ou convictions » (p. 95). L'Assemblée générale considère qu'elle est un facteur incompatible avec la paix dans un monde globalisé. Bien qu'acceptable, cette position est exagérée, déclare Blandine Chelini-Pont. Passer de la protection de l'ordre public à la celle de la cohésion sociale, dans un espace pluriel, risque d'imposer toutes sortes de limitations à l'expression d'opinions différentes. On aboutirait à la censure de la critique publique, au motif de la protection d'entités mal définies. La « diffamation des religions » étant considérée comme une *cause indirecte* d'offense, et non pas *un discours de haine* en lui-même, comment reconstituer le lien entre diffamation présumée et les effets qui en auraient résulté pour constituer une violation du droit ?

En conclusion, pour Blandine Chelini-Pont, il ressort de l'analyse des documents, des Résolutions et des Rapports de l'Assemblée générale des Nations Unies et du Conseil des droits de l'homme, son organe à Genève, que sans définition du concept de « diffamation des religions » et, en conséquence, sans pouvoir définir ses limites exactes, le risque serait la suppression de la liberté d'expression. Toute déclaration jugée comme potentiellement offensante, serait susceptible de la censure, car considérée comme diffamatoire.

Examinant plus en détails, les grands documents juridiques internationaux onusiens, elle remarque qu'ils fournissent pourtant des outils et des clés à même d'offrir une protection adaptée contre les discours de haine, - bien que visant à protéger des individus dans leurs droits -, et qu'ils établissent un équilibre dans le rapport entre liberté d'expression et liberté de manifester sa religion, entre le droit à l'information et le respect de la foi et des convictions religieuses. Le 9 décembre 2008, les rapporteurs ont demandé au Conseil et à l'Assemblée générale de « renoncer à l'adoption de nouvelles déclarations soutenant l'idée de diffamation des religions » (p . 103). « Le problème central qui préoccupe les Rapporteurs Spéciaux est celui de l'effet contre-productif que peut avoir la pénalisation de la diffamation des religions en générant un climat d'intolérance et de crainte au détriment de la libre expression de la critique » (p. 105).

Documents

La troisième partie de ce numéro de la revue comprend trois documents :

- Une présentation du nouveau Rapporteur spécial des Nations Unies sur la liberté de religion et de conviction
- Lutter conte la diffamation des religions (Rapport de 2008 actualisé du Centre européen pour la justice et les droits de l'homme
- La Déclaration relative aux propositions sur la diffamation des religions adaptée par l'IRLA le 3 septembre 2009.

MAURICE VERFAILLIE

***Revista Fides et Libertas 2010*, Religion, humanrights, and religious freedom, 202 pp.**

Professor John Witte, at the Center for the Study of Law and Religion, Emory University was most gracious in offering his assistance in helping us put together a special issue on religious freedom. It was Professor Witte who provided us with the following articles:

Jeremy Waldron in his article, "The Image of God: Rights, Reason, and Order"

addresses "Imago dei" the doctrine that men and women are created in the image of God. As he notes it "is enormously attractive for those of us who are open to the idea of religious foundations for human rights. It offers a powerful account of the sanctity of the human person, and it seems to give theological substance to a conviction that informs all foundational thinking about human rights—that there is something about our sheer humanity that commands respect and is to be treated as inviolable, irrespective of or prior to any positive law or social convention." His article accomplished three points. First, surveyed some of the difficulties that "stand in the way of treating imago dei as a foundation for human rights." Particularly the idea that because it is a religious doctrine it is thereby disqualified by some. Second, "assuming that we think it is appropriate to persevere with imago dei in this context," he argues "that human rights theory can avail itself of deep insights generated by the idea of imago dei in a number of different ways, and I shall set out what these are." Third he argues "If imago dei is relevant to rights at all, it may be thought especially relevant to our assessment of political rights—the right to participate in various ways as a citizen in the governance of one's society. Humans may be regarded as bearing the image of their Creator in their ability to apprehend and participate in an intelligible order. Such a conception puts front and center the rational and moral capacities of the human being and their role in personal, social, and political life."

In "Religion and Equality," Kent Greenawalt argues that "religious liberty often coalesces with equal treatment. But sometimes aspects of religious liberty are in serious tension with aspects of equality." He notes that "the special treatment of religion in comparison with other subjects is, on balance, usually beneficial to minority religions, and thus promotes equality among religions. This is illustrated by the rule that government cannot engage in teaching religious truth." "[T]he law must often settle for something less than an ideal. Legal standards of all sorts are often applied to favor dominant groups to the disadvantage of outsiders. Inquiries about sincerity, importance, and the boundaries of religion may work to the disadvantage of minority religious movements within a pluralist religious culture. But, by and large, the alternative of not engaging these inquiries will be that members of those groups will be subject to all the rules that apply to ordinary citizens, and they will be worse off. Some likely disadvantage in the applications of these standards is preferable to not having the standards used at all." Finally, "it would be a worthwhile endeavor in the coming decades to study just when the law should treat religion as distinctive and how the necessary legal inquiries may be undertaken as consistently with basic values of equality as is humanly possible."

Carolyn Evans wrote in "Religion and Freedom of Expression" that while the relationship between religious freedom and freedom of expression is complex, "Religious believers express their beliefs in both explicit statements and also in a range of important symbolic ways. Without a robust protection of freedom of expression, many religious practices are threatened. To that extent, the two freedoms have an important, complementary relationship." But there is a problem when "some forms of expression are threatening to religious people or to religious freedom" as when some religious followers are harmed or offended because their religious beliefs are challenged and make calls for restrictions on expression. "There is no simple or formulaic way to resolve such tensions. Neither freedom of religion or belief nor freedom of expression is given absolute protection in international law or most

domestic bills of rights, which acknowledge that these rights must sometimes give way to other important considerations." There are growing tensions between expression that "do not comply strictly with orthodox religious viewpoints and at the same time a divide is growing between those who wish to see more expression of religiosity in the public sphere and those who wish to see less religious symbolism." This is all complicated more by our modern world where a "dispute about crosses in Italy or cartoons in Denmark can spread across the world in a matter of days and cause serious social disruption in countries far from the origin of the dispute."

Douglas Laycock's wit and humour came out in his piece, "A Conscripted Prophet's Guesses About the Future of Religious Liberty in America," which was written on the occasion of the 25th anniversary of the Emory Center for the Study of Law and Religion. He was asked to look out 25 more years and predict what religious freedom in America would look like in 2032. To this Laycock replied, "If I could foretell the future, I would have made a fortune in the stock market by now." Some issues such as public funding will continue to be a discussion as it has since the 1820s. Others will become less an issue – gay rights will be an issue for religious freedom but with the increasing acceptance of gay rights amongst the young it will increasingly be less of a concern. Many other topics such as the Supreme Court, increase in the Muslim population, and the role of partisan politics were addressed by Laycock in this very interesting article.

Richard W. Garnett in "Religious Liberty, Church Autonomy, and the Structure of Freedom," argues that the freedom of religious communities to organize, govern, their internal affairs, in accord with their own teachings and doctrines "not only benefits from, but also contributes to, the enterprises of human rights law and of constitutionalism more generally." Yet "church autonomy principles and premises are vulnerable and, in some contexts, under attack. The right clearly exists, but its scope and foundations are, increasingly, contested." It is contested according to Garnett because many connect n church autonomy principles, on the one hand, and, on the other, sexual abuse and corrupt activity by clergy. "It is common for the critics of religious communities' self-determination rights to misunderstand these rights, and the church autonomy principle, as entailing the implausible and unattractive assertion that churches and clergy are somehow "above the law," entirely unaccountable for wrongs they do or harms they cause." This combined with the every increasing view that religious freedom and faith "more in terms of personal spirituality than of institutional affiliation, public worship, and tradition." That tends to "regard religious institutions as, at best, potentially useful vehicles or, more likely, stifling constraints and bothersome obstacles to self-discovery. This, however, would be a mistake."

William W. Bassett's article, "Religious Organizations and the State: The Laws of Ecclesiastical Polity and the Civil Courts," outlined "some results of the great efforts jurists in the American legal system have made to balance the needs of organized religion with those of society through nearly two hundred years of intense scrutiny of the polity of the churches. The administration, functions, missions, roles, and competencies of Christian churches have never been overlooked by the courts, and, frequently, have been evaluated by analogy to civil counterparts. Out of this legal history has come a peculiar vocabulary of trust law, cast upon a screen of constitutional ambiguity that is the notion of incorporation itself and of its relationship to distinctively American notions of federalism and freedom."

An area of increasing concern is that of self-determination in religious

communities. That was the subject of Johan D. van der Vyver 's contribution. He reviewed the issues raised in those countries that "do not subscribe to the right to self-determination of distinct communities within their borders, basing their negative attitude on a general denial of, or unwillingness to afford relevance to, ethnic, religious, or linguistic varieties among their respective citizens and residents." Turkey, Greece and France has adopted this general attitude. He also pointed out that "four countries with a prominent indigenous population voted against the adoption of the United Nations Declaration on the Rights of Indigenous Peoples of October 2, 2007, those countries being Australia, Canada, New Zealand, and the United States of America. These countries based their objections in part on (drafting of) the right to self-determination afforded to indigenous peoples." "The right to self-determination has come to be an important principle of international law." It is a right that "appreciates and seeks to accommodate the group identities of sections of a political community. It promotes pride in one's cultural extraction and religious affiliation. It is patron to a political dispensation comprising, in the celebrated words of Archbishop Desmond Tutu, "a rainbow people." Accommodating, and indeed protecting, the right to self-determination of religious communities within the political structures of the body politic is after all also in the interest of the state."

John Witte, Jr. and Joel A. Nichols address the question whether there should be "Faith-Based Family Laws in Western Democracies?" There are a number of very difficult questions that are raised by the increase of diversity in Western Democracies. They include, "What forms of marriage should citizens be able to choose, and what forums of religious marriage law should state governments be required to respect? How should Muslims and other religious minorities with distinctive family norms and cultural practices be accommodated in a society dedicated to religious liberty and self-determination, and to religious equality and non-discrimination? Are legal pluralism and even "personal federalism" necessary to protect Muslims and other religious believers who are conscientiously opposed to the liberal values that inform modern state laws on sex, marriage, and family? Is every constitutional accommodation of Muslim family law and Shari'a courts a dangerous step on the slippery slope toward empowering a faith, some of whose leaders subvert the very democratic and human rights values that now offer them protection?" They note that "If religious tribunals do eventually get more involved in marriage and family law, states might well build on these precedents and set threshold requirements in the form of a license – formulating these license rules through a democratic process in which all parties of every faith and non-faith participate."

David Little's chapter considers the Western foundations and international dimensions of religious liberty. He exposits "the prevailing human rights provisions in the light of relevant jurisprudence, particularly the "general comments" of the United Nations Human Rights Committee" and to "excavate the historical background, mainly in the West, out of which the human rights understanding has emerged." His objective is descriptive. "The elucidation of existing standards, as well as the explanation of where they came from, leaves open, for the most part, the subject of how the standards ought to be construed and implemented, though it is not always possible to abstain completely from suggesting preferences." He concludes that the "principle of what might be called self-abnegation in regard to the religious control of civil and political life, one partially based on theological conviction, constitutes a compelling model for the implementation of religious liberty. The principle is of course highly controversial,

within Christianity as well as other religions, but there is evidence that it is finding increasing resonance in religions around the world, as it has found resonance, historically, in at lease one segment—often a besieged minority—of Western Christianity."

Jeremy Gunn "provides an overview of the principal issues that arise under the limitations clauses related to the freedom of religion and belief." "Once it has been determined that a state restriction on religious activities targets manifestations only and not beliefs themselves, international human rights law typically introduces a three-step test to determine whether the particular restriction on manifestations is permissible." *First, the limitation must be "prescribed by law." Second, the limitation must be in furtherance of a legitimate state interest....* The ECHR like the ICCPR, identifies the five legitimate grounds upon which a state may restrict manifestations of religion: the protection of (1) public safety, (2) public order, (3) public health, (4) public morals, or (5) the rights and freedoms of others." *Third, the limitation must be "necessary" (or "proportional").* "Proportionality analysis in limitations clause jurisprudence assumes that there should be a proportionate correlation between the seriousness of the harm that the state seeks to prevent when imposing the restriction on the manifestation of religion and the severity of the infringement on the liberty that the restriction imposes."

We provided a more in depth book review with David Trim's book review essay which tackled two very meaty works on the framing of the First Amendment to the United States Constitution. Trim's erudite analysis is concise and fair. His reading of the works under review suggests that they "give little comfort to those who confidently affirm that the founders of the American republic clearly and consistently wanted complete and unconditional separation between church and state."

As this journal is the flagship of the International Religious Liberty Association we continue to highlight the work of our Secretary-General Dr. John Graz. His yearly report includes some notes on his experience attending the Lutheran World Federation Assembly on July 22, in Stuttgart, Germany. The Lutheran community coming to terms with their past treatment of the Anabaptists is a tremendous example of what benefits flow when there is mutual respect for the religious expressions of others.

BARRY W. BUSSEY

***Revista Libertas, Estudos em Direito, Estado e Religião*, Ano 1, nº 1-1º Semestre de 2009, 251 pp.**

Comienza la andadura una nueva revista cuya publicación semestral es el resultado de un curso de Derecho realizado gracias al esfuerzo conjunto entre el Centro Universitario Adventista de São Paulo (UNASP) y la *International Religious Liberty Association* (IRLA). El primer número está dedicado monográficamente al Estado laico en Brasil.

La UNASP, Universidad Adventista del centro de São Paulo, nació el 9 de septiembre de 1999. Unaspress es su editorial y produce, edita y publica el material académico de la institución, tanto en grado como en posgrado. Además, también publica libros y revistas periódicas cuyo objetivo es profundizar en el conocimiento de temas específicos; producción orientada a la comunidad universitaria y al público interesado en materias de derecho, Estado y religiones. De otro lado, la Iglesia Adventista comenzó a liderar en 1893 un movimiento confesional que promovía la libertad reli-