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

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## Appendix I Legal provisions and terms

### Key legal provisions

The fundamental right to freedom of thought, conscience, and religion is included as a core civil right in international treaties. The text is similar across the international treaties incorporating the right.

#### *The European Convention on Human Rights (ECHR)*<sup>251</sup>

##### Article 9 – Freedom of thought, conscience, and religion

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

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others.

#### *Universal Declaration on Human Rights (UDHR)*<sup>252</sup>

##### Article 18

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

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<sup>251</sup> Nov. 4, 1950, 213 U.N.T.S. 2889.

<sup>252</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 29 (December 10, 1948).

others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law, solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

#### *International Covenant on Civil and Political Rights*<sup>253</sup>

##### Article 18

1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The State Parties to the present Covenant 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.

#### ***The Muslim Accords***

Chapters 2, 3 and 4 in this work refer to a group of international instruments as the Muslim Accords. These include:

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<sup>253</sup> G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights art. 18 (December 16, 1966).

*The Cairo Declaration on Human Rights 1990*<sup>254</sup>

A declaration by the Organisation of Islamic Cooperation. This affirmed Shar'ia as its source and provided 'guidance for Member States in the field of human rights. The declaration did not incorporate a right to freedom of thought, conscience, and religion.

*The Istanbul Process 2011*<sup>255</sup>

This was a series of inter-governmental meetings to promote and guide implementation and work towards countering religion or belief-based intolerance.

*The Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence 2013*<sup>256</sup>

Part II Context.

7. As the world is ever more inter-connected and as the fabric of societies has become more multicultural in nature, there has been a number of incidents in recent years, in different parts of the world, which have brought renewed attention to the issue of incitement to hatred. It should also be underlined that many of the conflicts worldwide in past decades have also – to varying degrees – contained a component of incitement to national, racial, or religious hatred.

8. All human rights are universal, indivisible, and interdependent and interrelated. Nowhere is this interdependence more obvious than in the discussion of freedom of expression in relation to other human rights. The realization of the right to freedom of expression enables vibrant, multi-faceted public interest debate giving voice to different perspectives and viewpoints. Respect for freedom of expression has a crucial role to play in ensuring democracy and sustainable human development, as well as in promoting international peace and security.

9. Unfortunately, individuals and groups have suffered various forms of discrimination, hostility, or violence by reason of their ethnicity or religion. One particular challenge in this regard is to contain the negative effects of the

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<sup>254</sup> The Cairo Declaration on Human Rights in Islam, (August 5, 1990) UN GAOR, World Conf. on Hum. Rts., 4<sup>th</sup> Sess A/CONF.157/PC/62/Add.18 (1993).

<sup>255</sup> Heart of Asia – Istanbul Process 2011-2019, accessed 25 March 2024, <https://www.hoa.gov.af/>.

<sup>256</sup> Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence A/HRC/22/17/Add.4, accessed 18 November 2023, [https://www.ohchr.org/sites/default/files/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf).

manipulation of race, ethnic origin and religion and to guard against the adverse use of concepts of national unity or national identity, which are often instrumentalized for, inter alia, political and electoral purposes.

10. It is often purported that freedom of expression and freedom of religion or belief are in a tense relationship or even contradictory. In reality, they are mutually dependent and reinforcing. The freedom to exercise or not exercise one's religion or belief cannot exist if the freedom of expression is not respected, as free public discourse depends on respect for the diversity of convictions which people may have. Likewise, freedom of expression is essential to creating an environment in which constructive discussion about religious matters could be held. Indeed, free and critical thinking in open debate is the soundest way to probe whether religious interpretations adhere to or distort the original values that underpin religious belief.

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13. Against this background, the following conclusions and recommendations constitute the synthesis of this long, transparent, and deep reflection by experts. The conclusions – in the area of legislation, judicial infrastructure, and policy – are intended to better guide all stakeholders in implementing the international prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

The Rabat Plan of action then proceeds to recommend, *inter alia*, anti-discrimination legislation aimed to protect minorities and vulnerable groups.

#### *Fez Process and Fez Plan of Action 2017*<sup>257</sup>

Linked to the Rabat Plan of Action, this aimed to engage religious faith leaders in countering hate speech and incitement to violence. It also recognised the importance of the media.

#### *Marrakech Declaration 2016*<sup>258</sup>

The Muslim community gathered at Marrakech declared its:

...firm commitment to the principles articulated in the Charter of Medina.... [That t]he objectives of the Charter of Medina provide a suitable framework for national

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<sup>257</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect 'Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes', accessed 17 September 2024, [https://www.un.org/en/genocideprevention/documents/publications-and-resources/Plan\\_of\\_Action\\_Religious-rev5.pdf](https://www.un.org/en/genocideprevention/documents/publications-and-resources/Plan_of_Action_Religious-rev5.pdf).

<sup>258</sup> Marrakech Declaration on the Rights of Religious Minorities in the Muslim World, 2016.

constitutions in countries with Muslim majorities, and the United Nations Charter and related documents, such as the Universal Declaration of Human Rights, are in the harmony with the Charter of Medina, including consideration for public order.

And further that:

[D]eep reflection upon the various crises afflicting humanity underscores the inevitable and urgent need for cooperation among all religious groups, we AFFIRM HEREBY that such cooperation must be based on a ‘Common Word’ requiring that such cooperation must go beyond mutual tolerance and respect, to providing full protection for the rights and liberties to all religious groups in a civilized manner that eschews coercion, bias, and arrogance.

*The Beirut Declaration and its 18 commitments on ‘Faith for Rights’ 2017*<sup>259</sup>

This declared that:

We, faith-based and civil society actors working in the field of human rights and gathered in Beirut on 28-29 March 2017, express the deep conviction that our respective religions and beliefs share a common commitment to upholding the dignity and the equal worth of all human beings. Shared human values and equal dignity are therefore common roots of our cultures. Faith and rights should be mutually reinforcing spheres. Individual and communal expression of religions or beliefs thrive and flourish in environments where human rights, based on the equal worth of all individuals, are protected. Similarly, human rights can benefit from deeply rooted ethical and spiritual foundations provided by religions or beliefs.

## **Key terms**

*Freedom of thought, conscience, and religion*

As the jurisprudence within international and national courts has developed and as academic commentary has grown, aspects of FTCCR have come under the spotlight. In brief, FTCCR has come to incorporate freedom to adopt, change or renounce a religion or belief; freedom from coercion; the right to manifest one’s religion or belief; freedom to worship; protection for religious sites, shrines and symbols and, places of worship; to observe days of rest and to

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<sup>259</sup> Office of the United Nations High Commissioner for Human Rights ‘Beirut Declaration on “Faith for Rights”’ 2017.

celebrate holidays and ceremonies in accordance with the precepts of religion or belief; the right to train, appoint, elect or designate by succession appropriate leaders; write, issue and disseminate relevant publications; teach religion or belief in suitable places; the right of parents to ensure the religious and moral education of their children; the right to conscientious objection.<sup>260</sup>

The Human Rights Committee in its general comment 22 on article 18 ICCPR, para 5 states:

Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.<sup>261</sup>

The wording of the right to FTCT has been analysed by courts, academics, diplomats, and NGOs, an analysis of the case law in respect of FTCT can be found in Chapter 2, below are some highlights:

### *Belief*

The international treaties incorporating the right to FTCT generally refer to the right to ‘freedom of thought, conscience, and religion’ and then subsequently refer to ‘religion and belief’. The literal interpretation of these legal instruments<sup>262</sup> is that the term belief incorporates systems of ‘thought and conscience’ but that religion is something different. The terminology ‘religion and belief’ is, however, contested. The terms religion, thought, conscience, and belief are further distinguished in the documentation of the United Nations: for example, the ‘#Faith4 Rights Toolkit’<sup>263</sup> this is explored in more detail below.

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<sup>260</sup> United Nations Office of the High Commissioner for Human Rights. Special Rapporteur on Freedom of Religion or Belief, ‘International Standards’ n.d, accessed 17 September 2024, <https://www.ohchr.org/en/special-procedures/sr-religion-or-belief/international-standards>; Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief. An International Law Commentary*: 55-258. 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.

<sup>261</sup> United Nations Office of the High Commissioner for Human Rights, ‘Human Rights Committee General Comment adopted by the Human Rights Committee under Article 40, paragraph 4, of the International Covenant on Civil and Political Rights. General comment no. 22 (48) (art. 18) of the ICCPR’ (1993) CCPR/C/21/Rev.1/Add.4: para 9, accessed 17 September 2024 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F21%2FRev.1%2FAdd.4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F21%2FRev.1%2FAdd.4&Lang=en).

<sup>262</sup> Reference here is made to the United Kingdom’s approach. The United Kingdom, a common law jurisdiction, uses a fourfold method of legal interpretation including a literal approach whereby the judiciary interpret legislation in a manner which represents the literal meaning of the wording: Rules of Interpretation in Francis A R Bennion, *Understanding Common Law Legislation: Drafting and Interpretation*. (Oxford: Oxford University Publishing, 2009): Chapter 9, 79-88.

<sup>263</sup> United Nations Office of the High Commissioner for Human Rights ‘The Collonges Declaration and #Faith4Rights Toolkit’ (2019).

### *Freedom of religion*

The legal and philosophical definition of religion remains contested. In its broadest sense it includes all existential convictions. In its narrower legal sense, it relates to systems of belief that incorporate a supernatural being.

Lord Justice Neuberger, in *R (on the application of Hodkin) v Registrar General of Births, Deaths and Marriages*<sup>264</sup> when considering whether scientology was a religion warned, at para 34, that:

There has never been a universal legal definition of religion in English law.

Experience across the common law world over many years has shown the pitfalls of attempting to attach a narrowly circumscribed meaning to the word.

Referring to the ‘considerable volume of common law jurisprudence’ he ruled, in *Hodkin* at para 51, that unless ‘there is some compelling contextual reason for holding otherwise, religion should not be confined to religions which recognise a supreme deity’ since to do so would exclude Buddhism, Jainism, Taoism, Theosophy and part of Hinduism.

He further ruled, at para 57 that:

I would describe religion in summary as a spiritual or non-secular belief system, held by a group of adherents, which claims to explain [humankind’s] place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system. By spiritual or non-secular, I mean a belief system which goes beyond that which can be perceived by the sense or ascertained by the application of science.

The European Court of Human Rights had cause more recently to consider the legal scope of the term ‘religion’ in *Hermina Geertruida de Wilde v the Netherlands*.<sup>265</sup> In that case the Dutch Administrative Jurisdiction Division reiterated the definition of religion established in, *inter alia*, *Campbell and Cosans v The United Kingdom*<sup>266</sup>; *Eweida and Others v the United Kingdom*<sup>267</sup> and *S.A.S v France*<sup>268</sup> namely that:

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<sup>264</sup> *R (on the application of Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77.

<sup>265</sup> *Hermina Geertruida de Wilde v the Netherlands*, Application no 9476/19 (ECtHR, 9 November 2021).

<sup>266</sup> *Campbell and Cosans v The United Kingdom*, Application no 7511/76; 7743/76 (ECtHR, 25 February 1982, 23 March 1983).

<sup>267</sup> *Eweida and Others v the United Kingdom*, Application nos 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 27 May 2013).

<sup>268</sup> *S.A.S v France* Application no 43835/11 (ECtHR, 1 July 2014).



... for a construct of views to be considered a religion or belief within the meaning of Article 9 of the Convention, those view[s] must have obtained a certain level of cogency, seriousness, cohesion, and importance.

It ruled that Pastafarianism was a parody of religion and that the satirical elements involved were so dominant that it could not be considered a religion in and of itself within the meaning of Article 6 of the Dutch Constitution and Article 9 of the ECHR.

When it came before the European Court of Human Rights, the court ruled in *de Wilde*, at para 50 that:

The Court is mindful that the right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of a religion of legal protection. Such limitative definitions have a direct impact on the exercise of the right to freedom of religion and are liable to curtail the exercise of that right by denying the religious nature of a faith (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 114, 26 April 2016).

But, at para 51, that:

Although the concept of “religion or belief” in the sense of being protected by Article 9 must be interpreted broadly, that does not mean that all opinions or convictions are to be regarded as such (see *Pretty v. the United Kingdom*, no. 2346/02, § 82, ECHR 2002-III). The Court has held that the right to freedom of thought, conscience and religion denotes only those views that attain a certain level of cogency, seriousness, cohesion and importance. However, provided this condition is satisfied – and when it has thus been established that Article 9 applies, the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *S.A.S. v. France* [GC], no. 43835/11, § 55, ECHR 2014, and *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 81, ECHR 2013, with further references).

Concluding, in agreement with the Dutch Administrative Jurisdiction Division, that Pastafarianism was not a religion or belief within the meaning of Article 9 ECHR since its aim was to parody other religions and its original purpose was to protest against the

introduction of the doctrine of ‘intelligent design’ into the school curriculum in the state of Kansas in the USA.

Cliteur on *De Wilde* argues that this is inconsistent with a line of reasoning first established in *Kokkinakis v Greece* app. No 14307/88, that has protected ‘atheists, agnostics, sceptics, and the unconcerned’ under article 9.<sup>269</sup> Arguing that in the light of the ‘new atheism’ movement the Church of the Flying Spaghetti Monster should have been accorded a sufficient level of coherence and seriousness so as to come within ‘freedom to change religion’ pursuant to article 9.<sup>270</sup> Cliteur poses the question as to whether freedom of religion should protect a group that seeks to promulgate freedom from religion.

The term ‘religion’ is contested outside the deliberations of the courts, as well as within them. William James, in his Gifford Lectures, identifies a twofold definition of religion, including the institutional aspects on the one hand and the personal aspects on the other. The institutional he defines as ‘Worship and sacrifice, procedures for working on the dispositions of the deity, theology and ceremony and ecclesiastical organization’. This he identifies as ‘religion as an external art’. Personal religion he defines as the ‘inner dispositions of [humankind themselves] which form the centre of interest, [their] conscience, [their] deserts, [their] helplessness, [their] incompleteness’. For the purposes of his lectures, he defines this personal aspect of religion further as ‘The feelings, acts and experiences of individual [humans] in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine’.<sup>271</sup>

From Dooyeweerd’s perspective, the term religion is used in two ways.<sup>272</sup> The first is ‘the radical, central and integral depth dimension of creation, touching the *heart* of I-ness of the human being, giving direction to all the issues of life proceeding from this core dimension’. The second is to ‘designate one amongst the many articulations of life, familiar to us in faith and confessional activities and found alongside other human endeavours differentiated in activities such as thinking, the forming of culture, lingual activities, social actions, economic concerns, aesthetic creations, the formation of law, and moral worries.’ This is encompassed in the ‘*faith-function* of reality’ and is linked to ‘religious activities’. However, it also extends beyond a single aspect or function of reality since it is radical and integral in so far as it goes to the root of human existence and embraces all of life. For Dooyeweerd, religion was thus an

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<sup>269</sup> Paul Cliteur, ‘Atheists, Agnostics, Skeptics and the Unconcerned. Why the European Court is Inconsistent in its Case Law and Violates Article 9 ECHR.’ *Journal of Religion & Society* 25 (2023): 1-16.

<sup>270</sup> Paul Cliteur, ‘Atheists, Agnostics, Skeptics and the Unconcerned.’: 12.

<sup>271</sup> William James, *The Varieties of Religious Experience*: Lecture 2 ‘Circumscription of the Topic’, 2-3.

<sup>272</sup> Daniel F M Strauss, *The Philosophy of Herman Dooyeweerd*: 11-14.

‘all-embracing worldview’ a ‘ground motive’. Dooyeweerd’s philosophy is thus based on the idea that human rationality is not self-sufficient, and this leads to the conclusion that there must be a ‘*supra-theoretical ground motive*’. It is the supra-theoretical knowledge of God that, for Dooyeweerd, justifies a Christian philosophy. This sets him apart from theologians such as Karl Barth who regarded philosophy as alien to theological concepts and who identified theology as distinct, with its own epistemological basis<sup>273</sup>. Whilst both agreed that theology was about the systematic study of themes arising from scripture and about the nature of God, for Dooyeweerd it was entirely possible to pursue philosophy from a religion-based perspective, what was relevant was what that religion-based perspective was. For him it was based on the salvic-act of God.<sup>274</sup>

Whilst their conclusions are reached through very different reasoning, both Dooyeweerd and James appear to agree at one level, namely on the all-encompassing nature of religion. This understanding of religion has not filtered through to the courts adjudicating freedom of thought, conscience, or religion claims either as to the extent of the meaning of ‘religion’ or as to its all-encompassing nature. The threefold classification of claims as pertaining to religion, thought, and conscience therefore still prevails.

### *Faith*

The word faith in the context of discourse relating to freedom of thought, conscience and religion, is often taken to mean religious faith. Faith-group is consequently taken to mean a religious-faith group. Nicolae Turcan notes, however, that a faith does not necessarily need to encompass a religious foundation based on religious text and dogmas, it should rather first be considered as ‘a general human phenomenon ... based on a phenomenology of philosophical faith’<sup>275</sup>. This Turcan argues is founded on the idea that ‘every human being understands and knows from his or her own existence what it means to believe, even if this knowledge does not involve the religious dimensions’<sup>276</sup>. Thomas Langan, similarly, describes a natural faith as the ‘interpretive horizons we bring to every knowing’<sup>277</sup>. Thus, individuals demonstrate

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<sup>273</sup> Barth did, nevertheless perceive of the interaction between theology and philosophy as an important one: Kenneth Oakes *Karl Barth on Theology and Philosophy* (Oxford: Oxford University Press, 2012).

<sup>274</sup> Herman Dooyeweerd, *In the Twilight of Western Thought. Collected Works. Series B. Volume 16. Studies in the Pretended Autonomy of Philosophical Thought* (Ontario: Paideia Press, 2012) series ed. Daniel F Strauss: 79-87.

<sup>275</sup> Nicolae Turcan, ‘Faith as Experience: A Theo-Phenomenological Approach’ *Diakrisis Yearbook of Theology and Philosophy* 6, No. 1 (2023): 49-63, 50.

<sup>276</sup> Nicolae Turcan, ‘Faith as Experience: A Theo-Phenomenological Approach’, 50.

<sup>277</sup> Thomas Langan *Being and Truth* (Columbia: University of Missouri Press, 1996), 7.

faith without it being grounded in religious texts and faith-groups can encompass groups that similarly do not have at their core a religious scripture or religious texts defining their rationale for cohesion and action.

### *Freedom of thought and conscience*

The #Faith4Rights toolkit defines freedom of conscience as that which:

Shapes human choices and distinguishes human beings from other creatures. Freedom of conscience is imperative and larger than freedom of religion or belief. It covers all ethics and values a human being cherishes, whether of religious nature or not. There are no admissible limitations to this freedom, as long as personal convictions are not imposed on others and do not harm them.<sup>278</sup>

Frank Cranmer distinguishes freedom of thought and conscience from freedom of religion, whilst pointing out that sometimes the distinction is not clear.

...not every claim involving “thought”, or even “conscience”, is based on religion. It is self-evident that adherence to a religion cannot be a necessary prerequisite either for holding a particular philosophical belief or for maintaining a particular moral stance.<sup>279</sup>

Cranmer gives the example of someone exercising the right to conscientious objection. This can be grounded in a religious faith or a system of conscience.<sup>280</sup>

Cranmer further explores how freedom of thought can be considered distinct from freedom of conscience, although UK law does not include political beliefs within either: *Redfearn v The United Kingdom app no. 47335/06*. Cranmer argues that freedom of thought could address a parent’s desire to withdraw their child from religious aspects of the school day, such as prayers or a daily service.<sup>281</sup> He also points out that it has been called in aid to support the protection of cultural practices as distinct from religious practices, for example an Afro-Caribbean school boy whose cultural practice was to keep his hair in ‘cornrows’ (braids).<sup>282</sup>

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<sup>278</sup> United Nations Office of the High Commissioner for Human Rights ‘The Collonges Declaration and #Faith4Rights Toolkit’: Module 1 Freedom of Conscience: Full text of commitment I, accessed 8 October 2023, <https://www.ohchr.org/en/faith-for-rights/faith4rights-toolkit/module-1-freedom-conscience>.

<sup>279</sup> Frank Cranmer, ‘The Right to Freedom of Thought in the United Kingdom’ *European Journal of Comparative Law and Governance*, 8 (2021): 146-170, 148.

<sup>280</sup> Frank Cranmer, ‘The Right to Freedom of Thought in the United Kingdom’: 148.

<sup>281</sup> Frank Cranmer, ‘The Right to Freedom of Thought in the United Kingdom’: 152-153. Here he differs from Cliteur who argues that freedom from religion should be encompassed within the right to freedom of religion: Paul Cliteur, ‘Atheists, agnostics, skeptics and the unconcerned’: 2.

<sup>282</sup> *G (by his litigation friend) v The Head Teacher and Governors of St Gregory’s Catholic Science College* [2011] EWHC 1452 (Admin). Frank Cranmer, ‘The Right to Freedom of Thought in the United Kingdom’: 153.

Freedom of thought protects spiritual or philosophical convictions;<sup>283</sup> such as the belief that climate change exists and the need to act accordingly.<sup>284</sup> It also protects veganism as a philosophical position and the sanctity of life incorporating an anti-foxhunting stance;<sup>285</sup> pacifism, vegetarianism and abstinence have also been recognised as potentially coming within the protection of freedom of thought;<sup>286</sup> although in *Conisbee* the employment tribunal ruled that vegetarianism was not accorded protection as a belief.<sup>287</sup>

Although it is less litigated than freedom of religion and freedom of conscience, freedom of thought has however been recognised in some jurisdictions as belief which has a particular meaning not limited to religious belief.<sup>288</sup> Whilst beliefs are potentially protected under article 9, opinions enjoy the protection of article 10 (freedom of expression). The jurisprudence reveals that freedom of thought means an individual has an absolute right to believe what they want to<sup>289</sup> and also to refuse to articulate their beliefs.<sup>290</sup> An individual cannot be compelled to alter their inner thoughts, nor can they be subject to interventions to enable others to discover their inner thoughts.<sup>291</sup>

Freedom of thought and conscience have been described as ‘philosophically complex’ and as ‘transcending the bounds of law into philosophy, psychology, sociology and theology’.<sup>292</sup>

Although some argue that conscientious objection claims ought only to be religion based,<sup>293</sup> John Adenitire argues that an exercise of conscience should not privilege or disadvantage religion over non-religious beliefs. He proposes a ‘Liberal Model of Conscientious Objection’ based on four propositions: first, there should be a general right to conscientious objection. Second, the state should not pass judgment on the content of beliefs giving rise to

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<sup>283</sup> Patrick O’Callaghan and Bethan Shiner, ‘The Right to Freedom of Thought in the European Convention on Human Rights’ *European Journal of Comparative Law and Governance* 8 (2-3): 112-145: 127 quoting *McFeely et al v The United Kingdom* [1980] ECHR 8317/78: [29].

<sup>284</sup> *Grainger Plc & Ors v Nicholson* [2010] IRLR 4.

<sup>285</sup> *Hashman v Milton Park (Dorset) Limited (t/a Orchard Park)* [2011] ET 3105555/2009.

<sup>286</sup> *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2 AC 246, para 55; Frank Cranmer, ‘The Right to Freedom of Thought in the United Kingdom’: 160.

<sup>287</sup> *Conisbee v Crossley Farms Ltd & Ord* [2019] UKET 3335357/2018.

<sup>288</sup> Patrick O’Callaghan and Bethan Shiner, ‘The right to freedom of thought in The European Convention on Human Rights’: 126. *Pretty v The United Kingdom* [2002] ECHR 2346/02, 29 April 2002 and *Gough v The United Kingdom* [2015] ECHR 49327/11, 23 March 2015.

<sup>289</sup> Patrick O’Callaghan and Bethan Shiner, ‘The Right to freedom of Thought’: 130.

<sup>290</sup> *Alexandridis v Greece* [2008] ECHR 19516/06, 21 February 2008 and *Grzelak v Poland* [2010] ECHR 7710/02, 22 November 2010; Patrick O’Callaghan and Bethan Shiner, ‘The Right to Freedom of Thought’: 131.

<sup>291</sup> *Alexandridis v Greece and Sinan Işık v Turkey* [2010] ECHR 21924/05, 2 May 2010.

<sup>292</sup> Gerald Chipeur and Robert Clarke, ‘The Art of Living with Ourselves: What does the Law have to do with Conscience.’ In *Religious Beliefs and Conscientious Exemptions in a Liberal State* ed. John Adenitire, (Oxford: Hart Publishing, 2019): 157-184.

<sup>293</sup> For example, Richard Moon, ‘Conscience in the Image of Religion’ in *Religious Beliefs and Conscientious Exemptions in a Liberal State* ed. John Adenitire (Oxford: Hart Publishing, 2019): 73-88.

conscientious objection. Third, neither religious nor non-religious belief should be privileged. Fourth, exemptions should be granted if the interests of others or the general public interest is not disproportionately affected.<sup>294</sup> A more convincing approach is proposed by Yossi Nehushtan and Stella Coyle who argue that a method for exploring moral soundness could be developed.<sup>295</sup> Arguably a system such as Dooyeweerd's philosophical approach to the analysis of interactions of civil society groups could provide such an approach. This would involve either proportional balancing<sup>296</sup> or reasonable accommodation.<sup>297</sup>

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<sup>294</sup> The British Courts have found (2) unworkable and have had caused to examine religious beliefs in specific cases: for example, *R (Ghai) v Newcastle City Council & Ors* [2009] EWHC 978. Although Neuberger MR, found a compromise solution when the case went to the Court of Appeal, based on a detailed reading of the Cremation Act 1902. This meant Mr Ghai had the reassurance before his passing, that he could be burnt on a funeral pyre in a crematorium with a retracting roof. See also *Shergill & Ors v Khaira & Ors* [2014] UKSC 33.

<sup>295</sup> Yossi Nehushtan and Stella Coyle, 'The Difference between Illegitimate Conscience and Misguided Conscience: Equality Laws, Abortion Laws and Religious Symbols' in John Adenitire ed., *Religious Beliefs and Conscientious Exemptions in a Liberal State* (Oxford: Hart Publishing, Bloomsbury Publishing Plc, 2019): 111-134.

<sup>296</sup> Ian Leigh, 'The Courts and Conscience Claims' in John Adenitire ed., *Religious Beliefs and Conscientious Exemptions in a Liberal State* (Oxford: Hart Publishing, 2019): 89-109.

<sup>297</sup> Gerald Chipeur and Robert Clarke, 'The Art of Living with Ourselves' What does the Law have to do with Conscience.': 176-180.

## Appendix II Published works incorporated into chapters 2-5

**Jessica Giles**, 'Religious Freedom in Global Context' *Implicit Religion* 21, no. 3 (2018): 239-270.

**Jessica Giles**, 'A Theological Justification for Freedom of Religion and Belief as a Universal Right' in David Bunikowski & Alberto Puppo eds., *Why Religion? Towards a Critical Philosophy of Law, Peace and God* (Cham, Switzerland: Springer Nature Switzerland AG, 2020).

**Jessica Giles**, 'The Interrelationship between Freedom of Thought, Conscience and Religion and The Rule of Law' *Cambridge Journal of Law and Religion* 38, no. 3 (2023): 376-402.

**Jessica Giles**, 'Tradition as a Peacebuilding Tool' in Jessica Giles, Andrea Pin and, S Frank Ravitch eds., *Law, Religion and Tradition* (Cham, Switzerland: Springer Nature Switzerland AG, 2018).

## Appendix III Additional publications

### Journal articles – (refereed)

**2021** Hough, Christine V, Abbott-Halpin, Edward, Mahmood, Tariq and **Giles, Jessica**, ‘Contemporary Influences on the Role of Imams in Britain: A Critical Analysis of Leadership and Professionalisation for the Imamate in 21<sup>st</sup> Century Britain.’ *Religions* 12, no.9: 771-788.

### Blogs

**2025** **Giles, Jessica**, ‘Radical dialogic and interfaith hope in a time of poly crisis’ <https://williamtemplefoundation.org.uk/radical-dialogic-and-interfaith-hope-in-a-time-of-poly-crisis/> (William Temple Foundation, 4 June 2025)

**2023** **Giles, Jessica**, ‘The interdependence of the rule of law and the right to freedom of thought, conscience and religion’. [Law School Blog](#) (Open University, 2023).

**2023** **Mbalyohere, Charles and Giles, Jessica**, ‘Equipping Graduates for the Global Stage: Constructing an International Employability Skills Framework’. [SciLAB blog series](#) (Open University, 2023).

**2023** **Giles, Jessica**, ‘Renewed hope for a New Year: pilgrimage, pandemic and transformation in Contemporary Religion in Historical Perspective’. [Religious Studies Blog](#) (Open University, 2023).

**2020** **Giles, Jessica**, ‘How do I solve the world’s problems from my desk?’ [SciLAB blog series](#) (Open University, 2020)

**2019** **Giles, Jessica**, ‘Universally Aspirational or Aspirationally Universal: the Right to Freedom of Thought, Conscience and Religion’. [Real World Approaches](#): Freedom of Religion and Belief blog (London School of Economics and Political Science, 2019)

**2018** **Giles, Jessica**, ‘D2uble Penalty: Refugees and Freedom of Religion and Belief’. Year of Mygration [Day 99 \(The Open University, 2018\)](#)

### Conference papers

October 2024. International Consortium of Law and Religion Scholars. Notre Dame University, South Bend, USA. The Accommodation of Religion or Belief in the Public Sphere. Undeserved Privilege or Fundamental Right. Panel lead ‘The role of legal education, legal practice and the courts in guaranteeing religious pluralism’. Paper presentation ‘The role of the legal profession in supporting a universal approach to freedom of thought, conscience and religion’.

July 2024. World Congress of Sociology and Philosophy of Law (IVR). Soongsil University, South Korea, online. Paper presentation on ‘The Rule of Law and Freedom of Thought, Conscience



- and Religion’ on panel led by Professor Iain Benson and Barry Bussey at conference on the Rule of Law, Justice and the Future of Democracy.
- October 2023. European Academy Scholars of Religion. The Lithuania Society for the Study of Religion and Lithuania University, Vilnius, Lithuania. Presentation on: ‘Space law and human rights. Thinking theologically about space’ and panel lead ‘Law, Religion and Technology’ at conference on Religion and Technology.
- April 2023. Association of Law Teachers, Westminster University, London. Co-presenter – paper presentation: ‘Building employability skills between Uganda and the UK – a collaborative case study.’
- December 2022. Flashpoints Conference, Centre for Rights and Justice, Nottingham Trent University, online. Law, Human Rights and Religion. Paper presentation: ‘Theological perspectives on space law’.
- September 2022. International Consortium of Law and Religion Scholars, Cordoba, Spain. Panel I (lead): *The Communal Nature of Religious Freedom*. Paper presentation: ‘Anglican and Reformed theological approaches informing constitutional pluralism’. Panel II (co-lead with Professor Zachary Calo). Panel: *Human Dignity and Human Futures: law, religion and biotechnology*. Paper presentation: ‘Space exploration and religion’.
- September 2022 Keynote lecture, Theology Faculty, Lund University, Lund, Sweden. Lecture entitled ‘Establishment within the United Kingdom and implications for the funding of religion’ at conference on ‘The implications of state funding for religion, religious communities and faith-based organisations in Europe’.
- May 2022. European Academy of Religion (EUARE), Bologna, Italy. Panel co-lead: *Law, Religion and Technology: Emerging Issues*. Paper presentation: ‘A Theological Perspective on Space Law and Technology’.
- August 2021. Vietnam National University, online. Paper presentation ‘The Interdependence of The Right to Freedom of Thought, Conscience and Religion and the Rule of Law’ on panel on ‘Transcendental and non-transcendental approaches to the rule of law’.
- 2019 LSE Forum on law and politics (x 2 sessions): Comparative methodology (Katherine Valcke) and When Democracies Decay (Huq and Ginsburg). Discussion forum.
- November 2019: Dublin. World Conference on Online Learning. ‘Interdisciplinarity teaching and learning on a Master’s Module (W822)’
- June 2019: World Congress of sociology and philosophy of law (IVR). Lucern, Switzerland. Co-lead with Professor Zachary Calo Hamad Bin Halifa Law School, Qatar on a panel ‘Law, religion, bio-ethics and IP’. Paper presentation ‘Religion and intellectual property. Copyrighting God’.
- March 2019: EUARE. Bologna, Italy. Co-convenor with Professor Zachary Calo of panel on ‘Philosophy of human rights’. Paper presentation on ‘Reformed theology and freedom of thought, conscience and religion’.
- December 2018: Flashpoints Conference. Centre for Rights and Justice. Nottingham Trent University. Co-presenting with Professor Zachary Calo ‘Freedom of Thought, Conscience and Religion in Global Context’.
- September 2018: International Law and Religion Scholars Conference, Rio de Janeiro, Brazil. Co-lead with Professor Zachary Calo of panel on Religious Freedom in Foreign Policy. Co-presenters Dr Michael Wiener, UN Office for Human Rights, Geneva and Professor Zachary Calo. Paper presentation ‘The Religious Freedom Accords’.
- June 2018: European Association for the Study of Religion (EASR) Bern, Switzerland. Organiser of stream ‘self-conceptions and identity discourses within religious communities and traditions’ (9 presenters). Paper on ‘Tradition and engendering plural living together’ at conference on ‘Multiple Religious Identities’.
- April 2018: Law and Religion Scholars Network (LARSN) Conference Cardiff, UK. Paper presentation ‘Religious freedom in (global) case law’.
- March 2018: EUARE, Bologna, Italy. Panel organiser and paper presentation ‘Religious foundation tertiary education institutions’.
- February 2018: Open University Conference, Milton Keynes. Paper presentation on ‘Religious symbols: theological perspectives’ on panel organised by Hugh McFaul on ‘Religious

freedom and theological perspectives’ at conference led by Paul Tremlett and David Robertson (RE) ‘Contemporary Religion in Historical Perspective’.

February 2018: Religious Freedom Conference, University of Notre Dame, Sydney and The University of Adelaide, Australia. Paper presentation ‘Religious symbols in constitutional context: rights hierarchy and religious freedom’ at Notre Dame Law School, Sydney University. Chairing panel on religious freedom in public life. Presentation at Adelaide University Law School on publishing in law journals and on open education projects at the OU. Trip funded by Brigham Young University, USA; Notre Dame Law School, Australia; Adelaide Law School, Adelaide University, Australia.

December 2017: Religious Heritage Conference. Interdisciplinary Centre, Herzliya, Israel. Paper presentation ‘Protecting tradition and belonging: the war crime of intentionally directing attacks against buildings dedicated to religion’.

Summer 2017: EUARE, Bologna, Italy. Organising and running a day-long conference stream on the theme of tradition. Paper presentation ‘Tradition as a peacebuilding tool’

Summer 2017: EUARE, Bologna, Italy. Paper presentations ‘Imams Centred Professional Leadership’. Co-presenting with Tariq Mahmood, field worker, Imams’ project and Open University visiting fellow.

Summer 2017: World Congress of the International Association of the Philosophy of law and sociology (IVR), University of Lisbon, Portugal. Paper presentation ‘A theologically grounded dialogical approach to rights frameworks as a tool for peacebuilding’ on panel led by David Bunikowski and Alberto Puppo.

May 2017 Law and Religion Scholars Network Conference Cardiff. Paper presentation: ‘Religious Symbols at work’.

November 2016 Restoring Religious Freedom Conference, Emory University, Atlanta, USA. Paper presentation ‘A coherent EU religious freedom policy?’.

November 2016: Human Dignity Conference, Uberlandia University, Brazil. Paper presentation on ‘Law, religion and bio-ethics’.

June 2016: Living with Difference Symposium, Open University law school. Conference organizer. Paper presentation ‘A businesses right to exercise religious freedom’.

Spring 2016 Open University LLM guest lecture ‘Religious freedom in international law’

2015 Religious Freedom Conference, Theology faculty, University of California Santa Barbara. Paper presentation ‘Freedom of Thought, Conscience and Religion and normative institutional pluralism’

## Appendix IV Curriculum Vitae

Jessica completed her undergraduate and Master's law degrees at Durham and Bristol Universities in the UK. She qualified as a solicitor and later as a barrister, working for the Incorporated Council of Law Reporting for England and Wales reporting cases in the Royal Courts of Justice, London and the Court of Justice of the European Union. She is a Senior Fellow of the Higher Education Academy and senior law lecturer at the Open University, UK. She has been teaching law at the Open University since 2006 and public theology for Rochester Diocese since 2022. She has been an Advisory Council member at the McDonald Centre for Theology, Ethics and Public Life, Oxford University and, an associate editor of the Oxford Journal of Law and Religion, Oxford University Press. In 2020, Jessica started as an external PhD Candidate at the Leiden Law School of Leiden University.

## **Appendix V Propositions relating to the dissertation**

### **Propositions relating to the dissertation Freedom of Thought, Conscience and Religion Supporting Peaceful Plural Living Together**

**Jessica Giles**

#### **Propositions**

1. Despite high levels of infringement globally, there is an ongoing role for the fundamental right to freedom of thought, conscience and religion in a national and international context.
2. A multivalent approach to the underlying rationale of freedom of thought, conscience and religion in a global context could enhance its implementation.
3. Within the context of multivalent dialogue, the philosophical approach of Herman Dooyeweerd could be re-envisioned to support rights-based plural living together.
4. The dialogue necessary to build consensus from a multivalent approach could be supported through a reflection by civil society groups, including religious groups, on their core doctrine/ideas and their traditions, to understand how they have adapted and might continue to adapt over time.
5. Religious rationale/the religious voice is one of a multitude of voices necessary to build consensus in political/public dialogue in a plural rights-based society under the rule of law.
6. Freedom of thought, conscience and religion is key to a public discourse on the societal virtues underpinning the implementation of the rule of law.
7. The internationalisation of the rule of law, incorporating a tranche of human rights, needs to draw on a plural understanding of the rationale underpinning freedom of thought, conscience and religion.
8. A 'neutral' approach to public governance necessarily needs to locate itself in a philosophical or theoretical basis. In light of high levels of religious adherence globally, to exclude religion from this debate is to unjustifiably preference freedom of thought over freedom of religion at the highest levels of government.

9. The right to freedom of thought, conscience and religion has implications for individual, communal and societal enjoyment of the right: protecting human flourishing through individual free choice; the flourishing of the individual in their chosen communities or civil society organisations; and peaceful plural living together within society.
10. The reformed theological concepts of sphere sovereignty and common grace provide theological approaches within a multivalent dialogue, for envisaging a rights-based approach to plural living together.
11. Herman Dooyeweerd's philosophical approach to analysing interactions between types of civil society interactions could provide a basis for resolving a clash of rights, including in respect of religion based and equality claims.
12. Taking a multivalent, dialogic approach to human rights necessarily involves fostering a discourse between seemingly entrenched and widely differing theoretical and theological perspectives, to move incrementally towards establishing common norms.

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