 7(2).
- 23 [1972] I.R. 1.
- 24 *Ibid.* at 24–25. See also *McGrath v. Trustees of Maynooth College* [1979] I.L.R.M. 166 at 187, where Henchy J. stated: "In proscribing disabilities and discriminations at the hands of the State on the ground of religious profession, belief or status, the primary aim of the constitutional guarantee is to give vitality, independence and freedom to religion. To construe the provision literally, without due regard to its underlying objective, would lead to a sapping and debilitation of the freedom and independence given by the Constitution to the doctrinal and organisational requirements and proscriptions which are inherent in all organised religions. Far from eschewing the internal disabilities and discriminations which flow from the tenets of a particular religion, the State must on occasion recognise and buttress them."
- 25 The Irish legislative process requires legislation to pass through the Dáil (lower house) and Seanad (upper house) of the Oireachtas (parliament) before being signed by the President. If the President has doubts surrounding the constitutionality of a Bill, Article 26 of the Irish Constitution allows the President to refer the Bill to the Supreme Court to test its constitutionality by way of judicial preview. The outcome of the Supreme Court decision will determine whether the Bill is enacted or whether it is unconstitutional in part or in full.
- 26 *Re Article 26 and the Employment Equality Bill, 1996* [1997] 2 I.R. 321 at 356–59. The Court stated that "[i]t is true that 'ethos' is a vague term and is nowhere defined in the Bill ... It is probably true to say that the respect for religion which the Constitution requires the State to show implies that each religious denomination should be respected when it says what its ethos is. However the final decision on this question as well as the final decision on what is reasonable or reasonably necessary to protect the ethos will rest with the court and the court in making its overall decision will be conscious of the need to reconcile the various constitutional rights involved."
- 27 See Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (Saarbrücken: VDM Verlag, 2009), 165–67.

- 28 *McKeever v. Board of Management of Knocktemple National School*, EE/2007/666, October 1, 2010, available at <www.equalitytribunal.ie/index.asp?locID=181& docID = 2470> (accessed December 3, 2010).
- 29 See Carbery, "Do Teachers Have Religious Freedom?," *The Irish Times*, November 30, 2010.
- 30 *Flynn v. Power* [1985] I.L.R.M. 336.
- 31 See generally Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (Saarbrücken: VDM Verlag, 2009).
- 32 *Ibid.* at 107.
- 33 *Ibid.* at 104.
- 34 *Ibid.* at 106.
- 35 *Ibid.* at 80.
- 36 *Ibid.* at 79.
- 37 *Ibid.* at 75–82.
- 38 *Ibid.* at 135.
- 39 *Ibid.* at 136.
- 40 *Ibid.* at 142.
- 41 See also Quinn, "Time to Transfer Control of Primary Education," *The Irish Times*, January 26, 2010, who comments that many parents "realise that a visit to the baptismal font is between them and access to a primary school place for their child. Parents and godparents, not practising, lapsed, agnostic or atheists are now required to make solemn vows before a priest, to raise the child as a practising Catholic. The priest, who has not seen the parents before and does not expect to see them again, goes along with this charade."
- 42 Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (Saarbrücken: VDM Verlag, 2009), 169–72.
- 43 *Ibid.* at 180–83.
- 44 *Ibid.* at 175.
- 45 *Ibid.* at 176.
- 46 See, e.g., McGarry, "Reduction in Catholic Schools Provision," *The Irish Times*, March 10, 2010; O'Regan, "Coughlan Rejects Proposal for Forum on Patronage in Primary Schools," *The Irish Times*, May 7, 2010; McGarry, "Church Calls for Study over Future of Primary Schools," *The Irish Times*, August 4, 2010; and McGarry, "Only Thing Clear is that Change Will Be Slow," *The Irish Times*, August 4, 2010.
- 47 See, e.g., Flynn, "Forum to Report on School Patronage in October," *The Irish Times*, March 29, 2011, and Flynn, "Catholic Partnership Sets Out Markers on What Changes it May Find Acceptable," *The Irish Times*, April 7, 2011.

Religious education in Israel

Asher Maoz

The interrelation between state and religion in Israel does not easily lend itself to traditional classification.¹ Israel is not a religious state yet it is certainly not secular. There is no separation between religion and state. The state supports the various religions; central parts of individual and public life—such as marriage and divorce—are governed by religious law and religious institutions; religious institutions are officially recognized by the state and carry out state functions; they are budgeted by the state; the state moreover intervenes in the establishment and composition of these institutions. The extent of state intervention varies. It is more extensive with the Jewish, Muslim, and Druze communities, while Christian communities, save for the Greek Orthodox community, are largely autonomous. This set-up has its historical roots dating back to the Ottoman Empire. It should be emphasized, however, that, although Israel was established as a Jewish state, there is no state religion in Israel. Moreover, the jurisdiction of Sharia (Muslim) religious courts is substantially wider than that of Rabbinical (Jewish) courts. The same goes for Muslim religious law.

National and religious affiliation

On the eve of its sixty-third Independence Day (May 2011) the population of the State of Israel consisted of 7,746,000 people: 75.3 percent (5,837,000) Jews; 20.5 percent (1,587,000) Arabs; 4.2 percent (322,000) “other people.”² At the end of 2009 the population of Israel included 7,552,000 people. By religious affiliation: 72.53 percent (5,703,700) were Jews; 17.04 percent (1,286,500) Moslems; 2.01 percent (151,700) Christians; and 1.66 percent (125,300) Druze.³ In spite of the substantial Jewish immigration to Israel, the percentage of Arabs grew from 18 percent at the establishment of the State of Israel to 20.4 percent. This may be due to several reasons, such as the annexation of East Jerusalem in 1967 and the Golan Heights in 1981 and the influx of Palestinians into Israel. A major source of this growth is the difference in birth rate. While the total growth of the Israeli population in 2009 was 1.8 percent, the growth of the Jewish population was 1.7 percent, including Jewish immigration. On the other hand, Arab growth was at the rate of 2.4 percent. There is a distinction also within the Arab population. While Moslem growth was at the rate of 2.8 percent, the growth of the Christian population was merely 1 percent. This tendency is expected to continue. It is expected that by the year 2030 the

Jewish population will drop by 0.53 percent–1.23 percent and constitute 71.3 percent–72.2 percent of the total population. At the same time, the Arabs will constitute 23.7 percent–24.3 percent of the population. Within the Arab population the Moslem population will grow to 20.4 percent–21.1 percent of the population while the Christian Arabs will decrease to 1.4 percent–1.6 percent. The Druze population will grow to 1.7 percent–1.8 percent of the total population.⁴

Religious education⁵

Jewish studies in state schools

Israel recognizes the status of religious schools at all levels, from kindergarten to high school, as well as institutions for the training of school and kindergarten teachers. The education system includes both religious and non-religious state schools as well as private schools. Judaic texts, such as the Bible, as well as Jewish history and Jewish holidays, are taught in all schools, including those that are not religious, though the Bible is taught from a critical view and not as a divine book. This is natural considering that those texts constitute part of Jewish culture and history beyond their religious manifestations. Indeed, State Education Law outlines the objects of state education, *inter alia*, as educating the students to respect their heritage, their cultural identity, and their language. The law specifically provides that these objects include “teaching the *Torah* of Israel, the history of the Jewish people, Israel’s heritage and Jewish tradition.”

State religious education

Religious education is defined as “State education, yet its institutions are religious according to their way of life, their curricula, their teachers and inspectors,” which educate to a life of *Torah* and *mitzvot* (religious commandments) according to the religious tradition and in the spirit of religious Zionism. The law provides for the religious way of life of the educators and enables schools to disqualify a principal, inspector, or teacher “on religious grounds.” No restrictions relating to secular background or lifestyle apply to students and their families, save for the schools’ right to insist on the students not infringing, in their appearance and conduct, the religious way of life within school. Indeed, a substantial portion of the student body of the schools comes from non-religious homes.

The religious state education system experienced in recent years a withdrawal of students to ultra-Orthodox institutions and came under pressure from parents to enrich its religious curricula and introduce a more Orthodox atmosphere in school. This led to the establishment of networks that put more emphasis on religious studies. Critics of these schools point out the fact that they tend to be elitist and frustrate one of the main targets to enhance integration of various socio-economic sectors.

Arab, Druze, and Circassian state schools

Arab state schools operate in Arab towns and villages and in city quarters with large Arab populations. The same goes for Druze and Circassian villages. Students belonging to these ethnic groups may choose to attend these schools or a general (“Jewish” or “Arab”) school where available.

The Arab schools are part of the general state schools and are not regarded as religious schools; however the law provides for a curriculum that will fit “their special conditions.” In practice the curriculum is adapted to the religion of the student body, whether Muslim or

Asher Maoz

Christian. The same goes for the Druze and Circassian schools. The main language of instruction in these schools is Arabic, and Arab culture is taught. The use of Arabic represents a characteristic of cultural autonomy, the language being related to cultural, historical, and religious attributes of the Arab minority in Israel.

In 2000, the State Education Law was amended to state that “the objective of state education is “to educate people to love others, their nation, and their country, to be loyal citizens of the State of Israel, to respect their parents and family, their heritage, their cultural identity, and their language.” Recently some binational and bilingual schools have been established.

State schools with reinforced Judaic studies

State Education Law charges the Minister of Education with establishing a “supplementary program” upon the demand of parents of three-quarters of the students. Under this aegis, parents join to create schools with an enhanced program of Jewish studies, yet not Orthodox oriented, named Tali (Hebrew acronym for “reinforced Judaic studies”). These schools operate with the sponsorship of the Schechter Institute for Jewish Studies, which provides pedagogical and educational support with a Conservative Judaism orientation. In the 1980s the Reform Movement joined the Tali network in opening schools within state schools and a chain of kindergartens. It also established an independent school and provides religious enrichment in regular state schools. There are other state schools that do not belong to the official religious stream but reinforce Judaic studies.

In 2008 the State Education Law was amended and a new category of state schools was created—the combining state school. This is a state school which “combines in its curriculum intensified Judaic studies and emphasizes Jewish identity teaching.” The supplementary curriculum for such a school includes comprehensive study of Judaic sources emphasizing Jewish identity and values of tolerance in Jewish heritage and “the coexistence and common destiny and fate of all parts of the nation in Israel and in the Diaspora.” An official school may be declared as a combining state school if parents of at least two-thirds of the student body have so requested.

Recognized non-official schools and non-recognized schools⁶

Alongside the state schools there operate schools that are recognized by the state yet are “non-official.” Under this provision various types of “non-official” schools have been established; most of them are religious, both Jewish and Christian. The latter include schools that are operated by the Greek-Catholic Malachite Church, the Latin Patriarch, and the Anglican Church. Muslim and Druze students also study in these schools, and at times they form a substantial proportion of the student body. There is also a Druze network of recognized schools.

Most of the recognized religious Jewish schools are ultra-Orthodox. There are at least 15 variants of these schools’ networks, belonging to various religious communities. The main networks are the Independent Education Network and the Sephardic Centre of Fountain of Religious Education in Israel, known as “The Fountain of Religious Education.” The first network is the former *Agudat Yisrael* network that was official yet declined to integrate into religious state education. The latter was founded in 1984 by the Sephardic (oriental) religious new political party *Shas*. While the Independent Education Network caters exclusively to the ultra-Orthodox population, the Fountain of Religious Education includes students from various backgrounds, most of them of non-Orthodox but rather traditional or even non-religious background. The Independent Education Network established in the late 1990s a network for

students that come from non-religious families called *Shuva* (repent). There is a strict sexual division among the students in these networks. Such division exists also in many religious state education schools. The educational system for male students within the Independent Education Network is divided into four age groups: *Talmudei Torah* (verb. Torah Studies) for ages 5–13; *Yeshiva* (Academy of Torah) divided between a “Small *Yeshiva*” for ages 13–16 and “High *Yeshiva*” from the age of 17. Girls are educated in a separate network.

The number of students in the ultra-Orthodox schools has increased significantly and this increase seems ongoing. At the same time, the proportional numbers of students, both in state schools and in religious state schools, dropped substantially.

A further category includes “exempt schools” that are neither state nor recognized schools, but regarding which the Minister of Education has decreed that parents and children attending them are exempt from the obligation “to ensure that such child or adolescent attends a recognized educational institute.” These institutions belong to ultra-Orthodox Judaism and are run as old fashioned education such as prevailed in the Diaspora.

The autonomy of private schools, especially religious schools, and the extent of state supervision that may be exercised over them, varies. Generally speaking, the autonomy of exempt institutions is much wider than that of recognized schools. Christian Religious Communities’ schools operating under the rules of the Education Ordinance, 1933, enjoy the widest autonomy and the Ministry of Education is not entitled “to demand any change in the curriculum or internal administration of the school” its supervision being limited to preserving public order and proper management.

According to State Education Law the Minister of Education may regulate the basic curriculum of recognized schools, as well as their administration and inspection. The minister issued regulations, according to which no institution will be recognized, unless it fulfills “the basic curriculum,” which “will consist 75% of the total curriculum hours in an official education institution.” However, “the basic curriculum” is defined as “the number of hours according to the subjects that are compulsory on each educational institute.” There are no provisions as to the content of this curriculum, nor provisions that the curriculum is subject to the approval of the minister. The result was that these schools enjoyed vast independence in calculating their educational system. In 1969 the Knesset enacted the Inspection of Schools Law. The Law introduced an important innovation in the subjection of schools to state control and subjected the curriculum and textbooks to the inspection of the minister. It also empowered the minister to ensure that their education is based on the principles set out in the State Education Law.

The law does not apply, however, to *Yeshivas*, or seminaries for the training of clergy. Nor does it apply to religious studies in high-school *Yeshivas*. In the same vein, it does not apply to institutions of higher education.

The Ministry of Education pursued a stated policy of “broad discretion and freedom of choice for schools, consistent with the special needs of each community served by the school,” especially “for private schools serving a recognized religious community in Israel.” In this respect the Supreme Court upheld the refusal of a Greek-Catholic school to enroll a female Muslim student unless she agreed to attend school bare-headed and to participate in co-gender physical education activities wearing a gym suit.⁷

State funding and school curriculum

State schools are fully funded by the state and local authorities. Recognized schools, on the other hand, are not automatically entitled to state funding. However, under provisions of the law, the Minister of Education may fix in regulations the state’s participation in the budget of non-official

Asher Maoz

schools. From the very first days, the state supported recognized non-official schools, including church schools, though the scope of supported institutions, as well as the amount of support, varied over the years. “Exempt” schools managed to receive state funding as well.

In 1992 the Budgetary Principles Law was amended and it mandates equitable tests for the disbursement of the amount allocated in the budget for the support of public institutions. However, the law provides that the Independent Education Network and the Centre of Fountain of Religious Education in Israel should be funded “according to uniform and equal criteria like all Israeli children.”

School funding in Israel generates heated political as well as legal controversy. In 1999 the founder of a secular N.G.O. petitioned the Supreme Court, arguing that the Minister of Education failed in his duty to set a basic curriculum for recognized education institutions. He argued that State Education Law was meant to ensure that every student will study core subjects in order to equip them with the necessary knowledge and tools that will enable them to become part of society. In his response the minister undertook to prepare and publish a basic curriculum as required “within 30 days.” This undertaking became part of the Court’s decision.⁸ Following the decision the Minister of Education established a Commission for Examining the System of Budgeting. The Commission submitted its recommendations that were endorsed by the minister. Thereafter, the Ministry of Education adopted a core curriculum that must be taught at all primary educational institutions in order to make them eligible for state funding. The Director General of the Ministry of Education issued a circular that implemented the decision. The circular established what is known as “the Core Curriculum Scheme” for primary education in Israel (grades 1–6). It stated “the common denominator, consisting of substances, skills and values that are obligatory to all the students in the Israeli education network.” The subjects included in the scheme have been defined as “the obligatory basis in the entire education network,” to which the various schools may add complementary subjects. The core curriculum is comprised of four compulsory and two recommended clusters of subjects. The compulsory clusters are: heritage (including Bible and history) and social studies (including civic studies); language and literature (Hebrew language and literature for Jewish schools; Arab language and literature for Arab schools; and English language and literature for all schools); mathematics and sciences; and physical education. The recommended clusters include fine arts and school culture. It was stated that teaching the core curriculum is a prerequisite for obtaining state funding. State schools must teach the whole of the curriculum, while recognized schools must teach 75 percent of the curriculum and exempt schools 55 percent only.

In 2002 the Union of Teachers in High Schools, Seminaries and Colleges petitioned the Supreme Court to suspend the funding of *Haredi* (ultra-Orthodox) high schools that do not teach the basic curriculum including “the basic pedagogical knowledge that each boy and girl in the State of Israel must obtain.” In a statement submitted to the Court, the Ministry of Education declared that it had adopted a policy to be implemented gradually in primary schools. According to this policy, recognized schools that teach the set core curriculum and, on top of that, admit students on an integrative basis and take part in the Growth and Effectiveness Measures for Schools (G.E.M.S.) including feedback tests, will obtain 75 percent of the budget of state schools. Recognized schools that do not admit students on an integrative basis will receive 65 percent and will have to teach 65 percent only of the curriculum. Exempt schools will not be subject to these requirements and will obtain 55 percent of the budget. The Independent Education Network and the Sephardic Centre of Fountain of Religious Education in Israel will continue to obtain full funding, provided they teach the whole core curriculum. The Ministry stated that teaching the core curriculum is a precondition for obtaining a permit for opening new schools and that, in some cases, permits of existing schools that do not teach it

might be suspended. As for intermediate schools and high schools, declared the minister, completion of the budgetary reform will need to be spread over several years. This is so since the Ministry will have to prepare a core curriculum, prepare materials, train teachers, build a proper system of inspection and implementation, and obtain the necessary funding. The minister declared, moreover, that she wishes to come to terms with the ultra-Orthodox community in view of the fact that it is being required to change its way of life in an area that is of utmost sensitivity.

The Court accepted the petition and declared that funding of institutions that do not apply the core curriculum and do not fulfill the objects of state education is illegal. The Court added that the authority conferred upon the minister to set conditions for recognizing a non-official school is subject to the objects of state education, including values of tolerance and respect for the other. The Court added: "Funding of institutions that do not fulfill the conditions set by law, and do not carry out the objects of State Education Law, is done without legal authority." The Court accepted, however, the minister's argument that the implementation will have to last for several years and that immediate revoking of funding for ultra-Orthodox education will shatter the entire sector. The Court was of the opinion that, in view of the long period that the present situation had existed and the school's reliance on it, considerable steps must be taken in order to amend the illegal allocation of funds. In conclusion, the Court accepted the petition and ordered that no funds be allocated to schools that do not fulfill the conditions and criteria set by law for the recognition of *Haredi* schools. The Court decided, however, that the order would come into effect in the school year 2007–08.

The adoption of a compulsory core curriculum was met with fierce criticism by the Orthodox community. Its leaders regarded the plan as an infringement of their autonomy and freedom of belief, and declared that they will never succumb to the dictate. Not only do their spiritual leaders regard secular studies as a waste of precious time that may be dedicated to religious studies, but they are also concerned about exposing their children to a different culture. It is interesting to note that in ultra-Orthodox girls' schools more time is being allocated to the teaching of general subjects. This is a result of two main factors. First, according to Jewish religion girls are not obliged to study *Torah*; there even exist statements in classical Judaic sources objecting to it. Second, since in the ultra-Orthodox community men are expected to devote their time to the study of *Torah* even at a mature age, the women support their families and need therefore to obtain a minimal general education that would enable them to acquire a profession.

A further source of concern for ultra-Orthodox institutions was the implementation of the recommendations of the Commission regarding school budgeting. Generally speaking, the Commission advocated a transition from a system of budgeting schools on the basis of the number of classrooms to a system of budgeting based on the socio-economic make-up of the students. Towards this end the Commission suggested a model based on the level of neediness index of the students. This system works in opposite directions as far as the ultra-Orthodox network is concerned. On the one hand, it should benefit from the new system, since a large proportion of its student body comes from underprivileged families. On the other hand, due to the fact that their students are spread all over the country and due to the wide range of schools, their classes are small, and therefore they might lose funding.

In May 2006, the Ministry of Education stated that the Independent Education Network and the Sephardic Centre of Fountain of Religious Education in Israel fully apply the core curriculum. Some doubt this statement and attribute it to lack of supervision. Moreover, this statement does not refer to other schools that constitute a substantial proportion of ultra-Orthodox education.

Asher Maoz

The issue of failing to implement the Court order in the *Union of Teachers in High Schools* case came before the Supreme Court in a petition brought by the Reform Movement.⁹ The case revealed a gloomy picture. Not only did the Ministry of Education fail to implement the core curriculum in Small *Yeshivas*, as ordered in HCJ 10296/02, it did not have any concrete plans to do so. Moreover, the Ministry came up with the idea of changing the status of these institutions from recognized non-official schools to exempt schools, thus avoiding the duty to teach the core curriculum. The Court declared that, although the specific order of the Court referred to recognized non-official schools, its reasoning applies to all kind of schools including exempt schools and prohibits state funding for schools that do not implement the targets of public education by avoiding teaching the core curriculum. The Court clarified that the core curriculum creates a balance between the privilege of the parents to educate their children according to their viewpoint and beliefs and the state's duty to provide basic common educational values to all students, prepare them for life, and enable them to take part in society. The Court emphasized that this is of special significance in Israeli society, which consists of a mosaic of cultures and beliefs.

At the end of its decision the Court was going to order the Ministry to implement without any delay the core curriculum in all recognized non-official high schools and withhold any financial support from both these schools as well as from exempt schools that do not teach the core curriculum. However, four days before the decision was handed down, the Knesset enacted the Unique Cultural Education Institutions Law in 2008. This statute created "unique cultural education institutions" defined as "an education institution where ... systematic education stemming from the compulsory way of life of the unique cultural group is provided in accordance with its unique characteristic" designated for students in grades 9–12. The legislature spelled out which "unique cultural group" it had in mind. This is either "the *Haredi* group whose students study religious studies according to Jewish *Halakha* in a *Yeshiva*" or "another group which has been recognized by the Minister's order." The statute does not intervene in the curriculum taught at the unique cultural education institutions and satisfies itself with the requirement that "the curriculum and activities" of the said institutions "do not negate the values of the State of Israel as a Jewish and democratic state." Moreover, it provides that the Education Ordinance and the Inspection of Schools Law will not apply to these institutions. Finally, the statute provides that the said institutions will receive state budget in the amount of 60 percent of the budget allocated per student in state schools. This amount is higher than the amount allocated originally for exempt schools though lower than the budget for recognized non-official school that teach at least 75 percent of the core curriculum.

In the explanatory notes to the statute bill it was expressly stated that the motive for this statute was to overcome the court decision in HCJ 10296/02 and enable state financial support to these institutions contrary to said decision. It was also mentioned that the statute is needed in view of "other petitions, which are pending in the Supreme Court." This reference referred directly to HCJ 4805/07. Indeed, in view of the statute the Court refrained from making specific orders and mentioned that the impact of this legislation will be examined "in another legal framework."

The constitutionality of the Unique Cultural Education Institutions Law has recently been challenged. In a petition submitted to the Supreme Court,¹⁰ the petitioners argue that the statute infringes the autonomy of *Yeshiva* students, which is part of human dignity, by preventing them from developing their self and choosing a way of life since they are being exposed only to religious studies. Thus their ability to integrate into society and to develop a sense of belonging is being negated. Moreover, by preventing them from acquiring basic knowledge their ability to acquire higher education and prestigious professions is severely hampered.

In 2008 the State Education Law (Recognized Institutions) Regulations, 1953 were amended. According to the amendment, recognized schools, up to grade 9, that teach the required core curriculum and on top of that carry on an integrative registration policy and whose students' socio-economic status is similar to that of other schools within a local municipality will receive 75 percent of the state budget allocated to similar official schools. Recognized schools that fulfill only one of the latter requirements will receive 70 percent of the budget. If it fails to fulfill both requirements the school will receive 65 percent of the budget. In any case the school must teach the required core curriculum, which is a prerequisite for granting recognition to the school. Under the new Section 11 of the State Education Law the school is entitled to the same budget from the local authority. The regulations do not apply to the Independent Education Network and the Sephardic Centre of Fountain of Religious Education in Israel who receive the full budget under the provisions of the Budgetary Principles Law. No provisions were made regarding exempt institutions. While grades 9–12 of these institutions may come under the Unique Cultural Education Institutions Law, lower grades are left out and their financial assistance is left to the policy of the minister.

Conclusion

The struggle between the melting pot policy, advocating educational uniformity, and the demand for religious autonomy in the area of education ended with a salient triumph for the latter. Israel's educational system appears as a convincing example of educational autonomy, particularly religious autonomy, and as a model of multicultural education.

In the sphere of ultra-Orthodox education there is another basic deficiency. As one researcher put it, it is multicultural only on the "macro-level," while unicultural on the "micro-level." This is so since each educational sub-system is "closed, uniform and unicultural." As a result, children who are enrolled in an ultra-Orthodox sub-system are exposed to "particularistic subgroup culture and norms at the expense of the appreciation of diversity and the tolerance of other cultures and norms."¹¹ On top of that, the educational and cultural segregation withholds the development of a creed that would be common to all segments of Israeli society. Moreover, in granting large autonomy to these sub-systems the state fails to ensure that the youngsters are being equipped with the necessary tools to become fruitful and successful members of society. By doing so the state abstains from fulfilling its duties both under Israeli law and under international established norms.

The State of Israel must pave its way between two seemingly contradictory covenants: the International Covenant on Economic, Social and Cultural Rights from 1966 and the Convention on the Rights of the Child from 1989. While the first document affords the parents the right "to choose for their children schools, other than those established by the public authorities ... and to ensure the religious and moral education of their children in conformity with their own convictions," the latter obliges the state to direct the education of the child "to [t]he development of the child's personality, talents and mental and physical abilities to their fullest potential" and to "[t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin." The discrepancy between both conventions may be the result of the development of the doctrine of childrens' rights in international law. The gap between these documents might be, however, smaller than appears at first sight. Thus, the Covenant on Economic, Social and Cultural Rights subjects the parents' right to choose the education for their children to the state's right to impose on the chosen school "minimum educational standards." At the same time, the Convention on the Rights of the

Asher Maoz

Child imposes on the state a duty to supply the child with the education that will be directed “to . . . [t]he development of respect for the child’s parents, his or her own cultural identity, language and values.” Israel must find a way to compromise between these two ends.

Notes

- 1 See Asher Maoz, “Religious Human Rights in the State of Israel,” in *Religious Human Rights in Global Perspective—Legal Perspectives*, eds. J.D. van der Vyver and J. Witte Jr. (The Hague: Martinus Nijhoff, 1995), 349–89; *ibid.*, “State and Religion in Israel,” in *International Perspectives on Church and State*, M. Mor ed. (Omaha: Creighton University Press and Fordham University Press, 1993), 239–48.
- 2 This figure includes new immigrants from the former Soviet Union whose religious affiliation is not registered and those who are non-Arab Christians. Foreign workers, who numbered 220,000 at the end of 2009, are not included in these statistics. On the other hand, Israeli settlers in the Occupied Territories are included. These are estimated figures based on the 2008 census; Central Bureau of Statistics (CBS), Press Release May 8, 2011, <www1.cbs.gov.il/reader/newhodaot/hodaa_template.html?hodaa=201111101>.
- 3 Central Bureau of Statistics, Statistical Abstract of Israel 2010 No.61, <www1.cbs.gov.il/population/demo_prop09.pdf>. It is easy to get data of national and religious affiliation of the Israeli population as, under the provisions of the Population Registry Law, 1965, both religion and ethnic affiliation of residents are recorded.
- 4 Central Bureau of Statistics, Population in Base Year 2005 and Projection for 2015 and 2030, by Variant, Population Group and Religion, <www1.cbs.gov.il/www/hodaot2008n/01_08_056t4.pdf>. Some challenge this forecast pointing out the constant growth in the Jewish birthrate combined with a sharp drop in the Arab birthrate; Yaakov Faitelson, *Demographic Trends and their Influence on Israeli Education* (Jerusalem: The Institute for Zionist Strategies, 2011), 44–45, <<http://izsvideo.org/papers/Education%20Demography-Full.pdf>>. For an English abstract see: <<http://izsvideo.org/papers/Education%20Demography%20English%20Abstract.pdf>>.
- 5 See Asher Maoz, “Religious Education in Israel,” 83 *University of Detroit Mercy Law Review* (2005–06): 679–728; *ibid.*, “Religious Education in Israel,” with an Addendum, in *Religión en la Educación Pública. Análisis comparativo de su regulación jurídica en las Américas, Europa e Israel*, ed., Carmen Asiaín Pereira (Madrid: Asia in Fundación Universitaria Española, 2010), 495–548.
- 6 See Leslie Sebba and Varda Shiffer, *Tradition and Rights to Education: The Case of the Ultra-Orthodox Community in Israel*, in *Children’s Rights and Traditional Values*, eds. Gillian Douglas and Leslie Sebba (Aldershot: Ashgate 1998), 160.
- 7 HCJ 4298/93 *Jabareen v. Minister of Education*, [1994] IsrSC [Official Hebrew reports of the Supreme Court] 48(5) 199.
- 8 HCJ 2751/99 *Paritzky v. Minister of Education* [2000], <<http://elyon1.court.gov.il/files/99/510/027/a02/99027510.a02.pdf>>.
- 9 HCJ 4805/07 *The Center for Jewish Pluralism High Schools, Seminaries and Colleges v. Ministry of Education* [2008], <http://elyon1.court.gov.il/files_eng/07/050/048/r28/07048050.r28.htm>.
- 10 HCJ 3752/10 *Rubinstein v. The Knesset*.
- 11 Stephen Goldstein, *Multiculturalism, Parental Choice and Traditional Values: A Comment on Religious Education in Israel*, in *Children’s Rights and Traditional Values*, eds. G. Douglas and L. Sebba (Aldershot: Ashgate, 1998), 118–33, 127–28.

Religious education in Italy

Alessandro Ferrari

Catholicism is part of Italy's collective identity; indeed, the teaching of Catholicism has dominated, as a near monopoly, state education in Italy. In recent years, however, religious and cultural pluralism have gained increasing visibility in Italy. Such changes are making a dramatic impact on the state school system. Moreover, increasing pluralism, together with the state's financial difficulties and resistance to a more culturally and religiously open state school could encourage the development of religious schools, which have been traditionally less important in Italy than in other countries.

Religious education in state schools

Teaching the Catholic religion

The Concordat between Italy and the Holy See, dated February 18, 1984, stipulates that the teaching of the Catholic religion must be funded by the government pursuant to a joint management system governed by agreements between the Italian Episcopal Conference and the Ministry of Education (Article 9, Paragraph 2).¹

Teaching must be in line with both the Catholic Church's teachings and with the "purposes of school." Therefore, despite maintaining its confessional nature, it must have a rigorous scientific base and avoid all forms of proselytism and discrimination. Indeed, classes are open to all pupils, regardless of their religion. In practice, students tend to have little interest in a dogmatic presentation of Catholicism and so classes cover issues from moral ethics to in-depth presentations of the cultural implications of Catholicism and other religions, depending on the teacher's own background and sensitivity and the specific nature of each school. Yet, the Catholic bases of such classes are clear and attendance is neither compulsory nor chosen from among a range of choices (optional), but depends purely on student choice. At the start of the academic year, students must be presented with the choice to attend or not and those who choose not to attend are not required to attend regular school at those times.²

The Constitutional Court declared this system to be compatible with the principle of *laicità* (secularity) since it acknowledges both "the positive value of religious culture, which can no

Alessandro Ferrari

longer be considered as a religion, but rather as the religious pluralism of civil society” and the “fact that Catholic principles have become part of the historical heritage of the Italian people.”³

Over the past few years, the tendency has been for this class to be less of an “open choice” and more of an “option.” Indeed, religious education teachers not only report on student attendance with a specific mark, but are also involved in the overall assessment required for admission to the final exam of the first cycle and the final assessment of the results from the second cycle. This means that this class actually influences a student’s school career and, in order to avoid disparity with the students who do not attend, schools now have to organize alternative classes. At the end of high school, students who chose neither religion nor an alternative will inevitably have fewer credits.⁴

The integration of the teaching of Catholicism into state schools is also a consequence of the stronger status acquired by religious education teachers. Traditionally, those who taught the Catholic religion were chosen by the bishop competent for the area where the school was located.⁵ They were required, at least after the Concordat of 1984, to have a state-approved diploma, were on the state’s payroll, and could lose their job if the religious authorities lost faith in them or students stopped attending their courses. However, Law no. 186 of July 18, 2003 put an end to this precarious situation by setting up a system of public regional “examination competitions” and dedicating a 70 percent share of the available vacancies to full-time teachers on open-ended contracts.⁶ Should those who are selected lose their jobs, they get a job in another diocese or a job either teaching a different subject or working in the school’s administrative offices.

The teaching of other religions

The opening up state schools to society and the needs of families translates into giving mainstream culture a privileged position. Consequently, in state schools, there is limited room available for other religions and any space they can carve out is directly related to their institutional strength, that is, their ability to sign an agreement with the government.⁷ Due to this, many non-Catholic religions demanded that their followers be always granted the freedom not to attend Catholic religion classes and that state schools should “not provide any general religious teaching when other classes are underway” so as “to remove any potential influence on the education and religious formation” of students.⁸ These agreements also envisage the right, for non-Catholic religions, to “meet,” at their own expense, “the needs of pupils, their families, or the school authorities” as concerns “the study of ‘religion’ and its implications.”⁹

Those faiths that have not managed to sign an agreement (for example, Islam) can be granted, but only outside of school hours, “the availability of some school classrooms for the teaching of religion to their pupils ... when the number of pupils justifies this and when, for sound reasons, it is not possible to use a place of worship.”¹⁰ This option, which could cause some embarrassment to school and town administrations regarding the opening of Muslim places of worship, has never been put into practice.

Religious symbols and religious conduct in state schools

As concerns a secular approach designed to promote integration ahead of separation in terms of the role of religion in the state school system, it should be noted that the Italian system is definitely not devoid of religious bias, with it being fair to say the system focuses on a pluralist neutrality with a Catholic influence. During the Christmas season, nativity scenes are often found in schools, especially in nursery and primary schools. Masses, blessings, and pastoral visits are

sometimes organized¹¹ and, as is known, there are crosses on the walls.¹² Indeed, by adopting an interpretation that goes beyond the strictly legal remit and that turns Catholicism into a “condition of use” for the application of the principle of secularity, the Council of State, although recognizing the religious nature of the cross, decided to justify its display on the grounds of constitutional secularity and the principles of the Second Vatican Council coming together.¹³ According to the Council of State, the presence of a cross does not represent discrimination against non-Catholic pupils, but “stands as a symbol of the principles of freedom, equality and tolerance ... which are the basis of our living together and are part of Italy’s legal, social and cultural heritage.” Consequently, the cross becomes the tool to convey “extra-communitarian (*sic*) pupils the values of openness towards diversity and rejection of all integralism” and to reaffirm, “against any clash of civilizations,” an “identity that is defined by the values of respect for the dignity of every human being and universal solidarity.”¹⁴

Thus, the cross has become not only a *symbol* of where religion meets the Constitution, but also a *symbol* of legal postmodernity, that is, the explicit recognition that it is impossible for the contemporary state to live without the “presuppositions that it cannot guarantee.”¹⁵ We could indeed say that, in Italy, the cross enables pupils to wear religious attire—including Islamic scarves—at school. Therefore, the cross acts as a guarantor of secular pluralism and the constitutional principles that, without this cultural and religious mediation with a universal vocation, might be interpreted in a much more restrictive way, given the current tendency to cling to one’s identity.¹⁶

Alongside “healthy secularism,” some other constitutional principles favor the expression of religious and cultural opinions in state schools. The constitutional principle of the independence of schools along with the academic freedom of teachers ensures that the latter, despite being employed by the state, are not seen as being spokespersons for the state. Consequently, it is common for teachers to use crosses and other symbols.

Religious schools

During the 2007/08 academic year, Catholic schools accounted for roughly 5–6 percent of the total number of schools in Italy.¹⁷ Catholic schools are governed by ordinary law with a legal basis drawn from Article 33 of the Constitution, which allows private schools to be opened without the need for administrative authorization. In addition, schools are given total freedom of teaching, since the state is only tasked with defining the “general rules in the field of education,” namely organizational provisions, curricula indications, and teacher qualifications.¹⁸ There are no provisions for state subsidies to private schools—indeed, they almost seem to be overtly banned¹⁹—but the Constitution does allow private schools to award legally recognized qualifications. This results in two types of private schools: state-accredited schools, which can award qualifications and where pupils can increasingly benefit from public funding,²⁰ and schools that are not officially recognized and therefore do not receive any funding. In the current education system, it is almost as if there is a network of state and state-accredited private schools where the boundaries are increasingly blurred, while the non-accredited private schools play a marginal role. Therefore, it is only natural that, in order to maintain its public role, the Catholic Church favors state accreditation for its schools.

In order to obtain state accreditation, a private school must demonstrate that it is properly organized, employs qualified teachers, and has a sufficiently high number of pupils enrolled. In contrast to the past, state accreditation does not imply a standardization of public and private schools, the latter being granted the “independence” afforded to state schools.²¹

Alessandro Ferrari

More specifically on the issue of religious education, the law demands that state-accredited private schools comply with “the principles of freedom set forth by the Constitution of the Republic.” They have to accept all those who wish to be enrolled and guarantee that pupils are not forced to take part in religious activities. On the other hand, it guarantees total freedom for cultural and didactic approaches. They have the option of developing a religious-focused educational program and the right to expect that its users accept it. In the daily practice of such schools, especially Catholic ones, such religious education seems to be influenced more by social context than by legally binding constraints. Generally, the result is an open and constitutionally minded approach to teaching, where religious education is governed, by analogy, by the Concordat model in force in state schools.

Conclusion

Religious teaching is increasingly included in those matters subject to bilateral legislation between the state and different faiths, making a unilateral change by Parliament highly unlikely. However, the necessity to respond to the needs of intercultural education demands that more attention is paid to diversity, including for religious matters. In many cases, quiet, local arrangements are made that do not have any formal impact on an institutional framework still dominated by a degree of rigidity.

Notes

- 1 The framework agreement was signed on December 14, 1985 (see Executive Decree by the President of the Republic no. 751 of December 16, 1985). It establishes two hours per week in nursery and primary schools and one hour in middle and high schools. The agreement also outlines the criteria to be adopted for the bilateral definition of curricula, the choice of textbooks, and the qualifications required of teachers. Between 1986 and 2009, the same Ministry and the Italian Episcopal Conference signed an additional ten specific agreements. For the 1985–2004 period, see <www.governo.it/Presidenza/USRI/confessioni/accordo_intese.html>, and for the agreement of August 1, 2009, the Executive Decree of February 11, 2010, see <www.olir.it/documenti/index.php?argomento=&documento=5362> (consulted on September 10, 2010).
- 2 See the decisions by the Constitutional Court nos. 203 of April 11–12, 1989 and no. 13 of January 11–14, 1991, in <www.olir.it/documenti/?documento=370> and <www.olir.it/documenti/?documento=371> (consulted on September 10, 2010). The freedom to choose attendance at these classes is, according to the Court, a mark of respect for the students’ freedom of conscience and religion since they are not forced to choose an alternative to this class. In any case, the composition of classes does not take into account pupils’ choices regarding this subject.
- 3 See the Decision no. 203 of April 11–12, 1989 (ref). However, it must be noted that the provisions of the Concordat do not intend to deprive Catholicism of its specific consideration, nor do they mean to turn this religion into a solely cultural phenomenon, stripping it of its doctrinal and dogmatic components. At the same time, the orientation expressed by the 1989 decision mirrors the tendency to consider Catholicism as an Italian “civil religion.”
- 4 This discrimination was justified by the Council of State because of its “limited extent,” as indicated in verdict no. 2749 of May 7, 2010, in <www.olir.it/documenti/?documento=5336> (consulted on September 11, 2010).
- 5 In nursery and primary school, this class can be taught by the regular teachers, with the approval of the church authorities.
- 6 To participate in a competition (held every three years), one must be endorsed by the bishop for the diocese where the school in which the candidate intends to teach is located. The examination boards are made up of teachers from state schools and universities. They do not assess the religious knowledge of the candidates, but focus on their cultural and didactic knowledge. In order to ensure that bishops have total freedom in choosing the names of the candidates, the lists they receive are in alphabetical order, with no comments.

- 7 Such agreements even define holidays in accordance with students' religious needs, for example, Articles 4 (recognition of absences for the Sabbath) and 5 (recognition of Jewish religious celebrations) of Law 101/1989 that approve the agreement with the Jewish community. The agreement with the Adventists is along the same lines, but is only limited to the rest on the Sabbath (Article 17, Law 516/1988) as are the agreements, signed but not yet ratified by Parliament, with the Jehovah's Witnesses (Article 7, religious celebrations) and Orthodox Christians (Article 9, religious celebrations).
- 8 See, more specifically, the agreement with the Jews (Article 11, Law. 101/1989), the Adventists (Article 11, Law. 516/1988), and the Assemblies of God (Article 8, Law 517/1988). All the most recent agreements signed (but not yet ratified) contain the same assurances. It is true that such negative guarantees, which translate the constitutional principles of impartiality, neutrality, and secularity of the public administration into practice, are now also enshrined in ordinary law. See Article 311 of the Code of Education (Legislative Decree no. 294 of April 16, 1994).
- 9 The same goes for agreements with the Waldensians, the Assemblies of God, the Adventists, the Baptists, the Lutherans, and all the other agreements that have been signed, but not yet ratified. However, the agreement with the Jews specifically mentions the "study of Judaism." The proposals of agreement that were unilaterally tabled some years ago by three Muslim groups were closer to the model of the agreement signed by the Jewish community or even to the Concordat. Indeed, two of these demanded the teaching of Islam be given the same institutional status granted to Catholicism. The "neutral" approach whereby religions are not granted the right to study their specific religion, but rather to study the "religious phenomenon" in general, lies at the heart of all the efforts to create a general law on religious freedom that have been unsuccessfully proposed in recent years.
- 10 See Article 23 of Decree no. 289 of February 28, 1930 implementing the law on "accepted religions in the country."
- 11 The legality of such initiatives is doubtful. The Council of State, however, confirmed that a school granting permission for a bishop's pastoral visit, excluding a strictly religious meaning and considering it as a simple "cultural testimony," is comparable to a "lecture by a representative of a different faith or religion," Ruling 1911 of April 6, 2010 in <www.olir.it/areetematiche/19/index.php?documento=5309> (consulted on September 10, 2010).
- 12 The legal basis, dating back to the fascist era, governing the display of crosses and the related case law is published in <www.olir.it/areetematiche/75/documenti.php?argomento=127> (consulted September 10, 2010).
- 13 For further information, consult Council of State, Ruling no. 556 of January 13, 2006, in <www.olir.it/ricerca/index.php?Form_Document=3517>. In Ruling no. 389 of December 13, 2004, the Constitutional Court refused to be drawn on the matter given that the provisions in question were regulatory rather than legislative in nature. See <www.olir.it/documenti/index.php?documento=1712> (consulted on September 10, 2010).
- 14 See for more information Council of State, opinion from February 15, 2006, in <www.olir.it/areetematiche/75/documenti.php?argomento=127&documento=3638> (consulted on September 10, 2010).
- 15 See Ernst-Wolfgang Böckenförde, "Die Entstehung des Staates als Vorgang der Säkularisation," in *Säkularisation und Utopie. Ebracher Studien. Ernst Fortshoff zum 65 Geburtstag* (Kohlhammer: Stuttgart 1967), 75–94. This discourse lies at the basis of the *Lautsi* case against Italy in the European Court of Human Rights in Strasbourg. In its first decision the court seemed to be keener on a "modern" notion of protecting human rights that is centered on the priority given to individual rights, but only in circumstances when a given concept of state neutrality is not at stake.
- 16 In this regard, in fact, in the first decision the arguments of the Strasbourg Court on the *Lautsi* case were formally straightforward, however they might not give due weight to the complexity of the case in question nor the feasibility of more generalized iconoclasm—and its consequences—in Italian schools. At present, there seems to be a tendency in schools to decentralize these matters and leave them up to the school's governing body. Finally, the first Chamber judgment did not limit itself to noting that the cross must not degenerate from being a symbol of recognizing each other into a symbol of separation and division, excluding those who do not worship it from enjoying rights. Instead, like in the *Dahlab* case, the Court ends up arguing for some abstract, almost legislative considerations based on a concept of strict neutrality for the public space, which is highly debatable when it comes to religion.
- 17 The Catholic Church has never placed importance on creating an independent network of schools, preferring to maintain a public role, given its stable presence in state schools. See Alessandro Ferrari, *Libertà della scuola e laicità dello Stato in Italia e Francia* (Giappichelli: Torino, 2002).

Alessandro Ferrari

- 18 Law no. 27 of February 3, 2006 and Ministerial Decrees no. 267 of November 29, 2007, and 82 and 83 of October 10, 2008 require educational projects to comply with the principles enshrined in the Constitution and to ensure that building health and safety regulations are met and that teachers have the necessary qualifications.
- 19 Article 33 of the Constitution refers to the freedom to open private schools “without any cost for the State.” This is a longstanding bone of contention that has been overcome, in practice, by increasing public subsidies to state-accredited private schools and their pupils both from the central government and regional administrations. See Ferrari, *Libertà della scuola*, op. cit., 281–350.
- 20 See Law no. 62 of March 10, 2000.
- 21 Paradoxically, in the contemporary school system, freedom of teaching correlates directly to the level of standardization between private and public schools. The old mentality of opposition between public and private schools has been replaced by cooperation, encouraged by the more practical and consumer-minded approach shown by families. This might be a bit of a problem for minority schools, which are less likely to be organized and, sometimes, are somewhat distant from “mainstream culture.” See Ferrari, op. cit., 254ff.

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Religious education in Japan

Eiichiro Takahata

General aspects of the Japanese school system

The Japanese Constitution provides in Article 26 that all people shall have the right to receive an education, and that parents and guardians shall be obligated to have all boys and girls under their protection receive an ordinary education. The latter clause requires a parent to send his or her child to schools for nine-years' basic education.¹ This, understood as compulsory education, is one of the duties of the Japanese people.

Basic education is provided in an elementary school for six years, and a junior high school (or a secondary school) for three years.² There is a three-year high school which is not compulsory, but more than 98 percent (in 2009) of children attend it.³ The percentage of graduates entering a university or a college is around 57 percent (in 2009). The School Education Act regulates these educational institutions. However, a university or a college enjoys academic freedom guaranteed in the Constitution (Article 23); thus each university or college has the authority to determine contents of teaching and administration of the organization. With respect to educational content, high schools and schools below this level are strictly controlled by the national government. Those schools and their teachers should follow government guidelines for teaching,⁴ and must use officially accredited textbooks which are precisely examined by the government.⁵ The government prescribes that both public and private schools take responsibility for public education.⁶

Most schools in basic education are public (99 percent of elementary schools and 93 percent of secondary schools in 2009). It is nearly the same for high schools (74 percent are public).

Constitutional and legal frameworks

Japanese Constitutional Law makes provisions with respect to both the free exercise of religion and separation of religion and state. Article 20 of the Constitution states as follows:

Freedom of religion is guaranteed to all; No religious organization shall receive any privileges from the State, nor exercise any political authority; No person shall be compelled to

Eiichiro Takahata

take part in any religious acts, celebration, rite or practice; The State and its organs shall refrain from religious education or any other religious activity.

Article 89 prohibits governments from conferring financial aid on religious organizations.

The Constitution provides almost absolute protection on religion, though it has a provision that all the rights protected in the Constitution shall “not interfere with the public welfare.”⁷ This public welfare is understood to prohibit encroachments on life, liberty, or property of other individuals, and to allow for the maintenance of public order.⁸ Constitutional Article 20 guarantees freedom of belief, the freedom to choose one’s religion, the free exercise thereof, and the right to organize or join a religious group. These rights imply the freedom of religious bodies. Religious bodies have the right to exercise and propagate their religious beliefs.⁹ Religious bodies that meet the requirements to be a corporation under general law may be incorporated. Religious bodies are allowed to possess property, especially land. The autonomy, independence, and self-determination of religious bodies are guaranteed.¹⁰ The courts shall not interfere in the internal affairs of a religious body if the issue concerns its religious dispute.¹¹

The Constitution provides separation of religion and state. The state and its organs should not engage in religious education or any other religious activity. The government ought not to give religious organizations any privileges or political authority. There must be no established state religion in Japan. No public money or other property can be expended for the use, benefit, or maintenance of any religious body. Despite the constitutional separation of religion and state, it is understood that some relations between the two are allowed. Some government offices or facilities may display symbols which have minor religious significance such as a Christmas tree or *Kadomatsu*, a Japanese traditional decoration usually set up on New Year’s Day.¹² It is also the same concerning prohibitions against religious education. Strict understanding of this constitutional ban will provoke prohibition against “education in religious knowledge” or “moral education based on religious sentiments” in public schools. Since it is quite difficult to teach children Japanese history without referring to Shinto and Buddhism or to inculcate good behavior without mentioning religiously traditional tales, it is almost impossible to take a strict interpretation. Thus, the Diet, the Japanese national assembly, has interpreted this constitutional provision as a prohibition against sectarian religious education, which is legislated in Article 15 of the Basic Act on Education of 2006. It provides in the first paragraph that the attitude of religious tolerance, general knowledge regarding religion, and the position of religion in social life shall be valued in education.

History of religious education

The Japanese school system started in the late nineteenth century. Long before then, Buddhist temples had offered higher education including nurturing their priests in Japan.¹³ In the *Edo* period, when the *Shogun* governed the country, the *Bakufu* and many *Daimyo*, regional lords, established their own institutions to educate *Samurai* warriors. They learned mainly *Jugaku*, the teaching of Confucius concentrating on moral elements. The teaching also justified the then caste system and royalty to *Daimyo*.¹⁴ For public education, many civil volunteers taught children basic reading, writing, and mathematics at many private institutions such as *Terakoya*.¹⁵ It is hard to find a certain religious component in general education in this area.

Since 1868, when the shogunate gave way to the *Meiji* Restoration, returning the sovereign power to *Tenno*,¹⁶ the new government began to establish a modern school system to offer public education to make Japan a modern constitutional state and to amend unfair trade treaties with Western countries.¹⁷ The government placed pre-existing private institutions under its

control, and launched its own elementary and secondary schools and university system in 1872. The young nation was supposed to attend schools.¹⁸ Around the time of the *Meiji* Restoration, new types of private schools were established. Those schools taught law, medicine, liberal arts, and religion. Since the government withdrew the prohibition on Christianity in 1873,¹⁹ many Christian denominations built their missionary schools.²⁰ However, these Christian educational movements made the government separate education from religion, because it tried to instruct Japanese people to admire *Tenno*, who has been deeply connected with Shinto religion.²¹ When those newly established private schools came under the control of the government, it issued an order in 1899 that those schools under governmental supervision (both public and private) should not teach religion at all.²² Even though religious freedom was guaranteed in the *Meiji* Constitution of 1889, religious education was strictly prohibited in approved schools. Nevertheless, many non-approved schools were allowed to inculcate religion.²³

Tenno issued a document on moral education in 1890, Imperial Rescript on Education (*Kyouiku Choku-go*). The document addressed loyalty and filial piety as Japanese traditional morality, and did not itself contain any religious elements. However, this was treated almost as a religious tenet, because the document came directly from the *Tenno*. Since *Tenno* connected with Shinto religion, moral education based on the Imperial Rescript on Education in many schools evolved to reflect somewhat Shinto teaching.²⁴

Although moral education should be traditional, the education at large at both public and approved private schools was influenced by Western thought, and Western educational methods were introduced into those schools. So, having a Western sense of ideas, many workers and students became committed to the socialist movement. Then, the government realized the necessity of moral education based on religious sentiments. In 1935 it allowed schools to give education based on religious sentiments, though religious education itself was still prohibited.²⁵ At the time of the Second World War, the military whose head was *Tenno* forced children to admire him, and to go and pray for Shinto shrines.²⁶

After Japan's defeat in 1945, the *Meiji* constitution was modified to adopt the notion of the sovereignty of the people.²⁷ The religion provision, now contained in Article 20 of the Constitution, is heavily influenced by the American occupying army which occupied Japan several years after the war and converted it to a more democratic country, giving the people religious liberty.²⁸ As to education, the Imperial Rescript on Education was abolished, and Shinto elements in school teaching were removed. Private schools have been allowed to give religious education.²⁹

Religious education in public schools

As noted above, Japanese Constitutional Law prohibits the state and local government from offering religious education in their public schools. Under this constitutional provision, the Basic Act on Education of 2006 states in Article 15, Paragraph 2, that “the schools established by the national and local governments shall refrain from religious education or other activities for a specific religion.” It is understood that this law prescribes religious neutrality in public schools.³⁰ Nonetheless, the government acknowledged the necessity of moral education based on religious thought. Thus, the then Ministry of Education issued in 1949 a circular notice that at public schools 1) visiting religious facilities with the aim of worship or participating in religious ceremony and festival is prohibited; 2) visiting those facilities for academic or cultural purpose is allowed unless children are forced to go; 3) to use religious materials in a class is accepted for academic or educational purposes, except praising or denying a certain religion; and 4) school children are free to form religious groups in extracurricular activities.³¹

Eiichiro Takahata

In Japan, the national government decides and defines the curriculum for public education.³² The curriculum includes moral education as well as other fundamental subjects (Japanese language, mathematics, foreign languages, social studies, and science). The government also determines the content of the subjects taught in any schools through a curriculum guideline which has binding authority on teachers and schools.³³ Since education in religious knowledge and moral education based on religious sentiments are incorporated into classes for moral education and history,³⁴ it is useful to see the government guidelines with respect to religious elements. The guideline states that a class for moral education aims to encourage zest for living. In so doing, the guidelines at elementary and secondary school levels emphasize having a feeling of reverence for what is beyond the power of the human being as well as fostering friendship by trusting each other and learning together, cooperating with the opposite sex in a friendly manner, respecting and having affection for parents and grandparents, and being willing to make commitments for the happiness of the family.³⁵ Since a class for moral education contains no denominational content, all children are supposed to take the class.³⁶ At the high school level, the guideline for a class in ethics helps to teach students basic ideas of the Christian, Buddhist, Confucian, and Muslim religions in addition to ancient Greek philosophy to aid them in understanding their human status. It also permits teaching the Shinto religion among other Japanese traditions as indigenous ingredients.³⁷ A student may choose to take this class.³⁸ In a history class, religion is treated as historical facts in both Japanese and world history. All students learn Japanese history until the secondary school level, and should take a class for world history at high school.³⁹

Although the Basic Act on Education of 2006 acknowledges “education in religious knowledge” and “moral education based on religious sentiments,” it is hard to find any mention of religious elements in educational laws. Today, religion seems to be a kind of taboo in public schools. Religiously related education is rarely offered since most teachers in those schools are indifferent to religion.⁴⁰

At the university level, to study religious tenets from a third party’s standpoint, or religious history, is permitted in national and public universities. Those national and public universities even offer courses to train teachers to teach a religion class in a private school. Among them, there are some 12 universities that have courses to study religion, and three universities that have religious teacher training courses.

Religious accommodation in public schools

Because the government has taken a strong policy to separate education from religion completely in the public schools, there are some conflicts between a student who wants to observe his or her religious belief in the school and the religious neutrality policy. There are two legal cases with respect to this issue.

The first case, *Sawa v. Edogawa Ward*,⁴¹ dealt with an elementary school that held its school visitation on Sunday because it was a convenient time for parents, especially fathers. The purpose of the visit was for the parents to come to the school, see how a class was actually operated, and discuss the education of their children with the children’s teachers. The school visitation was held once every school term. The petitioners were school children, who were devout Christians, and their parents, who were ministers of a Christian church. Since the children attended Sunday school at their church, their parents asked the school not to hold the visit on Sunday. The school did not answer their request, but carried out the visitation and recorded the petitioners’ absence. The petitioners filed suit against the municipal government and the principal of the school, seeking retraction of the record of the absence. The Tokyo district court

dismissed the case. It held that the record of their absence did not directly influence the petitioners' rights or duties in a legal sense. No evidence showed the absence gave them any disadvantage in applying to schools or finding a job, and it was impossible to believe that the record would influence their entrance to higher schools. Thus, the court held that the petitioners lacked standing to bring the suit. Furthermore, the court also emphasized that allowing an exemption not to attend the school for religious reasons was not appropriate to the neutrality principle in a public school. Thus, to require children to attend the school on Sunday for a special occasion constituted compelling constraint even if the requirement collided with their religious freedom.

Ten years later, this judicial attitude of rigorous neutrality was overturned by the Supreme Court decision in *Matsumoto v. Kobayashi*.⁴² The plaintiff was a student of a public college, and a devout Jehovah's Witness. The college required its students to take physical training, and since 1990 *kendo* became a mandatory training program for the first-year students. Before the physical training class started, the plaintiff, who believed that it was against the tenets of his religion to practice *kendo*, asked his teachers if he could submit papers instead of engaging in the *kendo* training. The teachers denied his request and said that his lack of participation would be counted as an absence from the class if he refused to practice. The defendant, the principal of the college, finally made a decision not to accommodate the request. The plaintiff participated in the preparatory exercises and lectures but only watched as his classmates practiced *kendo*. After each of the classes, he voluntarily submitted papers for the class, but the teachers refused to accept them. Since the college regarded the plaintiff's refusal to practice *kendo* as an absence from class, he failed and had to repeat his first year. The following year, neither the plaintiff nor the college had changed their minds, and he failed again. The code of the college provided that the principal could order the dismissal of a student who failed a course twice. Based on this provision, the defendant dismissed the student from the college. The plaintiff brought suit, seeking a repeal of the order. The district court denied his claim, but the High Court recognized it.

The Supreme Court upheld the plaintiff. Although the court found that a college principal has reasonable discretion to dismiss a student, it recognized that the decision to dismiss a student from a college—depriving the student of his or her status—is a crucial decision. In such a case, the court said, more careful consideration was required when a principal chooses to dismiss a student, and a student may only be expelled when there are educationally compelling reasons for doing so. The court stated that in a college, practicing *kendo* was not said to be an absolute requirement. It was possible to substitute the practice of other sports to accomplish the aim of physical training. It was obvious that the plaintiff's disadvantage was extreme, because he was dismissed as a result of his refusal to practice *kendo* based on his religious belief, even though he had good grades in other courses. Moreover, the principal's decision in this case surely was of a character that obliged the plaintiff to practice *kendo*, against his religious tenet, in order to avoid his extreme disadvantage. Since the decision had such features, the defendant had to accommodate the plaintiff when the defendant made the decision as an exercise of discretion. Given the character of the decision, the defendant should have considered the proprieties, manners, and conditions of substitute measures for *kendo* practicing before finally making the decision. The court did not find that the defendant took such measures into account here. Thus, the court finally concluded that the decision at issue was invalid because it was clearly inappropriate in light of the common sense of society and went beyond the limits of discretion. The court rejected the defendant's argument that to take the substitute measures would violate the separation clause of the Constitution. Instead, it said that to give a grade in a physical training course to a student who cannot participate in *kendo* practice because of religious reasons should

Eiichiro Takahata

not be regarded as an activity whose purpose has religious meaning and whose effect supports, promotes, and fosters a certain religion, or one that oppresses and interferes with other religious believers or non-believers. Allowing the student to take an alternative means in any manner and condition cannot evidently be said to violate the separation clause. In public schools, it is not permitted to investigate or look into students' beliefs or to treat religions unequally. However, it does not violate the requirement of religious neutrality in public education to investigate whether a student's refusal of practicing *kendo* is a pretext of indolence or whether it has a reasonable relation to a serious religious tenet.

In both of these cases, the courts have balanced the state interest that would be impaired by exempting a religious practice from a generally applicable law with the value of the accommodation to the religious practitioner. On the one hand, the court in the Sunday school visitation case did not permit the children's request, stressing that public education must be neutral toward religion and that the petitioners were not actually disadvantaged—the only damage they had suffered was merely the record of the absence. On the other hand, the Supreme Court of Japan compared the interest of the college in requiring its students to practice *kendo* with the student's interest in not participating in the class as an exercise of his constitutional right. The Supreme Court emphasized that since *kendo* practice was not indispensable for the purpose of physical training in a college, denying the appellee's religious right subjected him to an unreasonable disadvantage. In so declaring, the Supreme Court held that the principal of the college would have to accommodate the student in this situation. Although the Supreme Court did not hold that forcing a religious person to make this choice violates the Constitution, this was a circumstance in which religious accommodation was needed. Since the disadvantage of the student was crucial, the Court held that the religious neutrality in a public school should give way to his right to exercise religion.

The Japanese government itself provides for religious accommodation in public schools. Japanese public elementary and secondary schools usually offer school lunch to the children. While no formal research has been conducted on religious accommodation for food served for school lunch, a few anecdotal examples of accommodation of those who have religious dietary restrictions are known. Edogawa Ward, a municipal government in Tokyo, gives special treatment to children who do not eat pork. As they would with a child with food allergies, schools ask parents whether their children need special accommodation for meals at the beginning of the school year in April. They usually do not offer different meals, but simply remove the foods that the children will not eat.⁴³

Religious education in private schools

Sectarian religious education is permitted in a private school. Since the government dropped the prohibition of religious education in approved private schools, it is understood that a private school is free to inculcate a religious tenet. Based on this understanding, Article 50, Paragraph 2, and Article 79 of the Ordinance for Enforcement of the School Education Act provide that a private elementary or secondary school may include a class for religious education to organize its curriculum or to substitute the class for a class for moral education. Religiously affiliated high schools may also offer a class for religious education as regular curriculum.⁴⁴

There are 115 high schools that are affiliated with the Roman Catholic Church. There are 93 Protestant high schools. Shinto affiliates with five high schools and Buddhist sects have 108 high schools. Newly developed religious sects also have 16 high schools.⁴⁵ Some 25 percent of all private high schools approved by the government are religiously affiliated. There is a wide variety of textbooks that are used at religious classes. The most are concentrated on religious

inculcation, while some books give general knowledge of religion and denominational differences.⁴⁶ Those textbooks for religious classes are not supposed to be examined by the government for accreditation.

Teachers who are in charge of the class must be qualified. The School Teacher's License Act prescribes that a religion teacher who gives a class in a secondary or high school should have a license of the subject, "Religion."⁴⁷ Those who want to be teachers should take a training course offered in universities (three of those are national universities).⁴⁸ The Ordinance for Enforcement of the School Teacher's License Act provides that a university student wanting to be a religious teacher needs to obtain credits in "Religion" and "Religious History."⁴⁹ A local government of prefecture level confers the license.⁵⁰ It is curious that while the government must refrain from religious education, it regulates religious teachers in lower institutions by licensing.

More than 60 percent of religious schools are Christian, but those schools seem to have little impact on increasing the actual number of Christian believers in Japan. The Christian population across Japan has increased almost three times from 1 million in 1980 to 3 million in 2006.⁵¹ Nevertheless, Christians are only 2.4 percent of the total Japanese population.⁵² Given the numbers and presence of Christian schools in Japan, it is hard to say that those institutions exert influence on bringing up young Christian believers. That is because most students who attend religious schools are non-believers and do not choose the school by its religion but its prestige or reputation for sending students to fine universities.⁵³ There are few schools that make religious education prominent in their offerings.

There are 39 universities and colleges affiliated with the Roman Catholic Church, 87 with Protestant denominations, four with the Shinto religion, 72 with Buddhist sects, and four with newly developed religious sects.⁵⁴ Some 20 percent of all private universities and colleges are religiously affiliated. Since universities and colleges are free from governmental control of the educational curriculum, there is no restriction on private institutions from teaching religious tenets or even training clergy.

State financial support for religious education

As noted above, the Japanese Constitution provides in Article 89 that no public money or other property shall be expended or appropriated for the use, benefit, or maintenance of any religious institution or association, or for any charitable, educational, or benevolent enterprises not under the control of public authority. Upon this provision, to confer public funds to support religious education is prohibited. And also giving the funds to private schools which are "not under the control of public authority" seems to be banned.

However, the government subsidizes private schools and universities with more than 425 billion Yen a year in 2009.⁵⁵ There is a controversy over whether the government's actual spending on the schools violates the constitutional prohibition. Reading the provision strictly, one argument suggests that most of the financial support for private schools and universities is unconstitutional because "under the control of public authority" must mean that the government has decisive power to control the business of the enterprises or institutions, such as deciding their budget or appointing staff.⁵⁶ In such a situation, no "private" institution independent from the government would exist. On the other hand, since private institutions are indispensable for sharing an important part of public education and to actualize the right to education that the Constitutional Law itself prescribed, some commentators maintain that the constitutional provision should not be interpreted so strictly and that being controlled or

Eiichiro Takahata

regulated by laws or ordinances is enough to be in compliance with the provision.⁵⁷ Some lower courts took the latter interpretation.⁵⁸

Under the latter argument, Article 59 of the Private Schools Act states that the national or local government may subsidize private institutions. Governmental surveillance on those institutions is articulated in the Act on Support for Promoting Private Schools. In Article 12 the act authorizes the government 1) to require the schools to submit reports on their business and books; 2) to inquire into the staff; 3) to audit; 4) to inspect facilities and articles of the schools; 5) to redress the number of students to the supposed number; 6) to alter the budget in a case of inadequate spending; and 7) to dismiss a member of the school board when he or she violates any laws. These requirements seem to conform to the constitutional provision.

There is no distinction between secular private schools and religious schools in their ability to receive funds.⁵⁹ Limiting subsidy only to secular schools appears to be a violation of equal protection, though the Constitution itself states that no public money or other property shall be expended for the maintenance of any religious institution. This might be one of the unique constitutional interpretations with respect to the religious and equal protection clause, which was taken by a famous Supreme Court decision.⁶⁰ The financial support covers ordinary expenditure of private institutions, which includes payment for teachers and costs for building and maintaining their facilities.⁶¹ There is no means to separate the funds from religious use.

The government also confers tax exemptions not only to religious corporations but also to hospitals, charitable corporations, and schools, including religiously affiliated schools, as public-interest corporations.⁶²

Notes

- 1 See Kyouiku Kihon Ho [the Basic Act on Education], Article 6, Paragraph 1; Gakkou Kyouiku Ho [School Education Act], Article 16.
- 2 See Gakkou Kyouiku Ho [School Education Act], Articles 29 & 45.
- 3 The rates in this chapter are calculated by the author based on Ministry of Education, Culture, Sports, Science and Technology, *Report on Basic Survey 2010*, available at <www.e-stat.go.jp/SG1/estat/New-List.do?tid=000001011528> [in Japanese].
- 4 Gakkou Kyouiku Ho Shiko Kisoku [Ordinance for Enforcement of the School Education Act], Articles 52, 74 and 84. See also *Fukuoka Prefecture Board of Educ. v. Handa*, 44 Minshu 1 (Sup. Ct., Jan. 18, 1990).
- 5 See Gakkou Kyouiku Ho [School Education Act], Article 34, Paragraph 1.
- 6 See Shiritsu Gakkou Ho [Private Schools Act], Article 1.
- 7 Kenpo, Article 13.
- 8 See Kazuyuki Takahashi, *Rikken-Shugi to Nihonkoku-Kenpo* [Constitutionalism and the Constitution of Japan] (2nd ed. 2010), 110–13.
- 9 See Nobuyoshi Ashibe, *Kenpo* [The Constitution] (5th ed. 2011), 151–52.
- 10 See Makoto Oishi, *Kenpo Kougi II* [2 Japanese Constitutional Law] 123 (2007).
- 11 See e.g., *Renge-ji v. Kubokawa*, 43 Minshu 889 (Sup. Ct., September 8, 1989).
- 12 See *Kakunaga v. Sekiguchi*, 31 Minshu 533, 559 (Sup. Ct., July 13, 1977) (Fujibayashi, C.J., additional dissenting).
- 13 See Conrad Totman, *A History of Japan* (2nd ed. 2005), 117–18.
- 14 See *ibid.* at 275–76.
- 15 In the *Edo* period, highly intellectual people who used letters and figures greatly supported Japanese society and culture. See *ibid.* at 236–51.
- 16 See W.G. Beasley, *The Meiji Restoration 2* (1972); Stuart D.B. Picken, *Essentials of Shinto* 35 (1994).
- 17 See Einosuke Yamanaka, *Shin Nihon Kindai Hou Ron* [New Japanese Modern Law] 122–23 (2002).
- 18 See *ibid.* at 123–24.

- 19 See Bunkacho Bunka-Bu Shu'umu-Ka, [Agency for Cultural Affairs, Cultural Affairs Dept., Religious Affairs Div.], *Meiji Iko Shu'ukyō Seido Hyakunen-shi* [Religious History of 100 Years Since Meiji Restoration] 3 (1983).
- 20 See Nobutaka Inoue, "Kindai Nihon no Shu'ukyō to Kyouiku" [Religion and Education in the Modern Japanese Society], in Kokugakuin Daigaku Nihon Bunka Kenkyu'u-jyo [Institute for Japanese Culture and Classics, Kokugakuin University], *Shu'ukyō to Kyouiku* [Religion and Education] 3, 14 (1997).
- 21 See Bunkacho Bunka-Bu Shu'umu-Ka, note 19, at 234.
- 22 See *ibid.* at 236–38. See also Yamanaka, note 17, at 129.
- 23 See Bunkacho Bunka-Bu Shu'umu-Ka, note 19, at 237.
- 24 See *ibid.* at 234–35.
- 25 See *ibid.* at 239–41.
- 26 See *ibid.* at 244.
- 27 See Kenpo, Article 1 ("[T]he people with whom resides sovereign power."); *ibid.* pmbl ("Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people.").
- 28 See Eiichiro Takahata, Japan, in 2 *Encyclopedia of World Religions* 456, 457–58 (Gerhard Robbers ed. 2007).
- 29 See Bunkacho Bunka-Bu Shu'umu-Ka, note 19, at 408–10.
- 30 See Oishi, note 10, at 117.
- 31 See Inoue, note 20, at 11–12.
- 32 See Gakkou Kyouiku Ho Shiko Kisoku [Ordinance for Enforcement of the School Education Act], Article 50, 72 & 83.
- 33 See text accompanying note 4.
- 34 See Motoshi Ohsaki, "Kyouiku Kihon Hou Kaisei no Rekishi to Mondai-ten" [The History and Issues of Amending the Basic Act on Education], 2007 *Gendai Huhu'ukyō* [Modern Religion] 39, 52–55.
- 35 The government guidelines for moral education are available at <www.mext.go.jp/b_menu/shuppan/sonota/990301/03122601/011.htm> (for elementary schools) and <www.mext.go.jp/b_menu/shuppan/sonota/990301/03122602/012.htm> (for secondary schools) [in Japanese].
- 36 See Gakkou Kyouiku Ho Shiko Kisoku [Ordinance for Enforcement of the School Education Act], Article 50 & 72.
- 37 The government guideline for a class of ethics at high school level is available at <www.mext.go.jp/b_menu/shuppan/sonota/990301/03122603/004.htm> [in Japanese]. See also Keiji Hoshikawa, "Koutou Gakkou no Shu'ukyō Kyouiku to 'Rinri' 'Gendai Shakai' no Kyoukasyo" [Religious Education in a High School and Textbooks for Classes of "Ethics" and "Modern Society"], 2007 *Gendai Hhu'ukyō* [Modern Religion] 63, 64–67.
- 38 high school student may choose to take a class of ethics among other classes of social studies.
- 39 See Supplementary Provisions to the Government Guideline at High School Level, available at <www.mext.go.jp/b_menu/shuppan/sonota/990301/03122603/026.htm> [in Japanese].
- 40 See Tetsuo Shimomura, "Jyugyou de Syu'ukyō wo Dou Atsukau-ka" [How to Treat Religion in a Class], in Tetsuo Shimomura, *Gakkou no Naka no Shu'ukyō* [Religion in Schools] 87 (1996).
- 41 37 Gyou Sai Reishu 347 (Tokyo D. Ct., March 20, 1986).
- 42 50 Minshu 469 (Sup. Ct., March 8, 1996).
- 43 For more details on religious accommodation cases and practices in Japan, see Eiichiro Takahata, "Religious Accommodation in Japan," 2007 *BYU Law Review*, 729.
- 44 The government guideline on education for high schools allows each high school to offer its own classes.
The guideline is available at <www.mext.go.jp/b_menu/shuppan/sonota/990301/03122603/001.htm> [in Japanese]. Religiously affiliated high schools offer classes for religious education as their own.
- 45 See Religious Information Research Center Home Page, <www.rirc.or.jp/schools/#name_search> [in Japanese].
- 46 See Inoue, note 20, at 21.
- 47 See Kyouiku Shokuin Menkyo Hou [The School Teacher's License Act], Article 4.

Eiichiro Takahata

- 48 See Ministry of Education, Culture, Sports, Science and Technology of Japan Home Page, <www.mext.go.jp/component/a_menu/education/detail/-icsFiles/afieldfile/2009/11/19/1287068_1.pdf> [in Japanese].
- 49 See *Kyouiku Shokuin Menkyo Hou Shiko Kisoku* [The Ordinance for Enforcement of the School Teacher's License Act], Articles 4 & 5.
- 50 See *Kyouiku Shokuin Menkyo Hou* [The School Teacher's License Act], Article 5, Paragraph 7.
- 51 See The Statistics Bureau and the Director-General for Policy Planning of Japan Home Page, <www.stat.go.jp/english/data/nenkan/1431-23.htm> [in English].
- 52 The Japanese population in 2006 was approximately 126 million.
- 53 See Inoue, note 20, at 20.
- 54 See Religious Information Research Center Home Page, note 45.
- 55 See Monbukagaku Hakusho 2009 [White Paper on Education, Culture, Sports, Science and Technology 2009] 200–201, available at <www.mext.go.jp/b_menu/hakusho/html/hpab200901/1295628_017.pdf> [in Japanese].
- 56 See e.g., Toshiyoshi Miyazawa, *Nihonkoku Kenpo* [Commentary on the Constitution] 742–43 (Nobuyoshi Ashibe ed., 1978).
- 57 See Yasuo Hasebe, *Kenpo* [Constitution] 347 (5th ed. 2011); Makoto Oishi, *Kenpo Kougi I* [1 Japanese Constitutional Law] 257 (2nd ed. 2009).
- 58 See e.g., *Igarashi v. Mayor of Yoshikawa Town*, 43 *Kominshu* 1 (Tokyo High. Ct., Jan. 29, 1990); *Ichikawa v. Kamo City*, 44 *Gyousai Reishu* 627 (Tokyo High. Ct., Jul. 20, 1993).
- 59 See *Shiritsu Gakkou Shinkou Jyosei Hou* [Private School Subsidizing Act], Article 4.
- 60 *Kakunaga v. Sekiguchi*, 31 *Minshu* 533, 540 (Sup. Ct., Jul. 13, 1977).
- 61 See Monbukagaku Hakusho, note 53, at 200.
- 62 See *Houjin Zei Hou* [Corporation Tax Act], Article 4, Paragraph 2.

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Religious education in Kazakhstan

Roman Podoprigora

Social context

Despite the fact that Kazakhstan is considered a Muslim country, the religious composition of the country is rather complicated. Under the latest population census, 70.2 percent persons recognize themselves as Muslims, 26.2 percent as Christians, 0.09 percent as Jews, and 0.03 percent as Buddhists. The percentage of unbelievers is 2.8 percent.¹

When estimates of the numbers of believers are made, very often the ethnic affiliation of citizens is taken to indicate their religion. Thus all Kazakhs, Tatars, Uzbeks, Uighurs, and other Asian nationalities that make up the majority of the population of Kazakhstan are often automatically considered to be Muslims. The same is true with the Slavic population: all Russians, Ukrainians, and Belarusians are often automatically considered to be members of the Russian Orthodox Church. However, most of these people do not in fact regard themselves as orthodox Muslims or members of the Russian Orthodox Church; they may take part in various religious ceremonies, but they do not go to the mosque or church regularly.² The above-mentioned population census is good evidence of the ethnic and religious affiliation of Kazakhstan. The religious affiliation coincides with ethnic affiliation to a large degree. At the same time, the general level of religiosity in Kazakhstan is rather low, to a large extent because of secularization in the Soviet period.

As for religious organizations, it is important to mention that during the Soviet period, Kazakhstan was remarkable for the great number of Protestant organizations and their influence.³ Today, despite the fact that it is still hard to speak of the dominant role of any religion, two religious organizations are now in fact coming to the fore: Islam and the Russian Orthodox Church. Yet Protestant organizations are still powerful; although their membership and influence have diminished because of emigration, primarily of ethnic Germans,⁴ a large number of Protestant missionaries have been active in Kazakhstan since the fall of communism.

According to data from 2008, more than 4,000 registered religious associations in the country include 2,337 Islamic, 281 Russian Orthodox, 82 Roman Catholic, and 1,180 Protestant organizations (Baptists, Seventh-day Adventists, Lutherans, Pentecostal and others).⁵

Roman Podoprigora

Constitutional context

Like any other country, Kazakhstan has a distinctive history of relations between state and religion. The two main peculiarities of this history are the comparatively late formation of the state as a political entity and the lack of developed religious communities in the geographical confines of modern Kazakhstan.

Kazakhstan does not have a long political history despite the fact that various political-state entities existed on the modern territory of the country: Turkic Kaganat, Kipchak Khanat, Mogulistan, Ak-Horde, and a few others. One of the famous formations was called Kazakh Khanate (from the fifteenth through the eighteenth centuries). Today this khanate is considered as the beginning of Kazakh statehood. The nomadic style of life created peculiarities in the organization of political power in the khanate: the concentration of power in the khan's hands, especially in land, military, and judicial issues; seasonal mutability of the impact of the khan's power; the domination of customary law; and an absence of developed institutions of political power such as the tax system, regular army, officialdom, and compulsory bodies.

A nomadic style of life also explains the instability of religious organizations. This lifestyle was incompatible with the establishment of centralized religious institutions. Tribes, dynasties, and ethnic groups typically confessed various pagan religions but, at different periods of history, Buddhism and Christianity achieved temporary influence on political issues.

Largely because of its geographical location, Kazakhstan is often considered to be a Muslim country, or at least a country under strong Muslim influence. This is, however, inaccurate. Although Kazakhstan does indeed lie in the area of traditional Islamic influence, it is located far from major Muslim centers. Historically, Islam appeared and spread in the territory of Kazakhstan much later than in other Asian countries. In general, the Islamization of the peoples of Central Asia was completed by the end of the eighth century, but the establishment of Islam as the main religion in Kazakhstan, especially in its northern regions, was not completed until the nineteenth century. The slow pace of this process can be explained by Kazakhstan's vast, thinly populated territory and the prevalent nomadic way of life of its population, as well as by the above-mentioned remoteness from the Muslim centers.

One of the historical events that had a strong influence on the political development of Kazakhstan was the entry of Kazakhstan into the Russian Empire in the eighteenth century. The joining of the Kazakh lands to Russia was a long and complicated process. Finally, at the beginning of the twentieth century, all Kazakh lands were under the state-political protectorate of Russia. Russian authorities put their own system of state administration and legislation onto Kazakhstan territory. In the first two decades of the twentieth century, the territory of Kazakhstan received a large number of Russians and Ukrainians rendered landless by tsarist agricultural policy.

State policy toward religious communities during this time period was based on the general imperial administration, with full control over religious activity. All religious organizations were under such control: the predominant religion (i.e. Russian Orthodox Church) tolerated religions (i.e. Muslims and Lutherans) and especially the persecuted religions (i.e. Baptists and Old Believers). The tsarist government appointed religious officials and sometimes paid their salaries, decided issues concerning the creation of new parishes and other religious units, and prohibited certain religious activity. It should be mentioned that the Russian Orthodox Church was the official state religion at that time. As for attention to religious education, the state supported the teaching of the predominant religion. During certain periods of time, the state also supported the Islamic educational institutions in order to keep its influence over the Muslims and strengthen the role of Russia in this part of the world. At the same time, all religious

educational institutions and their teachers were also under the supervision of government administration. For instance, the tsarist administration declined to teach persons who received religious education in other Central-Asia khanats.

The October Revolution (1917) signified a new stage in political development and state-church relations. In 1920, under Soviet decree, Kazakhstan for the first time received its own state system. The country was included as an autonomous national entity into the Russian Federation. In 1936, the Kazakh Autonomy was reorganized into the Kazakh Soviet Socialist Republic as one of the subjects of the U.S.S.R. In 1937, the Constitution of the new Republic entered into force. All Soviet constitutions (the last one was adopted in 1978) had formal democratic provisions, including those touching religious freedom, but in practice many of them were not realized. The communist ideology ran through all state legal systems at the time.

This time period covers dissimilar periods of state-church relations: from relative religious freedom at the beginning and ending of the Soviet period, to persecution and repression in between. Like any other republic of the former U.S.S.R., Kazakhstan was proclaimed an atheistic country where religion was considered a temporary social phenomenon. Religious doctrines were incompatible with communist ideology and the state actively assisted in the disappearance of religion. The realization of freedom of conscience declared in Soviet constitutions encountered many obstacles in real life. The believers and their associations were under total government control. There were a large number of limitations on religious activity: legal, institutional, and relating to property. Religious organizations had no status as legal entities for a long time. Furthermore, each action taken by religious leaders had to be approved by state bodies.

In this situation religious education was strongly limited. The Soviet government allowed certain religious centers to have a limited number of educational institutions only for training their own servants. Any appearance of religion in public schools (there were no private schools at that time) was prohibited. For instance, during Soviet times there were no religious educational institutions in Kazakhstan. The religious servants for Muslim communities were trained at the Islamic Institute (Tashkent, Uzbekistan). The religious servants for the Russian Orthodox Church and some Protestant communities were trained at the religious educational institutions in Russia. From time to time, in exceptional cases, the state would permit Sunday schools to function under the Orthodox parishes. Many religious communities (especially Protestant ones) had religious education under cover of different study groups until the state authorities paid attention to such practices.

Despite these obstacles, religious organizations have acquired stable institutional forms. The Soviet regime did not allow the existence of unknown, secret, or informal societies; all unregistered religious groups were illegal and their activity was punished.

Thus, three important features of the religious character of post-Soviet Kazakhstan are as follows. First, religion has played an insignificant role in the country during various periods of its history, and this has resulted in the underdevelopment of religious institutions and of state-church relationships. Second, there is no one dominant religion, due to the fact that the country has been a place of migration and deportation of many peoples with a variety of different religious faiths. Third, the intensive struggle against religion during the Soviet period has produced a predominantly secularized society and, as a result of that, a secularized educational system.

The modern stage of state-church relations began in the 1990s. On December 16, 1991, Kazakhstan adopted a constitutional law "On State Independence." It was at the time of the collapse of the Soviet Union and the erosion of communist ideology. The newly independent country needed a new organization of state power and its legal system. The old party-state

Roman Podoprigora

system could not meet the requirements of modern political and legal developments. The first Constitution of independent Kazakhstan, adopted in 1993, established the new political and legal regime. For the first time in its constitutional history, provisions about the separation of powers, individual priorities in state-individual relations, and equality of state and private property appeared. The Constitution of 1993 existed for only two years. In 1995, a national referendum adopted a new constitution. The main change expressed was the strengthening of presidential power and some democratic institutions were impaired. People justified this change by pointing to the problems of the reform period and the necessity of a strong power for a smooth transition from the old to new society.

The acting Constitution mentions several matters concerning religion:

- 1 In Article 1, point 1, the Republic of Kazakhstan proclaims itself a democratic, *secular*, legal, and social state whose highest values are an individual, his life, rights and freedoms.
- 2 Article 5, point 3, prohibits the formation and functioning of public associations pursuing goals or actions directed toward inciting social, racial, national, *religious*, class, and tribal enmity.
- 3 In accordance with Article 5, point 5, activities of foreign religious associations within the territory of the Republic, as well as appointment by foreign religious centers of heads of religious associations within the Republic, shall be carried out in coordination with the respective state institutions of the Republic.
- 4 Article 14, point 2, states that no one shall be subject to any discrimination for reasons of origin, social or property status, occupation, sex, race, nationality, language, attitude towards *religion*, convictions, place of residence, or any other circumstances.
- 5 Article 19, point 1, establishes that everyone shall have the right to determine and indicate or not indicate his national, party, and *religious* affiliation.
- 6 Under Article 20, point 3, propaganda of or agitation for social, racial, national, *religious*, class, or clannish superiority as well as the cult of cruelty and violence shall not be allowed.
- 7 Article 22 is entirely devoted to religious issues. Point 1 states that everyone shall have the right to freedom of conscience. Under point 2, the right to freedom of conscience must not specify or limit universal human and civil rights and responsibilities before the state. It should be mentioned that freedom of conscience is traditionally associated with freedom of religion or belief.
- 8 Article 77, point 3, sets the rule that the clergy shall not be obligated to testify against those who confided in them with some information at a confession.

Despite the fact that the Constitution does not mention any model or principles of state-church relations (like an official state church or religion, state neutrality on religious issues, or state cooperation with or separation from religion), the model of state-religion relations in the country can be characterized as a variation of a separation model. The involvement of religious organizations in state affairs is strictly prohibited. But the state considers its intervention into the affairs of religious organizations as possible and expedient. The model is also notable for strict government control and the necessity to receive state permission for different types of religious activity. There is not a preferred or privileged religion or group of religions in accordance with the Constitution or other legislation, despite the fact of a more privileged position of Muslim organizations and Russian Orthodox organizations in practice. There is also no reference to religion as a foundation or source of state law.

The Constitution does not mention any points regarding religious education.

Legal context

There is no specific legislation on religious education. The issue of religious education is regulated by the 1992 Law on Religious Freedom and Religious Associations (hereinafter “Religious Law”)⁶ and the 2007 Law on Education (hereinafter “Education Law”).⁷

Under the Religious Law, the state system of education is separated from religious associations and has a secular character. The parents or persons who replaced them have the right to bring up their children in accordance with their own beliefs, but coercive measures to recruit children to religion are not allowed. The religious upbringing of children must not hurt their physical and mental health and moral development.

Under the Education Law, the secular character of religious education is one of the principles of state policy in the educational area. It is prohibited to create religious organizations in educational organizations.

The Educational law also has a provision about licensing of religious educational institutions.

There are no specific bodies in the state structure that deal with religious education. All issues are under the control and supervision of the Ministry of Education and Science and Committee on Religious Affairs under the Ministry of Culture.

The state and religious autonomy

Religious autonomy is very limited in respect of different types of religious activity. And religious education is no exception in this sense. The state uses different instruments in order to control religious education.

First, the state has its own understanding of vague legislative provisions. Under such an understanding, religious education must be conducted only in the religious educational institutions that are created by religious organizations and registered by the state authorities. Thus, any other non-institutional activity, like Sunday school or home private education, is problematic. The state may use this understanding from time to time in order to exert influence over religious organizations, especially those not under the state patronage.

Second, no religious organization has the right to create a religious educational institution. Such right belongs only to religious centers or religious organizations whose activity covers two or more regions (oblasts).

Third, all religious educational institutions must receive licenses in order to conduct religious activity. The licensor is the Ministry of Education and Science. The licensing requirements are comparatively strong. They include: presence of full-time teachers who have higher spiritual education; presence of religious literature (50 units per trainee); presence of educational material resources (building, transport, etc.) and the right of ownership or other property right (there is no right to rent); the presence of medical provision for trainees; and the presence of a dining place for trainees.

So, such requirements create obstacles for getting licenses because some of them (e.g. teachers with higher spiritual education or medical provision) are not applicable for certain religious organizations.

Religion and state autonomy

There is not any particular religion given power to control religious education in public schools under state law.

Roman Podoprigora

The religious communities are free to create private schools. But, in order to conduct educational activity, private schools created by the religious communities must have a license issued by the educational authorities. There are a certain number of qualifying requirements and standards which are similar for any school (private or public). It means that private religious school is not free in curriculum issues. Once every five years, any school must pass through state attestation, which in general confirms the correspondence of educational activity of a private school to state standards.

If a religious private school has a license and passes through the state attestation, it has the right to issue diplomas of state standard.

State financial support of religious education

There is no state financial support for religious education. Moreover, under the Religious Law (Article 4), the state shall not finance religious associations.

The current model of religious education in Kazakhstan

In general, the model of current religious education in the country can be characterized as non-confessional and non-denominational.

Religious education in public schools

Religious education in public schools is prohibited. There is, nevertheless, some attempt to include courses that teach general, non-confessional knowledge about religion for senior pupils. In 2009, the Ministry of Education and Science proposed an experiment to introduce into high school curricula the subject "Basis of Religious Knowledge," a secular course taught by secular teachers.

Such an experiment was accompanied by many difficulties due to the absence of well prepared teachers and textbooks with neutral content.

Religious education in private schools

Theoretically, a certain kind of religious education is permitted in private schools, including those schools created by religious associations. But, in practice, there are many difficulties with this kind of education because the Law on Education secures the secular character of the educational system, and the state educational standards exclude any types of religious education.

Moreover, in practice, state authorities issue informal instructions with orders to exclude any appearance of religious artifacts, texts, or symbols in schools.

Taking into account the above-mentioned circumstances, religious education is considered predominantly to be the training of religious servants. But, even with such an approach, religious education is allowed in registered and licensed educational institutions which can be created only by religious centers or big religious organizations. There is no place for teaching of religion in public and private schools that is not specifically for the training of religious servants.

Notes

- 1 See *Kazakhstanskaya pravda*, November 16, 2010.

- 2 Sociological research in Kazakhstan shows that 11.9 percent of the population consider themselves believers and 41 percent identify themselves as believers who do not participate in religious life. See *Kazakhstanskaya pravda*, September 12, 2006.
- 3 In 1989 there were 671 religious associations in Kazakhstan, of which 168 were Evangelical Christian-Baptist, 171 Lutheran, 62 Russian Orthodox, and only 46 Islamic. See V. Ivanov and Ya Trofimov, *Religii v Kazakhstane*, Vysshaya shkola prava "Adilet" (Almaty, Kazakhstan, 1999). Most of the Protestants in Kazakhstan during the Soviet period were Germans and Ukrainians. More than 70 percent of the religious associations active in Kazakhstan in 1990 had total or partial German membership. See A. Artem'yev, *Ateizm, religiya, lichnost'* (Almaty, Kazakhstan, 1990), 50.
- 4 According to official data, 80 percent of the ethnic Germans in Kazakhstan have emigrated to Germany. Many members of other ethnic groups who were deported to Kazakhstan in the 1930s are also leaving. See *Panorama* (newspaper), November 11, 2000.
- 5 *Kazakhstanskaya pravda*, April 18, 2008.
- 6 *Vedomosti Verkhovnogo Soveta Respubliki Kazakhstan*, 1992, no. 4.
- 7 *Vedomosti Parlamenta Respubliki Kazakhstan*. 2007, no. 20.

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Religion and Education in Latin America

Juan G. Navarro Floria

Introduction

When dealing with the history and culture of Latin America, one must necessarily bear in mind the religious factor, particularly the role played by the Catholic Church in the region.¹ This assertion applies to all current Latin American countries, even though their political and legal evolution has been uneven.

Today, diverse models of religious teaching in school coexist in Latin America. While in some countries religion holds a significant presence in schools, in others it is virtually absent.² This diversity reveals that Latin America is not a homogenous reality, but rather a spectrum of countries sharing a common cultural background and a significant phase of their history, while having gone through different and sometimes opposing developments in certain matters.

Religious education has singularly been—and still is—one of the “battlefields” between religion and certain ideologies or political streams that in certain times and places have mastered countries, and master them even now. In a positive sense and using a classic terminology, we may hold that education is a “mixed matter,” or in other words, an area of common interest for the church as well as for the state, where each player deems itself entitled to play a directive role.

Therefore, depending on what the dominant ideologies are or have been, agreements have been reached or relationships have broken off between the state and the religious communities, turning education into an institution of conflict. In Latin America, for obvious reasons, when speaking about “the church” we mean first and foremost the Roman Catholic Church, although in recent times other religious stakeholders have made their appearance and involved themselves in these dynamics of covenant or confrontation.

Should it be possible to synthesize the development in this respect in a way that embraces the whole of the continent, it is important to distinguish several periods of history.

1 *A “pre-history,” consisting of a stage prior to the arrival of the white man and of Christianity.* At this point, we cannot easily assert the existence of common traits, given the vast diversity of cultures existing in pre-Hispanic America and the sharp difference in their relative development. Nonetheless, we do know that the religious element was essential in all of them,

pervading the whole life of individuals and communities. Education, which was obviously not the formal education as we know it today, must have necessarily contained a significant component of “religious” education (i.e. education in the spirituality and world view typical of the indigenous peoples).

- 2 *The stage of the Spanish and Portuguese conquest, and the colonization and integration into the Spanish Empire of the current Latin American countries.* In this stage, because the Spanish conquest—unlike other colonial experiences—always and prominently pursued a civilizing and evangelizing purpose, education in general and religious education in particular were extremely significant. The very goal of the conquest (at least in papers and in the intent of the first Spanish kings) was to evangelize the indigenous peoples, i.e. to educate them in the Christian faith.

Thereby, the educational task—with the typical ways of the times—was trusted mainly to the Catholic Church and, within it, to religious orders in particular. It was the church that created the first schools, the first universities, introduced the press, lent a written form to the indigenous traditions and their languages, and assumed educational endeavor in general. Naturally, such education was clearly and definitely oriented towards (Catholic) religion. Religion and the Catholic Church were privileged instruments of the state for the conquest and cultural homogenization of the American peoples. Catechisms were the textbooks wherefrom natives learned to read and write.

The stage of the Spanish and Portuguese domination in Latin America lasted three centuries (sixteenth, seventeenth, and eighteenth) and deeply marked the region’s culture, setting the Catholic Church as the central and almost sole religious presence.

- 3 *The independence of the current Latin American countries* from 1810 onwards, did not bring large changes at first, yet triggered a turbulent period of wars and revolutions, further introducing and spreading the “new ideas” of the Enlightenment. The revolution took place after the reforms introduced by the Spanish kings of the House of Bourbon, who were less prone to religion than their predecessors of the House of Austria, which regarded it under a more utilitarian light. Religion was indeed a tool of social control through several means, among them education; yet at the same time those kings sought higher direction through political authority (which, for instance, produced the expulsion of the Company of Jesus—the Jesuits—as being far too independent and powerful).
- 4 *The second half of the nineteenth century and the early twentieth century* was in nearly every country of the region a time of harsh ideological controversies, between a basically “conservative” stream (supported, in general, by the Catholic Church or at least by the bishops) and a “liberal” one (bearing a strong rationalistic influence and an anti-religious—anti-clerical, at any rate—tendency). The outcome of this strife differed depending on the places and even times within a single country. Following the dominant trend in one or other place or time came the model which eventually prevailed in the educational sphere (and specifically regarding the place of religion in education). It is evidenced by constitutions and legislations, but above all, by reality.
- 5 *The twentieth century and the 21st century so far* have witnessed the extension and development of education in the region, again nuanced from country to country. More slowly than desired, school education tends to become universal; nevertheless this purpose has only been attained in some places. The degree of school system development varies, keeping no direct or manifest relationship with the position held by religion within that formal education.

Juan G. Navarro Floria

The different models of religious education

Given such uneven historic evolution, Latin America does not have one single model for the teaching of religion in public schools. Only in some countries may religion be taught in state-owned public schools. In various forms, religious teaching is offered under different schemes at schools in Bolivia, Colombia, Costa Rica, Chile, Guatemala, Haiti, Honduras, Ecuador, El Salvador, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, and Venezuela.³ In Brazil and in Argentina, which are federal countries, only a few provinces or states leave room for religion in school teaching.

In some countries, constitutions refer to the teaching of religion at schools in different ways. They sometimes establish that diversity be guaranteed (Bolivia, Paraguay), or that religion may be taught provided that class attendance is optional (Brazil, Peru). In other cases, they set forth mandatory secular public teaching (Mexico, Honduras, several Argentine provinces), although they sometimes express that privately-owned denominational schools may teach religion (Ecuador, Nicaragua). The Panama constitution provides mandatory teaching of Catholic religion at schools, although class attendance is optional for students.

Other constitutions, instead, remain silent on the matter (Chile, Argentina, Colombia, Costa Rica, El Salvador, Guatemala, Dominican Republic, Uruguay), or merely acknowledge the parental right to ensure that children receive religious education according to their convictions (Venezuela).

Cuba's constitution does not deal with the subject, and claims to guarantee religious freedom; yet according to law and in practice, religious teaching is forbidden at public schools and, moreover, schools owned by churches or religious communities are banned. Therefore, all religious teaching is forbidden in public schools.

In Latin America, a significant source of law governing the relationship between the state and the Catholic Church are the concordats or agreements with the Holy See.⁴ However, several concordats in force are silent concerning religious education.

In the case of Bolivia, an agreement with the Holy See entrusts Catholic missionaries with the teaching of religion at public schools, further enabling the church to have its own schools, although this matter is currently under discussion. The concordat with Colombia guarantees the church's freedom to have its own schools, as well as mandatory education of Catholic religion at public schools with syllabi and books approved by the church; the church is also authorized to approve all professors who will be instructors in religion. Broadly speaking, the concordat with the Dominican Republic and the Agreement with Peru are worded in similar terms.

The recent agreement between the Holy See and Brazil guarantees the Catholic Church ownership and management of its own schools. It also provides that:

optional religious teaching, whether Catholic or from other denominations, is a discipline within the usual hours of elementary public schools, ensuring respect towards religious cultural diversity in Brazil, pursuant to the constitution and further laws in force, without any kind of discrimination.

This rule is particularly noteworthy because it is the latest agreement subscribed by the Holy See with a Latin American country (and one of the most recent worldwide), and because it guarantees not just the teaching of the Catholic religion, but of all other religions as well.

As already noted, the teaching of religion at schools is forbidden in Cuba; but it is also forbidden in Mexico, Uruguay, and most provinces in Argentina (these last three countries,

though, authorize the existence of schools owned by churches and religious communities, which do teach religion).

In the final analysis, we find the following:

- 1 Countries where the teaching of religion is forbidden, such as Cuba.
- 2 Countries where it is forbidden at state-owned schools, yet allowed at privately-owned denominational schools (Mexico, Uruguay, Argentina, Paraguay, Ecuador).
- 3 Countries where, in theory, religion classes may be conducted, although in practice this does not occur (such as Brazil or Venezuela).
- 4 Countries where, in theory, public schools must offer different religion courses, yet in practice only Catholic religion is taught (such as Chile, Peru or Bolivia).
- 5 Countries where public schools teach Catholic religion and optionally others—mainly the Evangelical religion (such as Colombia).

Throughout the Latin American region, except for Cuba, denominational schools are permitted (owned by churches and religious communities), and naturally they teach their own religion. In Mexico, this has been possible only since 1992.

Where religion is taught at school, it is never mandatory: either students or their parents have the option to exempt themselves from such courses. On the contrary, where laicism prevails, it is mandatory and imposed on all students.

International human rights law

Concurrent with the international system on human rights, whose main treaties have generally been ratified by Latin American states and incorporated into their own legal body of rules, even vesting them with constitutional hierarchy, the Americas have developed their own system for the protection of human rights.⁵

The system's primary tool is the Inter-American Convention on Human Rights, or *Pacto de San José de Costa Rica*, created in 1969. The pact devotes one article (Article 12) to guarantee the right to "Freedom of Conscience and Religion," in similar terms to Article 18 of the 1966 International Covenant on Civil and Political Rights. This article, in addition to guaranteeing freedom of religion, also protects the freedom to "disseminate" one's religion or beliefs, either individually or together with others, and dedicates one paragraph to education by saying: "4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions."

The Latin American pact was supplemented in November 1988 by an Additional Protocol in the area of economic, social and cultural rights, known as the "Protocol of San Salvador."⁶ Its Article 13 deals with the "Right to Education," yet it notoriously fails to mention religious teaching. It merely expresses that education "ought to enable ... [a] pluralistic society" and "should foster understanding, tolerance and friendship among ... all racial, ethnic or religious groups." It says nothing about religious teaching at school, although it sets forth that "4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above," and that "5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties."

Unlike Europe, where the European Court of Human Rights has rendered a great number of judgments concerning education as well as religious freedom, the Inter-American Court on

Juan G. Navarro Floria

Human Rights has virtually not dealt with these matters at all. Only once did it render judgment about a possible violation of religious freedom guaranteed by Section 12 of the Latin American pact, and education was not concerned.⁷

However, there is an international decision involving one country of the region (Colombia) and referring to the teaching of religion. It is the decision by the UN Human Rights Committee, dated August 23rd, 1990, *William Eduardo Delgado Páez vs. Colombia*.⁸ The claimant had lost his job as a professor of religion at a public school because the ecclesiastic authority had revoked his license to teach Catholic religion. Colombian legislation requires that schools' religious syllabi, and professors of the subject, be approved before by the authority of the pertinent church or religion (in that case, specifically, the Catholic Church). The Committee resolved that:

With respect to article 18, the Committee is of the view that the author's right to profess or to manifest his religion has not been violated. The Committee finds, moreover, that Colombia may, without violating this provision of the Covenant, allow the Church authorities to decide who may teach religion and in what manner it should be taught.

Conclusion

The history of the Latin American countries from their independence has been a history of tensions between religion and politics. In the former stage (colonial), religion, law, and government were intricately entwined. The Catholic religion, the only one permitted, was a powerful element of social cohesion. And education was largely in the hands of the Catholic Church.

The drive that resulted in the independence of Latin American countries was not anti-clerical in nature. Yet in the process of building themselves, the national states and governments would appropriate some of the areas of social life which until then had been monopolized, or at least strongly influenced, by the Catholic Church. One of them was education.

At that point, the public schools turned into a battleground between conservatives and liberals, between Catholics and freethinkers or masons. The outcome of these tensions differed from place to place.

Over time, other players emerged—minority churches and religious denominations. Today, they account for an ever-increasing percentage of the population, which varies among the countries. Concomitantly, old tensions between church and state have led to a new paradigm in the relationship between religion and society: the assertion of religious freedom as a fundamental human right. In this new arena of religious diversity, and of state neutrality or laicism, the place of religion at school is once again a subject of considerable discussion.

Notes

- 1 See, among several others, Mariano Fazio, *Evangelio y culturas en América Latina*, Buenos Aires, Promesa, 2011.
- 2 About this matter in general, and some countries in particular, see Asiain Pereira, Carmen (coordinator), *Religión en la educación pública. Análisis comparativo de su regulación jurídica en las Américas, Europa e Israel*, Madrid, Fundación Universitaria Española, 2010.
- 3 Latin American Episcopal Conference. Department for Education. *Orientaciones generales para la educación religiosa escolar en América Latina y el Caribe* (1999. Revisión 2001). Quoted by David Lara Corredor, "La libertad religiosa y el problema de la educación: la presencia de lo religioso en el ámbito público," <www.libertadreligiosa.net/articulos/LaraD%20%28III-6%29.pdf>.

- 4 In this regard, see Juan G. Navarro Floria, coordinator, *Acuerdos y concordatos entre la Santa Sede y los países americanos*, Buenos Aires, Educa, 2011.
- 5 On the religious factor, see Evaldo Xavier Gomes, *Liberdade de religião no sistema Interamericano de proteção dos direitos humanos*, Roma, Pontificia Università Lateranense, 2008.
- 6 The protocol has been ratified by Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, and Uruguay.
- 7 Other references to religious freedom or religion may be found in judgments concerning violations to the rights of indigenous communities (such as the right to own land), yet again with no reference to formal education.
- 8 CCPR/C/39/D/195/1985.

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Religious education in Latvia

Ringolds Balodis

Demographics

The statistical data currently available is quite disputable because, since the last census in 2000, ten years have passed.¹ An economic crisis, which started in 2007, has had a significant impact on Latvia, and economic emigrants and immigrants have also affected the religious landscape. Considering the data available in the public space there are 2.3 million inhabitants in Latvia. National or ethnic composition is: Latvian 57.6 percent, Russian 29.6 percent, Byelorussian 4.1 percent, Ukrainian 2.7 percent, Polish 2.5 percent, Lithuanian 1.4 percent, Jewish 0.4 percent, German 0.1 percent, other 1.6 percent.² According to a survey made by a Latvian public opinion research center in 2003, 49.3 percent of the inhabitants of Latvia do not read the Bible, 4 percent read the Bible almost every day, and about half read the Scriptures from time to time. According to the survey, the declared religious affiliations of the population are: Orthodox 25 percent, Lutherans 25 percent, Roman Catholics 21 percent, Old Believer Orthodox 2.7 percent, Adventists 0.4 percent, and Jews 0.1 percent. In this survey 9 percent considered themselves to be believers without identifying themselves with any particular denomination, while 12 percent declared themselves to be non-believers. There are significant numbers of atheists. Orthodox Christians, many of them Russian-speaking, non-citizen, permanent residents, are concentrated in the major cities, while many Catholics live in the east.

In the academic year 2009–10, there were 948 schools of comprehensive curriculum in the state: 45 of these were primary schools, 463 elementary schools, 377 high schools, and 63 special schools.³ In Latvia, 19 Christian educational institutions received state licenses in 2009; 13 of these are state schools.⁴ The others are preschool institutions (for example, the Christian consultative and play center of the Jesus parish “Jēriņš” (“Lamb”)). There are also elementary schools of nontraditional religions, for example the elementary school of Priekā vests “Harmōnija,”⁵ which includes grades 1 to 6.

Traditional, and, other nontraditional religion subjects, such as Judaism, are not compulsory in Latvia. Each school may offer these subjects as electives. The standard in these subjects is formed through coordination with the Ministry of Science and Education.⁶ Since September 1, 2004, either Ethics or Religion has been offered as compulsory subjects in grades 1–3; the parents of pupils have to choose one of the mentioned subjects beforehand.

By taking a broader perspective on the interpretation of the Law on Religious Organizations, it can be stated that Christian teaching is the teaching of the common faith principles in the Bible. Christian teaching is interdenominational; it concentrates on the essentials of Christianity that are important to both the state and society. In Christ's teaching the open society model is with God at its center and the human as the highest value in it.⁷ In the Christian teaching students gain knowledge and understanding about the order of the world created by God; learn to master the skills of Christian life (praying, serving, and commonwealth); and create motivation of action based on Christian values. For example, the Evangelical Lutheran Church declares that by learning the Christian teaching under democratic circumstances students will be able to create their own world outlook.⁸ According to the Law on Religious Organizations (Article 1.6.), Christian teaching is the system of views, doctrines, and ideas of certain Christian denominations, but religious teaching (Article 1.7.) is a system of certain religious views, doctrines, and ideas. According to the law everyone shall be entitled to acquire religious teaching, either individually or together with others in the educational institutions of religious organizations, but in the state and municipal schools only the Christian religion may be taught to persons who have expressed such a wish. Since 1998 the law has been supplemented by Article 6 (5), which provides that religious teaching and ethics classes are financed from the state budget.

As already mentioned, in Latvia if a student does not want to receive religious teaching he/she has to choose teaching of ethics. The amount of the compulsory subjects and their content⁹ in educational programs of the institutions run by the local governments that provide general education and private educational institutions that carry out licensed general elementary or secondary education programs of the Republic of Latvia is defined by Regulation No. 1027 of the Cabinet of Ministers of December 19, 2006 ("Regulations on the State elementary education standard and elementary education subject standard") and Regulation No. 715 of the Cabinet of Ministers of September 2, 2008 ("Regulations on the State general secondary education standard and general secondary education subject standards").

The standards of the subjects included in these regulations define the basic demands for these subjects on completion of grades 3, 6, 9, and 12, but they do not define the order of their attainment. In the examples of the educational programs publicized by the State Educational Content Center the order of the teachable subject themes is provided by school year, as well as according to methodological information, but nevertheless those are recommended documents and are not legally mandatory for educational institutions that do not act under the supervision of the Ministry of Education and Science.

Religious instruction after 1990

On May 4, 1990, the Supreme Council of the Latvian Soviet Socialist Republic adopted the declaration "On restoration of independence of the Republic of Latvia"¹⁰ and Latvia began a rapid dismantling of the Soviet system. This applied both to the economy and the limitations of human rights. By taking into consideration the wish of Latvian religious organizations to initiate positive action even before the adoption of the so-called constitutional law "On human and citizen rights and responsibilities,"¹¹ on September 11, 1990, the law "On Religious Organizations" was adopted. This law regulated the registration issues as well as the rights of the religious organizations to religious education. In Article 3 ("Education and Religious Organizations") of the law, it was stated that religious education may be taught individually or together with other students in religious organization schools, Sunday schools, hobby groups, summer camps, as well as, on a voluntary basis, at extracurricular activities, and public and private educational institutions. This law stated that the public and private school students in the study process will be

Ringolds Balodis

provided with the opportunity to become acquainted with different religious content, nature, and history. The law did not provide a specific number of denominations or churches that would be allowed to teach religion. The law “On Religious Organizations” of September 11, 1990 was replaced by a new law on religious organizations¹² on September 7, 1995; this happened because the law of 1990, like other laws adopted at that time, was incomplete and poorly drafted.

The Law on Religious Organizations of 1995 provides a specific range of denominations that have the right to teach religion in schools. The early romanticism of regaining independence had diminished and instead harsh competition between the religions emerged. Even *dievturi* (Latvian Pagans), who during the national awakening were seen as a symbol of freedom, were excluded from schools. Despite the desperate attempts to enter the circle of those denominations that can teach children religion, they are in the same situation as the new movements. Basically, the new religious movements are the ones that entered Latvia after the drop of the “iron curtain”—the Jehovah’s Witnesses, Scientologists, charismatic Christians, Mormons, and similar nontraditional groups. Even though the number of new religious organizations is rapidly growing, they cannot qualify to enter the list of denominations that have the right to teach religion, because they have to fight for registration.

First, parishes of Jehovah’s Witnesses were registered in the Ministry of Justice of the Republic of Latvia in October 12, 1998; nevertheless only in 2008 did they obtain “independent religious organization status” enabling them to begin entering the schools with their teaching. A similar arrangement was made with the Mormons. A different situation arose with the Methodists and Adventists, who, judging by Article 6 of the law “On Religious Organizations” of 1995, were not counted in the “chosen denominations” that may teach in schools. Both Adventists¹³ and Methodists¹⁴ have such rights stipulated in their special laws. The author believes that the placement of these two confessions on the list of the law “On Religious Organizations” is only a matter of time, as they have both confirmed the special status of traditional denominations¹⁵ after the adaptation of their special laws.

Legal sources

In the Constitution of the Republic of Latvia (*Satversme*) religion/church is mentioned only in Article 99, which declares that: “Everyone has the right to freedom of thought, conscience and religion. The Church shall be separate from the State.” This provision was included in the Constitution in 1998, when the Constitution was supplemented with a new section on human rights. In practice Latvia is a partial separation state, where constitutionally declared separation of church and state does not work in practice. Latvia does not associate itself with any specific religion, and the main question is not about religious tolerance, but about the meaning of church and state separation in the Constitution, because there is no clear opinion about where the borderline between the state and church should be strictly marked. The state and the church are separate; however, if we speak about the main conditions that ensure state–church separation, then practically none of these conditions exists in Latvia.

The clause specifying religious freedom that is included in Article 99 of the Latvian Constitution should be noted. It follows the right to religious education contextually treated in the Constitution through the prism of Article 112 (rights for education), because the same Article provides the right of everyone for education. Article 114 also states that “persons who belong to the minority nationality, have a right to preserve their language and cultural, ethnic particularity.” It all indicates that every person in Latvia, including minorities, has an equal right to the free choice of religion. This is also declared in Article 2 of the Law on Religious Organizations, which states: “The state does not grant any privileges to any religion or confession.”

The religious freedom clause included in Article 99 of the Constitution's first sentence includes the freedom to freely believe or disbelieve, and to practice or not to practice faith. The right to withdraw from religious education or the right to alternative education does not need to be *expressis verbis* in the basic law of the state, but arises automatically from the positive and negative breakdown of religious freedom. The rights to protection (for example, of symbols, etc.) of their own religion (religious belief) can be as widely interpreted as the rights to religious rituals. The state has an obligation to provide individuals and/or religious organizations with space for action where the world outlook can develop and be guarded from the followers of other religions or the attacks or restrictions of competing religious groups. Without doubt one can add to this the rights to religious education, which includes also the rights to study one's own religion, the rights to the provision of religious education, the rights to training of clergy, the rights to creation and distribution of religiously educational literature, and the like.

The content of education is regulated by the Law on Education, adopted in 1998. Articles 32–35 of this law state that the content of subjects (lessons) is regulated by the standards of the subjects. According to the generally approved order, such subjects as religion, history of culture, Christian lessons, ethics, and Christian ethics are considered as value-educational and help to form the paradigm of education.

The principle of the freedom of religion was settled as the purpose of the Law on Religious Organizations from September 7, 1995. The purpose of the law in accordance with Article 2 is to grant the inhabitants of Latvia the right to freedom of religion, including the right to freely state one's attitude towards religion, to adhere to some religion, individually or in community with others, or not to adhere to any religion, and to change freely one's religion in conformity with the existing legislative acts. The Law on Religious Organizations, in compliance with the Constitution, as well as international agreements concerning human rights in the sphere of religion, regulates social relations established through exercising the right to freedom of consciousness and through engaging in the activities of the religious organizations. The state protects the legal rights of religious organizations as prescribed by the law. The state, municipalities, and other organizations shall not be authorized to interfere with the religious activities of religious organizations.

Under Article 6 of the Law on Religious Organizations, the Christian religion may be taught in state and municipal schools to persons who have requested it in writing. Applications by minors to be taught the Christian religion must be approved by parents or guardians. If the minor is under 14 years of age, the minor's parents or guardians submit the application.¹⁶ The concept of Christian religious instruction does not include and cannot include the Jewish faith or Islam. Due to the very small number of Muslim and Jewish students, neither the parochial management of the Muslim nor the Jewish parish has been interested in teaching their faith in schools. The Christian religion, in accordance with the curriculum approved by the Ministry of Education and Science, may be taught by teachers of the Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers, or Baptist denominations, if not less than ten students of the same school have expressed their wish to study the religious teaching of the relevant denomination. The teachers must be selected by the denomination leaders and be approved by the Ministry of Education and Science. Ethics is offered as an alternative to religious instruction. Students at state-supported national minority schools may also receive education in the religion "characteristic of the national minority" on a voluntary basis. Other denominations may provide religious education in private schools only. Those organizations that have no rights to teach religion in schools put their emphasis on Sunday schools. For example, on Sundays parents go to mass while children aged three–ten years are taught in Sunday school.¹⁷ Many denominations have developed a comprehensive system of Sunday schools. For example, the Baptist

Ringolds Balodis

congregations in Latvia, embracing more than 6,200 members, have Sunday schools attended by approximately 5,000 children.¹⁸

According to the law, everyone, individually or in groups, has the right to religious instruction in the educational establishments of religious organizations. In national minority schools supervised by the state or municipalities, if such is the wish of the students and their parents or guardians, the religion appropriate to the particular national minority may be taught in compliance with procedures prescribed by the Ministry of Education and Science. Thus for example, the Orthodox, whose religion is not mentioned in the Law on Religious Organizations, can ensure that there are religious classes for their children.

Agreements and special laws

In Latvia, there are two types of legal agreements between the church and the state: international and national. The international agreement (and in the Latvian case there is only one, signed with the Holy See in 2000), unlike national agreements that were signed with local churches in 2004, has higher rank (legal status) than laws.

The Latvian Parliament on September 12, 2002 ratified the agreement with the Holy See. Accordingly, the teaching of the Catholic religion shall be conducted exclusively on the basis of a program approved by the Bishops' Conference of Latvia, in agreement with the Ministry of Education and Science, and must be undertaken only by qualified teachers who possess a certificate of competence issued by the Bishops' Conference of Latvia; the revocation of the certificate carries with it the immediate loss of the right to teach the Catholic religion. In accordance with Article 9(a) of this agreement, "With respect to the laws of the Republic of Latvia and in view of its legitimate pastoral undertakings," the Catholic Church is guaranteed freedom of access to the media and freedom of speech, including the establishment of its own means of social communication and access to those of the state, in accordance with the legislation of the Republic of Latvia. The Catholic Church has the right to establish and manage schools at every level, in conformity with the laws of the Republic of Latvia and the norms of canon law. The foundation of Catholic schools shall be requested by the Bishops' Conference of Latvia, the latter acting on behalf of the local Ordinary. Catholic schools, as well as institutions of higher formation, shall observe the laws of the Republic of Latvia concerning the general norms relating to the national curriculum. Catholic schools are entitled to financial support, in accordance with the laws of the Republic of Latvia. Teachers and other employees in officially recognized Catholic schools, as well as students and their parents, shall enjoy the same rights and have the same obligations as their counterparts in state and local government schools.¹⁹

Agreements were made in 2004 between the Cabinet of Ministers and churches due to the discontentment of the traditional churches regarding the exclusiveness of Roman Catholics that stemmed from the 2000 agreement with the Holy See. Each of these agreements has a preamble recognizing the special role of the Christian faith in the existence of the legal system of the country and system of values of society, as well as its significant contribution to the morale and process of socialization of the society.²⁰ In every agreement there was also implemented the right to teach religion in schools run by the state and local government. For example, according to the agreement signed on June 8, 2004, between the Republic of Latvia and the Evangelic Lutheran Church of Latvia (Article 14. Religious lessons), the Evangelic Lutheran Church of Latvia has the right to teach religious lessons in line with the regulatory enactments of the Republic of Latvia according to a curriculum jointly approved by the Ministry of Education and Science and the Evangelic Lutheran Church of Latvia. Although the agreements were made

based on the experience of Spain, Italy, Hungary, and Poland in this sphere,²¹ agreements had to be implemented in laws so that, in accordance with the demands of the Latvian legal system, they would acquire legal power. On the basis of the request from the Parliament (Saeima) Legal Office, under the leadership of the author of this chapter, the Ministry of Justice prepared seven special laws which were accepted in parliament in 2007–08.²² The primary reason for draft laws was to strengthen the relationship included in the agreements of 2004 between the Republic of Latvia and its traditional churches. After long and difficult negotiations that took place between the representatives of church, deputies, and legal service of the parliament it was broadly accomplished. In the end, questions regarding Sabbath were not included in the laws of Seventh-day Adventists and Jewish groups and the Lutheran Church did not succeed in including tax breaks in their laws.

Finally, when comparing the rights of traditional churches that have been established by the law, it can be seen that the Roman Catholic Church has the largest number of issues mentioned in the law regarding education, despite the fact that it does not have a special law.

Requirements for teachers of religion

In order to be able to teach Christianity, the teacher must have a degree in pedagogy as well as have graduated from or be enrolled in one of the aforementioned schools. Since 2004, more than 700 teachers have received the certificate to teach Christianity. Until 2009, the teacher had to receive a permit from the higher leadership of their denomination under the responsibility of the parish priest (with the aim of not letting representatives of different sects into the schools). When starting work, the teachers are not asked about their religious leaning or beliefs.

Religion taught in the framework of literature, history, philosophy, arts, and language courses

The teaching of religion, fully or partially, in the context of the Latvian system of education, is included in the elective subjects “Christianity” or “Teaching of Christian Faith.” Other subjects with state-approved syllabi do not include religious themes, so, according to the Ministry of Education and Science, one cannot determine the share of religion in them.²³ By coordinating with the administration of each school, the teacher determines the order of themes to be taught within each subject as well as the number of hours to be spent on specific themes.

The standard high school syllabus of “Biology” determines the body of knowledge and skills to be taught at the secondary level of education. In Appendix 12, point 16.8 of the provisions by the Cabinet of Ministers of September 2, 2008, Number 715 (“Provisions concerning the standard of comprehensive standard of secondary education and the standards of subjects of comprehensive secondary education”), it is said that the student, having learned biology, has become acquainted with the main laws of the origin of life and evolution. In public, opinions have been voiced about the hegemony of Darwinism in schools and the need to teach the so-called theory of intelligent origin, but they have not gained much ground and may be considered merely as exercising one’s rights to an opinion. According to the adherents of this theory, life is so complex that only an outside force could have created it, hence there must be some “intelligent designer.”

In the subject of Culture, which is also an elective, religion is treated as a form of culture, and is an integral part of it. In History (compulsory), the syllabus includes a short survey of the history of religion. Philosophy, similarly, includes religion in the context of the main subject.

Ringolds Balodis

In conclusion, creationism dominates in the electives, whereas in the compulsory subjects like Physics, Biology, and History, Darwinism is stronger. According to experts, this way it is possible to ensure parity between the two.

Religiously motivated behavior in public schools

Disposition of religious signs and symbols is up to the administration of each school. The same rule applies also to Christian public schools, private schools, and Jewish private schools.²⁴ Prayers are performed every morning in schools with religious specialization and during the holidays students are welcome to visit a church according to their discretion.

Religious ceremonies and rituals in comprehensive schools can be performed with the consent of parents, and, without their permission, no actions of religious nature can be conducted in schools.

Such issues, which are currently on the agenda in Scandinavia, as, for example, Coeducational Swimming Instruction for Muslim Girls, are still uncommon in Latvia. According to the Ministry of Education and Science, it had not received requests up until May 2010²⁵ from Muslims to organize separate groups for boys and girls in the subject "Sports."²⁶ Obviously, the Baltic states have different problems regarding the issues concerning Muslims, given the low number of Muslim believers in these countries.

Religious symbols at school

The Ministry of Education and Science admits²⁷ that it is not legally able to determine the norms of behavior of students in comprehensive schools, their internal regulations, special requirements regarding teachers' or students' clothing, or times of festivities or meetings. The code of conduct, adhering to laws and regulations, can be determined by the founders of each school; the local governments or private bodies (for private schools), confirm the internal regulations of each specific school. The use of religious symbols is up to the administration of each religiously oriented school, both in Christian public and private schools, and minority schools, for example, the Jewish private school. These norms can be determined in greater detail by the principal of each school.²⁸

Prayer is a part of every religion, thus it is one of the practical actions to be learned by the student. Therefore, religiously oriented schools include morning prayers, and, on religious holidays, students are welcome to go to church on a voluntary basis.

Latvian laws and regulations do not include requirements regarding clothing or the use of symbols by academic personnel; these, including norms of behavior, can be included in the internal regulations of each school by the founders of the institution of higher education or its main administrative bodies.

Sabbath and religious holidays

The school year and holidays, according to Article 4, Paragraph 16 of the Law on Comprehensive Education, are determined by the regulations of the Cabinet of Ministers regarding the start and end date of each specific school year and semester. In Paragraph 11 of the February 2, 2010 Regulations of the Cabinet of Ministers Number 96 ("Regulations of the 2009/2010 school year and semester start and end dates"), it is said that the local government, after a suggestion by a principal of an educational institution, can independently make a decision on extending the winter break by one or two days, noting the dates for substituting those days in the school year

2010–11. This norm has been included after taking into consideration the suggestion by many educational experts and local governments regarding Orthodox Christmas, which is celebrated by many families, often also by visiting relatives outside of Latvia. On Sundays, schools are closed in Latvia; no graduation examinations or tests are organized on those days. Issues concerning graduation examinations that take place during a holiday of a religious minority are dealt with on an individual basis, with both sides seeking a compromise solution.

It must be noted that at the June 4, 2010²⁹ meeting of the Council of Spiritual Affairs,³⁰ chaired by the Prime Minister, the agenda included ensuring the teaching of Christian faith in schools. Discussing teaching of Christian values in comprehensive secondary schools, the representatives of religious denominations praised the cooperation with the Ministry of Education and Science on developing the syllabus for the teaching of Christianity. At the end of the discussion, the Council of Spiritual Affairs agreed on appealing to the schools to find extra opportunities for the representatives of the traditional religious denominations to organize guest lectures several times during the school year, including at Christmas and Easter.³¹

Religiously motivated home schooling and teaching religion in the institutions of higher education

The opportunities for home schooling under the responsibility of the student's parents are set in the November 1, 2005 Regulations of the Cabinet of Ministers Number 811 ("Regulations on the compulsory requirements for the admittance and advancement to the next grade of students in comprehensive schools (excluding boarding schools and special educational institutions))." According to Paragraph 14 of these regulations, home schooling is allowed from grades 1 to 4, on the basis of a written petition by the student's parents, coordinated with the local government. The permission is given by the principal of the school, issuing a decree. The parents and the administration of the educational institution have to agree on the procedure of consulting the parents and the procedure on assessing the student's achievements during the year by the teachers in order to give their decision on advancing the student to the next grade.³² Religious affiliation of the family to a religious organization registered according to the provisions of the Law on Religious Organizations cannot be a basis for denying the parents their right to educate their child at home. However, if the teachers note that the student's knowledge does not conform to the standard of comprehensive education set by the state, the principal can lift the permission to educate the student at home under the authority of his or her parents.³³

Part 3 of Article 4 of the Law on Institutions of Higher Education states that each institution can independently determine the content and standards of its study programs. Study programs are regulated by the description of their content and realization, which, according to the type and level of education, includes the aim of each program, planned results, the content of offered education, compulsory subjects and electives, the division of time among them, and the means of control and their regulations. According to Article 55 of the Law on Institutions of Higher Education, one-fourth of the total study program is determined by the senate of the highest council of the institution. Hence, it is under the authority of the founders and the highest organs of administration of each institution to include religious themes in their study programs, determining their content, extent, and order of teaching. Therefore, specific institutions should be consulted to find the share of religious themes in the total body of all study programs.

Notes

1 subsequent census was taken in 2011.

Ringolds Balodis

- 2 R. Balodis, "Latvia," in *Encyclopedia of World Constitutions*, vol. II, ed. G.Robbers, U.S. Facts on File, 2007 pp.513–19.
- 3 By comparison, in the academic year 1998/99 there were 1,074 schools in the state.
- 4 Baltinava Christian special boarding elementary school, Riga Christian high school, Bauska city Christian elementary school, Talsu Christian high school, Dobele Christian elementary school, Rezekne Catholic high school, Kalnezeru Catholic elementary school, Liepaja Catholic elementary school, Riga Catholic gymnasium, Aglona Catholic gymnasium, Ogre St.Meinard's Catholic elementary school, Graveru elementary school of Riga, and Latvia Metropolitan Aleksander (Kudrjasov).
- 5 <www.priekavests.lv/lv/izglitiba/privatskola_harmonija?read=131>.
- 6 According to the Agreement between the Republic of Latvia and the Holy See, Article 15, the teaching of the Catholic religion shall be conducted exclusively on the basis of a programme approved by the Bishops' Conference of Latvia, in agreement with the Ministry of Education and Science, and shall be undertaken only by qualified teachers who possess a certificate of competence issued by the Bishops' Conference of Latvia, the revocation of which signifies the immediate loss of the right to teach the Catholic religion.
- 7 <www.lalb.lv/lv/?ct=skolas>.
- 8 In the same place.
- 9 <<http://visc.gov.lv/saturs/vispizgl/standarti.shtml>>; <<http://visc.gov.lv/saturs/vispizgl/programmas.shtml>>.
- 10 Declaration of the Supreme Council of the LSSR "On the renewal of the independence of the Republic of Latvia." Latvijas Republikas Saeimas un Valdības Ziņotājs, May 17, 1990, no. 20.
- 11 Constitutional Law "Human and Citizen Rights and Liability: Law of the Supreme Council of the Republic of Latvia." LR Saeimas un MK Ziņotājs. January 30, 1992, no.4
- 12 The Law on Religious Organizations, LR likums. Latvijas Vēstnesis, September 9, 1995, no. 146 (429).
- 13 Article 14 of Law on Latvian Association of Seventh-day Adventist Communities, LR likums. Latvijas Vēstnesis, 2007. 12.jūnijs nr. 93 (3669).
- 14 Article 12 of Latvian Joint Methodist Church Law, LR likums. Latvijas Vēstnesis, 2007. 6.jūlijs 91 (3667.)
- 15 Latvia has no state religion. The Constitution of the Republic of Latvia (*Satversme*) does not mention any specific religion. The Latvian legislative norms (unlike Lithuanian) have no such concept as "traditional" denominations. "Traditional" and "non-traditional" organizations are not regulated by the Law on Religious Organizations and the Law does not list religions or religious denominations that are regarded as traditional. Confessions included in Article 51 of the Civil Law are called "traditional." These are Lutheran, Catholic, Orthodox, Old Believer, Methodist, Baptist, Seventh-day Adventists, and Jewish religious communities. Although the issue of traditional churches in Latvia has been discussed for more than ten years, it was included in all the special church laws. In this aspect please see Article 2 of the special church laws that recognizes the prevalence of the respective traditional religious organization in the territory of Latvia.
- 16 According to the Agreement between the Republic of Latvia and the Holy See, Article 14, the Republic of Latvia recognizes the right of parents and their legal representatives, and, in the cases provided for by law, of children themselves, to ensure for children an adequate religious education in institutes of education through religion classes in state and municipal schools, and the Catholic Sunday schools. The state guarantees this right within the terms established by law and the international treaties binding upon the Republic of Latvia.
- 17 <www.priekavests.lv/lv/izglitiba/svetdienaskola?read=3730>.
- 18 R. Balodis, "Religion Relations: Republic of Latvia, Revue," *Européenne de Droit Public*, vol. 17 (1) Spring (2005): 397–408.
- 19 Ibid.
- 20 General presentation: Latvia: Sociological and legal data on religions in Europe, <www.eurel.info/EN/index.php?pais=59& rubrique = 662>.
- 21 R. Balodis, "The Recent Developments of Latvian Model of Church and State Relationship: Constitutional Changes without Revising of Constitution," *Jurisprudencija* 3 (117) (2009): 19.
- 22 Law on Latvian Association of Seventh-day Adventist Communities: LR likums. Latvijas Vēstnesis, 2007, 12.jūnijs nr. 93 (3669); Latvian Baptist Community Association Law: LR likums. Latvijas Vēstnesis, 2007, 30.maijs nr. 86 (3662); Riga Jewish Religious Community Law: LR likums. Latvijas Vēstnesis, 2007, 20.jūnijs 98 (3674); Latvian Joint Methodist Church Law: LR likums. Latvijas

- Vēstnesis, 2007, 6.jūlijs 91 (3667); Latvian Old-Believers Pomor Church Law: LR likums. Latvijas Vēstnesis, 2007, 20.jūnijs 98 (3674); Latvian Evangelical Lutheran Church Law: LR likums. Latvijas Vēstnesis, 2008, 20.novembris 188 (3972); Latvian Orthodox Church Law: LR likums. Latvijas Vēstnesis, 2008, 13.novembris 188 (3972).
- 23 Letter number 1.-12/3426 of May 18, 2010 from M. Gruskevics, the Secretary of State in the Ministry of Education and Science, to R. Balodis, the Chair of the State Law Department of the Faculty of Law of the University of Latvia.
 - 24 Education: Latvia: Sociological and legal data on religions in Europe, <www.eurel.info/EN/index.php?pais=59&rubrique=658>.
 - 25 Letter number 1.-12/3426 of May 18, 2010 from M. Gruskevics, the Secretary of State in the Ministry of Education and Science, to R. Balodis, the Chair of the State Law Department of the Faculty of Law of the University of Latvia.
 - 26 It must be noted that the current laws and regulations allow dividing students into groups during lessons, including divisions of gender. The division into groups, given the funding allocated to each institution, is each founder's responsibility.
 - 27 Letter number 1.-12/3426 of 18 May 2010 from M. Gruskevics, the Secretary of State in the Ministry of Education and Science, to R. Balodis, the Chair of the State Law Department of the Faculty of Law of the University of Latvia.
 - 28 This takes into consideration that the standard syllabus of each subject has to be coordinated with the Ministry of Education and Science.
 - 29 Prime Minister: Attending the meeting of the Council of Spiritual Affairs/ Latvijas Vēstnesis, June 6, 2010.
 - 30 The Council of Spiritual Affairs is an independent, consultative institution for coordinating cooperation between the state and the church, with the aim of promoting harmony and understanding among the followers of different religious denominations and beliefs in Latvian society.
 - 31 Prime Minister: Attending the meeting of the Council of Spiritual Affairs/ Latvijas Vēstnesis, June 6, 2010.
 - 32 Letter number 1-17/923 of April 6, 2006 from K. Jarinovsk, the Secretary of State in the Ministry of Education and Science, to the Authority of Religious Affairs of the Republic of Latvia.
 - 33 Ibid.

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Religious education in Lithuania

Milda Ališauskienė

The religious and social composition Lithuania

According to the 2001 Census, a majority of the Lithuanian population is Roman Catholic (79 percent). The second biggest religious community is Russian Orthodox (4 percent). As the census revealed, 9.5 percent of the population declared that it did not belong to any religious community, and 5.3 percent made no declaration of any kind. Around 2 percent of the Lithuanian population belongs to various religious communities, including new religious movements.¹ Various surveys during recent years reveal that the religious composition of Lithuania has not changed much in recent years.²

Constitutional principles governing the relations between state, religion, and education

The passage of legal acts regulating religious issues began soon after the Republic of Lithuania gained its independence, most importantly with the adoption of the Constitution in 1992, although in the Law on Education the first changes related to religious education were made in 1991. These changes stated that in the public schools religion may be taught by persons authorized by their religious authorities under the requirement of parents/tutors. Such right (possibility) was guaranteed to all religious confessions. Those who do not want to choose classes of religion may instead go to classes of ethics or civic education.

Two articles of the Constitution of the Republic of Lithuania address religion and its place in Lithuanian society.³ Article 26 declares the freedom of conscience, religion, and belief. It was closely modeled after the Universal Declaration of Human Rights of 1948. Article 43 addresses church-state relations in more concrete terms. It asserts that “there is no state religion” and regulates the recognition of so-called “traditional” churches and religious organizations. The adoption of the article had been preceded by complex discussions among lawyers, priests, and politicians about the meaning of the phrase “traditional” religion. In 2007 the Constitutional Court ruled that the status of “traditional” indicated that a religious community had been present in Lithuania for more than two generations. In 1995 the Law on Religious Communities and Associations (L.R.C.A.) finally provided the list of “traditional” religious communities.⁴ It

was mostly based on historical criteria, that is, the religious composition of the Grand Duchy of Lithuania. Therefore, Baptists, Methodists, and Adventists were not included.⁵ The law also provides a more concrete legal framework for the recognition of religious communities. It identifies “traditional,” “state-recognized,” and “other” religious communities and their legal status. “Traditional” and “state-recognized” religious communities are entitled to state subsidies, tax exemption, recognition of marriages, prison and hospital chaplaincy, and religious education in state and municipal schools.

The status of “state-recognized” religion requires a legal registration of at least 25 years, to have support in society, and teaching and practices that are not in conflict with the law and public morals. In such cases the Lithuanian Parliament may grant the status of “state recognition” based on the positive conclusion of the Ministry of Justice. In 2002 this status was awarded to the Association of Evangelical Baptist Churches, and in 2008 to the Seventh-day Adventist Church. However the granting of “state-recognized” status was denied for the United Methodist Church and for the pagan community “Romuva.” There are still pending applications from the Pentecostals and the New Apostolic Church for this status that were met with favorable conclusions by the Ministry of Justice but ended in a delay at the Lithuanian Parliament. The decade 2000–2010 was marked by various efforts to correct the 1995 L.R.C.A. and include new requirements for the status of state recognition: the legal registration requirement was raised from 25 years to 50 years based upon the decision of the Constitutional Court, which explained that tradition should be kept for more than one generation.⁶ Nevertheless, despite these efforts the L.R.C.A. was not changed, as the amendments did not reach Parliament.

After the ratification of three international agreements in 2000 between the Holy See and the Republic of Lithuania, discussions began about the implementation of their regulations in the laws and in the relations of the state with other religious communities. Such discussions were also raised in 2005–08, mostly inspired by “traditional” religious communities that sought to ensure their special status in the society of Lithuania by strengthening it through agreement with the state. Though discussions did not end with a successful result, they actually attracted attention to the problem of the distinctive situation of the Roman Catholic Church in Lithuania.

The L.R.C.A. states that a religious community may be registered if it has 15 members and provides a statute with the doctrinal base, information about the structure, leadership, membership, rules of property ownership, and the like. The registering institution is the State Centre for Registers, where the application for registration documents should be presented by the Ministry of Justice. Refusals to register are analyzed in court. There have been few refusals, later analyzed in courts, one of which is the case of the Osho religious community, which was refused registration based on the unfavorable conclusion of the experts about the non-religious essence of this community. The court decision was favorable for the Osho community, and it was registered in 2005.

According to Article 40 of the Constitution of the Republic of Lithuania, Article 10 of the Law on Education of the Republic of Lithuania, and Article 14 of the L.R.C.A., religious communities and associations have the right to establish comprehensive schools and training institutions for the clergy and teachers of religion. Since 2001, the L.R.C.A. affirms that educational institutions of traditional religious communities and associations providing education in compliance with state standards are financed and maintained by the state.

Milda Ališauskienė

Legal context

There is no specific legislation on religious education. However, state regulations and Roman Catholic input in this area of cooperation from the Agreement between the Holy See and the Republic of Lithuania on Co-operation in Education and Culture⁷ were implemented in the laws. The Agreement on Co-operation in Education and Culture established the place of religious education in school curricula, the role of a teacher of religion, and the role of church and state in the education of teachers of religion. Thus religious education received a status of “mandatory subject” within the classes of “Moral Education.” The teachers of the Roman Catholic religion should have the delegating document (*missio canonica*) from authorities of the Catholic Church; they have the same rights and duties as teachers of other classes. Article 6 of this Agreement states that the preparation of religion textbooks is organized by the Conference of Lithuanian Bishops in cooperation with competent institutions of the Republic of Lithuania.

There are no specific bodies in the state structures that deal with religious education. There are few position in the structure of state governance related to religion in general. There is an adviser of religious affairs at the Office of the Prime Minister of the Republic of Lithuania. There is a sub-unit of religious affairs at the Ministry of Justice containing two officials. There is one official in the Ministry of Education that coordinates the field of religious education, together with ethics, together named “Moral Education.”

The state and religious autonomy

The state and religious communities are autonomous in the field of religious education. There are no legal or political instruments created to control religious education. Religious education started with the initiative of the mainstream religious community in Lithuania—the Roman Catholic Church. The content of religious education is confessional and “traditional,” with religious communities providing its material.

Religion and state autonomy

There is no particular religion that is given power to control religious education in public schools under the state law. Although the Roman Catholic Church and its religious education has evolved more since the history of religious education in Lithuania began in the early 1990s, as discussed in the International Agreement between the Holy See and the Republic of Lithuania and later, the notions of this document were implemented in the laws.

Religious communities are free to create private schools providing education in compliance with state standards; their curricula and diplomas are recognized by the secular state.

State financial support for religious education

The state provides financial support for religious education of “traditional” and “state-recognized” religious communities by educating teachers of religion, paying salaries to teachers, publishing textbooks, and so forth. Meanwhile religious communities in this system of religious education are mainly “responsible” for its content.

Description of the current model of religious education

Religious education in public schools

Religious education is an optional subject in the public schools within “Moral Education” classes where one chooses between religion and ethics. Such education is a part of primary, basic, and secondary education, and is provided in accordance with Article 26 of the Constitution of the Republic of Lithuania. Parents/tutors choose religious education for pupils younger than 14 years; older pupils choose religious education for themselves. State and municipal schools must guarantee religious education upon the request of parents/tutors. Religious education should not interfere with the secularity of the state and municipality.

The content of religious education in the public schools is instruction provided by one of the nine “traditional” or “state-recognized” religious communities. The programs of teaching of nine “traditional” religious communities are approved by the Ministry of Education. Thus, state and religious communities contribute in the process of creating, adapting, and proposing curricula for the classes of religious education. The teachers of the subject of religion are appointed by the authorities of the religious communities they represent. This regulation derives from the Agreement between the Holy See and the Republic of Lithuania about education and culture and is applied to all “traditional” and “state-recognized” religious communities.

In 2010, 55.1 percent of pupils chose classes of religion. The majority (221,000) chose classes of Roman Catholicism, Russian Orthodox (3,000), Eastern Rite Catholicism (730), Evangelical Lutheran (570), Judaism (283), Evangelical Reformed (153), Old Believers (50), Karaites (18), and Sunni Muslims (11). The majority of these pupils were attending public schools.⁸

As already mentioned, the content of religious education in public schools might be considered confessional, that is, mainly focusing on the teaching of a particular “traditional” or “state-recognized” religious community. The content of religious education is approved by the Ministry of Education of the Republic of Lithuania together with other disciplines in general programs. The involvement of religious communities in creating programs is regulated under the auspices of the Agreement between the Holy See and the Republic of Lithuania that was adopted in the Law on Education of the Republic of Lithuania.⁹ Article 31 of this law regulates religious education. Additionally it states that if the school cannot provide classes of religious education of a “traditional” religious community, it may include the evaluation of Sunday or other religious school.

Official knowledge about the content of religious education differs. For instance, the first teaching programs of Roman Catholic and Orthodox religious education were officially approved and published in 1994. Meanwhile, the teaching programs of Evangelical Lutherans and Evangelical Reformed were approved in 2002. In 2008 the teaching programs of Karaites and Jews were approved. Meanwhile, other “traditional” religious communities like Old Believers, Sunni Muslims, Eastern Rite Catholics, as well as the above-mentioned religious communities that have the status of “state recognition” have not yet proposed the teaching programs of their religious education. However, as the official statistics reveal, there are pupils who attend classes of religious education of the latter “traditional” religious communities.

In the early years of the provision of religious education in Lithuania, some religious communities used these classes for preparation of pupils for their religious life—for instance, for the reception of sacraments. However, the Roman Catholic Church in 2003 issued “Landmarks for differentiation between religious education and parish catechesis,”¹⁰ which urged that educators not provide any preparation for communion in public schools, arguing instead that pupils should receive this instruction in the parishes during Sunday schools.

Milda Ališauskienė

There is no non-confessional religious education in public schools in Lithuania but it is possible to have classes of comparative religion within the framework of social sciences in the last grades of the secondary school, where pupils can choose between psychology, sociology, economics, and other courses. In 2000 the discussion was held within the Ministry of Education about broadening the variety of classes of “Moral Education”; alternatives discussed were philosophy, comparative religion, and psychology. However, the decision was to maintain for now only two alternatives—religious education and ethics.

Religious education in private schools

The possibility of establishing private schools was created only after independence was declared and for some time thereafter the funding of pupils was not clear until the “pupil’s basket” was invented in 2002. The teaching of religion in private schools is funded through the system of the “pupil’s basket” from the state budget. However, additional programs in the private schools provided by their founders are funded by the owners.

If the private school is owned by a certain religious organization, it is also responsible for the content of religious education. Just as in the public schools, religious education in private schools is also taught by persons authorized by certain religious authorities—in the majority of cases, the “traditional” religious community.

Notes

- 1 Statistikos departamentas prie Lietuvos Respublikos Vyriausybės (Department of Statistics of the Republic of Lithuania), 2001. *2001 metų surašymas: Romos Katalikų daugiausia*. (The 2001 Census: Majority are Roman Catholics). See <www.stat.gov.lt/lt/pages/view/?id=2815>.
- 2 Andrius Sprindžiūnas, et al., “Discrimination on the Grounds of Religion and Beliefs: Research Summary,” in *Summaries of Sociological Studies. 2007 European Year of Equal Opportunities for All* (Vilnius, 2007), 34–36. “Report on the Survey on Religious Movements” (Vilnius, 2007).
- 3 *Constitution of the Republic of Lithuania*, 1992, at <www3.lrs.lt/home/Konstitucija/Constitution.htm>.
- 4 *LR religinių bendruomenių ir bendrijų įstatymas* (Law on Religious Communities and Associations), 1995, at <www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=2173>. There are nine “traditional” religious communities: the Roman Catholic Church, the Greek Catholic Church, the Russian Orthodox Church, Old Believers, Judaism, Karaism, Sunni Islam, the Evangelical Lutheran Church, and the Reformed Evangelical Church.
- 5 Cf. Irena Vaišvilaitė, “Tradicinių ir kitų religinių bendruomenių perskyra Lietuvoje” (The Distinction between Traditional and Other Religious Communities in Lithuania), in *Religija ir teisė pilietinėje visuomenėje. Tarptautinės konferencijos medžiaga* (Religion and Law in the Civic Society. Material from International Conference) (Vilnius, 2001), 127–29.
- 6 Glodenis, Donatas, “Administrative and Financial Matters in the Area of Religious Freedom and Religious Communities: Case of Lithuania,” in *Legal Aspects of Religious Freedom*, ed. Drago Cepar (Ljubljana, Office of the Government of the Republic of Slovenia for Religious Communities, 2008), 392–408.
- 7 *Agreement between the Holy See and the Republic of Lithuania on Co-operation in Education and Culture*, 2000, at <www.lcn.lt/b_dokumentai/kiti_dokumentai/AS-LR-sutartis-svietimas.html>.
- 8 *Etika mokyklose populiarumu nusileidžia tikybai. BNS ir Lrytas.lt informacija*. (Classes of Ethics in Schools Are Not As Popular As Religious Education. Information of Baltic New Service and Lrytas.lt website), November 30, 2010, at <www.lrytas.lt/print.asp?data=&k=news&id=12911084>.
- 9 *LR Švietimo įstatymas* (Law on Education of Republic of Lithuania), 2003, at <www3.lrs.lt/pls/inter2/dokpaieska.showdoc_1?p_id=364830>.
- 10 “Gairės tikybos mokymui ir parapiinei katekezei diferencijuoti” (Landmarks for Differentiation of Religious Education and Parish Catechesis), 2003, *Bažnyčios žinios* (Church News), April 15, 2003, No. 7, 17–18.

Religious education in Malaysia

Rosnani Hashim

Historical background

Religion has been thought of as a hindrance to the growth of scientific and critical inquiry since the clash between the church and modern science beginning with the age of Galileo. As such and with the increasing secularization of the West, religion was relegated to the backseat in Western civilization. The notion that there is a conflict between science and religion in the West has been imported to other worldviews/civilizations, including Islam, hence leading to the divide between religious and secular education, something unknown in the early Islamic tradition. The Qur'an is known for challenging minds by encouraging its readers to reflect upon the human body, human personality, and other creations in the universe, and especially the natural world which is a precursor to empirical science. Therefore the Islamic faith is not regarded as a hindrance but rather a catalyst for scientific development as testified by Islamic history. In this sense a holistic and integrated Islamic religious education is of "this" world and also of the "other" and is thus a necessity.

Religion is also thought to divide people; witness the many conflicts that have arisen between people of different ethnicity and faith, especially in multi-ethnic and multi-faith societies. It is also thought of as not being conducive to a liberal democracy and pluralistic society. This has been a principal reason for its exclusion from the school curriculum in most democratic nations. In this chapter, the robustness of religious education in a multi-faith and multi-ethnic society will be examined.

Background

Modern Malaysia is a multicultural, multi-faith, and multi-ethnic society. Her population in 2008 stood at 27.73 million with 65 percent Malays and other indigenous (*Bumiputera*) groups, 26 percent Chinese, 8 percent Indians, and 1 percent others.¹ They comprised 60.4 percent Muslims (primarily Malays), 19.2 percent Buddhists, 9.1 percent Christians, 6.3 percent Hindus, 2.6 percent Confucianists/Taoists/other traditional Chinese religions, and 2.4 percent others. The Malays are primarily Muslims, the Chinese primarily Buddhists, and the Indians primarily Hindus. Thus, religion seems to run parallel to ethnicity. Prior to the British colonial period, Malaysia was

Rosnani Hashim

basically a Malay land; hence the term Malaya, and Islam was the major faith after the founding of the Malaccan Sultanate in the early 1400s. The Malay states were ruled by their respective sultans who were Muslims. During the British colonial period, beginning in 1874 with the Pangkor Treaty, the secularization of the state was instituted, whereby the sultans were marginalized to protect only Malay customs and Islamic religious affairs, while civil administration was under the charge of British resident advisers.

Religious education in Malaysia, in particular of the Muslim faith, has a very long tradition—as evident from the founding of the Terengganu Inscription Stone (Batu Bersurat) in the thirteenth century, or the finding of the Muslim gravestone in Tanjung Ingeris, Kedah, in the ninth century. Being a faith that has a holy book, the Qur'an and its laws, and the *Shari'ah* derived from it through man's *ijtihad*, it was natural for its followers to study the book and its laws. Thus, from the beginning Islamic traditional education has been held in mosques or as a private enterprise in the homes of teachers, aristocrats, or the sultan until the *pondok* was established in the eighteenth century as the natural extension of the mosque. The *pondok* are small huts surrounding the mosque and the teacher's house. The *pondok* bears the closest resemblance to a public or community school. Muslim education in Malaysia during the early period emphasized reading and understanding the Qur'an in Arabic and also religious knowledge. It was the tradition that the Malay language was only acquired after Qur'anic literacy was attained and the letter of instruction was *Jawi* (using Arabic scripts). Many famous scholars, all of whom obtained their education in Mecca, emerged in the eighteenth and nineteenth centuries.

There have been other religious schools; the most notable among them were the Christian Missionary Schools which were later managed by the colonial government in roughly the same manner that the English schools were managed. These schools were first set up by Christian missionaries such as the Catholic Order of the Christian Brothers which founded St. Xavier Institution, St. Paul Institutions, St. Francis Institution, and St. Michael Institution. The Anglican Church of England established St. George's Girls and St. Mark Schools in Penang, while the American Methodist Episcopal Mission set up Anglo-Chinese or Methodist Schools.² Since most of the English schools were established by missionaries, the Bible was an important and integral textbook.

The *pondok* was later transformed into more formal, modern schools called the madrasah, where learning was more regulated with fixed schedules and classes as a consequence of the influence of the Egyptian reform movement. There was minimal Islamic religious instruction or even none offered in the Malay vernacular or the English schools. The pathetic condition of Islamic religious instruction in the Malay schools was well documented in the Barnes Report chaired by L. J. Barnes, a sociologist from Oxford University who was commissioned by the British colonial government to “inquire into the adequacy or otherwise of the educational facilities available for the Malays.”³ This took place in 1949, that is, after the defeat of the Japanese during the Second World War. Barnes argued that the lack of Islamic religious instruction in schools had led Malay parents to seek an alternative by having instruction in the afternoon, which was very tiresome given the hot and humid weather conditions. To solve this, the Committee proposed that the period of *Jawi*⁴ lessons be dropped and religious instruction be taught instead. It also suggested that *Jawi* be taught as part of Islamic religious instruction, while the other “secular” subjects used the Romanized alphabet to facilitate non-Malays in learning the Malay language. However, the Barnes Report did not receive a favorable response from the non-Malays for its assimilationist stance.

Today Islamic religious instruction is not only taught in the public or national schools, but it is compulsory for all Muslim students at primary and secondary levels. In fact, today there are various agencies that offer Islamic religious instruction, namely, 1) the National schools; 2) the

National Religious Secondary Schools; 3) the State Religious Schools; 4) the *Rakyat* (community) Religious Schools; and 5) the private integrated schools. All religious schools offer an Islamic religious study track at the upper secondary level in preparation for specializing in higher Islamic studies that can be done at three local universities or abroad at the Middle East, American, British, or European institutions. Meanwhile, all the mission or English schools became conforming schools or government-aided schools as of 1961 and completely subscribed to the national curriculum. Although they have changed their names to National Type Secondary School (S.M.J.K.), their names as Christian or Catholic High Schools remain in use. As a result of the Aziz Commission (1971) where teachers were absorbed as government servants and their appointment and deployment was determined by the Teachers' Service Commission, the helms of many of these schools were handed over from the Brothers or Priests to the lay principals in the 1980s. Currently, there are 227 such schools in Peninsular Malaysia and 235 in East Malaysia. Of these, 338 are primary and 124 are secondary schools.⁵ Though the school land is owned by the Catholic Church, much of the school funding is received from the government.

The constitutional context

Islamic religious instruction was introduced in the public schools only after Independence in 1957 following the spirit of the newly formulated Malayan Constitution and the Education Act 1961. The Constitution which was later amended to take into consideration the formation of Malaysia, which added Singapore and the two North Borneo states of Sabah and Sarawak, is a very important document in providing a source of the law of the country and also in its development after independence especially in inter-ethnic, inter-cultural, and interfaith matters and the survival of the nation. The Malaysian Constitution guarantees upon independence that Malay-Muslims and the indigenous citizens of Sabah and Sarawak who obtained it from colonial masters the recognition of their right as the original owners of the land (Article 153), an acknowledgment of Islam as the official religion of the state (Article 3 (1)), recognition of the Malay language as the national language (article 152 (1)), and the special position of the Malay rulers for their sacrifices in giving up the civil administration of their states to pave the way for the birth of the Federation of Malaya in 1948 (Article 3 (2)). It is also true that the Constitution reinforced the separation of civil administration from religious affairs and Malay customs administration which continued to be held by each respective sultan of the various states with the exception of Malacca, Penang, Sabah, and Sarawak as stated in Article 3 (2) of the Constitution:

(2) In every State other than States not having a Ruler the position of the Ruler as the Head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observance or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the religion of Islam authorize the Yang di-pertuan Agong to represent him.

(3) The Constitution of the States of Malacca, Penang, Sabah and Sarawak shall each make provision for conferring on the Yang di-Pertuan Agong shall be Head of the religion of Islam in that State.

The position of Islam as the official religion of the state is clearly stated in Article 3:

Rosnani Hashim

(1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.

The freedom of religion is clearly enunciated in Article 11:

(1) Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.

(2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

(3) Every religious group has the right

(a) to manage its own religious affairs;

(b) to establish and maintain institutions for religious or charitable purposes; and

(c) to acquire and own property and hold and administer it in accordance with law.

Concerning education, the Constitution prohibits any form of discrimination on the ground of religion as articulated in Article 12:

(1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth

(a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or

(b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).

It also asserts that every religious group can provide religious education for its children:

(2) Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law.

The special position of Islam is evident from the fact that the state may control or prohibit the propagation of any religious doctrine or belief among Muslims:

(4) State law and in respect of the Federal Territories of Kuala Lumpur and Labuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

The Federation or the state is allowed to assist in establishing and maintaining Islamic institutions such as Islamic schools, with financial assistance as stated in Article 12 (2):

but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose.

It is illegal to offer religious instruction to somebody under 18 years, or to take part in any religious ceremony or act of worship other than one's own. This is clearly stated in Article 12:

(3) No person shall be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own.

(4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

Thus it is evident from the Constitution that the Islamic faith is the preferred faith in Malaysia due to the history of the land, and it is clear that the drafters of the constitutions understood the indigenous peoples' sensitivities and respected the rights of the sultans.

The legal context

The Razak Report 1956 paved the way for the teaching of Islamic religious instruction in the public schools with support from the government bursary after Independence. It also provided for religious education of non-Muslim students but at their own expense. However, the Razak Report did not specify which agency of the government should bear the cost. It was only after the Rahman Talib Report of 1960 that this problem was resolved. The Education Act of 1961, which was based on both Reports, spelled this out clearly in Section 36 (1): "where in a school in receipt of grant-in-aid there are fifteen or more pupils professing the Islamic religion, such pupils shall be instructed in the tenets of that religion by religious teachers approved by the State Authority."⁶ Thus it was incumbent upon all types of national or public schools—English, Chinese, Tamil and Malay—to provide Islamic religious education for Muslim students for two hours per week.

In Section 37 (1)–(4), the responsibilities of the expenses were clearly laid down to be borne by the state and federal governments for primary schools and Parliament for secondary schools. Meanwhile, Section 38 allows for the instruction of pupils of schools in receipt of grant-in-aid for the instruction of a religion other than Islam provided "(a) no such provision shall be defrayed from monies provided by Parliament; (b) no pupil shall attend instruction in a religion other than that which he professes, except with the written consent of his parent."

All the above provisions are retained in the amended Education Act 1996 under Chapter 10, Sections 50 and 51, with the minimum number of Muslim pupils reduced from 15 to five for the provision of Islamic religious instruction.⁷ The Education Act of 1996 added Section 52 which allows for the Minister of Education or the state government to provide financial assistance to Islamic educational institutions not established by them as they deem fit. Probably this was in anticipation that, with the establishment and recognition of private higher education institutions and branch campuses of foreign universities, there arises the possibility of only a small number of Muslim students in those institutions.

Meanwhile, the *Rakyat* Religious Schools continued to grow through registration with the State Religious Department without any specific regulations from the Ministry of Education (M.O.E.), but only registration with State Religious Departments which also accredited its teachers. This meant that the schools or madrasah have to subscribe to the curriculum prescribed by the State Religious Departments which were oriented to admission into Al-Azhar University in Egypt. However, since 2003, most of these schools have been persuaded to become government-aided religious schools (S.A.B.K.), which required them to register with the Private Education Department of the Ministry of Education, and in return they have to offer the National Curriculum in addition to the traditional Islamic sciences. In exchange for government aid, these schools can expect better facilities and trained teachers. Being government aided, it will facilitate the Ministry of Education to monitor and supervise their school activities to ensure that they are not manipulated by unwanted extreme political or religious elements.

Rosnani Hashim

The state and religious autonomy

Legally, the state sanctions the teaching of Islamic religious instruction, since constitutionally Islam is the official religion of the state and the king is supposed to protect and uphold its status. Islamic religious education is compulsory for all Muslims and is taught in the national schools from Year One in the primary level to Form Five, the final year of the secondary level. So the state provides for teacher remuneration, teacher preparation programs, and curricula and syllabi. The state does not forbid religious instruction by other religious groups in their respective worship houses for their children and members of the faith, but the cost of this has to be borne by the community themselves, that is, the expenses for teachers, their training and instructional materials, and the like. In lieu of their own religious education, the government in 1983 adopted the teaching of moral education for non-Muslim children in the public or national schools from Year One to Secondary Five. This was based on the recommendation of the Cabinet Committee Report, or the Mahathir Report, in 1979. The assessments for both Islamic education and moral education are set up by the Malaysian Examination Council of the Ministry of Education. The curricula and syllabi are designed by the Curriculum Development Division. Despite being offered in the National Curriculum, some Muslim citizens are not satisfied with the hours or amount of Islamic religious education provided in the national schools. Consequently, there has been considerable growth of private Islamic schools that offer additional components of Islamic studies and longer hours in addition to the National Curriculum.

Despite the absence of religious education in the national school system for faiths other than Islam, the Malaysian Examination Council offers examinations for Bible knowledge. This means that Christian students could study their holy book privately or in community churches and take official examinations as needs arise. In addition, some schools set up religious societies such as the Buddhist society in Chung Ling and Han Chiang High schools in Penang.⁸ Similarly, there are Buddhist societies in local higher institutions such as Universiti Sains Malaysia, Universiti Putra Malaysia, and Universiti Tunku Abdul Rahman.

Religious education in private schools

There is not much difference today between teaching religious education in the public schools and in the private schools as far as the official religion is concerned because the curriculum is regulated by the Private Education Department. The only concern is that some of the Islamic religious schools, whether madrasah or *pondok*, are not financially sound because the school authority only depends on school fees which are nominal. Religious communities are free to create private schools but they have to use the curricula prescribed by the Ministry of Education. This goes for all religious affiliations, including the Muslim communities. Every private school is required to register with the Department of Private Education of the M.O.E., which supervises and monitors such schools with respect to curriculum, building safety, and school tuition fees. But the curriculum does allow for teaching Bible knowledge for Christians, which is a popular examination paper for those from East Malaysia.

Curriculum reform in the 1980s

The public or national schools offer Islamic religious instruction based on the Muslim denomination of Ahli Sunnah wal Jamaah, which is in opposition to the Shi'ah since the Muslims in Malaysia are predominantly Sunnite. The Islamic religious education curriculum is comprised of the following components: 1) al-Qur'an recitation, memorization, translation, and meaning; 2)

Hadith (Tradition of the Prophet) in various aspects of life; 3) Belief (*aqidah*) specifically, the six articles of faith (God, the Prophets, the Holy Book, the Angels, the Hereafter, and Predestination) and the five pillars of faith, that is, the kalimah shahadah, prayer, fasting in Ramadhan, zakat, hajj, ibadah (i.e. worship rituals such as prayer, fasting in ramadhan); Sirah (History of the Prophet—his birth, his marriage and family, his mission and his death); Islamic history; Islamic world view; and Islamic ethics and etiquettes. In Islamic ethics, students are taught how to conduct themselves in accordance with their environment—from their self to their family, the community, the nation, and the international community—and universal Islamic values. The depth and breadth of this topic will vary according to levels. For those who desire to specialize in Islamic study, Arabic language becomes a compulsory tool, but others could also learn it to a certain extent. The moral education curriculum is comprised of values for 1) self-development; 2) family; 3) the environment; 4) patriotism; 5) human rights; 6) democracy; and 7) peace and harmony.

One of the important reforms in Islamic religious education occurred in the 1980s with the formulation of the New Curriculum for Primary School in 1983, the formulation of the National Philosophy of Education in 1987, and the Integrated Curriculum for Secondary School in 1989. The National Philosophy of Education formulated in 1987 desecularized the public schools by incorporating belief in God as a foundation for education in the country. It emphasizes excellent moral values as one of the outcomes of education. The philosophy states that:

Education in Malaysia is an on-going effort towards further developing the potential of individuals in a holistic and integrated manner, so as to produce individuals who are intellectually, spiritually, emotionally and physically balanced and harmonious, based on a firm belief in and devotion to God. Such an effort is designed to produce Malaysian citizens who are knowledgeable and competent, who possess high moral standards, and who are responsible and capable of achieving a high level of personal well being as well as being able to contribute to the harmony and betterment of the society and the nation at large.⁹

This philosophy aims to inculcate universal moral values across the curriculum and to reassert teachers' important role in developing students' moral and spiritual growth alongside their physical and intellectual growth and not to leave this responsibility to the religious or moral teachers alone. Integration means that students are taught the natural sciences, the social sciences and humanities, and other acquired knowledge in addition to the religious sciences. Consequently, the practical aspects of moral and religious growth are observed closely, especially for Islamic religious education whereby schools provide facilities and space for worship so that students will not miss their mid-afternoon and evening daily obligatory prayers. In addition, *doa* (supplication) for wellness, health, learning, and guidance is sometimes recited in school assemblies and classrooms. The Muslim code of dressing began to be observed upon encouragement by the school. In a subtle way the landscape of the national schools began to incline towards an Islamic ethos. Although values related to ethics are universal and are readily accepted, some other values, for example the way of dressing and some types of food, are not. Theoretically, schools are not supposed to compel students but rather encourage choice through rational persuasion.

Rosnani Hashim

Issues regarding religion and education in Malaysia

In general, Malaysians have accepted the status of Islam as the official religion in Malaysia and thus the preferred position of Islamic religious education in the public school system for Muslims, while moral education is provided for non-Muslims. They have also accepted the financial assistance offered to Islamic private schools as similar assistance is given to National-type Chinese and Tamil Primary and Conforming secondary schools, although these schools are more ethnic than religious-based. However, with the coming of globalization, where every local group becomes more conscious of its values and identity in the effort to preserve it as an attempt to oppose Western cultures and values, the issues of religion and education have become more important. The problem sometimes lies in the interpretation of religious injunctions and values and insensitivities to the practices of other faiths. This is evident from several recent incidents that occurred in the national schools:

- 1 Conflict between the parents of two Muslim pupils in a national primary school and its Muslim school principal who forbade them to wear Muslim *serban* (headgear) in school¹⁰ on the grounds that it was against school regulations.¹¹
- 2 Conflict between the parents of six Hindu students and their school authority who forced them to shave their beard and moustache despite their parents writing to inform the school that they were keeping their facial hair because of a religious (Thaipusam) vow.¹²
- 3 Conflict between parents and the school authority of S.M.K. Seremban Jaya in January 2008, which authorized sex or gender segregation in the schools—in classes, canteens, and even the stairways and entrances.¹³ Apparently the school principal got carried away in his attempt to discipline his charges, especially unruly boys. Some argued that there are many “little Napoleons” in schools who formulate their own rules and make national schools look like religious schools.¹⁴ This is not true only for this school, but for several others, such as S. M.K. Tansau and Penampang Sabah.¹⁵
- 4 Conflict between parents and the school authority of S.M.K. Seksyen 4 in Kota Damansara over the disqualification of students in sports due to wearing shorts.¹⁶ Parents asked if the Ministry could clarify the dress code in non-religious schools. None of them were informed that the school had a rule that runners must wear track-bottoms or long pants.

With respect to moral education for non-Muslims, there have been some groups who argue against it. They would prefer to teach religious education rather than advance secular morality. Sadhana Visionary Academy (SVA) has made an attempt to develop a secondary Hindu school that combines secular values and Hindu values. This school is modeled after the success of the American Home-Schooling model that is currently established in Malaysia by the Grace Assembly Church. The church was able to meet the need for Christian education and secular education for its congregation and has been in operation unhindered for over 20 years.¹⁷

Similarly there are some Christian groups, particularly in East Malaysia, who are beginning to plead that Christian religious education be included in the national school curriculum. The Consumer Association of Sabah and Labuan (Cash) hopes that the State Education Department will respect the wishes of non-Muslim parents who want their children to be allowed to learn their own religions during school hours. It was argued that this was not only in line with the principle of Rukun Negara (national ideology) of belief in God, but would also help in the correct upbringing of students, particularly since fights and gangsterism are now becoming commonplace in schools.¹⁸

Conclusion

This chapter has sought to provide a brief review of religious education in Malaysia. It is clear that Malaysia is a dynamic Muslim country if the education system is used as the yardstick, because Islamic religious education is given strong support by the government. Islamic religious education is not just for the sacred but also for the mundane when efforts are made to translate its social, political, and economic theories into practice as testified by the existence of Islamic banking, Islamic insurance and business systems, and Islamic educational, medical, and social services. Although scholars such as W. Feinberg have expressed concern as to how religious education might not serve modern liberal democracies that require “the need for autonomy and critical reflection,” and the “requirement for tolerance, mutual recognition, and respect for differences demanded by pluralism,”¹⁹ this has not been the case in Malaysia. The recent events are only incidental and not the norm. With the exception of these minor incidents, the various faiths have been living peacefully for at least a century and the school system has successfully inculcated the ethics of mutual respect. This is because religious education is provided within the national system of education and not left to private enterprises. It is the goal of Islamic or other religious education to foster moral and spiritual excellence among all its followers and students regardless of ethnicity and faith. Schooling based on ethnicity plays a more divisive role than religious education. All of Feinberg’s arguments in his work can be mapped for racially segregated primary schooling in Malaysia that hinders the tolerance, mutual recognition, and respect for differences needed for a diverse society. That said, we do recognize Feinberg’s concern to the extent that practices of religious instruction may develop critical reflective skills and attitudes of respect for differences that democracy requires, especially if religion is intertwined with ethnicity.

Another related issue is the teaching of moral education based on critical reasoning alone, without any roots in the student’s traditions. What this will give rise to is secular morality which also has problems as illustrated by the setback of the value clarification movement and other approaches such as Kohlberg’s stages of moral development. Teaching secular morality is in a way inconsistent with the demand of one of the pillars of Rukun Negara (National Ideology), which is belief in God, and also the National Education Philosophy.²⁰

What would be essential for pluralism is for the public schools to offer religious education to any religious group that requests it. H. Rosnani has deliberated on this matter publicly when she discussed the need for a single education system for the primary school in Malaysia which would devote its morning session to the national curriculum and the afternoon session for moral, spiritual, language, and cultural needs of each faith and race. At least these students will study together for three-quarters of the school period and the next quarter within the same faith to study its mother tongue, culture, values, and faith or traditions.²¹ This could avoid the divisiveness that Parker-Jenkins, Hartas, and Irving associated with faith-based schools run privately in isolation of other pupils from a different faith as experienced in the United Kingdom today.²² In this way the public schools are able to accommodate all the differences due to pluralism. But this would require single session schools and therefore the need for the government to build more schools. School leaders should be cautious and not overzealous when dealing with religious matters in order not to tread on others’ toes and turn national schools into religious schools. What is most important is the enculturation of shared values. Religion can be tricky and experience informs us that many of the conflicts in the world arise due to religious intolerance. Thus, the teaching of religion should also be cultivated with reason and philosophical inquiry, which will open up students’ minds to understand and accept differences in perspectives.

Rosnani Hashim

Notes

- 1 Malaysia, Department of Statistics, 2008.
- 2 See H. Rosnani, *Educational Dualism in Malaysia* (Kuala Lumpur: Oxford University Press, 1996).
- 3 Federation of Malaya, *Report of the Committee on Malaya Education 1951*, L. J. Barnes, chairman (Kuala Lumpur: Government Press, 1951), 13.
- 4 *Jawi* is the written script of the Malay language which utilizes Arabic alphabets plus five other locally invented letters to adapt to the Malay sound.
- 5 See *Berita NECF* (National Evangelical Christian Fellowship), November–December 2008, 11.
- 6 *Education Act, 1961* (Kuala Lumpur: International Law Book Services, 1987).
- 7 *Akta Pendidikan 1996 (Akta 550) and Education Act 1996 (Act 550)* (Kuala Lumpur: International Law Book Services, 1996).
- 8 See <www.clhs.edu.my>, accessed January 14, 2011.
- 9 Malaysia, Ministry of Education, Curriculum Development Centre, *The Integrated Curriculum for Secondary School* (Kuala Lumpur, 1989), v.
- 10 The *serban* is the cloth that is folded in a circle around the *kufiyeh* or skull cap worn by males on their head.
- 11 Punjabis were allowed to put on the turban as it was a religious edict, but it was not compulsory for Muslim males—only encouraged.
- 12 *The Star*, “Schools must not divide,” February 2, 2008.
- 13 *The Star*, January 12, 2008.
- 14 *The Star*, “School segregation: Put on mat those going against policy,” January 14, 2008.
- 15 *The Star*, “Sabah school told to stop it,” January 24, 2008.
- 16 *The Star*, “Clarify dress code in school,” January 30, 2008.
- 17 See Progress on the Creation of Sadhana Visionary Academy as of July 2009, S.V.A. <www.myhindupage.org/index.php/sva-introduction>, accessed January 12, 2011.
- 18 *The Daily Express*, Kota Kinabalu, “Cash backs call on religious studies,” July 25, 2005.
- 19 W. Feinberg, *For Goodness Sake: Religious Schools and Education for Democratic Citizenry* (New York: Routledge, 2006), xv.
- 20 Rosnani H. discussed this in her work *Educational Dualism*, 2nd edition (Petaling Jaya: The Other Press, 2004), 212–13.
- 21 Rosnani H., *New Straits Times*, “Make education truly national,” April 1, 2001.
- 22 M. Parker-Jenkins, D. Hartas and B.A. Irving, *In Good Faith: Schools, religion and public funding* (Aldershot, Hampshire: Ashgate Publishing Limited, 2005).

Religious education in Mexico

María Concepción Medina González

Social demographics

Mexico is a multicultural and multilingual nation. At first glance, Mexico appears to be a thoroughly “Catholic country.”¹ A majority of the Mexican population is Catholic, but the increasing presence of other religions is a fact that cannot be ignored. The decrease in the number of Catholics emerges clearly and is strongly associated with a regional reference, particularly within rural areas in southeastern Mexico. The continuation of this downward trend of Catholic religious affiliation is likely.

The ratio of non-Catholics increased between 1990 and 2000 by 10.31 percent to 12.01 percent.² The ratio of Catholics in the United Mexican States according to the 2000 census covers an average of 87.99 percent. The 2010 census³ reveals that Mexico is 83.9 percent Catholic, 7.6 percent Protestant or Evangelical, 2.5 percent Other-religion, and 4.6 percent Without-religion. On the other hand, the Administrative Catalogue of the Directorate General for Religious Associations of the Ministry of the Interior, without referring to matters of theological analysis but simply to technical and administrative purposes, classified religious associations into five groups: Eastern, Jewish, Christian, Islamic, and new expressions. In April 2011 there was a total of 7,553 registered religious associations and 67,571 ministers of worship. Full details are presented in Table 30.1.

Constitutional context

Under Article 3 of the Constitution of the United Mexican States (C.P.E.U.M.), everyone has the right to receive an education. The state—Federation, States, Federal District, and Municipalities—provides preschool, primary, and secondary education, which constitute the basic education, compulsory, free (*gratuita*), and lay (*laica*).

In its historical development, the constitutional provision relating to religious education in Mexico is roughly divided into the following phases:⁴

- 1 Before the 1857 Constitution the provision of religious education was largely in the hands of the Catholic Church.

María Concepción Medina González

Table 30.1 Numbers of religious associations (AR) and their ministers of worship (April 2011)

<i>Religious tradition</i>	<i>Religious associations</i>			<i>Ministers of worship</i>
	<i>Matrices</i>	<i>Derivatives</i>	<i>Total</i>	
1 Eastern	17		17	83
1.1 Hindu	2		2	3
1.2 Buddhist	13		13	50
1.3 Krihsnas	2		2	30
2 Jewish	1	8	9	9
3 Christian	3,490	4,031	7,521	67,438
3.1 Orthodox	26	2	28	136
3.1.1 Patriarchate	5		5	25
3.1.2 Traditionalists	21	2	23	111
3.2 Catholic, Apostolic, Roman	650	2,563	3,213	21,096
3.2.1 Nunciature	1		1	
3.2.2 Mexican Bishop's Conference (CEM)	1	3	4	153
3.2.3 Archdiocese	17	1,171	1,188	8,257
3.2.4 Diocese	69	1,159	1,228	8,663
3.2.5 Prelatures	6	14	20	197
3.2.6 Eparchies	1	3	4	11
3.2.7 Congregations	555	213	768	3,815
3.3 Protestant	33	58	91	1,469
3.3.1 Lutheran	14		14	72
3.3.2 Anglican	1	1	2	81
3.3.3 Presbyterians	18	57	75	1,316
3.3.3.1 National	1	57	58	1,110
3.3.3.2 Independent	17		17	206
3.4 Evangelical	2,778	1,408	4,186	40,076
3.4.1 Methodist	7		7	222
3.4.2 Baptist	438	1,253	1,691	3,030
3.4.2.1 National	2	1,138	1,140	1,438
3.4.2.2 Anabaptist	1		1	59
3.4.2.3 Mennonite	2		2	38
3.4.2.4 Independent	433	115	548	1,495
3.4.3 Salvation Army	1		1	12
3.4.4 Pentecostal	2,259	151	2,410	33,291
3.4.4.1 Pentecostals	1,897	118	2,015	26,712
3.4.4.2 Neo Pentecostals	351	33	384	6,446
3.4.4.3 Interdenominational	11		11	133
3.4.5 Adventist	14		14	1,492
3.4.5.1 Seventh-day	1		1	845
3.4.5.2 Israel	13		13	647
3.4.6 Church of the Living God Pilar and Support of Truth, the Light of the World	1	4	5	800
3.4.7 Spiritualists	54		54	1,220
3.4.8 Christian Science	4		4	9
3.4.9 Non-evangelical Christian Bible	3		3	4,661
3.4.9.1 The Church of Jesus Christ of Latter-day Saints in Mexico	1		1	339
3.4.9.2 Christian Congregation of Jehovah's Witnesses	2		2	4,322
4 Islamic	2		2	25
5 New expressions	4		4	16
Total	3,514	4,039	7,553	67,571

Source: Data were taken from Directorate General for Religious Associations of Ministry of the Interior

- 2 From 1857 to 1873 religious education could be taught in all schools (public or private) under the right to freedom of education. Article 3 of the Constitution of 1857 established freedom of education and thus opened the possibility of lay (*laica*) education.
- 3 From 1874–1916 lay education was provided in all public schools (Article 4 of the Organic Law of 1874 banned religious instruction), but religious education was possible in private schools.
- 4 From 1917–33, lay education was provided in all public and private schools of basic education; however, imparting religious education was possible in private schools for secondary and higher education.⁵
- 5 In the Constituent Congress of 1916–17 they discussed the prohibition of religious education, which was thought to contain the abstract idea of religious dogma, and therefore could not be assimilated by children. It counteracted the natural psychological development of children as well as having the tendency to cause some distortion of their spirit, depositing the seed that would generate a violent fanaticism. For this reason, the Mexican government banned religious education in public and private schools. The key feature of the liberal state is its laicism, its formal and material independence of the church, and its separation from any religious dogma.⁶

Under the terms of the original Articles 3, 5, 24, 27, and 130 of the Constitution of 1917, religion was virtually declared to be a private matter. Religious communities were denied legal personality and thus their public effectiveness was greatly limited. The “Principle of State Supremacy over the Church” predominated.

It is reasonable to note that in 1917 there was indeed a national education system and illiteracy reached 80 percent of the population. Most schools were privately owned and managed by religious corporations and ministers of worship.⁷ With the reform of the Penal Code of July 2, 1926, all contravention against Article 3 of the Constitution was fined 500 pesos or the offender was imprisoned for 15 days, and the corresponding school was closed.⁸

- From 1934 to 1945 there was socialist education in all public schools and in private primary and secondary schools and schools for workers and peasants.⁹
- From 1946 until January 1992 there was compulsory and lay education in schools, both public and private.

By the constitutional reform of January 28, 1992 to Article 3, three basic amendments were made. First, the word “lay” (*laica*) in paragraph I of this article was introduced to stress the lay nature of education, and thus confirm the non-confessionality of the Mexican state. Previously the lay content of education had been mentioned but not specifically by the word (*lay*) that characterizes it. Second, in Article 3, Paragraph II (c), concerning the improvement of human relations in education, the phrase “avoiding sect privileges” was altered to read “avoiding religious privilege,” since the word sect is pejorative. Third, with the derogation of Paragraph IV of Article 3, the prohibition on imparting religious education in private schools was implicitly derogated. It was established that the private schools must provide education with adherence to the goals and criteria that establish the first Paragraph and Paragraph II of Article 3, but are not mentioned in Paragraph I, which establishes explicitly lay education as separate from any religious doctrine.¹⁰

Since 1992 constitutional reform to Article 3, lay education, remains defined by three fundamental criteria.¹¹ But these criteria are not easily dealt with in practice because of the complex nature of education. In these respects laicity is facing new challenges. It should not be

María Concepción Medina González

reduced to the sole and exclusive “criterium of estrangement” (Article 3, Paragraph I, C.P.E.U.M.), but shall also consider the “scientific criterium” (Article 3, Paragraph II, erste Paragraph, C.P.E.U.M.), but mostly the “democratic and social criterium” (Article 3, Paragraph II, a and c, C.P.E.U.M.). Thus an open laicity must consider conscientious objection, public ethics, balancing the roles (or loyalties) of a teacher (loyal to himself, to parents and to the state), cultural values and social cohesion, as well as make room for religious education in its just dimensions. It is the state’s duty to respect and guarantee the right of parents to educate their children in accordance with their own convictions.¹²

Constitutional reforms

1 On March 8, 2011, the Senate approved the draft of the constitutional reform on human rights. This reform amends 11 articles of the Constitution. In particular it includes the following relevant aspect in Article 1: The enjoyment of the human rights recognized in the Constitution and all international human rights treaties ratified by Mexico. The Chamber of Deputies sent the reform bill to local legislatures in order to continue the legislative process. At least 17 local congresses must approve the project before it is referred to the Executive Power for its enactment. On May 18, 2011, 17 local legislatures approved this reform.

On June 10, 2011 the Decree of constitutional reform on human rights was finally published in the *Official Journal of the Federation* (Diario Oficial de la Federación).

2 On February 12, 2010, the Senate approved the draft of the constitutional reform to Article 40. This reform amends this article to include the word “lay” in the following terms: “It is the will of the Mexican people to organize themselves into a federal, **lay**, democratic, representative Republic.” The reform bill was sent to local legislatures in order to continue the legislative process. At least 17 local congresses must approve the project before it is referred to the Executive Power for its enactment.

These constitutional reforms would have impact in the matter of religious education.

Legal context

The right to religious freedom includes the freedom of everyone to manifest his religion in teaching, according to Article 18, Paragraph 1, of the International Covenant on Civil and Political Rights. The States Parties undertake to have respect for the liberty of parents (and when applicable, legal guardians) to ensure the religious and moral education of their children in conformity with their own convictions (Article 18, Paragraph 4, of the International Covenant on Civil and Political Rights and Article 12, Paragraph 4 of the American Convention on Human Rights).¹³ The Mexican state signed these international instruments without any reservation or interpretative declaration. Hence, the Mexican state is obliged to ensure the religious and moral education of all when it provides approximately 90 percent of basic education, and that means not only to respect but above all ensure that children can receive education at public schools. It is not allowed for the state to provide this education, because of laicity, but it is for the religious communities and religious associations to do.

The Education Act (*Ley General de Educación*) points out in Paragraphs I and VI of its Article 7 that the purpose of education is “to contribute to the integral development of the individual, to exercise its full human capacities” and “promote the awareness of human rights and respect

them.” On the other hand, there are also the provisions of the Law on Religious Associations and Public Worship (L.A.R.C.P.), with regard to religious associations, so that these organizations can participate in the creation, administration, maintenance, and operation of educational institutions, provided they do not pursue profit and are subject to the Law on Religious Associations and Public Worship and the other applicable laws in this field (Article 9, Paragraph V, L.A.R.C.P.).

The state and religious autonomy

Under the Second Paragraph of Article 24 of the Constitution of the United Mexican States (C.P.E.U.M.), the Congress cannot enact laws that establish or prohibit any religion. Article 130 b) of the C.P.E.U.M. determines expressly the prohibition on state authorities intervening in the internal life “*vida interna*” of religious associations.¹⁴ In this sense the “right of self-determination” must be understood as the right of religious communities to the indispensable freedom to decide not only on the content of their beliefs but also the organizational structure and designation of positions or the appointment of ministers of worship, without any obstruction or interference by the state. Therefore, state authorities are forbidden to determine the content of religious education; it is solely the task of the religious communities because of the right of self-determination.

Religion and state autonomy

Under Article 3, Paragraph VI, CPEUM in force (reform of March 5, 1993), private citizens may provide education in all types and modalities. The state must grant and can withdraw recognition of the official validity of studies conducted in private schools. Private people who wish to impart preschool, primary, secondary, and normal education are subject to the following limitations: 1) they require express authorization of public power (Ministry of Education) to impart it; 2) to do so they must comply with the official syllabi (*planes de estudio*) and curricula (*programas de estudio*); and 3) the orientation of the education imparted in private schools shall be in adherence with the goals and criteria established in the First Paragraph and Paragraph II of Article 3 of the C.P.E.U.M. (but not Paragraph I of Article 3 of the C.P.E.U.M. that establishes expressly lay education).

For their part, religious associations have the right to participate alone or in association with persons or entities in the establishment, administration, maintenance, and operation of educational institutions, provided they do not pursue profit and, in addition to this, observe the respective law, the Education Act (*Ley General de Educación*) (Article 9, Paragraph V, LARCP).¹⁵

State financial support for religious education

There is no specific or direct state financial support for religious education. The national spending for education in general in 2010 was a total of 849,357.4 million pesos, which corresponds to 77.26 percent in the public and 22.73 percent in the private sector. This total represents 6.9 percent of the national Gross Domestic Product.¹⁶ Moreover, the enrollment of students with public financial support exceeds 80 percent at the preschool education level (85.71 percent) and more than 90 percent at the levels of primary (91.74 percent) and secondary education (92.27 percent), compared to those getting private financial support.

María Concepción Medina González

The current model of religious education

Religious education in public schools

In Mexico, religious education is not a subject in the curriculum of basic education of the National Education System and therefore it is not imparted in public schools. However, in the subject Civic and Ethical Formation of basic education, the religious aspect is touched on indirectly or marginally.¹⁷

Religious education in private schools

The constitutional reform of January 28, 1992 to Article 3 resulted in the possibility to offer religious education in private schools. In Mexico, there are no accurate global data on the total number of private schools of different confessions or denominations. Currently, according to data by the National Confederation of Private Schools (C.N.E.P.),¹⁸ there are 5,000 schools spread out over 66 federations and 14 regions around the country, and a third of them are lay.¹⁹ For its part, the Mexican Association of Institutes of Higher Education Christian Inspiration (A.M.I.E.S.I.C.) has a curriculum that it has not yet utilized as a subject of religious education, although it maintains activities linked to religious issues (optional to students) but rather aimed at marginalized and indigenous groups. A.M.I.E.S.I.C. has a total of 52 partner universities owned by private people, congregations, and dioceses.²⁰

The National Assembly XXII of Pastoral Education²¹ of the Mexican Bishops' Conference in 2010 dealt with an education project based on ecclesiology and Christian anthropology as an educational task concerning all members of the church.²² This Assembly became important in Mexico since that deepened the lines of action for religious education, whose basis of reflection is in the Concluding Document of Aparecida, 2007.²³

Nevertheless, there are religious associations like the Christian Congregation of Jehovah's Witnesses that do not operate private schools, so that their religious principles are transmitted within families.²⁴

Conclusion

Within the school-related Mexican Law of Religion,²⁵ religious education is an integral part of the fundamental right of religious freedom, not "something alien" to it. The religious education in public schools is not directed against the principle of laicity of the state and is not an exception to the principle of separation of state and religious communities,²⁶ but its confirmation. While the Mexican state imparts, practically, more than 90 percent of basic education, lay and free, it should give space to religious education in public schools in regard to the right of parents to receive religious and moral education for their children in accordance with their own convictions, as is established in international human rights instruments to which the Mexican state is obligated. Otherwise laicity (as respect and consideration of the religious) might be emptied of meaning, especially if only parents who have sufficient financial resources are able to offer their children this kind of religious education.

In this context, imparting religious education in public schools requires proper cooperation between the state and religious communities, because it is a mixed question (*res mixtae*), which concerns both the state and religious communities. It is a matter for the state to integrate the subject (religious education) into the curriculum of public schools, school organization, and supervision, as religious education should not be neglected in relation to other subjects such as

history, civic and ethical formation, or even music or sports. As to the content of religious education and training of the teaching staff this is a matter for the religious communities themselves, precisely because of the principle of laicity of the state.²⁷

Notes

- 1 But there are also other religious communities: Light of the World that is present mainly in Jalisco, the state capital of Guadalajara, but was founded on April 6, 1926 in the city of Monterrey, capital of Nuevo León; Church of Seventh-day Adventists (1854); Baptist Church (January 30, 1864); National Presbyterian Church of Mexico (1872); Methodist Church (1873); Mormons (first missionaries, 1876); the first Jehovah's Witnesses (1893); National Baptist Convention (September 13, 1903); Jewish Institute of Mexico (1912); Congregation of Jehovah's Witnesses (1920); Mennonites (1922); Opus Dei (January 18, 1949); Sukyo Mahikari (February 1977); Centre Zen (Buddhist religious community, 1980); Eckankar of Mexico (1983). See Medina González, María Concepción, *Das Religionsrecht in Mexiko (The Law of Religion in Mexico)* Band I (Münster: LIT, 2005), 54–55.
- 2 In the 1990 census, the Mexican population was classified into Catholics and non-Catholics, and in this last category there were included Jews, Evangelicals, followers of other religions, non-religion, and non-specified. In the 2000 census, however, there was included among non-Catholics not only Jews, other, none and not-specified, but also Protestants (more precisely, followers of the historic churches, Pentecostals, neo-Pentecostals, followers of the Church of the Light of the World, and other Evangelicals and the followers of biblical religions, but who are not Evangelicals (e.g., Seventh-day Adventists, Mormons, and Jehovah's Witnesses)).
- 3 The 2010 census, in Section III: Characteristics of persons, Number 9, about religion, simply asked the following question: *What is the religion of (Name)?* With the following statement: *Enter the religion.* This resulted in a series of discussions since the 2010 census questionnaire did not include the expansion of criteria for how people are identified in the area of religious affiliation, as had been raised by several experts in the field.
- 4 In this regard, to get a deeper insight into the topic, see Adame Goddard, Jorge, “El derecho a la educación religiosa en México,” (“The right to religious education in Mexico”), in *Diez Años de Vigencia de la Ley de Asociaciones Religiosas y Culto Público* (1992–2002), coordinated by Javier Saldaña (México: SEGOB/UNAM, 2002), 23–44 (28).
- 5 According to a jurisprudential thesis, the only limitations to freedom of teaching were: the lay nature of education, the prohibition on religious corporations and ministers of worship establishing or directing schools of primary education, and the requirement that private primary schools could only be established subject to official surveillance. See “Libertad de enseñanza” (“Freedom of education”), in *Semanario Judicial de la Federación*, Pleno, 5ª (Época, Tomo VII, 2 agosto 1920), 543.
- 6 Gutiérrez Barrios, Fernando, “Juárez ante el siglo XXI” (“Juárez before the XXI century”), in *El Universal*, Primera Sección (14 Marzo 1999), 1, 24 (24).
- 7 Cf. *Diario de los Debates de la H. Cámara de Diputados* (Diary of the Debates of the H. Chamber of Deputies), LV Legislatura, Año Legislativo I, periodo ordinario, Nr. 17, 1806.
- 8 See Articles 3 and 4 of *Ley Reformando el Código Penal para el Distrito y Territorios Federales sobre delitos del fuero común y delitos contra la Federación en materia de culto religioso y disciplina externa* (Act Reforming the Penal Code for the Federal District and Territories on the local crimes and crimes against the Federation in the field of religious and external discipline), *Diario Oficial de la Federación* de 2 de julio de 1926.
- 9 Education in higher grades in private schools should not necessarily follow the principles of socialism according to a jurisprudential thesis. See “Enseñanza, las escuelas particulares en los grados superiores, no están obligadas a seguir determinados principios doctrinales” (“Education, private schools in the higher grades are not required to follow certain doctrinal principles”), in *Semanario Judicial de la Federación*, Segunda Sala, 5a. Época, Vol. LXV (21 de agosto de 1940), 2449. *Ley Orgánica de la Educación Pública* (The Organic Law of Public Education), published in *Diario Oficial de la Federación* (Official Journal of the Federation) on January 23, 1942, excluded the teaching or propagation of any religious doctrine or belief (Article 16, Paragraph IV). The exercise of religion within the meaning of Article 24 of the Constitution should not count as bigotry or prejudice (Article 17). The ban on religious corporations and ministers of worship imparting basic education was established in Article 37 of this organic law.

María Concepción Medina González

- 10 The possibility to impart religious education in private schools was met with suspicion by some of the doctrinaires who believed this would open the door to Protestant confessional schools, in which they feared foreign ministers of worship, with great financial help from the U.S.A., who might influence the students. Instead of evangelizing they seemingly continued the historic task of “weakening to divide the country” on Mexican territory. Another part of the doctrinaires even saw (in the constitutional reform to Article 3 related to the teaching of religious education) the beginning of a historical discussion: What power is estimated higher, the state or the church? However, this view is understandable since it reflects precisely the constitutional reform speech (January 28, 1992) questioning the transition from the monopoly of the church to the monopoly of the state. Then, for the first time in 75 years, the right of parents to moral and religious education of their children was observed, at least in private schools.
- 11 a) The *criterium of estrangement (criterio del distanciamiento o alejamiento)*, according to Article 3, Paragraph I, C.P.E.U.M. (must be kept separate or outside of the doctrines or religious beliefs); b) the *scientific criterium (criterio científico)*, according to Article 3, Paragraph II, first Paragraph, C.P.E.U.M. (fight against bigotry and prejudice of all kinds, not only religious); c) the *social and democratic criterium (criterio democrático y social)*, Article 3, Paragraph II, a) and c), C.P.E.U.M. (encourages human coexistence, avoiding the privileges of religion, which ultimately relates to tolerance and respect for diverse religious beliefs).
- 12 Moreover, the principle of religious freedom is also present in religious education by requiring “Non-competition of the State or State replacement to the act of faith and its practice,” which means that the state is not permitted to impose a religion on citizens or to replace the rights of parents to educate their children. The contrary could occur when the state assumes 90 percent of basic education and provides lay education without giving adequate space to religious education in public schools.
- 13 These international instruments, according to a thesis of the Supreme Court of Justice of the Nation, have a lower status than the Constitution, but a higher status than federal laws. The Constitution of the United Mexican States is, according to Article 133, the Supreme Law of the Union. “Tratados internacionales se ubican jerárquicamente por encima de las leyes federales y en un segundo plano respecto de la Constitución Federal” (“International treaties are located hierarchically above federal laws and in the background on the Federal Constitution”), *Semanario Judicial de la Federación*, Pleno, 9a. Época, Tomo X, Tesis P. LXXVII/99 (noviembre 1999), 46.
newnoteThe state cannot determine either the internal regulations of the religious communities or impose on them a particular form of organization of their affairs. This guarantee is embodied in Article 9, Paragraph II, in conjunction with Article 25, Second Paragraph, of the Law on Religious Associations and Public Worship (LARCP). “Artículo 9o. Las asociaciones religiosas tendrán derecho en los términos de esta Ley y su reglamento, a: II. Organizarse libremente en sus estructuras internas y adoptar los estatutos o normas que rijan su sistema de autoridad o funcionamiento y designación de sus ministros.” (Article 9: “Religious associations will have the right, in terms of this Act and its regulation, to: II. Organize freely in their internal structures and adopt the statutes or rules that govern their authority or operating system and appoint their ministers of worship”). Artículo 25 (segundo párrafo) “Las autoridades federales, estatales y municipales no intervendrán en los asuntos internos de las asociaciones religiosas.” (Article 25, Second Paragraph: “The federal, state, and municipal authorities must not intervene in the internal affairs of religious associations”).
- 14 In conformity with Article 10, First Paragraph, L.A.R.C.P., the previous prescription (Article 9, Paragraph V) is a kind of exclusive right of religious associations, which have no religious communities (churches or religious groups) that are not registered as religious associations.
- 15 Cf. Secretaría de Educación Pública, *Cuarto Informe de Labores* (Fourth Report of Work), septiembre 2010.
- 16 On the curriculum map of basic education in Mexico there is a global formative field called “Personal Development and Development for the Coexistence,” where aspects of civic and citizenship education are located. Both curricula of primary and secondary education are articulated around three substantive elements: a) diversity and multiculturalism; b) the emphasis on development of competencies (there are the following civic and ethical competencies: 1. Knowledge and care of oneself; 2. Self-regulation and responsible exercise of freedom; 3. Respect and appreciation of diversity; 4. Sense of belonging to the community, nation and humanity; 5. Management and conflict resolution; 6. Social and political participation; 7. Adherence to the law and sense of justice; 8. Understanding and appreciation of democracy); and c) incorporation of issues dealing with more than one subject, especially the formation of values. The development of this content is the responsibility of the whole school and implies, at the same time, that the curricula should highlight possible links between them, and especially promote

- school work, including topics and situations of social and ethical relevance. Plan de Estudios, Educación básica. Secundaria. (Syllabus 2006. Basic education. Secondary) (México: Secretaría de Educación Pública, 2006), 14, 20, 21.
- 17 September 21, 1943 Act gave rise to the CNEP, but since August 21, 1948 it has been a civil association. See *Revista CNEP (CNEP Magazine)*, Nr. 29, séptima época, agosto–septiembre 2008, página editorial.
 - 18 Interview with Brother José Manuel Velasco Arzac of the National Confederation of Private Schools of the Mexican Bishops' Conference, October 21, 2009. The Legionaries of Christ control about 280 schools; Opus Dei is responsible for another 200 schools.
 - 19 See Medina González, María Concepción, "Régimen jurídico de la religión en la educación pública en México" ("Legal status of religion in public education in Mexico"), in *Religión en la Educación pública: Análisis comparativo de su regulación jurídica en las Américas, Europa e Israel*, coordinated by Carmen Asiaín Pereira (Madrid: Fundación Universitaria Española, 2010).
 - 20 This Assembly of the Episcopal Commission for Pastoral Prophetic of the Mexican Bishops' Conference, through its Dimension of Education, took place October 26–29, 2010 in the Diocese of San Juan de los Lagos, Jalisco.
 - 21 Various participants involved in education evaluated the current education project in Mexico, including the Mexican Association of Institutions of Higher Education of Christian Inspiration (A.M.I.E.S.I. C.), the Organization of Mexican Seminars (O.S.MEX), the National Confederation of Private Schools (C.N.E.P.), E.N.C.E., the Union National of Parents (U.N.P.F.), the Teachers' Alliance (ALMA), vicarships of pastoral care, the Conference of Major Superiors of Mexico (C.I.R.M.) and various lay movements. Members of the Higher Institute of Religious Sciences participated as advisers and collaborators in the implementation of an Educational Project which worked with the Ecclesiastical Provinces of the country.
 - 22 Documento Conclusivo de la V Conferencia General del Episcopado Latinoamericano y del Caribe, (Concluding Document of the V General Conference of Latin American and Caribbean Episcopate) 2ª. ed., Aparecida, 13–31 mayo 2007. This document explains the reforms that various Catholic educational institutions in Mexico are undertaking.
 - 23 In addition, all "publishers" ("publicadores") are trained by means of meetings or church Bible studies, because although there are some advanced schools for missionaries, they do not have specialized theological schools, believing that biblical knowledge should be available to the whole congregation. This information was provided directly by the Christian Congregation of Jehovah's Witnesses in December 2009.
 - 24 The school-related Mexican Law of Religion (*derecho religioso mexicano*) aims to study the regulation of religious education, organization, and teaching conditions in private schools within the existing framework and the implications for their provision in public schools, under the principles of Laicity (*laicidad*) of the state, religious freedom, and separation of state and religious communities. See Medina González, María Concepción. "*Tendencias actuales del derecho religioso mexicano*" ("Current trends in Mexican Law of Religion"), in *Una puerta abierta a la libertad religiosa (México a quince años de las reformas constitucionales en materia religiosa 1992–2007) (An open door to religious freedom. Mexico—fifteen years of constitutional reforms in religious matters 1992–2007)* (México: Secretaría de Gobernación, 2007), 29–52.
 - 25 At the top of Article 130 of the Constitution of the United Mexican States is mentioned specifically "the historic Principle of Separation of State and Churches"; which means separation of state and religious communities, because not all religious communities are organized as churches, for example the Jewish or Moslem communities. This principle is against a close connection between the state and religious communities, that is, the prohibition of institutional or total identification between both and the rejection of a state church or state religion. Such a rejection should not banish religion and religious communities from public life. A strict separation between state and religious communities is not without problems. In this context, the separation of state and religious communities requires at the same time distance and cooperation, especially in the case of religious education.
 - 26 Here, the problem arises that they do not have sufficient staff trained to assume the primary responsibility of teaching. On the other hand, it should be made clear what is meant by religious education, in order to standardize criteria, especially when for some people this involves exclusively the teaching of religious doctrine while, for others, only religious cultural values of different religions, or even, wrongly, proselytism and religious bigotry.

Religious education in Nepal

Kanak Bikram Thapa and Bal Bahudur Mukhia

Social context of Nepal

Nepal is a multiethnic, multilingual, multi-religious, and diverse culture. It is a country of highly diverse traditions with a rich culture. Different kinds of festivals are celebrated throughout the year based on the customs and beliefs residing in different parts of the country. The total population of Nepal was 23,151,423 in 2001 and increased to 26,966,581 in 2008 (CBS, 2008). Easily more than 100 cultures and languages are to be found in Nepal. Nepal's principal faith systems are Sanatandharma, Prakritidharma (nature), Kiratdharma, Hinduism, and Buddhism, as well as sundry other manifestations and cultural ideologies. The linguistic landscape and cultures have contributed to Nepal's diversity.

Nepalese social structure is still based on and guided by the age-old values, norms, customs, and practices of Hindu state religion and higher caste or higher Hindu ritual status. In Hindu religious practices, there is a hierarchical caste structure. In the Vedic literature we find that society is classified by four Varna. The Interim Constitution of Nepal (2007) identifies Nepal as a secular state. Nevertheless, the Country Code of 1963 abolished various forms of discrimination, religious and otherwise. The Interim Constitution of 2007 includes a long list of fundamental rights.

The culture of Nepal is a unique combination of tradition and novelty. The culture of Nepal also includes the codes of manners, dress (Daura (labeda) suruwal), languages (the number of languages listed are 126, of which 124 are living languages), rituals (that is, rice feeding, guniu cholo, and the like), norms of behavior, and systems of belief. In Nepal, folklore and folktales have remained an integral part of Nepalese society; they reveal different dimensions of social and cultural life of the Nepalese people, and can often be identified by different regional and ethnic colors and banners. In Nepal people celebrate various festivals such as Dashain (the longest festival), Tihar, Buddha Jayanti, and Maha Shivaratri. The Nepal Heritage Society has compiled 1,262 significant architectural and archeological sites in Nepal which represent the culture of Nepal.

The economic development of Nepal rests primarily on four attributes. The first attribute is agriculture, on which 85 percent of the people of the country depend for livelihood. Nepal is not self-reliant in the field of agriculture and imports food grains to feed its population. The

second attribute is water. Nepal is considered the second richest country in the world in water resources available within its borders. The third attribute is industry, but since Nepal is a small land-locked country lying between two major industrial giants (China and India), the industrial sector has not prospered as it should. The fourth attribute is mines and mineral industries which are also not in a developed stage due to the enormous amount of money required for development. For the last few years tourism has played a vital role in the economic development of Nepal and is now regarded as the backbone of development.

Constitutional provisions

The mono-cultural policy of the state has resulted in an enormous loss of cultures of tribal/indigenous peoples and minorities. Taking this into account, Article 4 (1) of the Interim Constitution of Nepal (2007) declares Nepal to be an independent, indivisible, sovereign, secular, inclusive, federal, democratic republican state.¹

The Interim Constitution also attempts to strengthen national unity by maintaining the cultural diversity of the country by developing healthy and cordial social relations among various religions, cultures, tribes, communities, denominations, and linguistic groups based on equality and co-existence, and through the equal development of their languages, literatures, scripts, arts, and cultures.² Cultural right has been incorporated as the fundamental right in the Interim Constitution, providing that every community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization, and heritage.³

The Interim Constitution of Nepal (2007) provides employment and social security rights. Thus, every citizen has the right to employment. Those who are women, aged, disabled, incapacitated, or helpless citizens have the right to social security. Every citizen has the right to food sovereignty.⁴

The state has the obligation to make an inclusive, democratic, and progressive restructuring of the state, by ending the existing centralized and unitary structure of the state so as to address the problems including those of women, dalits, indigenous people, Madhei, oppressed, excluded and minority communities, and backward regions, while at the same time doing away with discrimination based on class, caste, language, gender, culture, religion, and region.⁵

Nepal is now writing a new, permanent constitution. The Interim Constitution declares Nepal to be a Federal Republic; the implementation of provisions calling for federal structure and Nepal's status as a republic will be decided by the first meeting of the Constituent Assembly under the new constitution.

Religion and state autonomy

Hindus constitute 80.06 percent of the population according to the census of 2001.⁶ Hinduism has become the dominant religion in Nepal. Buddhists, Muslims, Christians, and other, nature worshipers, are the principal religious minorities in Nepal. Vedic literature explains the classifications of Brahmin, Kshatriya, Vaishya, and Sudra. Discriminatory and inhumane practices, for example, the "Sati System" (burning alive of a wife in the funeral pyre of a dead husband) and "Das Pratha" (slavery system) were abolished in 1920 (1977 B.S.) and in 1924 (1981 B.S.), respectively, which were clearly milestone events in Nepalese society.

Nepalese laws from the ancient period until the establishment of democracy in 1951 were based on religion, local customs, usages, and royal edicts.⁷ Law is considered a branch of religion. Prior to the codification of the Country Code (Muluki Ain) of 1854, the legal system of Nepal was very much influenced by religion.⁸ In the ancient period, there was no

Kanak Bikram Thapa and Bal Bahudur Mukhia

differentiation between law and religion, or between law and customs. Religion and customary law, royal edicts, and usage were sources of law.⁹ The legal and justice system of the Kirati period can be understood from the Kirati Veda, that is, “*Kirat Mundhum*.” Mundhum was just like the Four Veda for Aryans.¹⁰ The early sixth century B.C.E. has been taken as the initial period of Kirat reign in Nepal. In early Kirat society the Mundhum was the only law of the state. Many of the rules were based on social customs, traditions, culture, values, and religion during the reign of Lichhavis. Traditional concepts of fairness and impartiality under the law of religion were some of the basic rules of the justice system. The kings of subsequent dynasties began to promulgate laws with the advice of Dharmadhikara (the owner of justice) and pundits.¹¹ Laws during the Malla period were Sruties, Smirities, and Manab Nyaya Shastra, as well as the practice of trial by ordeal.

Religion in Nepalese law after unification

Nepal as a viable political entity as it exists today came into being in the third quarter of the eighteenth century. Before unification Nepal was divided into several principalities and petty kingdoms. King Prithvi Narayan Shah of Gorkha laid the foundation of unified modern Nepal in 1768 (1825 B.S.).

Before the unification of Nepal the common feature among the principalities was the recognition of law based on religion (Dharmashastra). Veda, Smirities, puranas, commentaries, nibandha, usage, customs, and anadas (special Royal proclamations) were issued where Dharmashastras, customs, and usages were silent on the situation.¹² King Prithvi Narayan assigned the responsibility of administration of justice to Dharmadhikara. The king was considered the fount of law and justice. At the center, he established both trial and appellate courts. In all provincial and district level courts, pundits of Brahmin caste were appointed as the representatives of Dharmadhikara, who were responsible for application of the law of religion in all cases before the court. The principle of equality was ignored. The caste system was prevalent and criminals were treated in accordance with their caste status. The king and his descendants ruled the country with the help of royal edicts, customs, conventions, moral law, and local customs and religious instruments. The laws before the codification of law (Country Code) were based on Hindu religious texts, and the practice of settling disputes was carried out by the village chieftains, pundits, and local landlords. There were many other legal charters issued in the form of *Sanad*, *Sawal*, *Khadakanissana*, *Rukkha*, *Lalmohar*, and so on.

Jung Bahadur Rana, the then premier, visited England and France in the year 1849. Besides the English and French Court structures, the Code Napoleon and Civil Code of France influenced him. After his return from European countries he started to review the laws and appointed a Law Council (Ain Kausal). The Ain Kausal promulgated the Country Code (Muluki Ain) in 1854 under the red seal of King Surendra, the red seal of Crown Prince Trailokya, and the yellow seal of ex-King Rajendra. It dealt with criminal and civil law and had provisions relating to administrative law, family law, land law, regulation for the management of revenue administration, land surveys, and the like. This Code was the first code of modern Nepal based on Hindu jurisprudence; it incorporated diverse castes and ethnic groups of Nepal in a holistic framework of national case hierarchy. The Country Code (Muluki Ain) of 1854 was modified and redrafted from time to time. It underwent 13 minor and major amendments. It was the main source of law in the country until 1963.

Religion in Nepalese law after 1951

Jung Bahadur Rana, an ambitious and shrewd courtier, installed the Rana regime in 1846 and made the position of prime minister hereditary to the Rana family and maintained the status quo in virtually every respect. Rana rulers followed the closed door policy and prevented the process of modernization. During the Rana regime, Nepal's foreign relations were confined to only four countries: India, the United Kingdom, the United States of America, and France. Nepal lived under a highly personalized and autocratic rule of Ranas without any legal and constitutional provisions. The revolution of 1951 overthrew the Rana regime and introduced multi-party democracy for the first time.

The Nepalese legal system has by and large been replaced by a more Western system. The Nepalese constitution, laws, legislature, executive, and judiciary are organized in Western fashion. But arguably it is not organized in appropriate fashion.¹³

The Country Code (Muluki Ain) was introduced in 1963 and is based on the principle of equality before the law and doing away with caste and other religious considerations. It has been serving as common criminal code, common civil code, and is equally applicable to Hindus, Buddhists, Muslims, and others in matters such as marriage, adoption, inheritance, and succession.

The Country Code (Muluki Ain) of 1963 codified all the laws of Nepal—civil, criminal, religious, and customary. The Code also abolished all kinds of discrimination. Customs and customary law in Nepal based on religion are incorporated into the Country Code of 1963 as follows: (1) Recognition of customary rules: the preamble mentions that scattered religious rules have been codified. (2) The customary practice of marrying an uncle's daughter in an indigenous community like Gurung or Magar is exempted from punishment. (3) Offering animals (except cows) while conducting religious rites is exempted. (4) Cases related to forceful entry for religious reasons are dealt with.

The Country Code (Naya Muluki Ain) of 1963 prohibits conversions from one religion to another. A chapter on etiquette (Adal ko Mahal) stipulates that no one shall carry on any activity causing an adverse effect on any other religion. Attempting to convert a person to another religion carries a punishment of three years' imprisonment; and any successful conversion from one religion to another carries a punishment of six years' imprisonment and, if such a person is a foreign national, that person shall be expelled from the country after completing six years' imprisonment.

Religion in the Constitutions of Nepal

The Constitution is the supreme and fundamental law of the land. The Constitution is legally binding on the state and all subjects within it. Since 1948 (2004 B.S.), six Constitutions have been promulgated:

Religion in the Government Act of 1948 (2004 B.S.)

The Government of Nepal Act 1948 provided to the citizens of Nepal certain fundamental rights such as freedom of person, freedom of speech, liberty of press, freedom of assembly and discussion, freedom of worship, complete equality in the eye of the law, cheap and speedy justice, universal free compulsory elementary education, universal and equal suffrage for all adults, and security for private property. It did not mention anything about religious rights.

Kanak Bikram Thapa and Bal Bahudur Mukhia

Religion in the Interim Government of Nepal Act 1951 (2007 B.S.)

Late King Tribhuvan promulgated the Interim Government of Nepal Act (1951) which inaugurated a democratic system. The Act was subservient to the democratic aspirations of the people. It contained directive principles of the state policy which suited the democratic urges of the people, and fundamental rights were granted and the rule of law was assured (Articles 3–20). The Act did not mention religion.

Religion in the Constitution of the Kingdom of Nepal 1959 (2015)

The politics of the country took a drastic turn soon on King Tribhuvan's sudden demise in 1955. His successor, the late King Mahendra, assumed for himself the preeminent position in the governmental structure in accordance with the theory that sovereignty lay in the institution of monarchy. For eight years (1951–59), Nepal managed its affairs in accordance with the provisions of the 1951 Interim Constitution and its subsequent amendments. The Constitution of the Kingdom of Nepal was prepared and enforced in the year 1959 (2015B.S.) which guaranteed fundamental rights and their enjoyment (Articles 3–9). But it did not stipulate directly about the right of religion or anything regarding any religion.

Religion in the Constitution of Nepal 1962 (2019 B.S.)

On December 16, 1962, a new Constitution was introduced which laid the foundation of the Panchayat democracy. It was said that it was a constitutional innovation and that the system was essentially Nepali in character and spirit. Some claimed that the Constitution was nationalist in background and democratic in tendency. Fundamental rights except the right to form political organizations were granted to the people. Article 3 (1) of the Constitution of Nepal (1962) declared that Nepal is an independent, indivisible, sovereign, monarchical Hindu kingdom. Religious freedom has been granted but conversion of religion is prohibited. The same Constitution declared that the words “His Majesty” mean His Majesty the King – being a descendant of the Great King Prithvi Narayan Shah and an adherent of Aryan culture and the Hindu religion (Article 20 (1)). Article 14 of the same Constitution provided fundamental rights to religion according to which every person should have the freedom to profess and practice his own religion as handed down to him from ancient times, having due regard to traditional practices. No one, however, is entitled to convert another person from one religion to another religion. The referendum in May 1980 evidenced the victory of the Panchayat system. The late king Birendra promulgated the third amendment to the Constitution on December 15, 1980, and it lasted until 1990.

Religion in the Constitution of Kingdom of Nepal 1990

Article 4 (1) of the Constitution of the Kingdom of Nepal (1990) formally recognized the Hindu kingdom and declared that “Nepal is a multiethnic, multilingual, democratic, independent, indivisible, sovereign Hindu and Constitutional Monarchical Kingdom.” This provision clearly stated that the Hindu religion (Hindu Dharma) occupies the paramount position in Nepal. Article 27 (1) mentioned that the words “His Majesty” mean His Majesty the King—a descendant of the Great King Prithvi Narayan Shah and an adherent of Aryan culture and the Hindu religion. It is possible to say that the Constitution does not give any place for secularism. Article 19 (1) granted the freedom to profess and practice one's own religion as follows: “Every person

shall have the freedom to profess and practice his own religion as handed down to him from ancient times having due regard to traditional practices.” This Article also stated “that no person shall be entitled to convert another person from one religion to another.” Article 19(3) declared, “Every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts.” The same Constitution granted the right to equality and non-discrimination. The Supreme Court of Nepal has declared Section 10A of the Muluki Ain (chapter on Miscellany) to be discriminatory and violative of Article 11 of the Constitution and thus void.

Religion in the Interim Constitution of Nepal 2007 (2063 B.S.)

The Constitution of the Kingdom of Nepal (1990) was repealed on January 15, 2007 (1st Magh, 2063) and the Interim Constitution 2063 B.S. was introduced on the same day by the outgoing House of Representatives. Altogether 185 Parliamentarians supported the Interim Constitution and the Interim Legislature also endorsed the Interim Constitution. Article 3 of the Interim Constitution declares: “Having common aspirations and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, all the Nepalese people collectively constitute the nation having multiethnic, multilingual, multi-religious and multi-cultural characteristics.” Article 4 (1) of the Interim Constitution describes the State of Nepal as follows: (1) “Nepal is an independent, indivisible, sovereign, secular, inclusive and fully democratic State.” Article 23 of the Interim Constitution declares the right to religion to be a fundamental right as follows:

- (1) Every person shall have the right to profess, practice and protection of his or her own religion as handed down to him or her from ancient time having due regard to the existing social and cultural practices. Provided that no person shall be entitled to convert another person from one religion to another, and that no act or action shall be done in such a manner as to jeopardize the religion of each other.
- (2) Every religious denomination shall have the right to maintain its independent existence and to operate and protect its religious sites and religious trusts in accordance with law.

Some religious practices such as chaupadi, kumari pratha, jhuma, and deuki were prevalent in Nepal although they were not specifically referred to in various laws.

Religious education

Regarding education in Nepal, it may be said that education is an integral and inescapable part of sustainable development. It is evident that the enrollment of boys and girls has increased significantly at all levels of school education. Nepal has made strides in school enrolment; the current level of the net enrolment ratio has reached 91.8 percent at the primary level (D.O.E., 2009). At present the total number schools and higher secondary institutions are 31,156 and 1,976 respectively. Likewise there are six universities in the country and other universities are planned.

The history of Nepal’s development of modern education is fairly short, although educational institutions supported by Buddhism and Hinduism existed in Nepal several hundred years before the Christian era. Education supported by major religious organizations flourished in early Nepal and the same system continued in the medieval period of Nepalese history. Lichhavi and Malla kings supported development of education in a limited way. Public education as

Kanak Bikram Thapa and Bal Bahudur Mukhia

it is understood today did not exist.

Educating youth was a private family affair. With the unification of Nepal, King Prithvi Narayan Shah acted to educate the children of soldiers who died; that was the beginning of formal public education in Nepal. Rana rulers adopted the policy of opposing the development of education to maintain their family rule, and education suffered a severe setback. Educational development in the country was restricted so that very few schools came into existence until the end of the Rana regime. The democratization of education started formally after 1951.¹⁴

Existing structure of education in Nepal

Presently, pre-primary education is housed in nurseries, kindergartens, and upper kindergartens. Primary level education comprises class one to class five. Lower secondary education comprises class seven to eight. Secondary education takes place in classes nine and ten. There are provisions of general secondary education, Sanskrit secondary education, special education for the blind, handicapped, lame, deaf, and mentally retarded; there is also distance education and non-formal education in Nepal. Each community has the right to operate schools up to the primary level in its own mother tongue.

According to existing laws, the types of schools are as follows: community schools, trust schools, special schools, and corporate schools. Public schools are those schools which receive regular government grants for teachers' salaries and for other purposes. Community schools do not receive regular government grants. Corporate or private schools are privately-funded and supported by a school's own resources. Trust/Guthi Schools are run by the trust/guthi, community supports, and donations. Special education programs meet the needs of disabled students. Non-formal education is on a national campaign basis with the active participation of national and international N.G.Os. and community organizations to provide educational opportunities for adults, after-school programs for children of eight–14 years of age, and other sundry school outreach programs. The Education Act and Rules make provision for the afore-said types of education in Nepal.

Higher secondary education consists of classes 11 and 12. Higher education after this is imparted in various streams: science, humanities and social sciences, political science, history, geography, arts, culture, religion, sociology, anthropology, language, tourism, management, law, education, forestry, medicine, engineering, agriculture, and animal science, for example. Mahendra Sanskrit University, Tribhuvan University, Kathmandu University, Purbanchal University, Pokhara University, Deemed University, and B.P. Koirala Institute of Medical Sciences at Dharan impart higher education in Nepal.

Notes

- 1 Amended by the Fourth Amendment.
- 2 The Interim Constitution of Nepal (Article 35 (3)), (2007).
- 3 Ibid., Article 17 (3).
- 4 Ibid., Article 18.
- 5 Ibid., Article 33(d).
- 6 *Statistical Pocket Book Nepal 2002*, C.B.C. H.M.G., Thapathali, Kathmandu, Nepal, 6.
- 7 Bal Bahadurmukhia, *Comparative Jurisprudence*, A& m Mukhia, Kathmandu, Nepal (January 2004), 721.
- 8 Ibid., at 722.
- 9 Ibid., at 722; Rewati Raman Khanal, *Nepal Ko Kanooni Itihas Ko Ruprekha* (in Nepali language), Sarswoti Khanal, 2002 (2059B.S), 1–3.
- 10 Ibid., at 723.
- 11 Ibid.

- 12 S.P.Gujurel, "Nepalese Legal System: A Historical Perspective," and Jagdish C. Regmi, "A Historical Survey of Nepalese Legal System," in *The Nepalese Legal System, Souvenir*, University of Delhi (December 29, 1985), 147–63.
- 13 Kalyan Shrestha, "Judicial Activism and the Nepalese Experiments," *Essays on Constitutional Law*, Vol. 28, Nepal Law Society (December 1996), 14.
- 14 Bal Bahadur Mukhia, *Educational Administration in Nepal*, A.&m. Mukhia, Kathmandu (2003), 27–30.

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Religion and education in Norway

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The introduction of a new model for religious education in Norwegian public primary schools in 1997 caused a major controversy in public and political discourse. The subject as well as the legal provisions of the Education Act concerning its aims and content have been changed several times since, most recently in 2008. For example, the name of the subject has been changed from “Christian Knowledge with Orientation on Religion and Life Stances”¹ to “Christian, Religious and Life Stance Education,”² to the current “Religion, Philosophies of Life and Ethics.”³ These changes of the course’s name indicate how the role of Christianity in the subject has been changed, though it is still supposed to have a main emphasis on Christianity and in particular on its significance as “a cultural heritage.”⁴ The changes can be seen as responses from the Norwegian authorities after severe criticism from national experts on freedom of religion or belief and from international monitoring bodies claiming that the limited right to exemption from the subject caused violations of the equal right to freedom of religion or belief, and—more specifically—the particular the right of parents and legal guardians to decide the child’s religious and moral upbringing.⁵

The social and legal context

Knowledge about both the religious and social composition of the country and about the constitutional and other legal principles concerning religious education may help understand both the context of the current model for religious education as well as the changes that have taken place over the last decades.

Norway is a constitutional monarchy with a parliamentary system of government.⁶ The Constitution adopted in 1814 is still in use, although it has been changed several times both by amendment and by reinterpretation of existing provisions.⁷ Some provisions of human rights and the rule of law⁸ were included in the Constitution at its adoption in 1814. Freedom of religion was, however, first included in 1964—at the 150th⁹ anniversary of the Constitution, as a new first paragraph of Article 2. The second paragraph has the same wording as Article 2 had in 1814, referring to the “official religion of the state”:

(1) All inhabitants of the Realm shall have the right to free exercise of their religion. (2) The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same.

We may say that Article 2 now includes the two main pillars of the Norwegian religio-political system: the state church and the right to freedom of religion or belief. This twofold article might seem like a contradiction in terms. Article 2 at least reflects the conviction that it may be possible to secure freedom of religion or belief for all citizens, both the majority and minorities, in a country with a state church system. The provision on the “official Religion of the State” in Article 2, Section 2, is however currently being critically evaluated both in the political and broader public discourse, as are several other provisions which together make up the constitutional basis for the Norwegian state church system.¹⁰ The intention of the evaluation has been to find a model that gives a safer protection both of the rights to self-determination of the Church of Norway and of the rights of minority groups. According to a recent political compromise of all parties in parliament, a number of changes to the constitutional provisions on religion should be adopted by 2014 at the 200th anniversary of the Constitution.¹¹

The right to “free exercise of religion” in Article 2, Section 1, is in practice interpreted in constitutional law to include the right not to have a religious belief. The clause hence covers the right to freedom of religion or conviction, as enshrined, for example, in various international human rights conventions that Norway has ratified and in recent years even incorporated into national law, including the European Covenant on Fundamental Rights and Freedoms (E.C.H.R.) and the U.N. Covenant on Civil and Political Rights (C.C.P.R.).¹²

There are numerous religious groups and faith communities in Norway, including Jews, Muslims, Buddhists, Hindus, Secular Humanists, and others.¹³ The Secular Humanist Association is the largest one, and is registered as a “life stance community” with equal rights as religious faith communities. However, about 80 percent of the population belong to the Church of Norway, which is the established church, referred to by Article 2 of the 1814 Constitution as “the official religion of the state.”

There is no constitutional provision concerning religious education in schools. Article 2, second paragraph, requiring that parents professing the Evangelical-Lutheran religion should “bring up their children in the same” has been criticized by international monitoring bodies.¹⁴ Norwegian authorities have however defended it, claiming that this does not imply any legal duty on parents belonging to the state church, but should be seen as a historical paragraph on how it was thought that parents that were members of the state church had a moral obligation to raise their children as Christians. They also have underlined that it should not be taken to have any implications for religious education in public schools.

The state relation to religion is regulated primarily by the 1969 Act on Faith Communities and the Non-discrimination Act.¹⁵ Both of these acts aim to protect the principle of non-discrimination on the basis of religion by various provisions concerning equal rights for majority and minorities.¹⁶ The special status of the majority church in relation to the state is however underlined by the existence as well as the content of the Church of Norway Act.¹⁷ The principles governing more specifically religious education in public schools are enshrined in the Education Act.¹⁸

Ingvill Thorson Plesner

Public support of private religious education

Before looking closer at religious education in public schools, we shall have an overview over the role of religious education in private schools and in faith communities, since both these forms of religious education may receive state funding.

Parents in Norway have the right to establish private schools offering, for example, religious or philosophical education. This right is recognized both by international human rights conventions that Norway has ratified and incorporated¹⁹ and by (other parts of) national law.²⁰ Private schools that fulfill the formal criteria as well as criteria on the quality of education have the right to receive state funding calculated on the basis of how many pupils they have.

There are a number of private schools in Norway run by Christian groups and some based on the philosophy and pedagogy of Rudolf Steiner (“Steiner Schools”). The private schools may have a different model of religious education than the public schools, as long as the children get the basic knowledge listed in the Education Act.²¹ The Christian private schools may for instance offer more education about Christianity and may include confessional activities such as prayers. One Muslim private school was established in 1995 but has closed down due to administrative issues. There are currently groups working to establish a new Muslim private school.

There is no basis in Norwegian law or international human rights conventions for discriminating against a religious minority group that wants to establish a private school. Still, the ongoing debate on the issue shows that establishing a Muslim private school is quite controversial. Also, there are some political parties that want to reduce state support to private schools altogether, in particular those run by religious organizations, Christian and others, since they believe that these schools are based on values that are not in compliance with the state approach to gender equality.

Also, the state provides support to religious education run by the Church of Norway and other faith communities. Such education takes place outside public school hours and normally also outside the school premises. The funding was initiated in order to compensate for the termination of denominational or confessional education in the public schools, with the introduction of the new subject, “Religion, Philosophies of Life and Ethics,” which replaced the old Christian education subject.²² This funding of religious education in faith communities follows the same idea of equal treatment as the general state support to faith communities enshrined in the Faith Communities Act: All faith communities shall have the right to the same support per member a year that the state church (the Church of Norway) receives by the state per member a year.²³ The Secular Humanist Association receives a similar level of support per member a year including for their teaching of youth within their organization.

Religious education in public schools

Despite the controversies over private religious schools, the main issues in the religio-political and legal debates concerning religion and education in Norway have been the role of Christianity in the compulsory subject on religious education that was introduced in 1997 and that is now called “Religion, Philosophies of Life and Ethics.” The intentions and profile of the subject have been interpreted in light of the so-called “object clause” in the Education Act which defines the main values of the public schools. Until recently the clause stated that public primary schools should aim to give the pupils a “Christian and Moral Education.”²⁴ The object clause has recently been modified, but still emphasizes the particular role of “Christian values.”

The combination of its main focus on Christianity, the inclusion of certain “religious activities,” and a limited right to exemption has made the subject controversial among parents of different minority groups. The subject was introduced in 1997, at that time with the name “Kristendoms-, religions-og livssynskunnskap” (K.R.L.), which could be translated “Christian, Religious and Life Stance Education,” replacing the former model that had been in place since the early 1970s, whereby pupils could choose between “Christian Education” and “Life Stance Education,” or to opt out of both.²⁵

One of the objectives of the subject was to promote knowledge, tolerance, and understanding between religions and other world views (“life stances”) and to facilitate dialogue between the different traditions.²⁶ Another objective was to teach all the pupils about Christianity as a part of the “cultural heritage” of Norway. Together, these two objectives should serve the development of a common frame of reference, of common knowledge, and identity among the pupils. This is the reason the subject should be compulsory for children of all faiths, with a right to exemption only from certain parts of the subject (for instance, activities that may be seen as an exercise of religion).²⁷

Both before and after the introduction of this subject, minorities voiced the fear that the dominant role of Christianity in the subject, combined with the aim of the school in general and the subject in particular to promote “Christian” values, could influence or even indoctrinate their children to see the Christian faith as better than others. Two research-based evaluation reports²⁸ concluded in 2000 that the limited right to exemption did not give any safe protection in practice either against violations of the right to freedom of religion or belief or against discrimination. Accordingly, the partial exemption arrangement was not working as intended and should therefore be thoroughly reviewed. After this evaluation some changes were made, for instance in the name of the subject and in the routines for information to parents on the right to exemption, but the main profile of the subject—including the role of Christianity—was intact, and the right to exemption was not extended.

Two cases, one raised by secular humanist parents and one by Muslim parents, were brought before the Norwegian courts. Both groups of parents claimed that the denial of full exemption from the K.R.L. subject for their children contravenes Norway’s international human rights obligations.²⁹ The state was acquitted on all levels of the national courts. After the decision of the Norwegian Supreme Court on August 22, 2001, half of the humanist parents appealed to the U.N. Human Rights Committee and the other half to the European Court of Human Rights in Strasbourg.

In a decision of November 3, 2004, the U.N. Human Rights Committee found that the K.R.L. subject, with only limited right to exemption, constituted a violation of the right to freedom of religion or belief in general and of the right of parents to decide on their children’s religious or moral education in particular. The Committee also concluded that the limited right to exemption was practiced in a discriminatory way.³⁰ The syllabus and the legal provisions concerning the K.R.L. subject in the Education Act were slightly changed due to criticism, this time from the U.N. Human Rights Committee. Despite these changes, the main profile of the subject and the limited right to exemption remained the same.

On June 27, 2007 the European Court of Human Rights treated the appeal submitted by the parents of secular humanists in 2002. The Court’s decision, and its reasoning, was in most parts similar to the one of the U.N. Human Rights Committee in 2004. The Court concluded that the K.R.L. subject with limited right to exemption constituted a violation of the rights of parents according to the Add. Prot. 2 to the E.C.H.R. (which equals Article 18, Section 4, of the C.C.P.R.). The Court stressed, however, that a quantitative preference given to Christianity was not in itself sufficient to constitute any violations of this right. The Court found that the

Ingvill Thorson Plesner

syllabus and its legal framework did not give the impression that Christianity was to be presented in a qualitatively similar way as other religions and life stances, and the subject was therefore not “objective” and “pluralistic.” Furthermore, the right to exemption was in practice not possible to implement in a non-discriminatory way. It was—as for the U.N. Human Rights Committee—the total impression of the subject, based in particular on readings of the *travaux préparatoires*, the syllabus and the legal framework of the subject (in particular the relevant provisions of the Education Act) that made the Court come to this conclusion.³¹

New suggestions for changes were introduced by the government in December 2007 in order to counter the critics from the E.C.H.R. in the Court decision of June 29, 2007. These included another change in the name of the subject to “Religion, Life Stances and Ethics” (R. L.E.) from the school year 2008/09 (fall 2008), and this was approved by parliament in June 2008.

The textbooks developed for the K.R.L. subject are, however, still to be applied in the “R.L. E.” subject. The syllabus and the legal provisions concerning the subject in the Education Act were—again—changed due to international criticism from both the U.N. Human Rights Committee and the European Court on Human Rights. For instance, the importance of avoiding preaching and teaching about Christianity and other religions and philosophies of life in an “objective, critical and pluralistic manner” is strongly underlined. Still, a main focus on Christianity and Christian cultural heritage, and a limited right to exemption, is kept. The Education Act³² includes several provisions of relevance to the profile of this subject, most importantly Section 2–2 (“Teaching in the subject Religion, Philosophies of life and Ethics”):

(1) Religion, Philosophies of life and Ethics is an ordinary school subject that shall normally be attended by all pupils. Teaching in the subject shall not involve preaching. (2) The teaching in Religion, Philosophies of life and Ethics shall provide knowledge of Christianity, other world religions and philosophies of life, knowledge of the significance of Christianity as a cultural heritage and of ethical and philosophical topics. (3) The teaching in Religion, Philosophies of life and Ethics shall promote understanding, respect and the ability to carry out a dialogue between people with differing views concerning beliefs and philosophies of life. (4) The teaching in Religion, Philosophies of life and Ethics shall present different world religions and philosophies of life in an objective, critical and pluralistic manner. The teaching of [*sic*] in the different topics shall be founded on the same educational principles.

According to Article 2–3 a of the Education Act there is a right to exemption from the parts of the subject that may, from the point of view of their own religion or philosophy of life, be considered as “amounting to the practice of another religion or adherence to another philosophy of life.”³³ It is established through the *travaux préparatoires* practice and in circulars from the Education Authorities that this may include what could be conceived as “religious activities,” for instance, prayers, psalms, the learning of religious texts by heart, and the participation in plays of a religious nature.³⁴ The limited exemption shall not, however, imply exemption from learning about the parts of the subject from which exemption is granted, and the school must therefore see to it that the exempted pupils receive alternative education on the issues in questions.

In its interpretation of the K.R.L. subject, the U.N. Human Rights Committee in 2004 also took the so-called “Christian object clause” of the public primary and secondary school into consideration. The Committee found the clause—and the reference to “Christian and humanistic values” in the provision concerning the K.R.L. objectives in the Education Act (Article 2–4)—as factors contributing to giving the impression that the subject is not sufficiently “neutral

and objective”³⁵ and should therefore not be compulsory. The European Court also criticized the Christian object clause in its judgement on the K.R.L. subject. At that time the Education Act stated in its Article 1–2 (1) that Christian morality is a foundation of primary and secondary school education:

The object of primary and lower secondary education shall be, in agreement and cooperation with the home, to help give pupils a Christian and moral upbringing, to develop their mental and physical abilities, and to give them good general knowledge so that they may become useful and independent human beings at home and in society.³⁶

This clause was changed in 2008, so that it no longer calls for “Christian and moral education,” though the role of Christian values is still highlighted in the object clause of the Education Act:³⁷

(1) Education and training in schools and training establishments shall, in collaboration and agreement with the home, open doors to the world and give the pupils and apprentices historical and cultural insight and anchorage. (2) Education and training shall be based on fundamental values in Christian and humanist heritage and traditions, such as respect for human dignity and nature, on intellectual freedom, charity, forgiveness, equality and solidarity, values that also appear in different religions and beliefs and are rooted in human rights. (3) Education and training shall help increase the knowledge and understanding of the national cultural heritage and our common international cultural traditions. (4) Education and training shall provide insight into cultural diversity and show respect for the individual’s convictions. They are to promote democracy, equality and scientific thinking.

All in all we may say that the changes over the last years have resulted in a more pluralistic and less confessional religious education in public schools, though the preferential treatment of the majority religion remains—with a special emphasis on its importance as a “cultural heritage.” In the same period state support to the confessional education of the Church of Norway and other faith communities has been strengthened. The state approach to private religious schools is formally based on equal treatment, though it seems in practice to be harder for Muslim groups to establish such schools than for Christian groups.

Notes

- 1 “Kristendoms-kunnskap med religions-og livssynsorientering.”
- 2 “Kristendoms-religions-og livssynskunnskap.”
- 3 “Religion, livssyn og etikk.”
- 4 Act of July 17, 1998, no. 6.1 relating to Primary and Secondary Education and Training (Education Act), Section 2–4, see <www.lovdata.no>.
- 5 Compare the judgment concerning the subject by the U.N. Human Rights Committee: *Leirvåg et al. v. Norway* (Comm No. 1155/2003), U.N. Doc. CCPR/C/82/D/1155/2003 (2004), hereinafter *Leirvåg*, as well as the decision from the European Court on Human Rights on the same issue: *Folgerø and Others v. Norway*, June 29, 2007, European Court of Human Rights (no. 15472/02, November 14, 2007), hereinafter *Folgerø*. Compare also the research-based evaluation report on the practice of limited exemption from the subject, *Kristendoms-kunnskap med religions-og livssynsorientering (KRL)/ Cristian Knowledge with Orientation on Religions and Life Stances: “Et fag for alle?”/ “A subject for all?”*, eds. Johannessen, Plesner, et al. (Oslo: Diaforsk, 2001).
- 6 Eivind Smith, *Konstitusjonelt demokrati* (Constitutional Democracy) (Bergen: Fagbokforlaget, 2009).

Ingvill Thorson Plesner

- 7 All changes in the written constitution are made in a language close to the one of the original text of 1814, making it difficult for the public to distinguish between the original and new articles. In total about 2/3 of the original articles of 1814 have been changed or replaced; see Smith, 2008.
- 8 Among these were freedom of expression, property rights, freedom from torture, and the legality principle in criminal matters (no sentence without a basis in law). A provision declaring freedom of religion, at least for the Christian minorities, was originally to be included. In the final drafting of the Constitution it was, however, removed. Despite this, it was at least clear that the constitutional “founding fathers” had been inspired by enlightenment ideas and ideals. See Ingvill Thorson Plesner, “The Norwegian Constitution,” in *Encyclopedia of World Constitutions*, ed. Gerhard Robbers, (Facts on File, Inc., 2007).
- 9 Smith, *Konstitusjonelt demokrati*.
- 10 Plesner, “The Norwegian Constitution,” op. cit.
- 11 Ibid.
- 12 Since the Norwegian assignment to the 1950 European Convention on Fundamental Human Rights and Freedoms, international law in general and human rights case law from the European Court of Human Rights in particular has gained an increasingly important role in national law. In addition to the ratification of all major U.N. human rights conventions, a provision establishing an obligation of the state to respect and ensure human rights was included in the Constitution in a new Article 110 c in 1994. The article establishes that the main human rights treaties shall be implemented into national law by statutory enactments. Such a Human Rights Act came into force in 1999 (see <www.lovdato.no: LOV-1999-05-21-30> “Lov om styrking av menneskerettighetens stilling i norsk rett”). By this Act, e. g., the European Human Rights Convention (E.C.H.R.) of 1950, as well as the two major U.N. Human rights conventions of 1966, have been incorporated into national legislation. According to one of the articles of the new law (Article 3), the human rights conventions should prevail over other legislation if conflicts arise. Some argue that the human rights conventions have—by this provision—a status “in between” the constitution and other national legislation. Other legal experts have claimed that it is neither possible nor desirable to give human rights this kind of legal status “above” other legislation, but without being a part of the constitution. The fact that the Human Rights Act can be changed by parliament with a regular majority vote (and not a 2/3 majority as for constitutional changes), clearly shows that it does not have a semi-constitutional status.
- 13 About 10 percent of the population belong to faith communities other than the Church of Norway (out of which about half are members of various Christian churches, including the Roman Catholic Church). Further, 7 percent do not belong to any religious community at all. The largest faith and life-stance communities outside the Church of Norway are the Norwegian Humanist-Ethical Association (72,000), Islam (70,000), the Pentecostal Movement (45,000), the Roman Catholic Church (40,000 or more), the Evangelical-Lutheran Free Church (20,000), Methodists (13,000) and several smaller free churches. Other faith communities include Jews, Hindus, Sikhs, Buddhists, and Ba’Hai associations.
- 14 Høstmælingen, 2005; Plesner, “The Norwegian Constitution,” op. cit.
- 15 Ibid. See also <www.lovdato.no>.
- 16 Ibid.
- 17 Ibid.
- 18 See <www.lovdato.no>.
- 19 See, for example, I.C.C.P.R. Article 18, Section 4.
- 20 See Section 1–1 of the 2003 Act concerning Private Schools with the Right to State Funding (“Lov om privatskular med rett til statstilskot”/ LOV-2003-07-04-84; see <www.lovdato.no>), and Section 2–2 of the 1998 Human Rights Act.
- 21 See Note 22.
- 22 Formally confessional education ended with the new Education Act in 1969, and the new K.R.L. subject introduced in 1997 further underlined that this was now (to be) an “ordinary school subject” that should teach *about* Christianity as well as other religions and life stances and not be confessional in the sense of aiming to preach or in other ways influence the children’s religious or non-religious convictions.
- 23 Faith Communities Act, Article 19.
- 24 Plesner, 2008.
- 25 Until 1969 school education in Christianity had both formally and in practice been conceived as religious instruction in the Evangelical-Lutheran tradition, dating back to 1739 when the first “church schools”—which were the start of public school education in Norway—were established. From 1889

- onwards members of religious communities other than the Church of Norway were entitled to exemptions in whole or in part from the teaching of the Christian faith. See also note 23.
- 26 Plesner, 1998.
- 27 See the white paper that outlined the intentions and main premises for the subject in 1995/96: *St.meld. nr. 14* for 1995–96.
- 28 One report was titled; “Parents’, pupils’ and teachers’ experiences with the K.R.L. subject” (Foreldres, elevers og læreres erfaringer med KRL-faget), provided by Norsk Lærerakademi, Bergen 2000; the other was entitled “A subject for every taste? An evaluation of the K.R.L. subject” (Et fag for enhver smak? En evaluering av KRL-faget) by the Høgskulen i Volda and Diaforsk, 2000. The evaluation had been initiated by the Norwegian Parliament which had requested that a survey of the implementation of the exemption rules be prepared after a three-year period.
- 29 E.C.H.R. Articles 9 and 14 read together with Article 1 of the second additional protocol to the E.C. H.R. and C.C.P.R. Articles 2 and 18.
- 30 Cf. *Leirvåg et al v. Norway*, 2004. See also chapter 4 on the complaint and the responses of the international monitoring bodies. See *Høstmølingen*, 2005.
- 31 *Folgerø et al. v. Norway*, 2007.
- 32 The Education Act 1998 (Lov om grunnskolen og den videregående opplæring av 17. juli 1998 nr. 61—hereafter referred to as “the Education Act of 1998”), which entered into force on August 1, 1999 replaced the former Education Act of 1969 that was in force when the K.R.L. subject was introduced in 1997. Some changes were made in the Education Act after the evaluation of the K.R.L. subject in 2000/01. For instance, the name of the subject was changed from “Christian Knowledge with Orientation on Religion and Life Stances” to “Christian, Religious and Life Stance Education.” The aim set out in the Education Act Articles 2–4 of providing thorough knowledge of “Evangelical-Lutheran Faith” was changed to “Evangelical-Lutheran tradition.” Furthermore, the provision stating that the teachers of K.R.L. were obligated to take the object clause of the public school as a point of departure was taken out of the Act. This obligation still follows, however, from the object clause itself, for the K.R.L. subject, as for all other subjects in the public primary and secondary school.
- 33 “Section 2–3a. Exemption from activities, etc. in the teaching: (1) The school shall respect the religious and philosophical beliefs of pupils and parents and ensure their right to an equal education. (2) Following written notification by parents, pupils shall be exempted from attending those parts of the teaching at the individual school that they, on the basis of their own religion or own philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life, or that they on the same basis find objectionable or offensive. It is not necessary to give grounds for notification of exemption pursuant to the first sentence. (3) Exemption cannot be demanded from instruction in the academic content of the various topics of the curriculum. If the school does not accept a notification of exemption on such a basis, the school must deal with the matter in accordance with the provisions concerning individual decisions laid down in the Public Administration Act. (4) On notification of exemption, the school shall ensure that the exemption is implemented and make provisions for adapted teaching within the scope of the curriculum. (5) The school owner shall annually inform the pupils and the parents of pupils below the age of 15 of the rules for exemption. (6) Pupils who have reached 15 years of age shall themselves provide written notification as referred to in the first paragraph.”
- 34 After the evaluation of the K.R.L. subject in 2000/01, the provision on exemption from the K.R.L. subject was changed slightly, so that the parent no longer would have to explain why they wanted their children to be exempted from certain parts of the subject, and just give “notice” to the school on this, instead of an “application.” The reference to “religious activities” in the exemption clause was removed. It now reads: “A pupil shall, on the submission of a written parental note, be granted exemption from those parts of the teaching in the particular school concerned that they, from the point of view of their own religion or philosophy of life, may consider as amounting to the practice of another religion or adherence to another philosophy of life. In the event of a parental note requesting an exemption, the school shall as far as possible seek to find solutions by facilitating differentiated teaching within the school curriculum. Pupils who have reached the age of 15 may themselves give written notification pursuant to the fourth paragraph.” Education Act Article 2 – 3 a.
- 35 *Leirvåg v. Norway*, 2004.
- 36 Originally there was a provision in the Education Act that underlined that teachers in the K.R.L. subject should teach in accordance with this object clause (“A person who teaches Christianity, Religion and Philosophy shall take as a starting point the object clause in section 1–2 and should present

Ingvill Thorson Plesner

Christianity, the different religions and philosophy from the standpoint of their particular characteristics.”) When the provision underlining the particular importance of the object clause to the K.R.L. subject was removed in 2005 (after criticism from the U.N. Human Rights Committee, see chapter 4.3 and below) this did not change the fact that all the teachers are obligated to be loyal to the object clause of the school in all subjects, including in K.R.L.

37 Section 1–1 on “The Objectives on Education and Training” in the Education Act.

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Religious education in Pakistan

Khalil-ur-Rehman Khan and Qaisar Javed Mian

The religious and social composition of Pakistan

The partition of India in 1947 was based on Two-Nation Theory which was recognized and accepted by the Indian Independence Act of 1947.¹ The formula evolved for the division of the Subcontinent by the parties concerned—Britain, the Congress (Political Party of Hindus), and Muslim League (Political Party of Muslims)—was that the contiguous territories where Muslims were in the majority would form the State of Pakistan, while contiguous territories where Hindus were in the majority would constitute Bharat (India). Even beyond the contiguous territories, the spirit of the Indian Independence Act of 1947 was that the territories containing a majority Muslim population would constitute the State of Pakistan, while areas of Hindu majority would constitute the State of India.²

Muslims constitute 97 percent of the total population of Pakistan; the remaining 3 percent are Christians, Sikhs, Hindus and people of other denominations. The Sunnis (Hanfis) are 77 percent of Muslims, while the remaining 20 percent or so belong to the Shia denomination.

Constitutional context

The Constitution of the Islamic Republic of Pakistan³ declares Islam to be the state religion of Pakistan (Article 2) and that the state shall enable Muslims to order their lives in accordance with the teachings of Islam as set forth in the Holy Quran and Sunnah (sayings and practices of Prophet of Islam). The constitutional principles governing relations between state, religion, and religious education have been outlined in Articles 20, 21, and 22 of the Constitution of Pakistan. These Articles are:

Article 20

Freedom to profess religion and to manage religious institutions—subject to law, public order and morality.

- (a) every citizen shall have the right to profess, practice and propagate his religion; and

Khalil-ur-Rehman Khan and Qaisar Javed Mian

- (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

Article 21

Safeguard against taxation for purposes of any particular religion—no person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

Article 22

Safeguard as to educational institutions in respect of religion, etc.

- (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.
- (2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.
- (3) Subject to law.
 - (a) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and
 - (b) No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.
- (4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

Article 33

The State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens.

Article 38

The State shall secure well being of the people irrespective of sex, creed or race by raising their standard of living, by preventing concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by securing equitable adjustment of rights between employers and employees and landlords and tenants.

The provisions of the first quoted Articles form part of the fundamental rights guaranteed by the Constitution, while the provisions of the last two Articles are part of the principles of policy, which are to be acted upon insofar as they relate to functions of the organ and authority of the state.

Legal context

In 2001, the Federal government promulgated a law called “Pakistan Madrasah Education (Establishment and Affiliation of Model Dini Madaris) Board Ordinance 2001”⁴ for the purposes of 1) establishment of Model Dini Madaris; 2) improving and securing uniformity of standards of education; and 3) integrating a system of Islamic education imparted at Dini Madaris with the general education system.

This law contemplates registration, regulation, standardization, and uniformity of curricula and standards of education of the Dini Madaris (Religious Schools) in Pakistan with the general

education system to provide for recognition and equivalence of the degrees and sanad (certificate) awarded by such institutions and to regulate their examination system.

The government, despite this law, has not been able to make the organizers of Dini Madaris agree to abide by the provisions of this law and to affiliate their institutions with the Board constituted thereunder. More generally, the Pakistani government has simply not been able so far to implement this law.

The Madrassas represent the legacy of the spectacular resurgence of Islamic religious education in the Indian Subcontinent during the late nineteenth century beginning with the establishment of Deoband Madrassa in 1867. Since then, the Madrassa system has played an important historical role by preserving the orthodox tradition of Islam in the wake of the downfall of Muslim political power; by training generations of Islamic religious scholars and functionaries; by providing vigorous religious-political leadership; and, more importantly, by reawakening the consciousness of Islamic solidarity and the Islamic way of life among the Muslims of South Asia.

The Madrassas in Muslim South Asia teach a curriculum known as Dars-i-Nizami, first introduced by Mullah Nizamuddin Siharvi (d.1747), a scholar of some repute in Islamic jurisprudence and philosophy in Lucknow. This curriculum is not the same as that associated with the name of Mullah Nasiruddin Tusi (d. 1064) and the Madrassa Nizamia, which he established in eleventh-century Baghdad. Almost all Sunni Madrassas, irrespective of whether they are of Deobandi, Bareilvi, or Ahl-i-Hadith persuasion, follow the same standard Nizami course of studies adopted by the Deoband seminary in 1867. This consists of more than 20 subjects broadly divided into two categories: al-ulum an-naqliya (the transmitted sciences), and al-ulum al-aqliya (the rational sciences). The subject areas include grammar, rhetoric, prosody, logic, philosophy, Arabic literature, dialectical theology, life of the Prophet, medicine, mathematics, polemics, Islamic law, jurisprudence, Hadith, and Tafseer (exegesis of Quran). Medicine and polemic are not included in the subjects of study, though the art of debating or dialogue is discussed during the study of Hadith and Tafseer. It is important to note that of the 20 subjects, only eight can be considered as solely religious. The remaining subjects are otherwise secular and were included in the Nizami curriculum both to equip the students for civil service jobs and as an aid to understanding religious texts. Also, facilities for teaching these subjects and books are not usually available in all Madrassas. This is particularly true in the case of subjects such as mathematics, history, philosophy, prosody, and polemics. The result is that the students often have to move from one Madrassa to another to complete their curriculum. This also results in the failure of many Madrassas to institutionalize their grading and promotion procedures.

As is well known, most of the books taught in this curriculum are very old. Books used in philosophy and logic, for example, were written in the thirteenth and fourteenth centuries. Medicine is now rarely included in the course list; it is taught through an eleventh-century text that is still considered an authentic study of human anatomy and pathology. In what we have described as purely religious subjects, the books used date back to the seventeenth century at the latest and the eleventh century at the earliest. Books prescribed for astronomy, mathematics, and grammar are more than 500- to 700-year-old texts.

Presently each school of thought (religious sect/denomination) has established its own Madrassa system, called Wafaq, to which are attached the schools being run by the said sect. The five Wafaqs are:

- 1 Wafaqul Madrass ul Arabia (Deobandi Sect)⁵
- 2 Wafaq Madaras Al Salfia (Ahle Hadith)

Khalil-ur-Rehman Khan and Qaisar Javed Mian

- 3 Tanzim ul Madaras (Barelvi)
- 4 Wafaq ul Madaras Al-Shia (Ahle Tashee)
- 5 Rabatul Madarass of Jamiat-i-Islami.

In these Madrassas the subjects of science, arithmetic, algebra, and Pakistan Studies have been introduced besides the usual subjects. The students of these Madrassas also take part in the examinations held by the Board of Intermediate and Secondary Education and Universities of Punjab and other universities as private students and these exams qualify them towards obtaining their certificates and degrees.⁶ The organizers of these Madrassas also issue their own sanads after holding examinations organized by the Wafaqs since they are not prepared to surrender their independence and wish to continue to provide education of their own choice, and thus their autonomy is being maintained.

Public schools

Religious education is imparted at state level in public schools from Class 1 to Class 10, a total of ten years of education. However, in the course of higher education, religious education is provided for as an elective/optional subject in almost all areas including, but not limited to, engineering, medicine, architecture, law, accountancy, business administration and other social sciences, etc.

The public school curriculum does not include denominational religious instruction as a specific subject. The state, through its Education Department, prescribes curricula for the public schools. The books prescribed contain material for exposition of knowledge concerning Islam and Islamic faith. However, in private schools emphasis is on beliefs of the denomination to which the Madrassa belongs. In public schools, religion is one of the optional subjects. Teachers with relevant qualifications in the subject with reference to the stage of study (primary/secondary/intermediate) are appointed by the Education Department of the government and the salaries of the teachers are paid by the government.

Religious education

Religion is taught in Madrassas in an elaborate manner over a period of 10–12 years. Thereafter, specialized study of subjects extending over two–three years in each subject is undertaken. These subjects include Fiqh, Tafseer, Ifta, and Hadith. The Ifta Takhasus (Specialization) course is a three-year course in Jamia Dar-ul-Uloom, Karachi. In this course, methodology of analyzing issues and finding appropriate answers by applying relevant jurisprudential principles is studied. Ijtihad (a source of development of law) is undertaken. In Pakistan, only those who are qualified in Ifta can act as Mufti and issue Fatwa.

Regarding teachers of Madrassa, their qualification is dependent on the subject and grade of the course and the class of study. A teacher, who teaches reading the text of Quran, should have qualified in or at least know the Tajweed, that is, how to read the Arabic text. A teacher who is supervising students memorizing Quran should have experience in memorizing verses of Quran by the students. The teacher need not necessarily be a Hafiz (a person who has memorized the Quran). A teacher teaching Dars-e-Nizami classes should have qualified in Dars-e-Nizami himself and have at least some specialization (Takhasus) or teaching experience in any subject.

A few Madrassas are provided with funds by the Waqf Department but these are nominal. Philanthropists and well-to-do people in society are the main source of funding for religious Madrassas, which are provide education to the poor and lower–middle classes, free of cost.

The persistence of traditional Islam as a significant cultural alternative and as an intellectual pursuit is due to these Madrassas. The four primary concerns that Ulema (Religious Scholars) are serving through these Madrassas are:

- 1 unity and integrity of Islamic Ummah as a universal religious community;
- 2 integrity and orthodox beliefs and practices of Islam and the consensus of classical jurists;
- 3 preservation of Shariah, especially, in matters pertaining to family laws and religious rituals;
and
- 4 dissemination of Islamic religious knowledge under their supervision and guidance.

As interpreters, they resolve religious disputes and issue Fatwas, providing the faithful with religious guidance on all kinds of issues. As religious functionaries, they organize and lead congregational prayers, supervise the celebration of Islamic religious occasions, and conduct marriage ceremonies and burial rituals. The Madrassa education is critical for all these functions and concerns and the Madrassas are taken as citadels of Islamic faith.

Notes

- 1 Indian Independence Act 1947, <www.legislation.gov.uk/ukpga/Geo6/10-11/30>.
- 2 Pakistan First-Indian Independence Act 1947. For the history, see <<http://pak1stanfirst.com/20080128168/think-tank/history/indian-independence-act-1947.html>>.
- 3 <www.mofa.gov.pk/Publications/constitution.pdfSimilar>.
- 4 <www.pakistanlawsonline.com>.
- 5 <www.wifaqulmadaris.org>.
- 6 The Equivalence Committee of Higher Education Commission of Pakistan recognizes the Degree of Madrasa as being equivalent to an M.A in Arabic/Islamic Studies of the public universities for the purpose of teaching Arabic.

Religion and education in Peru

Gonzalo Flores Santana

Religious and social context

Peru defines itself as a democratic, social, independent, and sovereign republic. It is located in South America, having as bordering countries Ecuador, Colombia, Brazil, Bolivia, and Chile. Its population is approximately 30 million inhabitants spread out in three natural regions (the coast, the mountains, and the jungle) and 24 political regions. Its legal regime is one of a unique and indivisible state and its government is unitary, representative, decentralized, and organized on the political principle of separation of powers.

The Catholic Church, for its history and labor, is the most deeply rooted church in the country. According to census information in the 2000s, close to 90 percent of the population professes the Catholic religion, which places Peru among the countries with the highest number of Catholic faithful in the world along with Brazil, the Philippines, and Mexico.

Peru has one of the most important religious manifestations in the world, the Solemnity of the procession of the “Lord of Miracles,”¹ whose image leaves in procession for the streets of Lima every year in the month of October; more than 1 million faithful participate during its processional trip. Processions that venerate the Virgin Mary as well as other saints are frequent and they are practiced in all of the Republic’s territory.

Other than the Catholic Church, there are additional confessions such as Anglicanism, Islam, and Judaism, which form part of what are considered historic confessions whose existence in Peru dates back to the eighteenth and nineteenth centuries. In the last 50 years, distinctive evangelical confessions, which organize themselves principally in the Council of National Evangelicals of Peru (CONEP) and the Union of Christian Evangelical Churches of Peru (UNICEP), have seen important growth.

The coexistence of many distinct religions is respectful and pacific. They enjoy quite a broad degree of religious liberty with a significant number of different places of worship in the diverse social strata, without the state placing any additional requirements upon them, other than those demanded of any other service or activity that wants to carry itself out in a form open to the public.

Historical overview

Having achieved Peru's independence from the Spanish Crown, its liberator, Don José de San Martín, sanctioned the Provisional State on October 8, 1821. The republican patronage had also been initiated after the independence of Peru. One ought to keep in mind that the first presidents of Peru exercised their patronage *de facto*, so much so that it was considered a hereditary privilege of the crown. This continuity of the old legal framework of the monarchy was possible because a collective mentality remained that understood the link and collaboration between Peru and the Catholic Church, and the help that was offered to the church for the achievement of its mission.

In this context, the provisional status of San Martín and the distinctive constitutions that Peru had during the nineteenth and the beginnings of the twentieth centuries ought to be understood. Turning back to the provisional status, the stated document orientates itself to the religious aspect, declaring Peru as a nation of Catholic confession. Nevertheless, the second Article was directed at Christians who did not profess the Catholic religion, and it gives them the possibility of obtaining permission from the government to perform their own worship.

The first Constitution of 1823 declared in Article 8 that "the religion of the Republic is Catholic, Apostolic and Roman with exclusion of the exercise of any other." After that, the Constitution of 1860 prohibited the public exercise of any other religion distinct from Catholicism.² Vargas Ugarte comments that until 1895 the propagandist work of the Protestant churches was not noticed by the population.³

In 1915, with Law 2193, the final part of Article 4 of the 1860 Constitution, which did not permit other confessions to manifest themselves publically, was repealed. The 1920 Constitution is also confessional. The nation proclaims itself as professing the Catholic religion and declares that the state protects it. But now there are no legal provisions stopping the various confessions from manifesting their worship publically. This novelty is also found in Article 23 of the *magna carta* (Constitution of 1993) that established that: "Nobody will be persecuted by reason of their ideas or by reason of their beliefs."

In the 1933 Constitution, for the first time the freedom of exercise of any cult mentioned in Article 232 is recognized. Also, Article 59 established that freedom of conscience and of belief are inviolable.

With respect to the Catholic Church it should be mentioned that Peru, from its beginnings as a republic, tried to establish relations with the Holy See. Simón Bolívar went to the Apostolic Vicar Muzzi expressing to him Peru's intention to establish relations through a concordat. On May 10, 1852, Bartolomé Herrera traveled to Rome to ask for recognition of the patronage, which Peru was exercising *de facto*. On October 26, 1852 he presented his credentials before the Holy See and on November 1 he was received in an audience by Pius IX. It was the first time that Peru had an accredited delegate before the Holy See; it was known as "the Herrera Mission," giving beginnings to the diplomatic relations of Peru and the Holy See. Later, Luis Mesones was the first diplomatic representative of Peru residing in the Holy See.

Pope Pius IX named Monsignor Serafin Vanutelli as the first Apostolic Delegate for Peru, being received by President José Balta on June 30, 1871. In 1874 the same Pontiff conceded *Praeclara Inter Beneficia*, the Apostolic Letter by which patronage was endowed to Peru, and, starting from the mentioned date, this patronage began to be exercised by right. The *exequatur* was given by President Nicolás de Piérola by means of the Dictatorial Decree of January 27, 1880, becoming law of the Republic. The patronage would maintain its validity until July 16, 1980, the date on which Law Decree 23147 was dictated, which repealed the Dictatorial Decree indicated earlier.

Gonzalo Flores Santana

During the republican patronage, also called the national patronage, Peruvian attempts to sign a concordat with the Holy See were continued. This intention had been expressly made since independence, as much in the distinctive constitutions as in the Peruvian delegations and the plenipotentiaries before the Holy See. The Constitutions of 1920 and 1933 also stated this necessity of signing a concordat. After various decades of attempts to promulgate an international treaty, on July 19, 1980 the representatives of the Republic of Peru and the Holy See signed the International Agreement, which was ratified on July 22 and approved on July 24 by the Peruvian president through Law Decree 23211. On July 26 it proceeded to the exchange of paperwork and credentials. Through the International Agreement of July 19, 1980, signed between the Catholic Church and the Peruvian state, a great change took place in the relations between the two parties: the confessional system arrived at its end and, with it, the national patronage.

With the end of this period, the recognition of the Catholic Church as autonomous and independent became a reality and thus its relations with the Peruvian State transformed into relations of genuinely mutual collaboration.

Constitutional sources

The Constitution in force from 1993 states in its first Article that respect for the dignity of the human person is the highest goal of society and the state. In this framework the said norm consecrates the right to freedom of conscience and religion, in individual form or in association, as a fundamental right of the human person, and the state guarantees its respect. The essential limit of its exercise is that it would not offend morality nor alter the public order.

Article 50 of the same document recognizes the Catholic Church as an important element in the historical, cultural, and moral formation of Peru and offers it its collaboration. It further indicates that the state respects other confessions and that it can establish forms of collaboration with them. Moreover, Peru has a religious freedom law,⁴ which states the constitutional principles indicated above.

Peru has ratified all its multilateral treaties that recognize the right to religious freedom. The Constitution of Peru establishes that those treaties form part of national law. Likewise, its fourth final disposition establishes that the norms relative to the rights and liberties that the Constitution recognizes are interpreted in conformity with the Declaration of Human Rights and with the international treaties and agreements concerning the same materials that are ratified by Peru.

Apart from the law of religious freedom No. 19635, in internal law many laws and norms of lesser rank exist that make references to the religious ones: for example Article 80 of the civil code, Article 19 of the rent tax law, the municipal taxation law, the regulation of receipts of payment, and other administrative norms that are still valid and in agreement with the referenced religious freedom law.

Moreover, Peru has signed an International Agreement with the Holy See that dates from July 19, 1980 in which the independence and autonomy of the Catholic Church is recognized, establishing itself in a relational system of collaboration. In virtue of the said treaty, the Catholic Church has legal personality of public character, which is understood as extending to the Archbishoprics, Bishoprics, Prelatures, Vicariates, and the Peruvian Episcopal Conference, as well as their dependent entities such as the parishes, missions, and the like.

Peru had not previously held agreements with religious confessions, thus the legal framework of these religious confessions is constituted by the Constitution, the multilateral treaties, and the law of religious freedom.

Within the fundamental principles of the system of relations between the religious institutions and the Peruvian state is found, most importantly, the freedom of religion, or religious freedom, exalted as a fundamental right of the person as contemplated in Article 2 (3), of the Constitution.

The Constitutional Tribunal has indicated freedom of religion as the “fundamental right of every individual to be part of a determined religious confession, to believe in the dogma and the doctrine proposed by said confession, and to publically or privately manifest the consequent religious convictions and worship.”⁵

Article 1 of the Constitution also recognizes freedom of conscience. This constitutional recognition entails that those who exercise it will be able to assert their right to the objection of conscience in Peru, even though the Constitution does not expressly make mention of it.

The mandate that no person should suffer discrimination for religious motives is another recognized principle in Article 2 (3) of the Constitution, founded in equality before the law of all people, and it applies in all legal ordinates. Discrimination for religious reasons is constitutionally prohibited and has found sanction in the labor environment, in public administration, and in professional occupations.

Teaching in the Constitution and treaties

The Peruvian Constitution establishes the principle that education has as its aim the integral development of the human person. Education is understood as a fundamental right. In addition, it is an underlying principle that parents have a natural duty—and right—to watch over their children, care for them, and procure all that is necessary for the full development of their personality and dignified life.

Minors are also fully endowed with fundamental rights and, therefore, of ideological and religious freedom as well as the right to the dignity of the human person and the free development of personality and the right to physical and moral integrity (Article 2 (1) and (3)), although it is obligatory upon parents to ensure that these and other rights are exercised, until they have reached the age of majority.

Article 13 of the Constitution recognizes that “parents of the family have the right to educate their children and the right to choose the educational centers and to participate in the educational process,” and that “the religious education is imparted with respect to the freedom of conscience” (Article 14 (3)), and, consequently, the right to choose a religious education is a fundamental right, and its interpretation ought to be in conformity with the Universal Declaration of Human Rights and the international agreements and treaties ratified by the Republic of Peru.⁶

Similarly, in the international scope, the Convention of the United Nations concerning Children’s Rights, on November 20, 1989, established that the signees *will respect children’s rights and the freedom of thought, conscience and religion*, without prejudice of “the rights and duties of parents and, in its case, of the legal representatives, of guiding the child in the exercise of his rights in a way that conforms with the evolution of his faculties” (Article 14 (2)). In an analogous sense, the Latin American Convention of the Rights of the Youth was advanced and signed in Badajoz (Spain) on October 11, 2005 (Article 17).

Consequently, the freedom of parents to choose the type of education sought for their children is protected in the quoted constitutional and international precepts, and they insure the right to receive the religious and moral formation that the parents want for their children. This implies that the state cannot include in the educational system obligatory material whose inspiring principles, pedagogic objectives, or contents and criteria of evaluation would be

Gonzalo Flores Santana

directed at the moral formation of the students and which would have an indoctrinating character, in order to preserve the student from religious or moral education that is contrary to the convictions of the students and/or their parents. Along these same lines, as an expression of the right to choose the type of education that would best conform to each one's convictions and thus respect their ideals, is the right to elect the educational center of each one's choosing.

It ought to be pointed out that the Peruvian juridical system guarantees freedom of teaching, which also includes: 1) the native right of the parents to direct the formative process of their children and choose the learning center that they consider the most adequate; 2) the natural or juridical right of every person to constitute or run educational centers; 3) academic freedom of university teachers; and, 4) the right of the proprietors of the educational centers to establish the axiological line that will govern their center within the respect of those principles and values established in the Constitution.

The regulation of religious education

Peru uses Interconfessional Education Regulations (D.S. No. 01472 – E.D.), which predate the actual Constitution and are still valid. This policy was dictated when Peru was still a confessional country, and in that context there was established, for example, respect for the freedom of teachers to assume or abstain from the responsibility of religious education for motives of conscience. In the same way, it recognizes respect and tolerance that teachers ought to have for religious attitudes, beliefs, books, and objects of the distinctive confessions. These regulations establish the general principles that regulate religious education in Peru within a system of religious freedom. Concretely, the regulation indicates the following as principles of religious education:

- 1 The inviolability of freedom of conscience and of belief, not only of the students but also for the parents of the family and the educators.
- 2 The right that the parents of the family or guardians have to choose the religious education of their children, an option that can be exercised directly by the students taking into account their age and psychological maturity.
- 3 The right of families and confessional groups to promote the functioning of educational centers and programs according to their beliefs is recognized. Just as the right to religious teaching in agreement with a particular religious confession is established, the regulation also establishes the possibility of the exemption of religious education by request of one of the parties; what is not established is who ought to negotiate the request—whether it is the parents of the family, the teachers, the students, or the educational center. Nevertheless, administratively the possibility exists of said exemption.
- 4 To teach the students respect and tolerance for persons who have distinctive religious attitudes or beliefs or those who decide not to have a religious belief.⁷
- 5 To harmonize the religious education that is offered in the educational centers with that offered in the home and the community. The same regulation obliges each religious confession to compile a curriculum of the corresponding religious education, including dictated guides, texts, and the corresponding coordination with the Ministry, to the effect that this would give it its official value.
- 6 Each religious confession will bestow the corresponding authorization as well as fulfill the requisites of the law in order to exercise teaching in religious material.
- 7 A student's parents have the right to demand that in the public school the religious course of a determined religious confession be taught, provided there is a minimum of 40 students of

that confession. Otherwise, parents may still designate a teacher in charge of religious education for students of that religion.

The right to establish educational centers

As already pointed out, in Peru the right of individuals to establish teaching centers at all levels is recognized. The International Pact of economic, social, and cultural rights is applied as a norm of national law, particularly when it indicates that the bodies have the freedom to establish and direct teaching institutions whose educational contents should comply with the minimum norms that the state prescribes.

Moreover, the various international treaties to which Peru is a party convert themselves into a basic juridical basis that permits churches and religious confessions to establish and direct educational centers, with the resulting right to teach according to their corresponding religion.

This international principle is expressed in Article 19 of the International Agreement signed between Peru and the Holy See that establishes that the Catholic Church will be able to establish educational centers at all levels in conformity with national legislation.⁸ In the same way, the Legislative Decree 882 of 1996 (Law of inversion in education) permits natural and juridical persons (meaning all other religious confessions) to set up educational centers at all levels with the ideals proper to the proprietary entity.

The educational centers of the Catholic Church

As was pointed out previously, the institutions of the Catholic Church have the right to establish educational centers at all levels, which will be considered as private educational centers, directed with autonomy by the ecclesial institution, which has the right to diffuse its ideals and to charge economic fees.

Aside from private Catholic schools, many religiously affiliated schools receive state support. In 1989, by means of a Ministerial resolution, the Regulation of Education Centers of Joint Action was created between the Catholic Church and the Peruvian state in which three types of educational centers were established as described below.

Mixed financing

These are the educational centers that are the property of an institution of the Catholic Church, and which receive from the state subsidies for a determined number of “administrative and/or teaching posts” but which, in not covering their whole budget, are authorized to charge a fee for the educational services that they offer.

Free system

These are educational centers that are the property of the Catholic Church, but which receive from the state subsidies for all of the “administrative and teaching posts,” as well as economic transfers in order to cover the rest of their expenses. In being covered by the state for their entire budget, these educational centers do not have rights to charge economic fees.

Gonzalo Flores Santana

National centers in collective agreement

National Centers in Collective Agreement are the educational centers that are the property of the State that have handed over the administration of their centers to Catholic institutions. These educational centers are public and therefore the state covers the totality of their budgets, including the “administrative posts” and the religious personnel who are in charge of its direction and/or administration.

The educational centers of mixed financing are parish educational centers under regulations that date from 1977 and which are defined in the norm as particular educational centers promoted by an institution linked with the Catholic Church and whose purpose is to provide educational services to families of scant economic resources which are financed and subsidized by the state.

The coordination between the state and the Catholic Church concerning these joint-action schools are channeled by the National Office of Catholic Education—O.N.D.E.C. (Oficina Nacional de Educación Católica)—which depends on the Peruvian Episcopal Conference. O. N.D.E.C. is an institution recognized by the state by diverse juridical norms. One of its functions is to administer the teaching posts given by the state for the educational centers of joint action between the state and the Catholic Church. O.N.D.E.C. for its part counts on the support of the Diocesan Office of Catholic Education—O.D.E.C. (Oficinas Diocesanas de Educación Católicas)—which exercises this responsibility on the Catholic diocesan level.

It is important to keep in mind that these norms are sustained by the historic fact that Catholic institutions have always collaborated with the Peruvian state in many projects and works of a social character, and which cover spaces that the state has not yet been able to take charge of. The scope of the Catholic Church’s collaboration with the Peruvian state expresses itself in many ways as, for example: public and private school education,⁹ higher education, promotion of health by means of hospitals and other establishments, nutrition by means of soup kitchens and food safety programs,¹⁰ emergency social programs, disaster prevention, and social and economic reconstruction.¹¹

Religious classes

In respect of teaching religion in public schools, there is not a general or special norm that regulates the practice, except for the Catholic Church as noted below. In public schools, this has given place to not teaching religious material corresponding to other religious confessions; thus it has been the practice of the parents of non-Catholic families to solicit the exemption in writing so that their children would not receive a Catholic education, enclosing evidence or a legal declaration that they belong to another religious confession.

This right to remove oneself from religious class is contained in the religious freedom law approved on December 2010, specifically Article 8, which states: “the educational institutions, in all its levels and modalities, respect the right of students to exonerate themselves from religious classes for motives of conscience or for reasons of religious convictions without being affected in their academic average. In the cases of minors in age, the exoneration proceeds always and when the parents or whoever has legal guardianship express their will for it.”

The Peruvian state is also aware that education is a fundamental activity for the Catholic Church in the completion of its mission. Its labor in this field is a tradition that has contributed to the positive development of Peruvian society. For this reason Articles 19 and 20 of the International Agreement between Peru and the Holy See establish the following as a series of guidelines in Catholic religious educational material: 1) in public schools the Catholic religious

course is imparted as ordinary material; 2) for the civil appointment of religious teachers presentation by the respective bishop is required, the teachers being able to maintain their positions while they continue to enjoy his approval; 3) the diocesan seminaries and the training centers of the religious communities will be recognized as educational centers of the second cycle of higher education by means of a certificate of recognition expedited by the Peruvian Episcopal Conference. These entities bestow titles in the name of the nation.

In the specific case of religious professors, their civil appointment requires presentation by the respective bishop (the Ordinary of the place). As already indicated, the treaty establishes that a teacher will only be able to maintain his position while he enjoys the approval and trust of the bishop. If the bishop retracts his trust from a religious teacher, that teacher must cease teaching the respective course. Right now the right of the church to intervene in the appointment or termination of religious teachers has been questioned by some teachers as a denial of fundamental rights.¹² In the case of ecclesiastics who lend their services to public education, it is not demanded that they have the requisite nationality and they have the same rights enjoyed by other teachers.¹³

Notes

- 1 Law 29602 of October 18, 2010 declared the Lord of Miracles “Patron Saint of Catholic Spirituality of Peru” and “symbol of religion and popular sentiment.”
- 2 Constitution of 1860, Article 4: “The Nation professes the Catholic, Apostolic and Roman Religion: The State protects it, and does not allow the public practice of any other.”
- 3 Rubén Vargas Ugarte S.I., *Historia de la Iglesia en el Perú*, 5 Vols. (Aldecoa Press, 1953–1962), 291.
- 4 Law 29635 published in *El Peruano*, official daily, on December 22, 2010.
- 5 Constitutional Court verdict, file number 0895–2001-AA/TC, dated August 19, 2002.
- 6 Universal Declaration of Human Rights (Article 26), International Covenant on Civil and Political Rights (Article 18), International Covenant on Economic, Social and Cultural Rights (Article 13.3), Convention of December 15, 1960, sponsored by U.N.E.S.C.O., against discrimination in the field of education (Article 5.1.b) United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of November 25, 1981 (Articles 5.1 and 2).
- 7 Supreme Decree 016–72-E.D., Regulation of Religious Education, Article 2 (c): “To encourage in the pupil respect and tolerance for people who have different attitudes or beliefs or decide not to have any are objectives of the religious education.”
- 8 “‘To establish’ comprises the fact of instituting or creating corporations that have an intention of permanence in time and are created with a particular identity” in *The Experience of the Catholic University in Peru*, by Gonzalo Flores Santana (Latin American Congress on Religious Liberty, PUCP Fondo Editorial, 2001).
- 9 See Table 34.1.

Table 34.1 Catholic Church educational institutions

<i>Educational offer</i>	<i>Number of Schools</i>
Parish educational institutions	943
Private educational institutions	1,021
In agreement with Governmental educational institutions	311
Total	2,275

Source: M.I.N.E.D.U. (2005), Andrés Cardó Franco, *The Catholic Church and Education in Peru* (2005) (own elaboration)

- 10 Caritas Peru implements programs that aim to improve food health, especially for the country’s poorest families. One program is sponsored by U.S.AID with an investment of U.S. \$5,471,800. These activities have been developed in Jaen, Huancayo, Huancavelica, Ayacucho, Tarapoto, Huanuco, Cusco,

Gonzalo Flores Santana

- and Puno. Source: *Report of the Peruvian Conference of Catholic Bishops to the Technical Secretariat of the National Agreement* on December 26, 2006.
- 11 Caritas and other Catholic Church Institutions also promote reconstruction programs for *friaje* phenomenon (severe cold spell) and floods in southern Peru including in Abancay, Chuquibambilla, Sichuan, Cusco, Puno, Juli, and Ayaviri.
 - 12 Peru's Constitutional Court is currently reviewing a writ of *amparo* interposed by a religion teacher who was not re-signed because the Bishop of the Diocese of Huanuco did not renew his trust in him for having committed acts contrary to the doctrine of the Catholic Church. This issue becomes more complex because the Teaching Act does not include the Bishop's withdrawal of confidence as a cause of "cessation" for a teacher of religion, so many administrative problems have arisen in order to implement this right of the Catholic Church that is referred to in the International Agreement signed between the Peruvian Government and the Holy See on July 19, 1980.
 - 13 These rights are recognized in the Peruvian Educator's Bylaws, their amendments and regulations.

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Religious education in Poland

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Religious demographics

Poland is conventionally perceived as one of the most religious countries in contemporary Europe. Various indicators showing a high level of religious beliefs and religious practices seem to confirm such a picture. Some 95 percent of the population identify themselves as believers or strong believers, 54 percent of the population participate in religious practices once or a few times per week, and 69 percent declare that they pray every day or at least once a week.¹ However, despite strong indicators of religiosity, processes of individualization and privatization of religion can be also traced. For example, findings on the religiosity and morality of Polish Roman Catholics show selective acceptance of religious dogmas and dictates, especially in the younger generation. Among young people of 18–24 years, who declare participation in religious practices at least once a week, about 75 percent accept premarital sex, more than 50 percent do not perceive divorce as something that is wrong, and 20 percent accept abortion.²

The dominant religion of the country is Catholicism; approximately 95 percent of the population belong to the Roman Catholic Church. The second largest religious denomination is the Orthodox Church, with 550,000 adherents, and the various churches of Protestant traditions constitute the third largest group (approximately 148,000 adherents).³ In all, there are 172 churches and religious organizations of diverse religious traditions currently operating officially and registered in Poland.⁴ However, some scholars claim that in practice there are many smaller, newly established religious organizations operating in society, either registered as different kinds of association or without any legal recognition.⁵

Not only is the Roman Catholic Church the largest religious organization in Poland, but it also holds a special position and still plays an important role in the country's social and political life. This unique relationship to a large extent results from historical circumstances. The Catholic Church contributed to the building and sustaining of national identity in the situation of a lack of state structures during the period of partitions in the nineteenth century.⁶ Its significance was further strengthened during the socialist era. The Catholic Church was the institution representing the nation against the regime and providing a space for the resistance movement and fight for human rights, liberty, and civil society.⁷ As a result, after the fall of the regime, the church had a very strong and respected position, which was used, particularly in the

Katarzyna Zielińska and Marcin K. Zwierzdzyński

early 1990s, for attempting to impose Christian values and norms on the entire society as well as for intervening in the political and public affairs of the newly constructed democratic state.⁸ Scholars, pointing to the growing presence of the church in the mass media, the episcopate's guidance for voters in the EU accession referendum, strong support for the inclusion of a reference to God in the EU constitutional preamble, or recent fierce opposition to in-vitro fertilization as illustrations of renewed religio-political activity in Poland, speak of the "re-publicization" of religion in Poland. Ironically, this growing presence of religion is accompanied with declining support, as reflected in polls, for the church's political involvement in society.⁹

Church-state relations and legal provisions of religious education

The current legal provisions of church-state relations in Poland were introduced in the 1990s after long and fierce discussions concerning the nature and form of the newly established state.¹⁰ The foundations of these relations are laid down by the Polish Constitution of 1997, which formally defines the character of the Polish state. The basic executive act regulating church-state relations is the Law on Guaranteeing Freedom of Conscience and Belief.¹¹

According to the Constitution, church-state relations are based "on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good" (Article 25.2). All religious groups have equal rights in Poland; however, there are differences in regulations concerning the legal position of the Roman Catholic Church and other religious organizations. The legal position of the former is regulated by the international agreement between the Polish state and the Holy See. The legal position of other religious organizations can be regulated by signing bilateral agreements with the Polish state. In practice, only 14 historical religions have such separate acts.¹² The legal status of other religious organizations functioning legally in Poland is regulated by registration with the Register of Churches and Other Denominations, on the basis of conditions stipulated in the Law on Guaranteeing Freedom of Conscience and Belief. Currently there are 157 religious organizations of various sizes and diverse religious traditions recorded in the Registry.

The Law on Guaranteeing Freedom of Conscience and Belief regulates in more detail relations between state and religious organizations, especially those whose status is not regulated by the separate agreements. It describes conditions for and scope of functioning of churches and religious organizations, stressing their equal status in performing their religious activities. The Law also stipulates rules for registration of a religious organization as well as rules concerning reclaiming the property of some churches.

The Constitution also lays down general provisions regarding religious education (R.E.). According to Article 53, parents have the right to religious and moral upbringing and teaching of their children in accordance with their convictions. All religious organizations officially recognized by the state have the right to organize R.E. in schools, under the condition that schooling does not violate other people's freedom of religion and conscience. Furthermore, no one can be forced to take part in religious practices or reveal their religious beliefs or confession. The current constitutional regulations resemble to some extent those of the March Constitution of Poland of 1921, in accordance with which the teaching of religion was obligatory at each educational institution dealing with youth under 18 years old. R.E. was to be overseen by the relevant religious organization, with the principal supervision of the state's educational authorities (Article 120). Issues related to R.E. were not mentioned in the Constitution of the People's Republic of Poland of 1952. Moreover, the right to organize R.E. in schools was later concealed in 1961 by the Act on Development of the Educational System and Teaching. R.E.

was allowed to be organized outside the school. The decision about the removal of religion from schools' curricula should be seen as a part of the larger policy of laicization promoted by the communist regime.

The Law on Guaranteeing Freedom of Conscience and Belief also touches upon the issue of organizing R.E. It stresses the equality of all churches and religious organizations officially functioning in Poland in the right of offering R.E. in accordance with the decision of parents or legal guardians. R.E. is defined as an internal affair of churches and religious organizations and may be organized either at public schools and day-care centres or at places of worship, churches, or other places (Article 20). In the case of the former, detailed rules are stipulated in various acts (see below). Churches and religious organizations are also given the right to establish and run schools, day-care centers, educational and care centers as well as institutions of higher education. Details concerning the operation of such institutions, conditions for the state's or local government's financial support, as well as the way academic degrees and titles are granted and recognized are stipulated in relevant legal acts (Article 21). Churches and religious organizations also have the right to run seminaries or denominational high schools. The latter remain under the authority of the Minister of National Education (M.N.E.) in respect of the curriculum offered and the process of issuing the Polish high school leaving examination certificate (Article 22).

These general legal provisions regarding R.E. are further complemented by numerous regulations contained in the state educational law, documents issued by religious institutions, and bilateral agreements between the state and legally recognized religious associations. The most important legal acts concerning R.E. are the Education System Act and the Ordinance of the Minister of National Education on the Conditions and Methods of Organizing Religious Education in Public Schools and Kindergartens. Furthermore, the regulations between the state and the Roman Catholic Church stem from the Concordat (1998) and Agreement between the Minister of National Education and the Conference of the Polish Episcopate on Qualifications of Religious Instruction Teachers. Organization of R.E. by other religious associations is regulated by individual agreements, for example, the Agreement between the Polish Ecumenical Council and the Minister of National Education Concerning the Qualifications of Teachers of Religious Instructions of Churches Associated in the Polish Ecumenical Council. These documents regulate in detail the way R.E. should be organized in public and private schools at various levels of education, the status of the teachers, as well as financial issues related to R.E.

On the basis of the Education System Act of 1991, state schools are obliged to organize R.E. classes at all levels of compulsory education—in reception classes (six–seven years old), primary schools (seven–13 years old), lower secondary schools (13–16 years old), and higher secondary schools, independently of the type.¹³ From 1999 this requirement also applies to all state kindergartens (optional for three–six-year-old children). Participation in R.E. is optional. It is based on the written or oral expression of the will of the parents or legal guardians in the case of pupils in kindergartens and elementary schools and of parents or adult pupils in the case of secondary schools. However, the declaration can be changed at any time. These regulations also apply to non-public (private) schools with the entitlements of public school.¹⁴ Non-public (private) schools without such entitlements (mostly fee-based extramural high schools) are free to regulate all R.E. issues (its presence or absence, voluntary or compulsory character, denominational or non-denominational model, grades, teachers' qualifications, curricula and textbooks, amount of classes, and the like) on the basis of the competence of the school board and/or parents. The Education System Act designates the Ministry of National Education as the state body responsible for dealing with R.E. issues.

Detailed regulations concerning the organization of R.E. in schools are stipulated in the Ordinance of the Minister of National Education on the Conditions and Methods of

Katarzyna Zielińska and Marcin K. Zwierzdzyński

Organizing Religious Education in Public Schools and Kindergartens. According to this document the minimum number of pupils required for a school to organize R.E. classes is specified as seven, or three in the case of organizing interschool or interdenominational classes. Where pupils opt out of R.E., the alternative subject of ethics should be provided. All R.E. curricula and textbooks are detailed and approved exclusively by the relevant religious association offering R.E. classes and later made known to the M.N.E. R.E. classes should be offered in the amount of two hours per week. However, they can be reduced to one hour with approval from the authorities of the relevant religious association.¹⁵ The number of ethics classes is individually settled by the school principal. The grade received from religion or ethics is placed on the annual certificate, without specification as to whether the grade pertains to R.E. (or of which religion) or ethics class. Since 2007 the grade from the R.E. or ethics class has been included in the calculating average, but it is not taken into consideration in promotion to the next class. Additionally, discussions are taking place as to whether R.E. could be one of the optional subjects to be taken for the high school leaving exam. The school is obliged to provide supervision during these classes for pupils who do not participate in either religion or ethics classes. Pupils attending R.E. have the right to be excused from all classes during the three-day Easter retreat, then being in the custody of the R.E. teacher. The regulations of the ordinance also confer the right to put a cross in the classroom as well as say a prayer before and/or after classes.

The requirements regarding professional training and status of R.E. teachers (often called “catechists”) is regulated by the documents regulating R.E. (see above) as well as the Teacher’s Charter.¹⁶ Regulations regarding the professional training of R.E. teachers vary slightly at different levels of education. Qualifications for teaching R.E. in secondary schools are automatically held by clergymen with a seminary diploma. Similarly, lay R.E. teachers are obliged to have completed theological education at university level. Alternatively, they may have non-theological education at university level, further complemented by relevant post-graduate courses focusing on pedagogical and catechetical subjects. For elementary schools and kindergartens similar rules apply. Additionally, final-year students of theological studies and people who have completed relevant post-graduate courses may be employed as R.E. teachers at this level of education.¹⁷ R.E. teachers have similar rights and obligations as teachers of other subjects; however, they cannot serve as form tutors. They can organize parent-teacher meetings and are allowed to conduct socio-religious and ecumenical activities within the public space of a state school. On top of their training requirements, all R.E. teachers are compelled to receive a special referral issued by superiors of the given religious association (e.g. *missio canonica* given by the diocesan bishop in the Roman Catholic Church), which can be revoked at any time during the school year. Furthermore, their work is supervised by the inspectors designated by the authorities of religious associations. In practice, this means that the professional qualifications of R.E. teachers and their work are beyond the control of the Ministry of National Education. Only the pedagogical aspect of R.E. is controlled by school boards.

The legal documents also regulate financial issues related to the organization of R.E. in Polish public schools. R.E. is treated as one of the school subjects; therefore, all elements and aspects related to it (classrooms, didactical aids, salaries of teachers) are financed from public funds and are covered by the state budget.¹⁸ In the case of non-public schools, expenses related to R.E. are covered partially by the state and partially by private donors or parents, depending on the way school is financed. The salary of R.E. teachers is calculated based on both R.E. organized at school and catechesis organized in parishes. This does not cover optional socio-religious and ecumenical activities organized by R.E. teachers, which are conducted for free. When the referral is revoked, a catechist has the right to receive a salary until the end of the school year or

disposable severance pay. The salary of the new teacher is then paid from the religious association's funds.

The legal regulations concerning R.E. arouse possible controversies. First, attending R.E. is based on expression of will; however, the legal acts do not resolve either potential conflict between the will of minors and their parents, or the problem of pupils whose parents are representatives of two different religious associations and are undecided in which tradition to bring up their child.¹⁹ Second, the fact that there must be a group of three or seven pupils in order for a religious group to have a right to organize religious education in school could be seen as a constriction of all parents' and pupils' right to participate in R.E., as guaranteed by the Constitution and Education System Act. In practice, the Roman Catholic Church is the biggest beneficiary of such solutions. The dominance of Catholic R.E. in state schools of all levels is overwhelming and it can be seen as a consequence of the exceedingly stable denominational structure of Polish society. Roman Catholic R.E. is dominant in kindergartens (94.7 percent), primary schools (98.0 percent), lower high schools (97.1 percent), technical high schools (92.6 percent), and grammar schools (93.3 percent).²⁰ Data on R.E. provided by minority religions are hardly available. For sure, the Orthodox Church, the Evangelical-Augsburg (Lutheran) Church in Poland, and Poland's Greek-Catholic Church are able to meet such requirements, yet only in some regions of Poland where their adherents are concentrated. As a result, in many cases the R.E. of minority religions is organized in parish premises or other places. Third, pupils taking neither religion nor ethics lack a grade on the school certificate. This may disclose a pupil's or his/her parents' world view, which is overtly unconstitutional. Fourth, pupils have the right to participate in spiritual retreat, but the acts do not regulate the situation of pupils attending ethics class, those who attend neither R.E. nor ethics class, or adherents of other religious associations not participating in any kind of retreat. Furthermore, there is no specification as to what kind of cross, of which religious tradition, can be placed in school or kindergarten, in which classrooms, and why other religious symbols are excluded. Finally, there is no designation either of the prayer content or of the time and place in which it can be said. Moreover, there is no specification as to who should adjudicate on these matters.²¹

Religious education in practice

R.E. was reintroduced into all Polish state schools up to the secondary level on the basis of ministerial instruction at the beginning of the 1990/91 school year.²² The instruction was prepared by the Joint Episcopal-Government Commission, without wider discussion or consultations with minority religions. The decision initiated the public debate over the issue of the return of R.E. into schools, perceived as a potential violation of the right to freedom of religion and belief.²³ There were also various protests from the representatives of minority religions.²⁴ Consequently, a second instruction was issued regulating R.E. in respect of minority denominations. Critics also pointed out that the instruction lacked legal authorization and was undemocratic since such a decision should be taken by the Polish parliament. These were the main reasons for the Polish ombudsman to question the instruction's legitimacy and validity in relation to the church-state relations inscribed in the Constitution.²⁵ The Constitutional Tribunal found the instructions to be legal, but appropriate changes within educational law were recommended.²⁶ In the period 1990–2010 actions were brought against the regulations on R.E. on four occasions: in 1990 (by the ombudsman), 1993 (by the ombudsman), 1997 (by the President of the Republic of Poland), and 2007 (by representatives of the opposition party). In every verdict the Tribunal found the challenged regulations to be legal.

Katarzyna Zielińska and Marcin K. Zwierzdzyński

An analysis of the legal regulations concerning R.E. in Polish state schools points to its substantially denominational character. This means that religious institutions are solely responsible for R.E., despite the fact that classes are organized within the public space of state schools. Range (what is to be taught), methods (how it is to be taught), aims (what the planned effect of teaching is), and the main entities—teachers and pupils—are all connected with the particular faith community. The content of R.E. is utterly denominational and theological and underscores doctrinal (i.e. dogmas), ecclesiological (i.e. celebrations), and liturgical (i.e. sacraments) issues. At the same time pedagogical, existential, and universal humanistic aspects of educational process are neglected.²⁷ Teaching religion is treated exclusively as a form of catechetical (mostly evangelizational) mission aimed at a group of pupils and the whole school community, including teachers, staff, and the board. The main task of R.E. is to recognize, develop, and improve the personal faith of the pupil in accordance with the official stance of the religious organization responsible for the R.E. process.²⁸ The need to deepen faith is emphasized and religious identity is treated as a vessel to be filled with ready-made religious components. Religious identification is clearly defined and expected to grow.²⁹

In some R.E. textbooks, mostly at the secondary school level, teaching about other religions is included. However, this tends to be done from the point of view of the dominant denomination. Additionally, elements of nondenominational education about various religions and beliefs are included in mandatory school curricula particularly within the fields of subjects such as literature, history, geography, and civic education. However, a special reference to Christian tradition is usually made.³⁰

In principle R.E. takes place in classrooms; nonetheless some activities (mostly liturgical) are implemented within a sacral space managed by religious organizations (for example, churches, parishes, shrines, etc.). With minority religions, frequently all R.E. is organized outside the schools, as the requirement of having three or seven pupils in order for R.E. to be organized in school is not met. It is not possible for teachers from outside the faith community to conduct R.E. Although all of them are assigned by religious associations, they are employed by state schools and paid from public funds.

The reintroduction of R.E. to state schools stirred ambiguous reactions. At the beginning of the 1990/91 school year, more than 95 percent of pupils declared their wish to participate in R.E. classes. Paradoxically, at the same time only about 30 percent of pupils and teachers, and about 40 percent of parents agreed with the introduction of R.E. into state schools. In the mid-1990s two-thirds of Poles supported the presence of R.E. classes in state schools.³¹ Despite more positive attitudes, R.E. in state schools was still criticized for a lack of organizational preparation (too numerous classes, deficiency in the number of teachers, etc.), its extremely catechetical form, loss of the contact with parishes, and the possibility of fueling intolerance towards religious minorities and atheists.³² Results of recent public polls show high support for R.E. in state schools: 65 percent of the population is in favor, while 32 percent oppose it. R.E. in kindergartens seems to be more controversial: 44 percent support it, whereas 49 percent are against it.³³ However, the research also shows support for non-denominational R.E.: 58 percent of those interviewed claimed that R.E. should focus on teaching on various religions and beliefs. There also seems to be controversy as to whether a grade should be given for attendance at R.E: 55 percent of those interviewed oppose this solution. Moreover, 62 percent are against counting this grade within the average and 57 percent are against the possibility of taking R.E. as an optional subject for the high school leaving exam.³⁴ However, these findings were contradicted by results of another public poll from the same year. In this survey, 51 percent of those interviewed opted for R.E. in parishes, whereas more than 35 percent supported R.E. in school.³⁵

Conclusion

Most important regulations concerning church-state relations as well as R.E. were prepared and introduced immediately after the collapse of the communist regime, when the new political and social order was being constructed. The legal framework that emerged, in the opinion of various commentators, was shaped under the pressure exerted by the Roman Catholic Church, aiming to secure its interests, and often introduced without consultation with the wider society.³⁶ As a result, the hastily introduced regulations lack coherence.

The most controversial issue is the fact that religion classes are conducted within the public space of the school, though under special circumstances and outside the auspices of the national education system. The peculiar status of R.E. teachers and the distinctive process of preparing and approving educational materials are examples of the extraordinary status of religion classes in Polish schools. In short, the religious part gives the “essential content,” while the state part gives the “organizational form.” The various challenges faced by R.E. stem from specific tensions between religious associations and schools, often resulting from contradictory institutional interests. Despite the various weaknesses of the legal framework regulating R.E. in Poland it has never been reconsidered.

Notes

- 1 Rafał Boguszewski, *Dwie dekady przemian religijności w Polsce* (Warszawa: CBOS, 2009), 4–7.
- 2 Rafał Boguszewski, *Moralność Polaków po dwudziestu latach przemian* (Warszawa: CBOS, 2009), 7–9.
- 3 *Concise Statistical Yearbook of Poland* (Warsaw: Central Statistical Office, 2010), 130–31.
- 4 full list of all registered churches and religious organizations is available on the website of the Ministry of Internal Affairs—<www.mswia.gov.pl/portal/pl/92/Wyznania_religijne.html>.
- 5 Maria Libiszowska-Żótkowska, “Metodologiczne problemy badań nowych ruchów religijnych,” *Nomos Kwartalnik Religioznawczy* 39/40 (2002): 11–28.
- 6 Jose Casanova, *Public Religions in Modern Times* (Chicago: Chicago University Press, 1994), 92–93; Geneviève Zubrzycki, *The Crosses of Auschwitz: Nationalism and Religion In Post-communist Poland* (Chicago: Chicago University Press, 2006), 36–39.
- 7 Irena Borowik, “The Roman Catholic Church in the Process of Democratic Transformation: the Case of Poland,” *Social Compass* 49, no. 2 (2002): 241; Maria Grabowska, “Religijność i Kościół w procesie transformacji w Polsce,” in *Pierwsza dekada niepodległości. Próba socjologicznej syntezy*, eds. Edmund Wnuk-Lipiński and Marek Ziółkowski (Warszawa: Instytut Studiów Politycznych PAN, 2001), 179.
- 8 See: Mirella W. Eberts, “The Roman Catholic Church and Democracy in Poland,” *Europe-Asia Studies* 50, no. 5 (1998).
- 9 David Herbert and Max Fras, “European Enlargement, Secularization and Religious Republicization in Central and Eastern Europe,” in *Religion, Politics and Law in the European Union*, eds. Lucian N. Leustean and John T.S. Madeley (London: Routledge, 2009), 85.
- 10 Timothy A. Byrnes, “The Catholic Church and Poland’s Return to Europe,” *East European Quarterly* 30 (1996), <http://findarticles.com/p/articles/mi_7063/is_n4_v30/ai_n28681631 (accessed October 8, 2010)>.
- 11 The Law on Guaranteeing Freedom of Conscience and Belief was passed in 1989, before the change to the system, along with the Act Regulating the Position of the Roman Catholic Church and Law Concerning the Social Insurance of Clergy (so called May Acts). It introduced regulations concerning church-state relations for the first time in the modern history of Poland. Amended in 1998, the document is still in force today. See *Journal of Laws* 1989, no. 29, item 154.
- 12 The list is available at: <www.mswia.gov.pl/portal/pl/92/222/Wykaz_kosciolow_i_zwiazkow_wyznaniowych_dzialajacych_na_podstawie_odrebnych_ustaw.html>.
- 13 There are a few types of higher secondary schools. The most popular are grammar schools (three years) or technical colleges (four years), ending with the secondary school-leaving examination, which is a condition for entering education at higher level. There are also vocational schools.
- 14 Within the Polish educational system, two types of non-public (private) schools are distinguished: with and without public school entitlements. The crucial element of those entitlements is the right to issue

Katarzyna Zielińska and Marcin K. Zwierżdżyński

- state certificates and diplomas. All schools, public and private, offering classes at pre-secondary level (elementary schools and junior highs) need to have such entitlements. This is related to the obligatory character of schooling at the age of 7–18. In both types of non-public schools, funding is split between the state (20–40% of school needs) and parents' or sponsors' donations. The status of non-public relates to almost 10% of all schools in Poland (e.g. 2.6 percent of elementary schools, 7.7 percent of junior highs, 19.4 percent of high schools). More or less one-third of them are run by religious associations (23 percent of elementary schools, 35 percent of junior highs, 47 percent of high schools). See Elżbieta Putkiewicz and Anna Wilkomirska, "State and Private Schools in Poland. Summary of the Main Research Results," 2004, <www.isp.org.pl/files/4550771190611377001127466657.pdf> (accessed November 29, 2010)>.
- 15 Classes in public schools last 45 minutes, while in kindergarten they last 15 minutes (in the three–four age group) and 30 minutes (in the five–six age group).
 - 16 The Teacher's Charter regulates in detail the status, duties, and privileges of the teachers. It is complementary to the Labor Law, and has priority over it.
 - 17 Recent data show a slight majority of lay R.E. teachers—in state kindergartens and schools taken together 53.9 percent are lay catechists, whereas 46.1 percent are clergy. In detail: kindergartens: 66.5 percent : 33.5 percent; elementary schools: 61.6 percent : 38.3 percent; junior highs: 51.6 percent : 48.4 percent. The proportions are reversed in secondary schools: trade schools and technical colleges: 30.5 percent : 69.5 percent; high schools: 25.7 percent : 74.3 percent. Piotr Tomasik, "Religiöse Bildung in Polen. Stand, Chancen und Gefährdungen," in *Verkannte Dimensionen Der Bildung*, eds. Jerzy Bagrowicz, Jarosław Michalski and Jürgen Heumann (Toruń: UMK, 2008), 169–70.
 - 18 Artur Mezglewski, *Polski model edukacji religijnej w szkołach publicznych. Aspekty prawne* (Lublin: KUL, 2009), 106.
 - 19 Michał Pietrzak, *Prawo wyznaniowe* (Warszawa: PWN, 1999), 281.
 - 20 Tomasik, "Religiöse Bildung," 170–71.
 - 21 Pietrzak, *Prawo wyznaniowe*, 283.
 - 22 Beata Górowska and Grzegorz Rydlewski, eds. *Regulacje prawne stosunków wyznaniowych w Polsce. Zbiór przepisów i dokumentów* (Warszawa: UW, 1992), 142–45.
 - 23 Eberts, "The Roman Catholic Church," 822–23.
 - 24 Bogusław Milerski, *Religia a szkoła. Status edukacji religijnej w szkole w ujęciu ewangelickim* (Warszawa: ChAT, 1998), 75–83.
 - 25 Eberts, "The Roman Catholic Church," 821.
 - 26 Pietrzak, *Prawo wyznaniowe*, 279.
 - 27 Milerski, *Religia a szkoła*, 277.
 - 28 Marian Zajac and Paweł Mąkosa, "Poland: Faithfulness to God and to People. Religious Education in Poland," in *How Teachers in Europe Teach Religion: An International Empirical Study in 16 Countries*, eds. Hans-Georg Ziebertz and Ulrich Riegel (Münster: Lit, 2009), 172.
 - 29 Marcin K. Zwierżdżyński, "Personal Identity in Cognitively Oriented Religious Education," in *Religions and Identities in Transition*, eds. Irena Borowik and Małgorzata Zawila (Kraków: Nomos, 2010), 182.
 - 30 *Base Curriculum for General Education. The Project* (Warszawa: ISP, 2005), <http://www.isp.org.pl/podstawa/podstawa_files/podstawa_programowa_051003B.pdf> (accessed November 29, 2010).
 - 31 See: Krzysztof Kiciński, Krzysztof Kosela and Wojciech Pawlik, eds. *Szkoła czy parafia? Nauka religii w szkole w świetle badań socjologicznych* (Kraków: Nomos, 1995).
 - 32 Krzysztof Kiciński, *Wizje szkoły w społeczeństwie posttotalitarnym* (Warszawa: Open, 1993), 110–49.
 - 33 Michał Feliksiak, *Religia w systemie edukacji* (Warszawa: CBOS, 2008), 2.
 - 34 *Ibid.*, 4–5.
 - 35 Artur Grabarczyk, "Sondaż 'Polski': Rodzice nie chcą lekcji religii w szkole," *Polska Times* (September 28, 2008), <www.polskatimes.pl/fakty/edukacja/47195,sondaz-polski-rodzice-nie-chca-lekcji-religii%20-w-szkole,id,t.html?cookie=1> (accessed December 31, 2010).
 - 36 See: Casanova, *Public Religions*; Eberts, "The Roman Catholic Church."

Religious education in Portugal

Jorge Bacelar Gouveia

The birth and evolution of Portugal

Within the European context and even considering the world context, Portugal is one of the oldest existing states.¹ It was founded in the twelfth century, specifically in 1139 when, at the Battle of Ourique, D. Afonso Henriques took the title of King of Portugal.

Since that founding moment and until the present time, Portuguese history has known many vicissitudes, which can be summarized as follows:²

- 1 twelfth to fourteenth centuries: territorial consolidation thanks to a succession of conquests and the structuring of institutions according to mediaeval feudal schemes;
- 2 fifteenth to sixteenth centuries: the apogée of the Portuguese discoveries, with the rounding by Bartolomeu Dias of the Cape of Good Hope (1488), the discovery of the sea route to India by Vasco da Gama (1498), and the discovery of Brazil by Pedro Álvares Cabral (1500);
- 3 sixteenth to seventeenth centuries: political submission to Spain between 1580 and 1640, that took the form of a personal union, the crown being worn by the Spanish kings;
- 4 seventeenth to eighteenth centuries: system of absolute monarchy and decline of the overseas empire as a result of strong competition on the part of other sea powers such as the Netherlands, the United Kingdom and France; and
- 5 nineteenth to twentieth centuries: inflow and development of constitutional ideals within the framework of the contemporary state.

From the nineteenth century on, Constitutionalism made its appearance in Portugal. The country became subject to the influences of European and American liberal revolutions. Four different stages may be pointed out, each of which would bring with them differentiated lines and means of evolution:³

- 1 1820–1910: the period of royal and liberal Constitutionalism, with three Constitutional texts: the first Constitution in 1822, the Constitutional Charter of 1826, and the Constitution of 1838;

Jorge Bacelar Gouveia

- 2 1910–1926: the period of republican and liberal Constitutionalism, with only one Constitutional text, the Constitution of 1911 (First Republic);
- 3 1926–1974: the period of authoritarian and corporative Constitutionalism, also with only one Constitution, that of 1933 (Second Republic or *Estado Novo*); and
- 4 1974–present: the period of democratic and social Constitutionalism, which began in 1974 with the April 25 Revolution and was formalized by the Constitution of the Portuguese Republic (C.R.P.) of April 2, 1976, which has been in force since then and has been subject to seven reforms (Third Republic).

The present period belongs to the Third Portuguese Republic, which began in 1974, and during which various meaningful economic and social reforms have been undertaken.⁴ Most significantly, Portugal entered the European Community on January 1, 1986, at the same time as Spain (it thus became one of 12 member states).

Today, Portugal is both continental (it occupies an area of 88,797 square kilometres in the western part of the Iberian Peninsula), and insular (the groups of islands of the Azores and Madeira, in the Atlantic Ocean, with areas of 2,333 square kilometres and 797 square kilometres, respectively). The capital is Lisbon.

According to the 2004 census, the resident population was 10,536,000 and the active population was 5,523,000. This means a population density of 14 inhabitants per square kilometre. Portugal's currency is the Euro (EU). The G.N.I. per capita is EU 12,817.

The major religion is Roman Catholicism, professed by approximately 80 percent of the population, although many other religions coexist in the country in a context of total religious freedom.

The Portuguese Constitution of April 2, 1976

Present Portuguese constitutional law rests on the C.R.P. adopted on April 2, 1976, which came into force on April 25, 1976.⁵

This supreme Constitutional Law of the Portuguese state is a corollary of the April 1974 Revolution—the Revolution of the Carnations—which put an end to the nationalist, corporative, fascist-leaning, right-wing, and authoritarian regime known as *Estado Novo* that had been strongly influenced by the Italian fascist regime.

Until the adoption of the C.R.P., during the two-year interim period, while the democratically elected Constituent Assembly drafted the new Constitution, a series of urgent measures were simultaneously put in place in order to achieve decolonization, democratization, and development.

The C.R.P. text currently contains 296 articles distributed over four parts, some of which comprise chapters. Since entering into force, the C.R.P. has already undergone seven different reforms, with highly variable scopes and extensions.⁶

The republican, democratic and semi-presidential political system

The republican system was introduced in Portugal in the twentieth century by the Revolution of October 5, 1910. Since then, Portugal has been a republic, which means that a president, who is elected to a five-year term of office and who can only be re-elected to an additional single consecutive term, heads the state.

Similarly, public office is generally held on the basis of democratic legitimacy—direct legitimacy in the case of Parliament, and indirect legitimacy in the case of the government. The

Constitution does not recognize any aristocratic privileges and sets out the principle of reappointment, so that no public office can be held for life.

The fact that the state system is a republic also implies that the Constitution establishes the principle of separation between state and church. Thus, there is no official religion and all religious faiths must be treated equally; as a result, in various fields, such as the state-held media, the state-run education sector or taxation, religion must be respected in a context of cooperation and not of persecution.

Another substantial change directly brought about by the Third Republic has been the development of a democratic system within which different devices for the expression of the people's will coexist, at the three levels of public intervention:⁷

- 1 representative democracy, asserted in the election by direct universal suffrage of the President of the Republic (five-year term of office), of the Members of Parliament (four-year term), of the Members of the European Parliament (five-year term), of the Members of the Regional Assemblies (four-year term) and of Local Authorities (four-year term);
- 2 referendum democracy, which consists in the possibility of holding referendums at the national, regional, and local level on the most relevant issues to be decided upon by their respective governing bodies; and
- 3 participative democracy, which characterizes the exercise of the various fundamental rights and freedoms of a political nature, conducive to the free formation of public opinion not only by means of the media, but also by the formation of associations and political parties.

The political organs of the Portuguese state comprise the President of the Republic, Parliament (Assembleia da República) and the governmental offices, all of which are separate from the judiciary. The above-mentioned political organs share some common powers. The relationship between these three political organs has been defined according to the semi-presidential model, whereby each has effective powers of intervention in political action, grounded in a rationale of separation and interdependence of powers.

Despite those traits that characterize the Portuguese political system as being semi-presidential, practice has emphasized the predominance of Parliament. This is very much the result of the fact that, over the past ten years, the same ideology has held both a majority in Parliament and the office of head of state. It should also be pointed out that parliamentary composition, even during 2002–05, when there was a period of political cohabitation, always enabled the formation of stable government majorities, an important political factor in emphasizing the parliamentary side of any semi-presidential regime.

The relevance of fundamental rights in Portuguese constitutional law

The constitutional protection of fundamental rights has been one of the more dynamic parts of constitutional law and has experienced far-reaching developments since the liberal revolutions that began in the eighteenth century, in the United States of America and in France, and spread to other parts of the world throughout the nineteenth century, bringing with them the emergence of fundamental rights that have steadily grown in number.

Accordingly the constitutional law of any state governed by the rule of law (as contemporary political history clearly testifies) cannot but pay careful attention to the protection of fundamental human rights, starting with the relevant constitutional texts and evolving from there. Portugal, in this respect, is no exception. Through the evolution of its constitutions the various stages in the recognition of fundamental rights may be traced.

Jorge Bacelar Gouveia

In the nineteenth century, the first fundamental rights made their appearance in constitutional texts, closely linked to liberal political thought. These rights were either the subject of autonomous declarations or mentioned in the texts themselves, always within the context of the natural law theory largely developed by the Enlightenment philosophy.

This first generation of fundamental civil and political rights would, however, rapidly be joined by a second generation of fundamental social rights, which were to be dramatically asserted during the last quarter of the nineteenth century, at the time of the so-called Social Question. The fundamental social rights protected the workers' and trade unions' interests and helped build the welfare state that would only fully come into being in Europe after the Second World War.

More recently, since the 1960s, a third and fourth generation of fundamental rights have emerged. These latter rights are not linked by a single guiding thread but rather give vent to new concerns related to multiple issues, such as the environment, the protection of the individual against its misuse, the protection of man against genetic manipulation, or the right of peoples and nations to safeguard their cultural autonomy.

It was only under the Constitution of 1976 that fundamental rights found their fullest expression, in a global concept that covered all the various generations of rights and freedoms to have emerged in the course of the evolution of the contemporary state.

It should also be pointed out that constitutional law is definitively not the only branch of law concerned with protecting the fundamental rights of human beings. On the contrary, this protection is afforded by interaction with various other branches of law.

Civil law, since its origins, has turned to the protection of personal rights. The first codifications, in the nineteenth century, already offered schemes for the protection of an individual's privacy and personal inviolability. Such was the case in Portugal with the first civil code of 1867, setting a pattern that was again followed by the current civil code of 1966.

Likewise, in the twentieth century, international public law—likewise European community law—has seen the development of various systems of human rights protection: first at the universal level, within the framework of the United Nations Organization, but later at the regional level, in the Council of Europe, the Organization of American States and the African Union. Portugal is fully bound by both the universal and the European systems for the protection of human rights.

Fundamental rights in the Portuguese Constitution of 1976

In current Portuguese constitutional law, fundamental rights feature prominently in Part I of the Constitution of the Portuguese Republic (C.P.R.). These rights are enshrined in a range of articles, from articles 12 to 79, which means that the majority are enumerated and characterized.⁸

It is also possible to identify fundamental rights outside the Constitution. These acquire constitutional force under the so-called open clause of Article 16, §1 of the C.P.R., which states: "Fundamental rights enshrined in the constitution do not exclude any other fundamental rights contained in statutes or in applicable international law rules."

The evolution of the relationship between Portuguese Constitutionalism and religion

It goes without saying that the formation and evolution of the Portuguese state could not but be sensitive to these fundamental vectors in the appearance of the various models of relationship

between law and religion, in particular Roman Catholicism.⁹ That presence was felt at the very moment of the birth of Portugal, in two distinct historical events:

- 1 when the future first King, D. Afonso Henriques, after the battle of Ourique in 1139, received a divine Christian revelation and gained the courage to fight the “sarracens”; and
- 2 when Pope Alexander III, in 1179, conferred the title of rex to that same D. Afonso Henrique by the Papal Bull Manifestis probatum.

Hence, during the entire pre-Constitutional period and with some rather unedifying episodes along the way, such as those which occurred at the time of the Marquês de Pombal, Portugal went from mediaeval hierocratism, first, with the Pope intervening in many internal affairs, such as the discovered territories and the Treaty of Tordesilhas, to the advent of the absolutist state.

Curiously, during the first Constitutional age, in the nineteenth century, no significant changes arose from the Constitution of 1822, the Constitutional Charter of 1826, and the Constitution of 1838. The system continued to be one of official religion albeit with progressive but timid attempts at introducing some tolerance for other religions. Thus:

- 1 in the Constitution of 1822, Article 19 stipulated as one of the duties of the Portuguese the need to “venerate religion”;
- 2 in the Constitutional Charter of 1826, Article 6 established that “All the other religions shall be permitted to foreigners, who shall be allowed to worship in their homes or in houses to that effect which shall not take the exterior form of a temple”; and
- 3 in the Constitution of 1838, Article 3 asserts, “The State’s religion is the Roman Catholic and Apostolic Religion.”

The state of affairs underwent a radical change when the Revolution of October 5, 1910 proclaimed the republic and headed towards a secular model of religious persecution, the victim of which was to be the Catholic Church. The implementation of the Separation Act, enacted before the framing of the Constitution of 1911 and its provisions calling for a neutral separation of church and state, attested to the actual presence of persecution against religion, aimed specifically against the Catholic Church.

Political practice, as well as some ordinary laws passed at the time, pointed indeed in that direction: they joined in a frenzied attack against the Catholic Church, whose properties were confiscated and religious orders dissolved. The part that some radical freemason groups played in these attacks was decisive.

With the inauguration of the Estado Novo regime after the military coup of May 28, 1926, a new course was steered, that of reconciliation between the state and the Catholic Church. Formally the principle of secularism was applied, but in practice a more favourable treatment was accorded to the latter religion.

The principle of separation between state and religious confessions was enshrined in Article 46 of the Constitution of 1933 in the following terms: “Without prejudice to the provisions of the concordats concerning the Padroado (patronage of missions), the state maintains the regime of separation with regard to the Catholic Church and any other religion or cults practised within the Portuguese territory.”

Yet this regime of separation coexisted with the particular treatment granted to the Catholic faith, not only in practice but also as a result of the celebration of the Concordat of 1940, not to mention the subsequent evolution of the wording of the Constitution, which, in the new

Jorge Bacelar Gouveia

Article 45 introduced by the Constitutional reform of 1951, defined the Catholic faith as “the religion of the Portuguese Nation.”

In the wake of the April 25, 1974 Revolution, known as the Revolution of the Carnations and following the adoption of the Constitution of April 2, 1976 (C.R.P.), a new model emerged that kept to the line of separation between state and religious faiths, but where the first acknowledges and protects the latter. On the plane of fundamental rights, the freedom of conscience and religion, both from an individual and a collective viewpoint, is extensively dealt with and enshrined in this Constitution. At the level of the organization of political power, the state is declared to be non-confessional—the Portuguese state does not have a religion—and the separation between state and churches is raised to the status of material limit of Constitutional reform.

The present system of cooperative separation between state and religion

The other dimension that is similarly present in the republican principle embodied in Portuguese Constitutional Law corresponds to the application of the model of cooperative separation between political power and religious phenomenon.¹⁰

This is a matter that is equally relevant from the standpoint of the C.R.P., which does not refrain from setting out various rules and principles in that respect. At the level of the safeguarding of fundamental rights, it asserts the freedom of religion and conscience with several tiers of protection (Article 41 of the C.R.P.); and at the level of political organization, this issue has been elevated to the rank of material limit of Constitutional reform (Article 288(c) of the C.R.P.).

The sub-Constitutional legislation, on the other hand, has complemented the guidance drawn up by the Constitution with the Religious Freedom Act (L.L.R.), as well as a large amount of complementary legislation generically applicable to all religions; furthermore, a new concordat between Portugal and the Holy See was signed on May 18, 2004.

Concerning fundamental rights, the core precept consists in the positive status of the freedom of conscience and religion; in its first paragraph it stipulates “Freedom of conscience, religion and worship is inviolable” (Article 41(1) of the C.R.P.). This fundamental right irradiates from there to other specific spheres where the importance of religious activity is equally felt on an individual basis through the free activity of people in the manifestation of their religious faith, either in private or in public, in worship or any other pertinent manifestation; and on an institutional basis through the free establishment of religious associations and their liberty of organization and activity that may benefit from the protection of the state and the legal order.

The organization of political power, for its part, is in accordance with the notion of separation between political power and religious phenomenon. Identification between or, even worse, fusion of these two spheres of collective life is impossible.

In various fields where it operates, the state is expected to be guided by religious neutrality. In the media: “Freedom is guaranteed to each denomination to teach its religion and to use its own media to carry out pertinent activities” (Article 41(5) of the C.R.P.). In public education and culture: “The State shall not plan education and cultural development in accordance with any philosophical, aesthetic, political, ideological or religious precepts” (Article 43(2) of the C.R.P.). Finally, in public education: “Public education shall be non-denominational” (Article 43(3) of the C.R.P.).

And to confirm the foregoing, in addition to the principle of non-interference of religion with the organization of political powers, it is expressly stipulated with respect to the material

limits of Constitutional reform, “The laws revising this Constitution shall respect: ... The separation of Churches and State” (Article 288(c) of the C.R.P.).

With regard to sub-Constitutional legislation, the enactment in 2001 of the L.L.R. should be underlined. It updated the Religion Law in Portugal, revoking Law No. 4/71, which formerly provided guidance on the matter at issue. The L.L.R. consists of 69 articles with many relevant innovations to be underlined that deserve high praise:

- 1 the innovation in the employment status of workers who profess a religion, whereby the respective days of rest and worship are upheld;
- 2 the acknowledgement of the civil effects, in general terms, of religious marriage;
- 3 the institutionalized and organized acceptance of religious assistance attesting to a public interest in this matter on the part of the state; and
- 4 the protection of the religious cultural goods and the town-planning concerns over the location of church goods.

Finally, mention should be made of the important contribution of the Constitutional Court, which has been shaping, in many of its decisions, significant jurisprudential guidance.

Constitutional provisions and principles about religious education

The Portuguese Constitution is one of few constitutional documents that underlines the importance of education within the relationship between state and religion. It is expressly recognized in Article 43 of the C.R.P., about education, that Portugal will observe four main principles:

- 1 *The principle of neutrality in education and culture*: “The State shall not plan education and cultural development in accordance with any philosophical, aesthetic, political, ideological or religious precepts” (Article 43 (2) of the C.R.P.).
- 2 *The principle of non-confessional public education*: “Public education shall be non-denominational” (Article 43 (3) of the C.R.P.).
- 3 *The principle of freedom in private schools*: “The right to create private and cooperative schools shall be guaranteed” (Article 43 (4) of the C.R.P.).
- 4 *The principle of religious freedom in teaching religious issues inside private schools belonging to each religion*: “Freedom to teach any religion within the denomination in question and to use appropriate media for the pursuit of its activities shall be guaranteed” (Article 41 (5) of C.R.P.).

Catholic Concordat rules about religious education

Portugal has adopted an international treaty with the Holy See, named “Concordat,” where many subjects were agreed upon.¹¹ One of those subjects is Catholic education either in public or in private schools. Article 19 of the Concordat defines the conditions of Catholic education in public schools:

- 1 the guarantee of having in all public schools (with the exception of the university level) catholic religion and moral education (Article 19, n° 1);
- 2 the need of a explicit declaration from parents or students saying that there is the will of having that subject (Article 19, n>° 2);

Jorge Bacelar Gouveia

- 3 the right of Catholic authorities to freely choose the teachers of catholic religion and moral education, paid as civil servants (Article 19, n° 3 and 4);
- 4 the right of Catholic authorities to select all the issues of the program of catholic religion and moral subject (Article 19, n° 5).

Also, Article 21 of the Concordat affirms the right of the Catholic Church to have private schools at all educational levels, including the Catholic University of Portugal.

The Religious Freedom Act and religious education

In terms of religious education, Article 24 of the Religious Freedom Act authorizes all recognized religious communities to teach their own religious principles and doctrines in public schools. Two specific legal rights emerge:

- 1 the individual right of pupils and their parents as believers in having religious education in public schools;
- 2 the collective right of religious communities in organizing their programs of religious education in public schools, including the choice of subjects and teachers.

Religious education in public schools

Specific ordinary legislation authorizes religious education in all public schools. The first legal document was the Decree-Law n° 407/89, allowing only Catholic education in private schools. The Constitutional Court had the opportunity to evaluate this law and decided two principles in this field in the main decision n° 423/87,¹² followed by decision n° 174/93:

- 1 teaching religious education in public schools does not violate the principle of religious neutrality of the state; but
- 2 teaching religious education in public schools can never be mandatory, but only if the pupil or his parents explicitly declare their will of having that subject.

More recently, the Portuguese state also allows religious education of other religions, and there is no more monopoly of Catholic education in public schools.

Moreover, the Religious Freedom Act allows the religious communities to teach religious education in public schools.

Notes

- 1 See Jorge Bacelar Gouveia, *Manual de Direito Constitucional*, 3^a ed. (Coimbra, Portugal: I. Almedina), 235 and ff.
- 2 See, in general, *ibid.*, 238–39.
- 3 See, in general, *ibid.*, 403 and ff.
- 4 See *ibid.*, 492 and ff.
- 5 Concerning the Portuguese Constitution of 1976, see *ibid.*, 492 and ff.
- 6 *Ibid.*, 508 and ff.
- 7 See *ibid.*, 873 and ff.
- 8 See *ibid.*, 1049 and ff.
- 9 See Jorge Bacelar Gouveia, “Religião e Estado de Direito—uma visão panorâmica,” in AAVV, *Estudos Jurídicos e Económicos em Homenagem ao Prof. Doutor António de Sousa Franco* (I, Lisboa, 2006), 440 e and ff., and *Manual ...*, II, 861 and ff.

- 10 See Vitalino Canas, "State and Church in Portugal," in various authors, *State and Church in the European Union*, ed. Gerhard Robbers (Baden-Baden, 1996), 262 and ff.; also see *ibid.*, 862 and ff.
- 11 About this Concordat in general, see António De Sousa Franco, "Princípios Gerais da Nova Concordata," in AAVV, *Concordatas Santa Sé – Portugal* (Lisboa, 2004), 7 e ss.; Paulo Pulido Adragão, "Concordata," in *Dicionário Jurídico da Administração Pública*, 3º suplemento (Lisboa, 2007).
- 12 See the commentary of Jorge Miranda, "Anotação ao Acórdão nº 423/87 do Tribunal Constitucional," in *O Direito*, ano 120, 1988 (Janeiro a Junho), 475 e ff.

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Religious education in Romania

Emanuel Pavel Tăvală

Traditionally, church–state relations in the predominantly Orthodox countries were based on the Byzantine principle of *symphony*, that is, of harmony, understanding, and cooperation between two distinct institutions: a spiritual one and a political one, which were, however, united by the common social life of religious believers and of the state’s citizens.

However, in the Romanian Principalities (Moldavia und Walachia) the symphony of the Byzantine Empire was adapted to the realities of the Principalities and then of the modern Romanian state, influenced by the secularized Western spirit.¹

Social aspects of Romania

According to the Constitution of 2003, Romania is organized as a republic. It is a country situated in southeast Europe and has a surface of 238.392 km. Since January 1, 2007 it has been one of the 27 member states of the European Union. The population is about 21.7 million citizens,² but many of them emigrated and now work in other EU countries (like Spain or Italy). The majority (89.5 percent) of the population are Romanians, 6.6 percent are Hungarians, 2.5 percent Gypsies, and 0.3 percent Germans. In terms of religious affiliation, 86.7 percent declare themselves Orthodox Christians, 4.7 percent belong to the Roman Catholic Church, 3.3 percent to the Reformed Churches, and 0.9 percent to the Greek Catholic Church.³ The country is organized in 41 counties and the capital is Bucharest.

Constitutional context

Following the events of 1989, religious life was liberalized throughout the country. The 1991 Constitution of Romania as well as the new one of 2003 expressly guarantees freedom of religious belief, complete autonomy of legally established religious cults, as well as material assistance and administrative protection by the state. Article 29 of the Constitution⁴ provides:

- 1 Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions.

- 2 Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
- 3 All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.
- 4 Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults.
- 5 Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.
- 6 Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them.

These are the stipulations on which the relations between state and religion in Romania are based but, most importantly, the liberalization of religious life which has followed the 1989 political change stringently reopened the question of the relationship between the various religious cults in Romanian society.

According to the Constitution, Romania is the common land of all its citizens, without differences based on race, nationality, ethnicity, language, or religion (Article 4, Paragraph 2). Article 29, Paragraph 5 of the same law establishes that religious organizations are autonomous in their relation with the state and they enjoy its assistance. The state recognizes in Romania the important role of the Romanian Orthodox Church and of the other churches and religious denominations to both the national history and the life of Romanian society (Law 489/28.12.2006). The 18 recognized religious organizations⁵ in Romania are juridical persons of public utility and are organized by and function according to the Constitution and the law for religious denominations (law 489/2006), as well as their own statutes or canonical codes.

The expenses for maintenance of religious organizations and their activities are to be paid for with the income of the organizations, raised and administered in accordance with their statutes (Article 10, Paragraph 1, law 489/2006). According to the second paragraph of Article 10, religious organizations may fix financial contributions of their believers with the aim of sustaining their activities. The Romanian state also encourages parishioners and citizens to support religious communities and organizations by making tax-deductible contributions (Article 10, Paragraph 3). At the same time, the law states that nobody may be forced to contribute to religious organizations; according to Romanian law, state money⁶ is given to religious organizations on the basis of two principles: equality and more importantly, proportionality.

The development of the Romanian educational structure

The first schools in Romania were organized near the churches or monasteries and that is why religion was the main discipline of the educational system. Furthermore, the first educational laws were elaborated in Moldavia und Walachia in the eighteenth century and these were drawn up by the bishops of the two countries. In Transylvania, the laws of education were those of the Habsburg Empire, as the *Allgemeine Schulordnung*, which was valid from December 1764. In the Moldavia und Walachia the first law of the nineteenth century was made in August 1818 by Gheorghe Lazăr, the reformer of the school system from these two countries (former professor at the Theology Faculty from Sibiu, created in 1786).⁷ The next reforms made in the two countries (which after 1859 became the Romanian Principalities) had a basis of religious education. Religion was a discipline in the general curriculum of public schools until 1948 when the

Emanuel Pavel Tăvală

communists decided that religion and the church have no place in Romanian society. Romanians were forced to continue the activity in the so-called “liturgical ghetto” (just in the churches).

Legal context

According to the Education Law (1/2011), the Romanian educational system is organized by the Ministry for Education, Research and Innovation. Education begins in Romania with kindergarten (three–six years old), which is optional, but according to the project for the new education law, the last kindergarten year is likely to become compulsory. The basic comprehensive school consists of eight years (years one–four at primary level and five–eight at lower secondary level). The upper secondary level is from grades nine–12 and is divided into high schools and vocational training/professional schools. Compulsory schooling in Romania lasts until the tenth grade.⁸

After the historic events of 1989, private schools were allowed in Romania, provided they respected the general curriculum from the public schools. The private school system is well developed, especially on the side of kindergartens, but there are also some private schools opened by private investors or by the church. The system of private schools in Romania is not well developed yet. There is the case of a private university of Arad (Western Romania), where religious education is part of the general curricula without difference of specialization, but this is a rare case.

The school system has approximately 4.4 million registered pupils, from which 650,000 attend the kindergartens (even if this is not compulsory) and 3.11 million (approximately 14 percent of the total population) attend the primary and secondary schools. The education given in the public schools is free of charge, but for some activities the schools can take money under conditions foreseen by the law.⁹

Today in Romania there are approximately 12,000 religion teachers. The material resources, which come from the state budget, are approximately 500 billion lei for one school year. The number of pupils who attend the religion classes is approximately 3 million.

If we refer to the German Protestant religious education that was popular in Romania after the First World War, it is noteworthy that, between the two World Wars, of 365,000 Protestants there were 342,869 children of school age (it was a unique situation in the East European context).¹⁰ Of 100,000 Protestant church members, 60,000 left their homes in 1990. In this situation the German schools survived thanks to the Romanian Orthodox children, who today represent 85 percent of all pupils.¹¹ In the 2009–10 school year, 4,756 pupils took part in Protestant religious education, taught by 65 teachers, out of which 50 percent were pastors.¹² Only three of them were fully employed by the schools; the others worked for an hourly wage.

The education law from 1995 established that for the primary schools (I–IV), religious education is compulsory; for the secondary school (classes V–VIII) it is optional; and for high schools religion is offered in keeping with the statute of facultative discipline. The statute is in accordance with the decision of the Constitutional Court (nr. 72/18.07.1995) which permits introducing religion as a discipline in a student’s educational plan, with the possibility of the student choosing religion and confession.¹³ The discipline is organized by the Ministry of Education as any other discipline of the curriculum. The new law of education (1/2011) establishes religion as a discipline part of the common curricula for all the school levels (primary, secondary, high schools, and professional schools), excluding university.

The state and religious autonomy

To have a better understanding of how relations between state and church work in the field of religious education in Romania, we should mention some aspects of the process for reintroducing the discipline in the public schools immediately after the 1989 events.

Beginning with the school year 1990/91, “moral-religious education” was introduced as a compulsory discipline for the primary school, as optional for the secondary school and as facultative for high schools. At the beginning it was for one hour every two weeks, and it was confessional teaching. After seeing the positive impact of the new discipline, the Minister declared (through Order nr. 9176/01.02.1991) that “moral-religious education” would be taught in the public schools for one hour every week. For the 1992/93 school year, the Ministry established (through Directive nr. 10447/07.09.1992), in accordance with the former documents, the status of “moral-religious education” for primary and secondary school, but it was also established for teachers. Beginning with August 17, 1993, through a Minister’s Order (nr. 10306), “moral-religious education” was called “Religion.”¹⁴

The Romanian Orthodox Church asked that Article 9 of the law be revised. The church collected 1 million signatures for this change. They asked for a clearer status of religious and theological education in Romania. After accepting the initiative, the Romanian government made needed changes.¹⁵

An improved status for religion in public schools was offered by Order 3670 (April 17, 2001) for application to the religion teaching plan in high schools, beginning with the school year 2001/02. Article 5 of this order says that the pupil has the possibility not to attend religion classes, but should attend another class instead, a discipline which is optional, but not mentioned in the order.¹⁶

The two laws, the Education Law and Order 3670, set religion as a school discipline, part of the common body, in the academic realm of “Man and Society.” In this situation, religion is no more than an optional discipline, but the option becomes the discipline which is chosen instead.

Through Note 37609 (August 26, 2001), the Ministry established that in all teaching plans, for all schools and at all levels, religion must be introduced as a scholarly discipline, beginning with the school year 2001/02. Through Order 5723 (December 23, 2003) from the same Ministry, instruction in religion is included for all specialities of the pre-university school system.¹⁷

The Teachers’ statute says in Article 136, Paragraph 1 that religion may be taught only by specialized teachers, in accordance with agreements between the Education Ministry and the churches that are officially recognized by the state.¹⁸

Under these conditions the Orthodox Church acted immediately. Taking into account that religion was foreseen for all classes, the Orthodox Church was looking for unity and continuity in the teaching programs for all classes and levels. In June 1999, teaching programs for grades one–eight were approved; the program for grade nine was approved in June 2000; and approval was obtained for the program for grades ten–12 in September 2000.¹⁹

At the time these programs were approved, they began printing the necessary books for the religion classes. For the first eight classes the books were produced by the religion teachers from Iasi, and for the other classes by teachers from Transylvania. Experienced teachers were permitted to make their own manuals and then these would have to be approved by the Synod of the Orthodox Church for Orthodox religion classes.

At the beginning of 2008, a new law for education was proposed, but later was declared by the Constitutional Court as contrary to the Constitution. At the beginning, religion was foreseen no longer to be a part of the common body of all disciplines which are obligatory for high

Emanuel Pavel Tăvală

schools (Article 10, Paragraph 1). The decision to opt out of religion classes as a facultative discipline is given exclusively to the pupil, provided he/she is 16 years of age or older (Article 10, Paragraph 2).²⁰

After the Romanian Patriarchate expressed its disappointment on the new law project, especially because of the lack of religion classes offered in the high schools, it coordinated a national campaign called “We want no high school without God” which was successful; thus religion remained a discipline for all high schools too.

Religion and the autonomy of the state

The officially state-recognized religions have the right to organize two types of education, as described below.

Education within the theological public education system

Such a system would be structured for the training of the clerical personnel and for the mission activities of the churches. This right is not ensured equally and non-discriminatorily, it being provided only for the officially state-recognized denominations and proportionally with the numerical weight of each denomination, according to the updated official census. The teachers and other personnel are paid by the state.

Private personal education system

Due to the lack of other provisions in the text, we may understand that this type of education could be for all levels and sections (not only theological). However, in practice, the school authorities request compliance with the same conditions also for this type of education, so that rarely and with difficulty do religious groups obtain permits to establish and administer educational units for other sections than theological ones or those dedicated to the training of personnel for social and missionary activities. Despite the difficulties, the private kindergartens are very numerous, the church has also organized private schools, and the process continues.

State financial support for religious education

In the Romanian public schools, religious education is part of the general curriculum. To this end, in Romania, there are approximately 12,000 teachers of religion. These teachers' salaries cost about €10 million in the school year 2003/04 and was paid from the state budget. Additional costs were also incurred in the organization of the subject as well as in the hiring of teachers, recruitment of students, and the school contests for pupils. As mentioned before, according to Romanian law, state money is given to religious organizations on the basis of the principles of equality and proportionality.

There are also theological high schools in Romania, or so-called “seminaries,” which were included in the public schools system after the signing of Protocol 9484 (March 16, 1993) between the Romanian Patriarchate and the Ministry for Education. The number of such schools increased from 6 (in 1989) to 37 in 2011. All the costs for these schools are paid by the state, as with all other public schools.²¹

The current model of religious education in Romania

In Romania, it is proper to speak about “religious instruction in the public schools,” even if it is Orthodox, Catholic, or Protestant instruction. If the pupils do not want to attend these classes they have the possibility to opt out, and in this case they receive no grade. There is still no alternative discipline to religion, such as ethics, history of religions, or ecumenical teaching. In any case, the curriculum for Orthodox Religious Education is the most ecumenical one in comparison with curricula offered by the other recognized denominations.

The religious aspects, as shown before, in a society where church and state have always collaborated, are difficult to eliminate from other disciplines such as literature, history, arts, or language classes. It should be mentioned that, in the literature or history classes, sixteenth-century translations are sometimes used, such as the translation of metropolitan Dosoftei of Moldavia who translated and printed *The Lives of the Saints*. Later, other books were printed for school use, such as *The Calvinistic Catechism* (Sibiu/Hermannstadt, 1544), one of the earliest books printed in Romanian. Such catechisms were printed after 1544 by the Orthodox Church²² and are known as “Bucoavna.”²³

Also, at the beginning of the sixteenth century, the Prince Neagoe Basarab (1512–21) wrote, in Slavonic, *The Teachings for his Son Theodosius*, which contained a number of rules for the time when his son would be on the throne. The book contains many references to the Christian faith and is now studied in the literature or history classes.

The first school with Romanian as the instructional language was in Braşov (German Kronstadt) in 1490. This school had two cycles: an elementary one, which was for preparing those who wanted to be tradesmen or merchants and a second one, for those who wanted to become priests. This aspect is very important in that it identifies key points in Romanian history.²⁴ The formation of the Romanian states is impossible without reference to the churches and their organization. The 1848 revolution cannot be understood without portraits of the religious personalities involved. The church was always near the state in all its difficult and important moments and these aspects cannot be forgotten. Moreover, when we speak about the Romanian language, we should recognize that the Romanian Church was the first institution to introduce Romanian as the official language.

Conclusion

Immediately after the events of 1989, the Orthodox Church asked the state to reintroduce religious education in the public schools by returning to the arrangement that existed in 1948. Consequently, there is now a confessional religious education that may be organized by all 18 officially recognized religions in Romania. Each course should have a minimum of seven pupils for the discipline; if there are not seven pupils, then the student may attend the classes in his or her church and the priest sends the grades directly to the school. There are also cases when the pupils do attend the Orthodox religious education classes without any problems and they get the grades as any other pupil of the school. The discipline is perfectly integrated into the general curricula. Even if there were some actions to transform the discipline into an optional one, at the higher level there was the position and the campaign of the Romanian Orthodox Patriarchate against this initiative and the law was changed in favour of the Orthodox Church. In any event, the role of the discipline can be easily seen after 20 years; many teenagers and young persons do attend church; they respect its teachings and realize that they can have a positive influence.

Emanuel Pavel Tăvală

Notes

- 1 Daniel Ciobotea, "State-Church Relationship in Romania. Tradition and Modernity," in *Religious Liberty in Romanian and European Context*, eds. Adrian Lemeni, Florin Frunza, Viorel Dima (Bucuresti: Bizantina, 2005), 18. Furthermore, the church-state symphony was nowhere symmetrical in the sense of equality of similar forces, but almost always asymmetrical and uneven. The church was permanently praying for the state, and often it was also entreating the state to help it. The state, in turn, supported the church, but it was also often tempted to subjugate the church. In this sense, in all its history, the symphony between church and state was marked by the tension between ideal and insufficiency, between the tradition of *continuity* and the tendency of *renewal*.
- 2 In accord with the last population census from 2002.
- 3 The following religious groups comprised less than 2 percent of the population: Old Rite Christian (Orthodox) Church, Protestant Reformed Church, Christian Evangelical Church, Romanian Evangelical Church, Evangelical Augustinian Church, Lutheran Evangelical Church Synod-Presbyterian, Unitarian Church of Romania, Baptist Church, Apostolic Church of God (Pentecostal Church), Seventh-day Christian Adventist Church, Armenian Church, Jews, Muslims, Jehovah's Witnesses, the Baha'i Faith, the Family (God's Children), the Church of Jesus Christ of Latter-day Saints (Mormons), the Unification Church, the Methodist Church, the Presbyterian Church, Transcendental Meditation, Hare Krishna, and Zen Buddhism. According to the 2002 census, the number of atheists was 8,524, and there were 12,825 persons who did not have any religious affiliation.
- 4 Law Nr. 429/2003 on the revision of the Constitution of Romania, approved by national referendum on October 18–19, 2003, entered into force on October 29, 2003, at the date of publication in the *Official Gazette of Romania*, Part I, No. 758 of October 29, 2003 after decision of the Constitutional Court no. 3 of October 22, 2003.
- 5 The new religion law recognizes the same 18 religions: the Romanian Orthodox Church, Orthodox Serb Bishopric of Timisoara, Roman Catholic Church, Greek Catholic Church, Old Rite Christian (Orthodox) Church, Reformed (Protestant) Church, Christian Evangelical Church, Romanian Evangelical Church, Evangelical Augustinian Church, Lutheran Evangelical Church-Synod Presbyterian, Unitarian Church, Baptist Church, Pentecostal Church, Seventh-day Adventist Church, Armenian Church, Judaism, Islam, and Jehovah's Witnesses.
- 6 For more about this subject see Emanuel Tăvală, *Ajutorul financiar al statului pentru cultele religioase în țările Europei din perspectiva egalității de drepturi și nediscriminării în Indrumator bisericesc* (Sibiu, 2009), 243–54.
- 7 In the school system introduced by Lazăr, religious education was present at all levels, near writing (for the primary schools), or Philosophy and Law (for the superior levels).
- 8 Stefan Cosoroabă, "Religious Education in Romania," in *Religious Education in Europe. A Collection of Basic Information about R.E. in European Countries*, ed. Peter Schreiner (Munster: Comenius Institut, 2000), 135.
- 9 Valer Bel, Vasile Timiș, "La mission par l'activite didactique religieuse," in *Studia universitatis Babeș-Bolyai, Theologia Orthodoxa*, Nr. 2/2005, 22.
- 10 Stefan Cosoroabă, "Religious Education in Romania," op. cit., 137.
- 11 In Sibiu/Hermannstadt there are 1,718 Church Members and 1,702 pupils in Protestant Religious education, because at the German High School there was for a long period of time no Romanian Orthodox teacher for this discipline who could also speak German.
- 12 Stefan Cosoroabă, "Religious Education in Romania," op. cit. 140.
- 13 Vasile Timiș, *Religia în școală ...*, 33.
- 14 Stefan Cosoroabă, "Religious Education in Romania," op. cit. 140.
- 15 O.U.G. 36/1997; Government Urgency Order.
- 16 Vasile Timiș, *Religia în școală ...*, 33.
- 17 Ibid., 34.
- 18 Berthold W. Köber, "Das Recht der Religionsgemeinschaften in Rumänien," in *Das Recht der Religionsgemeinschaften in Mittel-, Ost- und Südsteuropa*, eds. Wolfgang Lienemann and Hans Richard Reuter (Nomos Verlag, 2005), 377.
- 19 Vasile Timiș, *Religia în școală ...*, 41.
- 20 The Minister of Education said at a public conference that for him religion is a beautiful story, like a myth that should be related until the age of 14 and after this age the pupil should be free to choose after his own thought. The Orthodox Church sees in the high school's children those mature persons

for whom the church should fight to keep on the right way, especially after the age of 14, when the temptations to stray are very large.

- 21 Nicu Octavian, "Statutul invatamantulu teologic si religios in România" (Situation of Theological and Religious Education in Romania), in *Biserica Ortodoxa Romana*, anul CXX, Nr. 1–6 (ianuarie-iunie 2002), 189–211.
- 22 There was another book printed by the Orthodox Church in 1544, also a catechism, but it is lost today.
- 23 The one printed at Alba Iulia in 1564 has a specification in the title that it is for the use of pupils as an introduction to the Christian faith. See also Mircea Pacurariu, "Geschichte der Rumänischen Orthodoxen Kirchen," *Oikonomia* 33 (Erlangen, 1994), 567.
- 24 Vasile Oltean, *Configurația istorică și bisericească a Brașovului (sec. XIII-XX)*, ed. Andreiana (Sibiu, 2010), 497.

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Religious education in modern Russia

Elena G. Romanova

Religious composition of Russia

At present, the population census is the only source of comprehensive information on the people of Russia, but the official census has never highlighted ideological self-identity (including religious adherence). Therefore, census records from 2002 and 2010 are hardly useful to analyze religious affiliation, ethnicity, or languages spoken. The federal law “On the All-Russia Population Census” provides a limited list of approved questions, but none of these reveal much information about religion. Moreover, answering many of the census questions is optional and thus much information that might be gathered is omitted. Thus, for example, answers relating to “nationality” in the 2002 census were either absurd (“hobbits” and “elves” were some answers) or quite pretentious, as when over 140,000 Russians referred to themselves as Cossacks. Meanwhile, references to nationality, ethnicity, or ideological identity (Orthodox) are non-natural in terms of history and the contemporary public and political environment.

Statistics on ideological self-identification of the citizens of the Russian Federation are provided by research teams and statistical agencies. These studies are mainly focused on major categories such as belief, atheism, and freedom for religious self-expression. These studies reveal sustained growth of belief until the mid-1990s, followed by a decline in belief, such that by 2000 an “ideological stagnation” had set in.

Most accurate statistics on religious diversity in Russia are recorded by the Ministry of Justice of the Russian Federation, which is responsible for registration of religious associations. However, data from this source is perhaps misleading because no religious group is given the status and rights of an association unless it has existed for 15 years. This legal provision enables the Russian Federation to control the authorization of newly formed religious associations and consequent tax benefits to which they are entitled, and to some degree educational institutions that might have religious affiliations, the right to conscientious objection for military service, and the reporting of these data by the mass media (primarily state television channels). But the legal provision also encourages some associations to exist out of control of official recognition. One may state that this provision to some extent panders to the growth of obscure/uncontrolled religious organizations.

In the Russian Federation, Christianity dominates the faith landscape. The Russian Orthodox Church headed by the Moscow Patriarchate has the majority among at least 40 Christian communities and denominations operating in Russia (13,265 religious associations—55.6 percent of them registered by the Russian Federation Ministry of Justice as of January 1, 2011).¹ Orthodoxy in Russia is also represented by 396 religious associations outside the Moscow Patriarchate: various communities of Old Believers, associations of the Ukrainian Orthodox Church of the Kiev Patriarchate, and the like.

There are 4,826 registered Protestant communities, 227 Roman Catholic communities, four Greek Catholic Church communities, and 74 Armenian Apostolic Church communities.

Islam, the second largest religion in Russia and the third largest in terms of the number of registered associations, accounts for 4,201 religious communities. In terms of popularity it is followed by Judaism (Orthodox and Modern) with 282 religious communities and Buddhism with 217. There are other religious communities that are growing in numbers, for example, Shamanism and various related native peoples from the North, Siberia, and Far East represented by 16 associations. The Society for Krishna Consciousness accounts for the largest share of registered centers among the new religious associations.

The question of how such religious diversity affects the Russian people, mainly pupils and students, remains alarming as there may be no valid answer. The research provided by the analytic center of Uriy Levada (Levada-Center, former All-Union Public Opinion Research Center) appears to be the most reliable and valuable source of information pertaining to this question.

In 2008, the Levada-Center conducted a number of opinion polls on religious associations, religious holidays and traditions, religious belief, and atheism. The information given in Table 38.1 was based on answers from 1,600 grown-up natives.²

Meanwhile, a follow-up question on externalities of religion made the respondents answer differently in 2008: only 5 percent called themselves religious; 20 percent appeared to be irreligious; 37 percent were religious to some extent; 33 percent admitted they were not too concerned about religion, though referred to themselves as religious; 2 percent called religion a matter of circumstances; and 3 percent found the question difficult to answer.

Special emphasis must be placed on the fact that analysis of religious affiliation at all stages of self-identification since the early 1990s has been handicapped as respondents (mainly followers of traditional religious communities) linked it with culture and national affiliation, that is, as a

Table 38.1 Religious confessions in Russia, %

<i>What is your confession?</i>	2003	2004	2007	2008
No certain confession	18	16	16	15
Orthodoxy	59	60	69	71
Catholicism	1	1	1	1
Protestantism (including Lutherans, Evangelists, Baptists, etc.)	<1	1	<1	1
Judaism	<1	<1	<1	<1
Islam	4	3	6	5
Buddhism	<1	<1	<1	<1
I believe in God, but don't practice religion	12	13	-	-
I am atheist	4	5	6	5
Other	1	1	1	1
Those who found it difficult to answer	2	2	2	2

Source: www.levada.ru/religion.html

Elena G. Romanova

way of life in Russia formed under religious influence. Therefore, a number of Russian citizens take Orthodoxy, Islam, or Buddhism as natural historical and cultural spheres within nations and communities that determine a way of life, rather than taking them as religious systems. With respect to this understanding, the consequent self-identification might be, for example: “I am Russian, thus I am Orthodox Christian,” or “Timur is Tartar—he is Moslem,” or “Badma is Kalmuck, thus he is Buddhist.” The Cossacks can serve as a glaring example of the inadequate fusion of ideological and ethno-cultural factors. After the social and cultural movements for revival of traditions in the late 1980s, Cossack entities gained ideological momentum to become an all-Russia phenomenon. Having been organized in unions of social institutes, these entities made up a network representing a certain ideology based upon culture or nationality (the Russian Federation Cossacks comprise the diversity of nationalities: Russians, Ukrainians, Tartars, Bashkirs, Kalmucks, Jews, etc.), religion, or territorial integration. According to specialists, religious stratification of Cossacks (as protectors of Orthodoxy) is a route for social and political identification. The Cossacks as a social phenomenon have not specified the principles of potential development: religious self-identification emphasizing the ideals of God and vestry or government based on ideals of power and integration of the state.

As there is no exact information on ideological self-identification of the Russian Federation citizens, after The Basics of Religion Cultures and Civil Ethics comprehensive approved course was introduced in some regions in 2009, it caused an immediate surge of interest in the topic. The parents (or legal representatives) select one of the six modules of the course: basics of Orthodox, Islamic, Buddhist, Judaic culture, basics of world religions, and civil ethics. News agencies have been excited about the modules selected as most reporters would tend to identify parents’ decisions with certain religious and ideological self-identification rather than with cognitive interests due to existing ideological and ethno-cultural concepts customary in public life. Therefore, the information on selected modules obtained during the approval process and unveiled by the Ministry of Education and Science of the Russian Federation in 2010³ can reflect ideological aspects only when combined with the other information on specifics of the region, organization of the educational process, and family traditions (details on the new educational course are given hereafter).

Constitutional and legal context

According to the constitutional principle separating religious associations and the state and indicating their equality before the law (Article 14 of the Russian Federation Constitution), the federal laws “On the Freedom of Conscience and Religious Associations” and “On Education” establish that the state shall provide secular education in state or municipal educational establishments; the state does not control the educations provided by religion-supporting organizations (associations).

The Russian Federation legislation reflects the state’s goal of producing a society that is modern, educated, and moral, with citizens capable of intercultural cooperation and possessing a sense of responsibility for the future of Russia. Therefore, world and national culture integration, as well as intercultural tolerance, are the primary objectives of the modern Russian education system.

The Russian Federation law “On Education” provides that education must contribute to mutual understanding and cooperation between peoples irrespective of their race, nationality, ethnic group, religious affiliation, and social position; and education professionals must respect diversity among the citizenry, and help students exercise their right to the free choice of opinions and convictions (Point 4 of Article 14).

To meet the ethno-cultural and ideology demands that the Russian Federation nationalities have, the law “On Education” was amended. It was the first time in the modern history of the Russian Federation that building moral personality was taken as one of the basic goals of the “education” concept (Article 14, Point 2). This aim is also implemented while teaching various subjects and giving special and optional courses in religious traditions and history at schools of general education.

According to Article 7, Point 7 of the Russian Federation law “On Education,” the federal-state education standards that meet the mentioned priorities are to be continually evaluated.

The federal-state education standards (F.S.E.S.) of primary general education and secondary (complete) general education approved by Orders of the Ministry of Education and Science in 2009 and 2010 (registered in the Russian Federation Ministry of Justice) are developed according to the regional, national, and ethno-cultural needs of the Russian Federation nationalities. This is one of the strategic resources of a stable multinational country’s development. F.S.E.S. are intended to develop personality traits in citizens that would meet the demands of a democratic civil society based on tolerance, dialogue of cultures, respect for nations, cultures, and confessions of the Russian Federation society.

The autonomy of the state and religious education

The state and religious communities are basically autonomous in the field of religious education. There are no legal or political instruments created to control religious education. The content of religious education is confessional and legal religious organizations provide their own material for religious education through the teaching of doctrines of a particular religion and its other aspects (moral, ceremonial, ritual, social, etc.). Meanwhile, religious organizations are also responsible for their own financial support.

There is no particular religion that is given power to control religious education in public schools under the state law. Legal religious organizations are free to create private schools providing education in compliance with F.S.E.S.

The current model of religious education in Russia

In compliance with Russian Federation legislation, constituent entities provide the control of ethno-cultural demands within the framework of the main educational program, which is approved and implemented by educational establishments on their own initiative.

Thereby, within the education system there is a network of general education establishments with the ethno-cultural component. This network has been active for about 15 years. It guarantees parents’ (or legal representatives’) and students’ rights to meet their ethno-cultural educational demands, including the need for knowledge of religious history and traditions.

Moscow is leading the way in developing the ethno-cultural education system (Law 25 of June 20, 2001 “On Education Development in Moscow”; Law 14 of March 10, 2004 “On General Education in Moscow”; and Provision on Moscow school of general education with ethno-cultural (national) component, approved by Decree 653 of the Moscow Government of August 19, 1997). The Moscow ethno-cultural curriculum is being successfully implemented. There are courses in culture, traditions, and languages of the Russian, C.I.S., and Baltic nations. Programs of museum pedagogy are being developed in 130 educational establishments. These institutions are financed annually from the Moscow budget.

At present, the programs of various subjects, including both special and optional courses, are being implemented: History and Traditions of World Religions—Moscow; Spiritual Study of

Elena G. Romanova

the Moscow Area—the Moscow region; History of the Smolensk Orthodox Culture—the Smolensk region; Orthodoxy and Cossacks—the Rostov region; Development of Russian Culture Based on Orthodox Knowledge—the Bryansk region; History of the Traditional Religions of the Karachayevo-Cherkessian Republic Nationalities—the Karachayevo-Cherkessian Republic; Moral and Spiritual Culture Basics—the Tyumen region; Culture of the Republic of Sakha (Yakutia) Nationalities—the Republic of Sakha (Yakutia); My Buryatia—the Republic of Buryatia; Ural Man Origins—the Sverdlovsk region; The Orthodox Culture Basics and the Islamic Culture Basics—the successive disciplines in the Republic of Mordovia, etc.

The 97 subjects comprising religious history and traditions have been introduced in the Russian Federation constituent entities. The most frequently studied extra courses/subjects are given in Table 38.2.⁴

The overwhelming part of the Russian Federation constituent entities (up to 90 percent which submitted the information) spend 34 hours a year on teaching religion-associated subjects. This figure is equal for all forms of education (primary, secondary, and senior).

The F.S.E.S. of general education incorporate the compulsory subjects (National History, Environment, Literature—at primary school; Literature, World History, History of Russia, Social Science, Fine Arts—in main general education) and religious history and traditions, primarily Christianity history (Orthodoxy) and the other religions that are inseparable from the historic heritage of the Russian nationalities. Besides, the materials on historic and cultural basics of world religions may be given as optional, extra, or special courses beyond the curriculum. The present day history, literature, and social science textbooks provide a significant amount of information on spiritual culture, everyday life, and traditions of the Russian and world nationalities.

The study of the religions of the Russian nationalities must not be confined to lessons. The system of additional education programs comprising culture, ethics, morals, and spiritual education provides opportunities for giving well-rounded education. In some Russian regions there are special centers to implement such programs.

In practice, teachers organize excursions to museums, implement social programs on regional study, history, traditions, and culture of specific nationalities, hold creative competitions together with representatives from social and religious organizations, and make up peacekeeping

Table 38.2 The most frequently studied subjects^{newnote}⁴

<i>Extra course/ subject</i>	<i>The number of regions (of 67 constituent entities of the Russian Federation) where the subject is introduced</i>	<i>% of the regions (of 67 constituent entities of the Russian Federation)</i>
Orthodox Culture Basics (Orthodox Culture)	54	81
World Religions	26	39
History of Russian Religions	16	24
Origins	9	13
World Art	6	9
Regional Study	5	7
Islam Basics	5	7
History of Religions	5	7
Buddhism Basics	4	6
Spiritual Culture Principles	4	6

(search and construction) groups of social movements, incorporating people of different ages for the benefit of a common socially important goal. In addition to the subjects associated with religion, extra and optional courses, additional educational programs for children, pursuant to Article 5 of the Russian Federation law “On the Freedom of Conscience and Religious Associations,” ensure the right of parents to have teaching of religion (religious basics) from educational establishments. Consequently, on July 1, 2003 the Ministry of Education approved Order 2833 “On Giving Religious Associations the Opportunity to Teach Religion at State and Municipal Institutions beyond the Curriculum” (registered in the Ministry of Justice on August 5, 2003 under No. 4955).

The order, while giving permission to religious organizations to teach beyond the curriculum, obliges the authorities of the state and municipal educational establishments to take into account the following points: religious organizations may teach at state and municipal educational institutions only by consent of the children and by request of their parents (or legal representatives); it is recommended that the request should be submitted in writing to the head of the institution. Permission to introduce religious programs must be coordinated with the local authorities. Books and study guides, including supplementary audio and video materials for the education process, must have a mark with the full name of the organization.

Contents, forms, and methods of teaching may be specified by religious groups provided they do not go against the Russian Federation Constitution, the federal law “On Education,” and the Universal Declaration of Human Rights (Article 18 sets out the right to freedom of thought, conscience, and religion). This right includes the freedom to change religion or belief and freedom, either alone or in community with others and in public or private, and to manifest religion or belief in practice, worship, and observance.

Religious associations rarely use the rights given by Russian and international law and developed at the order of the Russian Federation Ministry of Education. According to research conducted in the 2004/05 academic year, accommodation for religious education was provided in state and municipal educational institutions of 11 regions (1–2 schools in a region): the Arkhangelsk region (4), the Belgorod region (no figures submitted), the Kirov region (1), the Novgorod region (2), the Omsk region (1), the Pskov region (1), the Ryazan region (4), the Tver region (13), the Tula region (1), and the Khanty–Mansi Autonomous Area (8). The Voronezh region is an exceptional case; 198 schools were provided with accommodation for The Basics of Orthodoxy lessons.^{newnote5}

In 35 out of 67 constituent entities which submitted information in the 2008/09 academic year, religious associations have contract relations with municipal or state educational establishments that occasionally provide accommodation.

In most cases institutions make contracts with Orthodox associations, rarely with the organizations representing the other religions (Islam, Judaism, etc.). Some 90 schools (39 in the Central federal district, 46 in the Volga federal district) entered into contracts to provide accommodation to teach religion in addition to the regular curriculum. A total of 2,521 children studied these courses in the school year under review.

At a local level such contracts are rarely made by a school itself, but rather on the initiative of groups of parents. The Mordovia Republic may be taken as an example: the local religious associations (The Moslem Community of Ruzaevka and The Svyato–Varsonofjevsky Convent) teach Islam and Orthodoxy in two different municipal educational establishments.

Elena G. Romanova

Conclusions and new projects in the education system of Russia

The teaching of spirituality, moral values, and religion in educational institutions is the right of students and their parents to education in accordance with the values of the national culture and beliefs of a family.

Single-confession educational programs are being revised in many European countries following the lead of various decisions of the European Court of Human Rights.

Taking into consideration ongoing events, the Russian Federation speaks in support of the proposal to allow students to investigate and develop spiritual and moral values, especially as this provides familiarity with religious traditions and culture that meet the basic principles and general goals of state educational policy.

Religious and cultural subjects in the Russian Federation education system are aimed at explaining the insight of religion as a social phenomenon, the essential part of world culture and the basis of inter-ethnic, inter-confessional tolerance. They are destined to prevent religious and inter-ethnic extremism and contribute to considered and free choice of ideology.

It should be stressed that none of the goals mentioned can be reached without family. Therefore, in February, 2009 the Minister of Education and Science of the Russian Federation, A.A. Fursenko, speaking at the Seventeenth International Christmas Educational readings on teaching religious and cultural subjects, pointed out: "It is important for us all that the right of choice could be provided for children and their parents as the main educational customers."

This was the request of Russian religious associations, which brought up the issues of teaching history and traditions of religion and in summer 2009 addressed President D.A. Medvedev. The president made a positive decision, marking the main priorities of this work. He stressed that the main objective of the forthcoming efforts consists in "raising a decent ... conscientious nation that shows interest in the world around and respects convictions and beliefs of the others."

On April 1, 2010 schools of some regions introduced the Basics Religion Cultures and Civil Ethics, a comprehensive approved course for institutions of general education. This meets the demands of Medvedev's order of August 2, 2009 and the order of the Russian Federation Government of October 29, 2009. In accordance with the President's order of September 8, 2010, the two constituent entities of the Volga and Central districts will join the approved course in 2011.

The fundamental principle of the course—unity in diversity—reflects the social, ethnic, cultural, and religious complexity of Russia and the modern world. The approved course takes 34 academic hours; school children taking the course are ten–11 years old.

During the first period, 240,000 school children and 15,000 teachers from 19 regions were involved in the approved course. Over 250,000 school children and 17,000 teachers will be engaged in the second period. Parents (or legal representatives), teachers, school administration personnel, executive power representatives of the Russian Federation constituent entities exercising control in education, specialists from educational and research institutions, and the other concerned parties take direct parts during both periods.

It is important to stress the involvement of parents (having chosen a course module they participate in creative contests with their children) and the general public. Extended sociological and psychological research accompanies the approved course. It is aimed at disclosure of educational effectiveness and the attitude of parents, children, teachers, and the public to the new subject.

The parents engaged in research organized to the order of the Russian Federation Public Chamber frequently observed positive changes in their children after the course started. Studies

concluded that the overwhelming majority of parents (78 percent) whose children study the basics of religion and civil ethics approve of the course being a part of the curriculum.^{newnote6}

The work has just begun. The opportunity to teach optional subjects in the regions, such as the course, *The Principles of Religion and Civil Ethics*, has added a positive dimension to the educational process in Russia. Russia's objective is to minimize risks of discrimination, insure that the fundamentals of the course (secular approach, freedom of choice) are respected, that it will comply with sound educational goals, and that it provides overall improvement in the principles of individual educational programs at general education establishments.

Notes

- 1 This information corresponds to the documents provided by the Russian Federation Ministry of Justice at the meeting of the Presidential Council for Cooperation with Religious Associations on March 1, 2011.
- 2 <www.levada.ru/religion.html>. This data was obtained in March, 2011.
- 3 Most of the questioned parents (38.6 percent) selected *The Basics of Civil Ethics* module. Then, in order of popularity, came the following modules: *The Orthodox Basics*, *The Basics of World Religions*, *The Basics of Islam*, *The Buddhism Basics* and *The Judaism Basics*.
- 4 The general comparative processing of data received by the Russian Federation Ministry of Education and Science from 2004/05 until the 2008/09 academic year is performed by the State Higher Education Institution and The Orel State Technical University, as a part of the research work according to the order of the Ministry of Education and Science, state contract of August 24, 2009.
- 5 Processing of data that the Russian Federation Ministry of Education and Science received from 2004/05 until the 2008/09 academic year is performed by the State Higher Education Institution and The State University of St. Petersburg, as a part of the research work on request of the Ministry of Education and Science, state contract of May 17, 2006.
- 6 Materials of the Public Chamber hearings of December 1, 2010: presentation on the results of sociological research conducted after the first period of the comprehensive approbation course on the order of the Public Chamber of the Russian Federation (the *Politech* agency of social technologies).

Religious education in Scotland

Francis Lyall

Scotland's religious profile

The reputation of Scottish education is based on history. Scotland is the northern part of the United Kingdom of Great Britain and Northern Ireland, having united with England in 1707. In that union the Scottish educational system as separate from that of England was preserved and that has remained the position down the years and through the various arrangements under which Scotland was governed. Presently education is a responsibility of the Scottish Executive and Scottish Parliament under the devolution provisions of the Scotland Act 1998. Amid the population of 5 million people there is a majority of Protestants (of which members of the Church of Scotland, the "Kirk," are the most numerous), a minority of Roman Catholics, and a growing number of other religions that largely derive from immigration. Some "religious" schools exist, but arrangements for all major religions are made within the state system where numbers justify this and "world religions" form part of the curriculum in public schools.¹ The impact of the incorporation of much of the European Convention on Human Rights (1951) by the Human Rights Act 1998 (c. 42) has not yet been fully ascertained. The Equality Act 2010 (c. 15) consolidates much legislation on human rights, including matters of religion and belief.²

History

The Scottish Reformation occurred in 1560 and the Presbyterian government of the Church of Scotland was preserved in the union with England of 1707. During the Reformation, amid theology and the reorganization of the Scottish church, education was a concern of the reformers. Their civil program was set out in the *First Book of Discipline* which *inter alia* called for the creation of a school in every parish at the expense of the landowners (the salary of teacher being the responsibility of the congregation), and a system of bursaries for the "clever poor" to go to college or university.³ Their program was not, however, generally implemented, though the ideas for schools were influential.⁴

For three centuries after the Reformation the system of parishes into which the Kirk was organized was responsible for what was in effect local government, including education and poor relief. Parish and burgh schools were subject to inspection by the local presbytery, and

teachers were required to subscribe the Westminster Confession of Faith (1646). However, the actual enforcement of this law was patchy and erratic, culminating in a protracted court action, which the Kirk won, but which proved to be a Pyrrhic victory.⁵ Within months the Parochial and Burgh Schoolmasters (Scotland) Act (1861) removed the power of presbyteries. A decade later the state took over general responsibility for education throughout Scotland. The Education (Scotland) Act (1872), passed in the train of an equivalent English Act of 1870, made education compulsory for ages five to 13, set up a state school system controlled through local school boards, permitted the transfer of private schools (including denominational schools, which had been set up in many centres of population) to the state system, and made education in the state system “undenominational.” While religious observance in a school was permitted to continue as it had been practiced in the past, there was to be no inspection in religious knowledge in the state schools, nor were public monies to be provided for religious instruction, although such instruction might continue, again as in past practice. State schools would be open to children of all denominations, and parents might withdraw their children from religious instruction or religious observances in accordance with their own views. In short, there were so many variants of Christianity that it was considered a primary aim not to cater to a particular denomination or its beliefs.

Denominational schools had existed separate from the parish schools for many decades on a private basis. Some burghs and towns had also set up local schools. Many of both categories were in financial difficulties and took advantage of the new legislation to transfer into the state system if the local authority so agreed. Catholic schools, however, proved more intransigent. Roman Catholic schools had grown in numbers because of immigration from Ireland in the nineteenth century. Many of these were, however, later subsumed into the state system under the special provisions of the Education (Scotland) Act 1918, the Roman Catholic Church being allowed to retain powers as to religious observance, the content of education, and of approval of teachers in transferred schools. Again, whether to accept the transfer was for the decision of the local education authority. The result is that there still are Roman Catholic schools within the otherwise secular state school system.

Current arrangements

The principal ruling statute on school education in Scotland is the Education (Scotland) Act 1980 (c. 44), as it has been amended by a plethora of later statutes passed by the Westminster and, following devolution, the Scottish Parliament.⁶ The 1980 Act sets out the structure of public school education in Scotland, with duties being laid on local education authorities whose area of jurisdiction corresponds with that of the territorial local authority. Section 8 of the Act retains the provision of the 1872 Act as to religious observance and the prohibition of the use of public monies for religious instruction. However, many secondary schools do have teams of chaplains appointed by the head teacher and drawn from among nearby Kirk parishes and other denominations in the area. They may conduct school assemblies, and offer some pastoral care for pupils that request it. Such chaplains are unpaid. Section 9 of the Act provides that every public school is open to pupils of all denominations, parents having the right to withdraw pupils from religious instruction or any religious observance. Per Section 10, at the request of their parents, boarders at a public school are permitted to attend worship in accordance with the tenets of a particular denomination on Sunday or other days, and may receive religious instruction or practice religious observance outside the working hours of the school.⁷ Section 16 of the 1980 Act, as amended, now contains the provision for the transfer of denominational schools to the state system that was first enacted by the 1918 Act. While that Act had been designed to cope

Francis Lyall

with Roman Catholic schools, the modern provision may be used for any school that has a religious base. The staff of a transferred school employed at the time of the transfer are retained and put on the appropriate point on the state salary scale. Section 21, as amended, then provides for the management of denominational schools that have been transferred to the state system including staff appointments. New denominational schools may be established by a local education authority within the state system, or an existing one suppressed or made non-denominational under Sections 17 and 22 of the 1980 Act, as amended. The local authority has no duty to provide a denominational school, or to accept the transfer of an existing denominational school into the state system.

Apart from the public schools, independent private schools exist in Scotland. They are regulated under Part V of the 1980 Act, as amended, and the Self-Governing Schools (Scotland) Act 1989 (c. 89). An independent school must be registered by the Scottish Ministers and their approval is subject to a variety of conditions including their being satisfied as to the education to be offered, the qualifications of the staff, the school buildings and other accommodation, and the nature and suitability of the proprietor (s. 94A, 1980 Act, as amended). These schools may give religious instruction as part of their curricula.

Home schooling is allowed with the permission of the local education authority under Sections 35–38 of the 1980 Act. The quality of the education is informally monitored to secure that the education provided is efficient. Permission to home school may be withdrawn if necessary and the child is then required to attend a state school. Clearly in home schooling a parent may give religious instruction to a child.⁸

Educational standards in Scotland continue to be set by the state and implemented by the local education authority under the Standards in Scotland's Schools Act, passed by the Scottish Parliament in 2000 (2000 asp 6). The monitoring of standards and teaching in schools is, of course, important. Section 66.1 of the 1980 Act provides for the inspection of schools. As originally enacted Section 66.2 excluded religious instruction from the duties of school inspectors but that provision was, however, removed by Section 16 of the 1981 Act. From July 1, 2011 a new “Scottish Education Quality and Improvement Agency” will supervise education in Scotland, bringing together the previous H.M. Inspectorate of Education and the agency “Learning and Teaching Scotland” which was responsible for supporting the curriculum.

Religions now form an element of the “Curriculum for Excellence,” which is the curriculum at present generally followed in Scottish state schools. It is designed to foster knowledge and understanding, skills, capabilities, and attributes in each pupil. There are eight curriculum areas: Expressive Arts, Health and Wellbeing, Languages, Mathematics, Religious and Moral Education, Sciences, Social Studies, and Technologies. Schools and educational establishments themselves determine how best to achieve the appropriate outcomes and results from their balance of subjects taught in the school. Obviously some pupil choice is allowed as to the areas they take to higher levels. In deciding what is covered as to religion, schools have regard to the communities which they serve. Christianity is usually a major topic, but, within the general curriculum area of “Religious and Moral Education,” students may be introduced to and given a general understanding of, but not instruction in, some or all of Sikhism, Buddhism, Judaism, Hinduism, and Islam, as well as Humanism. The levels of understanding expected of the pupils rise throughout the secondary stage of education.⁹ The structuring of the “Religious and Moral Education” curriculum area is, however, modified for use in the schools that are linked with the Roman Catholic Church. The relevant section of the website states that Catholics schools “build on the openness of Catholic schools to other young people regardless of denominations and faiths” and teaching maintains “continuity with established practice within Roman Catholic schools” though developing “that practice further in the light of Curriculum for Excellence.”

Access to Catholic schools is important for Catholics, and an attempt to redistrict primary schooling east of Glasgow was defeated when its effect was to remove a few streets from the catchment area of a Roman Catholic school with a reputation for excellence.¹⁰

Religion can be important in the appointment of teachers in denominational schools, though such matters must now interact with the general move towards the prohibition of discrimination *inter alia* on religious grounds and related questions of employment law. Under Section 21.2A of the 1980 Act, representatives of the church or denominational body in whose interest the school is conducted have the right to approve the religious belief and character of a teacher who has otherwise satisfied the Secretary of State as to his or her qualifications. The main beneficiary of this provision is the Roman Catholic Church. However, the provision may be of limited effect. Because of difficulties in finding Roman Catholic teachers qualified in certain subjects, non-Catholics (including atheists) have been appointed to Roman Catholic schools. On occasion there have been disputes and publicity, particularly when promotion of non-Catholics has been involved, or when church approval for a senior appointment has not been given. Though productive of many newspaper column inches, these have usually been settled. One case has made it to the courts.

A 1991 agreement between the local education authority and the relevant Glasgow Roman Catholic diocese authorized the practice of non-Catholic appointments, with certain posts being specifically reserved to require approval by the church authorities. However, when a promoted post with pastoral responsibilities became vacant one teacher already in the school was not called for an interview because he was not a Catholic. He complained to the Employment Tribunal alleging breaches of Regulations 3 and 6 of the Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660), which prohibit discrimination on the grounds of religion or belief, and was awarded some compensation. On appeal it was held that a proper construction of Section 21.2A of the 1980 Act did not show that being a Roman Catholic was necessarily a genuine occupational requirement under Regulation 7(2) and (3) of the 2003 Regulations for a post in a Roman Catholic school. The provisions are drafted in such a way as to leave it open to the church to approve the appointment of a non-Catholic teacher provided it is satisfied as to his religious belief and character. To exclude an applicant from the interview process on the basis of belief was discriminatory at the point of that decision. The award of compensation was not disturbed.¹¹ Following this case interviewing practices have been changed.

We await further discussion in the matter of religion in Scottish schools. Human rights legislation doubtless affords an opportunity for challenge, debate, and possible amendment of the law.¹²

Notes

- 1 Note that in Scotland a “public school” is a school maintained by the state. The English fee-paying “public school” would be a “private school” in Scotland.
- 2 See the Act itself, or its Explanatory Notes at <www.legislation.gov.uk/ukpga/2010/15/notes/contents>.
- 3 J.K. Cameron, ed., *The First Book of Discipline* (Edinburgh: St Andrews Press, 1972). There were then four universities in Scotland—Aberdeen, St. Andrews, Edinburgh, and Glasgow—as opposed to two in England.
- 4 From 1696 all parishes were required to have schools (Parochial Schools Act, 1696 c. 26). For history see: Francis Lyall, *Of Presbyters and Kings: Church and State in the Law of Scotland* (Aberdeen: Aberdeen UP, 1980); J.H.S. Burleigh, *A Church History of Scotland* (Oxford: OUP, 1960); J. Scotland, *The History of Scottish Education* (London, 1969); Grant J. *A History of the Burgh Schools in Scotland* (London: Collins,

Francis Lyall

- 1876); Memorandum with regard to the provision made for Religious Instruction in Scottish Schools, Scottish Education Department, 1943, Cmd. 6426.
- 5 *The Presbytery of Elgin v. The Magistrates and Town Council of Elgin* (1861) 23 D. 287.
 - 6 Many amendments were made by the Education (Scotland) Act 1981 (c. 58).
 - 7 In the Highlands and Islands some state schools have boarding accommodation for pupils from remote areas where there is no local school.
 - 8 In the UK some charities and businesses provide course materials for the use of parents who are home schooling their children. These materials are adapted to the normal school curriculum, and therefore the children may in due course sit the relevant state examinations gaining qualifications for admission to further education of various kinds and other employments.
 - 9 The document “Principles and practice: religious and moral education” is available at the time of writing (2011) from the Learning and Teaching Scotland website—<www.ltsscotland.org.uk>. This will be relocated when the new agency mentioned earlier is activated. One might compare the teaching resources available at <www.ltsscotland.org.uk/nationalqualifications/subjects/religiousmoralandphilosophicalstudies.asp>.
 - 10 *Bowie v. East Renfrewshire Council*, 2010 CSOH 6, January 20, 2010. The action has resulted in the matter being reconsidered by the local authorities involved. The outcome is not clear at the time of writing (January 2011).
 - 11 *Glasgow City Council v. McNab*, 2007 IRLR 476; [2007] UKEAT 0037_06_1701.
 - 12 Cf. relevant sections of the Human Rights Act 1998 (c. 42); the Equality Act 2006 (c. 3); the Equality Act 2010 (c. 15); the European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950, 213 UNTS 222; ETS No. 005; 1953 UKTS 71, Cmnd.8969.

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Religious education in Senegal

Fatou Kiné Camara¹ and Abdourahmane Seck

Senegal is a multilingual² and multi-ethnic country of 75,749 square miles located in the most western part of Africa. According to the census data of 2007, Senegal has a population of 12,521,851. Senegal's population is predominantly Muslim (94 percent). There are also Christians, mostly Roman-Catholics (4 percent). The indigenous faith and other religions account for 2 percent of the population.³

However, the official statistics do not accurately convey the reality of religious life in Senegal. Islam and Christianity are infused with indigenous religious beliefs and traditions, and hence the very tolerant nature of Islam in Senegal as well as its tradition of secularity.

The current Constitution of Senegal was adopted in 2001. It is the fourth Senegalese Constitution since 1958. Each successive constitution has perpetuated an ostensible commitment to secularism. Thus, the 2001 Constitution of Senegal provides: "The Republic of Senegal is secular, democratic and social. It ensures equality before the law for all citizens, without distinction of origin, race, sex, religion. It respects all beliefs."⁴

The Constitution also upholds the rights of religious communities to worship and to educate their adherents. Under the Constitution, institutions and communities, both religious and non-religious, are equally recognized as a means of education.⁵ Freedom of conscience, religious and cultural liberties and practices, and the profession of religious education are guaranteed to all, subject to the public order.⁶ Finally, the 2001 Constitution makes it clear that religious institutions and communities "have the right to develop without hindrance. They are free from tutelage of the State. They regulate and manage their affairs in an autonomous manner." In a similar vein, religious adherents in Senegal enjoy the rights guaranteed by the Universal Declaration of Human Rights.⁷ This Declaration is expressly incorporated into the Constitution of Senegal.⁸

As for the relations between religious education and the state it is worth noting that the Senegalese school as it is known today⁹ is initially the work of religious congregations. Its evangelical mission accompanied, supported, and justified colonial conquest throughout most of the nineteenth century. The advent of a secular public school in Senegal dates from the early twentieth century, after it was imposed in France by Jules Ferry.¹⁰ Nevertheless, throughout the colonial period, Christian missionaries were the colonizers' partners. They set up schools dedicated to the cause of the colonizer whose main purpose was to train junior officers in the

Fatou Kiné Camara¹ and Abdourahmane Seck

service of the metropolis. Religion was not a decisive factor as the missionaries' schools hosted children of all faiths without discrimination; non-Christian children, mostly Muslims, were exempt from catechism classes. Students received the same lessons, the same instructions or guidance, in a word, the same education, as they all evolved under the same reference values ? and under the direction of the same teacher.¹¹

Due to the colonial policy of collusion between the state and religious bodies, Quranic schools also thrived. In Senegal, where the headquarters of A.O.F. (Afrique Occidentale Française, West African territories under French authority) were situated, the French colonial authorities reached an agreement with Muslim brotherhood leaders who accepted their authority and preached submission to them. In exchange, the colonial authority prevented Catholic missions from locating in areas devolved to marabouts (Muslim leaders), thus limiting Catholic proselytism to the areas where the indigenous faith prevailed.¹² The colonial state gave Muslim leaders lands to build mosques, establish daara (Quranic schools), and grow peanuts.¹³

The *modus vivendi* largely operated on the basis of the full autonomy of each power: the religious power was sovereign on its "holy land," resisting Westernization and enjoying the full freedom of preaching and organization of its schooling system. This win-win deal, or policy of mutual support based on the interests of all parties concerned, continued in the same manner after independence.¹⁴

Mamadou DIA (July 18, 1910–January 25, 2009) was Senegal's first head of government. He gives the following testimony as to the way to interpret the Constitution's provision on secularism:

In my capacity as head of government, I, at that time, tried to put things in place and in their order, by establishing a true positive secularism of the Republic. ... The implementation of the concept of Republican secularism was obviously not an ignorance of the needs of faith and of believers. ... As a reminder, I will mention in this regard that it is the first government of the Republic that I ran, who designed and built the Great Mosque of Dakar, achieved with the granting of a bail that the Colonial powers had refused to give, the release of a 3 billion CFA francs loan necessary to achieve the Mosque of Touba.¹⁵

It is in the light of this "positive secularism" that the 1963 Constitution provisions on secularity should be read:

The Republic is secular, democratic and social. ... Everyone has the right to education. ... It is provided for the education of youth by public schools. Institutions and religious communities are also recognized as a means of education. ... Private schools can be opened with the permission and under the control of the state. ... The institutions and religious communities ... are released from the tutelage of the state.¹⁶

The second President of the Republic of Senegal (1980–2000), Abdou Diouf, responding to the wishes of religious leaders in 1983, also explained the state's authorities' understanding of the Constitution's provisions on secularity:

Senegal is an old country where all ethnic groups, all races and all religions live together. But what makes its specificity, I would say its strength, is that the cooperative spirit that animates all religions lies in the fact that in light of our Constitution, freedom of faith has not affected the sovereignty of the state and the freedom of the citizens. Better yet, this fraternal cooperation between the spiritual families in Senegal allows each of the religions

to freely exercise its cult. Actually, the government and the Constitution, which guarantees freedom of faith and proclaims secularism as a fundamental principle of our Republic, have never lost sight of this reality. This is an opportunity for me to remind, in order to better reaffirm, what our Constitution means by secularism. Secularism is not atheism or anti-religious propaganda. Written proof is given by the sections of our Constitution which guarantee the autonomy of our religious communities. Our fundamental law goes even further, making the religious communities the auxiliaries of the state in providing education and culture.¹⁷

Hence, since Senegal gained its sovereignty the educational field has been dominated by three types of schools: public schools, secular private schools, and confessional schools. Public schools, secular private schools, and private Catholic schools form the core of formal education in Senegal, whereas the informal sector is largely dominated by the daara.

The secular public education sector

Public education is marked by three imperatives: it has to be free of charge,¹⁸ respectful of secularity, and able to deliver open access to everyone without discrimination.¹⁹ Those imperatives were provided by the Public Education Act no. 71–36 of June 3, 1971 (*loi d'orientation de l'éducation nationale n° 71–36 du 03 juin 1971*) and the Public Education Act no. 91–22 of January 30, 1991 (*loi n° 91–22 du 30 janvier 1991 d'orientation de l'éducation nationale*). However, the December 2004 Act on Public Education gave a different slant to the principle of respect for secularity in public education.

The principle of secularity under the 1971 and 1991 Act on Public Education

The statute on public education affirmed in 1971 and reaffirmed in 1991 the following principle as regard to secularity: “Public education is secular: it respects and guarantees freedom of conscience at all levels to all citizens.” The second paragraph of the Article provided that: “In addition, Public Education, based on the principles of secularity, is favorable to private schools that may provide religious instruction” (Article 4, Public Education Act 91–22 of February 2, 1991).

Consequently, there was a clear-cut dichotomy under the 1991 and 1971 Public Education Acts: religious education was the preserve of private schools; public schools were not allowed to provide religious instruction. The December 2004 Act on Public Education put an end to this dichotomy.

The introduction of religious education in public schools: genesis and objectives

Until the December 15, 2004 Act, only private schools were “likely to provide religious instruction” according to Article 4, Paragraph 2 of the statute on Public Education (Act 91–22 of February 16, 1991).

On December 15, 2004, the State of Senegal decided to propose “optional religious education “in the public and private schools in full respect of the secular state.” (*loi 2004–37 du 15 Décembre 2004 modifiant et complétant la loi d'orientation de l'éducation nationale n° 91–22 du 16 février 1991*). Charlier calls it “God’s return in Senegalese secular public schools,” and this is how he explains it:

Fatou Kiné Camara¹ and Abdourahmane Seck

Strongly encouraged by international organizations to quickly adopt measures supporting the increase in enrollment, the Senegalese authorities have introduced several major innovations in their education system at the beginning of October 2002. Firstly, children who receive religious instruction in “daara,” or Senegalese Quranic schools are now considered as much in the school system, as students enrolled in formal education. Secondly, religious teaching, which is essentially that of the Muslim religion, with over 90 percent Muslims in the country, has been integrated into the Republic’s Primary School cycle’s curriculum.²⁰

The offer of religious instruction in public schools had already been put on the agenda of the National Conference on Education (*Etats généraux de l’éducation*), held in 1981. Noting the gap between the formal offer of education and people’s expectations in terms of religious education, the Conference had recommended the introduction of religious education in public schools to meet this demand.

Charlier cites meaningful quotes from the 2002 speech of the Minister of Education, Moustapha Sourang:

In mid-July 2002, under the leadership of Minister of Education Sourang, Senegal took “the fundamental and irreversible option” to introduce religious instruction in public schools. The reasons for this decision are primarily political and technical, “It is in our best interest to enlist the 800,000 to one million youth who are in the Quranic schools, in order for them to have training that gives them access to modern training facilities.” In other countries such as Mali or Niger, children in Quranic schools are included in the gross enrollment rate. That is why these countries have a 90 percent rate of G.E.R. while Senegal is at 71 percent.²¹

From this explanation given by the Minister of Education, Charlier derives the following conclusion:

The first objective is to enable Senegal to display a substantial increase in its attendance rate without initiating sweeping reforms. A second objective is to bring more families to trust the public schools. ... a third goal could be to control as much as possible Quranic teaching.²²

Despite his statement that: “The population’s response was mostly positive,” Charlier, citing a number of articles published in the local newspapers, notes that the reform raised an outcry from trade unions, N.G.Os., “civil society,” the clergy, and university scholars.²³ The main concern was the threat to state secularism. The curriculum adopted by the Ministry of Education does not keep the scales of the balance equal in respect of all religions and beliefs.

From a secular legal framework to a non-secular application of the law: a bias towards the teaching of two specific religions and Arabic

The law in its formulation carefully refrains from referring to a particular religion,²⁴ but in reality religious instruction is established mainly for the teaching of Quran and Arabic. No offer of optional religious education in African indigenous religion(s) is given, although that religion is still very much alive in the territory even if it does not appear so in the statistics.²⁵ Religious education is also forced on children and their parents as it is mandatory in elementary school but, again, the choice is limited to either Christian or Islamic instruction.

In elementary school, the curriculum provides two hours of religious courses each week: Quran and hadiths for Muslim children, catechism for Christian children; and two hours of Arabic classes for all pupils without exception.

In Quranic courses there is a body of specific surahs to learn, starting with “the fatiha.” For each level there are six surahs to learn and a number of hadiths at the discretion of the teacher who is still required to comply with the themes given by the Ministry of Education. Pupils will also be taught the basics of Muslim prayer, including the ablution (cleansing with water).

In secondary schools the curriculum changes from religious instruction to courses on the history of religions. Those courses are not implemented yet.

The majority of students in the formal educational system are in public schools where teachers (even teachers of religious education) are recruited and paid by the state. All teachers must be graduates. Every educational level degree is represented in the teaching staff.

The Christian schools

The Christian Schools are mainly Roman Catholic schools. The statistics are as shown in Table 40.1:²⁶

Statistics show that, in the formal education sector, students predominantly attend public schools, both at the elementary (88 percent) and the intermediate and secondary levels (76.4 percent). Private Catholic schools host respectively 3.2 percent and 3.7 percent of the students.²⁷ At intermediate and secondary levels, the Catholic schools are the only confessional schools represented.

It should be noted that a significant number of young people attend non-formal education structures and are not included in these statistics. Although the statistics on the number of students in Catholic schools seem to fit the number of Christians in the population, a study²⁸ has shown that Catholic students are far from being the majority in Catholic schools. Actually, only one-third of pupils attending the Catholic system are from Catholic families.

The religious origins of pupils and teachers in private Catholic schools are shown in Table 40.2.

The private Muslim schools are mainly in the informal sector.

The French and Arabic schools (Écoles franco-arabes)

From 1963 to 2002, reports Thierno Ka, the state’s former commissioner of the pilgrimage in Mecca (*commissaire au pèlerinage*), Senegal had only one French and Arabic school. Today, he notes, there are 100 of them spread across all regions of Senegal and especially in the regions of Diourbel, Kaolack, Louga, and Fatick.³⁰

Table 40.1 Public and private school attendance in Senegalnewnote

<i>School denomination</i>	<i>Students in elementary schools</i>	<i>Students in intermediate and secondary schools</i>
Public	88.1%	76.4%
Public French and Arabic	0.3%	0%
Private Catholic	3.2%	3.7%
Private French and Arabic	2.7%	1.8%
Private Secular	5.6%	18%
Private Protestant	0.06%	0%

Fatou Kiné Camara¹ and Abdourahmane Seck

Table 40.2 Religious origins of pupils and teachers in private Catholic schools

Cycle	% of Catholic students	% of Catholic teachers
Elementary	29.98	99.51
Intermediate	32.22	89.45
Secondary	36.18	84.97
Technical and professional	16.83	33.33
Professional, post-Bachelor's degree	40.03	58.92
Total	31.13	92.32

Source: Diocese of Dakar, 2005²⁹

The curriculum of French and Arabic schools is the same as the public schools' curriculum, with the addition of mandatory Arabic and Quran courses. The daara or Quranic schools are entirely different.

The daara-Quranic schools

Daaras are scattered all over the country. The daara's primary objective is to teach the Quran and the principles of Islam and, at the same time, encourage the spiritual development of children. It does so by submitting its pupils to very rigorous and harsh living conditions. Although this institution is farthest from the school form embodied by the public school, it forms its most serious competition.³¹

There are three types of daara: neighborhood daara, uncontrolled daara, and modern daara.

Neighborhood daara

Neighborhood daaras are Quranic schools that host pupils who live in the area where the daara is established. These children spend only a few hours a day at the daara. They are usually students in a public school and only go to the daara during school holidays. Children who are too young to attend a public school (less than six years old) are sent to the neighborhood daara during formal school hours.³² Unlike the situation in uncontrolled daaras, in the neighborhood ones children stay under the care and responsibility of their family. The Quranic master is not left unchecked by the parents of his pupils, as is the case in uncontrolled daaras, which are more often than not a cover for child trafficking.

Uncontrolled daara

Parents from rural areas, with low income and more children than they can feed, give those children to Quranic teachers who bring them to urban areas where the children are forced to beg for their food and for their teacher's fee. Children can be cut off from their families for years. A survey gave the following testimonies which are a good summary of the situation and how it is justified:

“The Quranic schools' students who roam the streets do not learn much, they beg” (student's parent, a private guard), “Children go about freely and they learn to beg more than they learn the Quran” (teacher in a public school). Religious leaders justify this situation by their extreme poverty: “here, children beg, which is normal if you do not have enough to

eat” (master of a daara). According to them, the begging of the “talibés”³³ is the result of state authorities’ refusal to grant daaras the means they are entitled to: “Daaras need security and means to teach in better conditions” (Muslim religious leader).³⁴

Putting the children out to beg for their daara master is not only attributed to the fact that daara masters accept all children entrusted to them, without asking for financial compensation from the families or authorities; it is also justified by religious and pedagogical reasons, as the same survey shows:

“To teach him humility is why we send a child begging, for if he knows suffering, tomorrow if he has money, he will help others because of his knowledge of suffering” (company director). Known for the harsh conditions it imposes on everyone, the daara is recognized as a place of exacting moral education: “There is suffering as a means of education” (Arabic teacher in a French and Arabic school), “the individual who goes in a daara dresses in rags and does not even wash” (Arabic schoolmaster). “This harshness is not arbitrary, it aims to prepare children to ‘man’s life’ by suffering, a suffering that educates” (ibid.). Children are placed “under conditions where they are forced to fight or die. If they can grow in conditions like that, they show skills that other children do not” (school Inspector).³⁵

Corporal punishments are not separable from torture; but torture is also an accepted part of the pedagogical tools of the daara masters.³⁶

In 2009, the U.S. Department of State’s *Trafficking in Persons Report* stated the following about Senegal:

Trafficking within the country is more prevalent than trans-border trafficking and the majority of victims are children. Within Senegal, religious teachers traffic boys, called *talibe*, by promising to educate them, but subjecting them instead to forced begging and physical abuse. A 2007 study done by UNICEF, the ILO, and the World Bank found that 6,480 *talibe* were forced to beg in Dakar alone.³⁷

Modern daara

In modern daaras, children spend part of their time studying the Quran and the remainder in agricultural work as it used to be, in the times when talibés, in exchange for the religious instruction they received from their marabout, cultivated his land and thus provided sustenance for the community. Following a similar principle, modern daaras require a financial contribution from families. They also receive public subsidies and private donations.³⁸

According to an executive in a Western government agency providing economic and humanitarian assistance worldwide, the Senegalese Government, with that agency’s support, has already built and equipped more than 200 modern daaras, especially in areas where there has been a strong resistance to classic modern teaching. He added that this investment is made through the investment budget and has been kept constant over the past four years.³⁹

The state agencies supervising confessional schools

Three structures of the Ministry of Education deal with religious schools:⁴⁰

Fatou Kiné Camara¹ and Abdourahmane Seck

- 1 the division of private education
- 2 the division of Arabic teaching
- 3 the structure for the Inspection of Daaras.

The division of private education

The role of the division of private education, which was created in the 1960s, is to study and implement decisions on the opening, recognition, or closure of teaching facilities or the granting of teaching licenses for staff. This division decides the matter of subsidies and allowances for private educational institutions that have been state approved. It organizes and supervises their educational and administrative control and uses the periodical reports of external services to determine all actions necessary to promote the functioning of private schools.

The annual subsidies provided to schools in the private sector benefit a large number of Catholic religious schools. Eligibility criteria exclude nearly all Islamic religious schools as they do not follow the curriculum recommended by the government.

The division of Arabic teaching

The division of Arabic teaching was created in the 1980s. It aims to promote and organize not only the teaching of Arabic in schools but also relations with countries whose education system uses the Arabic language. This mission has expanded since the early 1990s to include technical support for Islamic schools wishing to modernize their teaching to include the teaching of French, mathematics, and science. This same structure oversees French and Arabic schools, which are schools that offer Islamic religious education.

The inspection of daaras

The Inspection of Daaras was created in 2004. It is the structure responsible for promoting the emergence of modern daaras and facilitating the integration of Quranic schools into the education system. Its responsibilities include supervising the building of schools that meet infrastructure standards and requirements for school facilities, professionalizing teachers through more comprehensive training, and developing a curriculum that provides vocational training for students.

Notes

- 1 would like to thank, for his help in gathering information, Mr Hamidou, W.A.T.T. Educational Advisor on National History and Geography, national coordinator for continuing education through the secondary level (le conseiller pédagogique national d'histoire et de géographie, le coordonateur national de la formation continue du moyen secondaire), and M. Pape Momar Sow, Chief of Education Division at U.S.AID in Senegal.
- 2 French is the only official language. According to statistics released by the *Délégation générale à la langue française et aux langues de France (Références 2006, 3)*, only 10 percent of the Senegalese population understand French. Senegal is a former French colony (1855–1960).
- 3 *Enquête démographique et de santé, EDS IV* (Demographic and health survey), 2005; all text originally in French has been translated into English by the authors of the article.
- 4 Constitution de la République du Sénégal, Title 1, Article 1.
- 5 Ibid. at Title 2, Article 22.
- 6 Ibid. at Title 2, Article 24.

- 7 Article 18 provides: “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.” Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (December 12, 1948).
- 8 Constitution de la République du Sénégal, pmb.
- 9 The indigenous educational system was actively fought against by the colonial authorities and their partners. Famous African writer and promoter of the African oral tradition, Amadou Hampaté Bâ, explains the process: “Formerly, that knowledge (the African knowledge) was regularly handed down from generation to generation, through initiation rites and various forms of traditional education. The impact of colonisation, an external, extra-African cause, put a stop to this regular transmission. [...] The western school started with fighting the indigenous African school and pursuing the holders of traditional knowledge. It was the time when all healers were thrown into jail under the label of being ‘quacks’ or for ‘illegal practice of medicine’ It was also the time when children were prevented from speaking their native language, in order to free them from traditional influences. It was so much so that at school, the child who was caught speaking his mother tongue was deprived of lunch and forced to sport a board called the ‘symbol’ on which an ass’s head was drawn.” *Aspects de la civilisation africaine*, (Paris: Présence Africaine, 1972), 26.
- 10 A. Camara, S. Cornelis, J.L. Wolfs, A. Salcin, “Ecole, religions et laïcité: analyse comparative entre le Sénégal et la Belgique,” Colloque AFEC-CIEP, *Éducation, religion, laïcité. Quels enjeux pour les politiques éducatives? Quels enjeux pour l’éducation comparée?* (Sèvres, 19–21 octobre 2005), available at: <<http://afecinfo.free.fr/ERL05/index.html>> (retrieved March 12, 2011)>.
- 11 Souleymane Gomis, “L’école au service du dialogue interreligieux au Sénégal,” Colloque AFEC-CIEP, *Éducation, religion, laïcité. Quels enjeux pour les politiques éducatives? Quels enjeux pour l’éducation comparée?* (Sèvres, 19–21 octobre 2005).
- 12 Sheldon Gellar, *Senegal, An African Nation Between Islam and the West*, Profiles / Nations of Contemporary Africa series (Boulder, Colorado: Westview Press / Gower, UK, 1982), 13.
- 13 Peanuts were the main export crop, and their cultivation was encouraged, even required, to the detriment of food crops.
- 14 In 1996, the late Serigne Salioù Mbacke, Caliph of the Mourides (Senegalese Muslim brotherhood) ordered the closing of all elementary “French” schools located on the “holy land of Touba.” In April 2009 when the Minister of Education decided to open them again he was met with the current Caliph’s opposition. The Caliph is quoted as follows: “There is no question of implantation in the perimeter of Touba of a school where French will be taught. I can not endorse replacing Quranic education by any other form of learning. ... I will never accept the installation of French schools in Touba as none of the Caliphs, from Serigne Moustapha Modou to Serigne Salioù, has accepted it.” Actually the so-called “French schools” are Senegalese schools; they are called “French” because French, being the sole official language in Senegal, is the language of instruction in public schools. *Walfadjri* (Senegalese newspaper), April 8, 2009, 8.
- 15 Mamadou Dia (first head of government of the Republic of Senegal) “Affaire Khadim Bousso. Un des effets récurrents de 40 ans de dérive clientéliste,” *Walfadjri*, June 11, 2003, 4.
- 16 The same provisions remain under the 2001 Constitution (Articles 1, 8, 21, 22, 23, and 24).
- 17 Cited by Joseph-Roger De Benoist, “La laïcité vécue au Sénégal sous la colonisation française et après l’indépendance», in Singaravelou, *Laïcité: enjeux et pratiques*, 157.
- 18 Article 5, Act n°. 91–22 of January 30, 1991 on Public Education, Title II, General Principles of Education:

“Public Education is democratic: it gives everyone an equal chance of success. It is founded on the right of every human being to receive instruction and training appropriate to their abilities, without discrimination of sex, social origin, race, ethnicity, religion or nationality.”

- 19 The current means of Senegal do not allow for all children to benefit from public schooling. However, education is free in public schools and they admit students without discrimination, within the limits of available space.
- 20 “Le retour de Dieu: l’introduction de l’enseignement religieux dans l’École de la République laïque du Sénégal,” J.E. Charlier, revue *Éducation et Sociétés*, n° 10/2002/2, 95, available at: <www.cairn.info/load_pdf.php?ID_ARTICLE=ES_010_0095>.

Fatou Kiné Camara¹ and Abdourahmane Seck

- 21 J.E.Charlier, "Les écoles au Sénégal: de l'enseignement officiel au daara, les modèles et leurs répliques," *Cahiers de la recherche sur l'éducation et les savoirs*, n° 3, 2004, 53, available at: <www.revues.msh-paris.fr/vernumpub/Les%20ecoles%20au%20Senegal.pdf>.
- 22 Charlier, 2004, op. cit.
- 23 Camara, Cornelis, Wolfs, and Salcin, "Ecole, religions et laïcité: analyse comparative entre le Sénégal et la Belgique," op. cit.
- 24 2004–37 Act of December 15, 2004 amending and supplementing the Public Education Act No. 91–22 of February 16, 1991, Article 2–Article 4 of the Public Education Act No. 91–22 of February 16, 1991 is repealed and replaced by the following provisions:
Article 4. Public Education is secular: it respects and guarantees at all levels, freedom of conscience of all citizens. Within public and private schools, while respecting the principle of state secularity, optional religious education may be offered. Parents may choose freely whether or not to let their children follow that course.
- 25 See, Fatou K. Camara and Abdourahmane Seck, "Secularity and Freedom of Religion in Senegal: Between a Constitutional Rock and a Hard Reality," *Brigham Young University Law Review* 2010, number 3; Fatou K. Camara, "State and Religion in West Africa: Problems and Perspectives," in *Law and Religion in the 21st Century—Relations between States and Religious Communities*, eds. Silvio Ferrari and Rinaldo Cristofori (UK: Ashgate Publishing, 2010).
- 26 Statistics from the *Direction de la planification et de la réforme de l'éducation*, 2004–5, cited in "Ecole, religions et laïcité: analyse comparative entre le Sénégal et la Belgique," op. cit.
- 27 Despite these figures, pupils from private Catholic schools take the lead in national tests. They are followed, at a safe distance, by the public schools' students, with secular private schools' students being at the tail end. Charlier explains this situation by the fact that private Catholic schools cultivate an elitist education for youth who are selected on intellectual and economic criteria. J. E. Charlier, 2004, 49–51.
- 28 Cited in, "Ecole, religions et laïcité: analyse comparative entre le Sénégal et la Belgique," op. cit.
- 29 "Ecole, religions et laïcité: analyse comparative entre le Sénégal et la Belgique," op. cit.
- 30 "Sénégal: introduction de l'enseignement religieux dans les écoles." Fatou K. Sene, *Walfadjri*, July 10, 2007, article on the subject of Dr. Thierno Ka's conference on the theme: "Pénétration et évolution de l'islam au Sénégal," <www.soninkara.com/societe/religion/senegal-introduction-de-lenseignement-religieux-dans-les-ecoles.html (visite le 16 mars 2010)>.
- 31 Charlier, 2004, op. cit., 46.
- 32 Charlier, 2004, op. cit., 46–49.
- 33 Talibé is the name given to Quranic school pupils.
- 34 Charlier, 2004, op. cit., 47.
- 35 Charlier, 2004, op. cit., 47–48.
- 36 Charlier, 2004, op. cit., 47.
- 37 This Report and subsequent updates are available at <www.state.gov/g/tip>.
- 38 Charlier, 2004, op. cit., 46.
- 39 Private interview, March 17, 2011.
- 40 Information available on the official website of the Senegalese government: <www.education.gouv.sn/administration/services.html> (retrieved March 20, 2011).

Religious education in the Slovak Republic

Michaela Moravčíková

Religious demographics

The Slovak Republic is a young, independent state that came into existence on January 1, 1993 after a peaceful division of the Czech and Slovak Federative Republic. The traditional religion is Christianity that was brought to the territory of present-day Slovakia by Irish-Scottish monks at the end of the eighth century and was developed thanks to the Byzantine mission in the ninth century. The prevailing denomination is Catholicism, of the Latin rite. Orthodox Christians, Protestants, Jews, and adherents of other religious societies are also integrated into Slovak society.

In the most recent census taken in 2001, 84.1 percent of the resident population professed allegiance to a state-recognized church or religious society: 68.9 percent of the population declared their affiliation to the Roman Catholic Church, 4.1 percent to the Byzantine Catholic Church (Greek Catholics), 6.9 percent to the Evangelical (Lutheran) Church of the Augsburg Confession, 2.0 percent to the Reformed Christian Church, and 0.9 percent to the Orthodox Church. Numerical representation in other small churches could be expressed in hundredths of a percent.¹ A total of 12.96 percent of the population declared themselves as being “without confession”; and 2.98 percent of respondents did not answer the question about religious denomination at all. A total of 6,294 persons² claimed membership of other than state-recognized churches and religious societies; from this number, 1,212 citizens declared their affiliation to Islam, which statistically represents 0.022 percent of the population of the Slovak Republic. The representatives of the Islamic organizations in Slovakia estimate the number of Muslims at 5,000, among them being about 150³ converts of Slovak nationality, the rest coming from other countries.

Constitutionally grounded principles of the relationship of the Slovak Republic to ideologies and religion serve to frame state-church relations. The 1992 Constitution of the Slovak Republic⁴ acknowledges in its preamble the spiritual heritage of Cyril and Methodius and the historical legacy of the Great Moravian Empire. In Chapter One of the Constitution (General Provisions), the basic principle is to be found in Article 1: “The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound by any ideology or religion.”⁵ Article 24 guarantees freedom of thought, conscience, religion, and faith. This right includes the right to change one’s religion or faith. Everyone has the right to refrain from a religious

Michaela Moravčíková

affiliation. Every person has the right to express freely his or her own religious conviction or faith, either alone or in association with others, privately or publicly, by worship, religious services and ceremonies, or to give or participate in religious instruction. Article 24 provides as follows:

- 1 Freedom of thought, conscience, religion and faith shall be guaranteed. This right shall include the right to change religion or faith and the right to refrain from a religious affiliation. Every person shall be entitled to express his or her opinion publicly.
- 2 Every person shall have the right to express freely his or her own religious conviction or faith alone or in association with others, privately or publicly, by worship, religious services or ceremonies and participation in religious instruction.
- 3 Churches and ecclesiastical communities shall administer their own affairs. All ecclesiastical authorities and appointments, religious instruction, establishment of religious orders and other religious institutions shall be separate from the State authorities.
- 4 The rights under sections (1) to (3) of this Article can be legally restricted only as a measure taken in a democratic society for the protection of the public order, health, morality, and rights and freedoms of other people.⁶

Principal questions of status and activities of churches and religious societies in the Slovak Republic are also regulated by Act no. 308/1991 Zb.⁷ on the freedom of religious faith and the position of churches and religious societies as subsequently amended/in the wording of later regulations. Religious freedom in the Slovak Republic is also guaranteed by Constitutional Act no. 460/1992 Zb., the Constitution, and Constitutional Act no. 23/1991, which introduces the Bill of Basic Rights and Freedoms.⁸ The issue of financing of churches and religious societies has been regulated by Act no. 218/1949 Zb. on the economic provision of churches and religious societies by the state in the wording of Act no. 16/1991.⁹

Act no. 308/1991 Zb. on the freedom of religious faith and the position of churches and religious societies in the wording of Act no. 394/2000 Z. z. and of Act no. 201/2007¹⁰ assumes the provisions of Article 24 of the Constitution and specifies them. It stipulates that profession of belief must not be a reason for restriction of constitutionally guaranteed rights and freedoms of citizens, foremost the right to education, to work and free choice of employment, and access to information. It also stipulates that the believer has the right to celebrate festivals and services according to the requirements of his or her own religious belief, in accordance with generally binding legal rules.

Act no. 308/1991 Zb. on the freedom of religious faith and the position of churches and religious societies regards as a church or a religious society a voluntary association of persons of the same religious belief in an organization with its own structure, bodies, internal regulations, and services. Churches and religious societies are legal entities, and can associate freely. They may create communities, orders, societies, and similar institutions.

Churches and religious societies are a special type of legal entity taking advantage of a special status (according to Article 24 of Constitution) as well as other rights awarded to legal entities in general. This concerns particularly the inviolability of privacy, the protection of property, name and inheritance, the inviolability of letters, the freedom of movement and residence, the freedom of expression and the right to information, the right to petition, the right to assemble, to associate, and the right to judicial and legal protection.

The state acknowledges only churches and religious societies that are registered. According to Act no. 308/1991 Zb. as subsequently amended, the registration body is the Ministry of Culture of the Slovak Republic. A preparatory body of a church or religious society may submit a

proposal for registration if it can prove that at least 20,000 adult persons—citizens of the Slovak Republic who are domiciled within the territory of the Slovak Republic—declare affiliation to the church or religious society.¹¹ The proposal for registration also must contain basic documents of the church or religious society to be founded, as well as affirmations of at least 20,000 adult members, who are domiciled within the territory of the Slovak Republic and are citizens thereof, that they claim affiliation to the church or religious society, support the proposal for its registration, are its members, know its basic articles of faith and its doctrine, and are conscious of rights and freedoms following from the church or religious society membership.¹²

Before May 1, 2007, the only registered religious societies were those that had attained the required membership minimum of 20,000. Registration was achieved by signatures on a petition attached to the basic documents of the church which, according to the then valid legislation, could be signed not only by members of the church to be founded, but also by supporters of its registration.¹³ Since then, newly registered religious societies include the Church of Jesus Christ of the Latter-day Saints (registered in 2006), and the Baha'i Community in the Slovak Republic (registered in 2007).¹⁴ In addition, in 2001 the New Apostolic Church was registered after it submitted relevant documents about its activities within the territory of the Slovak Republic.

At present there are 18 churches registered in the Slovak Republic: Apostolic Church in Slovakia; Baptist Union of the Slovak Republic; Bahá'i Community in the Slovak Republic; Seventh-day Adventist Church, Slovak Association; Brethren Church in the Slovak Republic; Church of Jesus Christ of Latter-day Saints; Czechoslovak Hussite Church in Slovakia; Evangelical Church of the Augsburg Confession in Slovakia; United Methodist Church, Slovak District; Greek (Byzantine) Catholic Church in the Slovak Republic; Christian Corps in Slovakia; Religious Society of Jehovah's Witnesses in the Slovak Republic; New Apostolic Church in the Slovak Republic; Orthodox Church in Slovakia; Reformed Christian Church in Slovakia; Roman Catholic Church in the Slovak Republic; Old Catholic Church in Slovakia; and the Central Union of Jewish Religious Communities in the Slovak Republic.

Religious education and denominational schools

According to the Constitution of the Slovak Republic, everyone has the right to education. School attendance is compulsory. Its period and age limit are stipulated by law.¹⁵ Citizens have the right to free education at primary and secondary schools and, based on their abilities and society's resources, at higher educational establishments, too.¹⁶ Schools other than state ones may be established, and instruction in them provided under conditions defined by law. Such schools may charge a tuition fee.

According to Article 24 of the Constitution, churches and religious societies “organise the teaching of religion” and, according to Act no. 308/1991 Zb. on the freedom of religious faith and the position of churches and religious societies as subsequently amended, believers have the right to be educated in a religious spirit and, on fulfilment of conditions established by internal rules of churches and religious societies as well as by generally binding legal regulations, to teach religion.

This issue is amended in more detail by the Basic Treaty between the Slovak Republic and the Holy See,¹⁷ and the Agreement between the Slovak Republic and the Registered Churches and Religious Societies;¹⁸ the contracting parties refer to a more detailed amendment in special agreements (so called separate agreements). The right to religious education is also guaranteed by Act no. 29/1984 Zb. on the system of primary and secondary schools (the School Act) as subsequently amended. Persons appointed by churches and religious societies may teach religion

Michaela Moravčíková

at all schools and educational institutions that are part of the educational system of the Slovak Republic.

Act no. 596/2003 Z. z. (on state administration in education and educational self-government) determines the competence, organization, and function of administrative bodies in the educational system, as well as in towns, municipalities, and self-government bodies in education, and defines their duties. It determines the network of schools and educational institutions, decides on the location of a school, school facility, or a vocational education center in the network, possible changes, and whether a school should be excluded from the network. The Act designates the bodies authorized to establish schools, educational institutions, or centers of vocational education. Such bodies are towns, municipalities, regional boards, registered churches or religious societies, and other corporate bodies or individuals.¹⁹ Education provided at denominational or private schools is on a par with the education provided at other schools. The aim of denominational and private schools or educational institutions is to provide, in addition to quality education and training, alternative contents, methods, and formats in education and training. Establishment of these schools allows parents to apply their right to choose a school or educational institution for their children according to their belief and conscience, and it creates a competitive environment to motivate everyone to improve the educational system.²⁰

Churches and religious societies have the right, for educational purposes, to establish, administer, and employ primary schools, secondary schools, universities, and educational institutions in compliance with the provisions of law. These schools and educational institutions have the same position as state schools and educational institutions and they are an important and equal part of the education system of the country. The Slovak Republic gives full recognition to diplomas issued by these schools and institutions and considers them equal to diplomas issued by state schools of the same kind, field, or level. Hence, they are acknowledged as equivalent to state diplomas; moreover, the same is true about academic degrees and titles.

The number of denominational schools began to increase in Slovakia right after the fall of Communism in 1989, and their number at present is rather stable. Today in Slovakia there is one Catholic university, 76 denominational high schools (54 grammar schools), 15 denominational professional education and training high schools, five denominational apprentice-training high schools, 114 denominational primary schools, and 36 denominational kindergartens. Moreover, there are three special education denominational kindergartens, six special education denominational primary schools, three special education denominational high schools, nine primary schools with focus on musical education, 32 denominational free-time centers and other hobby centers, one denominational special education clinic, and one church orphanage. The main founders of these institutions are the Roman Catholic Church, the Orthodox Church, the Evangelical Church of the Augsburg Confession, the Reformed Church, and the Brethren Church.

Government funding is also provided to private and denominational schools equivalent to the funding of state schools. Government funding of educational institutions is established on normative principles.²¹ Financing per student/year (norms) is the same for both denominational and state schools. However, state educational institutions (kindergartens, canteens, after-school nurseries, etc.) and state artistic schools still have more financial advantages in comparison to the same kind of schools founded by churches (or private founders).²² Financial means for schools and educational institutions from budget chapters of the Ministry of Education are provided to their founders through the Regional Education Offices according to the residence of the founder.²³

Most state universities include theological faculties. There are six theological faculties in Slovakia at four different universities: Faculty of Roman-Catholic Theology of the Comenius

University in Bratislava, Faculty of Evangelical Theology of the Comenius University in Bratislava, Faculty of Theology of the Trnava University in Trnava, Faculty of Theology of the Catholic University in Ružomberok, Greek-Catholic Theological Faculty of the University of Prešov, and Faculty of Orthodox Theology of the University of Prešov. There are also theological institutes and seminaries for future priests in Slovakia. These seminaries are specialized workplaces of public universities or theological faculties where university students are taught the values promoted by the respective church in accordance with the internal policies of the church.²⁴ Seminaries could also be autonomous legal entities that have an agreement with a university. In that case, seminary students are taught the values promoted by the respective church in accordance with the internal policies of the church, and the university education is provided by the university or theological faculty.²⁵

There are also theological institutes and seminaries in Slovakia. *Missio canonica*, or authorization of the church, is an inevitable condition for any educational activity at these institutions. Internal policies of theological faculties and denominational universities are approved by the academic senate only following the church's or religious community's pronouncement. Act no. 131/2002 Z. z. on higher education and on the change and supplements to some acts stipulates which paragraphs of this Act refer to denominational public universities and theological faculties "adequately." This concerns 22 paragraphs²⁶ of the Act on universities, which refer mainly to academic rights and freedoms, establishment of schools, academic self-government and its field of activity, rectors, deans, acceptance and disciplinary proceedings, rights and responsibilities of students, university teachers, and agencies of the scientific council and executive board of the public university.

In 2000, the Catholic Church established the Catholic University in Ružomberok;²⁷ its operation is funded/supported by state contributions. Its establishment was confirmed by the Bishops' Conference of Slovakia. The Catholic University currently has four faculties: Faculty of Arts and Letters, Faculty of Theology (in Košice), Faculty of Health Care, and Faculty of Education.

On January 20, 2004, the National Council of the Slovak Republic approved the Treaty between the Slovak Republic and the Holy See on Catholic Education²⁸ as well as the Agreement between the Slovak Republic and the Registered Churches and Religious Societies on Religious Education.²⁹

In the Treaty between the Slovak Republic and the Holy See on Catholic Education, ratified on June 4, 2004, the Slovak Republic proceeded from the Constitution of the Slovak Republic (above all from Articles 12,³⁰ 24 and 42), and the Holy See, from the documents of the Second Vatican Council, above all from the declaration *Gravissimum educationis* and from the norms of the Canon Law, and both contracting parties also from Article 9 of the Basic Treaty between the Slovak Republic and the Holy See. The Agreement came into force, based on Article VI, paragraph 2, on July 9, 2004.

The Agreement between the Slovak Republic and the Registered Churches and Religious Societies on Religious Education is the first of the series of agreements anticipated by the Basic Agreement between the Slovak Republic and Eleven Registered Churches and Religious Societies.

The ratification of the Agreement took place at the same time as the ratification of the Treaty between the Slovak Republic and the Holy See on Catholic Education, on May 13, 2004. The Treaty between the Slovak Republic and the Holy See on Catholic Education was signed by the President of the Slovak Republic and the State Secretary for the Holy See. The Agreement between the Slovak Republic and the Registered Churches and Religious Societies on Religious Education was signed by three top constitutional representatives³¹ and the leaders of the

Michaela Moravčíková

eleven churches.³² The first one is an agreement with a body of international law and the second one is an intrastate agreement.

These documents introduce religious education into the Slovak educational system as an elective mandatory subject, with students having the option to attend ethics classes as an alternative. The lowest possible number of students in a religious education class is 12.³³ Registered churches and religious societies may also include students from different classes and of different beliefs in religious education classes with their permission. If the number of students is lower than the required 12, the principal gives consent to teaching of religious classes during religious lessons of other denominations, ethics lessons, or after school.

One lesson a week is the standard quota for religious or ethics education at state or private primary schools. At primary denominational schools, students have two lessons of religious education per week. At state or private (non-denominational) high schools, there is one lesson of religious or ethics education per week in the first and second classes. In the third and fourth classes students may—if the school offers such a possibility—choose one of these subjects as a non-mandatory supplementary subject. At denominational high schools students have two lessons of religious education per week in all four classes.

Teachers of religion have the same status in labor law relations as teachers of other subjects; however, they have to be appointed by their church or religious society. For Catholics it is the authorization of *missio canonica*.³⁴ Parents or guardians decide on the religious education of the child until the age of 15.

In both the Treaty and the Agreement, the Slovak Republic guarantees, in accordance with the will of parents or guardians, to enable religious education in preschool facilities, too. The curriculums of religion and religious education have to be approved by the respective church after the statement of the Ministry of Education of the Slovak Republic. Besides expert qualification, religious education also requires canonical mission or authorization by the church or religious society according to the legal regulations of the Slovak Republic. This condition applies for university teachers of theological disciplines as well.

The above-mentioned documents also recognize the right of churches and religious societies to establish and to operate their own schools and school institutions of any kind and type. At the same time, the state guarantees not to require the denominational schools to carry out educational programs inconsistent with the upbringing and education principles of the respective church. Churches pledge to offer both general and special education at denominational schools consistent with the general and special education at state schools of the respective degree and type. Both sides are also obliged to cooperate in the process of preparation and creation of educational programs and in the sphere of education and upbringing in denominational schools. The schools of churches and religious societies will get the same funding as all the other schools in compliance with the legal order of the Slovak Republic. The Agreement also enables churches to establish pedagogical and catechetical centers with a nationwide field of activity in order to provide professional and methodical guidance to denominational schools, as well as expert training of pedagogical and non-pedagogical employees of denominational schools. The state pledges to support financially theological faculties as well as not to create obstacles to the founding and activities of university pastoral centers.

Article 6 of the Agreement between the Slovak Republic and the Registered Churches and Religious Societies on religious upbringing and education declares that the Agreement is open for accession by other churches and religious societies registered in compliance with the legal order of the Slovak Republic. This accession shall be decided upon by registered churches and religious societies participating in the Agreement on the basis of a written request. All contracting parties must agree with the accession. In compliance with the legal order of the Slovak

Republic, any registered church or religious society that is not a signatory of the Agreement can demonstrate a will to sign a similar bilateral agreement with the Slovak Republic.

Notes

- 1 Out of the total of 5,379,445 inhabitants of the Slovak Republic, there are also 7,347 Methodists, 20,630 Jehovah's Witnesses, 3,562 Baptists, 3,217 members of the Brethren Church, 3,429 Seventh-day Adventists, 3,905 members of the Apostolic Church, 1,733 Old Catholics, 6,519 members of the Christian Corps, 1,696 Hussites, and 2,310 Jews.
- 2 This is 0.11 percent of the total number of all inhabitants/believers.
- 3 R. Čikeš, "Registrácia cirkví a náboženských spoločností verzus náboženská sloboda," in *Islam v. Európe*, eds. M. Moravčíková and M. Lojda (Bratislava: Ústav pre vzťahy štátu a cirkví, 2005), 15.
- 4 No. 460/1992 Zb. as implemented in Constitutional Act no. 244/1998 Z. z., Constitutional Act no. 9/1999 Z. z., Constitutional Act no. 90/2001 Z. z., Constitutional Act no. 140/2004 Z. z., Constitutional Act no. 323/2004 Z. z.
- 5 <www-8.vlada.gov.sk/index.php?ID = 1378>.
- 6 <www-8.vlada.gov.sk/index.php?ID = 1379>.
- 7 "Zb." or, since 1993, "Z. z."—abbreviations for "Zbierka zákonov," i.e., Collection of Laws.
- 8 Cf. J. Juran, "Súčasný vzťah štátu a cirkví v Slovenskej republike," in *Ročenka Ústavu pre vzťahy štátu a cirkví 1998* (Bratislava: ÚVŠC, 1999), 115–18.
- 9 Cf. M. Moravčíková and M. Cipár, *Cisárovo cisárovi. Ekonomické zabezpečenie cirkví a náboženských spoločností* (Bratislava: ÚVŠC, 2001), 57–81.
- 10 Act no. 201 from March 29, 2007, amending and supplementing Act no. 308/1991 Zb. on the freedom of religious faith and the position of churches and religious societies in the wording of Act no. 394/2000 Z. z.
- 11 §11 of Act no. 201/ 2007 Z. z. The majority of registered churches and religious societies evidently do not fulfil the relatively high membership condition. These churches and religious societies were registered under the provision of the Act stipulating that churches and religious societies, already pursuing their activities, either under the Act or on the basis of state consent on the date of the Act coming into force, are considered registered. The majority of churches and religious societies in the Slovak Republic work on the basis of deemed registration.
- 12 §11d of Act no. 201/ 2007 Z. z.
- 13 Cf. Reply of the Ministry of Culture of the Slovak Republic to the request for information on the basis of the Information Act no. 211/2000 Z. z. (MK – 65/2001 – IZ from June 7, 2001), according to which "laws regulating the registration of churches and religious societies do not stipulate the motivation of persons when signing the signature sheet declaring their affiliation to a church or religious society, therefore it need not mean their membership according to the internal statutes of the given church or religious society."
- 14 <www.culture.gov.sk/cirkev-nabozenske-spolocnosti/neprehliadnite/spravne-konania>.
- 15 Currently compulsory education in Slovakia is for ten years, but students are in any event no longer required to attend school after completion of the school year in which the student turns 16.
- 16 There are heated debates about university tuition fees at present.
- 17 Published in the Collection of Laws under no. 326/2001 Z. z.
- 18 Published in the Collection of Laws under no. 250/2002 Z. z.
- 19 Section 19 Act no. 596/2003 Z. z. on state administration in education and self-government of schools, and on the changes and amendments to certain acts.
- 20 <www.minedu.sk/index.php?lang=sk& rootId = 37>.
- 21 §10 (5) c), h), j) to m) of Act no. 596/2003 Z. z.
- 22 The Statutory Order of the Government of the Slovak Republic that amends the Statutory Order no. 668/2004 Z. z. on the distribution of income tax revenues to regional self-governments, as amended by Statutory Order no. 519/2006 Z. z.
- 23 §3 (6) of Act no. 597/2003 Z. z. on the funding of primary and secondary schools and school institutions.
- 24 §39 (1) of Act no. 131/2002 Z. z. on universities.
- 25 There are currently seven seminaries in Slovakia: Seminary of Ss. Cyril and Methodius in Bratislava, St. Francis Xavier Seminary in Banská Bystrica-Badin, St. Gorazd Seminary in Nitra, Bishop Ján Vojtašák

Michaela Moravčíková

- Seminary in Spišská Kapitula—Spišské Podhradie, Seminary of St. Charles of Boromej in Košice, Greek–Catholic Seminary of Blessed Bishop Peter Pavol Gojdič in Prešov, and Orthodox Seminary of the University of Prešov in Prešov.
- 26 §§4–6, §8–ž 10, §21 (3), §23, §25–28, §30, §40 (2) and (4), §58 (6), §66, §67, §§70–72, §75 (4), (6), (8), (9), (10) and §102 (3) b) and c) of the Act.
- 27 Act no. 167/2000 Z. z. on the establishment of the Catholic University in Ružomberok.
- 28 Published on July 9, 2004 under no. 394/2004 Z. z.
- 29 Published on July 13, 2004 under no. 395/2004 Z. z.
- 30 “(1) People are free and equal in dignity and their rights. Basic rights and liberties are inviolable, inalienable, secured by law, and unchallengeable. (2) Basic rights and liberties on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status. No one must be harmed, preferred, or discriminated against on these grounds. (3) Everyone has the right to freely decide on his nationality. Any influence on this decision and any form of pressure aimed at assimilation are forbidden. (4) No one must be restricted in his rights because he upholds his basic rights and liberties.”
- 31 The President, the Chairman of the National Council, and the Prime Minister.
- 32 Evangelical Church of the Augsburg Confession in Slovakia; Reformed Christian Church in Slovakia; Orthodox Church in Slovakia; United Methodist Church, Slovak District; Brother’s Unity of Baptists in the Slovak Republic; Brethren Church in the Slovak Republic; Seventh-day Adventist Church, Slovak Association; Apostolic Church in Slovakia; Central Union of Jewish Religious Communities; Old Catholic Church in Slovakia; and Czechoslovak Hussite Church in Slovakia.
- 33 The maximum number of students is 24; this is a principle that applies to all “educational” subjects (e. g. ethics education, fine art education, and physical education).
- 34 Canon 805 C.I.C. and Canon 636 C.C.E.O.

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Religious education in the Republic of Slovenia

Drago Čepar

Statistical data on religious affiliation

Article 41 of the Constitution of the Republic of Slovenia¹ stipulates that no one shall be obliged to declare their religious or other beliefs, so there is no precise insight into the religious structure of Slovenian citizens or residents. However, there exists data from population censuses and the results of social surveys. In recent population censuses that covered all residents, an answer to the question about religious identity was not mandatory, but the majority of residents answered the question. In the 1991 census 71.6 percent of inhabitants declared their religion to be Catholic, 0.7 percent Evangelical, 2.4 percent Orthodox, 1.5 percent Muslim, 4.4 percent unbeliever or atheist, and 4.2 percent declined to answer the question. In the 2002 census 57.8 percent of inhabitants declared their religion to be Catholic, 0.8 percent Evangelical, 2.3 percent Orthodox, 2.4 percent Muslim, 10.1 percent unbeliever or atheist, and 15.7 percent declined to answer the question.² The results of social surveys for the years 2005, 2006, and 2007 are: Catholics 70.3 percent, 64.5 percent, and 66.3 percent, respectively; Evangelicals 1.9 percent, 2.0 percent, and 1.8 percent; Orthodox 1.8 percent, 2.2 percent, and 1.7 percent; and Muslims 1.4 percent, 1.2 percent, and 1.9 percent.³

Legal sources

In its provisions about education and schooling the Constitution does not explicitly mention religious education or denominational activities in school.⁴ Its Article 7 stipulates that the state and religious communities shall be separate; religious communities shall enjoy equal rights and shall pursue their activities freely. Article 14 provides for equality before the law. Article 41 provides for freedom of conscience, including the right of parents to provide their children with a religious and moral upbringing in accordance with their beliefs:

Religious and other beliefs may be freely professed in private and public life. No one shall be obliged to declare his religious or other beliefs. Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions.

Drago Čepar

The Act on Organization and Financing of Child Rearing and Education⁵ (The Education Act)

The Education Act, before later amendments, stipulated in Article 72 that, in public kindergartens and schools as well as in kindergartens and schools that have been granted state licenses, religious activity was not allowed. Religious activity is defined as: catechesis or denominational religious education with the goal of educating children in a particular religion; a subject where a religious community decides about the contents of the lessons, textbooks, education and suitability of teachers; or organized religious ceremonies. In considering the constitutionality of this provision, the Constitutional Court of the Republic of Slovenia, in its Decision No. U-i-68/98,⁶ addressed the admissibility of religious activities in public schools from the viewpoint of the principle of the separation of the state and religious communities. As the Court explained, the state is obliged to pursue neutral, tolerant, and non-missionary practices. So, religious content may not form a part of public instruction in schools. The same holds true of schools that have been granted state licenses; the license provides the mandate to pursue the activity, the permanent and uninterrupted pursuit of which is guaranteed by the state in the public interest, and the state fully finances the performance of that license-based public service. Safeguarding the negative aspect of the freedom of religion, the Court believes it is legitimate to implement the principle of separation between the state and religious communities in public kindergartens and schools in the strictest and most consistent possible manner.⁷ Beyond the performance of public service (outside the framework of the curricula of public, state-funded programs), denominational activity is permissible in kindergartens and schools with a state license.⁸ So the Court states in its decision that the Act's provision is unconstitutional in that part which refers to kindergartens and schools that have been granted state licenses. Consequently, the Act was amended on November 27, 2002⁹ and Article 72 was revised to conform to the Court's decision. In (private) kindergartens and schools with a state license, religious activity is now allowed when performed outside the curricula of public, state-funded programs. Religious activity must not hinder space or interrupt state-funded programs and must be organized so that persons who do not want to participate can come and leave undisturbed.

In special cases, if there are no other appropriate premises in the local community, the competent minister may allow catechesis or denominational religious lessons on the premises of public kindergartens and schools, but only outside the time of the regular curriculum of the school or regular time of operation of kindergarten.

The Agreement between the Republic of Slovenia and the Holy See on Legal Issues¹⁰ (the Agreement)

Article 10 of the Agreement provides:

- (1) In accordance with the legislation of the Republic of Slovenia and the canon law, the Catholic Church is entitled to establish and manage schools of all types and levels, secondary school and university students' halls of residence, and other educational institutions.
- (2) The State shall support the institutions referred to in the previous paragraph under equal conditions as other private institutions of the same kind.
- (3) The status of secondary school and university students and pupils of these institutions is equal to that of secondary school and university students and pupils of public institutions.

The first paragraph of Article 3 states that “the legal order of the Republic of Slovenia guarantees the Catholic Church freedom of activity, worship and catechesis.” We find similar provisions in the agreements of the Government of the Republic of Slovenia with the Evangelical Church in the Republic of Slovenia, the Pentecostal Church in the Republic of Slovenia, the Serbian Orthodox Church Metropolitanate of Zagreb and Ljubljana, the Islamic Community in the Republic of Slovenia, and the Buddhist Congregation Dharmaling.

The Religious Freedom Act¹¹

The Religious Freedom Act is the basic law regulating the manner of provision and implementation of religious freedom, the legal status of churches and other religious communities and their register, their rights, and conditions and procedures for their registration. Its Article 4 (Laity of the State and Equality of Churches and Other Religious Communities) reads as follows:

- (1) Churches and other religious communities shall act separately from the state and shall be free to organize and pursue their activities. The state shall not interfere with their organization and activities except in cases laid down by the law.
- (2) Churches and other religious communities shall have equal rights and obligations. Every church or other religious community shall be independent and autonomous in its organization. The state shall undertake to fully respect this principle in mutual relations and to co-operate with them in the advancement of the human person and the common good.
- (3) The state shall be neutral towards religious beliefs.
- (4) The state shall not express opinion on religious issues.

Article 5 defines churches and other religious communities as organizations of general benefit:

Churches and other religious communities promoting spirituality and human dignity in private and public life, endeavour to create meaning in terms of existence as regards religious life and at the same time exert an important role in public life through their activities by developing their cultural, educational, solidarity, charitable and other activities in the field of social state, thus enriching the national identity and performing an important social role, are organizations of general benefit.

It further states in the second paragraph of the Article: “The state shall respect the identity of churches and other religious communities and shall lead an open and ongoing dialogue with them and develop the forms of lasting co-operation.”

Religious education in public schools

There is no compulsory subject of religion in public schools in Slovenia. In public primary schools (which cover nine years of compulsory schooling, consisting of three triennials) the majority of content related to religion is included in the non-denominational subject, Religions and Ethics. Article 17 of the Primary School Act¹² obliges schools to offer at least six optional subjects, among which are a foreign language, the non-denominational subject of religions and ethics, and rhetoric. Until 2007 it was mandatory for each pupil to select at least three subjects. With amendments adopted in 2007 and applied since January 1, 2008, this number was diminished, so that it is now compulsory to choose at least two subjects. So, the subject Religions and Ethics could be called a “mandatory optional subject.” Every school is obliged to offer it as an optional subject, while its realization depends upon the number of applications. If there are

Drago Čepar

enough pupils who apply for the subject, it is taught in the seventh, eighth, and ninth grades, once a week. In the 2006/07 school year, it was taught in 65 out of 447 primary schools and was attended by 1,774 pupils, that is, 1.1 percent of all (164, 991¹³) primary school pupils. Forty primary schools taught the subject Religions and Ethics in one of the three classes of the last triennium, 18 primary schools in two of the three classes, and 7 primary schools in all three classes. After the application of the mentioned amendments of the Primary School Act the number of pupils who choose this subject dropped substantially. In the 2009/10 school year this subject was taught in 34 primary schools and was attended by 549 pupils. A total of 26 schools taught it in one, four schools in two, and four schools in all three classes of the last triennium. Teachers for this subject were educated in an educational program prepared by the Faculty of Arts and Faculty of Theology of the University of Ljubljana. Study meetings and workshops have been organized for teachers by the National Education Institute since 1998. To develop and promote this subject a project, "Intercultural Dialogue—Religions and Ethics," was organized from 2005 until 2009 at the National Education Institute. A two-day joint meeting for teachers and pupils in the form of a camp has also been organized.¹⁴ Religious content is also taught in mandatory subjects such as Slovenian language, history, civic education and ethics, geography, fine arts, and foreign languages.

In public secondary schools, students acquire their knowledge of religion primarily through subjects such as history, geography, sociology, philosophy, psychology, and Slovenian language. In the textbooks for the mentioned subjects, religions and their sacred texts are introduced. The Grammar Schools Act¹⁵ in Article 33 introduces a special system of so-called compulsory optional contents, which also provides a possibility for students to choose a program related to religion.¹⁶

Religious education in private schools

In Slovenian legislation there is no legal difference between kindergartens and schools established by religious communities, and private kindergartens and schools established by other private-law subjects.¹⁷ Thus, religious communities can establish education institutions, residence halls for pupils and students, and other similar institutions, and in them freely perform educational activities in line with their own statutes in accordance with the constitutional and legal order of the Republic of Slovenia. According to the Education Act (adopted in 1996) the state co-finances the activities of such (private) kindergartens and schools generally by covering 85 percent of salaries and material costs of the program in a comparable public institute, if the mentioned institutes of religious communities have been established in accordance with the law and perform a publicly verified program. However, the state covers 100 percent of salaries and material costs for certain schools that were established before 1996.

The Republic of Slovenia did not inherit from the Socialist Republic of Slovenia a functioning system of private schools at all levels from nursery school to university. So, the share of private schools in the national education system is still relatively small. When in 2007 the Ministry of Education and Sport intended to improve this by some amendments to the Education Act,¹⁸ it also drew attention to some related figures.¹⁹ In the school year 2005/06, out of 798 primary schools in Slovenia there was only one private school, accounting for 0.1 percent of all primary school pupils. Out of 142 secondary schools, there were six private schools, accounting for 2 percent of all secondary school students. The overall share of private schools in the number of pupils and students of primary and secondary schools was 0.8 percent. At the beginning of the school year 2010/11 there were 36 private kindergartens (out of 351),²⁰ three

private primary schools,²¹ and six private secondary schools,²² accounting for 0.24 percent of all primary school pupils and 2.38 percent of all secondary school students (1,939 out of 82,267).²³

The status of religious education in the three private primary schools performing a state-licensed education program differs from one school to another. Waldorf School Ljubljana²⁴ began its lessons in the school year 1992/93.²⁵ In the three years of the last triennium the non-denominational subject Religion and Ethics has been a mandatory subject.²⁶ Alojzija Šuštar Primary School Ljubljana,²⁷ as a constituent part of the St. Stanislav Institute, began its lessons in the school year 2008/09 as the first Catholic primary school. Its share in the national population of primary school pupils is about 0.1 percent. Its particularity is that religious education is a mandatory subject throughout all nine grades. In the first two trienniums the subject is called Comprehension of Religion, and in the last triennium it is called Religion and Culture. The mentioned mandatory subject is non-denominational but, as it is a part of the expanded program, pupils also have the opportunity in the school to attend catechesis which otherwise usually takes place within Catholic parishes. In such catechesis, the school will use the same textbooks and guidelines as the parishes do.²⁸ The Montessori Institute²⁹ began its primary school lessons in the school year 2010/11 at the level of first grade.³⁰ A special subject on religion does not fit into Messori pedagogics for this age of children, but a compulsory non-denominational subject, Religion and Culture, is scheduled for all three years of the last triennium.³¹

Four grammar schools in Slovenia have been established by a religious community,³² the Catholic Church, and had 1,748 students in the 2007/08 academic year, which was 1.9 percent of the total number of students enrolled in secondary schools in Slovenia that year. The non-denominational subject, Religion and Culture, has been taught as a mandatory subject³³ in the four Catholic grammar schools for a number of years. A special textbook with a special title has been written for each grade. The textbooks present the history of world religions, major existing religions, and their sacred texts.³⁴ Waldorf School Ljubljana in its grammar school program has a compulsory non-denominational subject, Religion, in all four years. Euro School (Euro šola), like the public schools, has no mandatory subject on religion in its grammar school program.

The main higher education institution established by a religious community in the Republic of Slovenia is the Faculty of Theology, which is also a member of the University of Ljubljana and has a branch in Maribor. As a part of the national university, it was formed with the establishment of the University of Ljubljana in 1919, and in 1949 was eliminated from the university with an act, but was still recognized. In 1952, the faculty lost this recognition. It regained it in 1991 after democratic changes and once again became a member of the University of Ljubljana in 1992.³⁵ In the 2007/08 academic year, there were 835 (728 in the year before) students, which was 0.8 percent of the total number of students (99,021) enrolled in all higher education institutions. Pedagogical work and material costs are financed 100 percent from public finances from the budget of the University of Ljubljana.³⁶

The endeavor to establish a Catholic university also is ongoing. The first faculty of the emerging Catholic university, The Faculty for Business Sciences, has been established by The Catholic Institute. It opened its doors in the academic year 2010/11 and began giving lectures to its first students on October 4. It is not financed from the budget, so students have to pay a fee, but they will get diplomas with public validity. The legal status of students (including the right to health insurance, subsidized meals, lodging, scholarships, etc.) is equal to the legal status of the students of other (public) universities.³⁷

Drago Čepar

Conclusion

Political and professional public discussions on the model of religious education in Slovenian schools have been ongoing over the past two decades. The international symposium “Religious Education in Slovene Schools: Evaluation and Perspectives” took place in Ljubljana in 2009 (November 26–27), where models of religious education in the schools of Slovenia and some other European countries were presented and discussed by teachers of religious education subjects, headmasters of private and public schools, researchers from universities, and other experts. In addition to lectures, sample class lessons prepared by teachers were organized.³⁸

In its closing statement the participants made observations that in other European countries religious education is present not only in private schools but also in public ones and that in Slovenia knowledge about religion is poor. For Slovenia they stressed the need for the debate to be concentrated on the expert level and not on the political one. The difference between denominational subjects of religion (in the domain of religious communities) and non-denominational ones taught in schools (also in private ones) should be clear. Cross-curricular programs between religious education and other school subjects should be encouraged. The right of parents to religious upbringing and education of their children should be exercised also in public schools. Religious communities should be included in the further development of the model of religious education at the national level.³⁹

Notes

- 1 The Constitution of the Republic of Slovenia, *Official Gazette of the R.S.*, Nos. 33/91, 42/97, 66/00, 24/03, 69/04, 68/06. Translation of specific articles is based on the English translation which may be accessed on the website of the National Assembly of the Republic of Slovenia: <www.dz-rs.si/index.php?id=351&docid=25&showdoc=1>, October 27, 2010.
- 2 Rapid Reports, No. 92/2003, Statistical Office of the Republic of Slovenia.
- 3 S.J.M. 2007/2, *Slovenian Public Opinion, Review and comparison of year-on-year measurements*, University of Ljubljana, Faculty of Social Sciences—Institute for Social Sciences, Public Opinion and Mass Communication Research Centre, Ljubljana, December 2007.
- 4 Article 57 (Education and Schooling): “Freedom of education shall be guaranteed. Primary education is compulsory and shall be financed from public funds. The state shall create the opportunities for citizens to obtain a proper education.”
- 5 *Official Gazette of the R.S.*, No. 12/1996.
- 6 U-I-68/98, of November 22, 2001, *Official Gazette of the R.S.*, No.101/01.
- 7 In April 2010, when considering the constitutionality of some articles of the Religious Freedom Act, the Constitutional Court further elaborated this view in paragraph 86 of the explanation of its Decision (U-I-92/07-23, *Official Gazette of the R.S.*, No. 46/2010) with the following statement: “However, in the case of conflict between positive and negative aspects of the freedom of religion, that is when its positive aspect interferes with its negative aspect, the negative aspect does not have ‘a priori’ priority with respect to the positive aspect.” It concludes that when considering child rearing and education, we have to take into consideration not only the religious freedom of children, but also the constitutional provision that guarantees parents a special aspect of their freedom of religion, namely the right of parents “to provide their children with a religious and moral upbringing in accordance with their beliefs.”
- 8 For a more detailed discussion of this and other constitutional decisions related to freedom of religion and religious communities, see M. Movrin, “Freedom of Religion and the Legal Status of Churches and Other Religious Communities in the Slovenian Constitution and the Decisions of the Constitutional Court of the Republic of Slovenia,” in *The State and Religion in Slovenia, Office of the Government of the Republic of Slovenia for Religious Communities*, ed. D. Čepar (Ljubljana, 2008), 39–55.
- 9 The Act on Amendments of the Act on Organization and Financing of Child Rearing and Education, *Official Gazette of R.S.*, No. 108/2002.

- 10 The Agreement was signed on December 14, 2001 in Ljubljana, and the National Assembly of the Republic of Slovenia adopted the Act ratifying the Agreement between the Republic of Slovenia and The Holy See on legal issues on January 28, 2004 (*Official Gazette of the R.S.—M.P.*, No. 4/04). On November 19, 2003, the Constitutional Court of the Republic of Slovenia delivered its preliminary opinion on the constitutionality of the Agreement (Rm-1/02-21, *Official Gazette of the R.S.*, No. 118/03).
- 11 *Official Gazette of the R.S.*, No. 14/2007.
- 12 *Official Gazette of the R.S.*, No. 12/1996.
- 13 Statistical Yearbook 2008, Statistical Office of the Republic of Slovenia, Ljubljana, 2008, <www.stat.si/letopis/2008/06_08/06-02-08.htm>, October 26, 2010.
- 14 Raw data about schools that executed the program and about the number of participants, as well as other information about the project “Intercultural Dialogue—Religions and Ethics” has been kindly provided to the author of this text by the project manager Mrs. Jožica Gramc, pedagogic counsellor at the National Education Institute.
- 15 *Official Gazette of the R.S.*, No. 1/2007.
- 16 Compulsory optional contents are activities and programs offered to students by schools and also other subjects. Students have some freedom to choose among offered programs, which must not be school subjects and must not be limited by curriculum rules. They are usually implemented in the form of compact full-immersion programs. In the four years of grammar school every student has to take part in 300 hours of these activities (90 hours in each of the first three years and 30 hours in the last year). See the website of the Ministry of Education and Sport: <http://portal.mss.edus.si/msswww/programi2010/programi/gimnazija/obvezne_izbime_vsebine.htm#4.9>, December 28, 2010.
- 17 See also L. Šturm, “State and Church in Slovenia,” in *State and Church in the European Union*, ed. G. Robbers, 2nd ed. (Nomos: Baden-Baden, 2005), 481.
- 18 The amendments were not adopted.
- 19 The website of the Ministry of Education and Sport: <www.mss.gov.si/fileadmin/mss.gov.si/pageuploads/zakonodaja/pdf/OS/ZOFVIOb.pdf>, October 28, 2010.
- 20 The website of the Ministry of Education and Sport: <<https://krka1.mss.edus.si/registriweb/SeznamVrtci.aspx>>, October 28, 2010.
- 21 The website of the Ministry of Education and Sport: <<https://krka1.mss.edus.si/registriweb/Seznam1.aspx?Seznam=2010>>, October 28, 2010.
- 22 They are: Zavod sv. Stanislava, Škofijska klasična gimnazija; Zavod sv. Frančiška Saleškega, Gimnazija želimlje; Zavod Antona Martina Slomška, Škofijska gimnazija Antona Martina Slomška; Škofijska gimnazija Vipava; Waldorfska šola Ljubljana; EURO šola Ljubljana. See the website of the Ministry of Education and Sport: <www.mss.gov.si/fileadmin/mss.gov.si/pageuploads/podrocje/ss/vpis/2010/Vpis_10_p1.doc>, October 28, 2010.
- 23 These most recent figures have been kindly provided to the author by the Ministry of Education and Sport from its archives.
- 24 Waldorfska šola Ljubljana.
- 25 The website of the Ministry of Education and Sport: <www.mss.gov.si/si/delovna_podrocja/osnovnosolsko_izobrazevanje/osnovna_sola/zasebne_osnovne_sole>, October 28, 2010.
- 26 The website of the Waldorf School Ljubljana.: <www.waldorf.si/?w=11>, October 28, 2010.
- 27 Osnovna šola Alojzija Šuštarja Ljubljana.
- 28 The website of Alojzij Šuštar Primary School Ljubljana: <<http://os.stanislav.si/nalozeno/Program31fe6.pdf>>, October 28, 2010.
- 29 Montessori inštitut.
- 30 The website of Montessori Institute: <www.montessori-institut.si/hisaotrok.html>, October 29, 2010.
- 31 Program osnovne šole montessori (Programme of the Montessori Primary School): <www.mss.gov.si/fileadmin/mss.gov.si/pageuploads/podrocje/os/devetletka/program_drugo/Montessori.pdf>, October 29, 2010.
- 32 Zavod sv. Stanislava, Škofijska klasična gimnazija; Zavod sv. Frančiška Saleškega, Gimnazija želimlje; Zavod Antona Martina Slomška, Škofijska gimnazija Antona Martina Slomška; and Škofijska gimnazija Vipava.
- 33 The website of “Škofijska klasična gimnazija”: <<http://skg.stanislav.si/osoli/predmetnik.htm>>, November 8, 2010.

Drago Čepar

- 34 D. Čepar, "Religious Freedom and Religious Communities in the Republic of Slovenia," in *The State and Religion in Slovenia*, ed. D. Čepar (Office of the Government of the Republic of Slovenia for Religious Communities: Ljubljana, 2008), 24.
- 35 The website of Faculty of Theology: <www.teof.uni-lj.si/?viewPage=208>, October 28, 2010.
- 36 Čepar, 2008, 23, 24.
- 37 See the introduction to The Faculty for Business Sciences on its website: <www.katoliski-institut.si/sl/fakulteta-za-poslovne-vede-fpv/predstavitev>, September 22, 2010.
- 38 R. Globokar, "Editor's Preface," in *Religious Education in Slovene Schools: Evaluation and Perspectives*, Proceedings of the International Symposium in St. Stanislav's Institution November 26–27, 2009, ed. R. Globokar (Zavod sv. Stanislava: Ljubljana, 2010), 179.
- 39 *Religious Education in Slovene Schools: Evaluation and Perspectives*, Proceedings of the International Symposium in St. Stanislav's Institution, November 26–27, 2009, ed. R. Globokar (Zavod sv. Stanislava: Ljubljana 2010), 357–58.

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Religious education in South Africa

Lourens M. du Plessis

The demographics of South Africa¹

South Africa is 79.02 percent Black African, 9.58 percent White, 8.91 percent Colored, and 2.49 percent Indian (or Asian). The total population is roughly 50 million. Religious groups break down as follows: 51.7 percent Protestant (including Pentecostal and charismatic churches), 23 percent African Independent Churches, 7.1 percent Catholic, 1.5 percent Islam, 1.2 percent Hindu, 0.3 percent African traditional beliefs, 0.2 percent Judaism, and 15 percent with no stated religious preference (the majority probably adhering to traditional, indigenous) religions. Most South Africans have religious affiliations, and most South Africans are Christians of some sort spread over 34 groupings and several thousand denominations. The more than 4,000 African Independent Churches hold a majority position among the Christian denominations.

Constitutional guarantees for religion and religious freedom

In South Africa “everyone has the right to freedom of conscience, religion, thought, belief and opinion.”² This constitutional guarantee is backed by the prohibition of unfair discrimination by the state or any person against anyone on the grounds of (amongst others) religion, conscience, and belief.³ Constitutional protection for freedom of speech does not extend to advocacy of hatred based on religion that leads to harm.⁴

There has never been an established state church in South Africa and public authorities are required to remain neutral in their relations with religious communities. These communities regulate and administer their affairs independently and within the limits of laws that apply to all, but there is also not an impenetrable wall of separation between the state and these communities. The Constitution, as a matter of fact, envisages manners of protecting the well-being of religious communities. First, persons belonging to a religious community may not be denied the right, with other members of that community, to practice their religion and to form, join, and maintain religious associations and other organs of civil society.⁵ This right may, however, not be exercised in a manner inconsistent with any provision of the Bill of Rights.⁶

Second, religious observances may be conducted at state or state-aided institutions (such as hospitals, prisons, and schools) in accordance with rules made by the appropriate public

Lourens M. du Plessis

authorities and provided the observances are conducted on an equitable basis and attendance at them is free and voluntary.⁷

Third, the Constitution protects the personal and familial concerns of minority religious communities, Muslims and Hindus in particular, by envisaging statutory recognition of marriages concluded under a system of religious personal or family law.⁸

A Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, one of the Constitution's state institutions supporting constitutional democracy, is tasked with the promotion of respect for the rights of religious communities. The commission is furthermore enjoined to promote and develop peace, friendship, humanity, tolerance, and national unity among religious communities, on the basis of equality, non-discrimination and free association.⁹

Religion in public schools

In apartheid South Africa the state showed a distinct bias towards Christianity in matters pertaining to religion and education, and went as far as adopting legislation sustaining Christian national education—premised on Calvinist beliefs and Afrikaner nationalism—for white children in public schools. The government provided an inferior form of (separate) education for blacks, and to an extent also colored and Indian children.

The National Education Policy Act¹⁰ presently provides that state policy regarding education must be in accordance with the Constitution and must facilitate the democratic transformation of the national education system into one that serves the interests of all people in South Africa, and upholds their fundamental rights. A National Policy on Religion and Education has also been published.¹¹ This policy states that there is no state religion, but the state is also not merely a secular one in which a strict separation between religion and the state is maintained. The policy aims to protect diversity and to promote equity. It links religion and education with the African Renaissance, moral regeneration, and the promotion of values in schools.

In terms of Section 15(1) of the Constitution (the freedom of religion clause), read with Section 5 of the South African Schools Act,¹² a learner may not be refused entrance to a public school because he or she does not subscribe to the mission statement of a school where such a statement has religious overtones.

The National Policy on Religion and Education envisages and supports three religiously informed activities in public schools. The first of these is non-denominational religion education which forms part of the curriculum and which is required to be supported by credible teaching and learning materials and objective assessment criteria. The policy highlights the key features of religion education and of the teaching and learning processes in this regard, and requires teaching materials to be developed through the collective efforts of provincial authorities, learning area committees, tertiary institutions, religious bodies, and researchers. A Standing Advisory Committee for Religion assesses and advises on learning and teaching support materials. The policy also provides for principles pertaining to the content and assessment of religion education programs.

The second religious activity for which the policy provides is denominationally specific religious instruction, allowed in public schools, but not as part of the formal school program. The state does not provide any financial support for such instruction and denominations/religious communities themselves must provide the instructors.

Finally the policy—and indeed Section 15(2) of the Constitution (as was mentioned earlier)—provides for the conduct of religious observances in public schools. The governing body of such a school is—in terms of Section 7 of the South African Schools Act¹³—obliged to

determine the nature and content of such observances, acknowledging the multi-religious nature of the school community and the quest for equitable treatment as required by the Constitution. No one may interfere with someone's Section 15(2) right to conduct religious observances in a public school, and at same time the right to freedom of religion precludes the enforcement of attendance at such religious observances. However, this ancillary right of non-attendance can be waived by, for example, acceptance of and/or acquiescence in an institution's constitution and regulations.

The Constitutional Court in *MEC for Education: KwaZulu Natal and Others v. Pillay and Others*¹⁴ held that learners who choose to do so, should not only be allowed, but also encouraged, to wear in school clothes and/or jewellery that express their religious beliefs. The court saw this as a celebration of identity surpassing a mere toleration of otherness.

Early in 2008 a Bill of Responsibilities, drafted by a Forum of Religious Leaders, was made available to (public) schools for use in their compulsory Life Orientation Program. The Department of Education has furthermore approved a national school pledge for public comment.

Independent/private schools

Section 29(3) of the Constitution entrenches "everyone's" right to establish and maintain, at one's own expense, independent educational institutions not discriminating on the basis of race, registered with the state and maintaining standards not inferior to those at comparable public educational institutions. Sections 29(3)(b) and (c) make it possible for the state to monitor and maintain a degree of control over the provision of education at independent institutions. Note that, in line with international human rights law, Section 29(3) extends the right to the protection of all independent educational institutions, and not only those based on a common culture, language, or religion. Section 29(3) is not understood as imposing an obligation on the state to allow parents to educate their children at home.

Independent educational institutions must be established and maintained at private, not public, expense, though state subsidy for such institutions, subject to the discretion of the relevant authorities, is not precluded.¹⁵ The state, having chosen to extend subsidies to independent schools, may not discriminate unfairly against and between various independent institutions in violation of the equality clause,¹⁶ though differences in the nature and extent of subsidies granted to independent schools may be permissible if they are based on relevant, rational, and bona fide criteria. The state cannot, however, through a selective grant of subsidies, secure an advantage for an independent school on, for instance, the basis of race or religion. On the other hand, a selective grant of subsidies could be justifiable as an affirmative action measure authorized by section 9(2) of the Constitution.

The fact that Section 29(3)(a) of the Constitution explicitly proscribes discrimination on the basis of race in the establishment of independent schools, does not imply that such institutions are at large to discriminate unfairly on other grounds, in a manner violating Section 9(4) of the Constitution which prohibits unfair discrimination against anyone on one or more of the grounds in Section 9(3). The state may furthermore prohibit the establishment and maintenance of any independent school discriminating on the basis on race.

Private schools are free to decide how they want to deal with religion in the education of their learners. The state cannot prescribe to them the direction that the form(s) of religion education or religious instruction that they offer should take. It is conceivable, however, that the state could—as a consequence of its monitoring powers and responsibilities provided for in

Lourens M. du Plessis

Sections 29(3)(b) and (c) of the Constitution—monitor the quality of, for instance, the religion education provided at an independent school.

In *Christian Education SA v. Minister of Education*,¹⁷ the Constitutional Court held that corporal punishment in an independent Christian school cannot be justified under the right of freedom of religion, even though the school and its teachers, parents, and learners believed that such punishment has to be part of a Christian upbringing of children. A statute proscribing corporal punishment in all schools was thus held to bind a private Christian school.

Notes

- 1 According to the Census of 2001.
- 2 Section 15 of the Constitution of the Republic of South Africa, 1996.
- 3 Sections 9(3) and (4) of the Constitution.
- 4 Section 16(2)(c) of the Constitution.
- 5 Section 31(1) of the Constitution.
- 6 Section 31(2) of the Constitution.
- 7 Section 15(2) of the Constitution.
- 8 Section 15(3) of the Constitution.
- 9 Section 185 of the Constitution.
- 10 Passed in 1996.
- 11 In *Government Gazette* 25459 GN 1307, September 12, 2003.
- 12 Passed in 1996.
- 13 Passed in 1996.
- 14 2008 (2) BCLR 99 (C.C.), 2008 (1) S.A. 474 (C.C.).
- 15 Section 29(4) of the Constitution.
- 16 Section 9 of the Constitution.
- 17 2000 (10) B.C.L.R. 1051 (2000 (4) S.A. 757) (C.C.).

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Religious education in Spain

Carmen Garcimartín Montero

Social demographics

Spain is a non-denominational country from a juridical point of view. There are no official statistics regarding religious affiliation as such, because the Spanish Constitution forbids any request of statement about it.¹ However, it is clear that Catholics are a majority—more than 75 percent of the total population, according to the Centre for Sociological Research.² As stated by this survey, 1.8 percent of the Spanish population would pertain to non-Catholic denominations and 20.6 percent would be atheistic or non-believers. However, other sources estimate that 2 percent of the population is Islamic, 1.5 percent Evangelicals, 2 percent Orthodox Christian, and that there is a small representation of Jews. Most persons from these groups are from non-Spanish origins.³

The religious configuration of the country has changed in the last decade due to immigration; the number of non-Catholics has increased significantly. This can be easily perceived by looking at the total amount of entities recorded in the Registry of Religious Entities in 1997 and the one documented ten years later, as shown in Table 44.1.

This change in the socio-political configuration, together with a general drop of religiosity and the development of some policies prone to remove religion from the public square, shape a country that will be hardly known, in this regard, by those who studied the Spanish case a few decades ago.

Table 44.1 Non-Catholic organizations in Spain

<i>Denomination</i>	<i>1997</i>	<i>2007</i>
Evangelicals	719	1293
Islamic	74	406
Jewish	14	18
Orthodox	5	13

Source: Former Spanish Secretary for Relations with Religious Denominations, and author

Carmen Garcimartín Montero

Constitutional context

The Constitution of 1978 is the general framework of the legislation in force. It conveyed a change in the principles governing religious freedom and the relations between religious denominations and the state after decades of a Catholic confessional regime under General Franco.⁴ According to the Constitution, relations between state and religion shall be informed by the principles of religious freedom, separation, neutrality, equality, and cooperation.⁵ This implies that religious and civil powers are separated; there cannot be any entanglement between religious denominations and the state; each one has its own sphere of power. There will not be an official religion of the state. Moreover, the state shall be neutral with regards to the different denominations that exist in the country, without discrimination, that is to say, without preference for any denomination over the others. Also, the state must cooperate with religious denominations on issues of common interest.

Education is addressed in Section 27 of the Constitution.⁶ Section 27–3 deals with religious education; it states that public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions. It is important to be aware that the right to religious education is regulated in the section about education, not in the one related to religious freedom (Section 16).⁷ Therefore, Section 27–3 guarantees the right to religious education in schools; other kinds of religious training—churches, for example—come under Section 16.

One of the problems that arises from Section 16 is in determining whether it contains just a constitutional guarantee or demands, in addition, positive action from public powers. In this regard, Section 27 should be considered together with Section 9–2, which says that it is incumbent upon the public authorities to promote conditions that ensure that freedom and equality may be real and effective.⁸ The best conditions for religious education to be effective would be that all citizens could choose the school they want for their children, and that religious education would be imparted throughout the whole school time, not only during the religious education class. However, as the Supreme Court stated, public authorities cannot guarantee the positive aspect of that right, since there would be as many schools free of charge as parents with different moral values in every town or village.⁹

Private schools—most of them run by the Catholic Church¹⁰—are entitled to have their own principles and aims regarding education, but they are not free of charge, although public funding can be obtained under certain conditions. Then, public authorities can only guarantee the negative aspect of the right, that is to say, that nobody will receive a religious or moral education that they do not want. Therefore, public schools, available to everybody because they are free, must be neutral; they must be neither confessional nor ideologically oriented. There cannot be any kind of religious or moral indoctrination, as stated by the Constitutional Court: “in a political legal system based on pluralism and ideological and religious freedom of people, and non religious spirit of the State, all public institutions, and particularly educational centres, must be ideologically neutral.”¹¹

Legal context

The first Spanish Act on Education was enacted in 1857,¹² and was in force until 1970, except for a brief period during the II Republic (1931–36).¹³ In accordance with the denominational ethos of the country at that time, religion was taught in all schools. Besides, the content of all subjects had to be in conformity with the Catholic doctrine. The General Act on Education of 1970

brought huge reform to the education system,¹⁴ but it did not have a deep impact on religious education.

Right after the Constitution of 1978 was adopted, a new Act of Education of 1980 stated that parents have the right to choose the education—including religious education—that they want for their children.¹⁵ This Act conveyed two main changes: religious education should not be compulsory, and denominational education other than Catholic can be imparted in public schools. All Acts on education henceforth enacted included these same provisions regarding religious education.¹⁶

The Catholic Church signed an Agreement with the state on “Education and Cultural Affairs.”¹⁷ This deals with religious education throughout different sections. The first one restates the principle of Article 27–3 saying, “in view of the principle of religious freedom, educational activity shall respect the fundamental right of parents concerning the moral and religious education of their children in schools.”¹⁸ Other sections regulate several aspects of religious education (they will be mentioned in due course). Due to the continual changes of state law, some sections are outdated.

The Agreements between the state and religious denominations other than the Catholic Church currently in force devote Section 10 to religious education. Their content is quite similar, with slight differences for a better regulation of this issue according to the particular tenets of each denomination.¹⁹

Apart from that, there are also a number of bylaws that develop—mostly in the Additional Dispositions—religious education at the different levels of education, and the status of the professors of religion.

State financial support for religious education

Section 27–6 of the Spanish Constitution recognizes “the right of individuals and legal entities to set up teaching establishments,” provided they respect constitutional principles. Therefore, religious denominations may establish and run private schools, at all educational levels. The Agreements with all religious denominations include this right, with the only prerequisite that they shall conform to the legislation in force concerning this matter and the exercise of their activities.²⁰ The Catholic Church can also establish Minor Seminars, that should be considered as elementary or high schools. The general legislation will be applied, although neither a minimum of registered students nor acceptance in accordance with geographical criteria shall be required.²¹

As public schools are not enough to guarantee all children access to free education, the state endows a number of private schools, which must, in exchange, offer free education.²² These subsidized schools are subjected to a system of control and management similar to that of the public schools. That means that they lose a part of their autonomy; for example, they must have a School Council—a body of control and supervision—constituted by a representation of teachers, parents, pupils, staff, and the local government. Also, the admittance of pupils must be done on the same basis as in public schools.

However, they maintain their own ethos, and, for example, they may have religion as a cross-curricular issue, or set up a religious approach to some specific matters. Therefore, they can properly be labelled as religious schools.

Carmen Garcimartín Montero

The current model of religious education

Religious education in public schools

Religious education in public schools is regulated in the Agreements between the state and the religious denominations and in several bylaws.²³ The Act on Education does not state anything with regard to this issue, but rather hands over the question to the Agreements.

According to these norms, religion is a not compulsory subject in all mandatory educational levels in public schools.²⁴ Parents are responsible for choosing the kind of religious education (if any) they want for their children who attend a public school.²⁵ They shall express their choice at the beginning of the academic year.²⁶

However, some matters should be clarified in order to understand why religious education in Spain is, and has been, highly controversial. Religion can be a denominational or non-denominational subject—both not compulsory.²⁷ The non-denominational option includes “history and culture of religions”:²⁸ its contents shall be fixed by the state powers, and, as far as it is a kind of general non-denominational knowledge, any qualified teacher of the school, without any specific requirement, shall impart it.

Regarding the denominational option, we must distinguish two different situations.

- 1 According to the Agreement with the Holy See, all schools must offer the subject of Catholic education, but parents are free to choose it for their children or not.
- 2 According to the Agreement with the Jewish, Muslim, and Evangelical communities, the state guarantees the right to receive religious classes in public schools, upon the request of parents, students, or the board of directors. The school shall provide premises suitable for religious education instruction activities. The same arrangement applies to subsidized schools, as long as the Jewish, Islamic, or Evangelical education does not collide with the ethos of the school.
- 3 Other religious denominations are not entitled to provide religious education in public or subsidized schools.²⁹

The authorities of the church or community will determine all content of the denominational option.³⁰

The implementation of the Agreement with the Catholic Church posed two main problems that remain unsolved, although they have encountered different solutions during the course of recent decades.³¹ The first one is related to the main features of this subject. The Agreement with the Holy See states that religion will be imparted under the same conditions as the other subjects, and the Act of Education reaffirms that religion will be imparted in accordance with the Agreement.³² However, religion, although subject to assessment, will not be taken into account in the curriculum when students are competing in a public competition.³³

The second problem at issue is the alternative to the religion class. There had been several patterns: general activities or studies, non-confessional religious culture, ethics and morals, and so on. All of them fuelled criticisms and disagreements.³⁴ Currently, each school can establish the alternative activity to be done by pupils who do not attend religion lectures. These activities cannot be discriminatory, in the sense that they cannot mean an advantage to those going to them over those who do not attend. They may not consist of any kind of religious knowledge—even non-confessional—and they must be open to parents.

The state authority appoints teachers of the Catholic religion, but the religious authority (the local bishop) makes the proposal. Communities in compliance with the respective Federation

will designate teachers of other denominations. Due to the special structure of the entities that signed the Agreements of non-Catholic denominations with the state (a Federation of communities of the respective denomination), it may not be an easy task to name the teachers of religious education, as there are very different communities belonging to the same Federation that must agree to appoint the teacher who will impart religious education.³⁵

The teachers must meet two requirements: to have the same qualifications as teachers from the corresponding educational level, and to be considered suitable for that position under the denomination's criteria (the so-called *Declaración Eclesiástica de Idoneidad* in the Catholic Church³⁶). If the teachers of religion are already teachers in the school, there is not any problem with their status. If they are not, there have been many controversies regarding their position. They are not civil servants—as other teachers are—but they will have a permanent contract.³⁷ However, the teachers can be dismissed if the bishop or the religious authority considers them not suitable any longer to hold that position, for example, because their teachings or even their personal life is not in accordance with religious doctrine and morals.³⁸

The salaries of the teachers of Catholic religion will be paid by the state. The salaries of the teachers of Evangelical or Islamic religion will be paid by the state if there are more than nine pupils in the school who asked for that religious option. Nothing is provided regarding Jewish education, probably because there will not be many public schools where ten or more pupils would ask for that option. The amount of the salaries will be, in all cases, the same as non-permanent teachers of that level of education.³⁹

Religious education in private schools

Private schools, even subsidized by the state, may have their own ethos. If they receive public money they must be in compliance with the aforementioned dispositions. In cases where they are run and endowed exclusively by private owners, they may endorse a particular rationale or value system that may include religion as a compulsory subject. Therefore, the school is not obliged to include in its curriculum an alternative subject to religion.

Teachers of religion in private schools, both subsidized and non-subsidized, must have the same qualifications that are required in public schools. If they are subsidized, their salaries will be paid by the state; if they are not, they will not receive any funds from the public powers.

Notes

- 1 See Section 16–2 of the Constitution, below.
- 2 Report number 2.824, December 2009 (see <www.cis.es/cis/opencms/Archivos/Marginales/2820_2839/2824/es2824.pdf>). Data provided by some denominations are different from the official statistics. See <www.ferede.org/general.php?pag=estad>; <www.islamweb.net/esp/index.php?page=articles&id=144539>; <www.fcje.org>.
- 3 40,000 Jews, according to their own data. See note 2.
- 4 This regime lasted from the end of the Civil War, in 1939, until Franco's death, in 1975. The new Constitution initiated an era of political change that re-established the monarchy and established a democratic regime whose major pillar is the Constitution of 1978.
- 5 Section 16: "1. Freedom of ideology, religion and worship is guaranteed, to individuals and communities with no other restriction on their expression than may be necessary to maintain public order as protected by law. 2. No one may be compelled to make statements regarding his or her ideology, religion or beliefs. 3. No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions."

Carmen Garcimartín Montero

- 6 Section 27 states: “1. Everyone has the right to education. Freedom of teaching is recognized. 2. Education shall aim at the full development of human personality with due respect for the democratic principles of coexistence and for basic rights and freedoms. 3. The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions. 4. Elementary education is compulsory and free. 5. The public authorities guarantee the right of all to education, through general education programming, with the effective participation of all sectors concerned and the setting-up of educational centres. 6. The right of individuals and legal entities to set up educational centres is recognized, provided they respect constitutional principles. 7. Teachers, parents and, when appropriate, pupils shall participate in the control and management of all centres supported by the Administration out of public funds, under the terms established by the law. 8. The public authorities shall inspect and standardize the educational system in order to ensure compliance with the laws. 9. The public authorities shall help the educational centres that meet the requirements established by the law. 10. The autonomy of Universities is recognized, under the terms established by the law.”
- 7 Notwithstanding, religious education is mentioned in the Fundamental Law 7/1980, of Religious Freedom, July 7, as a part of the content of religious freedom. See section 2–1–c: “The freedom of worship and religion guaranteed by the Constitution secures the right to [...]; Receive and give religious teaching and information of any kind, orally, in writing or any other means; choose religious and moral education in keeping with their own convictions for themselves and for any non-emancipated minors or legally incompetent persons, in and outside the academic domain.” Also, section 2–3 states that in order to ensure true and effective application of this right, public authority shall adopt the necessary measures to facilitate religious training in public schools.
- 8 Section 9–2: “It is incumbent upon the public authorities to promote conditions which ensure that freedom and equality of individuals and of the groups to which they belong may be real and effective, to remove the obstacles which prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.”
- 9 Supreme Court, January 31, 1997. Certainly, there are other ways to facilitate the conditions for this right that may be real and effective, such as school vouchers. However, this system has never existed in Spain.
- 10 Due in part to the confessional past of the country, Catholic schools played—and still do—an important role in education. Currently, around 32 percent of the schools of the country, overwhelmingly run by the Catholic Church, are private. (Cfr. <www.educacion.es/mecd/estadisticas/educativas/dcce/Datos_Cifras_web.pdf>). There are only two private Spanish Evangelical schools subsidized by the state, both in Madrid, three Jewish (two in Madrid and Melilla, subsidized, and one, not subsidized, in Barcelona), and no Islamic schools.
- 11 Constitutional Court, Ruling 5/1981, February 13. The implementation of the principle of neutrality in public schools is not an easy matter. If the transmission of values is a cross-curricular field, that would mean that no moral values should inform the educational program; but even allowing that this were possible, such neutrality is also a moral position, mostly a relativistic one.
- 12 Act on Public Education, September 9, 1857 (named *Ley Moyano* after its author).
- 13 From 1931 to 1933 there were some attempts to introduce non-religious education, banning the religious orders in Spain and secularizing the whole education system. However, a change in the government prevented those measures from coming into effect; therefore, there was not an effective change in the education system even during the more anti-clerical period of the II Spanish Republic.
- 14 Act 14/1970, General Act on Education and Funding of Education Reform, August 4.
- 15 Fundamental Law 5/1980, about the Bylaws of the Schools, June 19.
- 16 See Fundamental Law 8/1985, on the Right to Education, July 3; Fundamental Law 1/1990, on General Organization of the Education System, October 3; Fundamental Law 10/2002, on Quality of Education, December 23; Fundamental Law 2/2006, on Education, May 3. As a consequence of the particular circumstances of Spanish political life, with two big parties alternating in government, and the clear stance that education is one of the most important social issues, each party enacted new laws that were widely implemented by the other party (of course, until the party in government got the chance to approve a new Act).
- 17 Instrument of ratification dated December 4, 1979.
- 18 It adds that the education provided in public school will be respectful towards Christian values. This statement appears to be just a non-mandatory wish; actually, it is not saying that at least some Christian values are not regularly respected in public schools.

- 19 Acts 24, 25, and 26/1992, November 10, approving respectively the Agreement of cooperation between the State and the Federation of Evangelical Religious Entities of Spain, the Israelite Communities of Spain, and the Islamic Commission of Spain.
- 20 Section IX of the Agreement between the State and the Catholic Church on Education and Cultural Affairs; Section 10–15 of the agreement of cooperation between the State and the Federation of Evangelical Religious Entities of Spain; section 10–16 of the Agreements of cooperation between the State and the Israelite Communities of Spain, and the Islamic Commission of Spain.
- 21 Section VIII of the Agreement between the State and the Catholic Church on Education and Cultural Affairs.
- 22 Section 108 of the Fundamental Law of Education states that both public and subsidized schools render the public service of education.
- 23 Religious education is currently addressed in Additional Dispositions of the Royal Decrees that approve the curricula of the different levels of education: Royal Decree [regulation published by Executive Order] 1630/2006, December 29, for pre-schoolers; Royal Decree 1513/2006, December 7, for primary education; Royal Decree 1631/2006, December 29, for secondary education.
- 24 Religious education is not in the curricula of the last two years of upper-secondary school (*bachillerato*) as it is not a mandatory level of education. At university level, the *Teaching of Catholic doctrine* is an optional subject in the Education Program in Colleges, under the same conditions as other subjects (see cases May 20, 1988 and July 3, 2001, of the Supreme Court, and case 187/1991, October 3, of the Constitutional Court).
- 25 At secondary level, if the student is 18 years old or more, he can make the choice himself (see Royal Decree 1631/2006, December 29, 2).
- 26 It is not an easy task knowing the real percentage of students that choose one or other denominational religious education. Education is within the powers of the regional governments (*Comunidades Autónomas*); some of them publish these numbers, but others do not. Then, we must rely on the information provided by the religious denomination or in other secondary sources. In the academic year 2009–10, 72.1 percent of students chose to study Catholic religion (see <www.conferenciaepiscopal.es/ensenanza/estadisticas.htm>)); 0.098 percent of students chose Evangelical religion (see <www.pluralismoyconvivencia.es/recursos_didacticos/emas/ensenanza/index.html#R-ensenanza_evangelica_en_las_escuelas>); and 2.1 percent of students chose Islamic religion, according to a Report from the Spanish Union of Islamic Communities, *Estudio demográfico de la población musulmana* (October 2009). It must be noted, however, that this percentage varies deeply depending on the regional area; in Ceuta and Melilla more than 50 percent of pupils choose Islamic education, while in other parts of Spain nobody chooses this option. Furthermore, immigrant pupils almost double the numbers of Spanish pupils who choose it. No data could be found in regard to the Jewish option; apparently, it is not imparted in any public school in Spain.
- 27 The weekly amount of hours varies depending on the educational level and other circumstances (for example, if there is a compulsory subject of a second Spanish language), but it is more or less the same as art or physical education.
- 28 Royal Decree 1631/2006, December 2, 4.
- 29 As stated by the second Additional Disposition of the current Act on Education, only denominations that signed an Agreement with the state can provide for religious education in public schools. Amazingly, before the Fundamental Law on the General Organization of the Education System of 1990, no special provision was adopted in this regard and, therefore, two religious denominations, the Adventists and the Mormons, got the approval of the state to impart religious education at all educational levels (see the Regulations of the Ministry of Education of July 1 and November 7, 1983, regarding the religious education of the Seventh-day Adventist Church, and of June 19, 1984 and November 22, 1985 with regard to the Church of Jesus Christ of Latter-day Saints). This situation came to an end with the aforementioned Law of 1990, which reserved religious education in schools to denominations that had an Agreement with the state.
- 30 The contents of the subject of Catholic education were published in a Regulation of the Ministry of Education of June 6, 2007; of Evangelical Education in a Regulation of the Ministry of Education of June 28, 1993; and of Islamic Education in a Regulation of the Ministry of Education of January 11, 1996.
- 31 These matters caused a noteworthy number of judicial decisions, sometimes openly inconsistent with the legislation in force or with previous decisions.

Carmen Garcimartín Montero

- 32 See Section II of the Agreement: “Educational plans [...] shall include the teaching of Catholic religion in all educational centers, in conditions equal to those of the basic subjects.”
- 33 See Royal Decree 1631/2006, December 29, 7, and Royal Decree 1513/2006, December 7.
- 34 Although an alternative subject to religious education is not unequivocally stated in the Agreement, the Catholic Church manifested its objection to those subjects offered by the government, as it considered religious education is debased when the alternative is a subject of casual contents. See <www.conferenciaepiscopal.es/documentos/Conferencia/LOE2007.htm>.
- 35 Apparently, the disagreement between different communities of the Islamic Commission of Spain prevented the appointment of teachers of Islamic education on different occasions.
- 36 In the Catholic Church, it includes at least 180 hours of specific studies about the teaching of religion.
- 37 This has not always been that way: until 2007, the contract had to be renewed every academic year.
- 38 Royal Decree 696/2007, June 1, about the labor conditions of teachers of religion.
- 39 See the Agreements of April 23, 1996, with the Evangelical and Islamic Communities, and April 9, 1999, with the Catholic Church, regarding the appointment and economic regime of teachers of religion.

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Religious education in Sudan

Giuseppe D'Angelo

Social and religious aspects

The case of Sudan is simultaneously interesting and problematic. We must consider Sudan, first of all, as a valid representation of the particular heterogeneity of the African continent and especially of Africa south of the Sahara: various ethnic groups and subgroups and, above all, religious groups, characterize it (about 60 percent Muslim, 15 percent Catholics, and 25 percent animists or those belonging to traditional autochthonous religions). Consequently, Sudanese society could be described as an inter-cultural, inter-religious, and multicultural state.¹

Such a context surely gives rise to an occasion to examine whether Sudan's own model of religious education is respectful to the religious sensibilities of all its citizens. The alternative is a total absence of religious education, amenable to an emerging climate of global secularization perhaps, but probably not suitable to Sudan.

Religion in Sudan creates special problems. Due to the heavy concentration of Islam in the North and Christianity in the South, Sudan has experienced in recent years enormous religious conflict. In fact, bloody and long-lasting armed conflicts between these two rival religions have played a large role in the nation's history. Periodic efforts to enforce Islamic law throughout the country have led to ongoing conflict in Sudan and deepened the South region's claims of autonomy.

More recently, a new constitutional phase in Sudan's history has been opened. It represents the early results of peace agreements that produced two Interim Constitutions (2005)—one for the North and one for the South. Proposed referenda, however, might lead to either a stronger unitary state or the secession of the South from the nation.²

Constitutional context

In truth, it is not easy to believe that the outcome of any referenda will be decisive and lead Sudan to a definitive goal. No matter the outcome, however, religion is sure to maintain a public role, and this circumstance will necessarily influence Sudan's educational system in the future.

Giuseppe D'Angelo

Specifically, it is worth noting that the role of Sharia in the Sudanese legal system, and thus its education system, is an ongoing controversy. In Sudan's experience, educational policy is persistently marked by the use of religion, including Sharia law, for political aims.

To better understand this observation,³ a brief overview of Sudan's history, as it pertains to the relationship between law and religion, is appropriate.

We can here limit our attention by proceeding from the second phase of the political-military dictatorship of Jafaar Numeiri, which succeeded (1969) the brief democratic experience that set up the defenestration of Ibrahim Abboud (1964). Numeiri announced in 1977 the creation of a committee for the revision of Sudanese legislation, headed by the influential Hassan al-Turabi.⁴ This represented the starting point for the issuance, in 1983, of the "laws of September," through which the Sharia was explicitly recognized as the source of law for all Sudan.

In reality, the evaluation of the laws of September and the real meaning thereof that emerged in the context of international reading, is complex. The extended recognition of Sharia as the source of the law has surely led to decisive recognition of Sudan as an Islamic state, or the affirmation of a conception of national unity based on the once Arab and Islamic nature of national community (with evident disrespect to the religious and ethnic varieties of the country, as well as its being, above all, African). Nevertheless, the international reading itself outlines the negative consequences, in terms of progressive isolation of the dictator, coming from the indiscriminate enforcement of Islamic law.

In this perspective, we should highlight, considering the aim of our analysis, that the introduction of Sharia was not accompanied by a profound activity of Islamization of civil society as in the will of the same governmental contexts that have supported Numeiri.

The arrival on the political scene of Omar Hasan Ahmad al-Bashir, in 1989, marks the real turning point in the evolution of the process of Islamization.

Legal reforms—the introduction of a new penal code, largely based on the dictates of Sharia (1991), constituting a more knowledgeable and radical interpretation of political Islam—were now accompanied, internally, by a more decisive socio-cultural transformation (involving army and media as well as schools) and, externally, by a decisive policy of international propaganda based on the values of Islamic fundamentalism. Subsequently, radical enforcement of legal reforms clashed with the need to overcome the deadlock deriving from the progressive international isolation of Sudan. This then led to an attempt to "reconcile" Islamic law with the postulates of Western constitutionalism and the ideology of human rights.⁵ In fact, it should be said that the aim of the Islamization of Sudanese society remains, at last, still valid, especially in the North, as we will immediately see.

State, law, and religion in the Interim Constitutions of 2005

In the National and Southern Interim Constitutions, the relationship between state and religion is significant, even of symbolic, primary importance.

We can first consider the Interim National Constitution. It deals with the recognition of the "political" role of religion; it includes a decisive guarantee of rights and freedoms, including those pertaining to religion. In fact, the document clearly moves Sudan in the direction of being described as a non-secular nation, although the goal, if it is a goal, is not fully achieved. Thus, while it is not possible here to analyze the question more specifically, it is clear that the constitutional statements about the nature of the state and the goal of public institutions allow the recognition of the supremacy, for example, of Islam in the North. In other words, a certain

tendency to color with ethnic-religious content the political objectives of the state remains evident. This necessarily influences the government's approach to education, as we will see.

The condition of Southern Sudan is somewhat different with specific regard to the recognition of the importance of religion. As Article 8 of Southern Sudan's Interim Constitution states, "in Southern Sudan, religion and state shall be separate. All religions shall be treated equally and no religion shall be declared the official religion of Southern Sudan; religion or religious beliefs shall not be used for divisive purposes." Thus, Sudan seriously seeks to move toward separation of church and state, although it does not exclude that religion still plays a relevant role in public life.

Religious education

As mentioned earlier, it is rather clear that the Sudan school system serves the aim of politic elites. A brief historical overview with specific regard to the Sudanese educational system as well as consideration of the same theme in light of the actual constitutional context confirms this circumstance.

Like many African states after achieving independence, Sudan was faced with a situation in which the educational system was regarded as useful for the needs of the colonial administration so that the construction of a new system—one indeed useful for the Sudanese people—was a very difficult aim.

Of course, the education system was judged inadequate for the needs of social and economic development in Sudan so that many subsequent attempts to reorganize it were proposed and discussed, although, in the end, the lack of funds made it virtually impossible to make any real progress.

The strong link between education and religious values emerges more clearly with the advent to power of President Bashir. In fact, the issue of religious education can be considered essential for the construction of the "Islamization" put in place by Sudanese dictators, and above all by Bashir himself. That approach influences much of today's education system, especially in the North: all the education system is to be based on the teaching of religious values, so that religious precepts should guide the teaching of all academic disciplines. On these bases and considering that Sudan appears as an Islamic state, the state itself guarantees the observance of religious values by teachers and the consistency of the teaching programs to the dictates of Islam.

More recently, the demands of the international community, reclaiming real protection for the constitutional rights and especially for freedom of religion and freedom of conscience, constitute a very important opportunity to rethink the relation between education and religion in Sudan, consistent with international norms. Consequently, the Sudanese Constitutions begin by providing specific rights to education, relating them to the principle of equality before the law and to respect for all cultures and religions.

But the attempt to conform education to international standards has thus far not experienced adequate success. Consider, as an example, the Sudanese Constitution of 1999.

This text explicitly considers the promotion of science, art, and culture as well as education to be a very important objective of the state, to be implemented in accordance with the constitutional rights of individuals (first of all, religious freedom), but we can also take care to consider that the real aim of this promotion is, in reality, to reach the elevation of society towards values of religiousness, piety, and good deeds. (See Article 12 of the Sudanese Constitution of 1999.) At the same time, the state shall direct policies of education, moral care, national guidance, and spiritual cleansing to grow a good generation (Article 14 of the Sudanese

Giuseppe D'Angelo

Constitution) and, as Article 18 clearly explains, those in state and public life shall envisage the worship of God, wherein Muslims stick to scripture and tradition, and shall maintain religious motivation and give due regard to such spirit in plans, laws, policies, and official business in the political, economic, social, and cultural fields in the service of God.

At first glance, education seems not to be useful to the aim of the Islamization of society as in the past. But a closer reading of the whole constitutional framework should lead us to be more careful in this assessment. The education of youth is still characterized by strong elements of morality and spirituality so that recognition of the importance of a religious education—especially a religious education within Islamic dictates—seems to be, in truth, automatic.

This trend is now substantially confirmed—with due differentiation to the Interim Constitution of Southern Sudan—by the Interim Constitutions of 2005.

For example, Article 4 (b) of the National Interim Constitution (dedicated to the Fundamental Bases of the Constitution) states that religions, beliefs, traditions, and customs are the source of moral strength and inspiration for the Sudanese people. On these bases, it seems difficult to believe that education of youth could take place without regard to religious values. If nothing else, the provision makes it much easier to direct education along religious lines. More precisely, that provision constitutes a decisive element to legitimate, in the North, religious education strictly according to the dictates of Islam, the creed of the majority of the population or, if we prefer, of the Sudanese political elites. In my opinion, this is a trend that could be considered almost the same, involving the relationship between the statement of constitutional rights and the sources of law, especially the acceptance of Sharia as a source of law, which is stated by the Interim Constitution of the North.⁶ We know in fact that it provides many dispositions involving the guarantee of constitutional rights, but it is difficult not to realize that the real meaning and efficacy of the rights that are formally recognized in that Constitution are conditioned by other important factors.

On the one hand, we have to consider the incidence of social factors like the importance of strong religious values; on the other hand, we also have to consider that the inviolable rights provided by the Constitution are subjected to possible restrictions in the cases and manner established by the law; but this is like saying that the effective contents of these rights are substantially determined by Islamic law, which is immediately operating in keeping with the explicit claim contained in Article 65 of the Constitution itself.

Well, we can observe that this double form of conditioning is active in education too.

First, the social context certainly favors the orientation of education according to religious values and dictates, and precisely to the values and dictates of Islam. Second, viewing the theme from the constitutional context, we can consider, for example, the right to teach religion or belief in places suitable for this purpose which is expressly stated by Article 6 (e) of the National Interim Constitution: it is evident that this statement can imply very decisive limitations for this right because of the need to determine what is the meaning of the formula “places suitable for this purpose.” However, it is also evident that important limitations could be imposed by the necessity to protect the sensibility of Muslims.

We can also consider, in the same perspective, the constitutional provisions that are expressly dedicated to education. For example, Articles 13 and 14 provide specific commitments of the state to promote the education and the welfare of young generations; Article 44 then considers education as a right for every citizen so that the state itself shall provide access to education without discrimination as to religion, race, ethnicity, gender, or disability.

Nevertheless, there is no direct reference to religious education or to religious values as crucial elements of youth education. But, as we have already seen, we cannot ignore other provisions of the Constitution itself which provide various avenues to address youth education. For

example, Article 16 provides that the state shall enact laws to protect society from corruption, delinquency, and social evils and steer the society as a whole towards virtuous social values consistent with the religions and cultures of Sudan. Such directives might be used to guide youth education

On these bases, the presence of religious education in public schools and, generally, the religious orientation of all instruction, could be considered consistent with the constitutional framework. In truth, by reading the Constitution in this way, we have an open invitation to direct a specifically Islamic education in the schools of North Sudan and this circumstance can evidently interfere with the solemn affirmation of religious freedom and the express principle of equality before the law and non-discrimination on religious grounds which is contained in the Constitution itself.

In the case of the South, we have to consider the solemn affirmation of the principle of separation between state and religion. This is a very significant recognition but, as we have seen previously, it cannot lead—even in the South—to confine religion to the sphere of the individual conscience. In fact, the Interim Constitution of the South substantially moves from the idea that religion can still play a relevant public role, in consolidating the peace process as well as in relation to future political determinations.

This is why religious education—naturally oriented, in this case, by Christian values—maintains its important role in public and private education but, at the same time, the general context is less favorable to the occurrence of cases of religious discrimination. However, situations of inattention to the needs of non-Christians cannot be excluded at all, as we will see below.

The legal context: state, law, and religion

As already noted, the transitory constitutions of 2005 highlight, when speaking of religious freedom and the relationship between state and religion, a double disciplinary regime. The transitory national constitution continues to recognize the value of Sharia as a source of law in the North. The transitory constitution of Southern Sudan affirms an innovative principle of separation between the state and religion that clearly serves to impede the notion that Islamic law can be recognized as a general source of the law. In both cases, the constitutional declarations relating to the system of the sources of law and the general relationship between state and religion are followed by the recognition of the right of religious freedom as well as the prohibition of religious discrimination, even if the real meaning of this recognition changes considerably with the changing of the affirmations that precede it. Nevertheless, even when living with the explicit recognition of a principle of separation, religion in Sudan maintains a role of primary importance on a political level as well as in the concrete development of legal and administrative relationships.

Generally, the (formally different, but substantially common) recognition of the “public role” of religion produces very negative consequences with regard to religious autonomy from the state, while the state institutions also show very evident difficulties in adapting their action to the constitutional indications, especially in respect of the protection of collective and individual freedoms.

The government tends to interfere, particularly in the North, with the religious choices of individuals, favoring conversion to Islam and forbidding, or rather discouraging, the abandonment of the Islamic faith, and to maintain a penetrating form of control on religious-associative phenomena.⁷

Within this context, public institutions confirm, in the North, a privileged consideration towards Islam. Laws regarding religious freedom are interpreted in a more coherent way when they are applied to non-Islamic groups, while, in the South, the same appear to be ineffective

Giuseppe D'Angelo

and inapplicable. Religious rules of Islam continue to constitute, in the North, a very important parameter for the evaluation of the lawfulness of the behavior of individuals and groups, even when they are not Muslims.

At the moment, neither the common constitutional recognition of the right to religious freedom, nor the constitutional diversification, between North and South, of the relative regimes of the relationship between the state and religion still seem to act, on the whole, as a factor of improvement of qualitative standards regarding religious rights and freedom. But they still have not led to any relevant legislative reforms, but rather operate, on an interpretative level, as a further factor of territorial re-adaptation to the already existing regulations.

This leads to results that are somewhat ambiguous, above all in the North, leading to new limitations of individual freedoms as well as making old discriminations even more severe.

On several more specific profiles, geographical location influences the real content of constitutional rights. In other words, the Sudanese reality is quite different depending on the territorial specificities (especially between North and South), so that an overall view of the matter remains problematic.

However, we can say that the South of the country is far more liberal; nevertheless it is also to be considered that several of the limitations of religious freedom or rather cases of religious discrimination in the North tend to be reproduced or rather crystallized in the South, especially with regard to non-Christians.

Religious education in public and private schools

It is not easy to describe religious education in Sudan by recourse to the patterns and parameters valid for analysis of Western legal systems. In fact, a consideration of religious education as a purely optional teaching matter or, alternatively, as part of an educational system that respects a strictly interpreted principle of secularism, is probably impractical.

As we have just seen, religious values have a vital role in Sudanese society and are considered among the development objectives set by the Constitution itself. In this context, religious education might be considered even to have physiological goals; so, the real problem is constituted by the need to prevent teaching of religion as a way of imposing a particular religious faith upon those who do not want to profess it or who don't want to profess any faith. In other words, the concrete content of religious teaching should not be that of a specific religion only.

This should represent the decisive element in the assessment or, if one prefers, the objective to be pursued but, as we have seen, this aim is substantially hampered, especially in the North, from a consideration of the values of one religion as an element for strengthening political legitimacy.

High levels of illiteracy, the lack of funds, the effects of the civil war, and the fact that most schools are located in the urban centers, especially in the capital Khartoum, hinder an overall assessment of the educational system, especially in terms of its real performance. But the identification of some main lines of the Sudanese organization of religious education remains possible. It is indeed useful for a better reconstruction of the different models of the state's approach to religious education in the modern world, according to the objectives of this volume.

It is evident, first, that religious education peacefully constitutes a basic teaching subject just like languages, mathematics, and science. Nevertheless, this circumstance has important consequences. All schools in the North are expressly required to teach Islamic education classes to non-Muslims, even if public schools are sometimes allowed to excuse non-Muslims from Islamic education classes. So, the state itself guarantees the compliance of one's education to Islamic values and dictates. The possibility to follow Christian religious education classes is sometimes

granted to Christian students in the North, but it is often difficult to achieve, due to the lack of qualified teachers.⁸

As noted earlier, the teaching of religious values is not excluded, in truth, even in the context of the teaching of subjects such as, for example, science and history, because the educational system is substantially oriented to educate Sudanese citizens to respect the fundamental values of Islam in their daily lives. At the same time, it is worth considering that non-Muslim students live in a highly discriminatory situation. The religious needs of the faithful of minority religions are largely disregarded. We can consider, as an example, the case of holidays in public schools: the Christian students of the North have to go to school on Sunday, just like all other students. Similarly, Muslim students have to go to school on Friday in the South.

Finally, just like public education, the theme of religious education in private schools cannot be evaluated in the light of the approach valid for Western systems. Private education is indeed very important, especially in the South but, unlike in Western contexts, its role is not so much in ensuring freedom of choice but rather enabling the achievement of a minimum level of instruction of the population.

As a result, the existence of a sort of monopoly in private education cannot be evaluated negatively, although we could consider it as a very critical element if we analyze the situation in the light of the Western approach. This circumstance does not exclude, however, that public institutions are hostile to private schools. We could fairly say that the obstacles imposed by government authorities have a reason other than to provide secular education as a whole. Specifically, it represents a consequence of the fact that public authorities consider the associative phenomena as a danger for social cohesion. Consequently, private schools still suffer the interference of public authorities.

Christian private schools are substantially free to organize the teaching of Christian religion but they have to respect the indications of public authorities with regard to the other classes; at the same time, they must employ (state approved and from public schools) teachers to hold Islamic religious classes.

Notes

- 1 Miguel Angel Ayuso Guixot, *Christian-Muslim Relations in the Sudan: A Survey Through The Sudanese Politics, Islamochristiana* (Roma: Pontificio Istituto di Studi Arabi e d'Islamistica, 30, 2004), 132.
- 2 Sudan has now completed its transitory phase. The referenda's results have confirmed the will for secession of the Southern Sudanese, so that the birth of the Southern Republic of the Sudan has been declared (July 9, 2011). Clearly, this is a very important matter, although it does not alter anything written in this chapter.
- 3 The relationship between Sharia law and politics is very important in the Sudan. So international literature frequently recognises that intolerance towards the attempts at Islamization has acted as fuel to the claims for autonomy of Southern Sudan. See Aharon Layish, *The Reinstatement of Islamic Law in Sudan under Numayrī: An Evaluation of a Legal Experiment in The Light of Its Historical Context, Methodology, and Repercussions* (Leiden, Boston, Köln: Brill, 2002), 68.
- 4 M. Burr and R.O. Collins, *Hasan al-Turabi and the Islamist State, 1989–2000* (Leiden: Brill, 2003).
- 5 See I. Bantekas and H. Abu-Sabeib, "Reconciliation of Islamic Law with Constitutionalism: The Protection of Human Rights in Sudan's New Constitution," in *African Journal of International and Comparative Law/Revue Africaine de Droit International et Comparé* 12 (October 2000).
- 6 For a further explanation of my opinion, see Giuseppe D'Angelo, "Factor religioso, procesos constitucionales, transiciones constitucionales: la experiencia de Sudán," in *Revista general de derecho público comparado*, <www.iustel.com>, vol. 4 (1/2009).
- 7 U.S. Department of State, *Report on International Religious Freedom, 2008–2009–2010*.
- 8 ACS (AIUTO ALLA CHIESA CHE SOFFRE), *La libertà religiosa nel mondo. Rapporto 2008* (Roma, 2008).

Religious education in Sweden

Lars Friedner

Religious demographics

Until 2000, Sweden had a state church system.¹ Since the sixteenth century, the Evangelical Lutheran Church had been the state church.² With the state church system abolished, the Lutheran Church of Sweden is still the majority church, counting over 70 percent of the population as members.³ Compared to membership in the Church of Sweden, other religious communities in Sweden are extremely small. The Roman Catholic Church, the Mission Covenant Church of Sweden, the Pentecostal movement, the Eastern and Orthodox Churches, and Muslim communities each claim about 1 percent of the population as members or “served.”⁴ There is also an atheist organization in Sweden,⁵ but its official membership is even less than that of most minority religious communities.

Swedish education

The Swedish school system consists of pre-school classes, primary school, secondary school, and upper secondary school.⁶ Primary and secondary school, which a pupil normally attends from the age of seven till the age of 16, is compulsory.⁷ It is an obligation for the municipalities to hold schools for children and youth within their areas.⁸ Historically, the municipalities have fulfilled this obligation through the running of public schools. During the last few decades, however, quite a lot of private schools have opened. This is mainly due to the fact that the municipalities now have to support private schools economically in the same way, in principle, as public schools.⁹ Among the private schools there are relatively few denominational schools.¹⁰ As an effect of the financing system of the schools, there are no schools within the school system that do not receive public financial support.

To open a private school, which is entitled to be a part of the national school system, to give diplomas, and to receive public economic support, the organizers must meet certain standards.¹¹ The application for approval is handled by the Swedish Schools Inspectorate.¹²

Private schools as well as public schools have to follow the state-approved curricula. Regarding religion, the education in both types of schools has to be comprehensive and scientifically based.¹³ There shall be teaching *about* religion but no *religious instruction* or *confessional*

elements. The teaching must cover all the major world religions (Christianity, Islam, Hinduism, Buddhism) but, as an effect of Swedish history, have a special focus on Christianity.¹⁴ Besides education, which follows the curriculum, a private school with a denominational aim could offer confessional elements for pupils, although they need to be non-compulsory.¹⁵ On the other hand, it is obvious that parents, who have chosen a denominational school for their child, normally have done this because of the religious convictions of the family.

Religion is a mandatory subject in the primary and secondary school¹⁶ as in the upper secondary school.¹⁷ All schools, public as well as private, are supervised by the Swedish Schools Inspectorate. The task of the Inspectorate covers all school subjects, and there are no special authorities that deal with teaching of religion. All schools also have to take part in an evaluation program led by the Swedish National Agency for Education.¹⁸

There is no special system for appointing teachers of religion. Thus, as is the case for all teachers, the teachers of religion in public schools are employed and paid by the municipality; and in private schools by the owners/management of the school. The government had, at the time of writing, presented a bill to Parliament, which called for drafting a system of licensed teachers, and which was due to come into full effect sometime in 2012.¹⁹ If the bill is approved by Parliament, only licensed teachers will be regularly employed and entitled to allot marks.²⁰

Besides some private schools, the Swedish school system thus does not take any responsibility for religious instruction for children and youth. As an effect of this, the matter is a question for the parents.

The religious communities regularly offer some kind of religious instruction for their children and youth members. Such religious instruction takes place on the premises of the religious community. It happens, though, that a group of pupils in a school (most probably in the secondary school and upper secondary school) form a religious club or association. Such a community is normally allowed to use the school buildings,²¹ as are other clubs and associations formed by the pupils. Sometimes a priest, or another religious leader, is invited to a school to give his or her views, as a part of the education about religion. In this purpose it also happens that a school-class pays a visit, during school-time, to a church or another religious building.²²

The religious communities do not receive any public financial support specially designed for religious instruction. Many of the religious communities, though, are granted general economic support from the State.²³ Some of them (including the Church of Sweden) have instead the possibility of imposing their church levies through the tax system.²⁴ There are as well general state (and municipal) grants for organizations that arrange education, especially for children and youth.²⁵ This system of grants is probably sometimes used by the religious communities for religious instruction.

The long-lasting state church period in Sweden has of course affected the education system. At the time when the municipalities first were obliged to offer school education to all children (1842), the Lutheran Church was responsible for the schools.²⁶ Eventually the ropes tying together church and school loosened, but as late as the 1960s one could still see signs of the state church in the school system.²⁷ But, today, the schools are secular.

A major issue regarding school and religion in Sweden discussed widely in recent years is the matter of having an end-of-school-year “breaking-up” ceremony in a church. This has been a tradition in many Swedish schools, although in several places not a very old tradition. It is probably not to be regarded as a remainder of the state church system, but as a tradition in its own right. It has been discussed whether this tradition could remain in a secular school and a multicultural society. It seems, though, as if the opposition to the tradition mostly comes from atheist parents, and less from parents of religious conviction other than Christianity.

Lars Friedner

Some parents have opposed the “breaking-up” ceremony in a church through reports to the Swedish Schools Inspectorate. A recent case that recites the approach of the Inspectorate also is a fitting conclusion to a discussion of the role of religion in a nation where church ties to education die slowly. According to the Inspectorate:

The breaking-up ceremony in June 2010 was located to the church’s parish house. A priest talked to the children about what God has given each of them. He urged them to clasp their hands and to say a prayer. Two hymns were sung. ... The municipality declared that the programme for the ceremony had been unanimously decided by ... the School Council, where parent’s representatives from every class have a seat. Traditionally, the school cooperates with different associations, among them the church is an important collaborator. During the school-years, education about all religions is included, which guarantees that no influence occurs as matters the religious affiliation. The principal element in the breaking-up ceremony programme was that the pupils in each class were given the possibility to express happiness and to create a lovely atmosphere by the singing of summer songs. The element of the priest with the invitation to saying a prayer was, in the context, a small and short element and well adapted. The tradition is strong in the school and in the community regarding celebrating the breaking-up in this way, and where singing of hymns is also included. The programme for the ceremony was handed out to everyone in connection to the ceremony.

The Inspectorate concluded that:

A school always has to consider if it is appropriate to have a breaking-up ceremony on the premises of the church. The breaking-up ceremony is an essential and important part of the activities of the school. The ceremony frames and ends the common work of the semester and is an issue for all pupils of the school and for its entire personnel. If a school chooses to have the breaking-up ceremony on church premises, it risks that some pupils are locked out from the community at an occasion, which of all pupils is understood as important and significant. ... It is important that the head-teacher keeps the control over the final shape of the breaking-up ceremony, if it is held on the church’s premises and if a priest participates. It is essential that a school shapes the breaking-up ceremonies so that all pupils can be able to participate. The parents shall be able to send their children to the school with confidence, assured that the children are not prejudicially influenced for the benefit of one or another conviction. ... The limits for when a breaking-up ceremony is regarded as religious worship must be judged in each individual case. In some cases a breaking-up ceremony on the premises of the church may imply an influence towards a specific conviction from how the ceremony is shaped. In this case, it has been informed that the pupils sang hymns and that a priest invited them to say a prayer. The Inspectorate judges that the invitation to say a prayer during a school breaking-up ceremony must be regarded as a confessional element. ... The education at school shall be non-confessional. (The school’s) breaking up ceremony in June 2010 contained confessional elements. (The municipality) has consequently not acted accordingly to the statutes regarding the accomplishment of (the school’s) breaking-up ceremony in June 2010. The Inspectorate therefore criticises (the municipality).²⁸

Sweden

On the other hand, the Inspectorate has handled cases where the conclusion has been that it can be accepted that a school “breaking-up” ceremony is held in a church. Another case from 2010 mirrors this. In that case a report had come to the Inspectorate, saying that:

The programme of the semester breaking-up ceremony in (the school) in June 2009 was confessional and that no-one has the right to force the citizens to participate in a religious context or to assign their religious conviction. (The report also stated that the school had registered the pupils’ applications for exemption from the breaking-up ceremony and that the registration had been based on religious criteria.) ... The municipality declared that (the school) had not listed the pupils who had chosen not to be present at the breaking-up ceremony in the church. Every year, the personnel have a discussion how to arrange the breaking-up ceremonies and as a stage in this work the school has chosen to investigate how many pupils who, for different reasons, feel that they can not be present in the church. At the breaking-up ceremony in June 2009, it was four or five out of the school’s 370 pupils, who had chosen not to participate and therefore the school did not see it as necessary to arrange the breaking-up ceremony in any other way than it had been done before. The breaking-up ceremony was judged to be non-confessional.

The Inspectorate concluded:

introductorily, that the school had not formally forced any pupil to participate in the breaking-up ceremony in the church or to declare his or her religious conviction. Neither is there anything that indicates that the school had set up a list containing personal information about the pupils who had chosen not to participate. ... When it comes to the question if it is consistent with the rules to hold a breaking-up ceremony in a church, the following may be said: The breaking-up ceremony is a central and important part of the school’s activities. The breaking-up ceremony frames and ends the common work of the semester and is an issue for all pupils of the school and for its entire personnel. By choosing to have the breaking-up ceremony in a church, the school risks that some pupils are locked out from the community on an occasion, which of all pupils are understood as important and significant. ... A school which considers to arranging activities, which a minority of the pupils may understand as annoying, also has to pay attention to the fact, that the pupils may be said to have a dependent position to the school. In practise, it can therefore be difficult for a pupil to choose anything else than what seems to be prescribed by the school. The possibility to apply for exemption from e.g. a breaking-up ceremony may, in practice, be understood as small, as the effort to say no becomes too big a sacrifice for the pupil in relation to e.g. teachers and schoolmates.²⁹

The Inspectorate referred to the case *Lautsi vs. Italy* (30814/06) of the European Court for Human Rights and continued that it did:

not—from the considerations of the case—judge it generally to be contrary to the European Convention to hold breaking-up ceremonies in the church. The state of matters which the European Court has judged regards religious symbols which were found in the pupils’ class-rooms and which the pupils saw every day and were influenced by in their situation of education. A breaking-up ceremony which is held in the church is an isolated element in the activities and can not be said giving expression to the school’s position in the same way as did the crucifixes in that specific case. ... The limits for when a breaking-

Lars Friedner

up ceremony is regarded as religious worship must be judged in each individual case. In some cases a breaking-up ceremony in the church may imply an influence towards a specific conviction, from how the ceremony is shaped. In the actual case appears, that the breaking-up ceremony was held in (a church) and that a priest gave a speech. There was singing of a hymn ... but, as appears, no prayer, benediction, creed, or any other religious elements. The Inspectorate judges ... that, according to the programme which had been presented, the emphasis of the breaking-up ceremony was on traditions and being together. The breaking-up ceremony in question ... must therefore be regarded as consistent with applicable practice. ... The Inspectorate considers that nothing else has come out than that (the municipality) has acted within the frames of the applicable regulation in the field. The Inspectorate wishes though to take up the matter that it is the school's head-teacher who is responsible for how the breaking-up ceremony is shaped and performed. It is important that the head-teacher keeps control of the shaping of the breaking-up ceremony, if it is held in the church. The Inspectorate wishes finally also with severity to remind of the fact, that it is urgent that the schools shape the breaking-up ceremonies so that all pupils may feel that they can participate and that all parents with the same confidence can send their children to the school, assured that the children will not be prejudicially influenced for the benefit of one or another conviction. Therefore, a school has to consider accurately if it is appropriate to hold a breaking-up ceremony in the church. ... The Inspectorate does not take any steps (against the municipality) except the already made observations.³⁰

Conclusion

Swedish schools are generally excellent. While traces of the state church (Lutheran) system can still be seen in Swedish public schools, the schools are now largely secular and friendly to religious freedom and the increasingly diverse range of religions adhered to by students and their parents.

Notes

- 1 Act (1998:1592), Inaugurating the Church of Sweden Act, 1998:1591 (*sw. lag om införande av lagen om Svenska kyrkan*).
- 2 Göransson, *Svensk kyrkorätt—en översikt* (Stockholm 1993), 61.
- 3 <www.svenskakyrkan.se>.
- 4 <www.sst.a.se>; it must be noticed, however, that the stated figures of persons who are “served” by a religious community in some cases are estimated by the authorities for purposes of obtaining financial support from the state. When, in the public debate, the number of Muslims in Sweden is mentioned, one can often hear the figure of about 4 percent, which in this case aims at the number of persons that have their origin in a Muslim background abroad.
- 5 Swedish Humanist Association (*Sw. Humanisterna*).
- 6 1:1 School Act, 1985:1100 (*Sw. skollagen*); a new School Act was due to come into effect on July 1, 2011. See School Act 2010:800. The Swedish school system also comprises welfare for school children, Sami schools, special schools, schools for pupils with learning disabilities, upper secondary schools for adults, and education in Swedish for immigrants. These schools are left aside in this report; with the new School Act the pre-schools will become an evident part of the school system, not just the pre-school classes.
- 7 3:2 School Act 1985:1100; 7:10 and 12 School Act 2010:800.
- 8 1:4 School Act 1985:1100; 2:2 School Act 2010:800.
- 9 9:6 School Act 1985:1100; e.g. 10:38 School Act 2010:800.
- 10 <www.skolverket.se>.
- 11 9:2 School Act 1985:1100; 2:5 School Act 2010:800.
- 12 *Sw Statens skolinspektion*.

- 13 Expressly mentioned in 1:5–7 School Act 2010:800, but also valid today, although not mentioned in the current School Act.
- 14 E.g. Ordinance (SKOLFS 2010:37) with Curriculum for the Primary School, Secondary School, Pre-School Classes, and Welfare for Schoolchildren (Sw. *förordning om läroplan för grundskolan, förskoleklassen och fritidshemmet*).
- 15 1:7 School Act (2010:800); valid also today, but not mentioned in the current School Act.
- 16 Ordinance with Curriculum for the Primary School, Secondary School, Pre-School Classes, and Welfare for Schoolchildren.
- 17 Directions and General Advice of the Swedish National Agency for Education (SKOLFS 2000:1) on Courses in the National Programmes of the Upper Secondary School (Sw. *Skolverkets föreskrifter och allmänna råd om kurser i gymnasieskolans nationella program*).
- 18 Sw. *Skolverket*.
- 19 Prop. 2010/11:20
- 20 Ibid.
- 21 Prop. 2009/10:165, 227.
- 22 Regarding semester breaking-up ceremonies in churches, see below.
- 23 § Act (1999:932) on Support to Religious Communities (Sw. *lag om stöd till trossamfund*).
- 24 16 § Religious Communities Act, 1998:1593 (Sw. *lag om trossamfund*).
- 25 § Ordinance (1991:977) on Public Grants to Popular Education (Sw. *förordning om statsbidrag till folkbildningen*).
- 26 Primary School Regulation of 1842 (Sw. *1842 års folkskolestadga*); see Richardson, *Svensk utbildningshistoria—skola och samhälle förr och nu*, 8th ed. (Lund 2010).
- 27 Thelin, *Exit eforus—läroverkens sekularisering och striden om kristendomsundervisningen* (Stockholm 1981).
- 28 41:2010–3865.
- 29 41–2009:3425.
- 30 Ibid.

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Religious education in Switzerland

René Pahud de Mortanges and Raimund Süess

History and social demographics¹

Switzerland geographically lies in the middle of Europe. It is not a member of the European Union, but connected to it by several bilateral treaties. The model of the republican federal state forms the basis of the Swiss Constitution. Besides the federal government, the 26 constituent states, the cantons, also have considerable duties and competences. Out of the 7.8 million inhabitants of Switzerland, 21.6 percent are foreigners. The majority of the population belongs to a Christian denomination: 42 percent of the inhabitants are members of the Roman Catholic Church; 33 percent are members of the Protestant church; 4.2 percent belong to a Muslim community; 0.25 percent belong to a Jewish community; and 11 percent of the population is unaffiliated. The rest of the population belong to different religions.²

The contemporary regulation of religious education has a historical background. The cantons³ have been divided into three denominational groups since the Reformation: the Roman Catholic cantons (in particular Fribourg, Lucerne, Ticino, and Valais), the Protestant cantons (in particular Basel, Bern, Geneva, and Zurich), and the cantons where the two denominations are equally present (for example, Glarus, Grisons, Aargau, and St. Gallen).

Until the nineteenth century, the churches were strongly involved in the school system; the schools were half under church control, half under public control. Everyday life at school was orientated towards religion, and religion was of great importance for education as a whole. Denominational religious education, which instructed the children in the respective denomination of the canton, was therefore a matter of course. It was attempted to put the schools in the whole country under state control and to vastly detach public education from religious content for the first time during the Helvetic Republic (1789–1803). At that time, Switzerland was a centralized state, controlled by France. This first attempt was unsuccessful; after the intermezzo of the Helvetic Republic, the again-sovereign cantons reintroduced the old school system. In the course of the nineteenth century, a gradual deconfessionalization of the school system occurred.

A milestone in the evolution of human rights in Switzerland was the year 1874. At that time, the newly revised Constitution stated the sanctity of religious freedom in its Article 49. In Paragraph 2, it was explicitly mentioned that the individual citizen cannot be forced to

participate in religious education. Article 27 incorporated the rule that all children have to attend public schools, independently from their denomination. In the Protestant cantons and the cantons where the two denominations were equally present, religious education was held in a denominationally neutral context. This led the Catholics living in these cantons to keep their children away from religious education. Dispensations were particularly effected by order of the bishops and the pope.⁴ The schools in the Catholic cantons, on the contrary, were still strongly denominational. Only after the Second World War and after the internal reformation of the Roman Catholic Church in the course of the Second Vatican Council⁵ was the current system of academic religious education developed. This system allowed both denominations to organize their own religious education classes.

Guidelines in the Swiss Federal Constitution

Freedom of religion and conscience (Article 15)

Which legal norms matter for religious education in Switzerland today? First of all, the different regulations in the Federal Constitution, which was totally revised in 1999, are important. The Constitution establishes freedom of religion and conscience in its Article 15, Paragraph 1. This principle is defined in more detail in Paragraph 2, whereas Paragraphs 3 and 4 state the positive and negative aspects of the freedom of religion.⁶ In these two Paragraphs, religious education is explicitly mentioned. On the one hand, each person has the right to attend religious education (positive) but, on the other hand, the state is not allowed to force anybody to attend religious education classes (negative). Therefore, there needs to be the possibility to be exempted from religious education classes. Indeed, dispensation is only possible from denominational religious education, that is, religious instruction. If in regular class, religious or ideological content is taught from an objective point of view, the student has to participate.⁷

Article 3—distribution of competences between the federal state and the cantons

Article 3 of the Federal Constitution is the basic legal norm concerning the distribution of authority between the federal state and the cantons. Switzerland pursues the principle of the enumeration of authority of the federal state, which means that the Federal Constitution in principle only enumerates the areas for which the federal state is competent; everything which is not regulated by the federal state subsidiarily falls under the competence of the cantons.⁸ Nevertheless, a few cantonal competences are explicitly mentioned in the Constitution as well, as is the case for the regulations in respect of school education (Article 62) and church matters (Article 72). This only has a declaratory character.⁹

Article 62—school education

Article 62 states that the school system is in principle within the cantons' competence (Paragraph 1).¹⁰ They have to administer and supervise primary school, which has to be sufficiently and generally accessible (Paragraph 2). The canton therefore also has to guarantee that religious neutrality is respected at school. This implies that every child, regardless of his or her religious affiliation, is entitled to attend public school and that the school has to act in a denominationally neutral way. There should nevertheless still be room for religion at school. However, it needs to be treated in a realistic, objective, and neutral way.¹¹ The obligation to attend school, which is

René Pahud de Mortanges and Raimund Süess

also established in Paragraph 2, equally obliges children, parents, and school authorities; the latter are not allowed to grant global dispensations from primary school education.¹²

In Paragraph 4, the principle of cantonal competence for the school system is made relative. In some academic areas, harmonization between the cantons should be aspired to in order to achieve unification across Switzerland. The cantons should take action on the basis of inter-cantonal collaboration. This process is currently under way. Concerning religious education, the so-called *Lehrplan 21* (academic curriculum 21) is of significant importance (see below).¹³

Article 72—state and church

According to Article 72, Paragraph 1 of the Federal Constitution, the cantons are competent for the regulation of the relationship between church¹⁴ and state. This provision only has declaratory character because of Article 3 of the Federal Constitution.¹⁵ In order to regulate the relationship between religious communities, the cantons primarily make use of the legal concept of recognition under public law.

Principle of ideological neutrality

In denominational matters, the state has to act in a neutral way. It is not permitted to identify with or privilege a particular religious community or ideology.¹⁶ This principle is considered part of the freedom of religion, even though it is not explicitly mentioned in the Federal Constitution.¹⁷ The state policy of neutrality is not absolutely binding. The Swiss Federal Court has clarified that neutrality cannot be equated with irreligious laicism. Religious and metaphysical elements may be part of state action. The fact that the cantons have the possibility to legally recognize religious communities does not contradict the principle of neutrality either.¹⁸

Public schools, as state institutions, have to abide by the policy of religious neutrality. They are therefore not allowed to systematically orientate the content and methods of teaching towards a particular denomination.¹⁹ However, this does not preclude the cantons from offering denominational religious education at public schools.

Private law—religious upbringing by the parents

Article 303, Swiss Civil Code

The family law of the Swiss Civil Code regulates religious upbringing (Article 303) under the chapter “parental custody.” Parents have the right to bring up their children religiously (Article 303, Paragraph 1), but they can also decide to do without. The age of maturity in religious matters is 16 in Switzerland (Article 303, Paragraph 3).²⁰

Decisions of the Federal Court concerning swimming lessons

It can sometimes be difficult to determine the content and extent of the parental upbringing right. This is especially true when it comes into conflict with the obligations of the school authority and the child’s rights. In this context, the Federal Court decided in 1993 that a request for dispensation from the mixed-gender swimming lessons at school, submitted by parents for religious reasons, had to be granted.²¹ In a 2009 case, the Federal Court changed its practice: for reasons of integration of foreigners and the best interest of the child, it established a general obligation to attend swimming lessons.²²

Recognition of religious communities under public law

For the organization of the relationship between state and religious communities in Switzerland, most cantons²³ have adopted the legal concept of recognition under public law. Thereby, a cooperative relationship between state and religious communities is established. When a state recognizes a religious community, it becomes a corporation under public law. In this legal form, the religious community is authorized to collaborate with the state in different areas and in particular to raise church taxes from its members.²⁴

Recognition under public law also has an impact on religious education. The state only works together with recognized religious communities. From a legal point of view, this is, however, not a condition for collaboration. Thus, the cantonal administration can, for example, grant an Islamic community the right to organize religious education classes, even though it is not recognized under public law.²⁵

Religious education in particular

As already seen, the cantons are competent for the regulation of academic as well as religious matters. Thus, there are 26 different systems of organization of academic education, in particular religious education, in Switzerland.²⁶ All cantons have in common that religious education, in whatever form, is offered.²⁷ In the following section, an overview of the diverse regulation systems will be given. The example of the canton of Obwalden illustrates the legal relationships pertaining to religious education.

Responsibility for religious education

In certain cantons, responsibility for religious education lies exclusively with the state; in others, with the churches; in further cantons, it is jointly assumed. In most of the cantons, religious education is regulated in a formal law (mostly in the school law), but few cantons provide for standardization in a regulation, directive, recommendation, or contract. If the churches are included in the organization of religious education, their internal decrees matter as well.

This is only a rough overview of conceptual diversity in Switzerland. One could make further distinctions²⁸ which cannot be made in this article.

Denominational and non-denominational religious education

According to the Swiss conception, it does not contravene neutrality policy that general education at public schools is aligned with a Christian tenor—in the sense of occidental-ethical principles.²⁹ This needs to be distinguished from specific religious education. Religious education classes are denominational in some places and non-denominational in others. Denominational education is the traditional approach; it is orientated towards a particular creed. In most places, it is absolutely denominational, that is, only Roman Catholic or only Protestant, or, occasionally, also ecumenical-cooperative.

It is not compatible with the neutrality policy if denominational content is directly communicated. By offering the possibility to be absent from the religious education class, the freedom of religion is preserved.³⁰ This has led to a diminution in the number of students in the past years.

In order to teach students objective knowledge about religions in an increasingly multi-religious and at the same time secular society, the non-denominational religious education class has

René Pahud de Mortanges and Raimund Süess

been integrated into the academic curriculum as a new and compulsory class in several cantons.³¹ It is within the competence of the cantons to decide whether they simultaneously want to offer the denominational education class, which is the exclusive responsibility of the churches, at public schools.

Lehrplan 21 (*academic curriculum 21*)

Based on the constitutional mandate of the Confederation to the cantons to strive for basic harmonization in the school system (Article 62, Paragraph 4 of the Federal Constitution), all the 21 German-speaking and multilingual cantons³² have joined forces to develop the *Lehrplan 21* (academic curriculum 21). At the end of 2010 there was a basic report which determined the content and form of the future supracantonal curriculum.³³ It was due to be implemented in the cantons in 2014.

In material terms, the curriculum will determine departments that are mandatory for the cantons. For kindergarten and primary school, a department, “nature, humans, society,” is planned. The subject areas, ethics and religions, inter alia are going to be treated within this department of natural scientific, humanitarian, and socio-scientific subjects.

In the seventh to ninth grade, the department, “ethics, religions, community,” is an inherent part of education.³⁴ *Lehrplan 21* obliges the cantons to include this mandatory education in its concrete curriculum. In the basic report, it is further mentioned that denominational religious education lies within the competence of the churches and the denominational communities and that it is not part of *Lehrplan 21*.³⁵

*The example of the canton of Obwalden*³⁶

The canton of Obwalden lends itself to closer examination for three reasons. First, the school laws and the regulations based thereon date from 2005 to 2007. Second, religious education is extensively regulated in these regulations, and third, a new class (religious studies) has been introduced in the course of the revision of the school laws.

The fact that the cantonal Constitution of Obwalden of 1986 mentions religious education is rather an exception compared to the other cantonal Constitutions. Under the heading “church and state,” the Constitution provides in its Article 8 that (denominational) religious education has to be taught by teachers of the churches recognized under public law. In the part of the Constitution that deals with school, it is stated in Article 27 that schools have to be administered in a Christian spirit and it is guaranteed that each child, regardless of its denomination, shall attend classes.

On the basis of Article 27 of the cantonal Constitution, Article 2, Paragraph 2 of the *Bildungsgesetz* (Education Law, 2006) names an educational goal: public schools should teach a certain behaviour that is aligned with Christian, humanitarian, and democratic ideals. Article 48 of the same law deals with denominational religious education: it is within the competence of the churches recognized under public law. The costs have to be borne by the parish, whereas the schools provide their rooms for free.³⁷ The time for religious education classes is agreed on bilaterally by the school administrations and the representatives of the church.

In Article 12, Paragraph 3 of the *Bildungsverordnung* (Education Regulation, 2006), the negative aspect of the freedom of religion is concretized: deregistration from denominational religious education may be announced by the legal guardians to the competent ministry as well as the school administration.

Furthermore, the *cantonal executional orders* deal with religious education. It is regulated that, in middle school (seventh–ninth grade), the churches recognized under public law are granted one hour per week in the timetable for religious education. The school is allowed to grant churches further time blocks (approximately 20 lessons per school year), for example, for religious services at school or for block half-days.

In the canton of Obwalden, Bible studies were organized alongside denominational religious education at primary schools until a few years ago. This also lay within the responsibility of the churches, but was actually taught by school teachers.³⁸ In 2005, the Bible studies were replaced by a non-denominational class, called “religion and ethics.” The introduction of this class is a cooperative project of the region of Central Switzerland, wherein the cantons of Lucerne, Nidwalden, Obwalden, Uri, and Zug participated. The corresponding curriculum had been jointly put together by these cantons.³⁹ The class, “religion and ethics,” lies within the sole responsibility of the schools. It is taught at all levels of education and there is in principle no possibility of exemption.⁴⁰

In an *executional order*, it is at least stated that the classes “ethics and religion” and “denominational religious education” are not graded in the school report from the fourth grade on, but students instead receive the mark, “attended.”

Islamic religious education

A figure of 4.26 percent (State, 2000) of the Swiss population is of Islamic belief. Islam is, therefore, after the Roman Catholic and Protestant churches, the third largest religious community in Switzerland. The question of possible Islamic religious education thus arises. The cantons are also competent for Islamic religious education according to Articles 62 and 72 of the Federal Constitution. Recognition under public law of the Islamic religious community is not a condition for it.

It needs to be assured that such a class is in compliance with the educational goals of the schools and in particular with the values of fundamental rights. Teachers should be adequately qualified and the class has to find acceptance among the Muslim population. Developed in this form, Islamic religious education could have a positive impact and could protect Muslim children from the possible influence of extremist powers.⁴¹ Nevertheless, it can be said that the demand for Islamic religious education is both too early and too late. On the one hand, political acceptance of Islam is not yet given; on the other hand, in the Swiss cantons—as was seen above—a tendency is observable to establish a new form of religious education in the sense of a religious study.⁴²

It needs to be added that, in two municipalities in the canton of Lucerne, a corresponding project has been implemented. The Islamic religious education class is held in German, but extensively organized as a direct responsibility of the Islamic community. The teacher holding the class has completed professional training. The curriculum originates from a pedagogic institute in Cologne.⁴³ An evaluation report for this project emphasizes that Islamic religious education is well received in the canton of Lucerne. It has a great integrational potential which could, however, be extended.⁴⁴

Notes

- 1 Our thanks are extended to Tanja Schmutz for translating this chapter from German to English. For the history of religious education in Switzerland, see Michael Fuchs, “Religion, Schule,

René Pahud de Mortanges and Raimund Süess

- Religionsunterricht: eine Trias mit Vergangenheit, aber auch mit Zukunft?" in *Religionsunterricht an der öffentlichen Schule*, eds. Helga Kohler-Spiegel and Adrian Loretan (Zurich, 2000), 168.
- 2 The data correspond to the current state of affairs; they are from the Swiss Federal Statistical Office: <www.bfs.admin.ch>.
 - 3 The notion, "canton" formed during the Helvetic Republic (1798–1803); before then it described cities or classes.
 - 4 For example, can. 1274 of the C.I.C. 1918 states explicitly that Catholic children cannot attend non-Catholic, neutral, or mixed schools; see Fuchs, op. cit., 172.
 - 5 See *Declaratio de Educatione Christiana*, declaration of the Second Vatican Council (1967).
 - 6 Urs Joseph Cavelti and Andreas Kley, "Religionsfreiheit," in *Die Schweizerische Bundesverfassung, Kommentar*, eds. Bernhard Ehrenzeller, Philippe Mastronardi, Rainer J. Schweizer, and Klaus A. Vallender, 2nd ed. (Zurich, 2008), 351ff., note 3.
 - 7 *Ibid.*, 55ff., note 14. This question is not yet legally settled.
 - 8 Ulrich Hafelin, Walter Haller, and Helen Keller, *Schweizerisches Bundesstaatsrecht*, 7th ed. (Zurich, 2008), notes 1049 and 1052.
 - 9 Hafelin, Haller, and Keller, op. cit., note 1055.
 - 10 Cf. Bernhard Ehrenzeller and Markus Schott, "Article 62," in *Die Schweizerische Bundesverfassung, Kommentar*, eds. Bernhard Ehrenzeller, Philippe Mastronardi, Rainer J. Schweizer, and Klaus A. Vallender, 2nd ed. (Zurich, 2008), 1140, note 9ff.
 - 11 Ehrenzeller and Schott, 1143, op. cit., note 19; Hafelin, Haller, and Keller, op. cit., note 423.
 - 12 For example, in a case where parents request to exempt their child from a class of primary school education for religious reasons; see Ehrenzeller and Schott, op. cit., 1145, note 25; the Swiss federal court, however, grants vast protection of the freedom of religion and tolerates eight days' absence due to a religious holiday. See Cavelti and Kley, "Religionsfreiheit," 361ff., note 31; naturally, the possibility of exemption from denominational religious education always has to be assured (Article 15 of the Federal Constitution).
 - 13 Concerning the harmonization of the school system, see Ehrenzeller and Schott, op. cit., 1151ff., note 46.
 - 14 The Constitution uses the term of churches, but this terminology is clearly too narrow: there are also a lot of non-Christian religious communities in Switzerland.
 - 15 Cavelti and Kley, *Staat/Kirche*, 1288, note 3.
 - 16 Cf. Christoph Winzeler, "Religionsverfassungsrecht," in *Einführung in das Religionsverfassungsrecht der Schweiz, Freiburger Veröffentlichungen zum Religionsrecht*, Vol. 16, 2nd ed. (Zurich, 2009), 59ff.
 - 17 Winzeler, "Religionsverfassungsrecht," 60.
 - 18 Concerning religious neutrality, cf. Cavelti and Kley, "Religionsfreiheit," op. cit., 356ff., note 17ff.
 - 19 Christian Tappenbeck and René Pahud de Mortanges, "Religionsfreiheit und religiöse Neutralität in der Schule," in *Religiöse Neutralität, ein Rechtsprinzip in der multireligiösen Gesellschaft, Freiburger Veröffentlichungen zum Religionsrecht*, ed. René Pahud de Mortanges, Vol. 21 (Zurich, 2007), 114.
 - 20 Cf., for more detail, Peter Tuor, Bernhard Schnyder, Jorg Schmid, and Alexandra Rumo-jungo, *Das Schweizerische Zivilgesetzbuch*, 13th ed. (Zurich, 2009), 498ff., note 46.
 - 21 B.G.E. 119 Ia 178. (B.G.E. is the abbreviation for "Entscheidung des Schweizerischen Bundesgerichtes," i.e., Decision of the Swiss Supreme Court).
 - 22 B.G.E. 135 I 79; for more detail concerning the requirements under religious law for people involved in school activities, see Christian Tappenbeck and René Pahud de Mortanges, "Religionsfreiheit und religiöse Neutralität in der Schule," in *Religiöse Neutralität, ein Rechtsprinzip in der multireligiösen Gesellschaft, Freiburger Veröffentlichungen zum Religionsrecht*, Vol. 21 (Zurich, 2007), 122ff.
The parental right to decide on the moral and religious upbringing of children in Switzerland is explicitly guaranteed through Article 13, Paragraph 3 of the U.N. Covenant I; Switzerland is also bound by the provisions of the U.N. Convention on the Rights of the Child; see Ehrenzeller and Schott, op. cit., 1138, note 5.
 - 23 Only in the cantons of Geneva and Neuchâtel is there a strict division between state and church; in all the other cantons, the Roman Catholic Church and the Protestant Church are recognized under public law; in a few cantons, the Christ Catholic Church and the Jewish communities have this status as well.
 - 24 Cf. on this matter Christoph Winzeler, "Religionsverfassungsrecht," in *Einführung in das Religionsverfassungsrecht der Schweiz, Freiburger Veröffentlichungen zum Religionsrecht*, Vol. 16, 2nd ed. (Zurich,

- 2009), 77ff.; Urs Joseph Cavelti and Andreas Kley, "Staat/Kirche," in *Die Schweizerische Bundesverfassung, Kommentar*, 1290ff., note 7 and following.
- 25 René Pahud de Mortanges, "Islamischer Religionsunterricht—eine Forderung und viele Fragen," in *Muslime und schweizerische Rechtsordnung, Freiburger Veröffentlichungen zum Religionsrecht*, Vol. 13, eds. René Pahud de Mortanges and Erwin Tanner (Zurich, 2002), 170 and 177; concerning Islamic religious education in particular, see below.
- 26 Concerning this conceptual diversity, cf. in particular: Felix Hafner, Adrian Loretan, and Alexandra Schwank, "Gesamtschweizerische Rahmenbedingungen des Religionsunterrichts," in *Religionsunterricht an der öffentlichen Schule*, eds. Helga Kohler-Spiegel and Adrian Loretan (Zurich, 2000), 69ff.; Adrian Loretan, "Religionsunterrichtskonzepte und ihre rechtlichen Koordinaten," in *Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht, Freiburger Veröffentlichungen zum Religionsrecht*, Vol. 25, eds. René Pahud de Mortanges and Erwin Tanner (Zurich, 2005), 373ff.; Christoph Winzeler, "Religionsunterricht in der Schweiz und Liechtenstein," in *Historische und rechtliche Aspekte des Religionsunterrichts, Wissenschaft und Religion*, ed. Alfred Rinnerthaler, Vol. 8 (Frankfurt am Main, 2004), 488ff.; in the past few years, a lot of cantons have modified their concepts of religious education in a comprehensive way; cf. footnote 32.
- 27 Loretan, op. cit., 376.
- 28 Cf. Loretan, op. cit., 374; Winzeler, "Religionsunterricht," op. cit., 482.
- 29 Tappenbeck and Pahud de Mortanges, op. cit., 115.
- 30 Cf. Hafelin, Haller, and Keller, op. cit., note 416, 423.
- 31 Hafner, Loretan, and Schwank, op. cit., 71ff.; Loretan, op. cit., 380 and following; Pahud de Mortanges, op. cit., 171; Monika Jakobs, Ulrich Riegel, Dominik Helbling, and Thomas Englberger, *Konfessioneller Religionsunterricht in multireligiöser Gesellschaft, eine empirische Studie für die deutschsprachige Schweiz*, Beiträge zur Pastoralsoziologie (S.P.I. series), Vol. 13 (Zurich, 2009), 25ff. and 118; cf. in particular Tappenbeck, Pahud de Mortanges, op. cit., 116ff. This new class has been introduced in several cantons in the past years; the canton of Obwalden, for example, replaced Bible studies with the class, "Religion and Ethics" in the academic curriculum in 2005. A current national research project analyzes these tendencies from a sociological, but also legal, point of view; cf. the final report of Ansgar Jodicke and Andrea Rota, "Unterricht zum Thema Religion an der öffentlichen Schule," *Untersuchung im Rahmen des N.F.P. 58* [Nationales Forschungsprojekt 58]; *Religionsgemeinschaften, Staat und Gesellschaft* (Schlussbericht, University of Fribourg, 2010). Available at: <www.nfp58.ch/files/downloads/Joedicke_Schule_Schlussbericht_def.pdf>.
- In the context of this project, a miscellany was likely to be published in 2011; the sociological and legal situation of religious education in the Romanic cantons is analyzed in the dissertation of Andrea Rota, which was also due to be published.
- 32 The French-speaking cantons had already produced a curriculum with similar content, referred to as "Plan d'études romand"; see Grundlagenbericht, 7 (footnote 33).
- 33 Grundlagen für den Lehrplan 21 vom März 18, 2010, Geschäftsstelle der deutschsprachigen E.D.K.-Regionen (ed.). Available at: <<http://web.lehrplan.ch/sites/default/files/Grundlagenbericht.pdf>>.
- 34 Grundlagenbericht, 17ff. (footnote 33).
- 35 Ibid., 21.
- 36 In 2009, the canton of Obwalden, which lies in Central Switzerland, had a population of almost 35,000. It is a small canton with a surface area of almost 490 km²; the traditional denomination is Roman Catholic.
- The data are from the Swiss Federal Statistic Office: <www.bfs.admin.ch>.
- 37 The fact that the churches may use the classrooms for free is provided for in the school laws in most cantons.
- 38 Concerning the (legal) position of religious education in the canton of Obwalden (in 2002), cf. Andrea Belliger, "Staatlicher und kirchlicher Religionsunterricht an den öffentlichen Schulen der Deutschschweizer Kantone," (study at the University of Lucerne, 2002), 34ff. Available at: <www.unilu.ch/files/ru_kompendium_02_7810.pdf>.
- 39 The curriculum is available at: <www.beruf-z.ch/upload/lp_ethik_religion_bkz_20052.pdf>.
- 40 Because Article 12, Paragraph 3 of the education regulation only speaks of a dispensation from denominational religious education, it can be assumed that such a dispensation concerning "ethics and religion" is not possible; the curriculum merely mentions that "ethics and religion" is taught to the whole class.
- 41 Pahud de Mortanges, op. cit., 178ff.

René Pahud de Mortanges and Raimund Süess

42 Ibid., 182.

43 Loretan, op. cit., 378ff.

44 Elke-Nicole Kappus, *Islamischer Religionsunterricht im Schulhaus, ein Projekt in Kriens und Ebikon, ein Evaluationsbericht* (Biel, 2004), 21ff. Available at: <www.sad.ch/images/stories/Publikationen/364.pdf>.

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Religious education in Syria

Jacques el-Hakim

Social demographics

The population of Syria is approximately 22 million. Syria is dominated by Muslims but is highly diversified in its religious make-up. The religious commitments of the Syrian people break down as shown in Table 48.1.

Legislative Decree n° 60 of March 13, 1936, issued by the French High Commissioner¹ during the French Mandate over Syria (1920–45), lists the religious denominations that enjoy legal status in Syria. This includes the Alaouites and Ismaelis and authorizes a change in religion and intermarriage. But it was modified by Legislative Decree n° 53 of March 30, 1939 which excluded its application to Muslims.

Sunni Moslems generally represent the official faith of the state. The majority of its members follow the Hanafite School of jurisprudence and the others the Chafiite, Malekite, or Hanbalites school. Chi'ites (mainly settled in Iran and East Africa) believe that, when the Prophet Mohammed passed away in 632 his cousin and son-in-law Ali ibn Abi-Taleb should have

Table 48.1 Religious communities in Syria

<i>Community</i>	<i>% of Syrian population</i>
Sunni Moslems	48.0
Alaouites	14.0
Druzes	3.0
Ismaelians	1.0
Chi'i Moslems	2.0
Greek Orthodox	4.7
Greek Catholics	2.4
Syrian Orthodox (Jacobites)	1.9
Armenian Orthodox	0.9
Protestants (Evangelicals)	1.0
Other communities (Maronites, Latins, Chaldeans, Catholics, Armenians and Syrians)	2.3

Source:

Jacques el-Hakim

succeeded him as Caliph, followed by the imams (six or 12, depending on the Shi'i groups) who headed that community after Ali. Several smaller schools were based on the Shi'i principles, for example, the Zaidid in the Yemen, the Isma'ilis headed by the Agha Khan in India and East Africa, and the like. They do not recognize the authority of the Sunna (words and deeds of the Prophet which are a source of *Shari'a* after the Koran) and prefer the interpretation of the Koran by the recognized doctors—*ulemas*. That partition constituted the first major partition of the Islamic community which still persists and explains the continuous rivalry between the two groups.

The role of interpretation as a subsidiary source of *Shari'a* caused the Chi'ites to be more flexible and more adapted to modern evolution. Chafi'ites, so named after Chafi'i, are intermediates between Hanafites and Malekites. They were moderate in adopting analogy in interpretation. They mainly developed in Egypt, some parts of Saudi Arabia and Indonesia, are close to Sunnites, and rather restrictive in their interpretation of *Shari'a*.

Malekites (so called after Malek, who lived in the Hedjaz where he was closer to the Prophet's tradition and was the main source of the Hadiths reproducing his sentences and deeds) developed in North Africa and stressed the prevalence of public interest in deciding on applicable laws. Hanbalites (so called after the great scholar "Ahmad ibn-Hanbal") were not recognized originally as a main school of Islamic law. The main follower of that school was Mohammad ibn Abdul-Wahab, who founded the Wahabite school that developed in Saudi Arabia and was adopted, inter alia, by the dynasty and constitutes the main source of legislation and case law in that kingdom.

Constitutional principles

Basic laws

Article 35 of the Constitution of March 13, 1973 confirms the freedom of faith and the free celebration of all religious observances that do not breach public order. Since the proper laws of Christian communities were confirmed when the Arab (635) and Ottoman (1516) conquests took place, they have acquired a constitutional value and cannot be abrogated or modified without the approval of the respective religious authority. Zoroastrians,² who are not officially recognized as a religious community, can nevertheless observe their rituals and use travel documents delivered by administrative authorities.

Article 3, Paragraph 2 of the 1973 Constitution regards Islamic jurisprudence (*fiqh*³) as a main source of legislation. It contributes to the general tenor of Syria as a theocratic order.

A Personal Statute Code (PSC)⁴ summed up the main provisions governing the Sunni Moslem community regarding marriage, affiliation, capacity, and inheritance and declared them generally applicable to other denominations in addition to some rules of the Civil Code. Some of its final provisions⁵ declared it applicable to Christians, Jews, and Druzes,⁶ but its main provisions remained governed by the respective laws of each denomination. The Law on Civil Status⁷ and the Criminal Code contain several provisions dealing with religion.

Equality among all citizens was provided for as a general principle in Article 25, Paragraph 3 of the Constitution.

History

Under the various rules that existed in Syria after the Arab Conquest, religious education was provided by the respective authority in each community.

At the end of Ottoman Rule in the late nineteenth century, when the first government schools were opened, Islamic religion was part of the official program for Muslims. Under Independence (1946), two official books were published containing the basic principles of Islam and Christianity, written by some specialists in each religion and designed for up to the intermediate level. Up to that level, religion was part of the official exams but did not count for one to pass to the upper level.

Legal context of religious education

Religious education is governed by the Ministry of Education (“the Ministry”), which controls education in general, both in the state-owned and in the private schools,⁸ but there is no special department dealing with religious education. Religious choices of citizens, when authorized, fall under the control of each community, and religious communities are supervised by the Prime Ministry’s Office. On June 13, 2006 Law n° 31 was promulgated, restoring the previous rights of the Catholic denominations before they were restricted in 1953.⁹ But this law was abrogated by Legislative Decree n° 76, passed September 26, 2010, except with regard to inheritance and, moreover, Christians were made subject to their former status before 1953. It is a pity that, after the great achievement represented by Law n° 31/2006, Syria returned to the previous restrictive status of the Christian communities.

Private schools

Private schools are supervised and tightly controlled by a special department of the Ministry of Education. The only recognized degrees or diplomas are those issued by the government. No school can be created by a private individual or community and no book can be taught without the approval of the Ministry.

Financial support

There is no state financial support for religious education, but all teachers in public schools are on the state payroll.

Current religious education

Public schools

As stated above, religious education is standardized in a single model for Islamic communities and a similar one for Christian denominations. Each model tries to state the basic principles common to the various denominations of the respective group and to describe them in a single book which serves as a basis for official examinations.

The denominations concerned usually agree on a specific teacher who is appointed by the Ministry and delivers his teaching on the school premises.

Private schools

Each religious authority organizes religious teaching in the schools falling under its supervision. Since that teaching is not sanctioned by any examination or degree, those authorities are free to organize it as they deem fit and to adopt the books and sources they find suitable. Religious

Jacques el-Hakim

teaching is not restricted to schools and is carried out by many benevolent volunteers both in the cities and in the countryside.

Notes

- 1 The Commissioner exercised legislative responsibilities parallel to the elected Parliament when it could meet.
- 2 Worshippers of a god of good symbolized by light (Mazda) and a god of evil (Ahriman) symbolized by the devil. They originated in ancient Persia and are represented, in northern Syria, by populations coming from Iran or Iraq.
- 3 Words or deeds of the Prophet Mohammed.
- 4 Issued by Law n° 34 of December 31, 1975 and Legislative Decree n° 59 of September 1953 and partially amended by Legislative Decree n° 76 of September 26, 2010.
- 5 Particularly in matters of affiliation, alimony, and parental authority.
- 6 community that appeared in Egypt in the tenth century under the Fatimid Caliph Hâkim and that developed particularly in Syria and Lebanon.
- 7 Legislative Decree n° 26 of April 12, 2007.
- 8 Governed by Law n° 160 of September 1958, as amended by Law n° 167 of June 30, 1959, Legislative Decree n° 127 of September 9, 1967, and Legislative Decree n° 35 of July 13, 2008. All private schools were placed under the control of the Ministry by its Decree n° 1605 of November 11, 1967.
- 9 The Orthodox denomination refused at that date to recover its previous rights.

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Religious education in the United Kingdom

Suzanne Newcombe

The religious composition of the United Kingdom

The United Kingdom (U.K.) is traditionally Christian and most of the population continues to identify with Christianity. In the most recent census (2001), 72 percent of the population of Great Britain stated their religion as Christian. However, the religiosity of the population could be described as being a largely implicit cultural heritage rather than reflecting an active role of the Christian churches. In fact, less than 15 percent of the population attend church at least once a month¹ and only just over 6 percent of the population were in church on “Census Sunday” in 2005.² On matters of traditional Christian doctrine, the population of Great Britain shows a skeptical disposition, with recent surveys suggesting that only about 40 percent of the population consider Jesus as “God’s Son”³ and less than 40 percent believe in the immaculate conception of Jesus.⁴ Secularism is influential, with more people actively identifying as “not religious” in the 2001 Census (15 percent) than the total of those who identify with non-Christian religions. This group of “non-religious” individuals includes humanists and agnostics as well as atheists, and this group does not have any single attitude towards those who are religious.

Those identifying with a religion other than Christianity make up less than 10 percent of the total population. In late 2010, the Muslim population of the United Kingdom was estimated at 2,869,000, which is equivalent to 4.6 percent of the population.⁵ The Muslim population is over half of the total population of religious minorities in the country and contains many families with young children. There are also significant Hindu, Sikh, Jewish, and Buddhist minorities and other religious movements that have only thousands, hundreds, or dozens of adherents. Most of the major religious minorities in Britain originated historically in the migration of Commonwealth citizens, particularly those with ethnic origins in the Indian sub-continent during the second half of the twentieth century.

Relationship between church and state in the United Kingdom

Unlike many countries, the United Kingdom does not have a single constitutional document. Rather, its Constitution has traditionally been considered to consist of statutes, or Acts of Parliament. However, this situation has become more complex as Britain has joined the European

Suzanne Newcombe

Union and ratified the European Convention on Human Rights; inconsistencies between U.K. law and E.U. law are still being addressed by the legal system. English law does not insist on a separation between church and state; nor, despite the establishment of the Church of England, does it have any definitive provision for recognizing a group as a religion. This means that, in most legal contexts, religious organizations are regarded the same as secular organizations and are subject to the same civil laws and taxation requirements.

England has an established church, with Her Majesty Queen Elizabeth II being the “Supreme Governor” of the Church of England (C.o.E.).⁶ The monarch officially appoints archbishops, bishops, and deans of cathedrals on the advice of the Prime Minister. The two archbishops (of Canterbury and York) and 24 senior bishops sit in the House of Lords and contribute to Parliament’s work. The General Synod, which was established in 1970, is the national assembly of the Church of England. It meets to decide doctrinal and organizational matters within the C.o.E. but also can consider matters of religious or public interest. This is significant because it has the special legal status of being able to pass “Measures” which, if approved by resolution of each House of Parliament, receive Royal Assent and thereby become part of the law of England—that is, it can propose legislation on religious matters subject to Parliamentary approval. The U.K. government does not directly fund the Church of England through taxation; rather the Church of England is required to raise its own funds through donations, investments, and other activities.

The Churches of Wales, Scotland, and Northern Ireland are constituted independently. The Church of Wales is a member of the Anglican Communion, but it is not formally aligned with the government within Wales. The Anglican Church of Ireland is also an autonomous member of the Anglican Communion. The Church of Scotland is Presbyterian rather than Anglican and recognized in law as the national Church of Scotland; however it remains beyond legislative control for religious matters. The British monarch is an ordinary member of the Church of Scotland.

The United Kingdom government actively promotes multicultural toleration of its religious minorities, and discrimination on the basis of religion in the workplace is prohibited by the E. U. Equal Treatment Framework Directive (No. 2000/78) which was implemented in the United Kingdom by the Employment Equality (Religion or Belief) Regulations Act 2003.⁷ However, there are exceptions provided for when a “Genuine Religious Orientation” is a legitimate part of a job description, for example, for a religious education teacher to be Catholic in an independent Catholic School.

Brief overview of schooling in the United Kingdom

The majority of the approximately eight million five–16-year-olds in the United Kingdom are registered with a school; once registered, attendance is required by law.⁸ The overwhelming majority of schools (about 21,000) are termed “maintained schools,” which means that they are governed by a branch of local government called the Local Education Authority (L.E.A.) and funded by public taxation. A government department is then charged with reporting on and overseeing the schools’ standards and compliance with legislation. In England, this relevant department is the Office for Standards in Education, Children’s Services and Skills (Ofsted); in Wales the department is called Estyn; in Northern Ireland this function is performed by The Education and Training Inspectorate in Northern Ireland, and in Scotland, Her Majesty’s Inspectorate of Education.

There are about 2,600 independent schools educating around 628,000 children (about 7 percent) in the U.K.⁹ These schools are not funded by taxation and are not subject to direct

control by the government in the areas of national curriculum, admissions, or staffing. In most cases independent schools fund themselves from fees and may offer boarding to pupils; most schools also offer bursaries for some pupils without the financial means to pay. The independent sector is also subject to inspection; in England this is usually conducted by the Independent Schools Inspectorate (I.S.I.) which itself is monitored by Ofsted and reports to the Department of Education on the extent to which schools meet statutory requirements. Non-affiliated independent schools in England (20 percent) and schools in Scotland, Wales, and Northern Ireland are inspected through national inspectorates of each country.¹⁰

Since 2000, a new category of school in England termed “Academy” has been established. Academy schools are funded by both public taxation and “sponsorship” by an individual or corporation. The curriculum, budget, staff pay, and some admission decisions of Academies rest outside of local governmental authority, but the schools (the majority are for those over the age of 11) are still subject to inspection by Ofsted and must meet national curriculum core subject requirements as determined by Parliament. The coalition government, which assumed power in April 2010, passed legislation allowing transformation to Academy status to become easier. At the end of 2010 there were slightly over 200 Academy schools in England, but by April 2011 there were 629 academies (547 secondary schools and 82 primary schools).¹¹ The effects of what has been called “what could be the most radical overhaul of schools in England for a generation” have yet to be seen.¹²

The legal provision in England, Wales, Scotland, and Northern Ireland is slightly different, but in each case the law requires full-time *education*, not full-time schooling, and parents retain the right to make alternative provisions for their children’s education, that is, they can elect to educate their child at home or in independent schools. Children only need to be registered as home educated if they were at one time registered with a school; in 2009, there were about 20,000 registered home-educated children in England, but the total number of unregistered home-educated children might bring the figure up towards 50,000.¹³ Religious belief is not the primary reason for home education for the majority of families, although this would be entirely legal within all four nations of the United Kingdom. Home-educating families may be visited by the local authority to ensure their children are receiving adequate education, but parents are not required to accept such visits or follow any kind of syllabus in their education of their offspring.¹⁴

In most schools in the United Kingdom there is some element of religious education that is compulsory for pupils, which will be discussed in more detail below. However, parents have the legal right to exclude their children from religious elements of education.¹⁵ In practice this right is rarely exercised but is most often used by those of a strict religious character, for example the children of the Exclusive Brethren (a strict Christian sect) who sometimes attend maintained schools.¹⁶ The U.K. government views this right of parental exclusion as well as the allowance for “faith schools” as an element of the way it discharges its duty under Article 2 of Protocol 1 of the European Convention on Human Rights (E.C.H.R.) to respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions.

“Faith schools” in the United Kingdom

Historically, religions were the primary providers of free education in the United Kingdom. In the nineteenth century, the Church of England took the lead in offering education to the children of the poor, establishing about 17,000 schools between 1811 and 1860. Catholics, Methodists, Quakers, and other denominations also established schools for their congregations

Suzanne Newcombe

who could not afford private schooling in the second half of the nineteenth century.¹⁷ In 1902, free, compulsory Christian education up to the age of 11 was introduced for England and Wales by Parliament and most denominational schools were then merged into what became known as the “maintained sector.” This only substantially changed after the 1944 Education Act in which the government took over responsibility for providing full-time education to all children under a certain age (currently until children are 16 years old).¹⁸ Given their historical precedent, generous state funding has been made available to many religiously-run education establishments.

In 2007, about one-third of maintained schools in England still had an explicit religious ethos (approximately 6,850 out of a total of around 21,000).¹⁹ Historically, this religious ethos was of a Christian or Jewish nature. However, since 1997, Hindu, Muslim, Sikh, Seventh-day Adventist, and Greek Orthodox schools have joined the maintained sector. By 2001 in England, there were 6,384 religious primary schools and 589 secondary schools that were religious in nature. Of these, 4,716 were Church of England, 2,108 Roman Catholic, 32 Jewish, four Muslim, two Sikh, one Greek Orthodox and one Seventh-day Adventist. In September 2008 the first Hindu-based, state-funded school opened in north-west London.²⁰ Admissions policy to faith-based schools is determined by the school governors, but in many cases the local education authority is also involved. A school can insist that children come from a particular faith background but it is also bound by the Equalities Act 2010 in its admission procedures.²¹

The Church of England considers it essential that children learn about the major faiths represented in Britain today as well as having a sound grounding in Christian faith and belief. Therefore, all religious education syllabi taught in Church of England schools are multi-faith and require students to learn about at least the “six major world faiths.”²² Recently a senior bishop has called for a review of what percentage of places in Church of England schools are given to regular churchgoers, urging that 90 percent of places be drawn from the local community rather than by church attendance; some Church of England schools can currently select up to 50 percent of pupils by church attendance.²³

In England, Catholic schools, called Catholic voluntary-aided schools, provide 10 percent of all maintained school places, with approximately 30 percent of the children being non-Catholics. Their religious education curriculum focuses more on the Catholic faith, the degree of which varies with the leadership of the school. In this category of schools, the state pays 85–90 percent of capital costs and the teachers’ salaries. Catholic schools follow the national curriculum and other statutory regulations like any maintained school, as well as carrying additional responsibilities of ensuring a religious ethos.

There are also a number of religious schools in the independent sector. While most follow the national curriculum, it is not an obligation. Some schools, such as Steiner/Waldorf schools, offer the national curriculum exams (G.C.S.E. and A. levels) as options for children to take, when they want, as part of guided independent study. In England, the Independent Faith Schools are required to teach a standard of “spiritual moral and cultural development,” which includes a specific provision to “assist pupils to acquire an appreciation of and respect for their own and other cultures in a way that promotes tolerance and harmony between different cultural traditions.”²⁴ In April 2010, the Department for Children, Schools and Families issued further guidance for Independent Schools as to how to meet their legal requirement to “improve the spiritual, moral, social and cultural development of pupils.”²⁵

In the United Kingdom the main public concern in respect of faith schools is that such schools might promote cultural isolation and divisiveness rather than community cohesion. The background of this concern originates from the serious violence of “The Troubles” in Northern Ireland (roughly 1966–88 although some violence is ongoing), which is widely perceived to stem from the segregation of Catholic and Protestant communities in Northern Ireland and the

closely intertwined relationships between nationalism and religious and ethnic discrimination. In England during the last 15 years, public concern has focused on Islamic schools and the Asian community as needing to be integrated into the majority English community. This was dramatically highlighted in June 2001 when there were riots in the northern English town of Oldham (with smaller riots following in Bradford, Leeds, Burnley, and other northern towns) between the “white” English and Asian (largely Muslim Pakistani and Bangladeshi) communities.²⁶ Concern also focuses on the continuing opposition between English nationalist groups such as the English Defense League (E.D.L.) and the British National Party (B.N.P.), and “Islamist” groups such as “Al-Muhajaroun” (now banned) and the “suicide bombers” who acted in London on July 7, 2005 (and similar incidents). It is hoped by many that the structure of schools and curriculum in the United Kingdom might work towards minimizing the potential for ethnic/religious violence.

It is periodically presented in the popular media that allowing children to be educated within a particular faith tradition might exacerbate serious social problems and increase the potential for violent conflict.²⁷ In response to these concerns, in 2009 the Secretary of State commissioned Ofsted to inspect independent faith schools to consider the standard of the “spiritual, moral, social and cultural development” of pupils as well as the regulations promoting these principles’ “fitness for purpose.” The report found that, while there was some reluctance to teach about other faiths, “good citizenship was considered by all schools visited to be the duty of a good believer because this honored the faith.”²⁸

Religious education as curriculum in the United Kingdom

Two-thirds of the maintained sector schools are not associated with a particular religious denomination. However, in England and Wales, maintained sector schools are required by law to have a daily act of “collective worship” that is “wholly or mainly of a broadly Christian character” and to promote the “spiritual, moral, social and cultural development” of their pupils.²⁹ Unless otherwise specified the “collective worship” is assumed to be of a non-denominational Christian nature, although in practice many schools now reflect the mostly secular sensibilities of their catchment area. Many school assemblies might be better described as promoting Christian ethics and values, for example “community cohesion,” rather than providing any explicit presentations of Christian doctrine. S.A.C.R.E.s. (Standing Advisory Councils on Religious Education) can consider requests from schools to lift the legal requirement to hold acts of collective worship of a “broadly Christian character”; typically schools with a large majority of pupils from non-Christian religious backgrounds apply for exception.

Additionally, religious education is a statutory requirement for all schools in the maintained sector up to the school leaving age of 16. Until the 1970s, most religious instruction was explicitly Christian in nature. However, from the 1970s onwards, secularists and those of other faiths began to request that the “religious instruction” of their children be less discriminatory against their beliefs. Exactly what is taught as religious education is determined by the Local Educational Authority (L.E.A.) in consultation with a locally appointed Standing Advisory Council on Religious Education (S.A.C.R.E.).³⁰ S.A.C.R.E.s. consist of an appointed representative of the Church of England, representatives of other Christian denominations and faith groups, at least one representative from a teachers’ association, and elected councillors. Although the United Kingdom allows for some flexibility in defining syllabi for a particular area, most L.E.As. use some form of “agreed syllabuses,” which are standardized at a national level and, for G.C.S.E. level, include exam syllabi; these syllabi and curriculum materials are produced by private companies in response to L.E.A. demand. Currently, “all locally agreed

Suzanne Newcombe

syllabuses must reflect the fact that the religious traditions in Great Britain are in the main Christian, while taking account of the teaching and practices of the other principal religions represented in Great Britain.”³¹ The syllabi in use by most secondary schools emphasize the development of “successful learners, confident individuals, and responsible citizens” as important aims of schooling.³² The locally agreed syllabi usually cover Christian doctrine and ethics, include discussions on ethical subjects within current events such as genetic engineering, death, and abortion, and promote a basic understanding of world faiths.

In Northern Ireland, the curriculum requirements are more prescriptive than in England and Wales; schools have to provide religious education in accordance with the core syllabus drawn up by the four main churches and specified by the Department of Education, Northern Ireland. These were last revised in 2007 and include Christianity, morality, world religions, and a secondary level to study “The Christian Church” from both Protestant and Roman Catholic perspectives. Schools are still given freedom to expand and adapt these requirements in a way that suits the requirements of their pupils and the “ethos of the school.”³³ In Northern Ireland, more than 90 percent of children attend a school that is either predominantly Catholic or Protestant in enrollment, with only 5 percent attending “integrated” schools.³⁴

Despite the emphasis placed on religious education by these legal requirements, religious education in the United Kingdom has been characterized as a “third division” subject that is often taught by non-specialists who feel insecure in the subject material.³⁵ Partially due to entry requirements for specific university-level courses, schools in the U.K. place much greater emphasis upon the traditional academic subjects of English, Mathematics, and Sciences, with other Humanities and Social Sciences subjects also being given higher status in terms of school resources and staff training.

Religious education is also offered for a subject in A./A.S.-levels, the non-compulsory qualifications for 16–18 year olds that usually precede university entry in the United Kingdom. This subject is becoming more popular as a choice for students above the age of compulsory education, but remains a minority interest. In 2010, about 2.5 percent (17,710) of all candidates for A.-level qualifications took religious studies.³⁶ Both (Christian) theology and religious studies are established subjects of study in most British universities.

Notes

- 1 David Voas (2010) “Religious affiliation and church attendance in Britain, 1983–2008.” Data taken from the *British Social Attitudes Surveys* and posted on British Religion in Numbers website (<www.brin.ac.uk>)—a site hosted by the Institute for Social Change at the University of Manchester to put religious statistical information on Britain together in a useful and accessible central location: <<http://www.brin.ac.uk/figures/#AffiliationAttendance>>, last accessed December 18, 2010.
- 2 <www.brin.ac.uk/figures/FindingsfromtheEnglishChurchCensus2005.htm>, last accessed December 18, 2010.
- 3 <www.brin.ac.uk/figures/documents/jcdivinity_000.xls>, last accessed December 18, 2010.
- 4 <www.brin.ac.uk/figures/documents/jcvirginbirth.xls>, last accessed December 18, 2010.
- 5 Pew Forum on Religion and Public Life (2010) “Muslim networks and movements in Western Europe,” 16 September, <<http://pewforum.org/Muslim/Muslim-Networks-and-Movements-in-Western-Europe.aspx>>, last accessed December 18, 2010.
- 6 The Act of Supremacy (1534), which established Henry VIII as the “Supreme Head of the Church of England,” was repealed in 1555 under Mary Tudor but, in 1559, during the reign of Elizabeth I, Parliament adopted a new Act of Supremacy and the monarch has been the supreme head of the church ever since.
- 7 The Equality Act 2010 did not change the existing anti-discrimination laws in the UK, but clarified a series of anti-discrimination laws dating from 1970 into one framework. The act does not cover Northern Ireland, but is inclusive of England, Wales, and Scotland and essentially requires equal

- treatment and access to employment regardless of age, disability, gender reassignment, marriage or civil partnership, race, religion, or belief, sex, or sexual orientation.
- 8 “Home educators made to register” (2009) *BBC News Online*, June 11, 2009. Viewed at <<http://news.bbc.co.uk/1/hi/education/8093796.stm>>, last accessed December 18, 2010 and 2007. Office of National Statistics (2009) Correction notice key population and vital statistics 2007” Series V.S. No. 34, P.P.I. No. 30.
 - 9 Independent Schools Council (2010) “Pupil numbers” from the I.S.C. Census 2010. Viewed at <www.isc.co.uk/FactsFigures_PupilNumbers.htm>, last accessed December 18, 2010.
 - 10 Independent Schools Council (2010) “The Independent Schools Inspectorate (I.S.I.)” Viewed at <www.isc.co.uk/Inspection_TheIndependentSchoolsInspectorateISI.htm>, last accessed December 18, 2010.
 - 11 Jessica Shepherd (2011) “Three times as many academy schools: one in six secondary schools now an academy figures show,” *The Guardian* (London), April 7, 2011, <www.guardian.co.uk/education/2011/apr/07/academy-schools-treble>, last accessed April 23, 2011. BBC News Online (2010) “Q&A: Academies and free schools” located at <www.bbc.co.uk/news/10161371>, last accessed December 18, 2010.
 - 12 Angela Harrison (2010) “Schools are promised an academies revolution,” *BBC News: Education and Family*, May 26, 2010, <www.bbc.co.uk/news/10159448>.
 - 13 Department for Children, Schools and Families (2009) “Better monitoring and support for home educated children in England,” June 11, 2009. Viewed at <www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2009_0105>, last accessed December 18, 2010.
 - 14 There are occasional fears that unregistered “home education” might serve as a means for hiding child abuse. However, the safeguarding of children’s health and welfare is the responsibility of a number of government departments as outlined in The Children Act 2004. Although home education might not be monitored in a statutory way, children born in the UK, whose health and human rights might be “at risk,” are usually identified and monitored within the first few years of life by other means.
 - 15 Section 70 of the 1998 Act states that, subject to the parental right of excusal or other special arrangements, “each pupil in attendance at a community, foundation or voluntary school shall on each school day take part in an act of collective worship.”
 - 16 For information on the Exclusive Brethren’s beliefs and practices see: BBC Religions (2009) “Exclusive Brethren,” last updated November 8, 2009 at <www.bbc.co.uk/religion/religions/christianity/subdivisions/exclusivebrethren_1.shtml>, last accessed December 18, 2010.
 - 17 The first Jewish charitable school was established in 1732. Department for Children, Schools and Families (2007) “Faith in the system,” London: HMSO, p. 2, available at <<http://publications.education.gov.uk/DownloadHandler.aspx?ProductId=DFES-00496-2007&VariantID=Faith+in+the+system%3a+The+role+of+schools+with+a+religious+character+in+English+education+and+society+-+PDF&>>, last accessed December 18, 2010.
 - 18 1996 Education Act.
 - 19 Ibid.
 - 20 Church of England schools account for approximately a quarter of all primary schools in England and around 1 million children and young people are educated in Church of England schools annually. For secondary schools, only about one in 20 state-funded schools are Church of England run (about 210 schools). “Facts about faith schools” (2001) *The Guardian* (London), November, <<http://education.guardian.co.uk/schools/story/0,593365,00.html>>, last accessed December 18, 2010.
 - 21 The Equalities Act 2010 did not change the legislation established in the Race Relations Act of 2000. In 2009, a court ruled a Jewish school to be discriminatory in its admissions policy, but the school has subsequently won leave to appeal; see Rizat Butt (2009) “Jewish School wins right to appeal against ruling its entry policy was racist,” *The Guardian* (London), found at: <www.guardian.co.uk/education/2009/aug/03/jewish-school-admissions-appeal>, last accessed December 18, 2010.
 - 22 The Church of England (2010) “Frequently asked questions about church schools” found at <www.cofe.anglican.org/info/education/faqcofeschools>, last accessed December 18, 2010. Although nowhere established in law, the “six major world faiths” are conventionally accepted to be Christianity, Buddhism, Hinduism, Judaism, Islam, and Sikhism. Zoroastrianism is sometimes added to this list and Paganism is sometimes officially recognized as well.
 - 23 (2011) “Bishop: Open school access even if standards fall,” *BBC News: Education and Family*, April 22, 2011, <www.bbc.co.uk/news/education-13158380>, last accessed April 24, 2011.

Suzanne Newcombe

- 24 The Education (Independent School Standards) (England) Regulations of 2003. The full regulation in this regard is as follows: Independent schools, including independent faith schools, are required to meet the following regulations: The spiritual, moral, social and cultural development of pupils at the school meets the standard if the school promotes principles which:
(2a) enable pupils to develop their self-knowledge, self-esteem and self-confidence; (2b) enable pupils to distinguish right from wrong and to respect the law; (2c) encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute to community life; (2d) provide pupils with a broad general knowledge of public institutions and services in England; and (2e) assist pupils to acquire an appreciation of and respect for their own and other cultures in a way that promotes tolerance and harmony between different cultural traditions.
- 25 Department for Children, Schools and Families (2010) "Improving the spiritual, moral, social and cultural (S.M.S.C.) development of pupils: Non-Statutory guidance for independent schools." <www.dcsf.gov.uk/reg-independent-schools/downloads/SMSC-independent-schools-guidance.pdf>.
- 26 *Oldham Independent Review Report* (2001), London: HMSO, available at <<http://image.guardian.co.uk/sys-files/Guardian/documents/2001/12/11/Oldhamindependentreview.pdf>>, Last accessed December 18, 2010.
- 27 For a recent example see, BBC Panorama (2010) "British schools, Islamic rules," November 22, 2010.
- 28 Ofsted (2009) *Independent Faith Schools*, London: HMSO, p. 4, located at <www.ofsted.gov.uk/content/download/10230/117400/file/Independent%20faith%20schools.pdf>, last accessed December 18, 2010.
- 29 The current requirements for collective worship are contained in the School Standards and Framework Act 1998. These build on similar requirements in Section 346 of the Education Act 1996, the Education Reform Act 1988, and Section 25 of the 1944 Education Act.
- 30 The establishment of S.A.C.R.E.s. was permitted under the 1944 Education Act and required with the 1988 Education Act. For more information, see the National Association for Standing Advisory Committees on Religious Education (N.A.S.A.C.R.E.) at <www.nasacre.org.uk>, last accessed December 18, 2010.
- 31 Department for Education (2010) "A guide to the law for school governors: Religious education," November 30, 2010, published on <www.education.gov.uk/schools/leadership/governance/guide-to-the-law/b0065507/gttl/eyfs-and-national-curriculum/re>, last accessed December 18, 2010.
- 32 For example, see National Curriculum (2010) "R.E. and the national curriculum aims," at <<http://curriculum.qcda.gov.uk/key-stages-3-and-4/subjects/key-stage-3/religious-education/Religious-education-and-aims/index.aspx>>, last accessed December 18, 2010.
- 33 Department of Education, Northern Ireland (2007) "Core syllabus for religious education," available at: <www.deni.gov.uk/re_core_syllabus_pdf.pdf>, last accessed December 18, 2010.
- 34 P. Weller (2007) *Religions in the UK 2007–2010*, Multi-Faith Centre at the University of Derby, p 67.
- 35 Religious Education Council of England and Wales (2010) "R.E. strategy," located at <www.religiouseducationcouncil.org/content/view/77/48/1/4>, last accessed December 18, 2010.
- 36 In comparison, for 2010, English attracted 83,132, Biology 51,932, and Law 15,026. Joint Council for Qualifications (2010) "A., A.S. and A.E.A. results summer 2010," located at <www.jcq.org.uk/attachments/published/1297/JCQ%20GCE%20Results%202010.pdf>, last accessed 18 December 2010.

Religious education in Ukraine

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 Ukraine is a country with old traditions of education, laid down in pre- and early-Christian times. The schools of Kiev Rus, Galicia (Volyn principality) put forth a functioning system of public education of Old Rus states based on Christian values. The education was clearly religious; its structure also included secular sciences of that time. Without plunging into the full history of Ukrainian education,¹ we will focus on analyzing the current state of religious education in Ukraine, and today's challenges. Here, one first needs to examine some "obvious" questions: What is religious education? Under what conditions is it possible? Does religious education in modern Ukraine exist as a system and, if so, what are its condition and perspectives? And finally, what problems are there in the Ukrainian experience and how can those problems be solved?

Since the end of the Soviet era, religion has had a restored status in modern Ukraine. The presence of religion means the need for religious education. It is clear that religious education is possible only in countries where religion/religions do really exist; the presence of religion without its adherents does not make any sense for religious education. So, the social backgrounds for development of religious education are the religious people of different denominations, who teach and are taught, thus exchanging knowledge, information, and experience.

Given the ambiguous understanding of education in general, determining what religious education is becomes rather difficult. Nevertheless, religious education usually involves the study of religion's basics which form a person's religious views, embodied in righteous life and moral behavior. The targeting orientation of religious education can be explicit or hidden, but it usually aims at bringing up the religious (believing) person, increasing the religious awareness of the population so as to promote public awareness of religion, and the growth of religiosity.

Religious education is a broad educational and/or professionally-oriented activity. In some respects, religious education is identical to the evangelization and catechization that are conducted constantly through every church's or religious organization's system of religious (including Sunday) schools, catechetical courses, lay educational organizations, lecture halls, sacred text study associations, religious media (special pages in magazines, radio, and television), clubs for self-education, internet, and the like. In other respects, religious education involves the acquisition of special knowledge of theology, doctrinal training of clergy (priests, pastors), mastering certain secular knowledge, and thus developing the highly educated intellectual and moral person who is able to lead a conscious life in the chosen religion's coordinates.

Natalia Gavrilova and Liudmyla Fylypovych 

Taking into account a certain skepticism about the image of spiritual education, which has grown as a result of the anti-religious propaganda of the Communist Party, as well as in reaction to the predominantly negative experiences of religious education in the pre-Soviet period, it is extremely important now to deepen the analysis of the current situation in the field of education. Transformation of the latter goes on very slowly. Education, especially religious education, is still under the pressure of various prohibitions, both state- and church-born, both ideological and organizational. Progressive development of religious education in Ukraine today is prevented by objective circumstances, especially the entire post-totalitarian social consciousness, which unfortunately still is not free from seeing religious education as a secondary, unimportant matter. Thus, modern Ukrainian society should accept religious education as an alternative or parallel to the secular form of humanities that performs a number of socially important functions.

The second layer of problems is associated with bureaucracy, both the churches' and the state's. It often manifests itself when someone tries to implement innovative changes in education. Ministerial and regional officials do not want change; lawmakers prefer other spheres of social life, and therefore leave education intact. Churches are devoted to traditional, historically approved forms of education and are careful with any modernizations in education. Ignoring the need for educational reform, they all collectively protect the dead ideologies, outdated laws, and ineffective instruction. Instead of taking a simple and understandable step of allowing everything that is not prohibited by law, they seek to ban everything that is not mentioned in the laws.

In attempting to accommodate religious restoration in Ukraine, the state, recognizing that the church is separated from it, almost did not interfere in the process of restoration of old and the creation of new religious educational institutions. The problems began when it came to returning nationalized schools' and seminaries' buildings, colleges and academies, giving back the libraries, old icons, liturgical books, and other religious artifacts found in museum storerooms. Nevertheless, the state, including the secular education system, responded painfully slowly to the church's efforts to restore its rights in the sphere of education, its attempts to establish control in the educational field, to enter general secular education with its "religion-oriented" disciplines, and the like. Indisputable authority and sometimes even the forced transfer of religious education to the state's educational institutions triggered resistance from secular education workers. Both the state and the church do not always behave autonomously in education; they frequently interfere in each other's internal affairs, because the state's public schools have their obligations towards citizens and the churches have their responsibilities to their own parishioners. It is sometimes difficult to understand that citizens can be and are believers, and believers are the citizens of Ukraine. Therefore, the government, by ignoring believers' needs, actually discriminates against some of its citizens, limiting their right to choose education and alternative education. Likewise, the church, using the power of its authority, marginalizes non-Christians and non-believers, considering non-religious education as a process of secularization of human consciousness.

Here we need to note that religion is not taught in Ukrainian state public schools, specialized public schools, and higher education institutes. The public schools' curricula (in general and communal education systems) do not include confessionally-oriented subjects. Under the special decision of the Board of Ministry of Education and Science (M.E.S.), the state's education system implements disciplines of spiritual and moral direction (ethics, Christian ethics, ethics of faith), of which "Christian ethics basics" is most widespread. Teaching these courses is optional, and that is why it is allowed only with written parental consent. These disciplines should be taught only by specially trained teachers.

Teachers of Christian ethics are taught in educational institutions or on training courses for teachers at the National University “Ostrog Academy,” Catholic University of Lviv, or at regional institutes of postgraduate pedagogical education/courses for teacher training (Odessa, Ternopil, Kyiv, and Lviv).

As for teaching religious subjects in higher education, Cabinet of Ministers Order No. 787 of August 27, 2010 approved the list of specialities which should be taught in higher education institutions for “specialist” and “master” qualifications. Specialty Theology was put under the category “humanities” and received a state code number for specialists and a separate one for masters. The list was put into operation by M.E.S. Order No. 1067 of November 9, 2010. Today theology is taught only in a few universities in Ukraine. Most of its teaching and learning takes place in religious education institutions and spiritual academies, Bible universities, and religious institutions seeking to enter the international accreditation associations. Ukraine does not recognize foreign theological Bachelor’s and Master’s or Ph.D. diplomas.

The intellectualized part of Ukrainian society constantly emphasizes the need for religious organizations to create their own private educational institutions. After all, religious education is extremely important for religion itself, as well as for religious organizations. It is the phenomenon through which the reproduction of religiosity occurs. In general, almost all Ukrainian churches (there are few exceptions) have stated their need for religious education, but not all of them are able to satisfy these needs fully because of lack of experience, money, human resources, adequate legislature, and legal and social frameworks. And here we hit the main issue: how can we convince the deputies of the Ukrainian Parliament to adopt proper legislation that will give the right to and enable the establishment of and support for educational institutions by religious organizations? And how do we explain that children who study there are the same ones studying in secular institutions, for whom the state should care, just as it cares for other younger generation citizens, regardless of their ideological orientation or religious beliefs, and thus demonstrate that all religious organizations are equal before the state, and that it does not have any “closer” citizens, religious, or educational organizations? Conscious citizens constantly remind the Ukrainian state that the authorities are paid by all working people—Orthodox, Catholic, Greek Catholic, and Protestant, even by Hare Krishna’s and Muslims. In exchange, the state is expected to guarantee everyone the rights and freedoms that exist in education, in the sphere of religion’s and conscience’s freedom, and to provide citizens with the conditions under which these rights and freedoms are best implemented.

Unlike Europe, Ukraine does not have any specific legislation to regulate the sphere of religious education. Educational processes are legislatively based on the “Law on Education” of 1991, where Articles 6, 8, and 9 speak of religious education in a forbidding context (education is independent of religious organizations; the educational process in educational institutions is free from interference by religious organizations; participation of pupils and students in religious activities during the educational process is forbidden; educational institutions, regardless of ownership, are separated from the church and are secular, except for educational institutions founded by religious organizations).² Religious education is also subjected to the Law on Freedom of Conscience and Religious Organizations (1991): one prohibits religious education; the other, which permits instruction only by religious educational institutions (Article 11. Spiritual educational institutions: “Religious centers according to their registered statutes are allowed to create spiritual schools to train clergy and ministers of other religious specializations that they need”³), leads to confusion, and does not help to develop religious education. This education in Ukraine is still not certified and not licensed; legal documents needed to conduct the learning process do not exist. Religious education outside of religious educational institutions is simply illegal. The formula “school is separate from the church” is actually used by the

Natalia Gavrilova and Liudmyla Fylypovych

state to justify its inertia in the field of religious education. In reality the state is indifferent to this segment of life, although its president, officials, and deputies have many times declared that the spirituality and morality of the people are very important for the government.

The state considers religious education to be solely a matter for churches, who themselves plan, organize, and provide the educational process. At the same time society and especially the government do not realize that improving the education system in Ukraine *demands* the agreement of current laws that regulate relations in the field and the recognition of possible coexistence of alternative forms of education that would meet the principles of freedom to choose religion and education. This will bring about the emergence and development of various educational models. One potential model of alternative education is public schools established by religious and communal organizations.

According to M.E.S. data, in Ukraine there are nearly 200 private (in fact—alternative) middle-school educational facilities. This is about 1 percent of the total number of secondary schools in Ukraine. In Europe, the same figure reaches 10–13 percent.⁴ However, the number of private and specialized schools constantly grows, because the public demand for such education is constant, although proper permitting documents do not exist.

The current conflict between the laws' articles concerning parents' right to choose freely the education for their children and the right of religious and civic organizations to establish public schools needs to be overcome.

The parents, not the state, have the right to choose, and the appropriate institutions, including church and civic organizations, should work to create a system of religious education and upbringing. This approach fits into the constitutional and legal space of the Ukrainian state, the international standards in this sphere, including the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and the U.N. General Assembly Resolution 36/55 of 25 November 1981,⁵ and will ensure fully fledged implementation of citizens' right for the freedom of belief and freedom to choose education with regard to children's rights and interests.

The need to remove this problem has already been discussed.⁶ It seems as if everyone understands that the issue is to be solved, but everything remains at the Soviet-era level. At the legislative level, amendments to existing laws have been proposed repeatedly. For example, Verkhovna Rada had registered a proposition 2020 (August 2006, author—Deputy V. Stretovych), which proposed to include religious organizations in the list of entities that may establish secular schools. Religious organizations were to receive the same rights as N.G.Os. or private individuals.

In turn, the M.E.S., unfortunately, did not support the adoption of these legislative changes, referring to the Constitution of Ukraine which requires the separation of church and school, and emphasized the need to make complex changes to the entire system of laws on education. Given this position and because of the unfavorable political situation in Parliament, Proposition 2020 was rejected. Soon, however, Verkhovna Rada registered Proposition 3160 (February 2007, authors—Deputies Stretovych, Bodnar, Malyshev, and Marushchenko), which was somewhat different from its predecessor in proposing changes to the entire system of laws on education. The proposition was never seen by most deputies, and it did not even get to the agenda of Verkhovna Rada sessions.

The unpreparedness or unwillingness of Ukrainian society to resolve a knot of contradictions between reality and the law which legitimates this reality hampers the development of religious education. For in reality this education does exist in Ukraine. There are middle and high

schools actually founded by religious organizations either as private ones, or as subsidiaries of religious organizations, that alone have to confront the diverse bureaucratic apparatus of government, trying to close their business, to convert the structures created into ordinary schools, sometimes using illegal sources of influence (as an example we can recall the scandal associated with the initiatives of the Security Service of Ukraine to “cooperate” with the Ukrainian Catholic University). The state has no interest in the church’s autonomy in education, so it uses its power as a political and legal instrument to control the church.

Many questions remain unsolved in the sphere of autonomy of the church in its relations with the state. In Ukraine, unlike other countries, there is no particular religion or church which has the legal power to control religious education in public schools, but some churches would be happy to receive such a function. As religious communities have no legal right to create private schools with curriculum and diploma recognized by the secular state, they do not have any privileges in this area.

The state does not fund religious education. And it is very happy about it, because the state does not have enough money to support over 30,000 general schools, a number which grows every year. According to the initiative established under the Order of M.E.S. No. 941 of October 20, 2008, the Public Council under the M.E.S. on cooperation with churches and religious organizations, the M.E.S. asked the Ministry of Finances of Ukraine and the Parliamentary Committee on the Budget during the readings of the draft Law “on State Budget of Ukraine for 2010” about the possibility of budget funding to print textbooks on the subject “Fundamentals of Christian Ethics” for 122,000 children of state and communal educational institutions.⁷ The most significant result of the Public Council’s activity was the discussion on the state standards in theology and the conditions on which textbooks in theological disciplines can receive M.E.S. classification stamps.

The state is also very slow in solving questions of land allocation for religious and educational institutions, giving permission for construction, purchase of buildings, and leasing existing school buildings that are not used appropriately. Religious education does not receive any help from the state—neither material, nor methodical. Until recently, religious and state schools had to pay different public utilities charges. Only the Cabinet of Ministers decision No. 182 of February 24, 2010, “On some issues of tariff formation for generation, transmission, and supply of thermal energy,” allowed religious organizations, including religious education institutions, to pay the same fee for heat and water consumption as set for the general population. But still the government does not fulfil its duties; all these taxpayers are classified into four groups, each of them paying differently for heat consumption. So, religious education remains discriminated against by the state.

Responsibility for religious education conducted in Ukraine lies solely with the churches and other religious groups. The state has left it to religion’s mercy: by proceeding with a policy of no funding and no interest in the work of such institutions according to the idea of separation, the state shows a total indifference to this segment of education. This is not a small number of institutions; at the beginning of 2010 in Ukraine there were 12,633 Sunday schools⁸ (including almost 40 percent Protestant, 13 percent Catholic, and 46 percent Orthodox). The system of religious education in Ukraine also includes 196 educational institutions, in which there are 9,012 full-time students and 8,537 correspondence students. Among these institutions Orthodox count for 22.5 percent, Catholics 12 percent, and Protestants 64 percent. These data show that there is something important to think about, not only for religious organizations and parents, but for the state as well. Not to seize control over another public sphere and monopolize it with obsessive uniformity, but to understand: not “the people for government,” but the “government for the people.” The government is called to protect the rights and freedoms of

Natalia Gavrilova and Liudmyla Fylypovych

those who confess any religion or none, be it individually or collectively, and to enable anyone to publicly or privately express their beliefs in worship, observance, and to participate in any religious and ritual ceremonies and teachings.⁹

During roughly 20 years of Ukraine's independence, a lot in church-state relations has changed. Many controversial and sometimes even quarrelsome issues between the state and churches have been solved. However, religious education still remains a field which the state does not want to leave and which is claimed by the churches.

What prevents these two institutions (which are supposed to be partners) from solving the problems of religious education development? The first hindrance is the stereotypes about the content and form of religious education. Second, we can fault the lack of desire and the lack of creative and open-minded approaches to the problem, which can never be solved with old methods. Third to blame is the lack of knowledge about other countries' experience in this field, and ignorance of the historical past, when similar problems were solved more or less successfully. Fourth, and finally, we can cite the weak integration of modern pedagogical methods which are fundamental to developing unique educational programs and projects. Ukraine must find a way to overcome these obstacles and move to develop a workable system of religious education for the Ukrainian people.

Notes

- 1 Some generalizing material can be found in M. Babiy, "Religious Component in the Secular School for Conditions of Freedom of Conscience: The Ukrainian and International Legal Context," *Philosophy of Education* 1 (2006): 209–14 (Ukrainian).
- 2 T. Dobko, "Academic Theology in Ukraine," *Patriarchate* No. 4, July–August (2005): 389 (Ukrainian).
- 3 V. Fenich, "Catholic Theological Education: Some Reflections on the Status and Prospects of Its Development in Ukraine," (Ukrainian), <www.nbuv.gov.ua/portal/natural/Nvuu/Ist/2008_21/031.htm>.
- 4 L. Fylypovych, "Again ... about Education in the Context of State–Church Relations," <<http://lfilip56.wordpress.com/2011/02/15/about-education>> (Ukrainian).
- 5 N. Gavrilova, "Development of Orthodox Education in Contemporary Ukraine," 36 *Ukrainian Religious Study*, No. 4 (Kiev, 2005): 242–56 (Thematic issue: "Morality, Religion, Education") (Ukrainian).
- 6 What is a Protestant education in 2011? <http://risu.org.ua/ru/index/expert_thought/open_theme/40103> (Russian).
- 7 Information of the Institute of Religious Freedom: Yu, Kalnysh, "Theological Schools in Ukraine: An Overview," *Human and World* (April 2001): 32–37 (Ukrainian). Also see <www.irs.in.ua/index.php?option=com_content&view=article&id=459%3A1&catid=34%3Aua&Itemid=61&lang=uk>.
- 8 All religious organizations in Ukraine (as of January 1, 2010); <<http://risu.org.ua/ua/index/resourses/statistics/ukr2010>>; A. Kolodny and M. Zakovych, "Religious and Religious Study Education," in *Academic Religious Studies*, ed. A. Kolodny (Kiev: 2000): 854–58 (Ukrainian).
- 9 M. Mokienko, "Development of Evangelical Educational Institutions in Ukraine: Achievements and Conditions," *History of Religions in Ukraine, Scientific Yearbook* (Lviv: Logos, 2006), 2: 392–401 (Ukrainian).

Religious education in the United States of America

Elizabeth A. Clark

General background and constitutional-legal context

The United States of America (United States) is a predominantly Christian country with 78.4 percent of the population belonging to one of many Christian churches.¹ It remains predominantly Protestant (51.3 percent), with 26.3 percent evangelical Christian, 18.1 percent mainline Protestant, and 6.9 percent of the population belonging to historically black Protestant churches.² With 23.9 percent of the population, Roman Catholics easily form the largest non-Protestant group.³ A variety of non-Christian groups, such as Jews, Muslims, Hindus, and others together form 4.7 percent of the population,⁴ while 16.1 percent of the population is religiously unaffiliated.⁵

The role of religion in the United States is largely regulated by the First Amendment to the Constitution, which states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁶ While interpretations of this provision have varied greatly over time,⁷ the Establishment Clause has fairly consistently been held to bar state financial support for religious organizations or official endorsement of a particular religion,⁸ and the Free Exercise Clause has been held to prevent unfavorable state action that singles out a particular religion and to protect religious expression at least to the extent of protections of freedom of speech.⁹ The First Amendment originally applied only to actions by the federal government, but in 1940 the U.S. Supreme Court held that the reach of the First Amendment extended to actions by states, relying on the Fourteenth Amendment to the Constitution, which prohibits states from denying any person the “due process of law.”¹⁰

There is a significant amount of U.S. jurisprudence based on the application of the First Amendment to public education and especially to state financial support of private religious education that will be discussed in greater detail later in this chapter. The essential elements, however, prohibit denominational religious education on the property of or under the direction of the public schools, but permit teaching about religion, such as teaching comparative religion courses, and release-time studies, in which students leave school property to obtain denominational education paid for and run by the denominations. The cases concerning state funding of private religious schools are fairly complex and not always consistent. Essentially, however, the state may fund or help provide non-religious activities at religious schools or give tax credits to

Elizabeth A. Clark

parents to reimburse part of the cost of private religious schools to the extent that providing these sorts of funding or support do not involve excessive “entanglement” between church and state and it is done in a neutral manner. Direct state funding of religious schools or funding of denominational education is prohibited.

In addition to the federal constitutional provisions affecting education, some federal law affects religion in the public schools. For example, the Equal Access Act of 1984 requires public secondary schools that receive federal financial assistance and which open a space for speech (a “limited open forum”), such as by permitting extra-curricular clubs, to provide equal access and a fair opportunity to students who wish to conduct a meeting within that limited open forum without restriction on the basis of the religious, political, philosophical, or other content of the speech at such meetings.¹¹ In essence, this means that a school that allows student extra-curricular clubs (as most American secondary schools do) cannot exclude voluntary student religious clubs.

Another significant point to understanding the role of religion in the U.S. educational system is that the United States federal government has limited powers. Under the federalist system set up by the U.S. Constitution, education has been left almost entirely to the states. Thus, in addition to the federal Constitution, U.S. state constitutions and state laws play a key role in determining the role of religion in education. Specifically, 32 state constitutions have some kind of bar to state funding of religious education¹² and a few forbid “sectarian instruction”¹³ in and/or “sectarian control”¹⁴ of public schools. In the mid-twentieth century, the federal government began subsidizing education and adding relevant regulations, but the majority of laws affecting religion in education are still at the state level.

An example of the importance of state law in this area can be seen in the history of one of the U.S. Supreme Court cases dealing with aid to private religious schools, *Witters v. Washington Department of Services*.¹⁵ The U.S. Supreme Court held that the Establishment Clause of the U.S. Constitution did not require that state-funded rehabilitation and training classes available to blind students be denied to an applicant who was studying for the ministry at a Christian college.¹⁶ The case was subsequently remanded to the Washington State Supreme Court, which still struck down the aid based on the state constitutional provision that “no public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment.”¹⁷ This chapter will address the impact of federal laws and the federal Constitution on education in the United States, which generally establishes some outer limits on what is permissible. It must be kept in mind, however, that the overlay of state requirements results in a patchwork of actual practices throughout the country.

History of religion and education in the United States of America

Most education in the United States was originally closely tied with or organized by religious organizations.¹⁸ Beginning in the late 1830s, public schools were established, but universal compulsory public education did not extend throughout the United States until the twentieth century.¹⁹ Most of these schools had strong Protestant leanings, a reaction to which led to the development of an extensive Catholic parochial school system. Protestants opposed any public funding for Catholic schools; most notable is the so-called “Blaine Amendment,” proposed in 1875, which would have revised the First Amendment to have made it specifically unconstitutional to provide public funds to sectarian schools.²⁰ This measure passed the House and barely missed passing the Senate.²¹ While this effort was not successful at the federal level, several states amended their constitutions to impose such strict separation requirements in the area of education.²²

At the same time, however, particularly in smaller communities, some local schools relied on Catholic clergy to staff public schools or used church buildings as public elementary or secondary schools.²³ Most of the U.S. Supreme Court cases that currently define the relationship between religion and education have arisen since the mid-twentieth century as a result of challenges to Protestant practices or state support for and cooperation with Catholic schools.

Religion and public schools

The United States does not permit any form of denominational religious education as part of the compulsory public school curriculum. The Supreme Court has permitted “dismissed time” education, in which students are dismissed from school early to permit those students who select this option to attend denominational religious education at a location separate from the public school.²⁴ The public schools cooperate only to the extent of receiving attendance records from the denominations and reporting as truant those who were absent. The selection and payment of the teachers and the class curricula are entirely left up to the denomination. In contrast, the U.S. Supreme Court has not permitted teaching by religious organizations on public school grounds, even when the courses were optional and the teachers were paid by the denominations.²⁵

Study about religion, such as courses on comparative religion or the Bible as literature, is permitted in public schools,²⁶ although is not widespread—a recent survey showed that only 36 percent of Americans even know that comparative religion classes may be taught in public schools.²⁷ Some have tried to challenge the perceived lack of religion or lack of respect for religion in the schools, alleging that a secular curriculum established a secular humanist religion and was barred by the Establishment Clause,²⁸ or that presenting the material, without the option for students to be excused and have alternative assignments, violated individual freedom of religion.²⁹ Both challenges failed in federal courts of appeal.

Acts of worship that are teacher-led or endorsed or supported by the schools are also not permitted in public schools. A non-denominational prayer composed by the New York State Board of Regents was barred in public schools,³⁰ as was voluntary devotional Bible reading and recitation of the Lord’s Prayer,³¹ and a moment of silence set aside for meditation or prayer.³² The Supreme Court has held that a student prayer at a high school graduation³³ and a student-led prayer that was broadcast over a loudspeaker at a football game³⁴ were also inappropriate state endorsements of religion. The Supreme Court has also forbidden public schools from requiring student participation in flag salutes or in a pledge of allegiance.³⁵ A current issue in U. S. law is whether encouraging other schoolchildren to recite the phrase “under God” in the pledge of allegiance³⁶ violates the Establishment Clause or the rights of non-believers. A case involving this issue has come to the Supreme Court, but was decided on other grounds.³⁷ The two federal circuit courts of appeal to address the issue have upheld the pledge.³⁸

Individual or group student devotion in public schools is permitted so long as there is no appearance of state endorsement. For example, students are permitted to wear headscarves or religious symbols in class and student religious clubs may form and worship together.³⁹ Schools may not discriminate against private religious expression by students “but must instead give students the same rights to engage in religious activity and discussion as they have to engage in other comparable activity”; schools also, however “may not endorse religious activity or doctrine, nor may they coerce participation in religious activity.”⁴⁰ The U.S. Supreme Court has placed a limit on institutional accommodation of groups of religious believers—it held that the creation of a school district along religious lines to accommodate a Jewish Satmar Hassidim village violated the Establishment Clause because it allocated political power based on a religious criterion.⁴¹

Elizabeth A. Clark

Religion and private schools

The U.S. Supreme Court upheld the right to form private schools, including private religious schools, in 1925.⁴² States, however, retain the right to assure the quality of all schools by accreditation, licensing, and supervision.⁴³ State approval of private schools is generally based on state curriculum requirements, length of school day and year, and health and safety standards.⁴⁴

Private schools may choose to be privately funded or may seek state funding or material support. The Supreme Court case law on when the state may financially or materially assist in private religious education is far from clear and reflects a larger set of conflicting approaches on the meaning of the Establishment Clause.

Child benefit/neutral principles approach

In its first modern Establishment Clause case, *Everson v. Board of Education*, which involved the question of state provision of transportation for students attending religious schools, the Supreme Court introduced the concept of the “high and impregnable” wall of separation between church and state, a concept drawn from an 1802 letter from Thomas Jefferson to a group of Baptists in Danbury, Connecticut (often referred to as the “Danbury Letter”). In *Everson*, the Supreme Court interpreted the Establishment Clause as requiring strict separation of church and state:

Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. ... No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.⁴⁵

In *Everson*, however, despite this rhetoric, the majority opinion of the Supreme Court, authored by Justice Black, allowed the public funding of transportation of students to religious schools. The decision turned on the question of whether the aid in question provided a general and purely secular benefit directed to children of all schools (which was constitutional) or a benefit to “aid one religion, aid all religions, or prefer one religion over another,”⁴⁶ that would unconstitutionally cross the wall between church and state. Justice Black’s approach in *Everson*, or the “child-benefit theory,” has been the basis for some, but not all, of the Supreme Court cases that followed.

This line of decisions has permitted aid where the students or their parents can be characterized as the sole or main beneficiaries and the funds go to religious schools on a neutral basis. For example, the state may loan secular textbooks,⁴⁷ pay for an interpreter for a deaf student at a private religious school,⁴⁸ or may give money to parents in the form of a tax credit allowing them to deduct private school (including religious school) expenses.⁴⁹ States are not required to deny state-funded rehabilitation and training classes available to blind students to a man studying for the ministry at a Christian college.⁵⁰ This line of cases focuses on neutrality and private choice as determining factors for the constitutionality of state support for private religious schools. Using this reasoning, the Supreme Court has held that:

[w]hen the government offers a neutral service on the premises of a sectarian school as part of a general program that ‘is in no way skewed towards religion,’ ... it follows under our prior decisions that provision of that service does not offend the Establishment Clause.⁵¹

“Religious use” approach

Another line of cases, however, rejects any state funding of private religious schools that can be connected to a religious use of the money. This traces back to the 1971 Supreme Court ruling *Lemon v. Kurzman*. In *Lemon*, the Supreme Court held as unconstitutional salary supplements for teachers and direct payments to religious schools for secular subjects. The Supreme Court set out a test for Establishment Clause challenges: the state aid must 1) have a secular legislative purpose; 2) have a principle effect that neither advances nor inhibits religion; and 3) not foster an “excessive governmental entanglement with religion.”⁵² In *Lemon*, the Court found that the aid had the “secular purpose” of improving the quality of education in religious schools. The Court also held that the aid, as it was restricted to secular subjects, did not have the principle effect of advancing religion. The problem with the aid, however, was that, in order to avoid having the school advance religion in the subsidized classes, it would require “comprehensive, discriminating, and continuing” surveillance because the schools were pervasively religious and because teachers played a central role in establishing the religious atmosphere. These rules on state funding significantly limit the viability of state funding of private religious schools. As the Court stated later, “the very supervision of the aid to assure that it does not further religion renders the statute invalid.”⁵³ In addition, the Court noted the entanglement problem in that the program in *Lemon* had the potential to foster “political division along religious lines”⁵⁴ as denominations vied for state aid. This approach, which seeks in essence to privatize religion and discriminates against religious involvement in the public square,⁵⁵ has been abandoned by the Supreme Court as a reason to strike down aid.⁵⁶

The *Lemon* three-part test and “religious use” line of reasoning was used as a basis to strike down a 20-year ban on religious use of religious school properties funded or repaired with federal grants as insufficient to protect against religious use of federal funds.⁵⁷ The *Lemon* reasoning was also used in two companion cases decided at the same time that were subsequently overruled, both barring public school teachers from providing remedial education in secular subjects to students in private religious schools.⁵⁸ What is significant is that in one of the cases, *Grand Rapids School District v. Ball*, the Supreme Court struck down the program because the state did not impose restrictions on the public school teachers in respect of teaching religion in their classes in the religious schools⁵⁹ and, in the second, *Aguilar v. Felton*, the Court held that the existence of restrictions on public school teachers not to teach religion in the religious schools required impermissible state entanglement with religion.⁶⁰ These cases demonstrate what has been called the “Catch 22”⁶¹ problem, referring to the book of the same name by Joseph Heller, which involves self-contradictory circular logic.⁶²

The *Lemon* line of line reasoning was also used by the Supreme Court to hold that states may not provide tuition reimbursement for parents sending their children to private religious schools.⁶³ When the Supreme Court upheld a variation on tuition reimbursement which involved tax credits, however, it upheld that system because no continued state surveillance of the schools was required, which would constitute excessive “entanglement.” What is more telling, perhaps, is that the Supreme Court also switched back to a child-benefit approach in the tax credit case, holding that the tax credit did not primarily advance religion, but instead reflected a “secular and understandable” decision by the state “to defray the cost of educational expenses incurred by parents.”⁶⁴

Elizabeth A. Clark

Current approach: Agostini v. Felton

The problem with the *Everson* and *Lemon* lines of cases is that the theories are largely interchangeable—virtually all aid to private religious schools can be characterized as permissible neutral aid helping children and parents pay for education or impermissible aid that the schools will either use for religious purposes or which will entangle the state in ensuring that it is not used for such purposes.

The Supreme Court attempted to reconcile its own case law in 1997, when it took up and overruled one of its own prior aid cases, *Aguilar v. Felton*. This was one of the cases which involved payment for public school teachers to teach remedial classes in schools (including religious schools) in inner-city neighborhoods. New York City, which had lost the case in 1985, petitioned to reopen the case, citing that it had been required to pay over 100 million extra dollars to comply and arguing that the prior decision could not stand in the face of intervening precedent.⁶⁵ The Supreme Court agreed to reverse its prior decision, holding that more recent cases “have undermined the assumptions upon which *Ball* and *Aguilar* rested.”⁶⁶

In the 1997 case, titled *Agostini v. Felton*, the Supreme Court continued to apply the *Lemon* three-part test (whether the aid has a secular purpose, whether the primary effect is to advance or inhibit religion, and whether the aid engenders excessive state and church entanglement). In *Agostini*, however, the court changed the criteria for determining the “primary effects” of the aid, or second prong of the test, moving towards a more neutral-principles approach. The court held that the primary effect of aid is not advancing religion when “aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis.” Under such circumstances, the aid is less likely to have the effect of advancing religion.⁶⁷

In addition, the Supreme Court rejected a basis that it had previously used to find a “primary effect” of advancing religion: the fact that the aid involved some kind of “symbolic union” of church and state. It rejected the approach that “placement of public employees on parochial school grounds inevitably results in the impermissible effect of state-sponsored indoctrination or constitutes a symbolic union between government and religion”⁶⁸ and the “assumption that the presence of [public school] teachers in parochial school classrooms will, without more, create the impression of a ‘symbolic union’ between church and state.”⁶⁹

The Supreme Court also collapsed the analysis of the second and third parts of the *Lemon* test (primary effects and entanglement):

Regardless of how we have characterized the issue, however, the factors we use to assess whether an entanglement is “excessive” are similar to the factors we use to examine “effect.” That is, to assess entanglement, we have looked to “the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority.” ... Similarly, we have assessed a law’s “effect” by examining the character of the institutions benefited (*e. g.*, whether the religious institutions were “predominantly religious”), ... and the nature of the aid that the State provided (*e. g.*, whether it was neutral and nonideological).⁷⁰

In summary, it appears that aid to private religious schools is permissible so long as the aid is allocated neutrally, is indirect, and does not involve a continuing relationship between the government and the religious authority.

Notes

- 1 The Pew Forum on Religion & Public Life, *Religious Landscape Survey*, available online at <<http://religions.pewforum.org/reports>>.
- 2 The Pew Forum on Religion & Public Life, *Religious Landscape Survey*, available online at <<http://religions.pewforum.org/reports>>.
- 3 The Pew Forum on Religion & Public Life, *Religious Landscape Survey*, available online at <<http://religions.pewforum.org/reports>>; see generally Elizabeth A. Sewell, “Religious Liberty and Religious Minorities in the United States,” in *The Oxford Handbook of Church and State in the United States*, ed. Derek H. Davis (New York: Oxford University Press, 2010), 249–75.
- 4 The Pew Forum on Religion & Public Life, *Religious Landscape Survey*, available online at <<http://religions.pewforum.org/reports>>.
- 5 The Pew Forum on Religion & Public Life, *Religious Landscape Survey*, available online at <<http://religions.pewforum.org/reports>>.
- 6 U.S. Const., Amendment I.
- 7 Interpretations of the Free Exercise Clause, in particular, have swung a great deal. The earliest free exercise precedent permitted general laws to override religiously motivated behavior (*Reynolds v. Davis*, 1878) but, for a period beginning in 1963, the Supreme Court held that the Free Exercise Clause sometimes permitted exemptions from general laws (*Sherbert v. Verner*, 374 U.S. 398 (1963)). This approach was rejected by the Supreme Court in *Employment Division v. Smith*, 494 U.S. 872 (1990). The U.S. Congress attempted to increase the level of protection for religiously motivated behavior in the Religious Freedom Restoration Act, Pub. L. No. 103–41, 107 Stat. 1488 (Nov. 16, 1993), codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb–4 (also known as R.F.R.A.). This was, however, struck down with regard to restrictions imposed by state laws because of a lack of Congressional authority to regulate the states on this issue (*City of Boerne v. Flores*, 521 U.S. 507 (1997)). In response, many states adopted their own versions of the Religious Freedom Restoration Act or otherwise raised the level of protection of religiously motivated behavior.
- 8 *Everson v. Board of Education*, 330 U.S. 1 (1947); *Lee v. Weisman*, 505 U.S. 577 (1992).
- 9 *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). See also note 7.
- 10 *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
- 11 20 U.S.C. § 4071, upheld in *Board of Education v. Mergens*, 496 U.S. 226 (1990).
- 12 Ala. Const. art. XIV § 263; Alaska Const. art. VII § 1; Calif. Const. art. IX § 8; Colo. Const. art. IX § 7; Del. Const. art. X §§ 3–5; Haw. Const. art. X § 1; Idaho Const. art. IX § 5; Ill. Const. art. X § 3; Kansas Const. art. VI § 6(c); Ky. Const. § 189; Mass. Const. art. XVIII § 2; Mich. Const. art. VII § 2; Minn. Const. art. XIII § 2; Miss. Const. art. VIII § 208; Mo. Const. art. IX § 8; Mont. Const. art. X § 6; Neb. Const. art. VII § 11; Nev. Const. art. XI §§ 2, 9, 10; N.H. Const. art. LXXXIII; N.M. Const. art. XII § 3, art. XXI § 4; N.Y. Const. art. XI § 2(2); N.C. Const. art. IX §§ 2, 6, 7; N.D. Const. art. VIII § 5; Ohio Const. art. VI § 2; Pa. Const. art. III §§ 15, 29; S.C. Const. art. XI § 4; S.D. Const. art. VI § 3, VII § 16; Tex. Const. art. 1 § 7, art. VII § 5 (c); Utah Const. art. X §§ 8–9; Va. Const. art. VII §§ 10–11; Wash. Const. art. 1 § 11, art. 9 § 4; Wyo. Const. art. VII §§ 8, 12.
- 13 Ariz. Const. art. XI § 7; Colo. Const. art. IX § 8 (no teaching of “sectarian tenets or doctrines”); Wis. Const. art. X §§ 3, 6.
- 14 Ariz. Const. art. XX para. 7; Wash. Const. art. 26.
- 15 474 U.S. 481 (1986).
- 16 *Witters v. Washington Department of Services*, 474 U.S. 481 (1986).
- 17 *Witters v. State Commission for the Blind*, 112 Wn.2d 363 (Wash. S. Ct. 1989).
- 18 William W. Bassett et al., *Religious Organizations and the Law* (Eagan, Minnesota: West Publishing Co., 1997–2011), § 12.2.
- 19 Edwin Gaustad, *Church and State in America* (New York: Oxford University Press, 1999), 83.
- 20 Richard Aynes, “Blaine Amendment,” in *Religion and American Law: An Encyclopedia*, ed. Paul Finkelman (New York: Garland Publishing, 2000), 39.
- 21 *Ibid.*, 40.
- 22 W. Cole Durham, “Treatment of Religious Minorities in the United States,” in *European Consortium for Church-State Research* (1994), 323, 333; see *infra* note 9.
- 23 Sarah Barringer Gordon, *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (Belknap/Harvard University Press, 2010), 57.
- 24 *Zorach v. Clauson*, 343 U.S. 306 (1952).

Elizabeth A. Clark

- 25 *McCullum v. Board of Education*, 333 U.S. 203 (1948).
- 26 See, e.g., *Abingdon v. Schempp*, 374 U.S. 203, 225 (1963).
- 27 See survey reported at <<http://pewforum.org/other-beliefs-and-practices/u-s-religious-knowledge-survey.aspx>>. This recent survey also addressed religious knowledge among Americans. It found that the average score was 16 out of 32 questions, even though the questions were fairly basic, such as requiring the respondent to identify Moses as the Biblical figure who led the Exodus or that Mother Theresa is Catholic. *Ibid.*
- 28 *Smith v. Board of Commissioners of Mobile County Schools*, 827 F.2d 684 (11th Cir. 1987).
- 29 *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (6th Cir. 1987).
- 30 *Engel v. Vitale*, 370 U.S. 421 (1962).
- 31 *Abingdon v. Schempp*, 374 U.S. 203 (1963).
- 32 *Wallace v. Jaffree*, 472 U.S. 38 (1985).
- 33 *Lee v. Weisman*, 505 U.S. 577 (1992).
- 34 *Santa Fe Independent School Dist. V. Doe*, 530 U.S. 290 (2000).
- 35 *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), overruling *Minersville School District v. Gobitis*, 310 U.S. 586 (1940).
- 36 The pledge of allegiance states: "I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty, and justice for all."
- 37 *Newdow v. Elk Grove Unified School District*, 542 U.S. 1 (2004).
- 38 *Newdow v. Rio Linda School District*, No. 06-16344 (9th Cir. March 11, 2010); *Freedom from Religion Foundation v. Hanover School District*, No. 09-2743 (1st Cir. Nov. 15, 2010).
- 39 *Board of Education v. Mergens*, 496 U.S. 226 (1990).
- 40 Department of Education, Students' Bill of Rights (1995).
- 41 *Board of Education of Kiryas Joel Village School Distr. v. Grumet*, 512 U.S. 687 (1994).
- 42 *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).
- 43 *Board of Education v. Allen*, 392 U.S. 236 (1968).
- 44 See William W. Bassett *et al.*, *Religious Organizations and the Law* (2010) § 12:76.
- 45 3330 U.S. 1 (1947), 16.
- 46 330 U.S. at 18.
- 47 *Board of Ed. of Central School Dist. No. 1 v. Allen*, 392 U.S. 236 (1968).
- 48 *Zobrest v. Catalina School District*, 509 U.S. 1 (1993).
- 49 *Mueller v. Allen*, 463 U.S. 388 (1983).
- 50 *Witters v. Washington Department of Services*, 474 U.S. 481 (1986).
- 51 *Zobrest*, 509 U.S. 11.
- 52 403 U.S. 602, 612-13 (1971).
- 53 *Bowen v. Kendrick*, 487 U.S. 589 (1988).
- 54 *Lemon*, 403 U.S. at 622.
- 55 See, e.g., Tom Berg, *The State and Religion in a Nutshell* (Eagan, Minnesota: West Publishing Co., 1998), 208.
- 56 *Agostini v. Felton*, 521 U.S. 203, 233-34 (1997).
- 57 *Tilton v. Richardson*, 403 U.S. 672 (1971).
- 58 *Grand Rapids School District v. Ball*, 473 U.S. 373 (1985); *Aguilar v. Felton*, 473 U.S. 402 (1985).
- 59 *Ball*, 473 U.S. 373 (1985).
- 60 *Aguilar v. Felton*, 473 U.S. 402 (1985).
- 61 *Bowen v. Kendrick*, 487 U.S. 589 (1988).
- 62 Joseph Heller, *Catch 22* (New York: Simon and Schuster, 1961).
- 63 *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973).
- 64 *Mueller v. Allen*, 463 U.S. 388, 395 (1983).
- 65 *Agostini v. Felton*, 521 U.S. 203, 213 (1997).
- 66 *Ibid.* at 222.
- 67 *Ibid.* at 231.
- 68 *Ibid.* 521 U.S. at 223.
- 69 *Ibid.* at 228.
- 70 *Ibid.* at 232-33.

Religious education in Uruguay

Carmen Asiaín Pereira

Religious and social composition

Various polytheistic, or pantheistic, nomad peoples inhabited Uruguay prior to Spanish colonization. The Spanish conquest took place under the Christian cross, as a sign of appurtenance and evangelization.

Unlike the rest of America, pre-existing indigenous populations resisted integration into European culture, either through struggle or through self- or externally-imposed isolation, resulting in submission to slavery, misery, confusion, or assimilation to European blood. Decimated in battles, rebel native groups were exterminated after independence. Uruguay's shameful historical fact is thus the absence of native religions.

The Roman Catholic Church preceded Uruguay's independent state and, being the majority religion, was crucial in determining the denominational structure adopted by the 1830 Constitution. Forged as a homogeneous European population, this initial cultural, linguistic, ethnic, and religious uniformity strongly influenced Uruguay's attitude towards a monolithic ideology and a single truth.

Soon the religious scenario was gradually nourished by other Christian Protestant groups from Europe, by some minimal expressions of surviving native cults, and by Africans submitted to slavery, determining the birth of syncretism.¹ Despite Catholic hegemony, a tolerance of other cults developed. A strong Masonry, together with militant forms of agnosticism and atheism, formerly linked or not with historical anti-clericalism, determined the development of a secularization process.

As for the current religious composition of Uruguay, Roman Catholics are still the majority group, its number of adherents slowly decreasing due to new religious movements, mainly neo-Pentecostals of Brazilian origin and neo-Christians.

Traditional Protestant churches (Anglican, Lutheran, Calvinist, and Mennonite) coexist with Baptists, the Salvation Army, Seventh-day Adventists, Pentecostals, and neo-Pentecostals from Brazil, and neo-Christians or post-Protestants—Jehovah's Witnesses, the Church of Jesus Christ of Latter-day Saints (Mormons), and Scientologists—fill the landscape. Non-Catholic Christians are now the second largest group in Uruguay, behind Catholics. Armenian, Greek, and Russian Orthodox churches have a strong presence. Jewish communities—Orthodox, Conservatives,

Carmen Asiain Pereira

and Reformists—have established roots. Islam has arrived recently. There are also Buddhist and Hindu groups, Spiritualists, Theosophical schools, Rosicrucians, Moonies (Unification Church), and Bahá'ís. Afro-Brazilian religions—Candomblé, Quimbanda, and Umbanda—have a strong presence as well.

The population breaks down as follows:² Roman Catholics, 66 percent; Protestants, 2 percent; Jews, 1 percent; and those not professing a religion, 31 percent. According to the National Statistics Institute,³ which inquired about religious beliefs for the first time in history, “more than 80 percent of Uruguayans assert to believe in God,” indicating a strong “religious pluralisation and diversification.”⁴

Constitutional context

History of religious education

During colonial times all education of youth was imparted in Roman Catholic schools, being free for the underprivileged. Exemptions were conceded to non-believers or members of other denominations on request. Under the 1830 Constitution “The Roman Apostolic Catholic Church is the State religion.”

School Reform was promoted by the Masonry, starting with the “Common Education” Act in 1877 and culminating in 1909, with the total suppression of any kind of religious education in public schools: “As from this law’s enactment, all religious education and practice is suppressed from public schools.”⁵ Lawbreaking teachers were rigorously punished.

The words of this philosophy’s ideologists illustrated their *ratio legis*: “In Uruguay there is no place for religion, neither in schools nor in hospitals ... no child must bear the imposition of any given belief, which could only contribute to deform his spirit.”⁶ The School Reform was sealed by the 1918 Constitution, establishing church–state separation and consecrating a non-denominational, secular state in Article 5, which remains essentially unchanged to the present day:

All religious cults are free in Uruguay. The state does not endorse any religion. It recognizes the Catholic Church’s ownership of all temples that have been partially or completely built with funds from the National Treasury, with the only exception of chapels that have been designated to serve in shelters, hospitals, jails, or other public settlements. In like manner, all temples consecrated to the worship of the various religions are exempt of any form of taxes.

Constitutional principles governing state, religion, and religious education

Uruguay has been categorized as a prototype secular state. However, some peculiarities of its statutory setting—which go beyond the words and spirit of the Constitution and contradict the principles of international human rights law—distinguish it from other secular states. Most other countries have witnessed the gradual evolution of a relationship between religions and state. Not Uruguay. Uruguay’s uniqueness lies in its attachment to a model of liberal state with rigid separation going back to the nineteenth century.

While *neutral* and even *cooperationist* in its constitutional and international binding norms, its legal and administrative framework, and customary misinterpretation, tend to meet a high commitment to secularism, very proximate to secular fundamentalism. Nevertheless, two major

trends, the *secularist* and the *pluralist*, govern the theoretical and scholarly context of the relationship between religion and state in Uruguay.

In the *secularist* approach, secularity is identified as *prescidence*⁷ of religious issues by the state, or abstentionism:⁸ “the only governmental attitude compatible to religious pluralism is that of prescidence, indifference, State abstention from the religious phenomenon.”⁹

Sometimes religion is presented as restricting freedom, almost conducive to slavery, an obstacle to progress and to democracy,¹⁰ with religiously based arguments being disqualified. This “strident laicism” holds its own truth as absolute, but under the appearance of impartiality, as the only guarantee of neutrality. Thus, religion must be absent from public schools and outcast from public spheres. In this view, religion is confined to the *forum internum* and to private practice. In fact, the former hegemony of the Roman Catholic Church has been replaced by another hegemony, that of an anti-religious rationalism, which falls short of “achieving genuine neutrality.”¹¹ This rigid version of secularism has imposed itself on past and present generations, undermining the foundations of freedom of religion or belief in the minds and souls of Uruguayans.

In the *pluralist* approach, scholars call for achieving the minimum standards of religious liberty. This approach underlines the Constitution’s positive assessment of religion, acknowledges that it grants tax exemptions to churches, recognizes the Roman Catholic Church as a legal entity, and incorporates the principles of natural law by highlighting Article 72: “The enumeration of rights, duties and guarantees made by the Constitution, does not exclude others that are *inherent to the human person or derived from the republican model of the government.*” This approach is based on maximizing human dignity and upholding principles of democracy and republicanism. Infra-constitutional norms must therefore be adapted to suit the high hierarchy norms, and interpretation of the legal system ought to be enlightened to harmonize internationally enshrined human rights.

Moreover, freedom of religion or belief stands as a fundamental, non-derogable right, part of *ius cogens*, a core value to mankind, a principle prevailing over national regulations, binding the state.

In conclusion, the Constitution of Uruguay proclaims freedom of religion or belief as a fundamental principle, and subsequently establishes its non-denominational stance in regard to religion.

Constitutional provisions and governing principles

Uruguay is a state fully respectful of human rights, since the Constitution specifically acknowledges basic human rights and guarantees their protection (Article 7). The *forum internum* is exempt from the arm of authority, as are private actions, provided they do not interfere with public order nor impair others (Article 10).

Uruguay has ratified the key international instruments affirming freedom of religion or belief. As part of *ius cogens* and of the human rights bloc¹² formed by general principles of international human rights law and the Constitution, the protection of human rights can be directly invoked.

Natural law and human rights are incorporated in Article 72, a real guarantee for human rights compliance, and a tool to demand it from the authorities.

Article 332 consecrates the “direct applicability of the articles that acknowledge rights to individuals and those that assign powers and impose duties to public authorities,” and the absence of regulation “will be replaced by looking at analogous laws, the general principles of law, and the overall accepted theoretical foundations of law.”

Carmen Asiain Pereira

Holding the principles of *non-derogability of rights* independently from the will of the sovereign,¹³ democracy as the juridical manifestation of the *rule of law*,¹⁴ and the *principle of equality*,¹⁵ the Uruguayan system embraces a *pluralistic state*. The phrasing of Article 5 (“All religious cults are free in Uruguay”) embodies the recognition of different religious denominations coexisting in equal terms. Likewise, Article 1, “The Republic of Uruguay is the political association of all the inhabitants of its territory,” comprises all individuals inhabiting the country, in an association of equals. Nevertheless, the Roman Catholic Church is granted automatic legal recognition, which might seem to be an encroachment on the core principle of equality.

Not only does the Constitution proclaim freedom of religion or belief, it highly esteems religion, which is revealed by tax exemption granted “to churches consecrated to worship of the different religions.”¹⁶ Uruguay is a secular state, yet pluralistic. Freedom of conscience is specifically shielded (Article 54¹⁷), a foundation for conscientious objection. Allusions to morals and virtues abound throughout the Magna Carta, revealing the recognition of spirituality.

Religious education is not specifically addressed by the Constitution, yet it is not banned. Some scholars even hold it to be the state’s duty to provide, on demand, instruction concerning existing cults.

The Constitution guarantees academic freedom (Article 68):

Academic freedom is guaranteed. The Law shall regulate that State intervention will be limited to assuring the maintenance of hygiene, morality, security and public order. Every parent or guardian has the right to choose, for his children or pupils’ education, the teachers or institutions they wish.

It therefore recognizes parents’ right, in accordance with international human rights law, to “provide for the religious and moral education of their children or wards that is in accord with their own convictions.”¹⁸ Obviously, this provision is not complied with by simply allowing private religious education; state involvement assuring the actual exercise of this right is called upon.

Tax exemption is granted to private educational and cultural institutions (Article 69): “Private educational institutions as well as those of cultural nature will be exempt from national and municipal taxes, as a subsidy for their services.” Whenever the religious nature of an institution has been questioned for tax exemption, the institution’s “cultural” nature arises as a form of granting it.

Primary school and middle school are compulsory by Article 70.¹⁹ Article 71 is concerned with the:

gratuity of public primary, middle and high school standard education, as well as industry-oriented and artistic, and of physical education; the creation of cultural, scientific and labour perfections and specialization scholarships, and the creation of public libraries. All educational institution shall particularly focus on the moral and civic instruction of pupils.

So religious education is not only not banned, but should be offered and imparted by the state as a means of complying with the quoted mandates, especially when education in its whole “must particularly focus on the moral and civic instruction of pupils,” as endorsed by Article 71.

Religion as a subject in public schools is not prohibited. More accurately, the state has the duty to impart religion as the manager of public interest,²⁰ or at least instruct about the diverse religions present in the country in compliance with binding international documents. This is because “Rejection of religious education in public institutions exclusively based on Article 5 of

the Constitution constitutes an unconstitutional conduct due to erroneous interpretation of our constitutional frame.”²¹

Notwithstanding the above matters, religion is in fact absolutely absent from public school curricula.

Legal context

Not only does the Constitution value and favor religion, so does law. The University Frame Act²² proclaims academic freedom, enabling the “widest freedom of opinion and criterion in all subjects.”

The recent Law on Education²³ recognizes education as a basic human right under the guidance of international humanitarian law and the Constitution: “education shall be oriented towards the search of harmonic and integrated life ... tolerance and actual force of human rights, peace and understanding between peoples and nations” (Article 3).

Education shall be guided by the “human rights consecrated in the Universal Declaration of Human Rights, in the Constitution ... and in the international binding instruments ... , as essential elements incorporated ... to the proposals, curricula and educational measures, being a fundamental frame of reference for education in general and for educators.

(Article 4)

The “promotion of justice, solidarity, freedom, democracy, social inclusion ... and pacific coexistence” (Article 13) are among its aims, as is “integral development” to “educate reflexive, autonomous, solidary individuals.”

Article 17 defines the principle of secularity as that:

assuring the integral and egalitarian treatment of all topics in the ambit of public education, by means of implementing free access to all sources of information and knowledge, enabling pupils to adopt a conscious posture. *Plurality of opinions and rational and democratic confrontation of knowledge and beliefs is guaranteed.*”

Although there are no topics excluded from public education, teachers refrain from teaching the subject.

The state and religious autonomy

There are no legal or political instruments designed to control religious education, so religious communities are free to create private schools, submitting to public controls only in order to acquire official recognition.

Private university career degrees are recognized in general, the Ministry of Education holding some control over the curricula. Courses of religious doctrine are peacefully imparted.

Religion and state autonomy

Having the state impose an official ideology—that religion has no place in education—is a form of “fundamentalist secularism” or “indoctrination.”²⁴ The actual absence of religious and ideological pluralism is in fact a denial of the possibility to choose,²⁵ thus humanitarian international

Carmen Asiain Pereira

law is being infringed. Moreover, far from being neutral, the state creates a negative predisposition toward religion.

Religious education receives state subsidy through tax exemptions to “all temples consecrated to the worship of the various religions exempt of any form of taxes” (Article 5), or as educational or cultural institutions “as a subsidy for their services” (Article 69). Whenever doubts have risen over the concept of “temple” or “church” to be granted tax exemption, this was obtained through Article 69, including church annex buildings used for educational purposes.

As for religiously owned or operated schools—mostly Roman Catholic—they are also reached by Article 69, on behalf of their cultural nature. A number of interpretative laws have included “seminars or teaching institutions held by religious congregations or institutions,”²⁶ as exempted, and private educational or cultural institutions.²⁷ An administrative regulation²⁸ declared tax exemption provided they complied with three requisites: be non-profit, have legal personality, and have historical rooting, granting the exemption on behalf of their “cultural nature.”

The current model of religious education

Religious education in public schools

There is no religious education currently in public schools. Notwithstanding this serious flaw, religion has received some special consideration by education authorities, as examples of “positive” secularism:²⁹

- 1 Absences for religious reasons may be justified.³⁰
- 2 Refusal to take a compulsory oath or to reverence national symbols is not essential for continuing scholarship.³¹
- 3 Up to four absences per year are allowed for religious reasons; exams should not be set on those days.³²

Secularism does not mean disrespect for all religions, nor for the right not to have any religion at all.

Regrettably, the opposite criterion was established for public universities, denying students and professors waivers from university activities for religious reasons,³³ arguing that “freedom also implies that people should not impose the University a certain religion.” This affected a professor³⁴ who had requested a change of date for an oral examination set in Rosh Hashanah, and a similar request from a group of Seventh-day Adventists was also denied.³⁵

Religious education in private schools

Article 68 of the Constitution governs private educational institutions, granting “academic freedom” and limiting state intervention, “assuring the maintenance of hygiene, morality, security and public order.”

Thus religion is freely taught in private schools, with no state interference other than some controls in order to grant official academic degrees, but never on the subject of religious education, which is absolutely disregarded.

Teachers of religion are appointed by the school’s authorities on discretion. There are no specific regulations for teacher qualification.

Funding sources are privately provided. A number of scholarships are granted per grade, to enable underprivileged access. Apart from a few rich private schools, the vast majority are small, poor, Catholic schools, established all over the country, hardly surviving in terms of economic profit. The only subsidy they receive from the state is tax exemption.

Has this religious education in private schools been effective in spreading the doctrine and making and maintaining adepts? Considering that it is only the students in private religious schools who receive religious education, and given that more than 80 percent of Uruguayans assert a belief in God, one must conclude that Uruguay's religious schools have been very effective in preserving the faith of a considerable portion of the population.

Conclusion

Given the influence of the Enlightenment and nineteenth-century positivism, as well as freemasonry and agnosticism, Uruguay has proved to be the only Latin American country where religion is absolutely absent from public schools. Uruguay still follows the 1877 School Reform model, with no significant update in terms of integral education and with little regard for the religious nature of the individual.

As Gerhard Robbers has stated:

The neutral State cannot implement religious truth, but has to be open to different religious ideas. Being responsible—alongside with parents—for forming the personality of the young person, on the other hand, the state has also responsibility for the religious side of this personality. Rejecting religion completely, pushing it aside to evening hours or the Sundays, ignoring the thrust for truth would discriminate against religion. This again would mean a contradiction to state neutrality. More than that, rejecting religion would mean to fail in the task of forming the whole personality of the child.³⁶

“Running the risk of freedom”³⁷ in the education system implies recognizing the contribution of religion to school and articulating freedom of education in the widest possible manner, so that the presence or absence of religion in school would not mean authoritarian imposition of some values, but would be an exponent of respect for parents' and pupils' freedom in the conformation of the educational model.³⁸

Notes

- 1 Syncretism: the mingling of African cults with Brazilian faiths and Catholic ingredients to form a new amalgam, a symbiosis of religions.
- 2 <http://go.hrw.com/atlas/span_hm/uruguay.htm>.
- 3 Amplified National Homes Poll, published December, 2006.
- 4 N. Da Costa, *Guía de la Diversidad Religiosa de Montevideo* (Claeh: Santillana, Mvdeo, 2008), 16.
- 5 Act N° 3.441, April 6, 1909, Article 1.
- 6 E. Conzi Gonzalez and R.B. Giudice, *Batlle y el Batllismo* (Mvdeo, 1928).
- 7 H. Cassinelli Munoz, *Derecho Público* (F.C.U.: Mvdeo, 2002), 63.
- 8 M.A. Semino, *Estado y Religión*, and *La Enseñanza y la Laicidad*, *Semanario Búsqueda*, 17/4/08, 47 (Mvdeo, 2008), 83, 84.
- 9 J.P. Cajarville Peluffo, *Pluralismo Religioso y Acción Estatal*, Cuadernos No. 7, 161.
- 10 Julio Maria Sanguinetti (former President); Semino, op. cit.
- 11 Tore Lindholm, *Philosophica ... Facilitating Freedom of Religion or Belief: A Deskbook*, (Koninklijke Brill N.V., Martinus Nijhoff Publishers: Leiden, 2004), 45.
- 12 M. Risso Ferrand, *Derecho Constitucional I*, (F.C.U.: Mvdeo, 2006).

Carmen Asiain Pereira

- 13 H. Cassinelli, *Derecho Público*, 93.
- 14 Article 82: “The Nation adopts the *democratic republican form of government*. Its sovereignty will be directly exercised by the electoral body in the cases of election, popular initiative and referendum, and indirectly through the representative powers established by this Constitution; all according to the rules expressed in it.”
- 15 Article 8: “All persons are equal before the law, with no distinction among them other than their talents or virtues.”
- 16 A. Duran, “Enseñanza Religiosa,” in *Religión en la Educación Pública*.
- 17 Article 54: “Law shall recognize those under a labour or service relationship, as a worker or employee, the independence of his moral and civic conscience; a fair remuneration; limitation of working hours; weekly rest and physical and moral hygiene.”
- 18 American Convention on Human Rights, Article 12(4).
- 19 Article 70: “Primary school, as well as middle school, either standard, farm or industry-oriented, are compulsory. The State will promote the development of scientific research and technical instruction. Law shall provide what is necessary for these precepts’ effectiveness.”
- 20 A. Duran, “Enseñanza Religiosa,” op. cit.
- 21 Ibid.
- 22 N° 12.549, X-16-1958.
- 23 Law N° 18.437, December 12, 2008, Articles 1, 4, and 17.
- 24 J. Martínez-Torron, and R. Navarro-Valls, *The Protection of Religious Freedom*, 209–38.
- 25 I. Martín Sánchez, “El Derecho a la Formación de la Conciencia en el Ordenamiento Jurídico Internacional,” in *Congreso Latinoamericano* (Lima Fondo Editorial: Perú, 2001), 222.
- 26 Law N° 12.802, Article 134.
- 27 Law 16.226, Article 448, October 29, 1991.
- 28 Decree N° 166/008, March 14, 2008, Article 1.
- 29 F. Rotondo Tomarúa, *La Religión en la Educación Pública Uruguaya*.
- 30 Ordinance N° 31, a.n.e.p., 1986, Res. 7, 1994.
- 31 Resolution of the High School Council, July 20, 2005, circular N° 2666/005.
- 32 A.N.E.P., Res. N° 20, Act. N° 14, March, 25, 2009.
- 33 Resolution N° 15, October, 28, 2008, Central Governing Board, University of the Republic.
- 34 M. Szeinblum, “Libertad de Cultos versus Laicidad en la Educación Pública,” in *Religión en la Educación Pública*.
- 35 Resolution N° 15, 10/28/08, Central Executive Council, University of the Republic.
- 36 Gerhard Robbers, 239.
- 37 R. Navarro-Valls, *Los Estados frente a la Iglesia, Anuario de Derecho Eclesiástico del Estado*, vol. IX (Madrid, 1993), 41.
- 38 R. Palomino, “Religión y Educación Pública,” in *Religión en la Educación Pública*.

Religious education in Vietnam

Nguyen Thi Minh Ngoc

In many countries religious groups play an important role in education. These groups often provide various education programs at different levels. They function in a manner similar to state-owned schools and are considered a form of private education. In Vietnam, education programs provided by religious groups have not been as fully developed as those given by their counterparts in many other countries. Currently, only private kindergartens and vocational training schools offer religious instruction.

Religion in contemporary Vietnam

Since the social reform in 1986, particularly since 1990, religious groups have become more active in Vietnam. The rise of religion emerged from the spiritual needs of the Vietnamese people. Many religious researchers, including Đặng Nghiêm Vân, Nguyễn Duy Hình, Đỗ Quang Hùng, and Nguyễn Minh Ngọc, agree that the economic transition from a centralized, bureaucratic economy to a socialist-oriented market economy has had a great influence on the rise of religion. In reality, the change in economic development has made more people feel insecure. Oscar Salemink, in *Seeking Spiritual Security in Contemporary Vietnam*, has pointed out four forms of insecurity that might require a mental adjustment: 1) physical and mental health (requires treatment); 2) economic safety and market risks (looking for good fortune); 3) the uncertainty associated with deaths of relatives missing during the war (such as locating remains and performing burial rituals); and 4) risk management and taking risks into consideration.¹ Thus, a paradigm shift in economic conditions in Vietnam has prompted people to look to religion to find security in their businesses, and to seek their fortunes and avoid market risks. The model of a socialist-oriented market economy has quickened and deepened social stratification in Vietnam. Social stratification is also a major psychological factor that leads more people to find security in religion. Religions develop their forms to meet these needs. For all religions, especially Buddhism, goods and services to meet the spiritual needs of believers are growing more and more. For example, we now increasingly see Buddhist temples organize great festivals to pray for peace and relieve bad luck.²

As religions grow, the Vietnamese government and the Communist Party also amend their policies, creating a more favorable environment for religious development. The government

Nguyen Thi Minh Ngoc

and the Communist Party vehemently ensure religious freedom for the people. The Political Report at the Seventh National Congress of the Communist Party asserts:

beliefs and religions are spiritual need of some people. The Communist Party and the government respect religious freedom of the people, seeking to foster equality and unity between people of different or no faith. Learn to overcome all narrow-minded attitudes, prejudices and discriminations against people who hold faith confessions, stop the violation of religious freedom, and prohibit and prevent all acts of vandalism, which takes advantage of religious freedom to oppose national unity and socialism, or to prevent the religious faithful to fulfill his or her civic duties.³

Article 70 of the 1992 Constitution of the Socialist Republic of Vietnam states:

The people of Vietnam have the right to freedom of religion, religions, or non-religion. All religions are equal before the law. The places of worship of all religions are protected by law. Do not infringe upon freedom of belief or take advantage of religious freedom to act against the laws and policies of the government.⁴

On October 16, 1990, Politburo Resolution 24-NQ/TW on strengthening religion in the new situation was issued by the Vietnamese government. Subsequently, on March 21, 1991, the Council of Ministers Decree No. 69-HDBT set forth provisions for regulating religious activities. Religious education was also emphasized in the Decree. Religious groups relentlessly seek to improve their clerical training program. Clerical training schools of Catholic and Evangelical Christian groups are now being gradually institutionalized. Since its establishment, the Buddhist Church of Vietnam has built a system of schools at different levels including four Institutes of Advanced Buddhist Studies, 30 Schools of Intermediate Buddhist Studies, and a nationwide system of schools of Elementary Buddhist Studies. Thanks to the improving education system, the qualifications of religious clergy are improved constantly. However, the contribution of religious groups has not been extended to the national education system of the country.

Training programs provided by religious groups in Vietnam

Religions in Vietnam also contribute to the education of the country. Article 4 of the Education Law describes the national education system as follows:

- 1 National education system includes formal education and continuing education.
- 2 Education and training levels of the national education system include:
 - a. pre-school, which includes nursery and kindergarten;
 - b. general education, which is elementary school, middle school, and high school;
 - c. vocational education, which is professional secondary and vocational training school;
 - d. college and graduate education (hereinafter referred to as tertiary education), which provide education at associate, undergraduate, master's, and doctoral levels.⁵

Accordingly, at present, religious groups are engaged in preschool education, general education, and vocational training. Religious groups that provide education must do so in compliance with the Education Law. The Law clearly prohibits evangelization in schools and training institutions. This is specified in Article 19 of the Education Law:

[Schools] shall not evangelize or conduct religious ceremonies in schools or other educational institutions of education systems of the public, of state departments, of political organizations, of socio-political organizations, or of the military.

Superstition is also prohibited in schools according to Article 20 on the prohibition of abusing educational activities:

It is prohibited to take advantage of educational activities to distort the policies and laws of the State, against the State of the Socialist Republic of Vietnam, divide the nation's unity, incite violence, propaganda for war of aggression, oppose national customs and traditions, spread superstition and bad practices, or engage learners in the social problems.

It is also prohibited to take advantage of educational activities for the purpose of earning profits or other forms of personal monetary gain.

Preschool education by religious organizations

Catholic Christianity and Buddhism have traditionally operated kindergartens in the form of private schools. The school curriculum complies with regulations on preschool education. Currently, there are 116 Buddhist schools that teach and board kindergarten children, orphans, and children with disabilities, with a total of 6,000 enrollments. However, the professional teaching staff of Buddhist clergy and laypersons is still inadequate. The Charity Commission of the Buddhist Church of Vietnam has organized training in childcare for 92 nuns and laypersons for teaching purposes.⁶ Hue City, which is considered a major center of Buddhism in Vietnam, has many kindergartens with spacious school facilities, such as Quảng Tế, Phước Vân, Hồng Đức, and Diệu Nghiêm kindergartens. Among these are schools that were named “good schools” by the City’s Education Department, such as Quảng Tế and Phước Vân kindergartens.

Many private kindergartens are associated with the activities of Catholic religious orders. Some orders have free classes for poor children with disabilities. The Catholic Church in Vietnam maintains records of the exact number of kindergartens operated by the church.

Except for free classes for poor children with disabilities, preschool classes of private schools operated by religious groups require tuition payments. The teachers in kindergartens of private schools are mainly religious sisters. They consider their work at nursery school a task entrusted to them by their church. Teachers in these classes must attend training for preschool teachers and pass the state’s qualification exam for preschool teachers. All teachers must annually attend training courses of continuing education provided by Education Departments at district and provincial levels. In reality, the majority of teachers at private kindergartens operated by religious groups provide quality instruction. However, in some cases there are untrained teachers who need further training.

This writer personally paid a visit to a private kindergarten operated by Catholic Christians in Hanoi. The headquarters were at 33 Nha Chung Street, Hoan Kiem District, Hanoi. The school facilities are spacious, fully equipped to operate as a nursery school. Annually, the Education Department of Hanoi oversees the school. The school has been named in the “good school” category for many consecutive years. The Health Department of Hanoi has also monitored the quality of the school’s hygiene, especially related to food safety issues. The results are very good, even higher than some public preschools.

This writer also interviewed Ms. Thay, the school principal. She said the school was highly regarded among many parents who wanted to send their children to school. Although the school is operated by Catholic nuns, children are admitted regardless of their religious affiliation.

Nguyen Thi Minh Ngoc

The children do not need to pay any admission fee. The nuns working at the kindergarten were trained at teacher training schools of the state and participate annually in the continuing education program. The curriculum complies with the standard curriculum provided by the Hanoi Department of Education. It does not include doctrinal education in its program. Unlike public schools, however, children have been taught to say grace before having meals.

It is obvious that this school has many advantages over public schools. The number of children per class is limited to a maximum of 25 instead of the 40–60 children one sees in public school classrooms. To welcome the two-year-old children coming to school for the first time, Ms. Thay asked all the religious sisters to support the school for those days, each sister taking care of two children in order to make sure that the children would not cry out of fear during their first days. The children think the food is delicious. Some children told us that the food at school was better than the food they have at home. Some parents, in their conversations with us, said that they were pleased with the school and thanked the nuns for helping them in taking care of and teaching the children kindly. The tenderness and kindness of the nuns produce a positive influence on the development of the children's personalities, especially the girls. The school's cost of tuition is still lower than other private schools, although it is higher than public school costs. Preschool children enrolled in this school are fully eligible to attend primary school.

Free Lớp Học Tình Thương (Classes of Mercy)

Economically challenged parents who do not generate enough income to send their children to public and private schools find free classes a good choice. Kỳ Quang II Pagoda, Go Vap District, Ho Chi Minh City has held free classes for children for many years. In the 2008–09 school year, it maintained six elementary classes with a total of 119 students.⁷

Thua Thien Hue Province has 212 classes with a total enrolment of 6,107 students, in which 115 classes are boarding classes with 4,422 students. They have a total of 74 teachers and 336 employees.⁸

The Buddhist Church has over 1,000 free classes with over 20,000 students. However, teaching staff made up of Buddhist clergy is limited. The Charity Commission of the Buddhist Church of Vietnam has organized training in childcare for 92 nuns and laypersons for teaching purposes.⁹

Vocational training schools

To help children coming from poor households or children with disabilities to learn how to generate income to support themselves, the Buddhist Church of Vietnam has organized free training schools at provincial level in some provinces. Currently the Buddhist Church has about 10 vocational schools across the country, teaching clothing, electrical works, computer works, car and motorbike maintenance, hairdressing, acupuncture, and other subjects. Flagship schools include Tây Linh Temple, directed by the Rev. Thích Nữ Nhữ Minh, and Long Thọ Pagoda, directed by the Rev. Thích Nữ Minh Tấnh, which provide two six-month courses per year. Each course has about 130–60 students. Since their opening, these two schools have equipped nearly 1,000 students in embroidery, clothing, and computer maintenance work. After graduation, students are introduced to work in garment shops in Ho Chi Minh City, Thủy Dũng weaving shops, and embroidery shops in Hue.

At Kỳ Quang II Pagoda, Go Vap District, Ho Chi Minh City, charity works included vocational orientation and vocational training. According to a 2008 annual report, the school

graduated three training classes (2006–08) on Japanese massage–acupressure for students with visual impairment. In the summer, the school cooperated with the Institute of Medicine Study to organize acupressure massage classes at the elementary level for students with visual impairment. This is the sixth such course so organized. The student enrollment was 60. While some students had been living at the temple, some students came from neighboring provinces.¹⁰

Conclusion

Religious groups in Vietnam, mainly Catholic Christians and Buddhists, have worked in the national education system for hundreds of years; in some cases their involvement can be traced to the early origins of their religion. Many church–established schools have met standards prescribed by the Ministry of Education and prove themselves to be of high quality. However, there are still some schools which have staffing limitations in terms of quality and quantity.

In the context of economic difficulties, educational works of religious groups share the burden with the Vietnamese national education system. However, in order to improve teaching quality and to extend their education programs to different education levels, the state should have more specific policies. In 2009, the Ministry of Education had an inter-ministerial team to investigate a proposal to open a Buddhist university. Currently the proposal has not been approved, but if it is eventually approved, it will be the first university established by a religious group in Vietnam since national reunification. This reflects the open-door policy of the government of Vietnam on religious matters, especially in the field of national education.

Notes

- 1 Oscar Saleminck, Presentation at “Anthropology of Human Security,” Free University, Amsterdam, August 29–30, 2005.
- 2 For further information, see Nguyễn Minh Ngọc, “Dịch vụ Phật giáo: Hoạt động mang tính dân gian và là cách thức giải quyết nhu cầu tâm linh tín đồ của Phật giáo Việt Nam” (Buddhist Service: Popular activity which is an approach to meet the spiritual need of Vietnamese Buddhists, in *Sử biến đổi của tôn giáo tín ngưỡng ở Việt Nam hiện nay* (Religious Transformation in Contemporary Vietnam) (Thế giới Publishing House, 2008).
- 3 Communist Party of Vietnam, *Văn kiện Đại hội đại biểu toàn quốc lần thứ VII* (NXBST, Hà Nội, 1991) tr 78.#
- 4 Hiến pháp Việt Nam (Vietnam Constitution) (NXB CTQG, Hà Nội, 1995) tr 159.
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