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Freedom of thought, conscience, and religion supporting peaceful plural living together

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FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION SUPPORTING PEACEFUL PLURAL LIVING TOGETHER



Jessica Giles

**Freedom of thought, conscience, and religion
supporting peaceful plural living together**

Jessica Giles

For Gordon, María and Christín

Freedom of thought, conscience, and religion supporting peaceful plural living together

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Table of Contents

<i>Foreword</i>	<i>viii</i>
<i>Acknowledgements</i>	<i>xiii</i>
<i>Chapter 1. Introduction, context, and approach</i>	<i>1</i>
1.1 Introduction, context, and approach	<i>2</i>
1.2 Introduction to chapter 1	<i>3</i>
1.3 Context: the relevancy of freedom of thought, conscience, and religion.....	<i>4</i>
1.3.1 The importance of freedom of thought, conscience, and religion as a universal human right	<i>4</i>
1.3.2 The tension between individual and communal rights: Herman Dooyeweerd and sphere sovereignty	<i>12</i>
1.3.3 Freedom of Thought, Conscience, and Religion as a constitutional tool to support individual, communal, and plural societal living together.....	<i>14</i>
1.3.4 Overcoming a Western cultural bias: the need for religion-based dialogue.....	<i>15</i>
1.3.5 Situating the analysis in the context of other approaches	<i>17</i>
1.3.6 How might the theoretical approach to FTCR inform its implementation?	<i>23</i>
1.4 The research questions and summary of the research	<i>25</i>
1.4.1 Research questions	<i>25</i>
1.4.2 Overview of the argument	<i>26</i>
1.5 The methodological approach and key terms	<i>32</i>
1.5.1 The methodological approach	<i>32</i>
1.5.2 Rigour.....	<i>39</i>
1.5.3 Central concepts	<i>40</i>
1.6 The relevance of Dooyeweerd's Christian philosophy	<i>48</i>
1.6.1 Dooyeweerd's philosophy	<i>50</i>
<i>Chapter 2. Religious Freedom in Global Context</i>	<i>57</i>
<i>Chapter 3. A Theological Justification for Freedom of Religion and Belief as a Universal Right</i>	<i>90</i>
<i>Chapter 4. The Interrelationship between Freedom of Thought, Conscience and Religion and The Rule of Law</i>	<i>127</i>
<i>Chapter 5. Tradition as a Peacebuilding Tool</i>	<i>155</i>
<i>Chapter 6: Conclusion</i>	<i>195</i>
<i>Chapter 7: Summary in English together with title and summary in Dutch</i>	<i>210</i>
7.1 Summary in English	<i>211</i>
7.2 Title and summary in Dutch	<i>213</i>
<i>Appendix I Legal provisions and terms</i>	<i>216</i>
Key legal provisions	<i>216</i>
Key terms	<i>220</i>
<i>Appendix II Published works incorporated into chapters 2-5</i>	<i>229</i>
<i>Appendix III Additional publications</i>	<i>230</i>
<i>Appendix IV Curriculum Vitae</i>	<i>233</i>
<i>Appendix V Propositions relating to the dissertation</i>	<i>234</i>

<i>Bibliography</i>	236
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Foreword

‘Modern democracy seeks to somewhat shape the ungraspable society by means of diverse institutions such as the family, the state, authority, the fatherland or culture [Lefort 1986b, 304]. Should this process of shaping society fail or be in danger of failing, or appear to be incredible, the discontent will result in a crisis, so that the legitimacy of the institutions will be called into question. It is in this stage that Western democracy at present finds itself. That is why it is precisely now that a commonly shared language and history is immensely important in defining national identity’.¹

This crisis of faith in civil society institutions shows little sign of abating² and is coupled with turmoil and breakdown within civil society outside the Western democratic context.³ Indeed, this sense of global unease and fragility is compounded by what Paul Cliteur describes as theo-terrorism, a terrorism that uses religion to legitimize violence and consequently has the effect of muting freedom of speech due to fear of that terrorism.⁴ The impact of this is that plural debate, religious or otherwise, around the moral frameworks, historic and new traditions that are the foundations of civil society, becomes crippled. A gradual mutation of expectations creeps into the substrata of civil society and comes to influence hearts and minds to new types of charismatic centralised leadership. A state of affairs that neither vicarious religion⁵ nor individual belief and interpersonal religion can counterbalance.⁶ Individuals

¹ Afshin Ellian, ‘L’amour de la démocratie versus the Dictatorship of the Constitutional State (Rechtsstaat). The defense in Democracy Itself’ in Afshin Ellian and Bastiaan Rijpkema eds., *Militant Democracy – Political Science, Law and Philosophy* (Cham, Switzerland: Springer International AG, 2018): 166.

² Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame: University of Notre Dame Press, 2011): 6-7.

³ For example, the Syrian revolution that began in 2011, the anti-American insurgency and sectarian civil war in Iraq (Second Persian Gulf War) 2003-2011 and, the displacement of the Rohingya people from Myanmar, most recently in 2017.

⁴ Paul Cliteur, *Theoterrorism v. Freedom of Speech: From Incident to Precedent* (Amsterdam, The Netherlands: Amsterdam University Press, 2019): for example, 12, 18 and Chapter 3.

⁵ Grace Davie posits the idea of ‘believing without belonging’, namely that belief is manifest in a smaller active religious faith group, with others believing on the periphery. Vicarious religion she identifies as the experience of the periphery who enjoy religion vicariously through the central active group, or religious faith leaders, rather than actively engaging with it themselves, Grace Davie, *Religion in Britain: A Persistent Paradox*, 2nd ed. (Hoboken, New Jersey: Wiley Blackwell, 2015): 79-90.

⁶ Although a strong sense of the concept of civil religion, that is the idea that religion holds society together, might better support more stable civil societies. Provided that the idea of civil religion for any given society has strong roots for establishing plural consensus around the core norms of public life: Robert D Putnam and David

become either incapable, or too frightened, of articulating their faith, belief, history, and tradition. Laws can be adapted or interpreted overtime providing weaker protection for core rights⁷. Collectively society may come to forget the virtues upon which it has been based, potentially leaving space for ideological and psychological radicalisation to take hold.

Building plural consensus around the common norms of society through the interaction of strong civil society organisations becomes a forgotten and/or an unwanted skill. Addressing radicalisation and maintaining a stable, peaceful society in which individuals are free to flourish, consequently, becomes increasingly difficult.⁸

What then of the role of human rights as this transformation occurs? Arguably there is a sense in which the individualism engendered by rights discourse is partly to blame. Ignoring the communal approach to rights signalled in article 29 of the Universal Declaration of Human Rights⁹, national and international institutions responsible for rights implementation have at times permitted the right of the individual to trump the wider interests of strong civil societies. As the legally self-appointed guardians of human rights, Western governments have tended to pander to individual rights protection, thereby gaining popular support. Whilst this strengthens ties between the state and the individual and, to some extent protects religion and belief, there is a sense in which the state becomes society's moral compass and saviour. This ignores the essential role of civil society institutions in tempering the exercise of arbitrary power¹⁰ and thereby protecting individuals from the excesses of a heavily centralised

E Campbell, *American Grace: How Religion Divides and Unites Us* (New York: Simon & Schuster, 2012): 517-518.

⁷ Miriam B. van Schaik 'The Right to Apostasy Recognised. Reaffirming the Right to Religious Freedom' *Politics, Religion, and Ideology* (2023) 24, No.2: 267-287.

⁸ For example, Mohammed Ilyas and Rayvinder Athwal, 'De-Radicalisation and Humanitarianism in Indonesia' *Social Sciences* 10, no.3, (2021): 87-104. The authors explore the issue of radicalisation in Indonesia and attempts to turn Indonesia into an Islamic state. They explain how, in the face of radicalisation of those living in Indonesia and the return of families from Syria and Iraq, there has been a recognition for the need to expand national de-radicalisation programs to include, inter alia, charity work supported by civil society organisations, life coaching and mechanisms to address the non-ideological factors that might have led individuals into violent extremism. The authors posit that these programs should also include humanitarian work to support a better understanding of community and interconnectivity between members of Indonesian society: see 99-100. These policies were pursued to protect pluralism in Indonesia (Pancasila), which had been adopted in the 1940s as national policy: Michael Morfit 'Pancasila: The Indonesian State Ideology According to the New Order Government' *Asian Survey* 21, No. 8, (Aug 1981): 838-851.

⁹ And indeed, the location of individual rights within a broader concept of relational virtue underpinning law: see Mark Somos 'Virtue' in ed. Randall Lesaffer and Janne E Nijman *The Cambridge Companion to Hugo Grotius. Cambridge Companions to Law* (Cambridge: Cambridge University Press, 2021): 91-117, 113.

¹⁰ See, for example, Martin Krygier's work exploring Gianluigi Palombella's analysis of the rule of law and the requirement for pluralism to support it: Martin Krygier, 'Inside the Rule of Law' *Rivista di Filosofia del Diritto* III, no.1, (2014): 77-98, 82-83, 86-88, 96; and his additional sociological analysis of the rule of law, for example, Martin Krygier, 'Tempering Power,' in Maurice Adams, Anne Meuwese, and Ernst Hirsch Ballin eds., *Constitutionalism and the Rule of Law: Bridging Idealism and Realism* (Cambridge: Cambridge University Press, 2017): 34-59, 47-49, 55-59; Martin Krygier and Adam Winchester, 'Arbitrary Power and the Ideal of the Rule of Law' in Christopher May and Adam Winchester eds., *Handbook of the Rule of Law* (Cheltenham,

government. This is evidenced recently in the work of Adam Chilton and Mila Versteeg, who argue that modern autocrats attempt to build a façade of governance in accordance with the rule of law, whilst gradually eroding rights by lawful means. Achieved, for example, through the purchase by government of majority shareholdings in media companies to control the dissemination of information and silence dissent.¹¹ In the face of the erosion of fundamental civil and political rights, those rights that are enjoyed collectively by civil society groups appear to withstand attempts to undermine them for longer. Chilton and Versteeg argue that this is particularly so for religious communities, since these groups generally cannot be bought out and will tend to use the courts to protect freedoms relevant to their operation. This gives some religious groups the ability to speak truth to power and exist under regimes which are otherwise hostile to individual rights. Religious groups are thus highly effective in the protection of both communal¹² and individual rights. This can extend beyond the right to freedom of thought, conscience and, religion and, can incorporate any rights in which the religious organisation regards itself as implicated.¹³ However, religious groups can only hold out so long against a regime determined to suppress rights in the context of a civil society which does not have an interconnected web of strong civil society organisations.

I posit that redemption from the crisis in which civil society currently finds itself can be found in a fresh look at the importance of FTCCR and in a nuanced theoretical approach to it. I argue for a balanced approach to the individual and communal common good, by supporting the individual, communal, and societal aspects of FTCCR. Indeed, Sophie van Bijsterveld, analysing the relationship between religion and the state, identifies the importance of the communal and societal aspect of FTCCR when she describes faith groups as bearers of social responsibility that ‘shape and confirm the social and moral fabric of society’.¹⁴ This, despite

England: Edward Elgar, 2018): 75-95, 86-88, 94-95. Martin Krygier also considers the conditions necessary for embedding the rule of law, Martin Krygier, ‘The Challenge of Institutionalisation: Post-communist “Transitions”, Populism and the Rule of law’ *European Constitutional Law Review* 15, No. 3 (2019): 544-573, 553-554, 573.

¹¹ Adam Chilton and Mila Versteeg, *How Constitutional Rights Matter* (Oxford: Oxford University Press, 2020): 7-12. According to Chilton and Versteeg, the power of civil society organisations proves even stronger than the instigation of opposition or demonstrations through social media. This is because social media inspired protests are often not coordinated and lack strong leadership. Unlike the longer lasting and more resilient actions taken by civil society organisations which have stronger structures and a depth of resources: Adam Chilton and Mila Versteeg, *How Constitutional Rights Matter*: 17-18.

¹² I perceive of the communal aspect of FTCCR as that which protects groups, for example faith groups. So, whilst FTCCR has a role in protecting the enjoyment by an individual of their thought, conscience and/or religion: it also has a role in protecting the right of groups to meet together, practice and enjoy freedom of thought, conscience and/or religion.

¹³ Adam Chilton and Mila Versteeg, *How Constitutional Rights Matter*: 229-263.

¹⁴ Sophie van Bijsterveld, *State and Religion. Re-assessing a Mutual Relationship* (The Hague, The Netherlands: Eleven International Publishing, 2018): 49.

the paradox built into social pluralism, namely the tension between creating room for individual and communal freedoms on the one hand, and the need to build common consensus concerning peaceful living together on the other.¹⁵

I seek to excavate the ground around freedom of thought, conscience, and religion to better understand its current context and unearth the potential that this right has to support plural living together. I explore a theoretical approach to expand the impact of this right, based on the Christian philosophy of Herman Dooyeweerd, the Reformed theological theory of common grace,¹⁶ and the concept of tradition. I posit that the concept of dialogic multivalent reasoning situated in an adapted Dooyeweerdian framework facilitates the articulation of virtues and the values accorded to them that can provide a mutually supportive approach. I explore, in particular, Dooyeweerd's conceptualisation of civil society as a series of spheres, based on Abraham Kuyper's development of the concept of sphere sovereignty.¹⁷

Dooyeweerd's work is chosen because of its sophisticated framework for supporting and analysing interactions within civil society. Falling within social pluralist constitutionalism,¹⁸ Dooyeweerd's approach provides a tool for reinvigorating support for the vital role that civil society institutions play in curbing the exercise of arbitrary power by government and tempering excessive individualism that can put stress on the seams of public life. I propose that the plural and communal aspect of Dooyeweerd's framework, coupled with its religion-

¹⁵ Sophie van Bijsterveld, *State and Religion*: 131; Hans-Martien ten Napel, *Constitutionalism, Democracy and Religious Freedom. To Be Fully Human* (London: Routledge, 2017): 6-7.

¹⁶ What I identify within the theory of common grace is the ability to recognise both Christians and non-Christians as capable of contributing theoretically towards the conceptualisation of the common good, an approach that acknowledges, from a Christian perspective, that other voices have an equally important contribution to make to the debate about public living together. This is important given that theoretical approaches to rights, including theological ones, tend to be exclusionary towards other theoretical approaches. The theory of common grace is expounded in Abraham Kuyper, *Common Grace: God's Gifts for a Fallen World. Volume 1* (Abraham Kuyper Collected Works in Public Theology) Jordan J Ballor and Stephen J Grabill eds., (Grand Rapids, Michigan: Acton Institute for the Study of Religion and Liberty and, Bellingham, Washington: Lexham Press, 2016): 13, 19-27 and Abraham Kuyper, *Common Grace: God's Gifts for a Fallen World Volume 2* (Abraham Kuyper Collected Works in Public Theology) Jordan J Ballor and J Daryl Charles eds., (Grand Rapids, Michigan: Acton Institute for the Study of Religion and Liberty and, Bellingham, Washington: Lexham Press, 2016): 94-102; Cornelius Van Til, *Common Grace and the Gospel* 2nd ed. Scott K Oliphint, ed. (Philipsburg, New Jersey: Presbyterian and Reformed Publishing Company, 2015): 20-44.

¹⁷ James E. McGoldrick, *Abraham Kuyper: God's Renaissance Man*. Second imprint (Faverdale, North Darlington: EP Books, 2009): 62-72; This was itself a development of the Calvinistic 'law-idea': Herman Dooyeweerd, *Essays in Legal, Social and Political Philosophy. Collected works. Series B. Volume 17* D F M Strauss general ed. (Ontario, Canada: Paideia Press, 2012): 18-19, 142. Sphere sovereignty is the idea that humankind possesses derived authority in each sphere of activity. For Kuyper this authority was derived from God. So, for example, government officials have derived authority in their sphere, those running schools in their sphere, those running businesses in their sphere and so on. Each sphere is sovereign in terms of its own activity and, all are under the sovereignty of God: Craig G Bartholomew, *Contours of the Kuyperian Tradition: A Systematic Introduction* (Downers Grove, Illinois: InterVarsity Press Academic, 2021): 131-145.

¹⁸ Hans-Martien ten Napel, *Constitutionalism, Democracy and Religious Freedom*: 9, and chapters 2 and 4.

based approach, makes it suited to both Western and non-Western contexts, engendering peaceful plural living together in global context¹⁹.

¹⁹ This document was submitted on the 27 September 2024 and reflects relevant sources up to this date.

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