17

‘What Is a Man If He Has Words But Has No Deeds?’
Some Remarks on the European Convention of Human Rights

PAMELA SLOTTE
University of Helsinki

ABSTRACT

The article focuses on religious freedom in European human rights discourse, more precisely in the case law of the European Court of Human Rights in Strasbourg. It asks about the sort of 'religious person' and notion of 'religion' that can be found at the heart of this discourse. The topic is approached by way of reflecting not only on contemporary human rights discourse, but on law and religion more generally, linking this, furthermore, to the religious-secular dichotomy.

KEYWORDS

freedom of religion, human rights, religion, secularism, forum internum, forum externum

INTRODUCTION

Concerning ‘the return of religion’ and the attention given to religion by law, international legal scholar David Kennedy has noted that ‘we normally return to religion less to question than to confirm our eclecticism, less as a

displacement of secularism than as a continuation of its will to power."[1] Other commentators have recently highlighted what they consider a disturbing trend in the reasoning of the European Court of Human Rights in Strasbourg (hereafter the Court):[2] in cases regarding religion, increasing emphasis is put on the principle of secularism and the 'secular' public sphere in a way that critics consider detrimental to individual religious freedom.

The focus of this article is religious freedom in European human rights discourse, and more precisely, in the case law of the Court. What sort of 'religious person' and notion of 'religion' do we find at the heart of this discourse? I approach this question by way of reflecting not only on contemporary human rights discourse, but on law and religion more generally; furthermore, I will link this to the religious-secular dichotomy. My claim is that the Court's current discourse does not reveal an entirely new conceptualization of religion; rather, it shows a defense of established foundational notions of society and of faith. These notions are then reinforced in situations where they are viewed as challenged.

1. APPROACHES TO RELIGION IN LAW

Two distinguished scholars in the field of law and religion recently labeled the act of defining religion in a legal context as 'partisan in nature.'[3] Defining religion is not a neutral exercise, but rather normative in character, since a definition can function as endorsement or exclusion in various ways. A certain sense of neutrality or impartiality may be intrinsic to our image of law. However, the mentioned scholars are challenging various misperceptions about what neutrality means and does not mean in relation to law, in

[1] David Kennedy, 'Losing Faith in the Secular: Law, Religion, and the Culture of International Governance,' in: *Religion and International Law*, Mark W. Janis & Carolyn Evans (eds.), (The Hague: Martinus Nijhoff 1999), 318. Some of the points made in this article have been elaborated in more detail in Pamela Slotte, 'Huvuddukar, krucifix och högtidsfirande: Religiöst och sekulärt i europeisk människorättsdiskurs,' in: *Mot bättre vetande: Festskrift till Tage Kurtén på 60-årsdagen*, Mikael Lindfelt, Pamela Slotte & Malena Björkgren (eds.), (Åbo: Åbo Akademis förlag, 2010), 213-266.

[2] See e.g. Malcolm D. Evans, 'Freedom of religion and the European Convention on Human Rights: approaches, trends and tensions,' in: *Law and Religion in Theoretical and Historical Context,* Peter Cane, Carolyn Evans & Zoë Robinson (eds.), (Cambridge: Cambridge University Press 2008), 291-315; Ingvill Thorson Plesner, *Freedom of religion and belief – a quest for state neutrality?* (Oslo: Oslo Coalition on Freedom of Religion or Belief 2008).

[3] W. Cole Durham Jr. & Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives* (Dordrecht: Wolters Kluwer 2010), 42.

order to make a point about the task of legal protection and how the conceptualization of this task is related to assumptions about religion, to ideas about what religion is all about, and to its role and meaning in human life.[4]

Legal scholars' and courts' approaches to religion are generally categorized in several distinct yet frequently overlapping ways: substantive, functional, analogical, or deferential (the last designating an approach that focuses on or defers 'to the self-understanding of the adherent as the baseline for defining what is and what is not religious'[5]).

Definitions or 'non-definitions' are constructed with regard to the conceived purpose and task of law in relation to religion. The role of a court and a judge, for example, is not the same as the role of a theologian or religious scholar. The sorts of definitions that a theologian might stipulate as meaningful are not of self-evident value to the judge doing his job in applying the law. For a court, a definition of descriptive value will not do. A court needs tools to rule on conflicts between opposing claims and to sort through competing narratives, to the benefit of one party and the detriment of another. The court must reach a decision. If, for example, a court concluded its proceedings by noting that we can simply understand what is taking place here in this way, this would not be sufficient. And of course, there is also the possibility of a judge declaring a mistrial.

The court's need to decide has an influence on what law focuses on when it comes to 'religion.' As Clifford Geertz has famously put it, law is a specific way of imagining the real.[6] The Court explicitly denies that its mission is to determine what is or is not religion. Moreover, it also refrains from assessing what it calls the legitimacy of particular beliefs. What it considers taking a stand on are state interventions in people's lives and whether these are justified. This is determined based on a fixed set of criteria. State interference with a person's freedom to manifest his or her faith must be prescribed by law, must be necessary in a democratic society in the interest of public safety or for the protection of public order, health, morals, or the rights and freedoms of others. Furthermore, it is not enough that there is a legitimate

[4] Durham & Schraff, *Law*, 40-44.

[5] Durham & Scharffs, *Law*, 40. See also Durham & Scharffs, *Law*, 45-48; Lucy Vickers, *Religious Freedom, Religious Discrimination and the Workplace* (Oxford: Hart 2008), 15-22.

[6] For the reference to Geertz, see Richard Ashby Wilson & Jon P. Mitchell, 'Introduction: The Social Life of Rights,' in: *Human Rights in Global Perspective: Anthropological studies of rights, claims and entitlements,* Richard Ashby Wilson & Jon P. Mitchell (eds.), (London: Routledge 2003), 5.

aim and a legal basis for the interference; the interference must be proportionate to the legitimate aim pursued.

The role of human rights law is to define boundaries for how states may act in relation to persons and groups of persons, and so the Court adjudicates the boundaries of religious freedom. So we are not, it would be argued, dealing with a case of 'subjective judging' because of the ambiguity of the concept of religion. This is the explicit approach to cases concerning faith and its manifestation. However, explicitly abstaining from defining religion does not mean that the Court's work is free from some implicit notion of religion. Despite explicit non-policy as regards 'religion,' the Court makes certain assumptions. How do we get at these? My approach in what follows will take up the concept of religion in light of that proposed by (among others) Talal Asad and William Cavanaugh.

2. THE RELIGIOUS - SECULAR DICHOTOMY

According to Cavanaugh, religion 'is a constructed category, not a neutral descriptor of a reality that is simply out there in the world.' As a term, religion 'has been used in different times and places by different people according to different interests."[7] Cavanaugh and Asad urge us to fix our gaze on concrete practices where 'religion' is employed and ask ourselves the purpose of its application. Why under certain conditions is something called 'religion'? What power configurations are authorized by the way 'religion' is used?[8] Of particular importance here is Asad's and Cavanaugh's emphasis that the category 'religion' as commonly used is tied up with the history of Western modernity and is therefore inseparable from the creation of what Asad has called religion's 'Siamese twin "secularism."'[9] The religious and the secular are dependent on each other for their meaning.

Why is this approach fruitful for the topic of this article? Commentators today observe that the protection of a secular public sphere (and here I do not distinguish between 'public' and 'political') is seemingly becoming more important to the Court. This may seem surprising, given that the Court has

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[7] William Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (Oxford: Oxford University Press 2009), 58.

[8] Cavanaugh, *The Myth*, 119; Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press 2003), 25, 201.

[9] Talal Asad, 'Reading a Modern Classic: W. C. Smith's The Meaning and End of Religion,' *History of Religions* 40 (2001), 221. See also Cavanaugh, *The Myth*, 58.

traditionally accepted a wide range of so-called church-state arrangements and division of competences as compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter the Convention). Different kinds of state support or preferential treatment and symbolic identification with a certain faith community have not necessarily been considered objectionable. It has even been accepted that a state be officially confessional, as long as it is possible for adherents of other life stances to live out their faith, not to be discriminated against, et cetera.[10]

However, the new emphasis on secularism is not necessarily surprising: in the Court's insistence on the secular we catch a glimpse of a notion of religion and the religious person that is not, I argue, new. In its argumentation concerning freedom of religion, the Court falls back on a specific way of distinguishing between religious and secular that structures its reasoning. Moreover, in order to gain a meaningful understanding of the current discussion, attention must be paid to what Asad has called the historical grammar of a concept.[11] The concept of religion as found in European human rights discourse has a history that has left its marks on today's way of imagining and speaking about religion.

3. HOW DOES THIS PLAY OUT IN COURT?

As seen, the issue of legitimate state interest plays a role when determining limits to the religious freedom of individuals and groups. This influences the verdict of whether state intervention is acceptable in the eyes of the Court. Concrete state interest varies from issue to issue – sometimes it is considered to be covered by the list of fixed criteria and thus legitimate, and sometimes not. Moreover, the Court needs to decide whether the actions taken by a state have been proportionate to the legitimate aim pursued, and the Court reaches different conclusions in different specific cases.

What is claimed today, however, is that the protection of the secular public sphere is considered ever more important even if it is not explicitly listed in Article 9.2 among the fixed criteria for when a state may legitimately interfere with the freedom of religion. This has brought about a partial reinterpretation of the role of states. The Court increasingly explicitly emphasizes the secular character of the public sphere, as a way to envision state neutral-

[10] See e.g. Thorson Plesner, *Freedom*, 270-271, 286, 308

[11] Asad, *Formations*, 189.

ity and consequently explicate what is demanded of states so as to guarantee religious freedom for their citizens. States should not signal religious preference.

A practical consequence of this may be, for example, that religious symbols have no self-evident place in state schools (public schools). Such was the verdict of the Court in a recent high-profile case that concerned crucifixes in Italian state schools.[12] The Court ruled that the practice of hanging crucifixes on classroom walls violated the freedom of religion of parents and children adhering to other life stances (or none at all), as well as the right of parents and legal guardians to have their children educated in conformity with their own convictions. Among other things, the Court argued that in accordance with the principle of secularism, state schools ought to be confessionally neutral. The Court did not see how a Catholic symbol such as the crucifix could serve a pluralistic education and by this support the democratic society which the convention seeks to safeguard and promote.

At play here is an understanding of the public sphere as secular simultaneously with a notion of the right place of religion. State schools ought to be confessionally neutral. Now, this could be considered a good thing. Theoretically, however, there is no straightforward correlation between less state identification with religion and more religious freedom, or vice versa[13].

In the consequent Grand Chamber judgment concerning crucifixes in Italian state schools, the Court also overturned the earlier Chamber judgment.[14] The Court now sides with the respondent State. It notes that as regards the sensitive matter at hand there exists no common European practice. In such cases, the Court affords member states wide discretion. However, discretion is not unlimited and the Court sets about deciding whether the Italian state has overstepped its mandate. Among other things, distinctions are introduced into the argumentation about symbols, an aspect of the argumentation in the Chamber judgment that had attracted critique. The crucifix is now held to be 'an essentially passive symbol'. For us to be able to talk of pupils and parents having their freedoms infringed, more is needed besides the simple presence of crucifixes on the classroom walls.

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[12] *Affaire Lautsi* c. *Italie*, Requête n° 30814/06, 3 novembre 2009.

[13] W. Cole Jr. Durham, 'Perspectives on Religious Liberty: A Comparative Framework,' in: *Religious Human Rights in Global Perspective: Legal Perspectives,* Johan D. van der Vyver & John Witte, Jr. (eds.), (The Hague: Martinus Nijhoff 1996), 18.

[14] *Lautsi and Others* v. *Italy* [GC], Appl. No. 30814/06, 18 March 2011.

Taking all aspects into account, like the fact that pupils are allowed to wear religious symbols in school and receive instruction in their own faith (provided it is a recognized creed), the Court concludes that no politics of Christian indoctrination, of which the display of crucifixes would form part, is at work in Italian state schools. Rather, education and teaching meets the criteria set out by the Court in its case law: it is objective, critical and pluralistic. Hence, the right of parents and legal guardians to have their children educated in conformity with their own convictions has not been violated. (No separate issue is said to arise under Article 9, the right to freedom of thought, conscience and religion.)

Interestingly, the Court now explicitly states that its task is not to judge whether the presence of crucifixes is compatible with the principle of secularism expressed in the Italian constitution. Instead it restricts itself to assessing the compatibility of the presence of crucifixes with the right of freedom of religion and the right of parents and legal guardians to have their children educated in conformity with their own convictions. However, the judgment can, among other things, be interpreted as expressive of the Court's continual unwillingness to take a strong stand on traditional state-church arrangements. In doing so, the Court would interfere with what several third-party interveners before the Court refers to as the culture identity of a country. The Chamber judgment went too far, now the Court takes a step back.

The reasoning does stand out in light of what has been the trend in recent years: namely for the Court to emphasize the secular nature of public educational institutions and that this fact may legitimately limit how individuals may exercise their freedom of religion or belief within these institutions.

Furthermore, what critics have pointed out is that this emphasis on the secular character of the public sphere seems to be made at the expense of the possibilities of individuals to manifest their faith in various ways rather than focusing on the actions of the state and simply questioning whether a state stays 'religiously neutral.' If we want to theoretically differentiate between a public and a political sphere, then what is apparently happening here is that the character of not only the political (public) sphere but also a wider public sphere is increasingly a matter of interest to the Court. This enlargement of the space of interest in terms of secularity places new sorts of obligations on private persons.

In the Court's reasoning we encounter the argument that manifestations of faith which appear to challenge fundamental values like pluralism and

democracy cherished by the Convention, or the principle of secularism, cannot count on self-evident protection. With his observation that law's interest in and attention given to religion could often reasonably be understood as secularism's continual will to power, Kennedy offers something of an explanation for why this 'new' argument is emerging as central in the Court. This will be elaborated on later in the article so as to offer a deeper explanation of this trend.

Some recent cases raising the issue of the principle of secularism have concerned female dress. In the cases of Leyla Şahin[15] and Lucia Dahlab[16], the Court notes that the Islamic headscarf represents 'a powerful external symbol,' and that with respect to a religious symbol the wearing of which is presented or perceived of as a religious duty, one has to consider the impact on others who choose differently. In the case of Şahin, secularism is highlighted as a notion 'consistent with the values underpinning the Convention,' and that an 'attitude which fails to respect' the principle of secularism cannot count on being acknowledged as a manifestation of faith enjoying protection.[17] For comparison, in the case of Moscow *Branch of the Salvation Army* v. *Russia*,[18] the Court found Russia's suggestion that the Salvation Army uniform threatens national security nonsensical, yet it accepts the interpretation by Turkey that the wearing of Islamic headscarves at a state university is subject to certain restrictions so as not to threaten the principle of secularism. For the sake of democracy, it may be necessary to reinforce that principle in Turkey.

While the Court emphasizes that it is in concrete contexts that the role and effect of religious symbols on state-church relationships, on other people's rights, and on public order et cetera must be evaluated, case law may seem somehow contradictory. However, I argue that the Salvation Army represents something 'familiar and safe,' manifesting faith in a way that accords with the Court's notions of faith and of societal life. Likewise, the re-

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[15] *Leyla Şahin* v. *Turkey* [GC], Appl. No. 44774/98, 10 November 2005.

[16] *Dahlab* v. *Switzerland*, Appl. No. 42393/98, 15 February 2001.

[17] *Leyla Şahin* v. *Turkey*, para. 114. The case of Dahlab concerns a person acting in an official capacity (a state school teacher), whereas the case of Şahin concerns a private individual (a university student). The actual professional role or public office of a person has proved to be of importance in case law regarding issues of freedom of religion. See e.g. *Dahlab* v. *Switzerland; Kalaç v. Turkey,* Appl. No. 20704/92, 1 July 1997, para. 28; *Başpinar v. Turkey,* Appl. No. 45631/99, 3 October 2002. However, here the focus is rather on the phrasings regarding secularism that can be found in the Court's argumentation.

[18] *Moscow Branch of the Salvation Army* v. *Russia*, Appl. No. 72881/01, 15 October 2006.

production in the Grand Chamber judgment of lengthy excerpts of the reasoning of Italian courts fleshing out how the modern secular state can trace its foundations, among other things, to Christianity signals something to the same effect. Italian Catholicism does not present a threat to the modern democratic secular state.

By contrast, cases like those of Şahin and Dahlab leave the observer with the impression that the Court seemingly finds that established models for envisioning 'religion' in the public space and for dividing competences between spiritual and temporal powers are being called into question.[19] There arises a need to safeguard these models. Critics have labelled the stance of the Court in various judgments as an expression of 'secular fundamentalism'[20] or 'illiberal secularism'[21] and have talked of a forced privatization of faith.

It may partly be the case that we are dealing with 'more privatization' with regard to the disentanglement of governmental bodies from what is deemed 'religious,' for example, although the mentioned Grand Chamber judgment calls for caution. However, as regards individual believers, to some extent I wish to interpret what is taking place as an affirmation of an already largely privatized notion of faith – regardless of the fact that the Convention sets out to safeguard faith in private and in public, as practiced alone or together with others. Hence, inconsistencies that critics highlight may be partly explainable – if not justifiable – against the conceptual background of the right to freedom of religion that I will examine in what follows, where I attempt to pinpoint some facilitating conceptual parameters of what international legal scholar Malcolm D. Evans has described regarding the shift in emphasis of the Court as a latent possibility materializing itself.[22]

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[19] It is telling that the Court in the Grand Chamber judgment of *Lautsi and Others* v. *Italy* explicitly states that the case differs from that of *Dahlab* v. *Switzerland*. *Lautsi and Others* v. *Italy* [GC], para. 73. An individual state school teacher wearing a headscarf is more problematic than an institutionalised practice of placing crucifixes on the walls in state schools.

[20] Evans, 'Freedom,' 312.

[21] Thorson Plesner, *Freedom*, 409 (fn 14). Interestingly, the Court in the recent Grand Chamber judgment, maybe in response to such allegations, identifies 'secularism' as a 'philosophical conviction' the respect of which may legitimately be restricted under the ECHR. *Lautsi and Others* v. *Italy* [GC], para. 58. We can interpret this as an attempt by the Court to reassert its neutrality in life stance matters.

[22] Evans, 'Freedom,' 300.

4. FORUM INTERNUM – FORUM EXTERNUM

A distinction of foundational importance to international legal thinking about freedom of religion and belief[23] is that between holding a belief and manifesting it. *Forum internum* and *forum externum* are separated. The freedom to believe or not to believe is an absolute right. Freedom of thought and conscience as well as the right to adopt a religion may under no circumstances be restricted. Furthermore, no one should be forced to reveal their thoughts or adopted religion. *Forum internum* does not belong to the sphere of state power. The right to manifest faith, on the other hand, may be restricted on the grounds that the exercise of this right may endanger the realization of other people's rights, for example. Manifestations of faith may thus have societal consequences that give rise to a need for state regulation. Manifestations are legally relevant. Therefore a man who has faith but no deeds is a believer who enjoys absolute protection under human rights law.

As we have seen, this distinction is also fundamental to judgments by the Court as well as Article 9 of the Convention that addresses freedom of thought, conscience and religion. Religious freedom is, as the Court has concluded, 'primarily a matter of individual conscience,'[24] but this also includes a right to manifest faith. However, not 'every act motivated or inspired by a religion'[25] is protected. This separation of belief and manifestation essentially makes possible other kinds of distinctions, and, as we have seen, opens a space for governmental action. By distinguishing between belief and manifestation in the way the Court has done, legal regulation in matters of faith is made possible in theory and practice and is 'justifiable.' The manner of expressing faith can be restricted in law without undoing the right to freedom of religion as such.

Hence, labelling something as 'religion' means that the Court will approach it with this distinction between belief and manifestation in mind. (There are of course other relevant distinctions as well.) The way religion/religious is conceptualized opens a space for governmental action and a space for law in matters of faith. It makes it possible to speak of government and faith communities holding different competences in different spheres. It

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[23] In this article, belief is by and large used as a general term accommodating 'religious' and 'non-religious' belief.

[24] See e.g. *Larrissis and others* v. *Greece*, Appl. No. 23372/94, 26377/94, 26378/94, 24 February 1998, para. 45; *Church of Scientology Moscow* v. *Russia*, Appl. No. 18147/02, 5 April 2007, para. 72.

[25] See e.g. *Kokkinakis v. Greece,* Appl. No. 14307/88, 25 May 1993, para. 48; *Larrissis and others* v. *Greece*, para. 45.

influences how different societal spheres are identified and characterized. Thus, drawing on Cavanaugh and Asad, my account here shows how denoting something religious, or secular, authorizes specific configurations of power. The distinctions are political, not 'neutral.' By denoting something as 'religion,' one designates it as having a special place and character.

5. THE HISTORICAL ROOTS OF EXPLANATORY VALUE

This way of imagining faith – characterizing the public sphere and distinguishing between spiritual and temporal governance – has a history that is linked to the formation of modern society, the continual renegotiations between temporal and spiritual powers, the Enlightenment and liberal thought, as well as a post-Reformational conception of faith. Faith is attributed with more intellectualizing features. It is about the orientation of the mind. Faith is personal, a matter of individual conscience, largely private and inward-turning. This view influences the perception of the societal ambitions of faith. Faith's proper sphere is one's interior life; as such, it is distinct from economic and political pursuits, for example. Thus the notion of faith/religion as stripped of a political 'body' – 'religion' at this time being basically identified as Christianity – crystallizes simultaneously with a specific understanding of society at large and the role and nature of civil/state government. Important also is how advancing this conceptualization of religion facilitates a faith that renders possible a co-existing loyalty towards god, as a believer, and towards the state, as a citizen.

Obviously, a multifaceted conceptual history is here being condensed down to the point of near absurdity.[26] However, this does not undo the fact that these notions influence the understanding of freedom of religion in contemporary European human rights discourse. The (historical) self-image of modern international law is intimately linked with the renegotiations of power in modern society and the nation state. Theorists highlight how the discipline of international law sees itself as part of a 'modern project,' as the response of 'reason' to 'religious passions' in the aftermath of the Thirty-Years

[26] For a short insightful reading of the history of the notion of religious freedom, see Brian Tierney, 'Religious Rights: A Historical Perspective,' in: *Religious Human Rights in Global Perspective: Religious Perspectives,* John Witte Jr. & Johan D. van der Vyver (eds.), (The Hague: Martinus Nijhoff 1996), 17-45.

War; this is the creation myth of a form of secular governance.[27] Asad identifies contemporary human rights law as part and parcel of the modern project to 'domesticate' and tame religion and counteract societal disorder.[28] This is law's self-image.

It is against this account of the legal imagination that we may interpret the Court's emphasis on the secular public sphere, an emphasis that intensifies as a result of the Court's encounter with believers who seemingly do not conform, who refuse to negotiate their identity in well-established ways, and whose loyalty to the cherished modern pluralistic and democratic society 'dearly won over the centuries[29]' is therefore questioned.

6. CONCLUDING REMARKS

To conclude, the factors influencing the Court's thinking on faith and its governance are naturally manifold. Here, the point has been made that the basic parameters for how the Court argues regarding freedom of religion have a history that precedes the founding date of the Court itself. Furthermore, I have claimed that sufficient attention is not being paid to the historical background of the prevalent models, and how a particular notion of religion is bound up with a particular view of society and civic 'secular' governance. Instead, it is assumed that the models are neutral and furthermore that Islam is a faith that holds political and societal ambitions more overtly than, for example, Protestant Christianity or present-day Catholicism in Italy. Be this as it may in either case, what is of interest here is that such notions prejudice the discussion.

While the Court does not operate with an explicit definition of religion, we indirectly see traces of a view of religion that could be identified, following Cavanaugh, as a sort of 'enlightenment figure.'[30] It should be asked if the Court is mistaking 'a contingent power arrangement of the modern West for a universal and timeless feature of human existence.'[31] It seemingly does not

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[27] See e.g. David Kennedy, 'Primitive Legal Scholarship,' 27 *Harvard International Law Journal* 1/1986, 1-2; David Kennedy, 'Images of Religion in International Legal Theory,' in: *Religion and International Law,* Mark W. Janis & Carolyn Evans (eds.), (The Hague: Martinus Nijhoff 1999), 146-149; Kennedy, *Losing*, 313.

[28] Asad, *Formations*, 134.

[29] *Kokkinakis* v. *Greece*, para. 31.

[30] Cavanaugh, *The Myth*, 17.

[31] Ibid.

acknowledge how its distinctions are political, or how using them to characterize and deal with various phenomena is a form of the exercise of power, because of the sort of spaces for action that are thereby created, the sort of power and authority they legitimate, and how their reading is possibly exclusionary in a way contradictory to the ideals that in other respects European human rights law praises.

A legal definition is not the same as a theological definition and one should not conflate the two. However, human rights law not only governs state action. Being a contemporary discourse of significant authority, human rights nowadays affects the way we think about religion. Like any other dominant discourse, it should not evade the critical eye.